

SOME KEY PRINCIPLES FOR A LASTING SOLUTION OF THE
STATUS OF KOSOVA: *UTI POSSIDETIS*, THE ETHNIC PRINCIPLE,
AND SELF-DETERMINATION

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I. THE OPTIONS FOR THE SOLUTION OF THE KOSOVA ISSUE

Kosova is a subject *sui generis*. Resolution 1244 placed Kosova under the mandate of the U.N. and authorized an international civil and security presence.¹ Resolution 1244 stresses the temporary character of the current situation and envisions that the future status of Kosova will be determined later. The Resolution leaves open all options for final status, from the independence of Kosova up to the restoration of Serbian authority. Different analysts, diplomats, and forums that have dealt with the issue of final status have presented various options, some of greater interest a few years ago, and others of greater interest now. The following options and solutions either have been suggested in the past and are now discarded or impossible, or are currently on the bargaining table:

1. **The preservation of the status quo** Preservation of the status quo was obviously one option before the NATO bombings. Kosova would have continued to be governed from Belgrade, and Serbian police and military forces would have continued to enforce Serbian law. This option was rejected by the Contact Group, which was originally formed to promote peace in Bosnia.² A return to the status quo is a possibility if all negotiations between Kosovar Albanians and Serbs and strategies by the international community fail. A reinstatement of Serbian authority over Kosova is unlikely, however, as Kosovar Albanians would probably never accept such an extreme solution.

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1. S.C. Res. 1244, U.N. SCOR, 54th Sess., 4011th mtg. ¶¶ 5, 6, 10, U.N. Doc. S/RES/1244 (1999).

2. Craig R. Whitney, *NATO Authorizes Kosova Air Raids if Serbs Bar Talks*, N.Y. TIMES, Jan. 31, 1999, § 1, at 1. The Contact Group members are Britain, Germany, France, Italy, Russia, and the United States.

2. **The autonomy of 1974-minus** The 1968 amendments to the Yugoslav Constitution and the Constitution of Socialist Federal Republic of Yugoslav (“SFRY”) of 1974 in particular granted Kosova full autonomy and many of the same powers as a republic within the Yugoslav federation.³ Constitutionally, Yugoslavia was a union of socialist republics and socialist provinces, united by free will, in which the nations and nationalities were equal.⁴ Kosova was one of the eight constitutive parts of the SFRY.⁵ Kosova was directly represented in the organs of the federation. According to the Constitution, the peoples of Kosova and Vojvodina realized their sovereign rights without any subordination to Serbia. Kosova had, among other entities, its own parliament, presidency, government, and ministries.⁶ The federation achieved its interests through federal agencies “with participation on terms of equality and responsibility of the Republics and Autonomous Provinces” and on the “basis of decisions of or agreement by the Republics and Autonomous Provinces [i.e. with their consent].”⁷ Indeed, Kosova had representation in the presidency of the SFRY, similar to the other units.⁸ Furthermore, certain decisions in the Chamber of the Republics and Provinces required unanimity of the republics and provinces, including amendments to the federal Constitution.⁹ This autonomous status was revoked by the Milosevic regime in the late 1980s. The “autonomy of 1974-minus” option would have restored

3. HUGH POULTON, *THE BALKANS: MINORITIES AND STATES IN CONFLICT* 60 (1991); KURTESH SALIHU, *NASTANAK, RAZVOJ, POLOZAJ I ASPEKTI AUTONOMNOSTI SOCIALISTICKE AUTONOMNE POKRAJINE KOSOVA U SOCIALISTICKOJ JUGOSLAVIJI* [THE ORIGIN, DEVELOPMENT, POSITION, AND ASPECTS OF THE AUTONOMY OF THE SOCIALIST AUTONOMOUS PROVINCE OF KOSOVA IN SOCIALIST YUGOSLAVIA] (Pristina 1985).

4. SOCIALIST FED. REPUBLIC OF YUGOSLAVIA CONST. art. 1, 245 (1974), *reprinted in* YUGOSLAVIA THROUGH DOCUMENTS: FROM ITS CREATION TO ITS DISSOLUTION 224, 225, 229 (Snežana Trifunovska ed., 1994).

5. *Id.* at art. 2.

6. SOCIALIST AUTONOMOUS PROVINCE OF KOSOVA CONST. art. 301, 349, 372, 390 (1974), *translated in* HELSINKI COMM. FOR HUMAN RIGHTS IN SERBIA, KOSOVA: LAW AND POLITICS, KOSOVA IN NORMATIVE ACTS BEFORE AND AFTER 1974, at 38, 45, 47 (1998).

7. SOCIALIST FED. REPUBLIC OF YUGOSLAVIA CONST. art. 244, *reprinted in* YUGOSLAVIA THROUGH DOCUMENTS, *supra* note 4, at 229.

8. *Id.* at art. 321, *reprinted in* THE CONSTITUTION OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA 260 (Dragoljub Đurović ed., Marko Pavičić trans., 1974) [hereinafter CONSTITUTION OF THE SFRY].

9. *Id.* at art. 398, *reprinted in* CONSTITUTION OF THE SFRY, *supra* note 8, at 299; SOCIALIST AUTONOMOUS PROVINCE OF KOSOVA CONST. art. 288, 399, *translated in* HELSINKI COMM. FOR HUMAN RIGHTS IN SERBIA, *supra* note 6.

most, but not all, of this autonomy and was unacceptable to the Kosovar Albanians, because it gave them less than Milosevic had deprived them of illegitimately.

3. **The autonomy of 1974-plus** This option, which would have restored the autonomy guaranteed by the 1974 Constitution along with additional protections, was the official stance of the West and was incorporated into Resolution 1244, which guaranteed Kosova a “substantial autonomy within the Federal Republic of Yugoslavia.”¹⁰ Resolution 1244 was supposed to be a temporary solution, which would eventually lead to independence. This view was reiterated in the meeting of the Foreign Ministers of the G-8, held in Petersberg, Germany, on May 6, 1999.¹¹ This solution was disputed because Kosova can enter the process of European integration only as a state; critics fear it will otherwise turn into a black hole.¹²
4. **A step-by-step solution** This option would have begun with a period of international administration, followed by local elections for provisional government institutions, a plebiscite, and then the implementation of whatever status in which the plebiscite would result. The goal of this solution would be to facilitate a peaceful separation.
5. **Part of a Serbian unitary state** This option would have placed a nonautonomous Kosova into a Serbian state. Obviously, such a result would be unacceptable to Kosovar Albanians.
6. **Unification with Albania** Unification with Albania was officially introduced as an option by Sali Berisha, the President of Albania, at the end of March 1992.¹³ Later, Berisha lowered his rhetoric to better match the mood of the Albanian public.¹⁴ This option does not have wide support in Albania or in Kos-

10. S.C. Res. 1244, *supra* note 1, ¶ 10.

11. *Id.* at Annex 1; *Crisis in the Balkans; U.N. Resolution on Kosova: Establishing the Principles of a Political Solution*, N.Y. TIMES, June 9, 1999, at A13; 2 ARSIM BAJRAMI, E DREJTA E KOSOVËS NË TRANZICION [CONSTITUTIONAL LAW] 262–69 (Prishtinë 2002). The G-8 is comprised of the major industrial democracies and meets annually to deal with major economic and political issues facing international society. Its members are Britain, Germany, France, Italy, Russia, Japan, Canada, and the United States.

12. Richard C. Hottelet, *The Kosova Quandary*, CHRISTIAN SCI. MONITOR, Apr. 24, 2001, at 11; KOHA DITORE, May 1, 2001 (Koha Ditore is a local Albanian-language newspaper. In all cases, page references were unavailable.).

13. MISHA GLENNY, THE FALL OF YUGOSLAVIA: THE THIRD BALKAN WAR 181 (1992).

14. *Id.*

ova (apart from minor groups such as the People's Movement of Kosova, the National Movement for the Liberation of Kosova, the Republican Party of Kosova, and the Albanian National Democratic Party).¹⁵

7. **A federal unit or a republic within the rump state of Yugoslavia** This option would have guaranteed Kosova equal status with Serbia and Montenegro within a rump Yugoslavia and was supported by the Contact Group in January 1998.¹⁶
8. **An international protectorate** This "temporary" solution was adopted in 1999. As conceived, the international protectorate would be interim in nature, after which the people of Kosova would be allowed to decide on final status.¹⁷ Security Council Resolution 1244 provides for civil administration of Kosova under the authority of a Special Representative of the Secretary-General; the United Nations Interim Administration Mission in Kosova ("UNMIK") also is directed to facilitate a determination of "future status."¹⁸
9. **Member of a confederation** The idea for the creation of a "mini-confederation" in the Balkans, consisting of the republics of Serbia, Montenegro, and Kosova,¹⁹ was supported by Kofi Annan in 2000.²⁰
10. **The regionalization of the Federal Republic of Yugoslavia ("FRY")** The FRY would comprise thirteen regions. Kosova would be divided into two regions, Kosova and Dukagjini (or Metohija, as the Serbs prefer to call it).

15. INT'L CRISIS GROUP, ICG EUR. REP. NO. 153, PAN-ALBANIANISM: HOW BIG A THREAT TO BALKAN STABILITY? 2, 14 (Feb. 25, 2004), at http://www.icg.org/library/documents/europe/balkans/153_pan_albanianism_how_big.pdf.

16. Barbara Crossette, *U.N. Chief Reports Little Help in Monitoring Balkan Arms Ban*, N.Y. TIMES, Aug. 11, 1998, at A3; KOHA DITORE, Jan. 10, 1998.

17. For some options see Zoran Lutovac, *Dymbëdhjetë propozime për zgjidhjen e statusit të Kosovës* [Twelve Proposals for the Solution of the Status of Kosova], KOHA DITORE, Apr. 25 & 26, 1997.

18. S.C. Res. 1244, *supra* note 1, ¶ 11(e).

19. MILOS MINIC, RATOVI NA KOSOVU, 1998–1999 I U CECENIJI, 1994–1996 [THE WARS IN KOSOVA, 1998–1999 AND CHECHNYA, 1994–1996] 133 (2000). Milos Minic was one of the most famous Serbs during Tito's rule. During the 1970s, he was Foreign Minister of SFRY.

20. *Transcript of Press Conference by Secretary-General Kofi Annan at Headquarters, 19 December 2000*, M2 PRESSWIRE, Dec. 21, 2000, available in LexisNexis AllNews Database and on file with the Chicago-Kent Law Review. Secretary-General Annan stated:

In my judgment, I think the ideal situation would be to work out some sort of confederation embracing the three territories and settle the issue in that manner, and then begin to operate the problem on a regional basis and give meaning to the regional Stability Pact and other efforts the international community is trying to make.

Id.; see also KOHA DITORE, Dec. 21, 2000 (statement given after the meeting of the UNSC).

11. **Standards before status** This formula was introduced by Michael Steiner, the Special Representative of the Secretary-General to Kosova, and has won the support of the international community.²¹ According to this formula, a number of standards must be fulfilled within a certain period of time and are prerequisite to international recognition. In the meantime, Kosova would become the beneficiary of a political trusteeship, the main aim of which would be the political, economic, social, and educational advancement of the population of the trust territory. By doing so, an end would be given to the Yugoslav sovereignty over Kosova—without recognizing Kosova as an international subject. Kosova would enjoy greater self-government than the one guaranteed by the Constitutional Framework.²²
12. **Conditional independence** This option recognizes the right of the people of Kosova to decide on their future and addresses the legitimate concerns of the international community regarding the fact that Kosova is still not ready for full independence. This option had the support of the International Crisis Group.²³ There are many cases where conditions have been imposed upon new states, the fulfillment of which would not have been accepted voluntarily. The EU adopted certain criteria for the recognition of new states in Eastern Europe and the former Soviet Union, including the acceptance of international obligations; the observation of ethnic, national, and minority rights; and the recognition of the inviolability of borders.
13. **The creation of two entities using the model of Bosnia-Herzegovina** This scenario, which envisions the division of Kosova into two entities, Albanian and Serb, was first floated by Nebojsa Covic, Deputy Prime Minister of Serbia.²⁴ The

21. Daniel Simpson, *A Restive Kosova, Officially Still Serbian, Squirms Under the Status Quo*, N.Y. TIMES, Dec. 29, 2002, § 1, at 14.

22. *Standards for Kosova*, U.N. Interim Administration Mission in Kosova, U.N. Doc. UNMIK/PR/1078 (Dec. 10, 2003), at <http://www.unmik-online.org/press/2003/pressr/pr1078.pdf>.

23. INT'L CRISIS GROUP, ICG BALKANS REP. NO. 124, A KOSOVA ROADMAP (I): ADDRESSING FINAL STATUS ii (Mar. 1, 2002), at http://www.icg.org/library/documents/report_archive/A400561_01032002.pdf; see also KOHA DITORE, Mar. 4–19, 2002. For conditional recognition see ZEJNULLAH GRUDA, PUBLIC INTERNATIONAL LAW 73 (Prishtina 2002).

24. Stefan Wagstyl & Judy Dempsey, *Dangerous Potential: A Macedonian Civil War Would Threaten the Stability of Other States in the Former Yugoslavia Now Enjoying a Fragile Peace*, FIN. TIMES (London), May 29, 2001, at 20.

Serb entity would be under the control of the Yugoslav police and military forces, and the Albanian entity would be given a high level of autonomy under the supervision of the international community. This scenario has the support of the Serbian government. Its implementation began in 2003 through the creation of parallel structures in the areas with a Serb majority. In the opinion of this author, however, the Serb majority's main concern is not to secure equal rights with the Albanians, but to help restore Serbian rule in Kosova (or part of it).

