

Kosovo's Declaration of Independence: Secession and States' Recognition

*Ibrahim Mashhour Aljazy and Mahasen Mohammad Aljaghoub **

ABSTRACT

The independence of Kosovo from Serbia on February 17th 2008 resulted in various reactions and divisions in the international community. While Serbia refuses to recognize Kosovo's sovereignty, arguing that Kosovo's secession and consequently the recognition of that secession was in violation of international law, some other states including the US, the UK and most of the EU's member states recognized Kosovo's independence. It's a source of concern for the international community that the example of Kosovo might set as a legal precedent for the other separatist disputes in various parts of the world.

The legality of secession is a difficult question under international law as two legal principles are interrelated: the right of states to maintain their territorial integrity and the right of peoples to self-determination. Determining the legality of Kosovo's unilateral declaration is before the International Court of Justice at the moment. Any determination by the World Court will require careful consideration of the above two mentioned principles. This forthcoming advisory opinion will be added to the case law of the Court and will undoubtedly be one of its significant case law if it clarified the rules regarding secessions. However, one should not expect that the court's final determination on Kosovo's status will be likely to affect the matter of states' recognition.

This article tackles the legal issues of Kosovo's declaration of independence and consequently states' recognition of such independence. Moreover, the article sheds some light on the General Assembly's request for an advisory opinion regarding the legality of unilateral declaration of independence which is still pending before the International Court of Justice.

Keywords: Modern English Poetry; Yeats; Eliot; Auden; Frost; Larkin; Levertov; Global; Provincial; Parochial Interest; Christology; Christian Sensibility; the Other; The Islamic Other; Civilizations; Byzantium; Incarnation; Redemption; Worldview.

Introduction

The province of Kosovo is located within the Serb Republic which was leading the Yugoslav federation. Some rights were granted to this province such as an autonomous government, a Supreme Court, a separate territorial defense army and the right to grant citizenship and to issue passports. The Socialist Yugoslav federation included, in addition to Serbia and Montenegro, four other republics which are: Bosnia and Herzegovina, Croatia, Macedonia, and Slovenia.¹ Kosovo counts because it is in the middle of Europe.

Kosovo's population comprises about two million people more than 90% of them are Muslim Albanians who have suffered from persecution of Serbs, particularly after the disintegration of the Yugoslav Federation.² On

14 December 1995 the full formal Dayton Peace agreement was signed.³ The Dayton agreement involved Federal Republic of Yugoslavia, Republic of Bosnia and Herzegovina, and Republic of Croatia. The summary of the Dayton agreement included the following points:

- Federal Republic of Yugoslavia, Bosnia and Herzegovina, and Republic of Croatia all agreed to fully respect the sovereign equality of one another and to settle disputes by peaceful means.
- The Federal Republic of Yugoslavia and Bosnia and Herzegovina recognize each other and agree to discuss further aspects of their mutual recognition.
- The parties agree to fully respect and promote fulfillment of the commitments made in the various Annexes, and they obligate themselves to respect human rights, the rights of refugees and displaced persons.
- The parties agree to cooperate fully with all entities, including those authorized by the United Nations Security Council, in implementing the peace settlement

* Faculty of Law, University of Jordan. Received on 3/9/2009 and Accepted for Publication on 11/5/2010.

and in investigating and prosecuting war crimes and other violations of International Humanitarian Law.⁴

However, despite signing of the Dayton Peace agreement, Kosovo rebels who have fought the repressive Serbian policy continued to do so. In 1998 the situation in Kosovo province continued to deteriorate due to the aggressive operations of the Serbian Army and Serbian Paramilitaries which created large number of refugees and displaced people.⁵ The NATO, being already disturbed by the huge flood of refugees in the destabilized Balkan region, started issuing warnings to Serbia to end its aggressive military actions.⁶ As Serbia refused to call off its forces and also refused to negotiate with the U.N and NATO, NATO Secretary General Solana issued an order to NATO air forces to attack Serbian forces in Kosovo.⁷ NATO believed that air force attacks against Serbian forces in Yugoslavia and Kosovo were urgently needed to resolve a "humanitarian emergency" and that NATO could not stand by doing nothing.⁸

Without any justifications, the U.S decided to participate side by side with 18 members of the NATO in the process of an air bombardment of all parts of Yugoslavia which resulted in the expulsion of the Serbian authorities from Kosovo province and placing Kosovo province under the United Nations Interim Administration Mission (UNMIK) and under the military protection of NATO forces.⁹ The UNMIK was appointed by means of the U.N Security Council's resolution number 1244, adopted on 10 June 1999, which provides in paragraph 10 that the Security Council,

"Authorizes the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo."¹⁰

The issuance of the Security Council resolution 1244 confirmed respect for the sovereignty and territorial integrity of the Serb Republic.¹¹ In view of the growing demand for independence in the province the United Nations Secretary General Kofi Annan appointed Martti Ahtisaari, the former president of Finland, as his Special Envoy for the Future Status Process for Kosovo and that appointment was approved by the Security Council on 10

November 2005. The task assigned to Ahtisaari was to lead the political process to determine the future status of Kosovo's province in the context of resolution 1244.¹² In a report released on 26 March 2007 Mr Ahtisaari stated that:

"I have come to the conclusion that the only viable option for Kosovo is independence, supervised for an initial period by the international community."

