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UDC:
341.218.2(497.115)

**PAVARËSIA E KOSOVËS SI E DREJTA NATYRORE QË
ËSHTË NË HARMONI ME RENDIN E RI NDËRKOMBËTAR**

**НЕЗАВИСНОСТА НА КОСОВО КАКО ПРИРОДНО
ПРАВО КОЈА Е ВО ХАРМОНИЈА СО НОВИОТ
МЕЃУНАРОДЕН РЕД**

**KOSOVO'S INDEPENDENCE AS A NATURAL RIGHT
HARMONY WITH THE NEW INTERNATIONAL ORDER**

Abstract

The Kosovo's unilateral declaration of independence triggered a lot and hard debate worldwide. The government of Serbia has used all of its available diplomatic, economic, and legal resource to oppose it, and also sent the case to the International Court of Justice to assess its legality. The court verdict has clearly stated that Kosovo's Declaration of Independence is in accordance with international law, and this case has acclaimed Kosovo as sui generis case. While the arguments of the opponents of Kosovo independence against the Declaration of Independence are only superficial, if we refer exclusively to the declaration of independence, it entails anyway its harmony with international law as a natural and positive right. As a rule, the Declaration of Independence has its support in international law, i.e. in accordance with the UN Charter of 1945, the UN Universal Declaration of 1948, international covenants on Economic, Social and Cultural and International Pact on Economic and Political Rights, all of which were adopted by the General Assembly of the UN in 1966 in Article 1 of these treaties, the

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Helsinki Document of 1975 and the Charter of Paris and the UK of 1990 for a New Europe. Kosovo's Declaration of independence in 2008 and the subsequent recognition of Kosovo by many countries brought much needed stability to the Balkans and closed the books on the protracted break what was once Yugoslavia. Declaration of independence sprang forth from a process supervised by the United Nations, through Resolution 1244 and the institutions it established, UN was deeply involved in the past and present in Kosovo. The unilateral declaration of Kosovo's independence has now made possible a future in which Kosovo is independent not only politically, but also economically and administratively. While Serbia, acting through the General Assembly, has asked this Court to give an advisory opinion to which it hopes will reopen status negotiations to re-define the future of Kosovo, it has not provided this Court any reason to upend what has become a stable equilibrium. Both Kosovo and Serbia are part of the future of Europe, at a time when Kosovo's independence has finally closed one of the most painful chapters of modern European history.

Keywords: *Independence, International Court of Justice, UN, Sui Generis*

Introduction

On 26 March 2008, the Serbian government deposited its plan to the UN, respectively in the International Court of Justice to decide on Kosovo's declaration Independence and final secession from former Yugoslavia, which in 2008 remained only Serbia as successor of the legal personality.² Serbia urged to take the opinion if the declaration had violated international law.³ The finding of the International Court of Justice becomes imperative of the time, which as an institution of international law have been established immediately after the First World War. Legal basis of the functioning of the court's face in the preamble to the Covenant of the League of Nations, which aims to "respect the exact roles of the international law", to maintain mutual relations of organized peoples in the level of states. Permanent Court of International Justice has functioned from 1922 until 1940, when the Germany led by Third Reich occupied the Netherlands. It is characteristic to note that during this time, this international institution has

² Gregory F. Treverton, *Dividing Divided States*, PENN, Pensilvania, p. 37.

³ See Sections 7 and 92 of the UN Charter

taken 31 decisions and provided 27 advisory opinions, which refers to instructions on citizenship in Tunisia and Morocco (UK - France) on church of St. Neum former Yugoslavia and Albania, in 1924, the exchange of Greek and Turkish populations between Greece and Turkey, on the border around Mosul etc.⁴ As a result of this court was continued its active presence at the conference in San Francisco in 1945, where was adopted the Charter of the United Nations and with this decision is the final establishment of this court, as one of the main bodies of the UN Organization, where its status becomes an integral part of the UN Charter. This court consists of 15 judges, and who principally are chosen by the Security Council of the UN. In the decision making process, which does not obligate the parties to the dispute, it always refers to International Law, and to support that, the court has relevant Statute, which establishes the acceptable criteria's, however, in the selection of judges, the statute explicitly requires that the person who is elected as a judge of this court should be of high moral character, i.e. that the place of the judge appointed to this institution should be expert, or possess high knowledge of international law.