14. **The division of Kosova along ethnic lines, more or less at the municipality level** This solution would use ethnic criteria and overlaps the following cantonization option.
15. **The cantonization of Kosova** This option, a more detailed version of option number fourteen, was suggested by Serbian leaders and would retain Kosova within the Union of Serbia and Montenegro but divide Kosova along ethnic lines. Cantonization is supported by the Serbs of Kosova who claim that they cannot live together with the Albanians after the renewed violence in March 2004.²⁵ Serbs in Kosova would prefer the borders of the cantons to be drawn using the land-registry books and the ethnic composition of the population.²⁶ According to the Serb leaders in Kosova, Kosova should be divided into seven cantons—four Albanian and three Serb. In the Serb cantons, Serbs would have their own police, judiciary, and budget, and they would also have the right to be represented in regional international organizations.²⁷ Although a similar option was presented by Archbishop Artemije, head of the Serbian Orthodox Church for Kosova, in Washington, D.C., in 2004,²⁸ these views are not supported by political leaders in

25. Daniel Williams, *In Kosova, Two Worlds Divided by One River*, WASH. POST, Mar. 22, 2004, at A16.

26. Milorad Todorovic, coordinator in the office of the Prime Minister of Kosova, on the return of internally displaced persons.

27. Serbian Unity Congress, *New Serbian Premier on Kosova and Metohija Issue*, ERPKIM Info-Service (Serbian Orthodox Diocese of Raska-Prizren and Kosova-Metohija), Mar. 3, 2004, at http://news.serbianunity.net/bydate/2004/March_03/20.html; ZERI, Mar. 31, 2004.

28. Ann Rodgers, *On a Mission from Kosova: In Visit to City, Serbian Bishop Calls Homeland an "Open Wound"*, PITTSBURGH POST-GAZETTE, Feb. 11, 2004, at A6. According to Bishop Artemije, the places with a Serb majority would have special ties with Serbia in the fields of education, health care, and in the protection of cultural, historic, and religious monuments, whereas the institutions in the places with an Albanian majority would have a high level of independence. (The fields of cooperation with the institutions of Serbia would be determined through mutual agreements.) This proposal does not

Kosova, the Special Representative of the Secretary-General, the State Department, NATO, or the EU.²⁹ To some, such views are nothing else but a call for territorial division.³⁰

16. **Independence for Kosova** Neither the international community nor the Contact Group support this option.³¹ Nonetheless, independence was seen as the inevitable solution for Kosova by Lord Owen, the international mediator for Yugoslavia and the EU peace envoy for Bosnia-Herzegovina and the Balkans. According to Lord Owen, the independence of Kosova could not be viewed as an isolated issue. Therefore, the international community should be ready to consider the redefinition of borders in the Balkans, which would be done in a peace conference (similar to the Berlin Congress in 1878).³²

Based on the developments of the past few years, only two or three of these solutions are workable: independence, conditional independence, and independence combined with decentralization. Nationalist forces in Serbia and the Serbs in Kosova wish to restore Serbia's authority over Kosova. Their argument is that the independence of Kosova will lead to war;³³ thus, the subjugation of the Kosovar Albanian people is justified. Albanians, as well as the members of the non-Serb minorities in Kosova, hope that Kosova will finally become a democratic, independent state and will join the family of nations as an independent state.

As far as the options for the final status of Kosova are concerned, the aspirations of Albanians and Serbs have proven completely opposed to one another. Thus, the international community has, will, and must exert its influence to resolve the question. The international community reflects the plethora of political, economic, cultural, religious, historic, and ethnic con-

say what would happen with the other minority groups and what kind of a community Kosova would be if its institutions (which would be multiethnic) "would . . . work on resolving the local problems concerning the common interest of all Kosova's inhabitants and would not act as para-state structures, as they do now." *Bishop Artemije Gives Lecture at Western Policy Center in Washington D.C.*, ERPKIM Info-Service (Serbian Orthodox Dioceses of Raska-Prizren and Kosova-Metohija), Jan. 30, 2004; DIJALOG ZA KOSOVA, Jan. 2004.

29. Ian Traynor, *Fourteen Dead as Ethnic Violence Sweeps Kosova: U.N. Peacekeepers Struggle to Contain Gun Battles*, GUARDIAN (London), Mar. 18, 2004, at 10 ("The notion was dismissed by Harri Holkeri, the U.N.'s Finnish governor of the province. 'Partition is not an issue we can discuss,' he said."); KOHA DITORE, Mar. 4, 6, 9, 2004.

30. Janusz Bugajski, *Koshtunica Against Kosova*, KOHA DITORE, Mar. 9, 2004.

31. Whitney, *supra* note 2, at 1.

32. Lord David Owen, Commentary, *Kosova Isn't Bosnia; the Serbs are Strong; NATO: The Conditions are Different; Bombing Won't Work*, L.A. TIMES, Mar. 23, 1999, at B7.

33. See Dimitrios Triantaphyllou, *Conclusion: Kosova Independence and Regional Stability Are Not Incompatible*, in WHAT STATUS FOR KOSOVA? 103, 108 (Inst. for Security Stud. of W. Eur., Chailot Paper 50, Oct. 2001).

cerns that are interested in the final status of Kosova. Unfortunately for Kosova, the international community has not been consistent in its treatment of emerging states. Additionally, past atrocities, such as those in Bosnia and Chechnya, have been tolerated by the U.N. and the governments of the most powerful states in the world.³⁴ The international community did not prevent such atrocities but looked upon them passively. For example, the EU called for a settlement in Chechnya “which respects the territorial integrity of the Russian Federation,”³⁵ the stance also taken by the Clinton Administration.³⁶

Despite these hypocrisies, on many occasions the international community has played a very important role in the determination of the fate of different peoples and states. As far as Kosova is concerned, the stance of the international community is still unresolved. This can be seen by the different propositions of almost all of the documents pertaining to Kosova. Documents, states, and international organizations cover the whole range of positions from supporting Serb aspirations to the independence of Kosova. Contrary to what would be expected, there are states and individuals who still continue to think in the spirit of the Holy Alliance or the “European Concert” and envision an international peace conference that would determine the final status of Kosova, with or without a redrawing of borders. Some powerful leaders still wish to deny Kosova the fundamental right to self-determination.³⁷ Their positions reveal their own self-interests as many

34. For example, Richard Nixon, former President of the United States, wrote, “It is an awkward but unavoidable truth that had the citizens of Sarajevo been predominantly Christian or Jewish, the civilized world would not have permitted the siege to reach the point it did.” RICHARD NIXON, *BEYOND PEACE* 154 (1994).

35. Ian Bell, *An Old Charmer in a New World*, *HERALD* (Glasgow), Jan. 20, 1995, at 11.

36. MINIC, *supra* note 19, at 246, 253; Charles Babington, *Clinton Lobbies Two Nations; Russia Pressed on Rights, ABM: Ukraine on Free-Market Reform*, *WASH. POST*, June 6, 2000, at A1 (“Clinton said, ‘the United States wants a strong Russia, a Russia strong enough to protect its territorial integrity while respecting that of its neighbors; strong enough to meet threats to its security . . . to give its people their chance to live their dreams.’”); KOHA DITORE, June 6, 2000.

37. For example, John Kornblum, Undersecretary of State, openly declared that the administration did not support the independence of Kosova. *Albanian Leader Says Talks With U.S. Envoy Very Significant*, *BBC SUMMARY OF WORLD BROADCASTS*, Apr. 21, 1997, available in LexisNexis AllNews Database and on file with the Chicago-Kent Law Review; KOHA DITORE, Apr. 21, 1997. A similar statement was made by James Rubin, the spokesperson of the State Department, who declared, “We have always said we do not support independence for Kosova, and we do not support independence for Kosova now.” R. Jeffrey Smith, *U.S. Officials Expect Kosova Independence: Secession Increasingly Is Seen as Inevitable*, *WASH. POST*, Sept. 24, 1999, at A1; KOHA DITORE, Sept. 25, 1999. On June 2, 2000, the very same was reiterated in a more implicit way by President Clinton. He stated, “[Peace] cannot be [achieved] by forcing people to live together; there is no bringing back the old Yugoslavia. It cannot be done by giving every community its own country, army, and flag. Shifting so many borders in the Balkans will only shake the peace further.” Remarks on Receiving the International Charlemagne Prize in Aachen, Germany, 36 *WEEKLY COMP. PRES. DOC.* 1262, 1264 (June 5, 2000); KOHA DITORE, June 3, 2000.

of them face independence movements or efforts for secession in their own countries.³⁸

But some leaders that take an anti-independence stance state a different reason. Because of the timing of the talks for the determination of the final status of Kosova, some leaders seek to ensure that the provisional institutions in Kosova are capable of providing stability within the borders of Kosova and of protecting human and minority rights. Regardless, by defending the principle of legitimacy and exalting formal retention of Serbian sovereignty over Kosova, they deny all of the positive developments in international law to Kosova, especially the right to self-determination.

II. THE DECISIVE FACTORS FOR THE CREATION OF NEW STATES

The creation of new states has been supported or obstructed based on a number of principles of international law, including the principles of legitimacy, balance of forces, nationality, and inviolability of borders.

A. *The Principle of Legitimacy*

Proponents of the principle of legitimacy object to pending or executed changes that are not in accordance with the existing or recently existing order.³⁹ The principle of legitimacy has often been used to restore past regimes or regain colonial empires, especially in the time of the Holy Alliance. The aim was to prevent revolutionary changes in Europe, and the result was a denial of the right of people to self-determination.

Those powerful countries that justified their empires by the principle of legitimacy hypocritically denied its application, for example, during the war for the liberation of Greece from the Ottoman Empire, a war of liberation of Christians from Muslims. Similarly, the cases of Kosova and East Timor show the existence of double standards: that the selective application of the principle of legitimacy depends on political, ideological, or religious factors. No other explanation can reconcile the different treatment of East Timor and Kosova; the U.N. and the powerful countries of the world supported self-determination for the East Timorese, while those very same actors deny the right to Kosova.

38. For example Russia has continued problems with Chechnya, as does China with Tibet, Sinkiang, and Taiwan; India with Kashmir; Spain with the Basque country and Catalonia; England with Northern Ireland, Scotland, and Wales; France with Corsica; Turkey with Kurdistan; and Canada with Quebec.

39. VLADIMIR IBLER, *RJECNIK MEDJUNARODNOG JAVNOG PRAVA* 135 (Zagreb 1972).

Sergio Viera de Mello, the special envoy of the U.N. to East Timor, justified the support of the East Timorese by the fact that the president of Indonesia gave the citizens of East Timor the opportunity to decide on their own fate.⁴⁰ Because of an agreement between Indonesia and Portugal, the citizens of East Timor participated in a U.N.-sponsored referendum for independence.⁴¹ An overwhelming number of East Timorese voted for independence.⁴² The Security Council transferred power to the independent East Timor on May 20, 2002.⁴³ Nonetheless, in the opinion of this author, de Mello did not give the real reason why this right is not recognized in Kosova. In order to do so, one must have great courage and strong moral determination, as one must say something which no one dares to say: that there is a double standard when dealing with Muslims and Christians.

If we bear in mind the above assertion, we can better understand the problems in Kashmir, Palestine, Bosnia, Chechnya, and Kosova—all instances in which the aspirations of a Muslim population for self-determination are denied by the international community. The international community did, however, intervene in Kosova, and this intervention can support the inference that the international community *is* willing to support the nationalist aspirations of a Muslim population. But the proof is not in the intervention; the proof is in the willingness to grasp the nettle of final status and to accept independence for Kosova. Ambivalence undercuts the moral credibility of the U.N. and the democratic countries of the world. Regarding the events in Bosnia, Srđa Popović, a distinguished Serb dissident, wrote, “the Security Council, not having the courage to fulfill its obligations and to prevent genocide, has been very careful not to use the words ‘aggression’ and ‘genocide.’”⁴⁴

In October 1998, Milos Minic criticized the international community for its delay in reacting to the tragic events in Bosnia and Kosova:

The international community has failed to react in Kosova. The very same had happened in Bosnia. If the international community had stopped the war earlier, less people would have been killed on both sides. The number of villages, which have been looted and destroyed by the Serbian police and military forces, would have been smaller. Hundreds of thousands of Albanians would have not been forced to flee their

40. KOHA DITORE, June 14, 2000.

41. Richard C. Paddock, *World Welcomes East Timor; War-Torn Territory Becomes a Nation After Colonial Rule*, CHI. TRIB., May 20, 2002, at 4; KOHA DITORE, Mar. 16, 1999.