Moreover, Ahtisaari believed that Kosovo's independence is the only option for political and economic stability.¹³ Therefore, Ahtisaari concluded his mission with proposing the independence of Kosovo province and the impossibility of the continuation of the province in the framework of the Serbs Republic due to the increasing hostility between the two sides.¹⁴ The Serbs have totally rejected the proposed independence during the negotiations, which were sponsored by the European Union between Kosovo and the Serbs who offered wider degree of "self-government".¹⁵

However, the United States and most of the European countries supported the idea of independence under international supervision, "supervised independence". Kosovo independence declaration was subjected to an intense discussion within the European Union at the foreign ministries' level of member states.¹⁶ The European Union presidency declared that member states have full freedom to decide on the issue of Kosovo's independence and that member states have the freedom to recognize Kosovo's independence or not recognize it.¹⁷

States' Reaction to Kosovo's Independence

The Provisional Institutions of Self-Government Assembly of Kosovo declared Kosovo's independence on 17 February 2008 which led to a storm of protest from the Serbs, Russia and China and a number of other European countries, notably Spain and Romania.¹⁸

The independence of Kosovo raised a number of legal and political issues, including those related to the contemporary rules of international relations and international law, and to what extent they were overridden or violated. The rules of international relations and international law confirm that the state is the basic unit in each of the relations and law, and remain so in accordance with the Morgenthau theory on force and conflict.¹⁹

The Majority of the European Union member states recognized Kosovo's independence. European Union members who did not recognize Kosovo's independence

are: Spain, Slovakia, Romania, Cyprus, and Greece.²⁰ In relation to Serbia, the Prime Minister of Serbia, Vojislav Kostunica blamed the United State for violating the international order for its own military interests, Vojislav Kostunica stated: "Serbia will never recognize the independence of Kosovo, but will go through this peacefully, with dignity", he also stated: "As long as the Serb people exist, Kosovo will be Serbia."²¹

With regard to Spain, the Spanish foreign minister Miguel Angel Moratinos provided that it was impossible for his country to accept Kosovo's declaration because "it does not respect international law".²² Russia, on the other hand stated that: "Russia which firmly supports Serbia in rejecting Kosovo's independence, signaled last week that it opposed independence of breakaway regions like Abkhazia and south Ossetia in Georgia, which have had de facto independence since the early 1990s."²³ Finally, the Romanian President Traian Basescu said: "Romania has clearly said that, in the absence of a UN resolution and in the absence of the observance of the international law, especially of the concept of territorial integrity and inviolability of borders, it cannot acknowledge Kosovo's independence."²⁴

Moreover, it should be mentioned that 52 U.N member states (in addition to Taiwan) have decided to recognize Kosovo's independence, while countries such as China and New Zealand have expressed their concerns over Kosovo and more and more countries are expected to take definite stands in the future.²⁵

Finally, it is worth noting that there is also a recent case concerning the position of Kosovo in the international institutions, including - for example - Kosovo's file in the Organization of Islamic Conference Summit which held on 13 and 14 March 2008 in Senegal. Where it is well known that the traditional position of the Organization towards Muslim minorities in non-Islamic countries emphasizes the need to respect human rights of minorities, with the preservation of the sovereignty of states where they reside. In fact, the summit's closing statement reflected, the organization embarrassing position towards Kosovo's independence, and was limited to taking note of it. This means that the decision to recognize Kosovo's independence is left for each state and that this matter will not cause a problem except when the organization receives an application requesting membership to it. It is worth noting that Senegal, Turkey and Gabon preceded the summit and recognized Kosovo's independence. However, what is striking in this

regard is that the Secretary-General of the Organization had initiated, before the summit convened, to personally recognize the new state, exceeding the scope of his powers, which could embarrass the member states. This strange position may be explained that the Secretary General is in line with his country's official position, as may be also interpreted as a desire to promote the recognition of a new Islamic State which may become a member of the Organization in the future.

