NON RECOGNITION OF KOSOVO AND STABILITY IN THE BALKANS

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Abstract - Kosovo is one of the newest states in the EU arena. It appeared as the independent state from the process of demolition of the former Yugoslavia. Various discussions in the field of diplomacy, political sciences, international law, media, etc., were developed and continue to develop regarding the process of creation of Kosovo as the state. They were developed from various point of views where two were main: some to justify the right of Kosovo to statehood and the others rejection this right. Author using the combined methodology with the help of scientific methods (method of theoretical analysis, method of historical analysis, method of comparison, etc.), which will explain that Kosovo right for independence was based in the international law, whereas the recognition of Kosovo as a state by five EU states that still did not recognize is a much better contribution toward peace and integration in EU. Findings and the recommendations are expected to be used in the further academic debate within and outside of Kosovo.

Key words - State, independence, recognition, peace, EU, debate

I. INTRODUCTION

After 78 days of NATO air strikes against Serbia/Yugoslavia military forces peace was settled in Kosovo. Indeed on June 10, 1999 in Kumanovo[1] there was signed an agreement between Federal Republic of Yugoslavia[2] and the NATO which opened the doors for peace and for international civil administration in Kosovo. This agreement known by name Kosovo Military Technical Agreement, was signed between: the International Security Force ("KFOR")

and

the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, which consisted of six articles.[3]

Thus at the same date UN Security Council adopted Resolution 1244 which created the legal basis for the international civil administration in Kosovo. The international civil administration began to be established in Kosovo immediately based on the mentioned resolution and it had among the others the duty of establishing the local provisional adminsitartion that were known as Provisional Institutional of the Self Governance in Kosovo. Whereas UNMIK[4] exercised its duties through its four pillars.Resolution has determined UNMIK as carrier of responsibilities in exercising the functions of public administration. By such Resolution, to the international civilian mission were entrusted duties and responsibilities in the political and administrative field at three levels as: a) temporary administration for Kosovo; b) establishment of democratic self-governing institutions, oversight of their development, including elections; and c) transfer of responsibilities to Kosovo institutions.[5]

UNMIK Exercised its powers through the following pillars:

Pillar I: Police and Justice led by the Organization of the United Nations;

Pillar II: Civil Administration, led by the UN;

Pillar III: Democratization and Institution Establishing, led by the OSCE; and

Pillar IV: Reconstruction and Economic Development, led by the European Union.[6]

As it could be seen from the above mentioned pillars in the post war Kosovo there were engaged together: UN, EU OESC and NATO. This shows that there was a well organized cooperation internationally which established peace and which created basis for establishing local institutions as well as which created a basis for determining the Kosovo status future. In this regard very quickly there were organized the first local elections in Kosovo and as the results we had in Kosovo established the local institution of the local governance in the Kosovo municipalities. And in 2001 in Kosovo there were organized the first central elections which resulted with the creation of the Kosovo Parliament and the other Kosovo institutions. These institutions were created based on the Constitutional Framework for the Provisional Self-Government in Kosovo.[7]Thus the regulation - Constitutional Framework on Interim Self-Government in Kosovo describes the institutions which will be put in the hands of Kosovo's leaders and civil servants after general elections, on 17

[1] A town in Macedonia that is close to the border with Serbia

[2] This federation doesn't exist any more, since Monte Negro after its referendum became an independent state

[3] See more at: http://www.unmikonline.org/Pages/kumanovo.aspx

[4] UN Mission in Kosovo is the acronym for the international administration in Kosovo

[5] MirlindaBatalli,*Reform of Public Administration in Kosovo*, Thesis,nr.1, 2012 Prishtina

[6] https://en.wikipedia.org/wiki/United_Nations_Interim_Administration_Mission_in_Kosovo

[7] This document was in the form of Regulation which was signed by the Special Representative of the UN General Secretary on May 15,2001. The Regulation hold nr.2001/9.