42. *Id.*

43. *Id.*

44. SRĐA POPOVIĆ, PUT U VARVARSTVO [THE WAY TOWARD BARBARISM], Biblioteka Svedočanstva No. 4, at 213–14 (Beograd 2000) (citing Srđa Popović, Tribunal (Publikacija Instituta za izveštaje o ratu i miru [Inst. for War & Peace Reporting] (Aug. 1995))).

homes in order to save their lives, in a process which had the dimensions of “ethnic cleansing.” Ethnic cleansing was not a consequence of the armed conflict but one of the main objectives of the offensive of the police and military forces in Kosova⁴⁵

This sentiment was reiterated by Zarko Korac and Gunter Gras. The former stated that the Jews were the symbol of sacrifice, whereas in Yugoslavia the Albanians and Muslims played that “role.”⁴⁶ Gunter Gras stated that the majority of atrocities in Bosnia and Kosova were committed against Muslims.⁴⁷

B. *The Balance of Forces Principle*

The balance of forces principle reflects the “realist school” of international relations theory, which emphasizes geopolitical relationships among states and de-emphasizes human rights. The balance of forces principle justifies political and legal arrangements that prevent any state from becoming either globally or regionally dominant. This principle was often used to justify the enslavement and partition of small nations or to prevent national unification. Austria, Russia, and Prussia justified their partition of Poland as a balancing of forces following the French Revolution.⁴⁸ Western European powers prevented the unification of Germany before 1871⁴⁹ and after WWII based on a balance of power theory.⁵⁰ For similar reasons, Serbia, Greece, and Bulgaria divided Macedonia amongst themselves after the first and second Balkan Wars in 1912 and 1913.⁵¹

The resistance towards the unification into an Albanian nation derives from the idea that it would create an Albanian state of 5–6 million inhabitants and “destroy” the equilibrium in the Balkans. Opposition exists despite the fact that other countries in the region have approximately the same number of inhabitants (Greece, Bulgaria, and Serbia for example) or a

45. MINIC, *supra* note 19, at 73–74, 118.

46. Zarko Korac is a professor at the University of Belgrade. He was the Deputy Prime Minister of Serbia. *Helsinki povelja, Bilten Helsinskog odbora za ljudska prava u Srbiji* No. 5, at 25 (Apr. 1998).

47. Gunter Gras is a German writer with social orientation and a great critic of the contemporary system of values. *KOHA DITORE*, Nov. 12, 1999.

48. CHARLES DOWNER HAZEN, *MODERN EUROPE* 314 (1920); EDWARD RAYMOND TURNER, *EUROPE 1789–1920*, at 18, 270 (1920).

49. HAZEN, *supra* note 48, at 444.

50. Amos Perlmutter, *Keeping Germany, and Europe, in Balance*, *L.A. TIMES*, Apr. 26, 1989, Metro Pt. 2, at 7.

51. Treaty of Bucharest, Mar. 10, 1913, available at <http://www.historyofmacedonia.org/PartitionedMacedonia/Bucharest.html> (last visited Nov. 19, 2004); E. LIPSON, *EUROPE IN THE XIXTH & XXTH CENTURIES 1815–1939*, at 278–80 (1940).

much higher number of inhabitants (Italy, Turkey, and Romania).⁵² Moreover, Moldova's referendum on independence or union with Romania in 1994 was not considered as disrupting the balance in the region.⁵³ According to Serbian President Vojislav Kostunica, however, the independence of Kosovo and the consequent increase in the number of states in the Balkans "would be fatal."⁵⁴ In contrast, Kostunica considers the Serb entity in Bosnia as "part of the family which is dear and close to [Serbia], temporarily separated but always ours and in our hearts."⁵⁵ When asked by the Embassy of Bosnia-Herzegovina in Yugoslavia to confirm the radical statement, Dragan Marsicanin, Deputy Chairman of Kostunica's Democratic Party of Serbia and head of his election headquarters, said that "unification was a long-term and historical interest of the Serb people."⁵⁶

C. *The Principle of Nationality*

One of the main principles that has contributed to the creation of new states is the "principle of nationality," which was introduced by the famous Italian jurist Pasquale Mancini in 1851.⁵⁷ According to Mancini, every nation—a group of people united by common factors such as: territory; race; language; history; tradition; customs; aspirations; and in particular, a feeling of common belonging—is free to organize itself into an independent state.⁵⁸ Mancini's ideas were enthusiastically adopted by German, Italian, and Polish authors, as well as authors from Central Europe, who recognized the right of each nation to create an independent state and to

52. The CIA World Factbook provides estimates of population and ethnic group sizes for each country as of June 2004. The population of Albania is 3,544,808, the population of Albanians in Serbia and Montenegro is 16.5% of 10,825,900 (1,786,274), and the population of Albanians in Macedonia is 25.2% of 2,071,210 (521,945). The population of Greece is 10,647,529, the population of Bulgaria is 7,517,973, and the population of Serbia and Montenegro minus Ethnic Albanians is 9,039,626. The population of Italy is 58,057,477, the population of Turkey is 68,893,918, and the population of Romania is 22,355,551. CENT. INTELLIGENCE AGENCY, THE WORLD FACTBOOK (2004), available at <http://www.cia.gov/cia/publications/factbook/index.html>.

53. Paul Hockenos, *Where the Mighty Have Fallen, Modest Moldova Stands Tall*, CHRISTIAN SCI. MONITOR, Dec. 10, 1996, at 6.

54. When asked whether he foresaw independence for Kosovo, Vojislav Kostunica's reply was, "Not as long as we live." *Landmark Kosova Talks Bring Little Hope for Early Resolution*, WORLD MARKETS ANALYSIS, Oct. 15, 2003, available in LexisNexis AllNews Database and on file with the Chicago-Kent Law Review; Kostunica, Skopje, Mar. 5, 2004; KOHA DITORE, Mar. 6, 2004.

55. *Weekly Roundup for Serbia, 7–13 September 2002*, BBC WORLDWIDE MONITORING, Sept. 14, 2002, available in LexisNexis AllNews Database and on file with the Chicago-Kent Law Review; DNEVNI AVAZ, Sept. 13, 2002; KOHA DITORE, Sept. 14, 2002.

56. *Id.*

57. ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES 13 (1995); CHARLES ROUSSEAU, DERECHO INTERNACIONAL PUBLICO 86 (Barcelona 1966).

58. ARTHUR K. KUHN, COMPARATIVE COMMENTARIES ON PRIVATE INTERNATIONAL LAW OR CONFLICT OF LAWS 14–15 (1937).

freely decide on its own fate.⁵⁹ Later on, the term “principle of nationality” was replaced with the term “self-determination.” According to this principle, a national group that lives within a certain territory has the right to decide, through plebiscite, whether it wants to join another state or stay within the state of which it has previously been a part. In other words, the people have the right to decide on the future of the territory.⁶⁰

D. *The Uti Possidetis Principle*

The *uti possidetis juris* principle refers to the inviolability of previous administrative borders.⁶¹ This principle was first applied in Latin America when the new sovereignties of the region decided to recognize the former colonial administrative borders in order to solve or avoid border disputes.⁶² Many Latin American states incorporated the *uti possidetis* principle into their constitutional law, and the principle was applied during later divisions.⁶³ Most of the African states that won their independence in the 1960s also accepted the *uti possidetis* principle, as did the Organization of African Unity.⁶⁴

The Badinter Commission, in reference to former Yugoslavia, stated that *uti possidetis* “is today recognized as a general principle” and that this “principle applies all the more readily.”⁶⁵ A Commission on Security and Cooperation in Europe statement of October 10, 1991, announced that the member states would “never . . . recognize any changes of border, whether external or internal, brought about by force.”⁶⁶

59. LUJ LE FIR, *MEDJUNARODNO JAVNO PRAVO* [INTERNATIONAL PUBLIC LAW] 49–57 (Belgrade 1934); MARSEL MOA, *OSNOVNI POJMOVI MEDJUNARODNOG JAVNOG PRAVA* [THE BASIC IDEAS OF INTERNATIONAL PUBLIC LAW] 36–38 (Belgrade 1925); RAMON DE ORUE, *MANUAL DE DERECHO INTERNACIONAL PUBLICO* 179–81 (Madrid 1933); ROUSSEAU, *supra* note 57, at 84–88.

60. MAREK ST. KOROWICZ, *INTRODUCTION TO INTERNATIONAL LAW* 283 (1964).

61. Enver Hasani, *Uti Possidetis Juris: From Rome to Kosovo*, 27 *FLETCHER F. WORLD AFF.* 85, 85 (Fall 2003).

62. EDUARDO AUGUSTO GARCIA, *MANUAL DE DERECHO INTERNACIONAL PÚBLICO* 295 (Buenos Aires 1975); 1 *OPPENHEIM'S INTERNATIONAL LAW* 669–70 (Sir Robert Jennings & Sir Arthur Watts eds., 9th ed. 1992); PETER RADAN, *THE BREAK-UP OF YUGOSLAVIA AND INTERNATIONAL LAW* 69–134 (2002); ROUSSEAU, *supra* note 57, at 260; 1 *MANUEL DIEZ DE VELASCO VALLEJO, INSTITUCIONES DE DERECHO INTERNACIONAL* 260 (Madrid 1973); Hasani, *supra* note 61, at 86.

63. RADAN, *supra* note 62, at 89–91.

64. Organization of African Unity Resolution on Border Disputes, July 21, 1964, OAU Doc. AHG/Res. 16(1), *reprinted in* BASIC DOCUMENTS ON AFRICAN AFFAIRS 360, 361 (Ian Brownlie ed., 1971).

65. JOSHUA CASTELLINO, *INTERNATIONAL LAW AND SELF-DETERMINATION* 140 (2000) (quoting Badinter Commission Opinion No. 3).

66. *INST. OF INT'L POLITICS & ECON.*, *INTERNATIONAL LAW AND THE CHANGED YUGOSLAVIA* 79 (Belgrade 1995).

E. *The Ethnic Principle*

The ethnic principle is a more specific instance of the nationality principle. It emphasizes the common ethnicity of a group that has nationalist aspirations. Ethnicity is distinct from other factors that may animate nationalism, such as common language.

F. *The Right of Peoples to Self-Determination*

1. The Subjects of the Right to Self-Determination

Many international acts that refer to the right of self-determination insist on the fact that this right belongs to “peoples.”⁶⁷ Mancini, under whose influence the principle of self-determination was affirmed, considered nations as the main subject of international law and the right of self-determination.⁶⁸ Lenin, too, wrote about the right of nations to self-determination.⁶⁹ Wilson, the Atlantic Charter, and the U.N. Charter used the term “peoples” to determine the subjects of the right to self-determination.⁷⁰ In a number of acts, however, “peoples and nations” are mentioned together.⁷¹ Lenin recognized nationalities as a subject of self-determination in addition to peoples and nations.⁷² This terminological confusion raises the need to define the terms “people,” “nation,” and “nationality.”

67. See, e.g., *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations*, G.A. Res. 2625(XXV), U.N. GAOR, 25th Sess., Supp. No. 28, at 121, U.N. Doc. A/8028 (1970); *Declaration on the Granting of Independence to Colonial Countries and Peoples*, G.A. Res. 1514(XV), U.N. GAOR, 15th Sess., Supp. No. 16, at 66, U.N. Doc. A/4684 (1960); International Covenant on Economic, Social and Cultural Rights, art. 1, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter *Covenant on Economic Rights*]; International Covenant on Civil and Political Rights, art. 1, Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter *Covenant on Civil and Political Rights*].

68. CASSESE, *supra* note 57, at 13.

69. See generally V.I. LENIN, *THE RIGHT OF NATIONS TO SELF-DETERMINATION: SELECTED WRITINGS* (1951).

70. U.N. CHARTER art. 1; Atlantic Charter, Aug. 14, 1941, U.S.-U.K., 55 Stat. 1603, 204 L.N.T.S. 382; WOODROW WILSON, WILSON'S ADDRESS TO CONGRESS, STATING THE WAR AIMS AND PEACE TERMS OF THE UNITED STATES, DELIVERED IN JOINT SESSION, Point 7, 10 (Jan. 8, 1918), *reprinted in* 1 THE MESSAGES AND PAPERS OF WOODROW WILSON 464, 469 (Albert Shaw ed., 1924) [hereinafter WILSON'S FOURTEEN POINTS].

71. *The Right of Peoples and Nations to Self-Determination*, G.A. Res. 637(VII)A, U.N. GAOR, 7th Sess., Supp. No. 20, at 26, U.N. Doc. A/2361 (1952); *Inclusion in the International Covenant or Covenants on Human Rights of an Article Relating to the Rights of Peoples to Self-Determination*, G.A. Res. 545(VI), U.N. GAOR, 6th sess., Supp. No. 20, at 36, U.N. Doc. A/2119 (1952); *Draft International Covenant on Human Rights and Measures of Implementation: Future Work on the Commission on Human Rights*, G.A. Res. 421(V), U.N. GAOR, 5th sess., Supp. No. 20, at 42, U.N. Doc. A/1775 (1950).

72. CASSESE, *supra* note 57, at 16; LENIN, *supra* note 69, at 87–90.

For many authors, the most frequently used term, “people,” is ambiguous or vague. Most often, this term means people who live within the same state (usually it denotes all of the citizens) or people organized into a state.⁷³ Thus, it can imply individuals who are of different races and religions and who speak different languages. These differences demonstrate that the term “people” is a legal rather than a natural category.⁷⁴ According to another definition the term, “people” means a nation that is not politically organized, a social group without a government, or a social group governed by a people that does not belong to that social group.⁷⁵

The term “nation” has a number of different meanings. On some occasions it has been used as a synonym for “state,” for example, in the names “League of Nations” and “United Nations.” Usually, however, the term means a natural society of men that differs from all the others by race, language, religion, aspirations, territory, tradition, arts, and customs.⁷⁶ Mancini stressed the importance of language for the existence of a nation as evidence of the moral unity of the nation—language, along with the will to live together, is the most powerful of all bonds that constitute the national idea.⁷⁷ Since Mancini, a nation has been defined as a blood union of people who share the same language, religion, and historical tradition, or as a group of people with the same origin, tradition, customs, and aspirations.⁷⁸

The nation is a group that is established through historical evolution and is comprised of individuals who speak the same language, have the same culture, and live in the same territory.⁷⁹ To Cavaglieri, the nation was not a primordial and ethnographic product but a psychological and historical one.⁸⁰ Thus, a number of authors do not define the term nation based on ethnologic criteria (territory, language, religion, and culture) but on spiritual criteria (the existence of a common consciousness of the group mem-

73. 1 HILDEBRANDO ACCIOLY, *TRATADO DE DERECHO INTERNACIONAL PÚBLICO* 89 (1945); HANS Kelsen, *PRINCIPLES OF INTERNATIONAL LAW* 196 (Robert W. Tucker ed., 2d ed. 1966); HANS Kelsen, *PRINCIPIOS DE DERECHO INTERNACIONAL PUBLICO* 196 (Buenos Aires 1965); GIORGIO DEL VECCHIO, *PHILOSOPHY OF LAW* 360 (Thomas Owen Martin trans., 1953).