The Principle of Self Determination

Article 1, paragraph 2 of the Charter of the United Nations states the purposes of the United Nations as follows:

1. To maintain international peace and security....;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character,...; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends."²⁶

Moreover, when confirming the principle of people's right to self determination, the UN Covenant on Civil and Political Rights (CCPR), General Comments No: 12, 13/03/1984, states:

"By virtue of that right they freely "determine their political status and freely pursue their economic, social and cultural development". The article imposes on all States parties corresponding obligations. This right and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law."²⁷

The basic and universal idea of self determination is that a people's fate should be determined by the free expression of their own will.²⁸ The International Court of Justice touched upon the principle of self-determination in several cases concerning the situation in South West Africa (now Namibia), the 1975 Advisory Opinion on the situation in the *Western Sahara* case, the *East Timor* case in 1995, and finally the Court reaffirmed the universal character of the right to self-determination in the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* case, by pronouncing that the construction of the wall in "Occupied Palestinian Territory" amounted to a forceful annexation in violation

of the right to self-determination of those who lived there. The Court asserted that the use of force to partition territory was contrary to self-determination²⁹.

The right of self-determination remains controversial due to two factors: firstly, it is not always easy to identify who possesses the right; and secondly, it is also not easy to identify what the implementation of the right entails. However, the international community supported the right of people to self determination under occupation and under colonial domination. It is important to note that there has been always a confusion in the history of international relations between the rights of peoples and the rights of minorities which were raised for political motives.

The Principle of *Uti Possidetis*

The principle of '*uti possidetis*' has been recognized by the International Court of Justice as a general principle of international law. This principle holds that the existing frontiers of states remain valid unless changed by agreement between relevant parties.

This principle, which Originated in Roman law, enables a belligerent party to claim territory that it has acquired by war. It also implies that territory remains with its possessor at the end of a conflict, unless provided for by treaty. The concept of territorial integrity is a result of the applications of the principle of the sanctity of the border, which emerged in Latin Americas in the 1830s and then became a universal principle after the events of Bosnia and was confirmed by the International Court of Justice as mentioned previously.³⁰

It is important to note that there are some important political consequences of the international recognition of Kosovo's independence, as it might prompt many people in similar or close circumstances to take advantage of this precedent, which could lead to endless wars or armed conflicts. There are at least 30 similar cases which actually demand independence.

The first case in this regard is the Palestinian case. Palestinians were divided on the possibility of utilizing the Kosovo's model. But following careful examination the idea was dismissed in order to avoid Israel's arousal. However, one could argue that it is possible to benefit from Kosovo's case not in a single Palestinian announcement for the independence but in a United Nations administration for Palestine as a prelude for a declaration of independence.

It cannot be denied that the above proposal regarding

Palestine contradicts the Zionist project, which does not permit the emergence of Palestinian state. The main difference between Kosovo and Palestine is that Kosovo follow sovereign of another state, while Israel in the general understanding is a mere occupying state.

The second case is the case of Turkish Muslims in the northern Cyprus: The Turkish side in Cyprus has already declared independence unilaterally without agreement of the Greek side in the island. The Security Council immediately issued a Resolution annulling that independence and prohibiting the recognition of the independence Declaration.³¹ In its resolution 541 (1983) the Security Council stated:

"Having heard the statement of the Foreign Minister of the Government of the Republic of Cyprus, ..., Considering that this declaration is incompatible with the 1960 Treaty concerning the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee, ...therefore, that the attempt to create a "Turkish Republic of Northern Cyprus" is invalid, and will contribute to a worsening of the situation in Cyprus,..."³²

It is worth noting that, at the European Union and Washington levels, Greece enjoys a much more favorite and significant position than Turkey. For that reason, the island unity and the search for combatable solutions for the coexistence of the two races is consistent with the general international line. Turkey rushed to declare its recognition of Kosovo's independence as a preliminary step towards renewing the request for the Turkish Cypriots independence. Turkey thought that the resemblance of the two cases will assist in obtaining the independence for North Cyprus this time. However, Turkey turned a blind eye on the impact of its recognition of Kosovo on its own population of Kurds and on Iraqi Kurds which Washington declined to support to achieve an independent state. The United States did not support the Kurdish demands related to an independent Kurdish state.³³

The third case is the Western Sahara, namely, the situation, which pits Morocco - who insists that the desert is part of its territory, but it's also ready to grant self-government for the Sahara residents- with the Frente Polisario (Polisario Front) which is recognized as a state by a large number of countries and it enjoys the membership of the African Union. In relation to Polisario Front: the name originates from the phrase "Frente Polisario" which is a Spanish abbreviation that means: Popular Front for the Liberation of Saguia El-Hamra and

Rio de Oro. Polisario front is a sahwari rebel movement working for the independence of Western Sahara from Morocco.³⁴

