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STATES AND NATIONS COMPARED. THE CASE OF KOSOVO AND UKRAINE VERSUS GLOBAL POLITICS

Abstract

The 2008 proclamation of Kosovo's independence, quickly recognized by many states including almost every single one of the western world, showed that a respected international legality does not exist anymore. In fact, in the eyes of the so-called "international community" Kosovo's secession, pursued by the Albanian majority despite the resistance of the local Serbian nationality (including Belgrade's government's efforts against it) and the minority ethnic groups (Goranis, Roma) is a fait accompli that the community itself supported. However, Kosovo's case is to be interpreted as a dangerous precedent that can endanger the territorial integrity of many states with national minorities aspiring to secession. This happened despite the existence of international law that does not allow unilateral acts of territorial secession, but only the eventuality of commonly agreed political separations. Examples of this kind could be the attempted secession of the eastern regions from the Ukrainian state, and the successful secession of Crimea from Kiev (that was successful also due to Russia's support). Such initiatives were supported by Russia and opposed by the West, with an inversion of roles completely opposite to Kosovo's case, that could be described as the other side of the same coin – with roles reversed – compared to the Ukrainian crisis: in Kosovo it was the West (the USA and most of the EU) that considered favorably – if not actually supported – the Albanian secession from Belgrade, while on the other hand Russia has presented itself in the role of the guardian of international legality while supporting the legitimacy of Serbia's sovereignty rights over Kosovo.

Key words: *emerging countries, international recognition, Kosovo, Ukraine, international crisis*

1. Introduction

At the end of 2008 only 53 out of around 200 member states of the United Nations – along with Taiwan – had recognized Kosovo as a sovereign state. Among these, Albania, United States, France, United Kingdom and Germany allowed Kosovo an almost immediate recognition, while the other EU members except Spain, Slovakia, Romania, Greece and Cyprus gave their recognitions in

the weeks following February 17th. In the years that followed Kosovo's international legitimization as a sovereign state grew progressively and has almost doubled in numbers six years afterwards. In fact, there are 108 UN countries that recognized Kosovo up to February 2014, despite the significant absence of colossus such as China and Russia, along with Serbia and Bosnia from ex Yugoslavia[1]. Considering these different points of view that have almost divided in two parts the world's states in the "Kosovo issue", the present work wants to analyze how this country started with a proclaimed independence that at first was not effectively exerted or recognized by the majority of the states, and has arrived to a sovereignty that may be dubious from an international legality point of view but *de facto* exists, because it is fully exerted now by Priština's institutions. Kosovo's secession from Serbia is the last segment of a larger phenomena of Yugoslavia's dissolution that started in 1991 with the exit of the Republics of Slovenia and Croatia from the federal state, and continued until the exit of Montenegro from the union with Serbia in 2006.

The conflicting relationships between the Serbian and Albanian nations in Kosovo have historical bases that go back to ancient past and that shall not be analyzed in the present paper. However, the antagonism between the two nations – both on a "higher" level between public authorities and ruling classes, and on a "lower" among common people – escalated further following the '80-s when Serbia revoked to a mainly Albanian Kosovo its administrative autonomy, reaching a point of no return in this clash between the Federal Republic and its rebel region. In fact, until then Kosovo enjoyed an administrative autonomy so ample that it could be compared in everything – except *de jure* – to those of the Federal Republics of Yugoslavia. The background of such decision of revocation of Kosovo's autonomy was Milošević's intention to gain political credit among the region's Serbs (and more generally among all Serbs) who were feeling menaced by the rapid demographic growth of the Kosovar Albanians, that started a shift in the strength equilibrium between the two communities, to the Serbs' disadvantage.

[1] Slovenia and Croatia recognized Kosovo because of they firmly belong to the West, and the western line of conducts has always been decided by the US; Montenegro and Macedonia did it because they are also oriented towards aligning with the western world's positions, in the perspective of a possible entrance in the EU. On the other hand, when it comes to Bosnia and Herzegovina, recognition of Kosovo is impossible despite the country's aspirations for an admission into the EU, but if the country should go in such direction the Sarajevo government would open the doors to the Republic of Srpska independence with its capital Banja Luka. In fact, the Republic of Srpska has obtained international recognition already in 1995 after the Dayton Peace, and not only has full administrative autonomy but also has qualifications that are certainly not inferior to those possessed by Kosovo that would justify the ambition for a secession from Bosnia and Herzegovina, whose part it is, even if it is *obtorto collo*.