Cases of decisions by the ICJ

When studying the political and especially legal disputes, we must have in mind that in the international relations, especially in the globalized world, we have to do with a system of constitutional governments, which are built on the principles of separation of powers, and focusing our aim in UN then this varies mostly in the political and judicial structure of this organization itself.⁵ And before entering to the topic of the court, we must emphasize that there are huge discussions, which institutions may request advisory opinions. Different scholars try to explain that if we see the practice, then it is very easy to understand that General Assembly and Security Council of UN are the main two institutions, which may request advisory opinions, but there are also scholars, who says that opinions may be requested also by other subjects of international law, such as different international organizations.⁶ If we refer to the International Court of Justice, Article 92 of the UN Charter, this Court is the main body of the United Nations.

⁴ See sections 2 and 9 of the Statute of the International Court of Justice

⁵ Louis Henkin. "Is There a 'Political Question' Doctrine?" *The Yale Law Journal*, vol. 85, no. 5 (1976), 597.

⁶ Zejnullah Gruda, (2007). *Public International Law*. Skopje: Furkan ISM, p. 512

According to its statutes, the Court takes two types of verdicts: a. decisions and b. opinions. From 1946 until 1995 the relevant court – approved and issued 60 verdicts (decisions) and over 20 advisory opinions. The first case that the court has decided is after the Second World War and that has been for the Corfu Channel case, in other words the Anglo - Albanian case (1949). The court then during the years has solved many cases. During this period the court has given many advisory opinions, the conditions for accession of states in the United Nations. As a rule it can be stated that by advising the UN Assembly to accept Kosovo among UN (in this context we are dealing, in assessing the declaration of the independence of Kosovo as object of examination in this court). If we see this court referred to the case of the Declaration of Independence, adopted on 17 February 2008, it has provided interpretation in a way or other, called advice or " Opinions", which, whatever we call is not obliged to parties.⁷

Request of Serbia to the United Nations

On 26 March 2008, the Serbian government presented its plan to the General Assembly of the organization of the United Nations exactly to the International Court of Justice to rule on Kosovo's declaration for secession. Serbia urged to take the opinion and made the only question if declaration for independence had violated international law. It was also taken an initiative to seek international assistance by the General Assembly of the United Nations, when met again in New York in September 2008. On August 15, 2008, Serbian Foreign Minister, Vuk Jere-mic formally submitted an application to the United Nations seeking the opinion of the International Court of Justice.⁸ The resolution was formulated as follows: Given the goals and principles of the United Nations, considering its functions and powers of the United Nations Charter, recalling that in the 17 February 2008, the Self -Government Provisional Institutions of Kosovo declared its independence from Serbia. Being aware of this act, it started to be accepted by Members of the United Nations with different reactions regarding its compliance

⁷ See sections 2 and 9 of the Statute of the International Court of Justice Statement of U.S. Representative Horald Koch, on the occasion of the presentation of historical facts and current issue of the Declaration of Independence, presented at the International Court of Justice , based in The Hague , December 2009 .

⁸ Bujar Desku, (2013). *Interpretation of the Declaration of Independence by the ICJ. Pristina*, p. 47

with the international legal order, said Serbia on its application.⁹ The General Assembly of UN requested ICJ, and the last had to decide, in accordance with Article 96 of the United Nations Charter asking the Justice, in accordance with Article 65 of the Statute of the Court to give an advisory opinion on the following issue: "Is the unilateral declaration of independence by the Provisional Institutions of Self -Government of Kosovo in accordance with international law?"¹⁰ On 30 September 2008, the Serbian initiative was first brought to a vote and was supported by 120 member states. General Assembly resolutions adopted that proposal 63/3 on the second ballot with 77 votes in favor of the applicant, 6 against and 74 abstentions.¹¹ Declaration of Independence has really thrown Serbia at the International Court of Justice, but in this context, this court has no mandate to deal with political issues, because the Declaration of Independence was a political issue and not exclusive legal issue, even though there are arguments that state institutions are political institution and as such all disagreements that they have in international relations are political.¹² Also, known international law author, Hans Kelsen "...the legal or political character of the dispute does not depend on the nature of the dispute, that is to say, on the subject matter to which the dispute refers, but on the nature of the norms to be applied in the settlement of the dispute. A dispute is a legal dispute if it is to be settled by the application of legal norms - by the application of existing law."¹³ Or another author, Rosalyn Higgins states that "...In fact, political interests and judicial settlement are not mutually exclusive. It is not hard to see that disputes in which the states political interests are at stake could also fall within a category of issues in relation to which relevant legal rules do exist."¹⁴ But, in contrary in some cases, the court order does not deal with this category, which decision was given in the