November 2001.[8] This sentence from shows that not all power would go in the hands of Kosovo leaders, therefore Kosovo created institutions had to undergo a long process of being monitored and measured so Kosovo enter into the process of status talks. More specifically in some phase of the international civil administration, the so called policies standards before the status were introduced.They were: Functioning Democratic Institutions, Rule of Law, Freedom of Movement, Sustainable Returns and the Rights of Communities and their members, Economy, Property Rights, Dialogue and Kosovo Protection Corp.[9]

Kosovo entered into this process of fulfilling the policies of standards before status and in this sense based on the Mr.Kai Aide Report regarding Kosovo fulfillment of standards, UN Security Council among the other stated…" The Security Council agrees with Ambassador Eide's overall assessment that, notwithstanding the challenges still facing Kosovo and the wider region, the time has come to move to the next phase of the political process. The Council therefore supports the United Nations Secretary-General's intention to start a political process to determine Kosovo's Future Status, as foreseen in Security Council resolution 1244 (1999). The Council reaffirms the framework of the resolution, and welcomes the Secretary-General's readiness to appoint a Special Envoy to lead the Future Status process. It looks forward to an early appointment. The Council offers its full support to this political process, which would determine Kosovo's future status, and further reaffirms its commitment to the objective of a multi-ethnic and democratic Kosovo, which must reinforce regional stability…."[10]This process opened the doors for the process of negotiations for determining the Kosovo final status which was led by UN special envoy, former Finish President Marti Ahtisaari. This process was developed in various forms between Kosovo and Serbia, which ended up with the report of Special Envoy of the Secretary-General on Kosovo final status, which in its point ten goes with:"Independence is the only option for a politically stable and economically viable Kosovo. Only in an independent Kosovo will its democratic institutions be fully responsible and accountable for their actions. This will be crucial to ensure respect for the rule of law and the effective protection of minorities. With continued political ambiguity, the peace and stability of Kosovo and the region remains at risk. Independence is the best safeguard against this risk. It is also the best chance for a sustainable long-term partnership between Kosovo and Serbia."[11] Only after this, Kosovo institutions in coordination with the international community (there were parts of it which had reserves or that were against) decided to approve the Comprehensive Proposal for Kosovo Status Settlement.[12] And of course Kosovo Parliament based on this went further and finalized this with the formal approval of Kosovo Declaration of Independence on February 17, 2008.

Kosovo independence and recognition

Non recognition by five EU states

After this process of measuring the achievements and after the long process of talks between Kosovo and Serbia, Kosovo Parliament gathered and adopted the Declaration of Independence based on which Kosovo became an independent state. The Declaration of Independence was adopted on February 17, 2008 and at the same date Kosovo reached its recognition of its state status from many states of the world. Indeed Kosovo called the international community and the states for its recognition.To this call there were positively responds from many countries of the world among which the most developed democracies responded positively with recognizing formally Kosovo as the state. They included USA, Federal Republic of Germany, France, Italy, Great Britain, Canada, etc. Immediately after the Declaration of the Independence there was the first wave of the recognition of Kosovo as the independent state and actually this was the wave when Kosovo got the biggest number of recognitions. Now the process of recognition of Kosovo as the independent state is a bit more slow, whereas five EU member states still do not recognize Kosovo as the independent state. Moreover Kosovo institutions keep the neutral position regarding the Kosovo status and this itself in a way makes the process a bit more difficult. Further in the text we will mention who these states are and before we got there we have to state that Serbia during the all stages and phases of Kosovo process of state creation and state building was the main obstacle for Kosovo. It still keeps the position that Kosovo Declaration of Independence was against the international. In this regard, Serbia raised the issue in the International Court of Justice which came up with the Advisory Opinion by which it was concluded that Kosovo Independence did not violate the International law.[13]It was expected that after this opinion there will not be doubts within the

[8] http://www.assembly-kosova.org/common/docs/FrameworkPocket_ENG_Dec2002.pdf

[9]http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3–CF6E4FF96FF9%7D/Kos%20Standards.pdf

[10]SECURITY COUNCIL PRESIDENTIAL STATEMENT OFFERS FULL SUPPORT FOR START OF POLITICAL PROCESS TO DETERMINE KOSOVO'S FUTURE STATUS (available at: https://www.un.org/press/en/2005/sc8533.doc.htm)

[11] See more at: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kosovo%20S2007%20168.pdf

[12]https://www.kuvendikosoves.org/common/docs/Comprehensive%20Proposal%20.pdf

[13] See more at: INTERNATIONAL COURT OF JUSTICE REPORTS OF JUDGMENTS, ADVISORY OPINIONS AND ORDERS (http://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-00-EN.pdf)

international community and thus there would be no more obstacles for Kosovo recognition. Unfortunately this process did not end still and in some parts of the international community these doubts still exists: some states hesitate to recognize Kosovo, the others have expressed that they will not recognize it. Some do not do it based on geo-political reasons; others due to the fact that they have inner problems and there might be other reasons as well. But the biggest issue and something more difficult to be understood is the issue of non recognition of Kosovo by the five member states and the neutral position of EU institutions regarding Kosovo status.