74. Kelsen, *supra* note 73, at 196–97.

75. KOROWICZ, *supra* note 60, at 287.

76. PASQUALE FIORE, *DEFINICIONI I MAMIANIT [THE DEFINITION GIVEN BY MAMIANI]* 186 (n.d.).

77. KOROWICZ, *supra* note 60, at 291.

78. 1 ACCIOLY, *supra* note 73, at 89 (citing THOMAS J. LAWRENCE, *THE PRINCIPLES OF INTERNATIONAL LAW* 48 n.1 (7th ed. 1928)).

79. ISAAC PAENSON, *MANUAL OF THE TERMINOLOGY OF PUBLIC INTERNATIONAL LAW (LAW OF PEACE) AND INTERNATIONAL ORGANIZATIONS* 2–3 (1983).

80. 1 ACCIOLY, *supra* note 73, at 90.

bers, i.e. the members comprise a separate group that is different from similar groups).⁸¹

Members of the same nation share the same language, religion, and territory. Nations are constituted by factors, which must not be confused with the state itself or a group of individuals known as a people. Its main element is the subjective factor represented through national consciousness. Thus, a nation is a moral union, whereas the state is a political one.⁸²

These factors have contributed to the creation of national states. However, this was not always the case. Italy and Germany have unified, but the Arab nations have not. Despite sharing the same language, religion, history, and customs, Arab nations were divided in many states. A common language, furthermore, does not necessarily lead to the unification of its speakers. Englishmen and Americans speak the same language but do not belong to the same nation. Finally, there are people who speak different languages but declare themselves to belong to the same nation, for example, the citizens of the United States. Taking into consideration such counterexamples, Ernest Renan, historian and philosopher, contended that race, religion, language, state, civilization, or economic interests do not create nations but that “[t]he nation is a soul, a spirit, a spiritual family, founded on a heroic past, great men, common glory; common experience . . . solidarity founded on the consciousness of sacrifices made in the past and on the willingness to make further ones in the future.”⁸³

The term “nationality” defines a group of people who share the same territory, past, language, and culture and who have a common goal for liberation and self-determination.⁸⁴ The 1974 Constitution of the SFRY regarded nations and nationalities as equals. Article 245 stressed, “[t]he nations and nationalities of the Socialist Federal Republic of Yugoslavia shall have equal rights.”⁸⁵ A similar provision ensured linguistic equality as well.⁸⁶

Usually peoples and nations are recognized as a subject of the right to self-determination. However, some consider nations as the main subject of

81. ROUSSEAU, *supra* note 57, at 85–86.

82. I ACCIOLY, *supra* note 73, at 89–90.

83. KOROWICZ, *supra* note 60, at 290.

84. D.B. Levin, *Princip Samoopredelenija nacij v mezdunarodnom prave* [*The Principle of Self-Determination of Nations in International Law*], SOVETSKIJ EZEGODNIK MEZDUNARODNOGO PRAVA [SOVIET ANNUAL OF INTERNATIONAL LAW] 25, 36 (1962).

85. SOCIALIST FED. REPUBLIC OF YUGOSLAVIA CONST. art. 245, *reprinted in* YUGOSLAVIA THROUGH DOCUMENTS, *supra* note 4, at 229.

86. *Id.* at art. 246 (“The languages of the nations and the nationalities and their alphabets shall be equal throughout the territory of Yugoslavia.”).

the right to self-determination.⁸⁷ In uninational states, nations can decide whether to remain a single nation or to join another state. In multinational states, nations can decide to secede and create an independent state or to join other nations in other multinational states.⁸⁸

2. The Emergence of the Principle of Self-Determination

The principle of self-determination is one of the most important principles of international law. It was formulated under the influence of the doctrine of “natural rights” and is associated with the period of transition between feudalism and capitalism, when the bourgeoisie sought the affirmation of national sovereignty and the creation of independent states. This process implied that the people possessed the right to determine the political order and status of the state. Scholars disagree as to the exact origin of the principle of self-determination.⁸⁹ In 1526, however, Francis I, the king of France, stated that territories cannot be ceded against the will of the people or “with[out] their explicit approval.”⁹⁰ A few years later, regarding the division of territories within the European continent, Henry IV, the king of France from 1553 to 1610, stated that “I agree that the territories in which the population speaks Spanish, should belong to Spain, whereas those where the population speaks German, should belong to Germany, but the territories where the population speaks French should belong to me.”⁹¹

The principle of self-determination was first applied at the end of the eighteenth century when France used a plebiscite as a form of expressing the collective will of the people and as a precondition for the transfer of sovereignty over a certain territory from one state to another.⁹² A plebiscite is a vote by which the people of an entire country express an opinion for or

87. E.A. KOROVIN, S.B. KRYLOV & F.I. KOZHEVNIKOV, *DERECHO INTERNACIONAL PÚBLICO* 188 (Mexico 1963); 1 FEDOR IVANOVICH KOZHEVNIKOV ET AL., *KURS MEZHDUNARODNOGO PRAVA* [Course on International Law in Six Volumes] 152–55 (1967); 2 KOZHEVNIKOV ET AL., *supra*, at 202–34; GRIGORII I. TUNKIN, *TEORIJA MEZHDUNARODNOGO PRAVA* [THEORY OF INTERNATIONAL LAW] 8–16, 78–79 (Moskva 1970); Levin, *supra* note 84, at 25–48; N.M. Minasyan, *Leninskoe uchenie o samoopredelenii i mezhdunarodnoe pravo* [Lenin's Teaching on Self-Determination of International Law], in *SOVETSKIJ EZEGODNIK MEZHDUNARODNOGO PRAVA* [Soviet Yearbook of International Law] 29–42 (1970).

88. 1 KOZHEVNIKOV ET AL., *supra* note 87, at 152–55; 2 KOZHEVNIKOV ET AL., *supra* note 87, at 202–34.

89. Halim Moris, *Self-Determination: An Affirmative Right or Mere Rhetoric*, 4 *ILSA J. INT'L & COMP. L.* 201, 202 (1997).

90. 1 ACCIOLY, *supra* note 73, at 91.

91. RED. AKAD. V.P. POTEMKINA, *PRVI SVEZAK, IZD. MATICA HRVATSKA, HISTORIJA DIPLOMACIJE* 177 (Zagreb 1951).

92. Gregory H. Fox, *The Right to Political Participation in International Law*, 17 *YALE J. INT'L L.* 539, 571 n.164 (1992). These events cannot be called a true plebiscite, however, as the right of self-determination applied only to those who voted pro-French. CASSESE, *supra* note 57, at 12.

against a proposal, especially on a choice of government or ruler.⁹³ Since its first use in France, the plebiscite has become the most frequent means for the determination of the will of the people, a means through which people freely decide on the fate of a certain territory. A number of plebiscites were organized in the nineteenth and twentieth century by the U.N.⁹⁴

The first documents which contained the principle of self-determination were the Declaration of Independence, the Declaration of the Rights of Man and the Citizen, and the Declaration of Rights of the People of Russia. According to the Declaration of Independence, adopted on July 4, 1776, governments derive their just powers from the consent of the governed. Pursuant to this, people have the right to choose the form of government, including the right to alter or abolish it when it is not capable of securing life, liberty, and happiness and the right to “dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature’s God entitle them.”⁹⁵ The Declaration of the Rights of Man and the Citizen confirms that power is “an expression of the common will” and that “the nation is essentially the source of all sovereignty.”⁹⁶ In conformity with this, every nation has the right to freely determine its own future. The Declaration of Rights of the People of Russia, adopted on November 15, 1917, confirmed: (1) the principle of equality and sovereignty of the peoples of Russia, (2) the abolition of all national and religious privileges, and (3) the right of the people to self-determination and the creation of independent states.⁹⁷

3. The Contributions of Lenin and Wilson to the Affirmation of the Principle of Self-Determination

Apart from Pasquale Mancini, the greatest contributions to the affirmation of the principle of self-determination were provided by Vladimir Lenin and Woodrow Wilson. WWI provided a chance to replace the old international order—based on the oppression of many nations in Asia, Af-

93. MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 891 (10th ed. 2001).

94. LOUIS HENKIN ET AL., INTERNATIONAL LAW: CASES AND MATERIALS 285 (2d ed. 1987); 2 DIPLOMATICHESKII SLOVAR [DIPLOMATIC DICTIONARY] 553–54 (Moskva 1961).

95. THE DECLARATION OF INDEPENDENCE (U.S. 1776).

96. DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN arts. 3, 6 (1789), reprinted in BASIC DOCUMENTS ON HUMAN RIGHTS 8–9 (Ian Brownlie ed., 1971).

97. DECLARATION OF THE RIGHTS OF THE PEOPLES OF RUSSIA (1917), translated in MATERIALS FOR THE STUDY OF THE SOVIET SYSTEM: STATE AND PARTY CONSTITUTIONS, LAWS, DECREES, DECISIONS AND OFFICIAL STATEMENTS OF THE LEADERS IN TRANSLATION 25–26 (James H. Meisel & Edward S. Kozera eds., 2d rev. ed. 1953).

rica, and Europe—with a better one that would ensure respect of the principle of self-determination.

WWI was justified by the hopes of many peoples for national liberation from Austro-Hungary and Russia. These peoples demanded independence and national unification.⁹⁸ Based on this, Lloyd George and Woodrow Wilson propagated the national principle and worked for the liberation of small nations and respect for the right of all nations for free development.⁹⁹ These efforts were in fact made to absorb the effects caused by both the publication of the secret treaties—the London Treaty of April 16, 1915 (which contained a number of fatal provisions for Albania), and the Sikes-Picot Treaty in 1916—and the calls by Lenin for self-determination.¹⁰⁰

Wilson, in his Fourteen Points Address, suggested that the readjustment of the frontiers of Italy should be effected “along clearly recognizable lines of nationality” and that the relations of the Balkan states to one another should be determined by “friendly counsel along historically established lines of allegiance and nationality.”¹⁰¹

On February 11, 1918, Wilson introduced a new set of principles, which essentially referred to the just solution of the national issue as one of the most important issues for the creation of lasting peace. According to Wilson:

1. peoples and provinces must not be bartered about from sovereignty to sovereignty, in a game, now forever discredited, of the balance of power;
2. every territorial settlement must be made in the interest and for the benefit of the populations concerned, and not as a part of any mere adjustment or compromise of claims amongst rival states; and
3. all well defined national aspirations must be accorded the utmost satisfaction.¹⁰²

On July 4, 1918, Wilson added to the previous proposals, insisting that all issues, including territorial ones, must be solved based on the free will of the populations concerned, which is equal to the right to self-

98. See CASSESE, *supra* note 57, at 20.

99. See *id.* at 24.

100. See PAUL JOHNSON, MODERN TIMES: THE WORLD FROM THE TWENTIES TO THE NINETIES 21–23 (rev. ed. 1992).

101. WILSON’S FOURTEEN POINTS, *supra* note 70, at Point 9, 11.

102. WOODROW WILSON, PRESIDENT WILSON’S ADDRESS TO CONGRESS, ANALYZING GERMAN AND AUSTRIAN PEACE UTTERANCES, DELIVERED IN JOINT SESSION (Feb. 11, 1918), *reprinted in* 1 THE MESSAGES AND PAPERS OF WOODROW WILSON, *supra* note 70, at 472, 477–78.

determination.¹⁰³ The culmination of all this was the view expressed in his speech in Billings, Montana, on September 11, 1919. Wilson stated:

The fundamental principle of [the League of Nation's Covenant] is a principle never acknowledged before, a principle which had its birth and has had its growth in this country: that the countries of the world belong to the people who live in them, and that they have a right to determine their own destiny and their own form of government and their own policy, and that no body of statesmen, sitting anywhere, no matter whether they represent the overwhelming physical force of the world or not, has the right to assign any great people to sovereignty under which it does not care to live.¹⁰⁴

Accordingly, new states were to be created after the war that would be homogenous and inhabited to the maximum extent by members of the same nation.¹⁰⁵ These ideas were warmly greeted by the oppressed and divided nations.