The Polisario Front was formally constituted on 10 May 1973 with the express intention of militarily forcing as an end to Spanish colonization of Saguia El-Hamra and Rio de Oro (Western Sahara). After the Spanish withdrawal, Morocco and Mauritania took control of Western Sahara based on the application of Madrid Accords between Spain and Morocco and Mauritania in 1976.³⁵ On 26 February 1976, Polisario Front proclaimed the Sahrawi Arab Democratic Republic and started a war against Morocco and Mauritania.³⁶

The support of Algeria to Polisario has been and remains the cause of a permanent split with Morocco. The source of the problem is the 1975 Advisory Opinion of the International Court of Justice, which was translated by the United Nations General Assembly as the legal basis of the right to self-determination of the Sahara people.³⁷

There are dozens of similar cases in a number of countries, such as Iraq's Kurds, Turkey's Kurds, and Nagorno-Karabakh, and the dissident territories in the Caucasus in the Russian Federation, and in Spain, Bulgaria, Romania and minorities in Greece, and Kosovo Serbs and the Bosnian Serbs. In Asia, a reference can be made to Muslims in the Philippines, and Muslims in China, Thailand, and Indian Kashmir, who call for independence or separation from India since the division of the Indian subcontinent. This wave can extend to the Arab world to tear apart existing states on the basis of political, religious or ethnic grounds, such as Darfur, the division of Iraq and the separation of the barbers.

Kosovo and the Membership in the United Nations

Despite the fact that the United Nations took over the civil administration in Kosovo, and that the proposal³⁸ of the independence of Kosovo was issued by the United Nations envoy to the province of Kosovo. However, the Security Council failed in adopting the proposal because of the Russian and Chinese objections. This objection makes it impossible for Kosovo to be accepted as a member state in the United Nations.

The Council's precedent in this regard is Eastern Timor, which gained independence despite the Indonesian's objection, but the Eastern Timor province was not considered as an Indonesian province from the international community perspective but as a province

which was under the Portuguese colonialism. None of the Security Council's permanent members object to the province joining the United Nations. It is known that the membership of the United Nations requires the affirmative recommendation of the Security Council and subsequently approved by the General Assembly.

In light of the Chinese and Russian's positions in supporting the principle of non-extracting regions of the state against their own will, it might be difficult for Kosovo to be accepted as a member state of the United Nations.

It is worth noting that the previous official position of the Security Council in these kinds of cases was to nullify the declaration of independence and invite states not to recognize such a declaration, whether when a state declares its independence or when a province is annexed to another. That had occurred when the Security Council invalidated Ian Smith one sided declaration in southern Rhodesia (currently Zimbabwe) and without the African participation or the British approval, which were assuming the colonial authority of the province.

Furthermore, the Security Council annulled the declaration of independence by the Turkish Cypriots, so as not to let the island to be torn apart. This model is the closest to Kosovo to a large extent. Finally, the Security Council nullified Israel declaration to annex the Golan and Jerusalem in the successive years 1980 and 1981 because the territory should not be annexed by the occupying power. The United nations Security Council issued a resolution number 497 of 1981 through which the Security Council expressed its condemnation that the Golan annexation by Israel and also considered that Israel's decision of 14 December 1981 to impose its laws, jurisdiction and administration in the occupied Golan constitutes an aggressive action.³⁹ Moreover, the Security Council declared that annexation of Golan is null and void and that all actions taken by Israel to validate its decision of annexing occupied Golan are null and not to be recognized.⁴⁰

The ICJ and the Legality of Kosovo's Independence

The International Court of Justice (ICJ) was established as the principal judicial organ of the United Nations (UN).⁴¹ As the UN's judicial organ the Court is therefore part of the UN body. In addition to its function of settling disputes in accordance with international law between States in its contentious jurisdiction, the Court may also give non-binding advisory opinions on legal

questions submitted to it by certain bodies. Thus, Article 65 of the Court's Statute provides that "the Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request." Article 96 of the Charter notes that in addition to the General Assembly and Security Council, other organs of the UN and specialized agencies where so authorized by the Assembly may also request such opinions on legal questions arising within the scope of their activities.

Since its inception in 1945, the ICJ has handed down a total of 79 Judgments,⁴² and 25 advisory opinions. The Court has given advisory opinions, concerning *inter alia* the conditions of admission of a State to membership in the United Nations, reparation for injuries suffered in the service of the United Nations, the international status of South West Africa (Namibia), certain expenses of the United Nations, certain judgments rendered by the United Nations administrative tribunal, Western Sahara, the applicability of the obligation to arbitrate under Section 21 of the United Nations Headquarters Agreement, questions relating to the privileges and immunities of human rights reporters, the legality of the threat or use of nuclear weapons and the legal consequences of the construction of a wall in the occupied Palestinian territory.