2. Kosovo towards a *de facto* sovereignty

When Priština's Parliament declared Kosovo's independence on February 17th 2008, governments from all over the world appeared to be – at least officially – very surprised by such a unilateral and unexpected initiative that overruled the United Nations Security Council Resolution1244[2] and had happened outside of international legality. In fact, the very Parliaments' Declaration specified that the Kosovo case was unique in the international picture, caused by Yugoslavia's non-consensual dismantling and therefore without precedents to be compared to[3]. The day after this Declaration, it was the Secretary of State Condoleezza Rice that announced that the US would recognize Kosovo's independence, and she also sustained the same Assembly's thesis according to which "… Kosovo [is] a special case. Kosovo cannot be seen as a precedent for any other situation in the world today"[4]. Non differently,

[2] Emanated on June 10th 1999 and officially still valid in 2014, it imposes administrative autonomy for Kosovo under international supervision, however keeping Belgrade's sovereignty over the region that therefore would have been still integrated in the Yugoslav state (Serbia since 2006). The Security Council was explicit in this matter already in the preamble of the text saying that "the commitment of all Members States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act…". The Helsinki Final Act of the Conference on Security and Co-operation in Europe (CSCE) held on August 1st 1975, subscribed by heads of states and governments of 35 countries including the European ones, USA and Canada, regarding "Questions relating to Security in Europe" says at point 1: "all the participating States… consider that their frontiers can be changed, in accordance with international law, by peaceful means and by agreement…" (www.osce.org/mc/39501?download=true). Therefore, the 1244 Resolution refers exactly to the intangibility of the states, unless there are different solutions agreed upon and approved by the Helsinki Final Act. Furthermore, under the Art.10 of the Resolution, the Security Council "Authorizes the Secretary General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia". Finally it is fundamental to assess Belgrade's sovereignty of rights over Kosovo where there is only recognition of auto--administration, the Annex 2 of the 1244 Resolution, that under the Art. 8 sees "a political process towards the establishment of an interim political framework providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia …" (www.nato.int/kosovo/docu/u9906101.htm).

[3] "Assembly of Kosovo… Observing that Kosovo is a special case arising from Yugoslavia's non-consensual breakup and is not a precedent for any other situation… approves Kosova Declaration of Independence" (www.assembly-kosova.org/?cid=2,128, 1635).

[4] http://2001-2009.state.gov/secretary/rm/2008/02/100973.htm.

during a meeting of the UN Security Council held on the same day, the same concept was being expressed by the UK Ambassador, Sir John Sawers, according to whom "… unique circumstances of the violent break-up of the former Yugoslavia and the unprecedented United Nations administration of Kosovo make this *a sui generis* case that creates no wider precedent – a point that all EU member States agreed upon today"[5]. It is important to notice that such thesis regarding the uniqueness of the Kosovo case expressed both by US and UK has appeared lacking or even completely void of juridical bases in international law (Borgen 2009, p. 11). This so-called uniqueness of Kosovo's case allowed the US at first, and then from 2014 on also half of the world states to legitimize a fait accompli of a rebel region that detaches from its own mother country (Serbia), who is among other things a member of the United Nations – an institution that should have provided some tutelage. All of this despite the principles of inviolability of borders without solutions accepted by both sides, and considering also that in 2008 there was no situation of grave and impending danger for the inhabitants that would have called for extraordinary measures of safeguard. In fact, that year the internal order was guaranteed by international forces and there was no sign of potential danger for the Albanian secessionist population; on the contrary, it was those belonging to national and ethnic minorities (and their cultural signs on the territory) that needed protection. In regard to this, we can consider the example of the medieval Orthodox churches and monasteries that were symbols of the Serbs' national identity, and therefore hated by the Albanians, who damaged them while aiming for complete destruction and that in 2014 are preserved thanks to the international forces' vigilance. Therefore, by supporting Serbia's claims in the Kosovo matter, Russia erected itself as the defender of international legality that considers inadmissible to break a State's territorial integrity without that State's consent. Opposed to this stance, there was the 2008 Bush Administration in the US: even by highlighting an alleged uniqueness of the case they simply applied the rule of "survival of the fittest", that in foreign policy wins over not only juridical nuances but also over legality *tout court*. It was exactly this unwritten "survival of the fittest" rule that induced the majority of the EU Countries to align with the US position recognizing the secession from Belgrade, while Spain, Slovakia and Romania did not, because of the potentially secessionist national minorities on their own territories[6], which could have followed the Kosovo example in their own regions, detaching themselves unilaterally from the central state. Greece did not recognize Kosovo in the name of its ties with Serbia, cemented by their common Christian Orthodox religious identity, while it is easy to discern both of

