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Master Thesis

The Right to Self-Determination and Statehood:

The Kosova Case

Student:

Besfort Rrecaj

Mentor:

Makau Mutua

Professor of International Law

Department of Law

Claude Welch,

SUNY Distinguished Professor

Department of Political Sciences

INDEX

Chapter One

Introduction.....	1
--------------------------	----------

Chapter Two

The Genesis of Kosova Identity in the Modern Era.....	4
--	----------

Albanian Renaissance and the Development of National Consciousness.....	4
---	---

European Politics and the Albanian National Question: Failed Attempts of the Albanians at Unification and the Emergence of the Albanian Cause in the Balkans.....	7
---	---

Balkan Wars and the Partitioning of the Albanian Inhabited Areas.....	10
---	----

Chapter Three

The Legal Status of Kosova up to the World War Two.....	12
--	-----------

The Establishment of the Kingdom of Yugoslavia and Suppression of Albanian Identity and Nationality.....	12
--	----

Albanian Struggle and the Expulsion Projects.....	16
---	----

Chapter Four

The Emergence of Autonomy Claims	22
---	-----------

Unification of Albanian Inhabited Lands during the Second World War, the Communist Movement and the Establishment of the Second Yugoslavia.....	22
---	----

Continuation of the Expulsion Programs by the Communist State.....	23
--	----

The 1974 Constitution and the Semi-Republican Status of Kosova.....	24
---	----

Rise of Serbian Nationalism and Break-up of Kosova Status within Yugoslavia.....	26
--	----

Chapter Five

A Case for Self Determination after the Dissolution of Yugoslavia	31
--	-----------

Failed Attempts to Keep Yugoslavia Alive.....	31
---	----

The role of International Community and Self-determination in Regard to Break Apart

Republics.....	34
----------------	----

Kosova and its Peaceful Manner to Self-Determination.....	38
---	----

Chapter Six

Fighting for Self Determination	41
--	-----------

Reluctant Resort to War.....	41
------------------------------	----

NATO Reaction to the Milosevic Policies and the Rambouillet Peace Process.....	44
--	----

Chapter Seven

A State in Embryo	51
--------------------------------	-----------

Installation of International Administration and Resolution 1244: Denial of the Right to

Self-Determination.....	51
-------------------------	----

The Final Status Talks: Their Potential Frame and Limits.....	56
---	----

Chapter Eight

CONCLUSIONS: Is Kosova Entitled to Statehood?	61
--	-----------

Chapter Nine

LITERATURE	70
-------------------------	-----------

Primary Sources	70
-----------------------	----

Secondary Sources	74
ACRONYMS	78
ANNEXES.....	80
Annex 1: Map of Kosova	80
Annex 2: Late Ottoman Vilayets 1881 – 1912	81
Annex 3:Expansion of Serbia and Montenegro	82
Annex 4: Frontiers after 1913	83
Annex 5: Yugoslavia 1945 – 1991	84

Chapter One

Introduction

To explore self-determination is, in the words of Antonio Cassese”, a way of opening a veritable Pandora’s Box.” Indeed, the historical evolution of the concept reveals that it has been subjected to ambiguity, misconception and contradictory application. Over the years, it was redefined and re-applied on the basis of the interests of particular states. More recent events, namely the dissolution of the USSR and Yugoslavia, have given a new perspective to the meaning of self-determination. In this post Cold War era, greater attention is being paid to the enforcement of human rights and with it, a broader understanding of both external and internal conceptions of self-determination.

The purpose of my scholarship is to apply this new understanding of self-determination in the case of Kosova Albanians. It begins with the pre WWI genesis of the Kosova cause in the Balkans; a period of national awakening on the eve of the Ottoman Empire’s destruction. In this period, Albanian leaders compiled a program to preserve the Albanian national identity and struggle for independence—a program ignored by the Great Powers.

In the third chapter, I discuss the impact of the Versailles Conference on the application of the principle of self-determination until WWII. It was at Versailles where Kosova was ceded to Serbia. I also discuss the status of Kosova within the newly established state, the Kingdom of Yugoslavia. In this period, Kosova would not have any legal status and the basic human rights of Kosovar Albanians would be suppressed.

In the fourth chapter I examine the situation of Albanians in general during World War II and give an overview of events under the second Yugoslavia. The 1974 constitution of Yugoslavia advanced the status of Kosova but did not settle the issue of Albanians. I also analyze the impact of the rise of Serbian nationalism and the Yugoslav economic crisis of the 1980s. I conclude that they resulted in an illegal change in the status of Kosova by Serbia and the beginning of the dissolution of Yugoslavia.

In the fifth chapter, I discuss the process of dissolution of Yugoslavia and the manner in which it was handled by the international community. Special emphasis is given to the European Community guidelines recognizing new states. I also discuss the political environment in Kosova, the peaceful efforts made by Albanians for international recognition, and the reasons for their failure.

The sixth chapter focuses on the failure of the international community to respond to the Albanian efforts to achieve their goal, their resort to arms and the escalation of oppressive Serbian policies toward Albanians. The chapter analyzes the impact of the failed peace talks at Rambouillet and the subsequent NATO air strikes to halt atrocities.

The seventh chapter discusses the installation of the United Nations Mission in Kosova (UNMIK) and the ambiguous status of Kosova--legally part of Serbia while in actuality under international administration. The chapter ends with the 2005 negotiation process to determine the final status of Kosova and offers some options for future status.

The eighth chapter reviews the evolution of the principle of self-determination. It concludes with reasons why Kosova has the right to self-determination, based on three factors: historical, legal and human rights.

The last chapter is the bibliography that includes a variety of sources in English, Albanian, Serbian and Croatian that were used to support the arguments presented in this paper. Throughout this paper, I have deliberately used the Albanian spelling of Kosova--ending with the letter "a". While most authors refer to it as Kosovo--ending with the letter "o", this is reflective of Serbian hegemony. Appropriate spelling is reflective of the right to self-determination.

Genesis of Kosova Identity in the Modern Era

Albanian Renaissance and the Development of National Consciousness

The early years of the 19th century opened a new era in the Balkans. In the wake of the collapse of the Ottoman Empire, the winds of national consciousness and self-determination that began with the American Declaration of Independence in 1776 and the French Revolution in 1789 would flow among the Balkan people. Yet the process of creating new states would involve outsiders. The Balkans thus became a theatre where the Great Powers were the main actors.¹ As other nations sought to take advantage of the collapse of the Ottoman Empire, Albanians—the ancestors of the Illyrians (the first inhabitants of the Balkan Peninsula)—defended their territories.² Albanians were able to do so by consolidating their political powers through an enlightened sense of national self-determination.

At this time, Albanians enjoyed weak support from the Great Powers while Russian aspirations in the region supported the idea of pan Slavism. In this geopolitical climate it seemed at first, that the best protection would be to require autonomy within the Ottoman Empire which would embrace all the Albanian inhabited lands³. The concern was evident because, as Serbia began to emerge in 1804, Albanians who lived in Nis and

¹ Skender Anamali & Kristaq Prifti, HISTORIA E POPULLIST SHQIPTAR (V-2, 2002), at 17 (Skender Anamali & Kristaq Prifti, HISTROY OF THE ALBANIAN PEOPLE, (V-2, 2002))

² Tom Gallagher, OUTCAST OF EUROPE: THE BALKANS, 1789 – 1989, FROM OTTOMAN TO MILOSEVIC (2001), at 19

³ Noel Malcom, KOSOVO - A SHORT HISTORY, at 182

surrounding areas (that are currently within Serbia bordering Kosova), were forced to emigrate or flee to territories which compose present day Kosova. All the villages were burned behind them⁴. This event resembled a huge migration of the Albanian population that occurred in late 1737 known as ‘The Second Migration’⁵.

Albanian efforts to control their inhabited territories and obtain wider autonomy, started at the end of the 18th and the early 19th century. This resulted in the creation of two Albanian dynasties. One of them was the Bushati dynasty, which controlled the northern part of Albania including Kosova. This dynasty was known for its equal treatment of all citizens regardless of religion or nationality. It created diplomatic relations with Western European countries and became an independent ally of the French revolutionary army⁶. Feeling threatened of losing control over the territory, the Ottoman Empire sent a military expedition that retained military control. But, this did not stop the resistance of the Albanian people, and in particular the general reforms announced by the Porte, the main governing body of the Ottoman Empire⁷.

As one of the last efforts to save the empire, the Ottomans announced reforms which were introduced into the territories of Kosova in 1843. Attempts to impose a conscription system in Kosova, introduce new taxes, and disarm the population, led to vast

⁴ Tim Judah, *Kosovo, WAR AND REVENGE* (2002), at 11 – 12

⁵ According to Ottoman Document in 1738 Janjevo, Novo Berdo, Prishtina and Vucitrn were all destroyed and the people there either fled or were killed. Cited by Noel Malcom, *KOSOVO: A SHORT HISTORY*, at 170

⁶ Supra note 3 at 175 – 177

⁷ Stavro Skendi, *THE ALBANIAN NATIONAL AWAKENING* (1967), 17 – 27

popular revolts from 1843 through 1845⁸. The revolt started in Prishtina (now capital of Kosova). The main Albanian demand was to protect the weak autonomy enjoyed prior to imposition of the reforms. Despite fierce battles and resistance, the revolt was crushed by 1845 when a large army was sent on the Sultan's order to deal with the situation⁹. Kosova, though, would stay in the state of permanent revolution in their quest to protect their lands¹⁰.

In 1867, as part of the general reforms, the Ottoman Empire introduced a new territorial administrative division and created new provinces called *vilayetes*. Among them, the *vilayet* of Kosova was formed composing four minor administrative territorial divisions known as *sanxhak*. The main administrative city was Prizren. After the Congress of Berlin, the center of power later shifted to Prishtina until 1888.¹¹ According to reliable data, the absolute majority of the population was Albanian. This contradicts the Serbian “Arnautas theory” established by Serbian writers, claiming that the Albanian population was in fact Albanianized Serb. Called by German expert Gustav Weigand, as a “mass of crude lies”, it is also widely known as the Serbian conspiracy theory¹².

⁸ Supra note 3 at 185 – 186

⁹ Supra note 1 at 93 – 94

¹⁰ Supra note 3 at 186

¹¹ Dr. Liman Rushiti, NDARJA TERRITORIAL DHE RREGULLIMI ADMINISTRATIV I KOSOVES 1878 – 1941 (2004), at 13-14 (PhD Liman Rushiti, TERRITORIAL DIVISION AND ADMINISTRATIVE REGULATION OF KOSOVA 1878 – 1941 (2004))

¹² Supra note 3 at 192 – 201

European Politics and the Albanian National Question: Failed Attempts of the Albanians at Unification and the Emergence of the Albanian Cause in the Balkans

The Ottoman defeat by Russia, and the notorious agreement in Budapest known as the Saint Stefan Agreement in 1877, encouraged Albanian patriots and politicians to unify in order to preserve its borders by organizing a country.¹³ The same agreement, supported by the idea of Pan Slavism, also led Serbian nationalists to begin to expand their territories towards Albanian inhabited lands¹⁴. The Serb aspirations were made public earlier in their famous plan called *Nacertania* (The Outline) in 1844¹⁵. The idea of Pan Slavism concerned not only Albanians but also the European Great Powers. Great Britain, in particular, was concerned that the European dominions of the Ottoman Empire were falling under the influence of Russia¹⁶. Thus, the Great Powers attempted to settle the Balkan issue in another congress that would be held in Berlin¹⁷. At this time the policy of the

¹³ Supra note 1 at 133 – 142

¹⁴ Supra note 3 at

¹⁵ Enver Hasani, SELF – DETERMINATION, TERRITORIAL INTEGRITY AND INTERNATIONAL STABILITY, THE CASE OF YUGOSLAVIA (2005) at 125 – 126. The famous document called *Nacertania* (the Outline) was drafted by Ilija Garasanin in 1844. The document called for the unification of all Serbs but also for acquiring Albanian inhabited lands as well as Macedonia, Dalmatia, Vojvodina, and Bosnia and Herzegovina

¹⁶ John Arthur Ransome Marriot, THE EASTERN QUESTION: AN HISTORICAL STUDY IN EUROPEAN DIPLOMACY (1917), at 283. The idea of Pan Slavism was raised in 1867 in the congress of Moscow, which established a central committee in Moscow and sub committees in Bucharest. This idea affected the western European countries interests, in particular Britain, and was in conflict with the Paris Congress agreement of 1856, which acknowledged the borders of Ottoman Empire, thus a rising tensions of great powers in the region.

¹⁷ *Id* at 291 – 300

Great Powers was to keep the Ottoman Empire weak rather than have Russian influence in the Balkans.

With the Congress scheduled to take place in the near future, Albanians prepared to present themselves as united and non-separable, with a unique platform. This process was achieved on June 10, 1878 at the Albanian Congress held in Prizren, with the creation of the Prizren League. Due to their weak geopolitical situation, they realized that the best way to protect national interests would be to seek autonomy within the Ottoman Empire, but as unified Albanian territories in one *vilayet*¹⁸. The purpose of the League of Prizren was to make the European powers aware of the existence of the separate national interests of the Albanian people¹⁹. The aim of the League was simply to stop any territory from being occupied by foreign troops²⁰.

Despite all the efforts, the Albanians were denied their national representation at the Congress of Berlin. The League had to present its proposals through the British representative. The Albanian stance at the Congress was against partition of Albanian territory. They also indicated that if territories were to be ceded to Serbia or Montenegro or other countries, they would protect them even by force if necessary²¹. The main demands

¹⁸ Supra note 1 at 131-162

¹⁹ Supra note 2 at 49

²⁰ Supra note 3 at 221

²¹ Supra note 1 at 39 – 40, The existence of the league and its program was stressed in the letter of Consul Kirby Green addressed to the Marquis of Salisbury, stating that the “League has no intention of making war either against Montenegro, Austria, Serbia, Bulgaria, Russia or Greece, but it has thus given the world notice that Albania is, so to speak, entitled property, and Sultan cannot make away with a single inch of it without the consent of the heirs-at-law the Albanians, see also supra note 3 at 239 – 240

of the League were: 1) unite all Albanian territories in one *vilayet*, 2) all civil servants serving in Albanian territories must be able to speak and write Albanian, 3) develop education in Albanian, 4) allocate enough money as needed from the general income of the *vilayet* to be used for the development of education and public reconstruction²².

The Congress of Berlin, which opened June 13, 1878 under the auspices of the Great Powers, ultimately did not take Albanian rights and requirements under consideration. They ignored the existence of an Albanian nation partly because of weak support from Austria-Hungary²³. The final outcome of the Congress in regard to the Albanian lands was to award the northern part of Albanian lands that belonged to the *vilayet* of Kosova to Serbia (Pirot, Vranja and Nis) and to Montenengro (Tivar, Podgorica, Plava, Gucia, Rugova and Kolashin)²⁴. The Congress also failed to address the future of Albanian territories that were left under the Ottoman Empire.²⁵ Albanian territories that compose present day Kosova would remain under the Ottoman Empire.

²² Ilijaz Rexha, LIDHJA PRIZRENTI NE DOKUMENTET OSMANE (1978) at 43 - 45

²³ Earlier in the secret Austrian – Russian Convention in 1877, Austria mentioned as a possible scenario the creation of an independent Albanian state in the case of dissolution of Ottoman Empire, see id at 47 - 48

²⁴ Supra note 1 at 162 – 163

²⁵ Supra note 3 at 228 – 229, A massive exodus followed establishment of Serbian rule in the territories ceded to her in an attempt to deny the Albanian presence on these territories. According to western statistics, there were 60 000 Albanian families fled that to Macedonia, while another 60 – 70,000 fled to remaining territories of Kosova.