Although an advisory opinion cannot create legal obligations, it nevertheless may be more influential than judgments in contentious cases because they affect the general interpretation of International Law for all States rather than just for the parties to an individual opinion.⁴³

The most recent request for an advisory opinion was submitted by the General Assembly in its resolution A/RES/63/3 in which it asks the ICJ to "render an advisory opinion on the following question: Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?"

It is important to note that this case is the first one regarding an act of secession to be brought before the ICJ. An advisory opinion of the world Court would be of a great significance in determining whether Kosovo's unilateral declaration of independence is in accordance with international law. An advisory opinion from the world Court would be an authoritative interpretation of law and will be added to the case law of the Court and will undoubtedly be one of the ICJ's significant case law

with implications despite the political and legal criticism surrounding it.

The legality of secession is a difficult question under international law as two legal principles are interrelated: firstly, the right of states to maintain their territorial integrity in accordance with the UN's Charter. Article 2 (4) prohibits the threat or use of force against the "territorial integrity or political independence" of states and secondly, the right of peoples to self-determination which is also recognized in the Charter. Article 1 (2) of the Charter states that one of the purposes of the United Nations is "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples"

While the states opponents of the unilateral declaration of independence centre their legal argument on the protection for the territorial integrity of FRY which was reaffirmed in the Security Council Resolution 1244, states proponents centre their argument on the protection of minorities which was violated by the former Milošević regime and the right to self determination.

The Court must first consider whether it has the jurisdiction to give a reply to the request of the General Assembly. The question before the Court is a legal one, because the Court is being asked to rule on the compatibility of Kosovo's unilateral declaration in light of the relevant principles and rules of international law. Some states would contest that the Court is not competent to answer the question due to the political implications of the case. In this regard, the Court on *the Legality of the Threat or use of Nuclear Weapons case*⁴⁴, stated that the fact that the question has political aspects is the case with so many questions which arise in international affairs, and therefore, it does not suffice to deprive the Court of a competence expressly conferred on it by its Statute.

It is important to note that the organ requesting the opinion has to be also "authorized by or in accordance with the Charter of the United Nations to make such a request". The Charter provides in Article 96, paragraph 1, that: "The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question." The most crucial question before the Court is whether rules of legal rights to secession deriving from the right to self-determination exist. The question whether the international law framework established for the decolonization should be extended to cases such as Kosovo is also still unclear.

Depending on the fact that there is an absence of clear

rules in international law regarding permitting or prohibiting secession one should not expect that the Court will declare the Kosovo's independence illegal.

CONCLUSION

Kosovo's declaration of independence is a source of concern for the international community in terms of the possibility of using this case as a precedent to encourage secession. Serbia argues that the Security Council resolution 1244 constitutes an affirmation of Serbia's territorial integrity with regard to Kosovo, and hence this declaration of independence violates international law. On the other hand Kosovo and some other states argue that Kosovo's independence is a special case and has no presidential value.

In light of the ambiguity in the area of secession, one could argue, that the task of the International Court of Justice is a difficult one. Recognizing the legality of Kosovo's declaration might bring uncertain situation in

Balkan and could encourage other separatist conflicts in the world. On the other hand, recognizing the illegality of independence might also not affect states' recognition of Kosovo. It is important to note that this case of secession is the first case before the ICJ and therefore, the international community is expecting a legal clarification from the principal judicial organ of the United Nations. The Court should determine whether Kosovo's unilateral declaration of independence is in accordance with international law or not.

In summary, the question remains whether the principle of the survival of a state and maintaining its territorial integrity is more well-established than other principles that may intersect with this principle, including the principle of intervention for humanitarian considerations, or even the principle of self-determination. The Court when answering these questions should be mindful to the needs and expectations of the international community and to its role as a principal organ of the UN.