[5] *Quoted in Borgen*, 2009, p. 11.

[6] The Basque and the Catalan nations in Spain, and the Hungarian nation in Romania and Slovakia.

the abovementioned motivations in Cyprus' decision[7]. In all of the mentioned cases, it is important to notice how it was not the interpretation of law or the comprehension of the needs of the involved populations that determined the positions of various states, but their single particular interests.

3. The infringed international legality

The Serbian government was convinced that the February 17th 2008 declaration happened in clear violation of the United Nations Security Council Resolution 1244, and the Foreign Minister Vuk Jeremić asked on August 15th of the same year for the United Nations to clear their position regarding Kosovo's secession. Therefore on October 8th 2008 the General Assembly accepted Serbia's request and asked through the 63/3 resolution (approved with a majority[8]) for the International Court of Justice's (ICJ) opinion on the issue: "Is the unilateral decision of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with International law?". This was the answer given by the ICJ judges through a majority vote (10 against 4) on July 22nd 2010: "The adoption of the declaration of independence on the 17 February 2008 did not violate general International law because International

[7] The issues are the Greek national identity with the Orthodox religion and the conflicted relationship with the northern Cyprus Turkish and Muslim population, that had proclaimed its own independent republic while not recognizing Nicosia's government; however, differently from Kosovo, this republic is not recognized internationally.

[8] With 77 in favor, 6 contrary and 74 abstaining (U. N. Doc A/63/PV.22, October 8th 2008, 10). Albania, USA and four small states voted against, aligned with the USA on the matter (Marshall Islands, Micronesia, Nauru and Palau); the countries that voted in favor were those that generally did not recognize Kosovo after that, and those abstaining were those that recognized it in 2008 or were going to in the years to follow. During the discussion regarding this Serbian request, the UK representative – that abstained during the voting – considered the Kosovo independence "a reality", qualifying the Serbian request as political more than legal (Meller 2012, p. 838). In regard to this, we could ask why the request was considered to be "political" rather than simply of legal nature: perhaps because – it would come natural to suggest – that way ex Yugoslavia, after losing the 1999 war against NATO, would not have had reasons based on international law, that at least theoretically, because of its own nature, is indifferent towards displays of force. In fact, presenting the issue as *political* and ignoring its juridical aspects would have allowed to ignore the fact that NATO's victory against ex Yugoslavia was the result of a war that had not been authorized by the UN and had dubious value from a legal point of view (see note n. 10), something that was better to push out of the picture. Among other things, this "illegal" war resulted both in a worsening of the *de facto* Yugoslavian position in the Kosovo issue, but at least officially it did not take away its sovereignty over Kosovo.

law contains 'no prohibition on declarations of independence'". Such a verdict from the ICJ avoided the whole issue: in fact the Court only gave a favorable answer to a non-illicit nature of that *declaration* of independence, avoiding expressing judgment in the matter of *the very independence*. In other words, the ICJ merely concluded that the declaration of independence did not violate the UN Security Council Resolution 1244 (that protects the right of sovereignty of Serbia over Kosovo), because it did not provide a specific final status for Kosovo; therefore, in absence of prohibitions in international law regarding promulgations of independence declarations, the one that happened on February 17th 2008 was not in any kind of violation of it. However, according to the opinion of the minority of judges adopted by E. Milano (2013, pg. 7 and 235), author of a significant essay regarding the Kosovo independence issue, the judging of the ICJ did not use the opportunity to clarify the relations between two important international law principles: territorial integrity and the right to self-determination of peoples; and furthermore, they did not explain how the latter could "legitimize separatist ambitions in situations where the rights of a minority with a territorial base are systematically denied" (Milano 2013, p. 235).