Kosovo since the independence and moreover with the Declaration of independence and with the Constitution has legally and politically shown the commitment to respect and fulfill all criteria set up by EU and by the international community. Kosovo even during the pre-independence behaved respecting all standards. It dealt in accordance with the Copenhagen criteria which comes as:

1. stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
2. a functioning market economy and the ability to cope with competitive pressure and market forces within the EU;
3. ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law (the 'acquis'), and adherence to the aims of political, economic and monetary union.[14]

Kosovo has entered into the contractual relations with the EU by signing the Stabilization and Association Agreement, and that document holds the file, Interinstitutional file:2015/0095 (NLE), date: October 02, 2015. The Stabilization and Association Agreement (SAA- Stabilization and Association Agreement between EU and Kosovo has entered into force in April 01,2016) with the parties:

Kosovo and its institutions tried during the entire process behave respecting the rules. Even when these rules put Kosovo not in an equal position with the other states that aspired integrations, etc. For example, Stabilization and Association Process was not the same since the beginning. It for many years treated Kosovo in a different way. For Kosovo it was created the other mechanism which was known as Stability Mechanism Track. Kosovo quite late entered into the stabilization and association agreement with the EU and that as follows:

Stabilization and Association agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo*, of the other part (*This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence). As seen from this one can immediately see the symbol asterix[*] that explains why it is put there, noting that EU institutions hold the neutral position regarding the Kosovo status. This explanation itself shows how different is the position of Kosovo in the process of integration. It is worth noting that 22 countries (out of 27 members without GB) have recognized the Kosovo Independence and there are 5states (Spain, Romania, Greece, Cyprus, and Slovakia) that still didn't recognize Kosovo as an independent state.[15]

This, among the others show clearly how Kosovo is put in the different position which was not the case for any of the other states created from the territories of former Yugoslavia. Moreover in addition to this, for Kosovo were created other conditions to be fulfilled in order to have for example, Kosovo citizens travel based on the visa free regime. One of the conditions for Kosovo to be fulfilled so it could be treated as a pre-condition for visa liberalization for Kosovo citizens was the demarcation of the border with Monte Negro. This criteria was fulfilled fulfilled since Kosovo Parliament adopted the Agreement (which actually was not easy to be fulfilled) whereas there are no still clear perspectives of visa liberalization, indeed.

CONCLUSIONS

Kosovo as a state derives from a long process of negotiations and after international conferences that firstly brought peace and then concluded a process that could not finished with any other results. It was created as a state respecting international standards which were confirmed by the opinion of the International Court of Justice. It has fulfilled continually conditions made by the international community in order to take part in overall integration processes. It has shown as a state, commitments to always gives contribution towards peace and stability in the region. This has been proven all the times even in cases when to it there were given conditions that were not for the other states which derived from the process of dissolution of former Yugoslavia. And Yugoslavia doesn't exist any more. There it doesn't exist the federation of Monte Negro and Serbia (Federal Republic of Yugoslavia) which for some time existed. Both states of that federation now are as independent states. Kosovo with its Declaration of Independence has clearly said and entered into the obligations that it doesn't intend to join any other state.It has shown clearly that as a state is fully committed to peace and to the stability not only in the region. The non recognition of Kosovo Independence

[14] http://eur-lex.europa.eu/summary/glossary/accession_criteria_copenhague.html (approached on July 11,2017)

[15] BashkimRrahmani, Kosovo – Balkans and the EU, 6th International Conference on European Studies , Local, Regional and Global Governance, Proceedings Book, Epoka University, 2017 pg.16.

from five states of EU doesn't is something that doesn't go in line with the EU declarations and the documents by which the Balkans should be a part of EU. Five mentioned states from EU that still hesitate to recognize Kosovo as the state may have their reserves based on their inner problems but there are no similar issues compared to what they consider Kosovo problems. Kosovo is a sui generis case on creation of states and it cannot be used as a precedent in any other potential parts of the worlds. This was proved among the other by the International Court of Justice. And in fact factually in the process of state building in Kosovo these states gave a contribution. They were at least contributors in construction and reconstruction and what is very important that were parts of NATO by which it was given a great contribution to the security and the peace. Non recognition of Kosovo creates a terrain for growing tensions not only in relations between Kosovo and Serbia, but it also opens the doors for other forms of tensions that could bring again conflicts in the region. And definitely the peace cannot be ensured if continually sides in the unsolved issues are not given equal opportunities and if there are double standards.

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