Notes

- (1) Amy Burchfield, *"International Criminal Courts for the Former Yugoslavia, Rwanda and Sierra Leone: A Guide to Online and Print Resources"*, NYU Law Global, Globalex, Internet source accessed on 5 January 2009 at: http://www.nyulawglobal.org/globalex/International_Criminal_Courts.htm
- (2) Ronald Scott Mangum, *Nato's Attack on Serbia: Anomaly or Emerging Doctrine?*, page 2, internet source accessed on 27 November 2008, at: http://findarticles.com/p/articles/mi_m0IBR/is_4_30/ai_74522164/print?tag=artBody;col1
- (3) The Dayton Peace Accords, Department of State, United States of America, internet source accessed on: 5 January 2009 at: <http://www.state.gov/www/regions/eur/bosnia/bosagree.html>
- (4) U.S. Department of State, Summary of the Dayton Peace Agreement on Bosnia – Herzegovina, fact sheet released by the office of the spokesman, November 30, 1995, page 1, internet source accessed on 27 November 2008, at: <http://www.state.gov/www/regions/eur/bosnia/bossumm.html>
- (5) Ronald Scott Mangum, *supra note 2*.
- (6) Ibid.
- (7) Ibid.
- (8) BBC Online Network, World: Europe, Nato bombs Serbia, internet source accessed on 5 January 2009 at: <http://news.bbc.co.uk/1/hi/world/europe/303108.stm>
- (9) Ronald Scott Mangum, *supra note 2*, at page 1-2, see also UNMIK online, News Coverage updated 24 July 2008, internet source at: http://www.unmikonline.org/archives/news05_08full.htm
- (10) See, Paragraph 10 of the United Nations' Security Council's Resolution 1244 (1999), S/RES/1244 (1999) adopted by the Security Council at its 4011th meeting on 10 June 1999, internet source accessed on 27 November 2008 at:
- (11) Biographical Note: *"Secretary-General Appoints Former President Marti Ahtisaari of Finland as a Special Envoy for Future Status Process for Kosovo"* Department of Public Information • News and Media Division • New York. U.N. Secretary-General, SG/A/955, BIO/3714, at: <http://www.un.org/News/Press/docs/2005/sga955.doc.htm>
- (12) Ibid.
- (13) Vince Crawley, United States supports U.N. Report endorsing independent Kosovo, Recommendations include international supervision, protection of minorities, 26 March 2007, accessed on 28 November 2008 at: <http://daccessdds.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>
<http://www.america.gov/st/washfile-english/2007/March/20070326170529MVyelwarC0.8236963.html>
- (14) Ibid.
- (15) Serbs protest Kosovo's independence move, internet source accessed on 26 December 2008 at:

- <http://www.msnbc.msn.com/id/23232150/>
- (16) Elitsa Vucheva, "EU Fudges Kosovo Independence Recognition", EUobserver.com, internet source accessed on 6 January 2009 at: <http://euobserver.com/9/25684>
- (17) Ibid.
- (18) Ibid, *supra note*, 15, pages: 4-5, 9.
- (19) Henry C.K. Liu, Morgenthau's "Realpolitik" and the war in Yugoslavia, accessed on 30 November 2008, at: <http://www.marxmail.org/archives/May99/morgenthau.htm>
According to Hans Morgenthau nations use power to accumulate more power which is used to further new interests. In this regard, Steven Castle states: "Mogenthau observed that nations have interests which are furthered through the use of power to accumulate more power (military, economic, and political alliances) to further new interests (regionalization or globalization). The world system constantly faces the threat of an imbalance of power, with some nations trying to maintain the status quo, and others trying to alter it. Morgenthau defined national policies that aim at changing the status quo as imperialistic ..."
- (20) Ibid.
- (21) Ellie Tzortzi, Serbia pledges long-haul fight over Kosovo, 17 February 2008, Reuters, internet source accessed on 5 January 2009 at: <http://www.reuters.com/article/europeCrisis/idUSL17718644>
- (22) Stephen Castle, "Behind the Scenes, E.U splits over Kosovo", 18 February 2008, International Herald Tribune, accessed on 30 November 2008 at: <http://www.ihf.com/articles/2008/02/18/europe/diplo.php>
- (23) Ibid.
- (24) Xinhua, "Romania reiterates opposition to Kosovo's independence declaration", People's Daily Online, 20 March 2008, accessed on 30 November 2008 at: <http://english.peopledaily.com.cn/90001/90777/90853/6377300.html>
- (25) Ibid.
- (26) Ibid.
- (27) General Comment No. 12: The right to self-determination of peoples (Art. 1): 13/03/84. CCPR General Comment No. 12. General Comments, (Twenty-first session, 1984). Accessed on 01 December 2008, at: <http://www.unhchr.ch/tbs/doc.nsf/0/f3c99406d528f37fc12563ed004960b4?Opendocument28>
- (28) The International Court of Justice: A Legacy of Peace and Justice, H.E. Judge Abdul G. Koroma, Symposium on "The Right to Self-Determination in International Law" Organised by Unrepresented Nations and Peoples Organization (UNPO), Khmers Kampuchea-Krom Federation (KKF), Hawai'i Institute for Human Rights (HIHR), 29 September – 1 October 2006, The Hague, Netherlands.
- (29) ibid
- (30) Uti Prossiditis- Oxford Dictionary of Law, (OUP, Sixth Edition 2006) page 560. See also, http://en.wikipedia.org/wiki/Uti_possidetis. EU Reactions to Kosovo's Independence: The Lessons for Scotland Simon James Honorary Senior Research Fellow, The Constitution Unit August 2008. available at: <http://www.ucl.ac.uk/constitution-unit/files/media/articles/2008/Kosovo08.pdf>
- (31) Resolution 541 (1983) Adopted by the Security Council at its 2500th meeting, on 18 November 1983, internet source accessed on 01 December 2008 at: <http://www.unhcr.org/refworld/category,LEGAL,,,CYP,3b00f16528,0.html>
- (32) Ibid.
- (33) Interview: Phillips: 'The Kurds Have Been Sold Out by the United States', Interviewee: David L. Philips, Executive Director, The Wiesel Foundation for Humanity. 2008 by the Council on Foreign Relations. Internet source accessed on 02 December 2008 at: <http://www.cfr.org/publication/7170/phillips.html?>
- (34) Polisario Fron: from Wikipedia, the Free Encyclopedia, internet source accessed on 2 December 2008 at: http://en.wikipedia.org/wiki/Polisario_Front
- (35) Ibid
- (36) Ibid
- (37) The Summary of the International Court of Justice Advisory Opinion of 16 October 1975, related to Western Sahara Case, in the penultimate paragraph of the Advisory Opinion was to the effect that: "The materials and information presented to the Court show the existence, at the time of Spanish colonization, of legal ties of allegiance between the Sultan of Morocco and some of the tribes living in the territory of Western Sahara. They equally show the existence of rights, including some rights relating to the land, which constituted legal ties between the Mauritanian entity, as understood by the Court, and the territory of Western Sahara. On the other hand, the Court's conclusion is that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court has not found legal ties of such a nature as