⁹ Blerim Reka, Bardhok Bashota and Ylber Sela. (2016). *International Relations*. Skopje. p. 202

¹⁰ Joshua S. Goldstein, (2003). *International Relations*. Tirana, p. 310

¹¹ *Statement of U.S. Representative Horald Koch*. Kosovo at the International Court of Justice, 2010, p. 37

¹² Hersch Lauterpacht, *The Function of Law in the International Community* (Oxford: Oxford University Press, 1933), 142.

¹³ Hans Kelsen and Robert W. Tucker, "Principles of International Law," (*Holt, Rinehart and Winston*, 1966), 525.

¹⁴ Rosalyn Higgins, 'Policy Considerations and the International Judicial Process,' *The International and Comparative Law Quarterly*, Vol. 17 (1968), 74.

Nicaragua case,¹⁵ and clearly refused to deal with “political question doctrine” in the opinion of *Israeli Wall* case.¹⁶ To sum up the ICJ’s jurisdiction in contentious cases, the Court defines an international legal dispute as a ‘disagreement on a question of law or fact, a conflict, a clash of legal views or of interests’.¹⁷

Arguments in favor of Kosovo

Kosovo's independence is irreversible. This will not change only for Kosovo but for the sake of peace and international security for region. After encroachment of human rights of Kosovo Albanians, Serbia lost all rights over this country. The will of the people of Kosovo goes back many years and it was clear to all participants in the Rambouillet Conference. "It was clear immediately after the conflict of 1999, when the UN Resolution 1244 which clearly referred to the Rambouillet agreement. It was clear during the administration of UNMIK and is fully discussed and taken into consideration during the negotiations on the final status" - which negotiations on the final status of Kosovo were intended to persuade Serbia to recognize the independence of Kosovo.¹⁸ Serbia has never been sincere in its offerings to solve the Kosovo's status. In the midst of the status talks, Serbia adopted its new constitution confirming Kosovo as its integral part, thus clearly showed that Serbia is not interested in finding a solution and showed what they thought for its offers for autonomy. In this way, Serbia showed that Kosovo is only a patch.¹⁹ The arguments from Albania, United States of America, Croatia, France, Germany, England and other countries have impacted substantially the opinion of ICJ in favor of Republic of Kosovo.

¹⁵ *Military and Paramilitary activities in and gainst Nicaragua, Jurisdiction and Admissibility*, I.C.J. Reports of 1984.

¹⁶ *Legal Consequences of the Construction of a Wall in the occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports of 2004.

¹⁷ The Statute of the International Court of Justice. Art. 36.

¹⁸ All means were used before the Declaration of Kosovo’s Independence in accordance with the UN Charter, Article 33 (1): “The parties to any dispute, the continuation of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”

¹⁹ See sections 2 and 9 of the Statute of the International Court of Justice Statement of U.S. Representative Harold Koch, on the occasion of the presentation of historical facts and current issue of the Declaration of Independence, presented at the International Court of Justice, based in The Hague, December 2009.

Stances against Kosovo's declaration of independence

Different states, some of them still regimes have proclaimed the unilateral independence of Kosovo as violation of international law. It is a challenge to the authority of the United Nations and a challenge to the international legal order based on the principles of sovereignty and territorial integrity. The Declaration of Independence is an attempt to remove the UN administration in Kosovo and to end the Serbian sovereignty in Kosovo by imposing independence as unilateral solution for Kosovo. Kosovo was " the historical cradle of Serbia and constitutes one of the main pillars of its identity." Declaration of independence was made by the provisional government of Kosovo and was in breach of Resolution 1244 of the United Nations, which guarantees the territorial integrity of the FRY (now Serbia).²⁰ All proposals of Serbia offering wide autonomy for ethnic Albanians are refused. Serbs and non-Albanians in Kosovo were always in threat of the basic human rights and getting pressure on them to leave the region. All major cities in Kosovo with the exception of North Mitrovica were ethnically cleansed. Serbian churches and monasteries in Kosovo are "landmarks that only are guaranteed by the European armed forces, because they face real threats of destruction" and would be a dangerous precedent if other countries of the UN conclude that the arrival of the peacekeeping forces represents the first step to divide one country. The declaration of independence was made by the provisional government of Kosovo and it was contrary to the United Nations 1244 Resolution, which guarantees the territorial integrity of FRY (now Serbia). After that Russia's representative, Kiril Gevorgian, has announced that this court has jurisdiction to issue the decision on declaration of independence, while continuing to recall that there have been many declarations of independence, which are considered illegal by the Security Council and gave as an example the Northern Cyprus, and including Kosovo Declaration of Independence of 17 February 2008.²¹ According to Russia, Kosovo's declaration of independence is illegal because it was made under an international administration," said Gevorgian, according to whom Kosovo's population is not included in the groups that qualify to have the right of self-determination. "In 2008 there was no threat to the people of Kosovo