Balkan Wars and the Partitioning of the Albanian Inhabited Areas

In 1908 the appeal of nationalism within the central authority of the Ottoman Empire was evident when officers known as the Young Turks seized power from Sultan Abdul Hamid II. Again, this situation proved a good opportunity for other nations to expand their territories. This period saw the creation of different alliances between Balkans countries (such as the Bulgarian-Greek alliance and the Bulgarian-Serbian alliance) whose purpose was to further expand their territories²⁶. Subsequently these alliances led to growing confrontations over domination in the Balkans that caused the Balkans Wars. Serbian, Greek and Montenegrin forces occupied most of Albania by the close of the first Balkan War at the end of 1912²⁷. Albanian revolts to gain control and protect their lands started during the year 1908, and spread all over Albanian territories by 1912 when the independence of Albania was declared. Their success concerned both Greece and Serbia, which feared that unless they reacted promptly, they might find the ground cut from under their feet, thus stopping their advantage of expanding their territories²⁸. Albanian independence was declared at the height of the Balkans War when most of the territories were occupied by foreign troops²⁹. This provided an opportunity for re-emergence of the Russian supported Serbian chauvinist plan, followed by the organized propaganda of “Albanian lawlessness against defenseless Serbs.”³⁰ The Albanian factor in the Eastern

²⁶ Supra note 2 at 62 – 64

²⁷ Supra note 2 at 65

²⁸ Supra note 16 at 396 – 398

²⁹ Supra note 1 at 391 – 436

³⁰ Supra note 3 at 243

Crisis was double edged. Albania was an object of desire by Austria – Hungary, Italy, Greece and Serbia.

The Ambassadors Conference, held in London in 1913, was set to end the Balkan Wars and be concerned with new border lines once it became clear that Ottoman Empire was too weak to handle internal national movements. Austria–Hungary did not want Slav interference in the Balkans and feared establishment of a Russian outpost in the Mediterranean Sea through the port of Durres (important Albanian port). It thus supported creation of an Albanian state. However, although the Albanian people had a clear cultural and linguistic identity, they had not yet been recognized as a separate nation-state despite weak support from Austria–Hungary. Even further, when Albania became independent in 1912, Kosova was ceded to Serbian rule in 1913, following the Ambassadors Conference-- a decision that was again restated at the Versailles Peace Conference. It was at Versailles when the second major injustice occurred. Large amounts of Albanian territories that nowadays compose Kosova were ceded to Serbia.

The 1912 – 1913 Balkan wars confirmed the reputation of the region as a zone of intense national rivalry and indeed hatred. Serbia, Montenegro and Greece subjected Albanians to heavy repression, both during and after the Wars. The oppression of Albanian villages that continued afterwards has been described by some scholars as the Third Balkan War³¹.

³¹ Supra note 2 at 65 – 67

Legal Status of Kosova up to the World War Two

The Establishment of the Kingdom of Yugoslavia and Suppression of Albanian Identity and Nationality

The Versailles Conference ended the First World War and established the new world order. It established the first global organization, the League of Nations. The purpose of the League was to prevent future wars and enhance peaceful resolution of disputes³². As a result of the Treaty of Versailles, new states emerged. Some were created based on the principle of national self-determination, while others were created based on geopolitical concessions and thus undermined the will of the people's concerned. The latter policy established the Kingdom of Serbs, Croats and Slovenes, which would later be known as the Kingdom of Yugoslavia. The Great Powers created what they believed was a single nation state representing numerous disparate groups³³. In truth, the Kingdom of Yugoslavia was an artificial state that failed to equally represent all ethnic groups³⁴.

³² The Covenant of the League of Nations was established as a part of the Versailles Treaty on June 28, 1919, see The Covenant of the League of Nations available at <http://www.yale.edu/lawweb/avalon/imt/parti.htm>

³³ John R. Lampe, YUGOSLAVIA AS HISTORY: TWICE THERE WAS A COUNTRY (2000) at 105 – 106. The Kingdom of Serbs, Croats and Slovenes was established on December, 1918 based on the Corfu Declaration and Belgrade Proclamation. It actually was a reward to the Serbs under the guise of Serbia's wartime espousal of "Yugoslavism". The scholar Mark Wheeler notes "The Union of 1 December 1918 was a shotgun wedding; the honeymoon was as short as the hangover was long", as quoted by Christopher Bennett, YUGOSLAVIA'S BLOODY COLLAPSE (1995) at 33

³⁴ Hurst Hannum, AUTONOMY, SOVEREIGNTY, AND SELF-DETERMINATION: THE ACCOMMODATION OF CONFLICTING RIGHTS (1996) at 53

The principle of national self-determination advanced by President Woodrow Wilson in his Fourteen Points was not equally applied. The Great Powers used the document when it advanced their own interests. Those states fortunate to be on the winning side when the First World War ended were given favorable allocations of territories. At Versailles, they applied the principle of self-determination to justify the dissolution of the Habsburg and Ottoman empires but not in forming a nation. Rather, in the case of the Kingdom of Yugoslavia, the Great Powers created an ethnically and religiously mixed country based on the domination of the Serbs.³⁵ The purpose of this was to create large states as buffers to the defeated powers, and to contain the menace of the Bolsheviks, the extreme socialists who had seized power in Russia in 1917³⁶.

In order to balance their policy towards nationalities left under the other states, the Great Powers introduced national minority treaties and urged those states such as the Kingdom of Yugoslavia to sign the Declaration for the Protection of Minorities. The treaties were categorized. The first category included the defeated states of Austria, Hungary, Bulgaria and Turkey. The second included new states created out of the dissolution of the Ottoman Empire. The third category included special regimes established in Aland, Danzig, the Memel Territory and Upper Silesia. However, these treaties were characterized by a selective imposition. They guaranteed what at the time had

³⁵ Susan L. Woodward, *BALKAN TRAGEDY: CHAOS AND DISSOLUTION AFTER THE COLD WAR* (1995) at 22 – 23. Some scholars say that the genesis of the destruction of Yugoslavia is its creation itself which was based on the dominance of one nation over the other, “It was the Croats and their relations with the Serbs the reason for the dissolution of Yugoslavia and their different conception of the idea of Yugoslavism”, Enver Hasani, *SHPERBERJA E ISH-JUGOSLLAVISE DHE KOSOVA* (2000) at 18 – 25 (Enver Hasani, *DISSOLUTION OF FORMER YUGOSLAVAIA AND KOSOVA* (2000))

³⁶ *Supra* note 2 at. 77 – 78

come to be viewed as traditional minority rights regarding religion, language and cultural activities. They did not imply any broader economic or political autonomy, except in the special cases of Danzig, Memel and Upper Silesia. Most importantly, the purported self-determination of certain nationalities was the result of the dictates of the Great Powers. In Paris, minorities were permitted to lobby, but not given the right to vote at home³⁷.

This affected persons of Albanian nationality. Serbia's representative persistently refused to address minority rights in the southern part of the state. It refused to acknowledge the legitimacy of the Albanian population in Kosova³⁸. In fact, the very existence of the Albanian population was denied and Kosova became a synonym for the deprivation of basic human rights.³⁹ By signing the treaty on the protection of minority rights, Yugoslavia tried to give the impression that it was prepared to give even the Albanians "just and effective guarantees" of their rights. But they did not apply them with regards to southern minorities. The Serbs claimed that the declaration applied only to the areas taken over by Austria-Hungary, even though the reference in the Treaty to "the areas taken over by Serbia and Montenegro since January, 1913 proves the opposite"⁴⁰.

Yugoslavia's highly centralized state apparatus was enshrined in the St. Vitus Day, or the *Vidovdan* Constitution of 1921. In the absence of Croat political parties, Serbs made deals with the Bosnian Muslim landowners and pushed through a centralist constitution

³⁷ Supra note 34 at 52 - 55

³⁸ Supra note 33 at 116 - 117

³⁹ Zejnullah Gruda, E DREJTA E POPUJVE PER VETEVENDOSJE (1996) at 14 (Zejnullah Gruda, PEOPLE'S RIGHT TO SELF-DETERMINATION (1996))

⁴⁰ A presentation by Frank Muenzel, Kosovo & Yugoslavia: Law in Crisis (1999), JURIST, A Law Professors Network at 15 – 16, article is available on internet: <http://jurist.law.pitt.edu/simop.htm>

virtually unopposed. All of the changes, including the creation of the nation itself, occurred with the exclusion not only of the Albanians but also of the other non-Serb populations (with the exception of Bosnian Muslims landowners).⁴¹ The situation of the Albanian population under the Kingdom of Yugoslavia became worse every day. In the new Serb dominated centralized state apparatus, Serbian forces were free to take revenge against Albanians who resisted seizure of their lands.

In a petition presented to the Secretary General of the League of Nations dated May 5, 1930, the Albanian clergy stated that Yugoslav authorities failed to impose provisions of the Declaration for Protection of Minorities signed by the Kingdom of Yugoslavia⁴². In its eight annexes, the petition emphasizes eight important points in violation of Articles 2, 3, 7, 8, 9, 10. These articles involved 1) the protection of life 2) protection of freedom, 3) protection of property, 4) civil and political rights, 5) right to use the language, 6) right to establish private schools and charity organizations, 7) right to public education, and 8) right to religion⁴³. The petition pointed out three different gross violations against Albanians: 1) prosecutions to force Albanians to leave their homes, resulting in more than 140,000 Albanians settling in Turkey and Albania and other countries, 2) employment of

⁴¹ Christopher Bennett, YUGOSLAVIA'S BLOODY COLLAPSE: CAUSES, COURSE AND CONSEQUENCES (1995) at 36 – 37

⁴² Memoire presente a la Societe des Nations par Done Jean Bisaku, Don Etienne Kurti et Don Louis GAsi, *La Situation de la Minorite en Yugoslavie*, available in the State Archive of Federal Secretariat for Foreign Affairs in Belgrade, DASIF Beograd, Fond DNZ 15. DI. secr. 4/19507/10528, the copy of the original petition is also available in pro-memoir by Hakif Bajrami, *Peticionin qe I shpetoi shqiptaret ne shqiperine kontinentale nga fashizmi serb*, (2005) at 25 – 73

⁴³ Article 2 of the petition

force and violation to assimilate defenseless people and 3) prosecuting and destroying individuals who refused to abandon their land or to assimilate and Serbianize.

The petition criticized the League of Nations for not doing enough to protect minorities, and for failing to investigate documents presented by the Yugoslav authorities which disputed these claims. For example, the Yugoslav document (C.370 of August 26, 1929) on the situation of the Albanian minority stated that Albanians established their own schools, while in fact more than 800,000 Albanians had no primary schools at all, not did they hold any important position in the state administration. The Albanian petition requested the League of Nations to establish an international commission to oversee the enforcement of the Minority Treaty. Unfortunately, the petition failed to convince the international community to do so⁴⁴.

Albanian Struggle and the Expulsion Projects

The creation of Yugoslavia was an attempt to solve the national question of the Southern Slavs, excluding the Bulgarians. It represented an almost total realization of the Serb national program of complete control of its state structures⁴⁵. The territory of Kosova remained an administrative part of the state without any specific legal status. Albanians were not recognized even as a national minority⁴⁶. Serbia, or Yugoslavia under the

⁴⁴ Supra note 42 at 1 – 6

⁴⁵ Hajredin Kuqi, INDEPENDENCE OF KOSOVA/O STABILIZING OR DESTABILIZING FACTOR IN THE BALKANS (2005) at 28 – 29

⁴⁶ *Id at 29*

dominance and control of Serbia, tried to eliminate the Kosovar Albanians, through a racist ideology propagated by Cvijic and Cubrilovic⁴⁷.

The Albanians persistently rejected Serbian authority. They organized guerilla like warfare in the early 1920s in units called *Kacaks*. When the revolt was crushed, the *Kacaks* resisted the reimposition of Serbian or Yugoslavian rule. They did not want Kosovo to be part of Yugoslavia. It was after all, a state of the south Slavs, as its name suggested, and the Albanians are not Slavs.

The Kosova Committee, which was previously formed to lobby the American government to protect Albanian national interests, then took the lead to organize a *Kacak* movement inside Kosova. The goals of self-determination and peaceful secession were set in the general rules of the movement. They included two principal points 1) that there would be no arms raised against local Serbs, and 2) no one would dare to burn down a house or destroy a church⁴⁸. Before resorting to arms, Albanians tried diplomatically to resolve the problem. During 1920, Albanian leaders met with a senior official of Serbia and put forward the requirements of the Albanians (also known as eight points): right to self-determination, cease killing of Albanians and taking their land, end the colonization program, end army action carried on the pretext of disarmament, and cease interning the families of insurgents.⁴⁹

⁴⁷ *Id*

⁴⁸ Supra note 3 at 273 – 275

⁴⁹ *Id*

The revolt of the Albanian population was fuelled by the fact that Albanian language schools were being closed⁵⁰. Serbian authorities tried to justify the closing of the schools, by claiming there were no qualified school teachers, despite the evidence to the contrary. Also no Albanian publications could be published during this period. On the other hand, private Turkish schools and mektebs (Islamic elementary schools) were allowed and almost every other minority in Yugoslavia had its publications in their language⁵¹. In spite of this suppression, Albanians managed to organize schools in private homes to keep their identity. (The same model would be used during the 1990s when again Albanians would be expelled from their school buildings). Beside schools, Albanians also created “illegal” organizations such as Agimi (Dawn) and Drita (Light). These operated through legal youth clubs and sports organizations, to disseminate books smuggled from Albania⁵².

In order to fulfill their goals, the Serbs started the process of colonization in Kosova. During it, many Serbs came from other parts of Yugoslavia. Land reform was the most important legislation passed in the interwar period. Large estates were broken up and the land was distributed among peasants, many of whom were Serbs. Inevitably these reforms came at the expense of the existing non Serb landowners⁵³. The official policy of Serbia was to settle official Serb farmers, and townspeople, while seeking to “Serbianize”

⁵⁰ Many Albanian people died during the clashes and many villages were destroyed. According to the Serbian philosophy of closing Albanian schools, the Albanians would remain “backward, unenlightened and stupid”, see supra note 4 at 21 – 22.

⁵¹ Supra note 3 at 267 – 268

⁵² Supra note 4 at 22

⁵³ Supra note 41 at 40

the Albanian majority linguistically and politically⁵⁴. From 1935, a wave of confiscating of land from Albanians grew, based on the new rule that all land should be treated as public property unless the farmer had a Yugoslav document to prove its ownership--something rarely issued to Albanians⁵⁵.

The most educated Serbian intellectuals drafted different expulsion programs and laws. Among them was the notorious Vasa Cubrilovic who supported more rigorous methods to achieve expulsion. Cubrilovic was highly critical of the colonization program because he believed it attempted to solve the problem of “bleeding Balkans” by Western methods. Because he was concerned about world reaction, in particular Britain and France, he attempted to conceal his expulsion program by carrying it out at the same time and in the same manner as Germany and Russia. That is, he applied the same techniques used by Germans to expel Jews and Stalin to shift millions of Russians and minorities, from one part of the Soviet Union to the other. In this way he hoped that the expulsion of Albanians would go unnoticed in the world’s eyes⁵⁶. He sketched the program for the expulsion of Albanians from Kosova and Serbian colonization of the depopulated areas in his 1937 lecture entitled “Evacuation of Arnauts”⁵⁷. He also urged state officials to use physical and

⁵⁴ William W. Hagen, *The Balkan’s Lethal Nationalism*, *Journal of Foreign Affairs* (July-August 1999), v78 i4 p.57

⁵⁵ In one example of this process, the entire Albanian population of twenty-three villages in upper Drenica (6,064) was dispossessed Supra note 3 at 283

⁵⁶ Supra note 4 at 23

⁵⁷ “Arnaut” is the Turkish word for Albanian.

psychological means to pressure Albanians to leave. Part of his program also included distributing weapons to the new colonists to encourage the rest of the population to leave⁵⁸.

As a result of the colonization program, hundreds of thousands of Serbians occupied Kosova. The long term purpose of the program was to change the national composition of the population there. Between the two world wars, over 11,000 Serb families with some 54,000 members and some 120,000 individuals were settled in Kosova⁵⁹. This was eventually the same program the Serbian government followed after 1991 in a new modified plan.

Expulsion of the Albanian population continued throughout this period until the Second World War. To achieve its aims, the Serbian government even entered into shadow agreements with other states such as Turkey in 1938, where 40,000 families (200,000 people) emigrated over the next six years. In the end, though, the Cubrilovic document remained a dead letter because of the outbreak of the Second World War⁶⁰.

⁵⁸ Mojmir Krizan, *New Serbian Nationalism and The Third Balkan War*, Studies in East European Thought (1994) at 47 – 48. According to Vasa Cubrilovic's project the Serbian authorities should use different means such as fines, police arrests, cutting forests, damaging fields, forced labor etc. to make the life harder for Albanians so they will eventually leave their lands.