According to Lenin, recognition of a people's right to self-determination is the key to a just solution of the national issue.¹⁰⁶ Thus, Lenin insisted that every nation must enjoy the right to decide independently whether it will create its own state or join another state.¹⁰⁷ According to Lenin, all nations, including those in multinational states, have the right to secede and create independent states, as the right to self-determination means the right to independence in a political sense, as well as the right to create a national state.¹⁰⁸ Replying to those who claimed that the right to self-determination promoted separatism and the creation of small states, Lenin argued that nations sought this right only in cases when they were subjected to national oppression.¹⁰⁹ According to Lenin, the denial of the right to self-determination was nothing else but an effort to preserve the privileges of the ruling nations.¹¹⁰

103. WOODROW WILSON, FOUR FACTORS OF WORLD PEACE, ADDRESS AT MOUNT VERNON (July 4, 1918), *reprinted in* SELECTED ADDRESSES AND PUBLIC PAPERS OF WOODROW WILSON 266, 268 (Albert Bushnell Hart ed., 1918).

104. CASSESE, *supra* note 57, at 20 (quoting WILSON'S IDEALS 109 (Saul K. Padover ed., 1942)).

105. ALFRED VERDROSS, DERECHO INTERNACIONAL PUBLICO 42-44 (Antonio Truyol Y Serra trans., 4th ed. 1974).

106. *See* LENIN, *supra* note 69, at 76.

107. *See id.*

108. *See id.* at 76-77.

109. *See id.*

110. *Id.*; 2 V.I. Lenin, *Shënime kritike në lidhje me çështjen kombëtare* [Critical Remarks on the National Question], in VEPRATË ZGJEDHURA NË TRI VOLUME [SELECTED WORKS IN THREE VOLUMES], 23-57, 80-141, 721-30 (Tiranë 1977) (originally published in volumes 10, 11, and 12 of PROSVESHENIE in 1913); V.I. Lenin, SKICA E PARË E TEZAVE PËR ÇËSHTJEN NACIONALE DHE KOLONIALE [PRELIMINARY DRAFT THESES ON THE NATIONAL AND COLONIAL QUESTION] (June 1920); 2 V.I. Lenin, VEPRATË ZGJEDHURA NË DY VËLLIME, VËLLIMI II [SELECTED WORKS IN TWO VOLUMES] 708-14 (Tiranë 1958); V.I. Lenin, *Mbi të drejtën e kombeve për vetëvendosje* [On the Right of Nations to Self-Determination] 4, 5, 6 PROSVESHENIE (April-June 1914); V.I. Lenin, *Detyrat e revolucionit*

Lenin has contributed to the recognition of the principle of self-determination as one of the main principles of international law. In harmony with his views, Finland, Poland, Estonia, Lithuania, and Latvia gained their independence between December 18, 1917, and December 22, 1918.¹¹¹ During this period, Russia was ready to recognize the independence of the Ukraine, Crimea, and Georgia.¹¹² The principle of self-determination was confirmed with the Treaty of Friendship, signed between Russia and Persia on February 26, 1921,¹¹³ and the Treaty of Moscow, signed between Russia and Turkey on March 16, 1921.¹¹⁴ The right of the republics to secede from the USSR was recognized in the Constitutions of 1924, 1936, and 1977.¹¹⁵ Of course, Lenin's embrace of the principle of self-determination was subverted by his successors at the helm of the Soviet Union, who viciously repressed separatist tendencies.

It must be stressed that there are significant differences between the views presented by Lenin and Wilson. Despite the fact that both meant to apply self-determination to Europe and the colonies, the American conception of how it should be extended to colonial countries was greatly qualified by the need to take account of the interests of colonial powers. Wilson stated:

A free, open minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.¹¹⁶

The wide gap between the two conceptions was apparent in the criticisms of the Soviet views voiced by the American Secretary of State, Robert Lansing, who wrote that Lenin's program menaced "the stability of the future world by applying the self-determination principle to the colonial world."¹¹⁷ According to Lansing, "however justified may be the principle of local self-government, the necessities of preserving an orderly world

[*The Tasks of the Revolution*] 20, 21 RABOCI PUT (Oct. 9 & 10, Sept. 26 & 27, 1917). The above-mentioned are articles that can be found in Lenin's works published in Russian (in Moscow).

111. J.A.S. GRENVILLE, *A HISTORY OF THE WORLD IN THE TWENTIETH CENTURY* 128-29 (1994).

112. JOHNSON, *supra* note 100, at 74.

113. Treaty of Friendship Between Persia and the Russian Socialist Federal Soviet Republic, Feb. 26, 1921, Persia-Russ., 9 L.N.T.S. 401, 403, 405. In the Treaty of Friendship, the Bolsheviks agreed to withdraw all troops from Persia and turn over all Russian property in Persia to Persia.

114. Treaty of Moscow, Mar. 16, 1921, Russ.-Turk., 118 B.F.S.P. 990. In the Treaty of Moscow, the Turkish government ceded Batum to Soviet Russia in return for Soviet recognition of Turkish sovereignty over Kars and Ardahan.

115. G. Alan Tarr, *Creating Federalism in Russia*, 40 S. TEX. L. REV. 689, 693-95 (1999); Minasyan, *supra* note 87, at 29, 31-32.

116. WILSON'S FOURTEEN POINTS, *supra* note 70, at Point 5.

117. ANTONIO CASSESE, *INTERNATIONAL LAW IN A DIVIDED WORLD* 132 (1986).

require that there should be a national authority with sovereign rights to defend and control the communities within the national boundaries.”¹¹⁸

There are also differences regarding another very important aspect of the right to self-determination. While Lenin insisted on a right to self-determination that included the right to secede and to create independent states, the American concept, which is widely supported in the West, tries to confine the right to self-determination to the so-called “internal self-determination.”¹¹⁹ According to internal self-determination, people have the right to determine their social and political status but cannot decide on their international status. In other words, internal self-determination does not include the right to secede and create an independent state, the right to secede and join another state, or the right to secede and join a state, part of which a people has been, but with a different status, for example, as part of a federation or an autonomous unit.¹²⁰ Internal self-determination confers on a people the right to choose their social and political order and is harmonious with the widely accepted views in the West, where self-determination is synonymous with self-government and the right to democratically elect one’s government.¹²¹

4. The Affirmation of the Principle of Self-Determination During WWII

Between WWI and WWII, the right to self-determination was a political concept that was not yet recognized as a legal norm.¹²² As early as 1941, the leaders of the antifascist coalition stated that putting the right to self-determination into practice after the war was one of the main objectives of the war.¹²³ The signatories of the Atlantic Charter proclaimed that they:

1. desired to see no territorial changes that did not accord with the freely expressed wishes of the peoples concerned;
2. respected the right of all peoples to choose the form of government under which they want to live; and

118. *Id.*

119. CASSESE, *supra* note 57, at 21.

120. See Stephen Alvstad, Note, *The Quebec Secession Issue, With an Emphasis on the “Cultural” Side of the Equation*, 18 TEMP. INT’L & COMP. L.J. 89, 99 n.90 (2004) (explaining distinction).

121. CASSESE, *supra* note 57, at 21; Zejnullah Gruda, E drejta e vetëvendosjes (Paraqitja, zhvillimi, çështjet aktuale) [The Right to Self-Determination (Introduction, Evolution, Current Issues)], Presentation of Paper at Conference hosted by the Helsinki Committee for Human Rights in Serbia, Conference, The Right to Self-Determination in International Law: The Case of Kosova, November 21–22, 1998.

122. CASSESE, *supra* note 57, at 4.

123. *Id.* at 37.

3. wished to see sovereign rights and self-government restored to those who had been forcibly deprived of them.¹²⁴

Through a Declaration by the United Nations, which was adopted on January 1, 1942, twenty-six states subscribed to the common program of purposes and principles embodied in the Atlantic Charter.¹²⁵ Thereafter, the principle of self-determination established itself as the main consideration in the solution of the colonial problem, and many oppressed nations and nations under colonial rule joined the antifascist movement, convinced that the end of the war would bring the fulfillment of their ideals.¹²⁶

According to Article 1 of the Charter of the United Nations, one of the main objectives of the U.N. is “[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.”¹²⁷ Respect for equal rights and the self-determination of peoples are seen as necessary for peaceful and friendly relations among nations.¹²⁸ The Charter requires the members of the U.N., who have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government, “to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions.”¹²⁹ The Charter proclaims that one of the main objectives of the trusteeship system is “to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned.”¹³⁰ The above-mentioned created the legal basis for the liberation of oppressed peoples and peoples under colonial rule.

Nonetheless, the right of peoples to self-determination continued to be disputed. This can be proven by the fact that the principle of self-determination was not incorporated into the Universal Declaration of Human Rights (due to opposition from colonialist states).¹³¹ Since 1952, however, many resolutions of the General Assembly of the U.N. address the

124. Atlantic Charter, *supra* note 70.

125. Declaration by United Nations, Jan. 1, 1942, 55 Stat. 1600, 204 L.N.T.S. 382.

126. CASSESE, *supra* note 57, at 4.

127. U.N. CHARTER art. 1 para. 2.

128. *Id.* at art. 55.

129. *Id.* at art. 73.

130. *Id.* at art. 76.

131. *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. GAOR, 3d Sess. pt. 1, at 71, U.N. Doc. A/810 (1948).

principle of self-determination. *The Right of Peoples and Nations to Self-Determination* called upon all states to promote the realization of that right in relation to the peoples of non-self-governing territories and trust territories.¹³² The Resolution states that “the right of peoples and nations to self-determination is a prerequisite to the full enjoyment of all fundamental human rights.”¹³³ Resolution 523 states that developing countries “have the right to determine freely the use of their natural resources.”¹³⁴ Since the adoption of the U.N. Charter, colonialism represents a flagrant violation of the principles of freedom, equality, sovereignty, and self-determination.

Another step towards the liberation of peoples came with the adoption of the *Declaration on the Granting of Independence to Colonial Countries and Peoples*¹³⁵—traditionally known as the Magna Carta of decolonization.¹³⁶ The Declaration stated that “[a]ll peoples have the right to self-determination . . . and [to] freely pursue their economic, social and cultural development” and called for:

[i]mmediate steps . . . in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or color, in order to enable them to enjoy complete independence and freedom.¹³⁷

The Declaration also called for a cease to “[a]ll armed action or repressive measures . . . directed against dependent peoples . . . in order to enable them to exercise . . . their right to complete independence.”¹³⁸

An article on the right of peoples to self-determination was included in both International Covenants on Human Rights:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

132. G.A. Res. 637(VII)A, *supra* note 71, at 26.

133. *Id.*; UNITED NATIONS, UNITED NATIONS ACTION IN THE FIELD OF HUMAN RIGHTS 54 (1988) [hereinafter U.N. ACTION IN HUMAN RIGHTS].

134. *Integrated Economic Development and Commercial Agreements*, G.A. Res. 523(VI), U.N. GAOR, 6th Sess., Supp. No. 20, at 20, U.N. Doc. A/2119 (1952); U.N. ACTION IN HUMAN RIGHTS, *supra* note 133, at 68.

135. G.A. Res. 1514, *supra* note 67, at 66–67; U.N. ACTION IN HUMAN RIGHTS, *supra* note 133, at 55.

136. AURELIU CRISTESCU, THE RIGHT TO SELF-DETERMINATION: HISTORICAL AND CURRENT DEVELOPMENT ON THE BASIS OF UNITED NATIONS INSTRUMENTS at 9, para. 48, U.N. Doc. E/CN.4/Sub.2/404/Rev.1, U.N. Sales No. E.80.XIV.3 (1981); JOSE A. PASTOR RIDRUEJO, CURSO DE DERECHO INTERNACIONAL PUBLICO Y RELACIONES INTERNACIONALES 283 (Madrid 6th ed. 1996).

137. G.A. Res. 1514, *supra* note 67, at 67.

138. *Id.*

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.¹³⁹

One of the most important steps towards the legalization of the right to self-determination was made through the adoption of the *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States*.¹⁴⁰ In the Declaration, the principle of self-determination of peoples is equal to the principle that States shall refrain from the threat or use of force, the principle of sovereign equality of States, and the principle that States shall fulfill in good faith the obligations assumed by them. Thus, every possibility for the denial of the legal value of the right of peoples to self-determination is eliminated, while at the same time the existing international legal order is not disputed.¹⁴¹ The Declaration proclaims that “all peoples have the right freely to determine . . . their political status and to pursue their economic, social and cultural development” and calls upon states to respect this right.¹⁴² According to the Declaration, the “subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle [of self-determination], as well as a denial of fundamental human rights, and is contrary to the Charter [of the United Nations].”¹⁴³ According to the Declaration, the modes of implementing the right to self-determination are “[t]he establishment of a sovereign and independent State, the free association or integration with an independent State, or the emergence into any other political status freely determined by a people.”¹⁴⁴ The Declaration calls upon States to refrain from any forcible action that deprives peoples of their right to self-determination, freedom, and independence, and authorizes peoples to seek and receive support in accordance with the purposes and principles of the Charter.¹⁴⁵

139. Covenant on Civil and Political Rights, art. 1, *supra* note 67; Covenant on Economic, Social and Cultural Rights, art. 1, *supra* note 67.

140. G.A. Res. 2625, *supra* note 67; U.N. ACTION IN HUMAN RIGHTS, *supra* note 133, at 55.

141. G.A. Res. 2625, *supra* note 67.

142. *Id.* at 123.

143. *Id.* at 124.

144. *Id.*

145. *Id.* at 122.

The right of self-determination was reiterated in the Helsinki Final Act, which states that:

By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.¹⁴⁶

The incorporation of this right in the Helsinki Final Act shows that the right lies not only with the peoples under colonial rule, but with all the peoples and countries of the world.