²⁰See Report of the Special Envoy of the Secretary- General on Kosovo's future status, S/2007/168 , 26 March 2007

²¹ Fejzulla Berisha: Right-lae magazine for legal and social issues, Journal for juridical and social issues No. 2-4 - Pristina, 2006.

from Serbia and violation of human rights cannot be taken as an argument for Kosovo's declaration of independence. The people of Kosovo was never accepted as a nation with the right of self-determination, while the international community in 1999, did not recognize the right of self-determination of the people of Kosovo". Russia has already reiterated that international law prohibits the independence of Kosovo". Kosovo under international law, is under UN administration and neither Albanians and nor Belgrade cannot take unilateral action that defy UNMIK and other international mechanisms in Kosovo". Gevorgian has alluded to the continuation of talks between Kosovo and Serbia, adding that the talks have not brought any results, but that does not mean that all possibilities are exhausted." Serbia has offered Kosovo, not only high degree of internal autonomy, but also participation in international organizations. Under Resolution 1244, "Kosovo's status should be substantial autonomy within Serbia and the resolution remains fully in force". In the hearing of the International Court of Justice has received word the representative of Spain, who reaffirmed that Kosovo's declaration of independence is contrary to international law, because it is violated Resolution 1244 of the Security Council of the United Nations. Its representative, Escobar Hernandez, in other words showed prominent position that "Spain considers that Resolution 1244 is still in force, the political process of finding a solution is still ongoing, and this situation should continue until the Security Council adopts a another decision". Hernandez said that "Kosovo's unilateral secession is not in accordance with international law, as is allowed only in cases of colonies", thus concluding that the "Kosovo issue is resolved with the resolution of the UN Security Council, the Albanians has provided extensive self-administrating position".²²

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

Declaration of Independence is a high value for the rule of law, because everyone is entitled to all the rights and freedoms, without any distinction. The declaration and recognition of Kosovo's independence brings us to historical retrospectives, since 4 July 1776 with the U.S. Declaration of Independence. As in the UN Charter of 1945, Article 55, and as well in 1952 the General Assembly of UN approved a series of

²² Statement of Finnish representative at the International Court of Justice , based in The Hague , December 2009

international documents, as pacts and then acts on the political will of the peoples, and nations for their future. Based on these documents, peoples and nations, enjoy and realize their aspirations for independence, namely their future. According to article 1 of the International pact on Civil and Political Rights adopted by the UN General Assembly, in 1966, concluded that "all peoples have the right to self-determination". These pacts that have their value and in 1976 were ratified by 87 subjects of international law, namely the UN subjects-states. The case of Kosovo is *sui generis*, and the arguments of opponents of independence against the Declaration of Independence have superficial side. If we refer exclusively to the declaration of independence, it nevertheless entails its harmony with international law as a natural and positive right. Although in 1912, 1914, 1919, 1936, 1945, 1966, 1981-83 and in 1999 Kosovo was under Serb-Yugoslav military administration, prevailed exerting an increasingly based antipathy of cultural supremacy of one ethnic group against another and this is certainly reflected in the primitive anti-Serb bias. It is recalled that the characteristic of Kosovo Albanians in their historical periods, in terms of formal, legal and factual, asked national plebiscite for self-determination in the years 1943-1944 in Bojan Conference, then in Pristina on July 2, 1990, in the Constitutional Declaration for Equality, in Kaçanik of 7 September 1990, the Constitution of the Republic of Kosovo, in Pristina in October 1991, Resolution and maintaining for its independence referendum, where 98 percent of its people declare independent for state of Kosovo, and in terms of the actual years 1968, 1981, 1988, 1990, 1997, 1998 and 1999.²³ But although mainly legal doctrine and comparative politics reason the determination of peoples to justify the separation, the former Yugoslavia and Yugoslavia consisting of Serbia and Montenegro in confusing circumstances has denied the Albanian political principle and right. On the other hand, in the International Law is essential the fact of creation of the state, which is highly connected with the law itself, it is a legal status attaching to a certain state of affairs by virtue of certain rules or practices.²⁴ It is not a fact as it is the a fact one car or house, but it is a fact that shows the existence of the state and its actual appearance as state power, with all prerogatives, although state and international