The sliding of Kosovo towards being a sovereign country that is less and less under international supervision[9] that in 2014 reached its minimum was something deriving from a chain of initiatives and events happening outside any semblance of legality; therefore, regardless of the principle of *ex iniuria jus non oritur*, reduced to a mere formula that in this case could not give concrete effects. In fact, we should consider the NATO military intervention in 1999 that took away from Serbia its administrative control over Kosovo, starting a process that culminated into its independence; that happened in direct contrast both with the NATO Treaty[10] and the paragraph 4, art. 2 of the Charter of the United Nations "that prohibits the Countries to menace or use force against territorial integrity and political independence of other States" (Milano 2013, p. 133); therefore not even "the supposed appearance of a right to a humanitarian intervention 'external' to the collective safety system of the UN" seems to be legitimized by international law (ivi, p. 134). The next step were the measures taken by the UNMIK to take away Yugoslavia's authority over the region; introducing the German mark instead of the dinar, producing new documents for

[9] The employees of the UN and UNMIK were around 10.000 in 2002, successively went to 300 in 2013, while the KFOR went from 50.000 in 1.000 to 5.000 in 2013. In Kosovo, there are also more than 2000 employees of the EULEX (Milano 2013, pg. 205 and 290).

[10] It contemplates the possibility of use of all force considered necessary to reestablish peace, in the case of an armed attack against one of member states; yet in 1999 the Yugoslav Federation did not attack or menace any NATO country. From a juridical point of view, the 78 days of bombings against Serbia have no legitimacy margins, not even if they are considered as a humanitarian intervention. In regard to this, it is useful to see the analysis done by C. Battista (2011, pg. 118–127).

Kosovar citizens who wanted to expatriate, control over properties of the Yugoslav state present on the territory also through privatization of public companies. Such measures induced FRY, Russia and China to protest against the General Secretary of the United Nations, who overstepped the authority given to him by the Resolution 1244, that was suppose to guarantee regional autonomy only (ivi, p. 150).

As it is well known the declaration of independence pronounced by Priština's Parliament on February 17th 2008 was not judicially based on the Resolution 1244 of the UN, which is the result of an agreement reached in international community, *including Serbia*; on the contrary, it claimed legitimacy from the fulfillment of the Ahtisaari Plan. The Plan did foresee the possibility of a independence, even if partially "supervised" by international powers, but it had been refused by Serbia during negotiations that took place in Belgrade under the patronage of the so-called *Troika* (USA, Russia and the EU) between September and November 2007. In such a picture that quickly changed radically, the EULEX[11] mission operated without keeping a *super partes* profile of equal distance between Albanians and Serbs; yet it still operated concretely in matters of justice, public order and border controls, implementing the Finnish ONU mediator Martti Ahtisaari's Plan, refused by Serbia. Consequently, the mission favored the extension of powers of the Priština government over regions still controlled by Belgrade, contributing that way to adding another component to the general picture of consolidation of the auto-proclaimed Kosovar state[12]. A statehood that actually grew stronger with the stipulation of bilateral treaties – around a hundred of them up to 2013 – and agreements with many Countries of the world and with Kosovo's membership in international organizations such as the IMF and the World Bank in 2009 (Qerimi & Krasniqi 2013, pg. 1645–1646), the European Bank for Reconstruction and Development (EBRD) in 2012 and the Council of Europe Development Bank (CEB) in 2013. However, the fact that the February 17th 2008 proclamation in favor of the independence made by Priština's Parliament was not indeed legitimate from a juridical point of view is easily seen if we consider similar initiatives that had been previously done and that had been cancelled by the Special Representative of the Secretary-General[13].