5. The Positive Effects of Self-Determination

The principle of self-determination was the driving force behind the realization of the national aspirations of many peoples throughout the world in their struggle for freedom, independence, and national unification. This can be proven by the impressive number of states and peoples that gained independence during the last 150 years (more than one hundred gained independence after WWII).¹⁴⁷ This is a sign of the U.N.'s success in promoting the realization of the right to self-determination. The fact that even today there are multinational states that have centralist systems that oppose the right to self-determination cannot change the prevailing attitude that the right of peoples to self-determination is one of the fundamental human rights.

Thus, it is not surprising that the following is written in a very famous book on international law:

The "open" community of today, replacing the "closed" community of earlier times, owes this essential characteristic to the self-determination of peoples. The right of peoples to self-determination has become the instrument, the key and the tool of an open society. Thus self-determination is in a sense a *precondition* for the very *existence* of this type of international community. In other words, this principle is the prior condition which has enabled international society to be what it is. It thus determines *the being* and *the essence* of the present-day international society. Hence, it is an essential, primary principle from which the essence of the present-day international community derives. If there is no self-determination, there is no present-day international community. Thus, in the hierarchy of the norms of international law, self-determination is an essential first and primary condition from which flow

146. Conference on Security and Co-operation in Europe: Final Act, Aug. 1, 1975, 14 I.L.M. 1292, 1295 [hereinafter Helsinki Final Act].

147. CENT. INTELLIGENCE AGENCY, THE WORLD FACTBOOK, FIELD LISTING: INDEPENDENCE (2004), available at <http://www.odci.gov/cia/publications/factbook/fields/2088.html>.

the other principles governing the international community. Self-determination thus belongs to *jus cogens*.¹⁴⁸

Thus, the principle of self-determination is part of positive international law and *jus cogens*.¹⁴⁹

6. Inconsistencies Related to the Principle of Self-Determination

In practice, the question of whether the right to self-determination can be used more than once is often asked. There are different views with regard to this question. To unitary forces in multinational states, the right to self-determination can be used only once. According to this view, the secession of a federal unit, province, or a territory from a state, or its complete disintegration, is not acceptable, even if this is done in accordance with the will of people.

This issue was first raised during the adoption of the Soviet Constitution in 1936. In an address to the Congress of the U.S.S.R., Stalin opposed the calls to remove article 17 from the draft of the Soviet Constitution, which recognized the right of the republics to secede from the Union.¹⁵⁰ Stalin argued that the Soviet Union was a free union of republics; thus, the denial of the right to secession would be a violation of the voluntary character of the Union.¹⁵¹ Stalin stressed that, for the realization of the right of peoples to self-determination, not only was the national factor important, that is—the group had to comprise a compact majority, geographical factors were important as well. Stalin argued that only the republics which were near the border had the right to self-determination, including secession.¹⁵²

This issue was also discussed by the federal units of the SFRY from the moment it became clear that the federation could not exist as such any longer. The political authorities of the time, which had a unitary orientation, did their utmost to prevent any efforts for the reformation, democratization, or modernization of the multinational federation, alleging that the

148. INTERNATIONAL LAW: ACHIEVEMENTS AND PROSPECTS 1184 (Mohammed Bedjaoui ed., 1991) (emphasis in original).

149. RIDRUEJO, *supra* note 136, at 288–89.

150. JOSEPH STALIN, REFERATI NË KONGRESIN VIII GJITHFEDERAL TË SOVIETËVE, Nov. 25, 1936 [ON THE DRAFT CONSTITUTION OF THE U.S.S.R.: REPORT DELIVERED AT THE EXTRAORDINARY EIGHTH CONGRESS OF SOVIETS OF THE U.S.S.R., Nov. 25, 1936], at 35 (1936); JOSIF STALJIN, PITANJA LENJINIZMA [QUESTIONS OF LENINISM] 575–76 (Zagreb 1981).

151. STALIN, *supra* note 150, at 35; STALJIN, *supra* note 150, at 575–76.

152. STALIN, *supra* note 150, at 36–37; STALJIN, *supra* note 150, at 576–77.

peoples that had joined the Yugoslav federation after WWII had already used their right to self-determination.¹⁵³

There were different views regarding this thesis. Ernest Petric argued that all of the postwar Constitutions recognized the right of self-determination for the peoples of Yugoslavia.¹⁵⁴ Professors Avramov and Kreca from the Law Faculty in Belgrade argued that the Constitution of 1974 recognized the right to secession, but conditioned that recognition on the consent of all the members of the federation, both republics and provinces.¹⁵⁵ On the other hand, Miodrag Jovicic claimed that the peoples who had joined the SFRY based on their free will had consumed the right to self-determination, including the right to secession.¹⁵⁶ In support of this view, the latter stated that the right of the republics to secession was not proclaimed in the normative part of the Constitution.¹⁵⁷ In contrast, Branko Horvat argued that those who decide voluntarily to join a certain entity can also decide to separate from it. Horvat's analysis would apply to Kosova, as the latter joined Serbia by the decision of its representatives in July 1945. Therefore, its representatives can decide to separate from Serbia.¹⁵⁸

Most international acts support the view that the right to self-determination cannot be consumed; it can be used more than once. It is a fundamental right without which people would not be able to enjoy other rights. Many constitutions recognize the right to self-determination, including secession. Further, international recognition of the independence of the former Soviet and Yugoslav republics confirms the international community's acceptance of the right of peoples to self-determination as a fundamental human right.

7. The Content of the Principle of Self-Determination

In international law, the right of self-determination means the right of people to decide on their own political status (external self-determination) and the right to determine freely by and for themselves their political, economic, social, and cultural status (internal self-determination).

According to international acts external self-determination includes:

153. This view is supported by the constitutional scholarship of Serbia and Montenegro. *See, e.g.*, MIODRAG JOVICIC, *VELIKI USTAVNI SISTEMI* (Beograd 1984).

154. Ernest Petric, *Nadglasavanje slobodne volje. Rizik nametnutog ustava*, *BORBA*, Mar. 15 & 16, 1988.

155. SMILJA AVRAMOV & MILENKO KRECA, *MEDJUNARODNO JAVNO PRAVO [PUBLIC INTERNATIONAL LAW]* 82 (Beograd 2001).

156. JOVICIC, *supra* note 153.

157. *Id.* at 238.

158. BRANKO HORVAT, *KOSOVSKO PITANJE [KOSOVA ISSUE]* 92-93 (Zagreb 1988).

1. the right of a people to secession or the establishment of a sovereign and independent state;
2. the right of a people to secession and association with an independent state; and
3. the right of a people to unification with a state of which it has been a part, but with alterative status, for example, as an autonomous member of a federation.¹⁵⁹

This was best interpreted by American Democrat Congressman Eliot Engel, who in an interview stated:

I continue to remain convinced that the only solution for Kosova is the right of its people for self-determination. If they want a Republic for Kosova, their will must be respected; if they want union with Albania, their will must be respected; if they want to remain in a confederation equal to Serbia and Montenegro, their will must be respected again. The political future of the Albanians of Kosova must be their own decision and not that of Milosevic or the International Community. I strongly believe in self-determination for all peoples; therefore, Albanians deserve the same destiny.¹⁶⁰

Internal self-determination includes:

1. the right of people to determine their political and social regime;
2. the right of people to freely dispose of their natural resources and pursue economic development; and
3. the right to solve all matters under domestic jurisdiction.¹⁶¹

In practice, out of all these forms of manifestation of the right of peoples to self-determination, states were mainly opposed to the right to secession. In democratic countries, such problems were solved without great difficulties, for example, in the cases of Norway and Sweden, the Czech Republic and Slovakia, and the breakup of the former Soviet Union. On the other hand, in totalitarian, hegemonic, and imperialist countries, the efforts of different peoples to secede were suppressed, for example, in the case of former Yugoslavia.

In order to understand the problem properly, it must be stressed that the calls for self-determination are provoked by the nature of certain regimes and the relations in multinational states. According to Paine, America proves that even in countries where no harmony is expected because of

159. G.A. Res. 2625, *supra* note 67.

160. ZĚRI, Oct. 25, 1997.

161. CRISTESCU, *supra* note 136, at 20–25, para. 113–65; HÉCTOR GROS ESPIELL, THE RIGHT TO SELF-DETERMINATION: IMPLEMENTATION OF UNITED NATIONS RESOLUTIONS at 22–28, para. 113–65, U.N. Doc. E/CN.4/Sub.2/405/Rev.1, U.N. Sales No. E.79.XIV.5 (1980); Levin, *supra* note 84, at 29–31.

their national composition and the multitude of languages and religions, all parties can create a sincere alliance through a government based on social principles and human rights.¹⁶² Lenin stressed that there is no national issue in Switzerland and no tendency for secession despite the fact that it is a heterogeneous state (as far as its ethnic composition and linguistic differences are concerned).¹⁶³

III. PLEBISCITE OR REFERENDUM AS A MEANS TO EXPRESS THE WILL OF THE PEOPLE

The will of the people was first mentioned after the signing of the Treaty of Madrid in 1526.¹⁶⁴ There, the king of France stated that territorial changes could take place only with the consent of the inhabitants.¹⁶⁵ In literature, such views were first presented by the Dutch jurist, Hugo Grotius. According to the latter, “Just as, in fact, there are many ways of living, one being better than another, and out of so many ways of living each is free to select that which he prefers, so also a people can select the form of government which it wishes.”¹⁶⁶ Grotius stated that the consent of the people was a fundamental issue.¹⁶⁷ Such views were supported by other authors as well. According to I.K. Bluncli, in order to legalize territorial acquisitions it is necessary to have the consent of the people.¹⁶⁸ In 1940, Hackworth stated that “[t]he consent of the population of ceded territory is not essential for the validity of the cession” but added that “in recent years cessions of territory have frequently been conditioned upon the will of the people as expressed in plebiscite.”¹⁶⁹

After WWI, the plebiscite became the most important institution for the recognition of the right of peoples to self-determination. A plebiscite

162. THOMAS PAINE, RIGHTS OF MAN 367 (Moncure D. Conway ed., New York & London, G.P. Putnam's Sons 1894); TOMAS PEJN, PRAVA COVEKA 203 (Beograd 1987).

163. Vladimir Il'ich Lenin, *Shënime kritike në lidhje me çështjen kombëtare* [*Critical Remarks on the National Question*], in VEPRJA TË ZGJEDHURA NË TRI VËLLIME, VËLLIMI II [2 SELECTED WORKS IN THREE VOLUMES] *supra* note 110, at 24–25, 45–47.

164. 1 ACCIOLY, *supra* note 73, at 91.

165. *Id.*

166. 1 HUGO GROTIUS, DE JURE BELLI AC PACIS LIBRI TRES [ON THE LAW OF WAR AND PEACE] 104 (James B. Scott ed., Francis W. Kelsey trans., Oceana Publications 1964) (1925); *see also* 2 GROTIUS, *supra*, at 261.

167. *Id.*

168. I.K. BLUNCLI, SOVREMENOE MEZDUNARODNOE PRAVO CIVILIZOVANIH GOSUDARSTV, IZLOZENO V VIDE KODEKSA 187–89 (Moskva 1877); B.M. Klimenko, *Mezdunarodno pravovoja priroda goosudarstvenoj territorii* [*International Legal Nature of the State Territory*], SOVETSKIJ EZEGODNIK MEZDUNARODNOGO PRAVA 195 (1968).

169. 1 GREEN H. HACKWORTH, DIGEST OF INTERNATIONAL LAW 422 (1940); HENKIN, *supra* note 94, at 310.

facilitates the right of the people to vote on the status of the territory in which they live.¹⁷⁰ Plebiscite is a means to determine the will of the people. It can be based on an internal act, on the decision of an international organization, or envisaged in an international treaty.¹⁷¹ After WWII, this principle became a constitutive part of the most important documents of the time. According to the Helsinki Final Act, “all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status.”¹⁷²

In practice, plebiscites have been employed on a number of occasions, including in Togo, Cameroon, Rwanda-Burundi, Western Samoa, French Polynesia, and East Timor.¹⁷³ Yet, there are also cases when a plebiscite was disputed or sabotaged. The plebiscite in Kashmir could not be held due to obstruction from India.¹⁷⁴ Similarly, Polisario opposed an OAU-proposed referendum in Western Sahara, insisting on the fact that the people of Sahara had already used the right to self-determination.¹⁷⁵ Polisario’s remarks could have been based on the view that the National Liberation Movement, rather than referendum, is the authentic manifestation of the will of the people.¹⁷⁶ Justice Ammon, of the International Court of Justice, stated that nothing shows the will for emancipation more clearly than the efforts undertaken in that direction together with the risk and immense sacrifices such a struggle entails, adding, “[t]he struggle is more decisive than a referendum, being absolute sincere and authentic.”¹⁷⁷ The United Nations has also recognized that liberation movements are authentic representatives of the lawful aspirations of a people for liberation and gave them observer status at the U.N.¹⁷⁸

The above-mentioned illustrates that the will of the people and plebiscite have become part of international law. For example, England, in relation to Gibraltar during the 1960s, insisted that it would not enter into any arrangements on the basis of which the people of Gibraltar would be put under the sovereignty of another state, against their freely and democratically expressed will.¹⁷⁹ Therefore, in 1967, the U.K. organized a referen-

170. MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY, *supra* note 93, at 891.

171. *See generally* Visuvanathan Rudrakumar, *The “Requirement” of Plebiscite in Territorial Rapprochement*, 12 HOUS. J. INT’L L. 23 (1989).