²³ See for more at Mr.sc. Blerim REKA: Right of self-determination in Kosovo and the End of the Last Colony in Europe. Published by: SHPKJ, Pristina, 2000, p. 78.

²⁴ James Crawford, The Creation of States in International Law, Calendon Press - Oxford, second edition, 2006, p. 5.

recognition of the new state is of utmost importance.²⁵ The actual size of the state of Kosovo has entrenched itself within a historical and current factual presentation individually and collectively under the umbrellas of various relevant legislations of countries, However, very important and high value in the international recognition and confirmation is to mention the democratic world from outside about the declaration of the will of the people of Kosovo with international recognition of Kosovo. This dimension of the actual functioning of the Kosovo state does not depends only by international recognition, but also in the operational capabilities of its organs, where power should normally have functionality throughout its territory, i.e. exercise of sovereignty in entire its territory. It is characteristic to note that international law does not regulate the political declarations of independence of states, but legal issues of conflict between the various subjects of international law. In other words, the ICJ should not address political issues nor political wills of states, and it should exclusively deal with legal issues. The independence of Kosovo is the last chapter in the process of dissolution of the former Yugoslavia. In the former Yugoslavia, Kosovo in 1981 has asked its equality within its fragile federalism, while institutionally on July 2 respectively on 7 September 1990, through the Declaration on equality of the Yugoslav Federation, declared the Constitution of the Republic of Kosovo.²⁶ Kosovo, however, as unit of the Yugoslav federation, was among the first in political and legal terms that declared its independence from hegemonic Yugoslavia, and the last of those units that gained independence, which later was recognized internationally, compared to other federal entities. Known from the late 80s and beginning of early 90s of the last century Serbia was generator and promoter of its hegemony, producing violence, terror and genocide against other Yugoslav subjects, particularly against the Albanian people in Kosovo and to everything that was Albanian. In these circumstances inevitably declared their independence Slovenia, Croatia, Bosnia and Herzegovina and Macedonia. The first two today are EU and NATO members with all rights on their structures. Serbia now has diplomatic relations with all these countries, hoping that one day and not so far will be forced by the international community, even by being close to join the European structures and NATO will accept the new reality in

²⁵ <http://www.mfa-ks.net/?page=1> , 33

²⁶ Andreevska Elena, Aziz Abdulla, *Fundamentals of Public Law Ndërkombëtare Jugorelcam* , 2008 Shkup, page 33

Kosovo, coinciding reality and interlocks with the natural right to practice advanced democratic countries identified by positive law. The Kosovo issue is solely a matter of self-determination and from this, Serbia should have relations with Kosovo, and to recognize its independence and sovereignty as soon as possible. Kosovo has so far mainly been internationally recognized by a number of states of the UN, and after the declaration of the International Court of Justice, expected a new wave of international recognition of those states who still have not done it.²⁷ The Republic of Kosovo is already recognized in several international forums by having the help of states with economic, political and diplomatic influence, as it is the U.S. In this regard the very great weight is receiving newest country in the world, in the International Monetary Fund and the World Bank, in 2009, and continuing in other international organizations. These major decisions make powerful the final act of 17 February 2008: firstly, this act is the will of the people that encompasses a natural gift, which coincides with the acts and international pacts. And, secondly, a declaration of independence strengthens the Rambuje document, namely Resolution 1244 of the Security Council in 1999, which international acts are booked for domestic law. The word here is precisely related to Kosovo. If we refer to Resolution 1244 of the UN Security Council has been characteristic to emphasize that it explicitly refers to the territorial integrity of Yugoslavia (Serbia and Montenegro), namely that Yugoslavia no longer exists.¹⁸ The resolution does not prohibit the declaration of independence, but on the other hand does not authorize it as well. It is the right of the people of Kosovo to declare its independence, under monitoring, or namely international supervision. Serbia and the former Yugoslavia, which does not exist with no international treaty cannot contest the independence of Kosovo. Article 55 of the UN Charter, adopted by the UN in 1945 characterizes the institution of self-determination as a high value on declaration of democracy and self-determination for the future of the people (the right of peoples and nations to self-determination is a prerequisite for the use of all basic human rights). Self-determination as an institution and the legal- political category is one of the fundamental principles of international law and a crucial collective right referring to the authority of certain people. The will of the people is the supreme principle and crucial. Self-determination as the highest value of