⁵⁹ Supra note 35 at 31

⁶⁰ Although the Convention talked about the "repatriation" of the Turkish Muslim population, it was clear that from the regions specified in the convention that the bulk of these people would be Albanian, see Supra note 4 at 22 – 23

Chapter Four

The Emergence of Autonomy Claims

Unification of Albanian Inhabited Lands during the Second World War, the Communist Movement and the Establishment of the Second Yugoslavia

The Second World War started in Europe on September 1939 with the invasion of Poland by German troops⁶¹. Thus started the expansion of Germany by conquest rather than annexation. Yugoslavia (including Kosova) fell under German occupation during April 1941, while Albania and Greece fell under Italian occupation. On April 20, 1941, Kosova was joined to Albania by an agreement between the German and Italian foreign ministers. The Italian government, by the decrees of October 1941 and February 1942, gave Albanian citizenship to all peoples living in Kosova⁶². After the collapse of the Italian fascist government, German troops occupied Albanian territories and officially recognized Albania, within the borders established by Mussolini, as an independent country⁶³.

When the Second World War came to an end, the reformulation of the world order began. It became clear that the Albanians wanted to correct decisions made without their consent, by focusing on national self-determination. This became more evident when Serbians developed another program for Greater Serbia formulated by Stevan Moljevic. On June 30, 1941, Moljevic published his program, "Homogeneous Serbia". In this, he posited

⁶¹ Bruce Robinson, *World War Two: Summary of Key Events*, BBC, http://www.bbc.co.uk/history/war/wwtwo/ww2_summary_01.shtml

⁶² However some small territories of Kosova remained under German military occupation governed by Serbian officials from Belgrade. In spite of Serbian objections, Albanian schools were allowed on these territories, see Supra note 3 at 291 - 293

⁶³ *Id* at 304

a new “theory” that because Serbs were the first to oppose German occupation, they acquired the right to the Balkans and its destiny. His theory gave them the right to express Serbian hegemony and fulfill their political mission⁶⁴.

At the end of World War II, the Kosovar Albanians fought vainly for nearly a year against their reincorporation into the Yugoslav state. In an attempt to tear down these Albanian nationalist feelings, and help establish the Communist party in Kosova, the Yugoslav Communist Party played the self-determination card. In December 1943, with the permission of the Yugoslav Communists in Kosova, the Albanian Communist Party advocated self-determination up to and including secession⁶⁵.

The Albanians responded by calling the Conference of Bujane in which the Serbians and Montenegrins participated⁶⁶. At this Conference, the Albanian desire for self-determination was included in the so-called Bujane Resolution.⁶⁷ However this resolution was totally ignored by the Serbs. In response, the Albanians resorted to force to defend their rights. Albanian partisans and commanders fought Serb nationalist paramilitary groups called *Chetnik*, until 1945. During that time, 44 villages were destroyed and approximately 20,000 people killed⁶⁸.

Shortly after the Conference of Bujane, the Yugoslav Communist Party (YCP) manipulated some Albanian communists to create a so called “Kosova Parliament” where

⁶⁴ Supra note 54 at 46 – 52

⁶⁵ Supra note 3 at 307

⁶⁶ Sami Repishti, *Rezoluta e Bujanit 2 Janar 1944: Nje Analize*, Studime Historike at 92, (Sami Repishti, *The Bujane Resolution January 2, 1944: An Analysis*, Historical Studies at 92)

⁶⁷ *Id.* at 96, see also supra note 3 at 308

⁶⁸ Supra note 3 at 312

it was decided that Kosova should join “Federal Serbia” in July 1945⁶⁹. This decision was interpreted as an exercise of “free will” as defined by Lenin⁷⁰. That is, once people express their will “freely,” they cannot reclaim it later. Serbs took this position to justify their stance. Subsequently, Serbian communists ruled Albanians in Kosova in a colonial fashion causing nearly 250,000 Albanians to emigrate from Kosova⁷¹.

Continuation of the Expulsion Programs by the Communist State

The constitution established in 1946 for the Second Yugoslavia, recognized Albanians as a national minority⁷². Even so, the post war era, known among Albanians as the Rankovic period, resulted in a massive expulsion of Kosovar Albanians⁷³. During this time, the Albanians were also subjected to colonization, mass arrests and the return to institutional domination by Serbs and Montenegrins⁷⁴. This continued until the late 1960s when Rankovic’s police apparatus was dismantled in the province of Kosova⁷⁵. This was a

⁶⁹ Enver Hasni, SHPERBERJA E ISH – JUGOSLLAVISE DHE KOSOVA (2000) at 21

⁷⁰ Branka Magas, THE DESTRUCTION OF YUGOSLAVIA (1993) at 34

⁷¹ Supra note 45 at 51

⁷² The decision to establish the Second Yugoslavia was made November 29, 1943 at the Meeting of Anti-Fascist Liberation Movement for Yugoslavia (AVNOJ). No Kosova Albanian participated in the meeting. Later constitutional refinement meant that the right to self-determination, meaning the right to secede from Yugoslavia, did not apply to Kosova Albanians, see supra note 3 at 30 - 31

⁷³ Tim Judah, THE SERBS: HISTORY, MYTH AND DESTRUCTION OF YUGOSLAVIA (1997) at 34 – 36. Rankovic was the Serbian Interior Minister who employed different coercive means and methods to fasten expulsion of Albanian from Kosova.

⁷⁴ Supra note 66 at 22, see also supra note 4 at 317 - 318

⁷⁵ Supra note 2 at 222

moral and psychological blow to the “Greater Serbia” mentality of his supporters who had worked actively to maintain Serbian supremacy in the province.⁷⁶

After this period, Serbs and Montenegrins lost their rights to dominate state political institutions, while the Albanians were freed to publicly express their needs. The Albanians did so through demonstrations in 1968 when they demanded the same legal status that other republics held within Yugoslavia. This led to some constitutional amendments which partly improved Kosova’s legal status⁷⁷. However, their demand for an Albanian language university was denied them. At the same time, other republic’s advocated a more decentralized Yugoslavia. The two republics that were most active were Croatia and Slovenia. Both desired more power in their interior affairs⁷⁸.

The 1974 Constitution and the Semi-Republican Status of Kosova

The new reality, and pressure from other republics, resulted in the adoption of constitutional amendments in 1968, 1971 and 1974. All were embodied in the new Yugoslav Constitution in 1974. With this constitution, Kosova was granted the status of an autonomous province, with clear border definitions and the power to approve of constitutional changes. All provinces were perceived as equal and responsible in

⁷⁶ Peter R. Prifti, *CONFRONTATION IN KOSOVA, THE ALBANIAN – SERB STRUGGLE 1969 – 1999* (1999) p 37.

⁷⁷ Supra note 66 at 22

⁷⁸ Supra note 4 at 38 – 39

allocating and executing federal policies, as well as in the federal decision making process. That is to say, Kosova had the right to veto⁷⁹.

The constitutional legal position of Kosova was characterized by two main factors. The first characterizes Kosova as a political–territorial unit. The second characterizes Kosova as a constituting element of the Yugoslav Federation. In the former, the main constitutional features were independence in the areas of territorial integrity, judiciary, finance, economics, protection of constitutionality and legislation, international relations, and maintaining order, providing security and national defense. In the latter, Kosova was given an advanced status within the federal structure of Yugoslavia. That is, while Kosova was considered an integral part of the Yugoslav Federation, it had its own territories and borders. As with the other republics, Kosova was one of eight federal units which had its own president, national bank and other administrative bodies with defined powers and duties. Also, Kosova was permitted a measure of international action within the framework of a foreign policy defined by Yugoslavia and international treaties. Kosova was represented in the Chamber of Republics and Provinces of the parliament of Yugoslavia where it had the right to propose laws and other acts. It also was represented in the Federal Executive Council, the Constitutional Court of Yugoslavia, and other federal courts, Kosova had an equal position with the other republics in the procedure of approving and changing the constitution of Yugoslavia⁸⁰.

⁷⁹ Kurtesh Salihu, LINDJA, ZHVILLIMI DHE ASPEKTET E AUTONOMITETIT TE KRAHINES SOCIALISTE ATUTONOME TE KOSOVES NE JUGOSLLAVINE SOCIALISTE (1984) at 58

⁸⁰ Supra note 42 at 39 – 44

In spite of this, the new constitution did not advance the status of Kosova to that of a republic, which was the main demand of the Kosovar Albanians. Nor did the new constitution satisfy the Serbs who began to stir the populace with cries of nationalism. However, the Albanian request for their republic embodied an awakening of a national pride among Albanians which had been suppressed for years⁸¹. After the death of Tito in 1981, Albanians were again in the streets seeking their legitimate right to a republic within the system. They believed this was their only recourse, because formal talks at the federal level were going nowhere. These demonstrations were suppressed and for the first time in Kosova, the police used firearms⁸². Serbia used these demonstrations as a pretext to seal off the whole country, and to send in “special police” to brutally clamp down on the demonstrators. More than 200 persons were killed in this action. A purge of people considered “guilty of ideological diversification” in Kosovar institutions followed. Many Albanians were arrested, trials were held in camera and some demonstrators were sentenced up to 15 years in prison⁸³.

Rise of Serbian Nationalism and Break-up of Kosova Status within Yugoslavia

Serb politicians tried to use every maneuver possible to portray Albanians as people who would politically destabilize and threaten Yugoslav survival. In fact it was Serbian propaganda and hegemonic appetites that were destabilizing. To further encourage

⁸¹ Supra note 66 at 23

⁸² *id*

⁸³ A presentation by Frank Muenzel, *What does public international law have to say about Kosovar Independence?* (1999), JURIST, The law professors network, see also supra note 3 at 335.

nationalism among Serbs, the League of Communists of Serbia organized a marathon session from December 24–26, 1981, devoted to interethnic relations within the republic. In the meeting, Serbs claimed that the existence of two autonomous provinces (Kosova and Vojvodina) within Serbia damaged its constitutional unity. They also maintained that Serbia was not getting the same treatment as other republics. During the session, one of the leading figures of Serbian politics, Draza Markovic, claimed that Yugoslavia actually consisted of five nations--Croats, Macedonians, Montenegrins and Serbs. This was an open threat not only to Kosova but also to Vojvodina and Bosnia⁸⁴.

In 1986, highly respected Serbian intellectuals of the Serbian Academy of Arts and Sciences unofficially prepared a notorious memorandum to fuel Serb nationalism. Essentially the memorandum was an elaborate, if crude, conspiracy theory. According to the authors of the memorandum, Croats in the person of Tito and Slovenes in the person of Edvard Kardelj, had deliberately constructed Federal Yugoslavia to exploit Serbia economically. It blamed Tito for allegedly trying to weaken Serbia with the Constitution of 1974, by carving the autonomous provinces of Vojvodina and Serbia out of Serbia. The memorandum went as far as to claim that Serbs were victims of organized genocide by “irredentist and separatist” Albanians⁸⁵. Despite protests, the Academy neither repudiated the memorandum’s contents nor published an official version⁸⁶.

⁸⁴ Sabrina P. Ramet, *Views from inside: Memoirs concerning the Yugoslav Breakup and War*, Slavic Review, Vol. 61, No.3 (Autumn 2002), 558 - 580

⁸⁵ Supra note 41 at 81 – 82

⁸⁶ Supra note 54 at

With the memorandum in place, Serbs needed an appropriate leader to give life to these nationalist theories. A growing nationalism, an economic crisis, and an economic gap between republics paved the way for the emergence of a dictator. Slobadan Milosevic, a Serbian leader whose status in public politics started to emerge in the late 1980's, took advantage of the new situation. Milosevic emerged out of the economic crisis involving high international debts when Western creditors refused to continue the reckless lending of the 1970's⁸⁷. Milosevic was able to gain power by combining nationalism with an economic crisis, as the Japanese nationalists and German Nazis had, during the world depression prior to WWII⁸⁸.

Serb leaders also used other means to fuel tensions not only among Serbs and Albanians, but also among Serbs and other republics. A petition emerged from the ranks of the Serbian Orthodox Church demanding the protection of the Serbian people of Kosova and their holy shrines. The Serbian Academy of Science and Arts drafted the notorious memorandum, which sent shock waves thorough Yugoslavia. Additionally, Serbian historians began re-examining the way in which the story of World War II had been told⁸⁹. In May 1985, an alleged Albanian rape of a Kosova Serb man was widely reported in the Serbian media, which not only seemed to confirm the revisionist victimization thesis, but also provoked a call for urgent political and police action to protect the Serb population in

⁸⁷ Supra note 33 at 321 – 322

⁸⁸ Richard N. Cooper, *Trade Policy and Foreign Policy* in the U.S. Trade Policies in a Changing World Economy 291 – 92 (Robert M. Stern ed., 1987)

⁸⁹ Sabrina Ramet, *A Theory about the Causes of the Yugoslav Meltdown: The Serbian National Awakening as a "Revitalization Movement"*, Nationalities Papers, Vol. 32, No. 4, December 2004

Kosovo from Albanian violence. Serbian authorities also claimed that the Serbian population was leaving Kosova under pressure of the Albanians⁹⁰.

This psychological preparation culminated in organized rallies and meetings. In 1987 Milosevic organized a meeting in Kosova where he addressed the Serbian crowd by saying that “no one should dare to beat you”. Emotions were also fueled in 1989, when the bones of the tsar Lazar, the King of Serbia, were carried all around Serbia to recall “the real souls of Serbians” before they were reburied⁹¹ in Gracanica (a village near Prishtina) with the supervision and approval of the Serbian Orthodox Church.

In addition to psychological preparations, Serbs also concentrated on the Serb dominated Yugoslav Peoples Army. Beginning in the early 1980’s and accelerating between 1985 and 1990, all places inhabited by Serbs fell under the direct command of the Belgrade Army. The process was completed in Kosova immediately following the 1981 demonstrations⁹².

All of this culminated in 1989 when the Belgrade regime began to abolish Kosova’s autonomy. The federal Presidency unilaterally approved constitutional changes, thus violating the Constitution of Yugoslavia that required the consent of Kosova and the federal parliament. This action destroyed the political and economic autonomy of Kosova.

⁹⁰ It was true that the percentage of population slightly shifted in favor of Albanians. This was not due to Serb emigration. However the Serb population after the Second World War remained relatively stable. The Albanian population which had a higher birth rate, made only a slight difference in national proportions. The question of emigration remained central in the evolving battle of lies, see Supra note 4 at

⁹¹ Supra note 66 at 22

⁹² *id*

While Belgrade celebrated these changes in an unusually festive session of the Serbian Assembly on March 29, 1989, the Albanians of Kosova counted their dead⁹³.

⁹³ Supra note 42 at 46

A Case for Self Determination after the Dissolution of Yugoslavia

Failed Attempts to Keep Yugoslavia Alive

As the former Yugoslavia was in full gallop towards its destruction, there were still some last ditch efforts made to reorganize the federated system. The efforts proved to be fruitless due to a heightened nationalism and economic disparities within the republics. With Kosova now under its shadow, Milosevic's Serbia moved to impose itself on the other republics. Milosevic's goal was to have a tighter Yugoslav state with Serb dominance. In the worst scenario, he would use the Serb population within the other republics to revolt, secede and request incorporation with Serbia. This scenario would prevail and subsequently would lead to bloody war.

In Yugoslavia, the issue of sovereignty became complicated because of uncertainties in defining the term. Were the people, or the republic, the bearer of the sovereignty? There were major clashes on the concept of sovereignty between Serbia and other republics. The Serbs supported the concept of national self-determination, while the other republics relied on the concept of territorial sovereignty⁹⁴. However, only Slovenia had both clear boundaries and a defined population. The situation was more complicated in the rest of Yugoslavia.

⁹⁴ Supra note 15 at 208 – 209. Serbia was proclaiming a national view of sovereignty because it would enable them to acquire all the territories with Serb inhabitants. There were many Serbs in the western parts of Croatia, Bosnia and in northern Macedonia. However the government in Belgrade did not want to apply this in Kosova. Croatia proclaimed territorial sovereignty in an attempt to keep its territories, but deviated in the case of Bosnia where it later acquired pieces of land inhabited by Croats there. See also supra note 41 at 113

The republics leading the drive for democratic reforms to save Yugoslavia were Slovenia and Croatia, both of which at the time enjoyed higher standards of living. They began by demanding a looser confederation and political reforms on the federal level. In their own republics, they approved multi party systems and made amendments to their constitutions. An important amendment of the Slovenian constitution stated the right of Slovenia to secede from the federation without the mutual consent of the other republics⁹⁵. The other republics soon followed, allowing multi party systems and organized elections. On the federal level, the late Yugoslav Prime Minister Ante Markovic attempted economic reforms in the belief that better economic welfare would keep the country together. But these were not followed by political reforms. It soon became apparent that holding the country together required more than merely economic remedies⁹⁶.