172. Helsinki Final Act, *supra* note 146, at 1295.

173. Rudrakumar, *supra* note 171, at 31.

174. *Id.* at 30.

175. *Id.* at 31, 45.

176. *Id.* at 45.

177. Western Sahara, 1975 I.C.J. 33, 100 (Oct. 16) (Advisory Opinion).

178. Rudrakumar, *supra* note 171, at 45.

179. *See* CASSESE, *supra* note 57, at 210.

dum, in which the people of Gibraltar declared themselves in favor of maintaining their ties with Britain.¹⁸⁰ This stance was incorporated in the Constitution of Gibraltar.¹⁸¹ England held a similar position in relation to the Falklands. According to the British, “it is upon the islanders to determine what their ultimate constitutional status shall be,” adding that the Charter of the United Nations and the *Declaration on the Granting of Independence to Colonial Countries and Peoples* states that “those wishes should be paramount.”¹⁸²

Such a stance was reinforced during the last decade of the twentieth century when the U.K. expressed its readiness to recognize the legitimacy of “whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its status.”¹⁸³ Until a final settlement was reached, Northern Ireland would be considered part of the U.K., that is—it would remain part of the U.K. as long as this reflected the democratic will of the majority of the population.¹⁸⁴ The New Framework for Agreement, which was a joint paper of the British and Irish Governments, emphasized that the two governments “take as guiding principles for their co-operation in search of this agreement the principle of self-determination as set out in the Joint Declaration” and that:

the British Government recognise[s] that it is for the people of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish; the Irish Government accept[s] that the democratic right of self-determination by the people of Ireland as a whole must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland.¹⁸⁵

This principle was reaffirmed by the U.N. through General Assembly and Security Council resolutions after the invasion of East Timor in December 1975.¹⁸⁶ The U.N. called for Indonesia’s withdrawal from East

180. *Id.* at 208. The result of the referendum was that 12,138 wanted Gibraltar to remain in association with the U.K.; 44 wanted it to become a part of Spain. *Id.*

181. *Id.* at 210.

182. Rudrakumaran, *supra* note 171, at 43.

183. Agreement Reached in Multi-party Negotiations, Apr. 10, 1998, U.K.-N. Ir.-Ir., available at <http://www.ucc.ie/celt/published/E900003-006/> (also known as the Multi-party Agreement, the Good Friday Agreement, and the Belfast Agreement).

184. *Id.*; Ibrahim Berisha, *Politika angleze dhe shqiptarët [British Policy and Albanians]*, BOTA SOT, Feb. 7, 1996.

185. A New Framework for Agreement, Feb. 22, 1995, 34 I.L.M. 946, 948, 949–50.

186. *Question of Timor*, G.A. Res. 3485(XXX), U.N. GAOR, 30th Sess., Supp. No. 34, at 118, U.N. Doc. A/10034 (1975); S.C. Res. 384, U.N. SCOR, 30th sess., 1869th mtg. U.N. Doc. S/11915 (1975).

Timor and for all states to allow the people of East Timor to decide their future.¹⁸⁷ A similar view was expressed by Dr. Klaus Hens, the Vice-Chairman of the European Parliament, when he stated that, “the status of Kosova must be sought through a referendum under international supervision.”¹⁸⁸

A plebiscite was organized in Puerto Rico on July 23, 1967, based on an internal act, through which the voters were to decide on the final political status of Puerto Rico.¹⁸⁹ A vote for the Commonwealth would mean “reaffirmation of the Commonwealth, the inviolability of Puerto Rican United States citizenship, the authorization to develop the Commonwealth to a maximum of self-government, and the permanence of the Puerto Rico-United States relationship.”¹⁹⁰ A vote for statehood would mean “the authorization to ask the Congress of the United States of America to admit Puerto Rico as a federated state of the American Union,” whereas a vote for independence would mean “the authorization to ask Congress for the independence of Puerto Rico from the United States of America.”¹⁹¹ In 1967, the Commonwealth option attracted a majority vote.¹⁹²

A second plebiscite was held in 1993, based on numerous bills on the status of Puerto Rico that the U.S. Congress considered in 1989, 1990, and 1991, implicitly authorizing plebiscite for the future political status of Puerto Rico.¹⁹³ Puerto Ricans choose among three options: independence, citizenship, or a Commonwealth. None of the options won more than 50% of the votes.¹⁹⁴

In 1961, Austria called for the consideration of the problem of South Tyrol in the General Assembly of the United Nations, insisted on “complete autonomy” for the province of Bozen, and underlined that a just solution for this problem could be achieved only through the application of the principle of self-determination.¹⁹⁵

187. D.J. HARRIS, *CASES AND MATERIALS ON INTERNATIONAL LAW* 101 (3d ed. 1983).

188. NASA BORBA, Feb. 17–18, 1996.

189. Jesús G. Román, Comment, *Does International Law Govern Puerto Rico's November 1993 Plebiscite?*, 8 LA RAZA L.J. 98, 112–13 (1995).

190. *Id.* at 113.

191. *Id.*

192. *Id.* at 98.

193. *Id.*

194. *Id.*

195. CASSESE, *supra* note 57, at 105.

IV. THE MAIN PREMISES FOR THE SOLUTION OF THE FINAL STATUS OF KOSOVA

The efforts for the solution of the final status of Kosova must be based on two premises: (1) the full respect of the principles of law and justice and (2) the rejection of the use of force, which is incompatible with the rules of international law. Additionally, an important role must be played by (1) the *uti possidetis* principle (Kosova was a separate part of the Yugoslav federation, with clearly defined borders) and (2) the ethnic principle. Solutions that do not respect the right of peoples to self-determination are not just or sustainable as the right of peoples to self-determination is a prerequisite to the full enjoyment of all fundamental human rights.¹⁹⁶

A. *The Principle of Legitimacy*

The principle of legitimacy is problematic for advocates of the independence for Kosova because Serbia has not consented to it.¹⁹⁷ This principle is nothing but a reactionary effort to prevent the self-determination of peoples who fight against tyranny.¹⁹⁸ If the consent of Serbia had been required, Slovenia, Croatia, Bosnia-Herzegovina, and Macedonia should have been denied their right to independence. It is unrealistic to expect that Serbia will consent to the independence of Kosova. Kosova and its people have the right to be free regardless of Serbia's position. The only apparent basis for such a power depends on an interpretation of the 1974 Constitution, according to which Kosova was a constitutive unit of the federation of free and equal nations and nationalities and had equal rights with the republics.

B. *The Uti Possidetis Principle as Applied to Kosova*

The 1974 Yugoslav Constitution recognized the "autonomy" of Kosova, while also recognizing the power of other autonomous units within Yugoslavia, called "republics," to secede. Accordingly, interpretation of the 1974 Constitution is crucial to advocacy of independence for Kosova under the principle of legitimacy.

196. G.A. Res. 637, *supra* note 71, at 26.

197. If at a future date, Serbia were to consent to Kosova's independence, that consent would satisfy the principle of legitimacy.

198. JURAJ ANDRASSY, *MEDJUNARODNO PRAVO* [INTERNATIONAL LAW] 34, 66 (Zagreb 1971); I MILAN BARTOSH, *MEDJUNARODNO JAVNO PRAVO* [PUBLIC INTERNATIONAL LAW] 184–85, 191, 213, 282 (Beograd 1954); ROUSSEAU, *supra* note 57, at 321.

According to the Constitutions of 1974 (federal, republican, and provincial), Kosova was a constitutive element of the Yugoslav federation and enjoyed equality with the other federal units.¹⁹⁹ Evidence of this can be seen from the Constitution of the Socialist Autonomous Province of Kosova of 1974, which enumerated Kosova's state attributes:

1. the right of the province to adopt and change its constitution;
2. the right to adopt laws;
3. the right to exercise constitutional judicial functions and to have a constitutional court;
4. judicial autonomy and the right to have a Supreme Court;
5. the right to decide on changes of its territory;
6. the right to ratify treaties that were concluded with foreign states and international bodies;
7. the right to have independent organs, such as a Parliament, Presidency, and Executive Council (Government); and Ministries such as the Ministry of Defense, the Ministry of Justice, the Ministry of Internal Affairs, and the Ministry of Foreign Affairs.²⁰⁰

That Kosova was a constitutive element of the Yugoslav federation, deserving of treatment equal to that of the other federal units, is supported by the remarks of Stipe Mesic, the President of Croatia, who was the chairman of the Yugoslav Presidency prior to its dissolution. During his testimony in the trial against Milosevic at the Hague, Mesic stated that "Vojvodina and Kosova were autonomous provinces and they were constituent elements of the Federation, just like the six republics."²⁰¹ He added that through the changes of the status of Kosova, which were done by force and against the will of the people, the implementation of the project for the creation of a greater Serbia began in the ruins of the Yugoslav federation.²⁰² Furthermore, in 1991, Mesic had called upon the international community to recognize the existing subjects of the Yugoslav federation, including Kosova and Vojvodina.²⁰³

199. SOCIALIST FED. REPUBLIC OF YUGOSLAVIA CONST. art. 1, *reprinted in* YUGOSLAVIA THROUGH DOCUMENTS, *supra* note 4, at 225; YUGOSLAVIA REPUBLICS AND PROVINCES 170 (1979).

200. SOCIALIST AUTONOMOUS PROVINCE OF KOSOVA CONST. art. 301, 349, 372, 390, *translated in* HELSINKI COMM. FOR HUMAN RIGHTS IN SERBIA, *supra* note 6, at 38, 45.

201. Transcript, Prosecutor v. Milosevic, Case No. IT-02-54, I.C.T.Y., at T. 10516 (Oct. 1, 2002), *available at* <http://www.un.org/icty/transe54/021001IT.htm>; KOHA DITORE, Oct. 2, 2002.

202. *Id.* at T. 10522; KOHA DITORE, Oct. 2, 2002.

203. Stipe Mesic, at the Symposium organized by the Institute fur Auswartige Beziehungen on Franz Joseph Strauss, Nov., 17-19, 1991.

According to the Constitution of the Socialist Federal Republic of Yugoslavia of 1974, the territories of its units were defined with “borders,” which could not be altered without their consent.²⁰⁴ According to the Constitution of the Socialist Republic of Serbia of 1974, the “territory of an autonomous province may not be altered without the consent of the provincial assembly.”²⁰⁵ According to the Constitution of the Socialist Autonomous Province of Kosova of 1974, “[t]he territory of the Socialist Autonomous Province of Kosova may not be altered without the consent of the Provincial Assembly.”²⁰⁶ The Constitution of the SFRY uses the word boundaries for the lines that divided the constitutive units of the federation and did not make any distinction between republics and provinces.²⁰⁷ A publication of the (Yugoslav) Federal Secretariat for Foreign Affairs confirms that the *uti possidetis* principle should apply to Kosova: “the boundaries of the province cannot be changed without the consent of the assembly.”²⁰⁸ Application of the *uti possidetis* principle is based on the rights and obligations contained in the aforementioned Constitutions.

The problem of borders, however, is complicated by the fact that the Serbs see the independence of Kosova in the existing, administrative borders as a change of borders and a violation of the Helsinki principles.²⁰⁹ The Albanians do not see this as a change of borders, as Kosova had its borders similarly to the other units of the federation. To the Albanians, the efforts of Serbia to keep Kosova within the Union of Serbia and Montenegro violate the *uti possidetis* principle from the aspects of both constitutional and international law.

The problem of borders is also complicated by regional concerns. The international community fears that the change of borders would have a “domino effect” in the region. Further, Serbs state that the independence of Kosova would open the issue of the Albanians in Macedonia and the Presheva Valley as well as that of the Serbs in Bosnia. The Albanians, however, consider that if Kosova is divided along ethnic lines then the

204. SOCIALIST FED. REPUBLIC OF YUGOSLAVIA CONST. art. 5, *reprinted in* YUGOSLAVIA THROUGH DOCUMENTS, *supra* note 4, at 226.

205. SOCIALIST REPUBLIC OF SERBIA CONST. art. 292, *translated in* HELSINKI COMM. FOR HUMAN RIGHTS IN SERBIA, *supra* note 6, at 27, 33–35.

206. SOCIALIST AUTONOMOUS PROVINCE OF KOSOVA CONST. art. 3, *translated in* HELSINKI COMM. FOR HUMAN RIGHTS IN SERBIA, *supra* note 6, at 41.

207. SOCIALIST FED. REPUBLIC OF YUGOSLAVIA CONST. art. 5, *reprinted in* YUGOSLAVIA THROUGH DOCUMENTS, *supra* note 4, at 226.

208. FED. SECRETARIAT FOR FOREIGN AFFAIRS OF THE SOCIALIST FED. REPUBLIC OF YUGOSLAVIA, ETHNIC ALBANIANS IN THE SFR OF YUGOSLAVIA 17 (Press, Information and Cultural Affairs Sector Belgrade, Apr. 1989).

209. Helsinki Final Act, *supra* note 146, at 1294.

same right can be requested by the Albanians in Serbia and Macedonia, the Serbs in Bosnia, and the Bosnians in Sandjak.²¹⁰

C. The Ethnic Principle

One of the most important principles to be taken into account during the process for the determination of the final status of Kosova is the ethnic principle. Applying the principle of ethnicity engenders controversy over the ethnic makeup of Kosova.