²⁷ Written Statement of the United States of America ("U.S. Declaration "), p . 50-55.

democracy should be ongoing process which people of all beliefs, race, color, national origin, etc. Is respected by means and methods of ensuring dignity in all societies. Through this institution is harmonizing all freedoms and human rights, which are also declaration granting independence to colonial peoples and countries. Security policy to promote human rights, human security approaches commensurate international juridical practice. Collectivities - entities through the institution of self-determination as the high value of democracy really has this completed and crowned the subject of international law. Resolution 1244 of the UN Security Council - approved in 1999, refers to the former Yugoslavia, which no longer exists.²⁸ Since the adoption of the resolution, in Kosovo were adopted many other acts from the international community for Kosovo. A range of other acts are also approved by the Assembly of Kosovo in conformity with international laws and treaties.²⁹

Kosovo's independence coincides with the new world order

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

Rambouillet Conference of 1999 gave the green light to open a path to free and sovereign Kosovo, and was seen as the nations's destiny in the new millenium.³⁰ But, at the Rambouillet Conference recognized de facto an-half of Albania from the current Albania and internationally proved here that on a part of the Albanian nation subjected to systematic violence and terror. However in this castle near the center of France was recognized the crime that UN Charter in 1945 for the first time in Chapter VII of its Charter, were preserved and protected, through the mechanisms of senior NATO military personnel, the highest values of

²⁸ David Armitage, Declaration of Independence: A Global Story 3, 20 (2007) XVII Assembly Resolution 1803 of the UN, December 1962, Permanent Sovereignty over Natural Resources .

²⁹ Resolution of the Conference of Bojan, published in the popular book. The provincial council of Kosovo and Dukagjini Autonomy.

³⁰ Michael Waller, Kyril Drezov and Bulent Gokay, Kosovo: the Politics of Delusion, Routledge – London and New York, 2001, p. 35.

freedom and human rights and international dimensions as exclusive international humanitarian issues. These factors were giving up the international community or the Security Council to define and adopt Resolution 1244 of 1999, while Rambouje Conference and the relevant resolution did not solve the issue of Kosovo, but on the other hand, they marked and advanced the international arena for Kosovo-for its legal and political position.³¹ Considering Dr. Pirrakut's book, titled: "For the Albanian cause 1997-1999" I stopped reading at the highest institution of democracy, namely the institution of self-determination. Previously most deeply impressed when one of our analyst or journalists asks Mr. Pirrakut that, "...According to you, the Kosovo's issue cannot be solved without international intervention. What do you request from the West?". Dr. Pirraku answers "The Kosovo issue is creating problem internationally, and therefore should be solved internationally" And, I would add to this case and issue that Kosovo is *sui generis* (special) case, separated as a matter of self-determination and in terms *ipso facto* and *ipso jure*³² today is independent country recognized by more than 110 UN countries.

International Court of Justice in the case of giving opinion to Declaration 'of Independence had in mind actual historical facts, which Kosovo was passing through. The independence of Kosovo is the historical imperative issue coincides with the new world order. In the current circumstances in which Kosovo is, the UN Security Council should take into account the new premises. In this respect Resolution 1244 of the UN Security Councils of 1999 delegitimize it would be appropriate, because this resolution is referred to the Federal Republic of Serbia and Montenegro, this creature of the state now is not existing anymore. From this, it is known that the three countries have emerged with international legitimacy, i.e Serbia itself, Montenegro and Kosovo. The last one almost a whole century occupied by Serbia, declared independence on 17/02/2008. And Kosovo emerged from behind an iron fence policy enforcement ethnic cleansing and genocide, while the KLA war and intervention of NATO forces led to the fall of the Milosevic regime, among the most ferocious in human history of the twentieth century. Democracy and the rule of law in Kosovo have

³¹ Resolution of the Conference of Bojan, published in the popular book. The provincial council of Kosovo and Dukagjini Autonomy.