The much-analyzed elections of the individual republics, made a significant contribution to disintegration and the bloody business that began in 1991. Of the six republic elections, the anti Communists won four, and a former Communist won the presidency in Bosnia-Herzegovina. While Milosevic still had the support of Montenegro, these election results made it difficult for him to impose his policy of a more unified Yugoslavia. Milosevic continued to reject all calls for a looser union in an attempt to implement his ideas of a more centralized state⁹⁷. This came to a head when Milosevic called an extraordinary 14th Congress of the LCY for January 1990. In this Congress, President Milan Kucan of Slovenia was shouted down by Milosevic's supporters when he

⁹⁵ Supra note 33 at 353

⁹⁶ *Id* at 118

⁹⁷ *Id* at 359

attempted to present his proposals for a looser union. As it became clear there could be no negotiation, the Slovene delegation walked out of the Congress on January 20, never to return. This move was followed by Croatian, Bosnian and Macedonian delegations and the meeting was canceled⁹⁸.

Another barrier to Milosevic's desire for Serb dominance was the break up of the Soviet Union and the institution of democracy in Eastern Europe. This made it impossible for Milosevic to recentralize Yugoslavia. It also caused the NATO countries to lose interest in keeping Yugoslavia united at any cost. Without the bogey of communism, Yugoslavia lost its claim to international importance and Yugoslavs could no longer rely on Western support to bail them out⁹⁹. This encouraged the two northern republics to declare independence --Slovenia in December 1990, Croatia in May 1991. At first, the secession of the two republics was not supported. US Secretary of State James Baker stated in an unofficial visit to Belgrade, that the US would not recognize Slovenia and Croatia "under any circumstances". Unfortunately, this statement would be interpreted as permission to use limited military power to hold Yugoslavia together. At first, the Western view of sovereignty paralleled the Serb view. The European Council believed that the JNA (Yugoslav Peoples Army) would be capable of taking measures and suppressing what they regarded as a domestic problem¹⁰⁰.

⁹⁸ Supra note 41 at 110-111

⁹⁹ *Id* at 111

¹⁰⁰ John Williams, LEGITIMACY IN INTERNATIONAL RELATIONS AND THE RISE AND FALL OF YUGOSLAVIA (1998) at 116 – 117 see also supra note 41 at 153 – 155, supra note 15 at 208 – 210.

The role of International Community and Self-determination in Regard to Break Apart Republics

The declarations of independence, and especially the use of force by the JNA against Slovenia and later support of Croatian Serbs, created a number of dilemmas for the leaders of the European Community (EC), in their efforts to manage the crisis. In the early 1990's, the EC, later to become European Union (EU) sponsored a peace conference on Yugoslavia in The Hague. The conference declared that there should be no unilateral change of borders by force, protection for the rights of all Yugoslav peoples, and full account of their legitimate concerns and aspirations¹⁰¹. In late 1992, the Maastricht Treaty was signed. One of the main points of the meeting was the issue of the recognition of Slovenia and Croatia. Under pressure from the German delegation, the EC voted to recognize the two northern republics. The move was opposed by the US because the other republics were not offered a chance of independence¹⁰².

Guided by US objections, European countries started to work on the set of rules, which would set standards for the recognition of new states resulting from the collapse of the Soviet Union and Yugoslavia. Using these rules, the EC adopted a common position with regard to the recognition of Yugoslavia¹⁰³. An arbitration commission was established

¹⁰¹ Marc Weller, *THE CRISIS IN KOSOVO 1989 – 1999: INTERNATIONAL DOCUMENTS AND ANALYSIS* (V1 1999) at 74. The peace conference was headed by Lord Carrington with the mandate to ensure peaceful accommodation of the conflicting aspirations of the Yugoslav people.

¹⁰² Carole Rogel, *THE BREAK UP OF YUGOSLAVIA AND THE WAR IN BOSNIA* (1998) at 60 – 61

¹⁰³ The Guidelines on the Recognition of New States in Eastern Europe and in Soviet Union, 16 December 1991, request the newly states to give:

under the Carrington Conference in The Hague and was headed by the French constitutional lawyer Robert Badinter, to judge the case for recognition of any Republic. As requested by the Guidelines, the Badinter Commission received applications for recognition by Slovenia, Croatia, Bosnia–Herzegovina and Macedonia. After receiving these applications, the Arbitration Commission in its first opinion on the former Yugoslavia (following the letter from Lord Carrington, President of the Conference of

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- respect for the provisions of the Charter of the United Nations and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights
 - guarantee the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of CSCE
 - respect the inviolability of all frontiers which can only be changed by peaceful means and by common agreement
 - acceptance of all relevant commitments with regard to disarmament and nuclear non-proliferation as well as to security and regional stability
 - commitment to settle by agreement, including where appropriate by recourse to arbitration, all questions concerning State succession and regional disputes

The EPC Declaration on Yugoslavia stated that the Community and its members agree to recognize the independence of all the Yugoslav republics fulfilling all the conditions set out below:

- they wish to be recognized as an independent state
- they accept the commitments contained in the above-mentioned guidelines
- they accept the provisions laid down in the draft Convention – especially those in Chapter II on human rights and rights of national ethnic groups – under consideration by the Conference on Yugoslavia
- they continue to support the efforts of the Secretary General and the Security Council of the United Nations and
- the continuation of the Conference on Yugoslavia

The implementation of this decision will take place on January 15, 1992.

See EPC Guidelines and EPC Declaration on Yugoslavia, *supra* note 97 at 80 - 81

Yugoslavia on November 20, 1991) stated that Yugoslavia was in the process of dissolution¹⁰⁴.

As the process of dissolution of Yugoslavia was recognized, Serbia attempted to manipulate the Serbian population living in Croatia and Bosnia to demand self-determination. At the Arbitration Commission, Serbia asked if the Serbian population in Croatia and Bosnia had the right to self-determination, and whether the international boundaries between Croatia and Serbia and between Bosnia-Herzegovina and Serbia could be regarded as frontiers in terms of public international law. With respect to the first question, the Arbitration Commission concluded that, the right to self-determination must not involve changes of existing frontiers at the time of independence, therefore the principle of *uti possidetis juris* should be utilized, except where states concerned agreed otherwise. It added that ethnic, religious or language communities should enjoy recognition of their identity under international law. With respect to the second question, the Arbitration Commission stated that Yugoslavia was in the process of dissolution. It recognized former republic frontiers as international frontiers and therefore non violable under international law and the former Yugoslavian constitution¹⁰⁵.

As requested by the commission, the four republics (Slovenia, Croatia, Bosnia-Herzegovina and Macedonia) submitted their applications for independence. With regards to Slovenia, the situation was clear. The population was homogenous, and a referendum held by Slovenia showed massive support for an independent state. Croatia was found to

¹⁰⁴ Supra note 98 at 82

¹⁰⁵ See Opinion No. 2 and 3 of the Arbitration Commission on the former Yugoslavia, 11 January 1992, available supra note 98 at 82 – 83

qualify except for the fact that its Constitution of December 4, 1991 did not offer any guarantees to protect minorities. The Commission urged Croatia to amend its constitution with regard to this. The EC recognized both Croatia and Slovenia on January 15, 1992, although Croatia did not make constitutional amendments as required.

With regard to Bosnia-Herzegovina, the Commission found that the local Serb population had not associated itself with the declaration of independence made by the Legislature, nor with constitutional changes subsequently put forward. The Commission also took note of a declaration made on November 10, 1991 by the Serbian people of Bosnia-Herzegovina, stating that they wished to remain within Yugoslavia or, should Bosnia-Herzegovina separate itself from Yugoslavia, to establish a separate Serbian Republic of Bosnia-Herzegovina. Therefore the commission concluded that the will of the people of Bosnia-Herzegovina for an independent state had not been fully established. It urged that an international monitored referendum be held in the future¹⁰⁶. The Bosnian government immediately promised to hold such a vote, setting it for February 29 and March 1, 1992¹⁰⁷. Bosnia's referendum duly took place, and was boycotted by the Serbs. The Muslims and Croats provided the majority in favor of independence. In response, the Serbs declared independence from Bosnia and fighting occurred. To cease the fighting, the EC recognized independence on April 6, 1992, and the US recognized Slovenia, Croatia

¹⁰⁶ Thomas Musgrave, *SELF-DETERMINATION AND NATIONAL MINORITIES* (1997) at 118 – 119

¹⁰⁷ During this period the Serbs did everything to ensure the vote could be discredited by a boycott, if not stopped altogether. It also gave them time to prepare their forces to announce their own secession in order to remain within Yugoslavia when the Croat and Muslim populations inevitably voted for independence. In that case war was guaranteed, see *supra* note 99 at 128 - 129

and Bosnia the following day¹⁰⁸. As for Macedonia (even though the European Community qualified Macedonia for independence), a dispute arose over the name. Greece opposed the favorable action because there is a Greek province known as “Macedonia”. Greece feared that the state of Macedonia would make territorial claims on its province, even though the Arbitration Commission had found that “use of the name” Macedonia could not be taken to imply any territorial claim with respect to another state. Macedonia was subsequently recognized on April 8, 1993, when a compromise solution was found whereby it was admitted to the United Nations under the name of “the Former Yugoslav Republic of Macedonia” pending settlement of its name¹⁰⁹.

Kosova and its Peaceful Manner to Self-Determination

In Kosova, the Serbian apparatus of repression allowed the mask to fall. Heavily armed police brutally beat and killed many Albanians. As Serbia could not now obtain consent from Kosova institutions, Albanians who wanted to remain in their jobs were asked to sign a document that would legitimate Serbian authority in Kosova¹¹⁰. While Kosovar Albanians were prepared to fight to hang on to a minimum of human rights, their prospect of successful defense in a full-scale war was remote. They did not have the weapons to defend themselves, nor control over the territory or their people. The so-called

¹⁰⁸ *Id* at 129, Bosnia – Herzegovina was a mixture of Serbs, Croats and Muslims where Muslims comprised 40 percent of the population, Serbs 32 percent and Croats 18 percent See also *supra* note 103 at 119

¹⁰⁹ *Supra* note 103 at 118 –19, see also, Viktor Meier, YUGOSLAVIA, A HISTORY OF ITS DEMISE (1999) at 181 - 182

¹¹⁰ Viktor Meier, YUGOSLAVIA, A HISTORY OF ITS DEMISE at 94 – 96

territorial defense of Kosova and its police forces had been disarmed and put under Belgrade's tight control in the mid 1980's.

As in a system of apartheid, the Albanians built up parallel institutions, beginning in 1989 when Kosovar autonomy was abolished by Serbia¹¹¹. The Legitimate Assembly of Kosova, a lawful organ according to the constitution of 1974, moved on July 2, 1990 to declare Kosova an equal and independent unit within the still existing Yugoslav federation. Belgrade's regime reacted brutally to this act, closing down the Kosova Assembly which went into hiding and continued to work without Serb and Montenegrin deputies. In the referendum held from September 26-30, 1990 organized by the same Assembly, 87% of the population of Kosova participated. 99.8% voted for Kosova's independence¹¹².

These moves were very important to keep pace with the new and rapidly changing circumstances. On December 22, 1991, the self-styled Government of Kosova, in exile, handed over its application for international recognition of Kosova's independent statehood, to the European Peace Conference on Yugoslavia¹¹³. Despite the fact that Kosova had its own territorial base and population, the application for international recognition of Kosova's full independence did not get a positive response from the international community. This was because parallel institutions and organs (the self-styled government of Kosova and the equally self-styled President of Kosova) did not have coercive powers and authority to effectively control their own territory and population. The

¹¹¹ Supra note 15 at 236, see also supra note 41 at 100 - 101

¹¹² *Id* at 237, see also supra note 33 at 409 - 410

¹¹³ Supra note 99 at 81

Kosovar government living in exile had neither army nor police to assert itself domestically or internationally.¹¹⁴

The years of peaceful opposition saw Albanians lives worsen every day. Serbia removed Albanians from their jobs and filled them with Serbs who were encouraged to resettle from Bosnia and Croatia. An organization established in Prishtina, called “the Serbian Block for colonization”, put high level pressure on the administration to accelerate the Serbian re-colonization of the province. Belgrade offered credits, housing and jobs to those Serbs and Montenegrins willing to settle in Kosova¹¹⁵.

In response, Kosova Albanians organized military units to defend their rights by resorting to force. The first was the Kosova Liberation Army (KLA) – Ushtria Clirimtare e Kosoves (UCK) which I will discuss in the next chapter. It was formed because of the repressive policies of the Belgrade regime and the reluctance of the international community to respond to the Kosovar Albanian leadership¹¹⁶.

¹¹⁴ *Id* at 237

¹¹⁵ Miranda Vickers, *BETWEEN SERBS AND ALBANIANS, A HISTORY OF KOSOVA* (1998), at 262 – 263, see also *supra* note 33 at 410 - 411

¹¹⁶ *Id* at 238

Fighting for Self Determination

Reluctant Resort to War

Failed attempts of Kosovar Albanians to gain international support in their quest for final independence, led to growing disappointment. The Dayton Accord was signed in December 1995. Richard Holbrook, who led the US delegation and who was the prime mover in the talks, insisted that the only issue on the agenda was a peaceful resolution to the war in Bosnia. Kosova would have to wait¹¹⁷. Therefore some Albanians concluded that a commitment to a peaceful resolution of the problem was not the best way to pursue independence of Kosova. Moreover, Albanians perceived the creation of the Republika Srpska alongside the Bosnian Muslim-Croatian Federation that came out of the accords, as international support of violence to achieve goals. This is because this entity did not exist as a matter of law before Dayton, but rather as a de facto entity due to war¹¹⁸. The international community was ready to negotiate the situation of the remaining Serb population in Croatia and Bosnia but failed to address the issue of the position of Albanians.

By ignoring the situation in Kosova, the Dayton Accord strengthened the position of Milosevic at the international and domestic levels. He would be seen as a man of peace because he signed the Dayton Accords and Serbia could now claim legitimate sovereignty

¹¹⁷ William G. O'Neill, KOSOVO, AN UNFINISHED PEACE (2002) at 22

¹¹⁸ Id, see also: General Framework on Agreement for Peace in Bosnia and Herzegovina, <http://www1.umn.edu/humanrts/icty/dayton/daytonframework.html>

over Kosova¹¹⁹. In the aftermath of the Dayton Accords, Dragoljub Micunovic, one of the most influential Serbian opposition leaders, told the media that Serbia felt validated because the international community recognized its frontiers as international borders, the territory of Kosova included within them¹²⁰. The international community would start removing economic sanctions imposed previously on the former Yugoslavia as a result of the wars in Croatia and Bosnia. To do so, in December 1996, the European Union released a Common Position on Terminating Restrictions of Economic and Financial Relations, but neglected the situation and continuous atrocities in Kosova¹²¹.

The pacifist movement in Kosova never received any serious commitment from the international community toward resolution of the problem. It was only given verbal support despite some international human rights activists monitoring the situation¹²². The Serbian position, after the Dayton Accord, coincided with the international stance towards non-violability of borders in Article 2(4) of the UN Charter on integral sovereignty. The international community encouraged political dialogue between Kosovan Albanians and Belgrade, which Milosevic used to improve his international position¹²³.