might affect the application of General Assembly resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory." internet source accessed on 03 December 2008 at: <http://www.icj-cij.org/docket/index.php?sum=323&code=sa&p1=3&p2=4&case=61&k=69&p3=5>

- (38) the Proposal is summarized in the following : "It includes detailed measures to ensure the promotion and protection of the rights of communities and their members, the effective decentralization of government, and the preservation and protection of cultural and religious heritage. In addition, the Settlement prescribes constitutional, economic and security provisions, all of which are aimed at contributing to the development of a multi-ethnic, democratic and prosperous Kosovo. An important element of the Settlement is the mandate provided for a future international civilian and military presence in Kosovo, to supervise implementation of the Settlement and assist the competent Kosovo authorities in ensuring peace and stability throughout Kosovo. The provisions of the Settlement will take precedence over all other legal provisions in Kosovo." As stated in the United Nations Office of the Special envoy for

Kosovo, the Comprehensive Proposal for Kosovo Status Settlement. Internet source accessed on 03 December 2008 at: <http://www.unosek.org/unosek/en/statusproposal.html>

- (39) Annexation Instead of Withdrawal, internet source accessed on 03 December 2008 at: <http://www.golan67.net/golan/annexation.htm>
- (40) Ibid.
- (41) See Article 92 of the UN Charter which complements Article 7(1) of the Charter.
- (42) These cases concern *inter alia* land frontiers and maritime boundaries, territorial sovereignty, the non-use of force, non-interference in the internal affairs of States, diplomatic relations, hostage-taking, the right of asylum, nationality, guardianship, rights of passage and economic rights. Available at: <http://www.icj-cij.org/icjwww/igeneralinformation/icjgnnot.html>. (Accessed 14 December 2004).
- (43) Heffernan, Liz, "*The Nuclear Weapons Opinions: Reflections on the Advisory Procedure of the International Court of Justice*", 28 *Stetson Law Review*, 1998, p. 133.
- (44) Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I), P. 234, Para. 2).

REFERENCES

- Amy Burchfield, "*International Criminal Courts for the Former Yugoslavia, Rwanda and Sierra Leone: A Guide to Online and Print Resources*", NYU Law Global, Annexation Instead of Withdrawal, internet source available at: <http://www.golan67.net/golan/annexation.htm>
- BBC Online Network, *World: Europe, Nato bombs Serbia*, internet source available at: <http://news.bbc.co.uk/1/hi/world/europe/303108.stm>
- Biographical Note: "secretary-general appoints former president martti ahtisaari of Finland as special envoy for future status process for Kosovo", department of public information • news and media division • New York. U.N Secretary-General, sg/a/955, bio/3714, at: <http://www.un.org/News/Press/docs/2005/sga955.doc.htm>
- Elitsa Vucheva, "*EU Fudges Kosovo Independence Recognition*", EUobserver.com, internet source available at: <http://euobserver.com/9/25684>
- Ellie Tzortzi, *Serbia pledges long-haul fight over Kosovo*, 17 February 2008, Reuters, internet source available at:

<http://www.reuters.com/article/europeCrisis/idUSL17718644>

- EU Reactions to Kosovo's Independence: The Lessons for Scotland*, Simon James Honorary Senior Research Fellow, the Constitution Unit August 2008. Available at: <http://www.ucl.ac.uk/constitution-unit/files/media/articles/2008/Kosovo08.pdf>
- General Comment No. 12: The right to self-determination of peoples (Art. 1): 13/03/84. CCPR General Comment No. 12. General Comments, (Twenty-first session, 1984), at: <http://www.unhchr.ch/tbs/doc.nsf/0/f3c99406d528f37fc12563ed004960b4?OpenDocument>
- Henry C.K. Liu, Morgenthau's "*Realpolitik*" and the war in Yugoslavia, at: <http://www.marxmail.org/archives/May99/morgenthau.htm>
- Heffernan, Liz, "*The Nuclear Weapons Opinions: Reflections on the Advisory Procedure of the International Court of Justice*", 28 *Stetson Law Review*, 1998.
- Interview: Phillips: '*The Kurds Have Been Sold Out by the United States*',

- Interviewee: David L. Philips, Executive Director, the Wiesel Foundation for Humanity. 2008, by the Council on Foreign Relations. Internet source at: <http://www.cfr.org/publication/7170/philips.html?>
- Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I), P. 234, Para. 2).
- Polisario Front: from Wikipedia, the Free Encyclopedia, internet source at: http://en.wikipedia.org/wiki/Polisario_Front
- Ronald Scott Mangum, *Nato's Attack on Serbia: Anomaly or Emerging Doctrine?*, internet source accessed on 27 November 2008, at: http://findarticles.com/p/articles/mi_m0IBR/is_4_30/ai_74522164/print?tag=artBody;coll
- Resolution 541 (1983) Adopted by the Security Council at its 2500th meeting, on 18 November 1983, internet source at: <http://www.unhcr.org/refworld/category,LEGAL,,,CYP,3b00f16528,0.html>
- Serbs protest Kosovo's independence move, internet source at: <http://www.msnbc.msn.com/id/23232150/>
- Stephen Castle, *Behind the Scenes, E.U splits over Kosovo*, 18 February 2008, International Herald Tribune, at: <http://www.iht.com/articles/2008/02/18/europe/diplo.php>
- The Dayton Peace Accords, Department of State, United States of America, internet source at: <http://www.state.gov/www/regions/eur/bosnia/bosagree.html>
- The International Court of Justice: A Legacy of Peace and Justice, H.E. Judge Abdul G. Koroma, Symposium on "The Right to Self-Determination in International Law" Organised by Unrepresented Nations and Peoples Organization (UNPO), Khmers Kampuchea-Krom Federation (KKF), Hawai'i Institute for Human Rights (HIHR), 29 September – 1 October 2006, The Hague, Netherlands.
- The United Nations' Security Council's Resolution 1244 (1999), S/RES/1244 (1999) Adopted by the Security Council at its 4011th meeting on 10 June 1999.
- The Summary of the International Court of Justice Advisory Opinion of 16 October 1975, related to Western Sahara Case, internet source accessed on 03 December 2008 at: <http://www.icj-cij.org/docket/index.php?sum=323&code=sa&p1=3&p2=4&case=61&k=69&p3=5>
- The United Nations Office of the Special envoy for Kosovo, the Comprehensive Proposal for Kosovo Status Settlement. Internet source accessed on 03 December 2008 at: <http://www.unosek.org/unosek/en/statusproposal.html>
- U.S. Department of State, Summary of the Dayton Peace Agreement on Bosnia – Herzegovina, fact sheet released by the office of the spokesman, November 30, 1995, internet source at: <http://www.state.gov/www/regions/eur/bosnia/bossumm.html>
- UNMIK online, News Coverage updated 24 July 2008, internet source at: http://www.unmikonline.org/archives/news05_08full.htm
- Uti Prossiditis- Oxford Dictionary of Law, (OUP, Sixth Edition 2006).
- Vince Crawley, *"United States supports U.N. Report endorsing independent Kosovo"*; at: <http://daccessdds.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>
- <http://www.america.gov/st/washfile-english/2007/March/20070326170529MVyelwarC0.8236963.html>
- Xinhua, *"Romania reiterates opposition to Kosovo's independence declaration"*, People's Daily Online, 20 March 2008, at: <http://english.peopledaily.com.cn/90001/90777/90853/6377300.html>

*

2008/2/17

.2010/5/11

2009/9/3

*