³² David Scheffer, **International Political and Legal Implications of Scottish Independence**, Adam Smith Research Foundation, University of Glasgow, p.7.

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

Giving the Opinion - by the International Court of Justice

On 22 July 2010 the court ruled that Kosovo's declaration of independence was not in violation of international law. ICJ opinion on Kosovo took the decision in The Hague, by 15 judges, nine of whom come from countries that have recognized Kosovo, including its Chairman, Japan's Hisashi Owada. Ten judges of the International Court of Justice estimated that Kosovo's declaration of independence did not violate international law, while four voted against. See the opinion of ICJ, in the year 2010.³³

Conclusions and recommendations

As a rule, the ICJ does not address the issues of political will of states, but it deals with politico-territorial issues, based on acts and international treaties. Kosovo's privilege was not a gift that someone gives to, but something that springs from the people and should serve them. This is a natural gift. For the Kosovo issue, we are dealing with the imperative of the historical and current issue, in which Kosovo has passed and is passing. Kosovo's independence meets with the New World Order and it has to do and is a natural flair.

As a rule, the ICJ does not address issues of political will of states, but deals with politico-territorial issues, based on international acts and treaties. It is important today that the ICJ has become more and more credible institution, where its decisions have been the subject of discussions by many states, especially those who lose a case, and far more of those who seek an opinion by this court and on the other hand do not accept its decision, as was the case with *Serbia vs. Kosovo*. Kosovo's privilege was not a gift that someone gives, but something that springs from people and should serve them. This is a natural gift. For the

³³ International Court of Justice Advisory Opinion on Kosovo Declaration of Independence: Last visited on 02 February 2018, at 20:55 hrs at: <http://www.icj-cij.org/files/case-related/141/16012.pdf>

Kosovo issue, we are dealing with the imperative of the historical and current issue in which Kosovo has passed and is passing. Kosovo's independence meets with the New World Order and it has to do and is a natural flair. However, the issue lies in the fact that the ICJ ruling has argued once and for all that the issue of Kosovo is a *sui generis* issue, raised over the existing legal order of this world order, hence its very existence as an independent state will never be able to be questioned.

But one aspect to be discussed was the weak result that brought this judicial decision on increasing recognition for the Republic of Kosovo. Although much was expected that a positive decision for Kosovo would pave the way for a quick membership to the UN. Of course, that did not happen and that the ICJ ruling was very important to Kosovo and that will bring many recognitions, which was a hope of all, and especially the political spectrum in the Republic of Kosovo.

Also, in this article were mentioned states like Russia and Spain. These states were used in this article, because states like Russia tried to use the Kosovo case and create other precedents in Georgia and Ukraine, cases that never came to be the same with Kosovo and in terms of international law were considered as interference in the internal affairs of Georgia and Ukraine and as such these two violent divisions were once again confirmed that they would not be accepted by this New World Order of the 21st century. On the other hand, the attitude of Spain, a country of the European Union, is very surprising and unobtainable, but has left much to be desired in the way it has seen the issue of Kosovo. By doing a serious mistake in not recognizing Kosovo's independence, and especially after the ICJ ruling, Spain failed to come out of the self and look further, by accepting the decision of a Court, part of which is itself through UN. If Spain would accept Kosovo's independence immediately after the ICJ decision, we think that Kosovo today would be in a better position in the international order, perhaps even being part of the UN, and much closer to it on its path to integration into NATO and the European Union. And on the other hand, even more in its interest, if Spain would accept Kosovo as an independent state and as a *sui generis* case, then the case of Catalonia would disappear as a case, where the Catalans could still be called in the case of Kosovo as an example case for them, though if we analyze these cases, then we can easily say that they have nothing in common in their history. So, if the recognition would happen, we easily see that also Catalan case cannot anymore be called on Kosovo case.

From what was discussed in this paper, it can easily be concluded that Kosovo as one of the parts of the former Yugoslav Federation was the case where the destruction of this Yugoslavia began and also the case where its destruction ended, being divided once and for all from a being, or a subject that never agreed to be for a nearly 100 years that it had become part of it.

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