¹¹⁹ Miron Rezun, *EUROPE'S NIGHTMARE, THE STRUGGLE FOR KOSOVO* (2001) at 42 – 43

¹²⁰ This would be reiterated later by the Chief of the General Staff of the Yugoslav Army, Nebojsa Pavkovic, upon signing the Kumanovo Agreement in June 1999 which made possible for NATO troops to enter Kosova, see *supra* note 15 at 239

¹²¹ See: Official Journal NO. L 095, 27/03/1998 P. 0001 – 0003, 498X0240

¹²² Report by the Independent International Commission on Kosovo, *THE KOSOVO REPORT: CONFLICT, INTERNATIONAL RESPONSE, LESSON LEARNED*, (2000) at 60

¹²³ Milosevic played international politics by signing the agreement on the normalization of the educational system for Kosovan Albanians. The agreement was mediated by the community of Saint Egidio but was never implemented. Kosovan Albanians held talks with the opposition leaders of Serbia in New York (USA) and Ulcin (Montenegro) during March and June 1996. These means proved ineffective in improving any

It would take another war followed by many massacres and expulsion of Albanians, to get the international community to halt the atrocities. However as we shall see, the international intervention in Kosova that took place in 1999 to halt state atrocities also would preserve the integral sovereignty of the former Yugoslavia. The refusal of the Serbs to engage in dialogue, and the reluctance of the international community to properly address the situation in Kosova, led to the creation of the military unit, Ushtria Clirimtare e Kosoves (UCK) – Kosova Liberation Army¹²⁴. It subsequently gained support of the Albanian population, which began to feel that the only way to achieve rights was a resort to violence. The UCK would gradually become an important military and political factor in Kosova.

The emergence of the UCK was used by the Serbian regime to mount attacks against civilians under the pretense of hunting for UCK members. Serb counter attacks resulted in destruction of entire villages and produced large numbers of civilian casualties¹²⁵. The presence of the UCK enabled Milosevic to justify his regime's ethnic cleansing of Kosova, including the displacement and murder of many others¹²⁶. According

sustainable form of self-determination over Kosova and its majority population. However, it gained Belgrade some points in the international community as a good effort to ease the tensions in Kosova, see supra note 42 at 87.

¹²⁴ The Kosova Liberation Army was founded in 1993 and subsequently gradually gained vast support of the Albanians, see supra note 4 at 117

¹²⁵ Richard Caplan, *International Diplomacy and the Crisis in Kosovo*, Royal Institute of International Affairs, Oct. 1998, Vol. 74, No. 4, at 745 – 761

¹²⁶ Supra note 51 at 58. Massive killings of the Kosovan Albanians started by the end of February when 26 civilian Albanians were killed in the villages of Qirez and Likoshan, which was followed with the death of 58 Albanians, in attempt to kill the founder and Commander of the UCK. Among them there were eighteen women and ten children under the age of 16. See also supra note 4 at 139 – 140

to the Belgrade newspaper, Nedeljni Telegraf of March 11, 1998, after the massacre in the Drenica region, a Serbian military analyst from Prishtina noted that “we are far from killing all the terrorists.... during the last two weeks at least 50 of them were killed, that number could be supplied by each individual village alone”¹²⁷.

The murderous acts of the Yugoslav and Serbian state were supported, not only by the governing parties in Serbia, but also by the opposition. The Yugoslav army recruited and engaged paramilitary-mafia type groups. Their aim was to commit horrific atrocities that would make the whole people leave their homeland. Their goal was to replace them by Serbian settlers. They chose their Albanian victims from areas that Serbs were interested in controlling and drew up maps to guide their actions. These were always areas that included the larger towns, the more important mines and strips of territory along main roads connecting them. In spite of their public comments claiming they wanted to keep control of Kosova because of their historical heritage, they were not, in fact, interested in the so-called Serbian cultural monuments.¹²⁸ Areas outside their interest were to be given some kind of autonomy to Albanians in Kosova, but still remaining in Serbia.

¹²⁷ Cited by Frank Muenzel, *What does Public International Law have to say About Kosovar Independence* (1998), JURIST, the Law Professors' Network, available, at <http://jurist.law.edu/simop.htm>

¹²⁸ There was an insignificant group of people gathered around the Citizen's Union of Vesan Pesic and Montenegro, which condemned the Serbian and Yugoslav actions, see Frank Maunzel, *What does International Law have to say About Kosovar Independence?* (1998), *Jurist: The Law Professros's Network*, pp. 9 – 10

NATO Reaction to the Milosevic Policies and the Rambouillet Peace Process

The new situation on the ground triggered UN actions. On March 31, 1998, the UN Security Council issued Resolution 1160 that called for a cease fire and urged parties to begin talks for a substantial autonomy of Kosova. It was followed by UNSC Resolution 1199 which called for halting the violence and allowing international monitors to observe the situation. The resolutions did not have any binding obligation, and the Serbian regime ignored them¹²⁹. The threat and possible use of force by NATO caused tensions with permanent Security Council members Russia and China.¹³⁰ But now, clearly, the problem of Kosova was not an internal affair. Rather the problem was the failure of Serbia to commit to human rights which could only lead to international tension and a breach in regional security¹³¹

The international community began a “carrot and stick” policy. Richard Holbrook, assigned by President Bill Clinton and the architect of the Dayton Accord, reappeared again to deal with the situation. At the same time, NATO threatened Milosevic with air strikes if he did not halt his attacks on civilians. Using this threat as his main bargaining chip, Holbrook secured Milosevic’s agreement in October 1998 to withdraw most of his forces and allow deployment of 2000 unarmed international inspectors to verify compliance with the agreement as a “confidence–building measure” for the civilian population. The mission established was called the Kosovo Verification Mission (KVM).

¹²⁹ See: UNSC Resolution 1160, <http://www.un.org/peace/kosovo/98sc1160.htm>, UNSC Resolution 1199, <http://www.un.org/peace/kosovo/98sc1199.htm>

¹³⁰ Marc Weller, *The Rambouillet Conference on Kosovo*, International Affairs, April 99, vol75 issue 2, p211, 51p

¹³¹ See OSCE Permanent Council Decision No. 218, March 11, 1998

Ambassador William Walker was appointed to head the KVM October 17, 1998. The UCK declared a unilateral truce on October 16, 1998¹³². The UNSC acting under Chapter VII of the Charter, issued resolution 1203 which appraised the Holbrooke-Milosevic agreement and establishment of the KVM, and called parties to respect resolution 1160 and 1199. It also warned of an escalation of a situation that could pose a threat to international security¹³³.

The KVM initially was successful and its presence led to a cease fire from both parties. Soon afterwards, though, the Serbian regime broke the agreement and unleashed an offensive against Kosova villages. As in the past, the reason given was the need to fight Kosova “terrorists” and as before, the attacks were directed against civilians as a whole rather than against the UCK¹³⁴. The KVM established a Human Rights Division to monitor and investigate reports on allegations of human rights abuses by all parties in the conflict in Kosova. The KVM analysis of the situation came to the conclusion that: 1) the violence perpetrated against Albanians was planned and organized at the highest levels of Serbian authority, 2) the Serb Army, police and various paramilitary forces specifically targeted various segments of Kosovo Albanian Society, 3) sexual crimes against woman and young girls were widespread¹³⁵.

¹³² Supra note 114 at 24, see also supra note 42 at 105, supra note 98 at 294, OSCE appoints Head of Kosovo Verification Mission, October 17 1998, Kosovo Monitor Mission Gear Up, BBC, November 24, 1998, <http://news.bbc.co.uk/1/hi/world/europe/221151.stm>

¹³³ See, UNSC Resolution 1203, <http://www.un.org/peace/kosovo/98sc1203.htm>

¹³⁴ Supra note 127

¹³⁵ The Analysis also reported atrocities committed which were mainly concentrated on Albanian collaborationists with Serbian regime and forces, see. Kosovo/a: As Seen, As Told, An Analysis of the

In January 1999, Serbian forces committed another attack at the village of Recak. The aftermath was witnessed by KVM ambassador William Walker who concluded that there “is no doubt” that this was an act of massacre. After this, the Serbian regime attempted to declare the head of the KVM persona non grata and remove him from its territory. As armed incidents proliferated, the KVM appeared an increasingly helpless observer to the unraveling of the October Holbrook agreement¹³⁶.

The international community became aware that the situation demanded a more coercive approach. To achieve this, they needed to have Russia on board as relations between NATO and its allies worsened during the crisis in Kosova¹³⁷. In an effort to find a peaceful solution, the US foreign Secretary of State Madeline Albright met with Russian Foreign Minister Igor Ivanov. They called upon the Serbian authorities to carry out the commitments in their 11 point Statement of Principles of a Political Settlement of October 13, 1998. They also agreed to maintain close contact in order to coordinate US and Russian support for a resolution of the crisis. The next day, the US announced that a strategy agreed upon by its allies, would resolve the crisis in Kosovo by “combining diplomacy

Human Rights Findings of the OSCE Kosovo Verification Mission in October 1998 to June 1999, available at http://www.osce.org/publications/odihr/1999/11/17755_506_en.pdf

¹³⁶ Serbian authorities tried to abuse with the victims by using Serb pathologists who showed how much politics can be involved even in the professional work of the doctors. Serb pathologist tried to claim that there was no massacre. On the other hand investigators from the International Criminal Tribunal for the Former Yugoslavia were barred from Serb authorities from entering Kosova, see, Marek Weller, The Rambouillet, see also, Pathologists, No Kosovo massacre, BBC, January 19, 1999, <http://news.bbc.co.uk/1/hi/world/europe/258529.stm>, Serbs Blamed for Massacre, BBC, January 22, <http://news.bbc.co.uk/1/hi/world/europe/260715.stm> 1999, Walker: “No Doubt over Recak”, BBC January 31, 1999, <http://news.bbc.co.uk/1/hi/world/europe/268788.stm>

¹³⁷ Albright’s “frank” Moscow talks, BBC, January 25, 1999

with a credible threat of force.” It would be implemented through a decision of the Contact Group. The threats for military action were repeated by NATO Secretary General Javier Solana and urged both parties to cease fire¹³⁸.

On January 19, 1999, the Contact Group (composed of US, England, Italy, France, Germany and Russia) on the former Yugoslavia agreed to summon representatives from FRY, the Serbian government, and representatives of the Kosova Albanians to Rambouillet on February 06, 1999. The Contact Group set a timetable for negotiations. The timetable referred to previous resolutions, 1160, 1199, 1203, confirmed the international position of non-violability of the borders, and urged the parties to find a common solution for the crisis. The goal of the international community was to work toward achieving a substantial autonomy for Kosova. They warned that both parties would be held accountable if they failed to take the opportunity, but assured them that the Group would be ready to work with both sides. The talks were set to start on February 6, 1999 in Rambouillet (Southwest of Paris, France)¹³⁹.

The stance of the international community preempted the whole negotiating process. Before any discussion could begin, they put forward for signature certain so-

¹³⁸ Supra note 127 at

¹³⁹ See Statement of the Contact Group for Former Yugoslavia, <http://news.bbc.co.uk/1/hi/world/europe/265498.stm>. The statement was fully endorsed by NATO on January 30, 1999, see: NATO Statement on Kosovo, January 30, 1999, Kosovo Information Centre: Daily Report No. 1679, January 31, 1999. The Contact Group gave the parties three weeks to reach a common solution on the principles declared in the Statement of the Contact Group for Former Yugoslavia, Three Week Deadline Over Kosovo, BBC, January 30, 1999, <http://news.bbc.co.uk/1/hi/world/europe/265277.stm>

called non-negotiable principles¹⁴⁰. These principles stressed the inviolability of the FRY's borders, which implied that any solution had to be found within FRY's sovereignty and territorial integrity. In practical terms, this meant that Kosova and its majority population would have to remain satisfied with the internal right to self-determination. This was in accord with previous resolutions and declarations of the international community on the substantial autonomy for Kosova¹⁴¹. The draft presented to the parties at the outset of the conference was for an interim period. It stated that after three years, there would be a comprehensive assessment of the agreement under international auspices with the aim of improving its implementation and determining the need for proposals by either side for additional steps. On the Kosovar Albanian request that the conference be based on the will

¹⁴⁰ The Rambouillet Accords set a kind of self-governance in Kosova realized through legislative, executive and judiciary bodies. All the national communities would be represented at all levels, decentralization, and mixed police. It required harmonized Serbian and federal legal frameworks with the Kosova interim agreement. For any changes of borders it required Kosova consent. Other points included issues on Human Rights, which required commitment to an international human rights framework and establishment of an ombudsperson. Also it included an implementation process to be composed of a dispute resolution mechanism, establishment of a joint commission to supervise implementation and participation of OSCE and other international bodies as necessary. Based on this framework of Rambouillet Accords, the international community wanted to re-establish autonomy for Kosova that it enjoyed with the Yugoslav Constitution of 1974. After so many killings and massacres this needed a huge commitment from Kosova Albanians to agree to talk. They did agree to participate on the condition that the territorial integrity of FRY would be limited to the interim period after which the people of Kosova would determine their fate. The Albanian side was now represented by the political wing of the UCK and other pacific political forces. They took the lead of the negotiating team of Kosova.

¹⁴¹ Supra note 15 at 244 – 245, see also opening speech of the President of France, Jacques Chirac, of the Rambouillet Conference, available at Chirac: The World is Watching, BBC, February 06, 1999, <http://news.bbc.co.uk/1/hi/world/monitoring/274027.stm>, again it stated that the international community will not tolerate proliferation of conflict.

of the people of Kosova through a referendum, the negotiators pointed out that they were not authorized by the Contact Group to adopt language on a referendum¹⁴².

Despite guarantees given to the territorial integrity and sovereignty of the FRY, the Serbian delegation refused to sign the agreement. Instead, the regime continued its war campaign throughout Kosova expelling hundreds of thousands of Albanians out of their homes. The humanitarian situation became a real threat to the peace and security of the region as hundreds of thousands of refugees crossed the border into neighboring states. NATO was forced to act under its declaration of January 30, 1999 and previous resolutions of the UNSC. NATO air strikes started on March 24 and lasted until the agreement on June 20, 1999 between NATO and the Serbians. The strikes aimed to end the humanitarian crisis and return the refugees, but also preserve the regional peace and security. These air strikes brought about the territorial integrity and sovereignty of FRY and the protection of the Kosovar Albanian population. Finally, they set the stage for a political solution of the Kosova issue to grant a “substantial autonomy” for the region¹⁴³.

Withdrawal of Serbian troops paved the way for the return of refugees and installation of the UN administration, which is discussed in the next chapter. The establishment of the United Nations Mission in Kosova (UNMIK) would help Kosova with rebuilding institutions and prepare for the negotiation of the final status.

¹⁴² Supra note 127 at 22 – 23

¹⁴³ Supra note 15 at 247

A State in Embryo

Installation of International Administration and Resolution 1244: Denial of the Right to Self-Determination

After 78 days of NATO air strikes, the Serbian regime finally conceded defeat. The Technical Military agreement in Kumanovo, Macedonia, between NATO and Serbian Army representatives allowed for a smooth NATO entrance while Serb forces withdrew from Kosova. This created conditions for installing the UN administration in Kosova (UNMIK) enacted by the UN Security Council resolution 1244¹⁴⁴. The resolution was based on the general principles adopted by the G-8 Foreign Ministers on the political solution to the crisis in Kosova¹⁴⁵. Resolution 1244 embraced these principles and all prior resolutions 1160, 1199 and 1203 of the Security Council. The Resolution created a unique political and institutional hybrid: a UN protectorate with unlimited powers whose purpose was to prepare the province for substantial autonomy and self-government. It reaffirmed the territorial integrity and sovereignty of the Federal Republic of Yugoslavia while promising substantial autonomy and self-government for Kosova. Thus Yugoslav

¹⁴⁴ See UNSC Resolution 1244 adopted on 12 June 1999, available at <http://daccessdds.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>

¹⁴⁵ The General Principles called for the end of violence, withdrawal of Serb military and police from Kosova, deployment of international civil and security presences, establishment of an interim administration in Kosova, the return of all displaced and refugee persons, a political process towards achieving substantial self-governance respecting territorial sovereignty and integrity of the Federal Republic of Yugoslavia and comprehensive approach to the economic development and stabilization of the crisis in Kosova, see: Statement by the Chairmen on the conclusion of the meeting of the G-8 Foreign Ministers held at Petersberg Centre on 6 May 1999, Annex 1 of the UNSC Resolution 1244,

sovereignty would be temporarily suspended while the UN prepared Kosova for substantial autonomy and negotiated the final political status of Kosova¹⁴⁶.

The resolution called for a demilitarized zone with NATO only forces, under the name of Kosova Forces (KFOR). Annex 2/6 of the resolution allowed Yugoslav troop to assist KFOR on mine clearance, maintaining a presence at Serb patrimonial sites and maintaining a presence and key border crossing points. It called for the dissolution of the recognized KLA forces. With the agreement of June 21, 1999 between the KLA and NATO, the KLA was transformed into a civil body called the Kosova Protection Corps (KPC) under the supervision of the KFOR¹⁴⁷.