Despite being multiethnic, Kosova has a population with an Albanian majority. Albanians are a majority in all the municipalities of Kosova except for Leposaviq. According to the census in 1981, the percentage of Serbs and Montenegrins in Kosova was 14.7%.²¹¹ According to the 1991 census, boycotted by the Albanians, the total number of Albanians living in Kosova was estimated at 1,607,000, comprising 81.6% of the population.²¹² Albanians regard this figure as a clear underestimation. Another publication in 1993 estimated that the population of Kosova consisted of less than or approximately 2 million people, of whom 90% were Albanians.²¹³ According to the 1991 census, organized by the Serb authorities in Kosova, the total number of Serbs and Montenegrins in Kosova was 191,700, which comprised about 10% of the population.²¹⁴ The Albanians of Kosova together with the Albanians in Macedonia, Southern Serbia, and Montenegro comprised the third largest ethnic group in former Yugoslavia.²¹⁵

A very important problem related to population data is the number of displaced persons, an object of great dispute. In the Congress of the Socialist Party of Serbia in February 2000, a number of 350,000 displaced persons, including 260,000 Serbs from Kosova, was mentioned.²¹⁶ In the 53d session of the United Nations High Commissariat for Refugees in 2002, the

210. Hivzi Islami, *Which Are the Options for the Division of Kosova?*, KOHA DITORE, Apr. 3, 2004; Tim Judah, *Closing the Circle in Kosova*, KOHA DITORE, Apr. 3, 2004; Augustin Palokaj, *Serbia Threatens Europe with a War in Bosnia if Kosova Becomes Independent*, KOHA DITORE, Jan. 13, 2003; Augustin Palokaj, *Who Will Save Kosova from Being Divided?*, KOHA DITORE, Mar. 8, 2004.

211. Dimitrije Bogdanovic, *The Kosova Question—Past and Present*, in KOSOVA 153 (Basil W.R. Jenkins ed., 1992); ETHNIC ALBANIANS IN THE SFR OF YUGOSLAVIA, *supra* note 208, at 5.

212. RADAN, *supra* note 62, at 196.

213. CASSESE, *supra* note 57, at 268.

214. Steven Erlanger, *Crisis in the Balkans: Belgrade; Diplomat Says Serbs Want Some Albanians in Kosova*, N.Y. TIMES, Apr. 25, 1999, § 1, at 16.

215. INT'L HELSINKI FED'N FOR HUMAN RIGHTS, FROM AUTONOMY TO COLONIZATION: HUMAN RIGHTS IN KOSOVA 1989–1993, at 1 (1993).

216. UNMIK Division of Public Information, Media Monitoring, Local Media Monitoring, *What is the Real Number of Serb IDPs from Kosova?*, KOHA DITORE, July 30, 2003 (page references unavailable), available at <http://www.unmik-online.org/press/2003/mon/Jul/lmm%20300703.htm>.

permanent representative of Serbia and Montenegro to the U.N. in Geneva, Milorad Scepanovic, stated that the number of displaced persons in Serbia is 290,000, of whom 260,000 are Serbs, which is much higher than the number of Serbs who ever lived in Kosova.²¹⁷ Another foreign author lacking reliable statistical data mentions a range of 150,000–300,000 internally displaced persons (“IDPs”) and adds that the number most frequently mentioned is 200,000 IDPs.²¹⁸ The latter adds that it is a deception to include the Serbs from Croatia and Bosnia brought to Kosova by Milosevic in the mid-1990s in the number of IDPs.²¹⁹ Such numbers continuously were spread abroad to exaggerate the problem or to open up new possibilities for colonization, as Milosevic attempted during the 1990s by bringing Serbs from Krajina. Unfortunately, very frequently the victims of such manipulation are internationals. Russian President Vladimir Putin spoke on the need for the return of 200,000 Serbs.²²⁰ Unfortunately, even the ICG, based on information taken from the United Nations Human Commissioner for Refugees, mentions in one of its own publications the number of 235,000 ethnic Serbs who allegedly left Kosova after the entry of KFOR.²²¹

By any account, the dominant ethnic group in Kosova is Albanian. The principle of ethnicity, applied to Kosova, thus supports independence.

D. The Principle of Self-Determination and the Albanian Issue in Former Yugoslavia

The principle of self-determination has great support in scientific circles, democratic countries, and among peoples under foreign rule. It also has great support among the Albanians, who had been severely affected by the territorial divisions in the European continent. Many scholars, including Serbs, recognize the latter. According to the Serb academician, Vladimir Dedijer, “the interests of no nation were the object of such shameless bargaining, in the peace conferences after WWI, as were the interests of the

217. *Id.*

218. Valur Ingimundarson, *Pitting Democratic Standards Against Sovereign Rights: The Nature of International Rule in Kosova*, 8 NEW BALKAN POL.: J. POL. 21 (2003), available at <http://www.new-balkan-politics.org.mk/napis.asp?id=11&lang=English>.

219. *Id.*

220. *Putin Calls for “Consistent Efforts” in Bringing Peace and Order to the Balkans*, BBC MONITORING INTERNATIONAL REPORTS, Sept. 6, 2003, available in LexisNexis AllNews database and on file with the Chicago-Kent Law Review; KOHA DITORE, Sept. 8, 2003.

221. INT’L CRISIS GROUP, BALKANS REP. NO. 134, FINDING THE BALANCE: THE SCALES OF JUSTICE IN KOSOVA 24 (Sept. 12, 2002).

Albanians.”²²² Following the Berlin Congress and the Balkan Wars, many territories that were inhabited by Albanians were cut off through borders that were drawn by the great powers in total opposition to the principle of nationality and the right to self-determination.²²³ This fact is confirmed by a number of Serb scholars who acknowledge that the annexation of Kosova in 1913 by Serbia and Montenegro “was in opposition to the aspirations of the Albanian people, which were expressed in the movement for national liberation between 1878 and 1912.”²²⁴ Similarly, in 1918 Albanians “opposed their incorporation in Serbia, respectively Yugoslavia.”²²⁵

The incorporation resulted in the division of the Albanian nation and its territories in two. These facts were confirmed by Dimitrije Tucović, who stated that “half of the population of Albania was left within our new borders.”²²⁶ This was the moment the Albanian problem was born, which has ever since continued to be one of the gravest problems not only in the Balkans but in Europe as well.

After WWI, the Albanians in Yugoslavia were treated as a national minority but were deprived of all the rights envisaged by the system of the League of Nations. They were subjected to brutal oppression and efforts at assimilation, including killings, beatings, the burning of villages, confiscation of property, and the banning of the use of the Albanian language. Kosova was turned into a place of oppression that was threatened with the “extermination of the Albanian population.”²²⁷ This was confirmed by Josip Tito, former ruler of the SFRY, in an article published on December 16, 1942. In it, he branded Yugoslavia as a “country where national oppression takes place” and painted the Albanians as an “oppressed nation subjected to extermination.”²²⁸ Because of the oppression, the Albanians of Kosova, Macedonia, and Montenegro laid their hopes with the principle of self-determination.

222. 2 SRBIJA I ALBANCI: PREGLED POLITIKE SRBIJE PREMA ALBANCIMA OD 1913 DO 1945 GODINE 17 (Ljubljana 1989) (quoting VLADIMIR DEDIJER, JUGOSLAVIJA OD VERSAJA DO PARIZA [YUGOSLAVIA FROM VERSAILLES TO PARIS] 24 (Belgrade 1947)).

223. HAZEN, *supra* note 48, at 314.

224. RADOŠIN RAJOVIĆ, AUTONOMIJA KOSOVA: ISTORIJSKO-PRAVNA STUDIJA 64 (Beograd 1985).

225. *Id.* at 65.

226. 1 DIMITRIJE TUCOVIĆ, SRBIJA I ALBANCI, *supra* note 222, at 29 (quoting *Strategijske tačke u Arbaniji*).

227. *Id.* at 75–76 (citing MILOVAN OBRADOVIĆ, AGRARNA REFORMA I KOLONIZACIJA NA KOSOVU 1918–1941, at 83 (Priština 1981)).

228. Josip Broz Tito, *Nacionalno pitanje u Jugoslaviji u svetlosti narodno-oslobodilačke borbe*, [Çështja kombëtare në Jugosllavi në dritën e luftës nacional-çlirimtare], [The National Issue in Yugoslavia in the Light of the War for National Liberation], PROLETER, Dec. 16, 1942, reprinted in 1 SRBIJA I ALBANCI, *supra* note 222, at 81; see also JOSIP BROZ TITO, NACIONALNO PITANJE I REVOLUCIJA 59 (Beograd 1977).

Consequently, the First Conference of the People's Liberation Committee for Kosova and Dukagjini, held December 31, 1943–January 2, 1944,²²⁹ proclaimed that it would respect the will of the people. Such a declaration was in accordance with views proclaimed before and during WWII. The Resolution, which was adopted on that occasion, reads in its most pertinent part as follows: “[t]he Kosova and Metohija area is a region . . . which has always as today, desired to unite with the land of [Albania].”²³⁰ The Resolution expressed the view that, as the result of common struggle, the time would come when “all peoples, including the [Albanians], [would] be in a position to declare themselves regarding their fate, with the right of self-determination, including the right to secession.”²³¹ According to the Resolution, the above-mentioned would be guaranteed by the National Liberation Army of Yugoslavia; the National Liberation Army of Albania; and the allies of the antifascist coalition: the Soviet Union, Great Britain, and the United States.²³² These views have never been disputed. Nonetheless, the Central Committee of the Communist Party of Yugoslavia (“CPY”), in a letter addressed to the Regional Committee of the CPY for Kosova and Dukagjini dated March 28, 1944, criticized such views as premature, stating that they would prejudice the solution of the national issue of the Albanians in Kosova. Yet, the letter reiterated the determination to guarantee equality to all the peoples of Yugoslavia and to guarantee their right to self-determination.

A second Resolution of the People's Committee for Kosova and Dukagjini, adopted on July 10, 1945, acknowledged that the status of the province would be determined in accordance to the will of the people. Thus, both committee Resolutions recognize the right of the people of Kosova to declare themselves regarding their fate and consequently recognize the right of Kosova, as a separate political and territorial unit, to self-determination.

E. The Principle of Self-Determination in Kosova

The Interim Agreement for Peace and Self-Government in Kosova, which was signed in Rambouillet, France, on February 23, 1998, provides the following:

229. Resolution of the First Conference of the People's Liberation Committee for Kosova and Dukagjini, *partially reprinted in* ALEX N. DRAGNICH & SLAVKO TODOROVICH, *THE SAGA OF KOSOVA: FOCUS ON SERBIAN-ALBANIAN RELATIONS* 143 (1984).

230. *Id.*

231. *Id.*

232. *Id.*

Three years after the entry into force of this Agreement, an international meeting shall be convened to determine a mechanism for a final settlement for Kosova, on the basis of the will of the people, opinions of relevant authorities, each Party's efforts regarding the implementation of this Agreement, and the Helsinki Final Act, and to undertake a comprehensive assessment of the implementation of this Agreement and to consider proposals by any Party for additional measures.²³³

According to the above-mentioned, the first criterion is the "will of the people," which is in harmony with the principles of international law and democracy. Yet, the Rambouillet Accords also envision the need to take into consideration the "opinions of relevant authorities,"—that is, the most powerful countries—in determining the future of Kosova, and the Helsinki Final Act, which conditions the change of borders on the achievement of an agreement.²³⁴

Other documents that deal with the Kosova issue are based on the Rambouillet Agreement. Resolution 1244 envisioned the establishment of an interim provisional administration in Kosova that would "facilitat[e] a political process designed to determine Kosova's future status, taking into account the Rambouillet Accords."²³⁵

The Resolution does not deal with the status of Kosova and does not set a time limit for the settlement of the final status. Nonetheless, the Resolution recognized the sovereignty and territorial integrity of the Federal Republic of Yugoslavia, leaving Kosova within the borders of the FRY.²³⁶ On one hand, the text of the Resolution is transitional in character as well as final status oriented. On the other hand, it is possible for the powerful states to interpret the text of the Resolution according to their own interests. On May 6, 1999, the Foreign Ministers of the G-8 group reconfirmed the view that the process to provide substantial self-government for Kosova must take full account of the Rambouillet Accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia.²³⁷

The right of peoples to self-determination is an undeniable right, unless one questions the international order and the U.N. Only the timing of the process is open for discussion, as fulfillment of the principle of self-

233. Interim Agreement for Peace and Self-Government in Kosova, ch. 8, art. 1, para. 3, Feb. 23, 1999, U.N. Doc. S/1999/648 (June 7, 1999) [hereinafter Rambouillet Accords]; BAJRAMI, *supra* note 11, at 270–331.

234. Rambouillet Accords, *supra* note 233, at ch. 8, art. 1, para. 3; Helsinki Final Act, *supra* note 146.

235. S.C. Res. 1244, *supra* note 1, ¶ 11(e).

236. *Id.* ¶ 10.

237. G-8's "General Principles" for Solving Kosova Crisis, CHRISTIAN SCI. MONITOR, May 7, 1999, at 8.

determination depends on a number of internal and external factors. Moreover, only Serb, Russian, or other nationalists who want to maintain the territories they have annexed as well as national oppression dispute the principle. It would be very tragic indeed if there were a need to argue the principle of self-determination to democratic countries.

CONCLUSION

Restoration of Serbian authority over Kosova is an entirely unacceptable final status solution for Kosovar Albanians. Further, the international administration of Kosova must end eventually. The future status of Kosova must be resolved and based on the following premises: (1) the application of the principle of self-determination, (2) the organization of plebiscite under international supervision as a means to determine the will of the people, and (3) the determination of status in conformity with the will of the majority of the population.