In a formal sense, the policy of Greater Serbia was not defeated in Kosova because the international community treated Kosova as an integral part of the FRY¹⁴⁸. This helped the Serb positions in negotiations that began in 2005, following six years of an international presence in Kosova. Despite all the success achieved in Kosova, the UNSC Resolution 1244 would be the main weapon of the Serbian representatives. They would use it to calm Serbian nationalism by claiming that Kosova was still formally part of Serbia. At the same time, they would use the Resolution to control the future of Kosova in spite of growing international sympathy toward Kosova independence. In creating the UNMIK, the international community strove to avoid the confusion of power sharing that led to failure in Bosnia. Rather, they created a more streamlined structure. The head of

¹⁴⁶ Supra note 119 at 259 – 260

¹⁴⁷ See: Kosovo Rebels to disarm, BBC, June 21, 1999, <http://news.bbc.co.uk/1/hi/world/europe/374482.stm> and KLA signs weapons pack, BBC, September 20, 1999, <http://news.bbc.co.uk/1/hi/world/europe/452915.stm>

¹⁴⁸ Supra note 15 at 248

international administration is the Special Representative of the Secretary General (SRSG) who reports directly to the UN Secretary General. Right under the SRSG, is a Principal Deputy Special Representative. The UNMIK is in charge of civil matters while the security belongs to KFOR, which reports outside the UNMIK structure to NATO headquarters in Belgium¹⁴⁹.

To perform its mandate under Resolution 1244, the UNMIK established four basic pillars that are to be supervised by the SRSG. The four pillars are: police and justice under the direct leadership of the UN, civil administration under the direct leadership of the UN, democratization and institution building led by the Organization for Security and Co-operation of Europe (OSCE), and reconstruction and economic development led by the European Union (EU). The Principal Deputy together with the four heads of the pillars form the SRSG's executive committee¹⁵⁰. The SRSG established the Joint Interim Administrative Structure (JIAS) as the only political authority in Kosova. The JIAS officially replaced all previous parallel institutions. It was to be a provisional decision until democratic elections enabled the establishment of a more permanent structure. In an effort to bring local representatives into the political process, the SRSG established the Kosovo Transitional Council (KTC) as the highest consultative body of the Joint Interim Administrative Structure (JIAS). The body was composed of the main political parties, members of the Interim Administrative Council (IAC)¹⁵¹, religious community leaders,

¹⁴⁹ Supra note 114 at 37

¹⁵⁰ See; UNMIK at a glance, available at <http://www.unmikonline.org/intro.htm>

¹⁵¹ The Interim Administrative Council was established as part of JIAS which is composed of the members of the Albanian political parties, participants at the Ramouillet Peace Accords, an observer, a representative of the Serb community and UNMIK senior officials.

representatives of the national communities and independents together with representatives of civil society¹⁵². The basic legal structure was developed by the so called UNMIK regulations, which were to be passed under the authority of the SRSG.

To open the way for democratic elections, the first step was to prepare the legal structure. The SRSG with the UNMIK Regulation of May 15, 2001 declared the Constitutional Framework for Provisional Self-Government. The Constitutional Framework set up the responsibilities of the provisional institutions of self-government. The most important provisions are the so called powers and responsibilities reserved for the SRSG¹⁵³. At times they undermine Kosovar institutions because many of their actions are to be approved by the SRSG.¹⁵⁴

The Constitutional Framework recalls the UNSC Resolution 1244 and takes into account the most important international documents, the UN Charter, and the most important UN and EU Human rights documents. In an effort to guarantee minority rights, the Constitutional Framework established a 120 seat parliament out of which 20 seats were reserved for minority groups (10 seats to the Serbs and 10 to the other minorities). The Constitutional Framework paved the way for the first central elections that established the

¹⁵² See official website of UNMIK, www.unmikonline.com

¹⁵³ Under the Constitutional Framework, the SRSG has, after consultation with the President, the power to dissolve the assembly and call for new elections, the final authority to set the financial and policy parameters, establish monetary policy, final authority regarding the appointment and removal from office and disciplining of judges and prosecutors, has power over international affairs etc, see UNMIK regulation no, UNMIK/REG/2001/9 on Constitutional Framework for Provisional Self-Government, available at <http://www.unmikonline.org/constframework.htm#8>

¹⁵⁴ See interview of Enver Hasani, expert of International Law and International Relations, given to the new agency Kosovapress, Pavaresia eshte dicka tjeter, Kosovapress, February 13, 2006.

first democratically elected institutions in Kosova. The first central elections were held in 2001 and the second was organized in 2004 by the OSCE. Both elections were characterized as free and fair both by local and international representatives¹⁵⁵. Despite this, the Constitutional Framework did not set up a mechanism for the solution of the final status of Kosova¹⁵⁶.

From the beginning, the installation of the international administration was meant to be of a provisional nature. Afterwards, different options were proposed for the final status of Kosova. The Independent International Commission on Kosova in its 2000 year report, proposed five possible solutions, one of them being conditional independence. In time, this solution would receive broader support on the international level¹⁵⁷. The options suggested by the Commission go beyond Resolution 1244, which has become no longer useful as a framework for managing the future of Kosova. Its essential commitments to

¹⁵⁵ In 2005 the activities of organizing elections were transferred to the Kosovo's Central Election Commission Secretariat which will continue to be headed by the Head of OSCE Mission in Kosova See OSCE

¹⁵⁶ See, QIK, Informatori Ditor, 15 Maj 2001, (Center for Information of Kosova, Daily Report, May 15, 2001)

¹⁵⁷ Other possible solutions presented by IIC were: 1) Protectorate that takes the current status of Kosova and extends it indefinitely into the future. This solution is not supported by the Kosovar Albanians, 2) Partition of Kosova part dominated by Serbs especially the northern part of Kosova. This option at some point was raised by some Serbs as the solution if Kosova would be granted independence. This option was recently objected to by the Special Representative of the UN for negotiations, Marti Ahtisari in his visit to Prishtina on November, 2005, 3) Autonomy within a democratic Yugoslavia. That is a solution offered lately by the Serbian officials but opposed totally on the Albanian side, 4) Full independence which is the solution supported by Kosovar Albanians but opposed by the Serbs. The international community in this case is mainly concerned with the situation of the minorities, see supra note 120 at 263 – 279, see also Ahtisari protiv podela Kosova, B92, November 23, 2005, http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=11&dd=23&nav_id=180999

FRY sovereignty and Kosova autonomy may not be incompatible in theory but they have become incompatible in practice. This is because the Kosovar Albanians unanimously refused to be co-opted into the FRY¹⁵⁸.

The Final Status Talks: Their Potential Frame and Limits

Recognizing the new reality, but concerned with the democratization process, especially the situation of the minorities, the international community created standards that needed to be met by Kosovar institutions. These standards consisted of eight main benchmarks that would be used to test the ability of Kosovar institutions to build a state of law and in particular, protect minorities¹⁵⁹. A successful evaluation of these standards would begin the negotiating process. The green light was given after UN special representative Kay Eide, presented a positive report to the SRSG. On October 7, 2005, the UN Secretary General informed the Security Council that conditions existed for a dialogue to begin, with the international community mediating the negotiations. To facilitate the process of negotiation, the UNSC appointed former Finish Prime Minister, Marti Ahtisari, to head the international mediators¹⁶⁰.

¹⁵⁸ Supra note 119 at 262 - 263

¹⁵⁹ The eight standards are: 1) functioning democratic institutions, 2) rule of law, 3) freedom of movement, 4) sustainable returns and the rights of communities and their members, 5) economy, 6) property rights, 7) dialogue, and 8) Kosovo protection corps.

¹⁶⁰ See: Anan preporucio pocetak pregovora, B92, October 07, 2005, http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=10&dd=07&nav_id=177995, Eide predavao izvestaj Ananu, B92, October 05, 2005, http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=10&dd=05&nav_id=177882, The Eide report was criticized by the Serbian side as too weak and not comprehensive, see Eide je trebalo da bude ostriji,

Due to conflicting interests between the two parties, the Contact Group constructed ten basic principles upon which the future status should be determined¹⁶¹. Some principles

B92, October 09, 2005,

http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=10&dd=09&nav_id=178120

¹⁶¹ The Contact Group Guiding Principles for the final status of Kosova are: 1) The settlement of Kosova issue should be fully compatible with international standards of human rights, democracy and international law and contribute to regional security, 2) the settlement of Kosovo's Status should conform with democratic values and European standards and contribute to realizing the European perspective of Kosovo, in particular, Kosovo's progress in the stabilization and association process, as well as the integration of the entire region in Euro-Atlantic institutions, 3) The settlement should ensure multi-ethnicity that is sustainable in Kosovo. It should provide effective constitutional guarantees and appropriate mechanisms to ensure the implementation of human rights for all citizens in Kosovo and of the right of members of all Kosovo communities, including the right of refugees and displaced persons to return to their homes in safety, 4) The settlement should provide mechanisms to ensure the participation of Kosovo communities in government, both on the central and on the local level. Effective structures of local self-government established through the decentralization process should facilitate the coexistence of different communities and ensure equitable and improved access to public services, 5) The settlement of Kosovo's status should include specific safeguards for the protection of the cultural and religious heritage in Kosovo. This should include provisions specifying the status of the Serbian Orthodox Church's institutions and sites of the patrimony in Kosovo, 6) The settlement of Kosovo's status should strengthen regional security and stability. Thus, it will ensure that Kosovo does not return to the pre-March 1999 situation. Any solution that is unilateral or results from the use of force would be unacceptable. There will be no change in the current territory of Kosovo, i.e. no partition of Kosovo and no union of Kosovo with any country or part of any country. The territorial integrity and internal stability of regional neighbors will be fully respected, 7) The Status settlement will ensure Kosovo's security. It will also ensure that Kosovo does not pose a military or security threat to its neighbors. Specific provisions on the security arrangements will be included, 8) The settlement of Kosovo's status should promote effective mechanisms to strengthen Kosovo's ability to enforce the rule of law, to fight organized crime and terrorism and safeguard the multi-ethnic character of the police and the judiciary, 9) The settlement should ensure that Kosovo can develop in a sustainable way both economically and politically and that it can cooperate effectively with international organizations and international financial institutions, 10) For some time Kosovo will continue to need an international civilian and military presence to exercise appropriate supervision of compliance of the provisions of the Status settlement, to ensure security and, in particular, protection for minorities as well as to monitor and support the authorities in the continued implementation of standards, see: Annex of the Letter dated November 10, 2005 from the President of the Security Council addressed to the

related to the eight standards already in the process of fulfillment. Perhaps the most important principle is principle 6, which states firmly that Kosova would not return to its status before March 1999, that there would not be a partition, and that there would not be union with another state. But confusion remained. Could some kind of union with Serbia possibly meet the criteria of the principles?

At present (2006), the international community is leaning more towards conditional independence, which would mean some international presence within Kosova even after independence. The Director of the British Foreign Office, John Souers, stated that independence is one option¹⁶². Some state leaders recognize the independence of Kosova as seen in the statement by President Janez Drnovsek of Slovenia during his visit in Kosova. Likewise, the Swiss Chief of Foreign Relations openly stated on January 20, 2006 in favor of independence¹⁶³. There also appears to be a shift by the main Serbian ally,

Secretary General, available at: <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kos%20S2005%20709.pdf>

¹⁶² When justifying this, Mr. Sojers refers to the situation during the 80's and 90's, violence, ethnic cleansing, refusal to sign the Rambouillet Accords and the last war of 1999. He urged Serbian representatives to focus their dialogue on decentralization, representation in the government, minority protection, the role of the international community, relations of the Kosova Serbs with Serbia etc., see *Nezavisnost jeste opcija*, B92, February 08, 2006,

http://www.b92.net/info/emisije/kaziprst.php?yyyy=2006&mm=02&dd=08&nav_id=187893, Mr. Souers is a British ambassador to UN and a representative in the Contact Group.

¹⁶³ See: *Drnovsek: Kosovo, realno, nezavisno*, B92, November 12, 2005, http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=11&dd=12&nav_id=180245, see also, *Svajcarska za nezavisno Kosovo*, B92, August, 2005, http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=08&dd=01&nav_id=173738, Tim Judah from the Institute for War and Peace Reporting stated that in case when parties cannot reach the common solution due to their bitter contradicting interests the international community can unilaterally impose conditional independence for Kosova, see, *IWPR: Uslovna nezavisnost*, B92, May 23, 2005,

Russia. The head of the Russian office in Prishtina spoke in favor of respecting the will of the people of Kosova while respecting the rights of other minorities, in particular the Serb minority¹⁶⁴.

The Serbian government unveiled their option when Serbian president, Boris Tadic, spoke at the Security Council's meeting on Kosova held on February 14, 2006. He suggested that Kosovar Albanians be given a "wide autonomy" that would make them independent in most of their day to day life. He also suggested that after a period of time (20 years) the issue would be discussed again¹⁶⁵. At the same meeting, UNMIK SRSG, Soren Jessen Petersen affirmed the stance of the Contact Group that the current status is unacceptable. He noted that with the exception of some minor drawbacks of the standards, the pace of fulfilling them was going well¹⁶⁶. Marti Ahtisary in a recent Contact Group meeting reiterated that the will of the people of Kosova had to be considered in

http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=05&dd=23&nav_id=169017. Director of the Project for Democracy and member of the International Commission for the West Balkan, Brus Jackson, stated that the Commission should recognize the independence of Kosova, "Priznati Nezavisnosta", B92, June 01, 2005, http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=06&dd=01&nav_id=169647

¹⁶⁴ Bazdikin: Rusia do ta rrepsektoje vullnetin e popullit shumice ne Kosove, RTK, February 13, 2006

¹⁶⁵ This option is not acceptable to the Kosovar Albanians but also it is against the principles set forth by the Contact Group. And the interest of the international community is to settle the issue as soon as possible and preferably by the end of 2006.

¹⁶⁶ See: Savet Bezbednosti o Kosovo, B92, February 14, 2006. The Serbs also suggest some kind of referendum to be held at Serbia's level (including Kosova) that will decide about the final status, Beograd: Iniciativa per referendum mbi statusin e ardhshem te Kosoves, RTK, February 16, 2006, see also: Referendum nova mantra?, B92, February 16, 2006

determining the final status¹⁶⁷. In response, some hard-line Serbian leaders threatened to use any means “necessary” to impede the independence of Kosova, if the international community decided in favor of any kind of independence for Kosova¹⁶⁸.

The international community urged negotiating parties to reach a common solution by the end of the year 2006, focusing on protection of the Serb minority in Kosova, and Serbian engagement in Kosovar institutions. It is believed that the final status should be decided by the will of Kosovar Albanians based on the principle of self-determination. Clearly, Albanians have acquired this right both historically and legally.

¹⁶⁷ He said after the meeting of the Contact Group that in Kosova, 90 % of the population are Albanian and that they are to determine the fate of their country, Ahtisari ocekujе nezavisnost Kosova, Blic, February 20, 2006, <http://www.blic.co.yu/>

¹⁶⁸ “Srbiju braniti svim sredstvima”, B92, February 10 2006, http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=02&dd=10&nav_id=188210, Radical Party of Serbia is the biggest party in Serbia.

CONCLUSIONS: Is Kosova Entitled to Statehood

Self-determination is one of the most sensitive areas of international law. Its meaning and application has been a source of much contradiction and misconception. This is due to the fact that self-interest dominates attitudes toward self-determination. States' attitudes toward self-determination shifted and sometimes changed completely depending on the impact it would have on a state's self interest. To would be states, self-determination is the key that opens the door to that coveted club of statehood. For existing states, self-determination is the key for locking the door against the undesirable results from within and outside the realm¹⁶⁹. The dynamic was simple: self-determination was attractive from afar; but unattractive when applied to them. It is however in the post cold war period with the break up of the USSR and the former Yugoslavia that new meaning was given to the principle of self-determination.

The origin of the principle of self-determination can be traced back to the American Declaration of Independence (1776) and the French Revolution (1789). However, in France this principle was propounded as a standard concerning the transfer of territory and it was applied only in cases where it would favor France. It was first put into practice in Italy where it was joined with the concept of national unification based on self-determination. This concept emerged on the international scene during the First World War and the Bolshevik Revolution. To Vladimir Illic Lenin, it was a means to achieve the dream

¹⁶⁹ Antonio Cassese, SELF-DETERMINATION OF PEOPLES (1995) at 1 – 7. However in overall self-determination has been one of the most important driving forces in the new international community. It has set in motion a restructuring and redefinition of the world community's basic "rules of the game".

of world socialism. For Woodrow Wilson, it was the key to a lasting peace in Europe¹⁷⁰. Yet Wilson did not apply the concept of self-determination universally. Rather, he saw it as applicable only to some subject nationalities as was made evident in his speech to Congress on January 8, 1918 outlining his Fourteen Points. Hence, Poles were able to form their own state after the war, but various ethnic groups in Austria-Hungary and the Ottoman Empire did not have the same opportunity¹⁷¹. Until the Second World War, the principle of self-determination remained essentially a political concept.

In the post World War II period, the status of self-determination changed dramatically. The principle was included in a number of important international documents, including the Charter of the UN and the two International Human Rights Covenants, International Covenant on Civil and Political Rights and International covenant on Economic and Social Rights. These documents focused on self-determination as one of the fundamental human rights, thus making it a *jus cogens* norm. Their focus was on the organization of personal and public life through expression of free will. The documents made no reference to external self-determination.

¹⁷⁰ France used the principle of self-determination to pave the way for annexation of Belgium in 1793 and the Palatinate. Plebiscites were organized and were valid only if the vote was pro-French. Also there was an internal limitation of the principle embodied in Title XIII of the 1793 Draft Constitution presented by Condorcet to the National Convention on 15 February 1793 where colonial people were not deemed to have a right to self-determination, neither were minorities or ethnic, religious or cultural groups, see *id* at 11 – 13, see also *supra* note 34 at 32.

¹⁷¹ In his speech to Congress on 11 February 1918, Wilson stated that, “Peoples are not to be handed about from one sovereignty to another by an international conference or an understanding between rivals and antagonists. National aspirations must be respected; peoples may now be dominated and governed by their own consent. Self-determinations is not a mere phrase, it is an imperative principle of action which statesmen will henceforth ignore at their peril. See *supra* note 103 at 22 – 24.

The most influential documents on external self-determination were two General Assembly Resolutions: the Declaration on the Granting of Independence to Colonial peoples and the Declaration on Friendly Relations.¹⁷²

However, the two UNGA resolutions were unclear regarding what people were eligible for external self-determination. In the Cold War, these resolutions were used to grant external self-determination to people under colonial rule. This became an important precedent for international law and was incorporated into Article 38 of the Vienna Convention on the Law of Treaties. As a result, minorities or peoples living in sovereign states were not included in the right to external self-determination.¹⁷³ This changed only when the international community became aware of the persistent suppression of peoples and minorities by sovereign states. As a result, support gradually grew for their right to external self-determination.

Based on this history and the evidence developed in the previous chapters, there are three reasons why Kosova Albanians should have the right to self-determination: 1) past unjust seizure of territory, 2) dissolution of a country and 3) attempted genocide. While the

¹⁷² In the UN Charter the principle of self-determination is enshrined in articles 1(2) and 55. At a time of UN Charter the principle was not regarded as a rule of international law, see UN Charter Article 1(2) and 55, see also supra note 34 at 33. Both of the major Human Rights Covenants, ICCPR and ICESR contain the principle in Art. 1(1) which provides that “All people have right of self-determination. By virtue of that they freely determine their political status and freely pursue economic, social and cultural development”, see ICCPR Art. 1(1) and ICESR Art. 1(1). The most important General Assembly Resolution about self-determination are, the Declaration on the granting of Independence to Colonial Countries and Peoples and also the Declaration on Friendly Relations.

¹⁷³ Supra note 104 at 59

first two are not well supported in the international community, the third is supported by court decisions and a number of distinguished scholars.

The first argument in favor of the right to self-determination is based on Alan Buchanan's scholarship. He argues that secession is a legitimate measure to rectify a past seizure, because it is a means for taking back what was unjustly taken.¹⁷⁴ This raises two questions: how clear must the title be, and how far in the past must one go to determine the rightful owners? The recent case of the Baltic Republic's secession from the former USSR in the early 1990's, suggests that the "past" may be defined as contemporary.¹⁷⁵ Therefore it is unnecessary to go far back into history.

It is clear that despite strong objections by the Albanians, Kosova was unjustly ceded to Serbia after World War I. Even though it was done at a time when the principle of self-determination was entering the international realm, the unequal application left the Albanians marginalized.

The second argument in favor of the right to self-determination is dissolution of a country. Yugoslavia formally ceased to exist by the decision of the UN. Additionally, the UN denied the Serbian request to inherit the status of Yugoslavia and required Serbia and Montenegro to apply for UN membership under the new authority¹⁷⁶. Therefore we do not

¹⁷⁴ Article by Alan Buchanan, *Self-determination, secession, and the rule of law* in Robert McKim and J. McMahan, *THE MORALITY OF NATIONALISM* (1997) at 310

¹⁷⁵ *Id*

¹⁷⁶ In its opinion No. 3 dated January 11, 1992 the Arbitration Commission on the former Yugoslavia stated that "the Socialist Federal Republic of Yugoslavia is in the process of breaking up". Following that the Security Council with UN Resolution 757 declined the request by the Federal Republic of Yugoslavia (Serbia and Montenegro) to continue automatically the membership of the former Socialist Federative Republic of Yugoslavia in the United Nations. UN Resolution 777 recommends to the General Assembly that it decide

have a continuation of the former state, to which Kosova was a constitutive part, but rather the creation of several new states. Based on this, Kosova should have been granted the right to self-determination. But at the time, Kosova did not control any territory as other seceding republics which were at war with Serbia did. Therefore, Kosova Albanians were not granted the right to self-determination, in spite of their peaceful efforts to achieve it.

Additionally, the clear definition of territory as defined in the Constitution of Yugoslavia calls into question all the arguments presented by the Serbian government that the independence of Kosova would cause ramifications in the region¹⁷⁷. Serbs claim that if Kosova were granted the right to self-determination, then the Serbian entity of the Srpska Krajina within Bosnia and Herzegovina would also make this demand. However, these parallels do not stand up under closer scrutiny. The political situation that existed during the former Yugoslavia until its dissolution must be taken into account. There was no Serbian entity or organization within Bosnia and Herzegovina that could resemble the case of Kosova. The Serbian entity came about as the result of the peace settlement of Dayton.

At the same time, a territorial definition of self-determination would understandably ignite a resort to the principle of *uti possidetis*. It had already been applied to secession of the other former Yugoslav republics, which helped them preserve border lines as they existed prior to the dissolution of the former Yugoslavia. Regardless, some Serb officials would like to partition an independent Kosova, in order to have a part of northern Kosova inhabited with Serbs, join Serbia. If this separation did happen, it would

that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the UN and that it shall not participate in the work of the General Assembly.

¹⁷⁷ See, Tadić: Pavaresia e Kosoves mund ta destabilizoj rajonin, RTK, March 08, 2006

set an unfortunate precedent in international law. It would cause other peoples within former republics to demand unity with Serbia. In contrast, applying the principle of *uti possideits* would help preserve boundaries that Kosova was guaranteed with the Constitution of Yugoslavia in 1974, rather than be a cause of destabilization in the region.

The third argument which is most supported in the international community is the right of self-determination to victimized people. Serbs persistently committed atrocities against Albanians using programs created by the highest authorities of the Serbian state apparatus. This began in 1844 with the notorious “Nacertania Plan” and was updated by other programs during the first and second Yugoslavia. The impact was most obvious during the war of 1998-99 when more than 13,000 Albanians were killed and almost 1 million were forced to leave the country. This writer personally experienced the organized expulsion on April 1, 1999 in Prishtina, the capital of Kosova. Two uniformed policemen ordered his family to depart with 24 hours or face death.

Serbian atrocities directed exclusively at Albanians showed a clear intention to eliminate them from Kosova. All of the elements of the Serbian campaign would satisfy the definition of genocide in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide. This states that any acts with intent to destroy, in whole or in part a national, ethnic, racial or religious group would constitute genocide. This should be read in relation to Article 3(d) of the Convention, which makes attempts to commit genocide a punishable crime. Only NATO intervention stopped Serbian troops from totally achieving their goal. Serbian actions, though, make it evident that they were on the path to complete genocide of the Albanians of Kosova.

The importance of human rights has been clearly articulated in the post Cold War world. A state's legitimacy is based on John Locke's concept of the fiduciary relationship between the government and its people. In *The Function of Civil Government*, he stated that "the government has a fiduciary responsibility to protect citizens against other citizens in a state of nature, as well as against the state." State legitimacy is derived from the people who are the only sovereign element within a state. People give up their sovereignty to government to protect and advance their interests. Therefore, any state action against the people ultimately means that a state is stripped of its legitimacy. Unfortunately for a number of years, this perception was undermined by the statist view of sovereignty, territorial integrity and non-interference that resulted from the Treaty of Westphalia (1648) and the misuse of Article 2 (4) of the UN Charter by despotic governments. However, in the present day, statehood is increasingly defined in terms of state participation in the civilized order. The evaluation for entry into the civilized world is based on human rights. Locke's concept has been resurrected as the criterion for sovereignty. Failure to conform, results in the forfeiture of statehood.¹⁷⁸

The importance of human rights on the international level is also evident in the formation 2006 of the UN Human Rights Council that replaces the Human Rights Commission (HRC). It was overwhelmingly supported by 170 states in the General Assembly. The HRC will be composed of representatives from states with the best human rights records. The Council will give the General Assembly the right to eliminate any state

¹⁷⁸ David A. Westbrook, *Law Through War*, 48 Buff. L. Rev. 299, at 11

with gross violations of human rights.¹⁷⁹ This suggests that in the future, states with human rights atrocities might be banned from the UN General Assembly and other related UN bodies and mechanisms.

In modern times, persistent atrocities towards a people are seen as a reason for external self-determination of the victimized people. There is no basis for a negotiated solution granting some kind of internal self-determination if central authorities are consistently oppressive and persistent violators of basic human rights. Furthermore when one or more groups are engaged in an armed conflict for secession in a multinational state, it may be too late to plead for a peaceful solution based on internal self-determination¹⁸⁰.

Human rights issues as a means for self-determination of groups living in the sovereign state were considered in two important cases: Aaland Islands in Finland and Quebec in Canada. In the former, the report of the Commission of Rapporteurs appointed by the League of Nations in 1919 concluded that international law did not legally support the right of self-determination for the people of the Aaland Islands. The report did suggest that the separation of a minority from the state of which it forms a part (and in this case incorporation to another state) could only be considered as a last resort when the state lacks

¹⁷⁹ See: UN Creates New Human Rights Body, BBC, March 15, 2006

¹⁸⁰ Frederic Kirgis, Jr., *The Degrees of Self-determination in the United Nations Era*, 88 Am. J. Int. L. 304 (1994), at 306, There is a balance of self-determination against the degree of representative government in the state. If the government is at the high end of democracy, the only self-determination claims that will be given international credence are those with minimal destabilizing effect. If a government is extremely unrepresentative, much more destabilizing self-determination claims may well be recognized. See also supra note 121 at 359

either the will or the power to enact and apply just and effective guarantees¹⁸¹. Similarly in 1998, the Supreme Court of Canada was asked to issue an opinion about the Quebecs right to secession. The Supreme Court concluded that under the Constitution of Canada, Quebec did not have the right to secession unilaterally. Rather, all of Canada would have to vote for the secession. The Court noted that international law did not support the right in cases where minorities freely choose their representatives and are given political, language and cultural protection. The Supreme Court did conclude, though, that when a people are blocked from the meaningful exercise of their right to self-determination internally, they are entitled, as a last resort, to exercise it by secession¹⁸².

In conclusion, it is clear that the government of Kosova is already passing one of the main tests given by the international community in their eight standard policies. The government of Kosova has shown that it is capable of protecting human rights, especially minority rights. In this way, Kosova demonstrates its maturity to enter the family of civilized nations. Just as importantly, when it becomes a state, it will contribute to the region by setting an example for the protection of human rights for all people, regardless of ethnicity, religion, language, or cultural background.

¹⁸¹ See: League of Nations Doc. B7 21/68/106 (1921). After the secession of Finland from Russia Swedish population of Aaland Island pleaded national self-determination as set forth by Woodrow Wilson, to join their mother land, Sweden

¹⁸² See: Reference Re Secession of Quebec, Supreme Court of Canada, 2 S.C.R 217, 37 Int'l Leg. Mat. 1342 (1998)

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ACRONYMS

EC – European Community

EU – European Union

FRY – Former Republic of Yugoslavia

GA – General Assembly

HRC – Human Rights Commission

IAC – Interim Administration Council

ICCPR – International Convention on Civil and Political Rights

ICESR – International Convention on Economic and Social Rights

JIAS – Joint Interim Administration Service

JNA (YPA) – Jugoslovenska Narodna Armija (Yugoslav Peoples Army)

KFOR – NATO Led Kosovo Forces

KPC – Kosovo Protection Corps

KTC – Kosovo Trust Council

KVM – Kosovo Verification Mission

NATO – North Atlantic Treaty Association

OSCE – Organization for Security and Co-operation in Europe

SC – Security Council

SRSB – Special Representative of the Secretary General

UCK (KLA) – Ushtria Clirimtare e Kosoves (Kosova Liberation Army)

UN – United Nations

UNGA – United Nations General Assembly

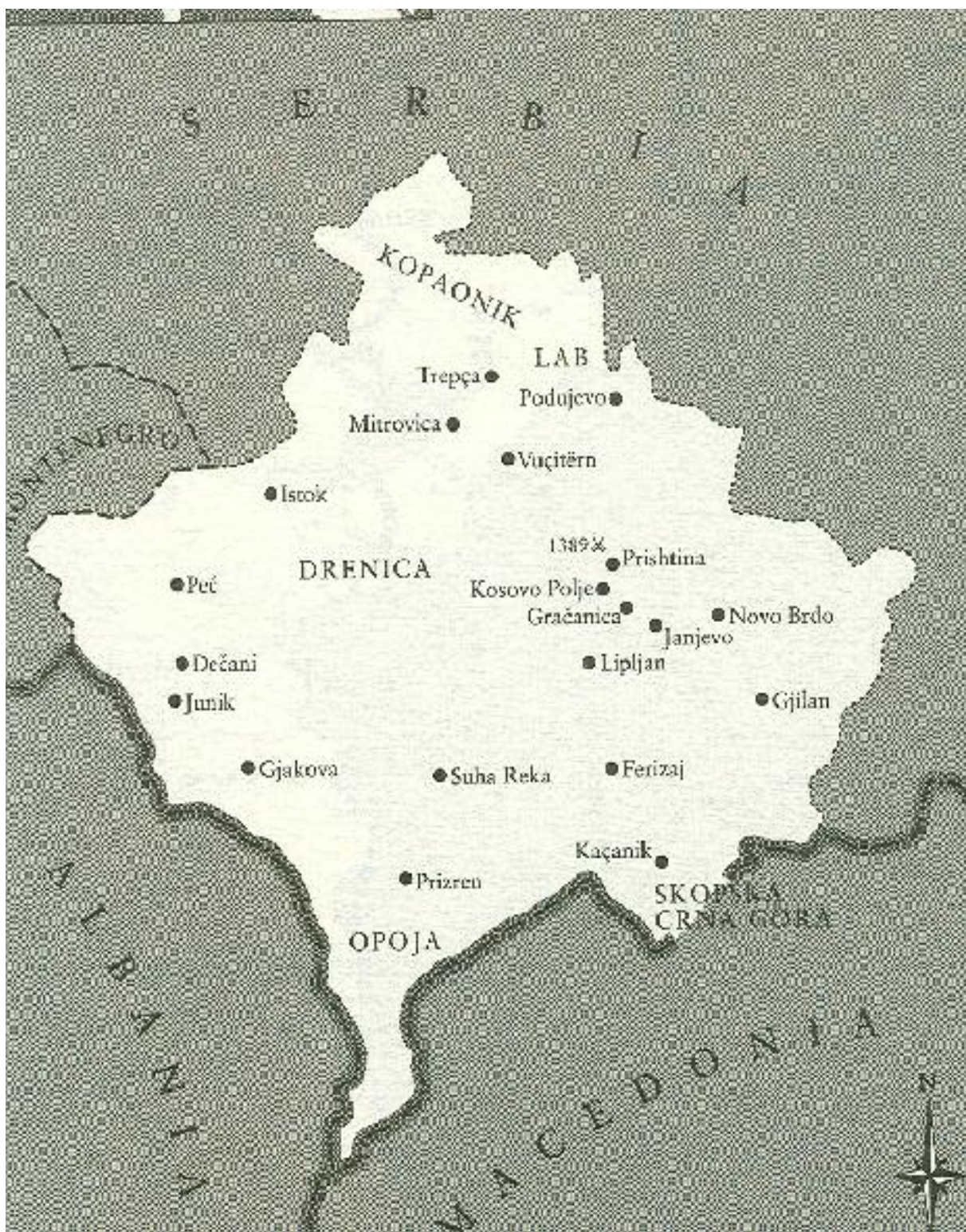
UNMIK – United Nations Mission in Kosovo

UNSC – United Nations Security Council

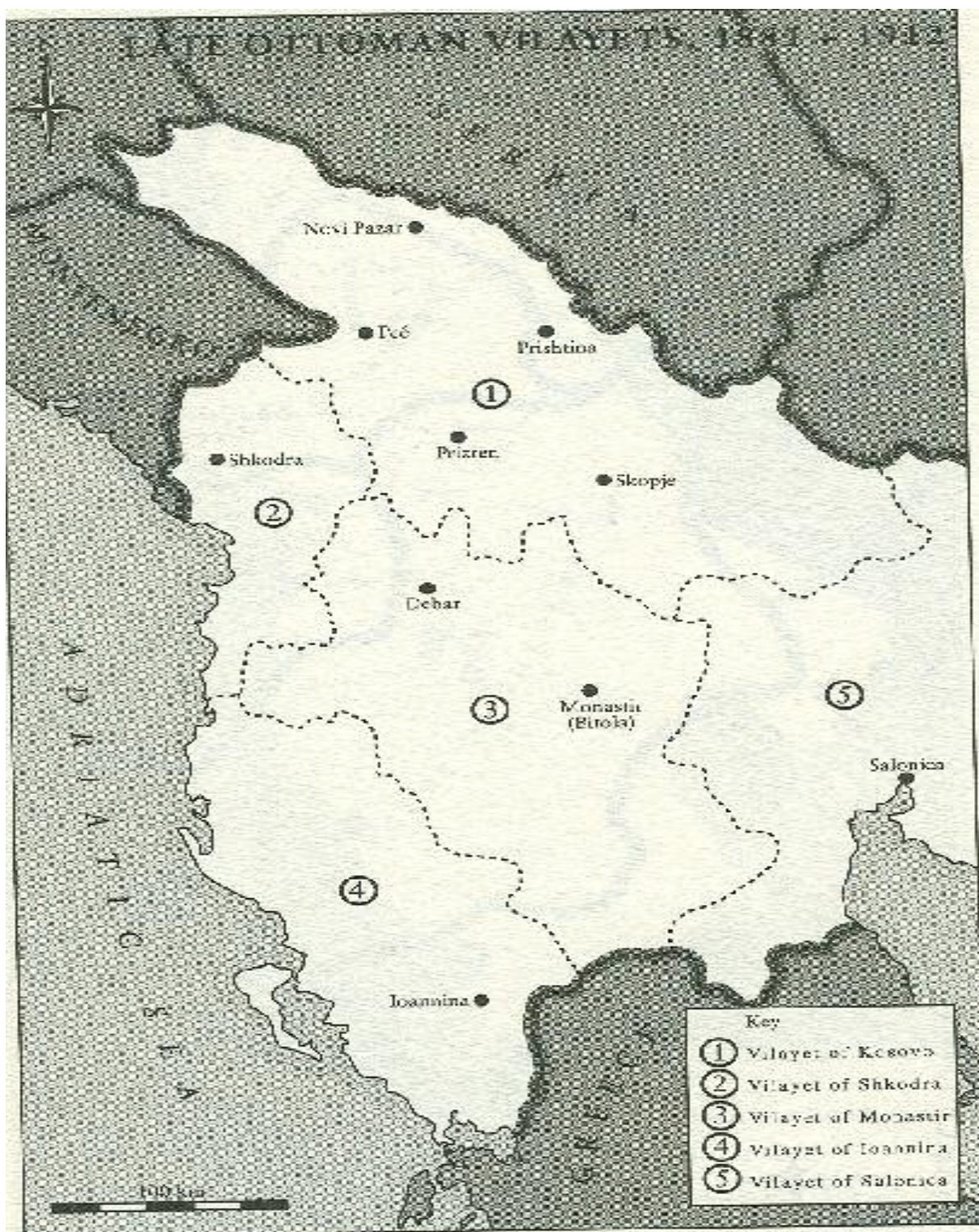
UNSG – United Nations Secretary General

USSR – Union of Socialist Soviet Republics

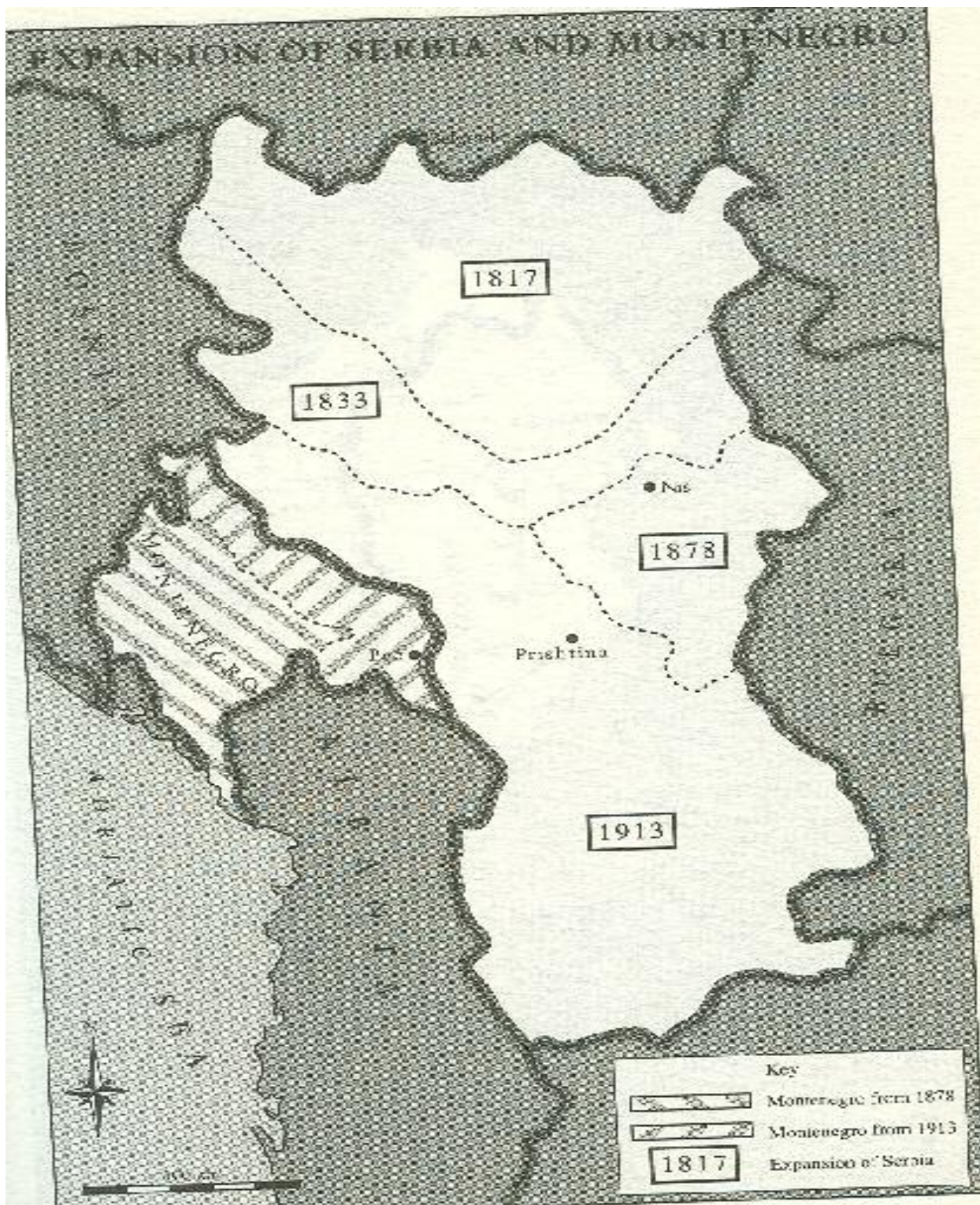
YCP – Yugoslav Communist Party



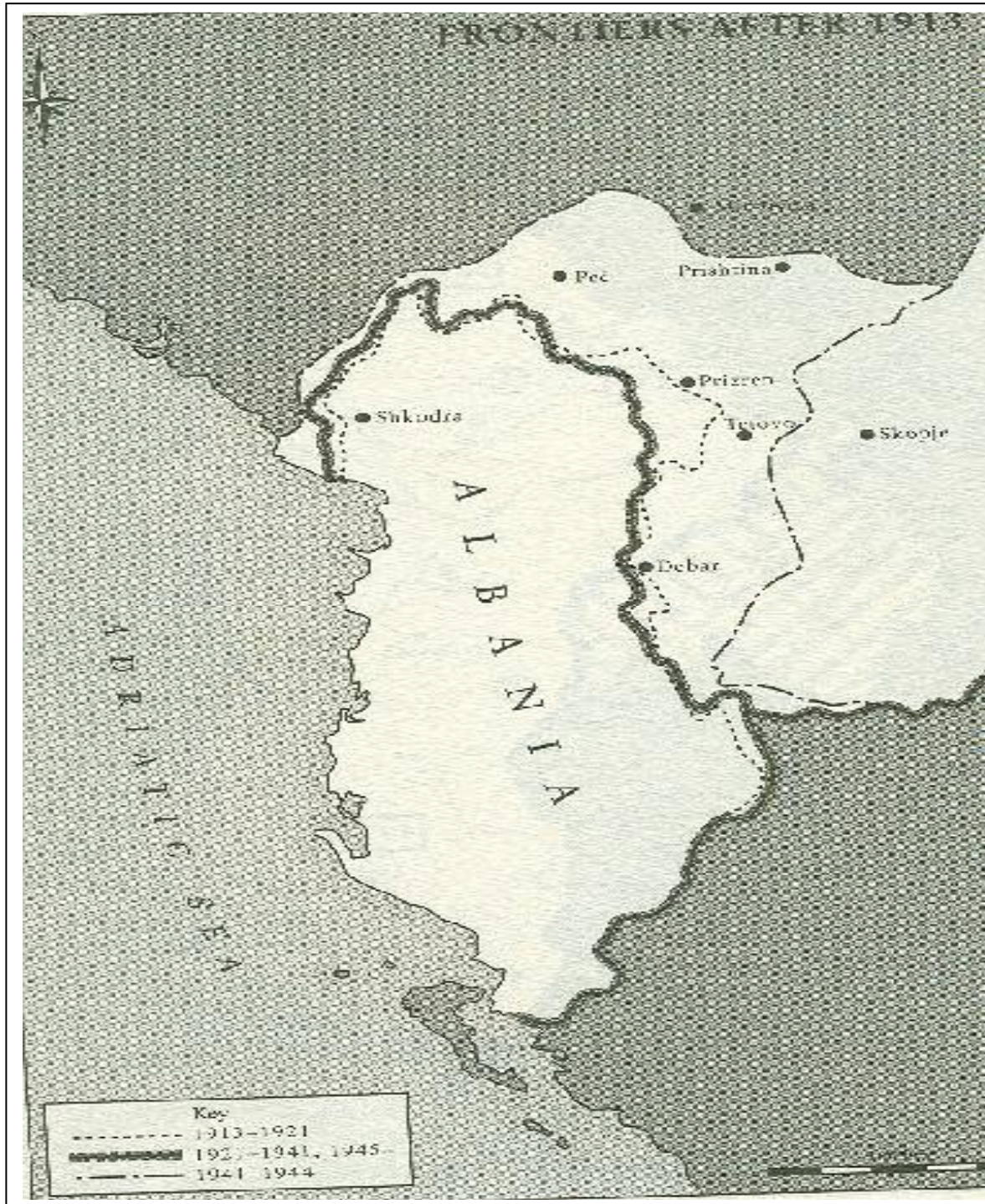
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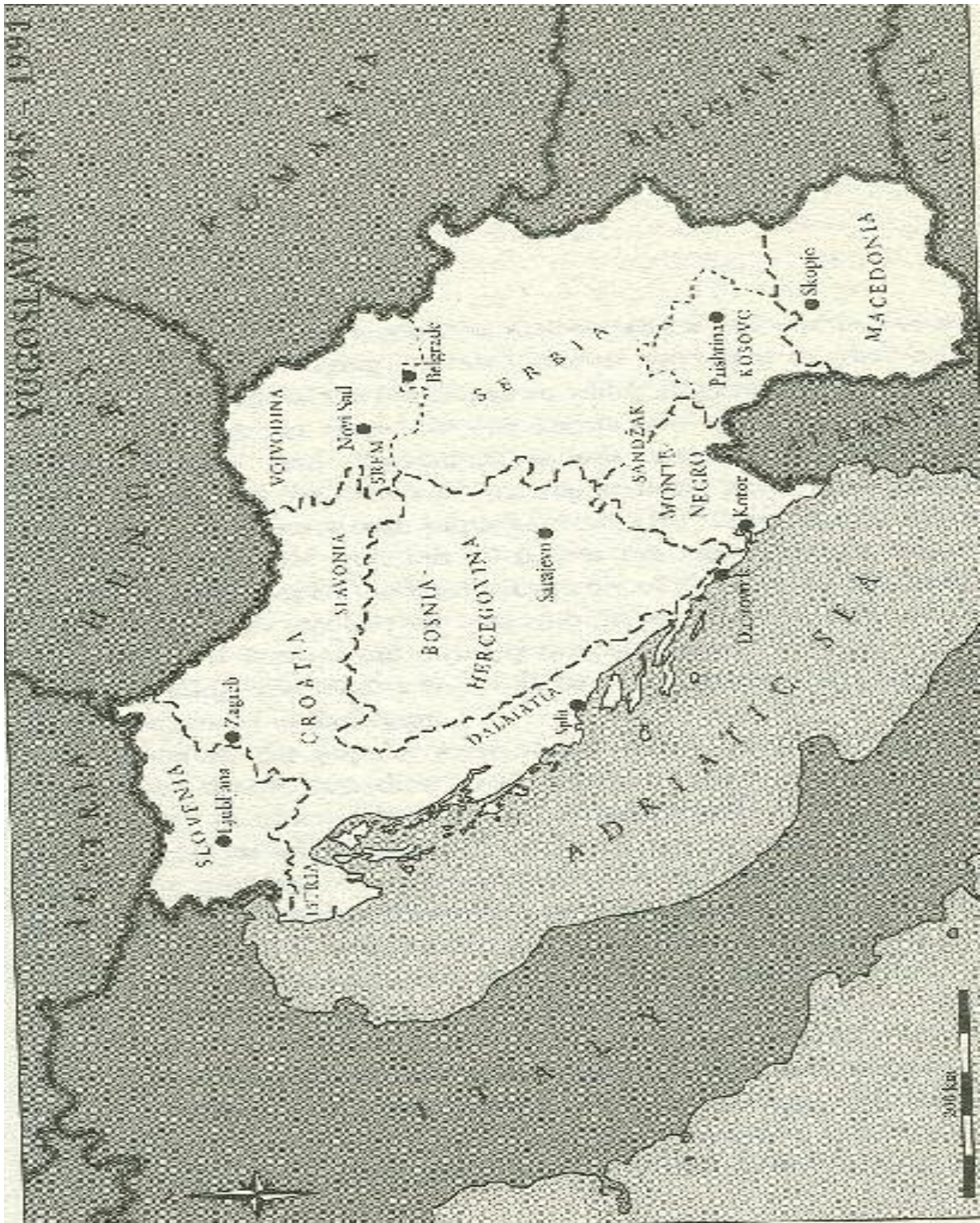
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Annex 3
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Annex 5
Noel Malcom, KOSOVO: A SHORT HISTORY (1998)