[11] EULEX was instituted on February 16th 2008 in order to assume the UNMIK's functions, but ever since its creation it was not recognized by the Serbian counterpart.

[12] In regard to this, Milano 2013, pg. 187–210, particularly p. 193.

[13] In 2002, in front of certain stances of Kosovar institutions that gave glimpses of practice of a true sovereignty, the Special Representative of the Secretary-General Michel Steiner wrote a letter to Nexhat Daci, the President of the Assembly of Kosovo on May 22nd 2002, saying that decisions or acts made outside the competence area of the Provisional Institutions of Self-Government could not be valid. Furthermore, on November 6th 2002 the Special Representative wrote to Daci: "… Let me make it clear that Kosovo is governed by Resolution 1244 and the Security Council of the United Nations. The future status of Kosovo is open and *it will be decided solely by the Security*

Also, we could say that according to a Note of juridical nature published in 2012 and concentrating on Kosovo, the requisites that allegedly give Kosovo the right to secession are not entirely convincing: according to it, an entity has the right to detach from the home state when it satisfies the following conditions: "1) constitutes a 'people', 2) is governed unequally or subjected to systematic oppression or egregious violations of human or humanitarian rights, 3) is denied any internal realization of self-determination, 4) freely chooses to exercise self--determination externally, and 5) respects *jus cogens* norms and the rights of other minorities and has the capacity to ensure such respect in the future" (Brewer 2012, pg. 276, *passim*). But they are not entirely satisfied because according to the author, the Albanian population whose leaders proclaimed independence satisfies only the requisites 1 and 4 among those mentioned before; and when it comes to point 2, the injustices, systematic persecutions, violation of human rights of Albanians, all that happened only until the 1999 NATO bombings against the former FRY. Afterwards, the application of the Security Council Resolution 1244 that was accepted by Belgrade and that included the Rambouillet Accords previously refused, closed any possibility for Serbia to inflict further damage against Kosovo Albanians. But there is more: the final fall of Milošević from the public scene that happened in September 2000 destroyed the nationalistic political inclinations that were pursued up to that point, starting a process of democratization and bringing FRY closer to the EU. In such a scenario that changed radically between 1999 and 2000, and with tens of thousands of NATO military in Kosovo, it was therefore objectively impossible to continue any kind of persecution towards the Albanian population. Not even the point n. 3 requisite can be considered as satisfied: the exercise of a self--determination does not necessarily correspond to a situation of full sovereignty; during the negotiations with the Kosovar administration guided by the Troika (USA, Russia and the EU) under UN mandate, that took place from August to November 2007, Serbia had offered Priština the largest autonomy possible, denying only its consent to making Kosovo a foreign land to Serbia. Yet according to requests made by Priština at the time, self-determination meant

Council. No third party or parties can prejudge it [the emphasis is added by author]". But there is more: on February 3rd 2003 the Assembly of Kosovo divulged a declaration named "Declaration on Kosova – A Sovereign and Independent State", that affirmed full Kosovar independence; that resulted in a clear message to Daci by the Principal Deputy Special Representative Charles H. Brayshaw: "… I would like to advise you in writing that consideration of this matter by the Assembly would be contrary to United Nations Security Council resolution 1244 (1999), the Constitutional Framework for Provisional Self-Government in Kosovo and to the Provisional Rules of Procedures of the Assembly …" (these documents are available on the internet at: www.icj-cij.org/docket/files/141/15038.pdf). Therefore there is no margin to ambiguity: there is a clear refusal to accept a unilateral declaration of independence for Kosovo by the highest international institution that is competent over the area.

nothing less than full independence from Belgrade. And consequently, despite the Albanian aspirations, independence would not have been the only solution in the issue of self-administration that among other things was already a prerogative of Priština. The motivation contained in the above mentioned Note appears to be quite weak: according to it, there is no guarantees that Kosovo could exercise permanently the self-administration inside Serbia, or that it could respect the human rights of its inhabitants (Brewer 2012, p. 286) even after the withdrawal of international forces: in fact, no country in the world could provide absolute guarantees regarding these points. Furthermore, even if we allow the possibility that Serbia is not capable of providing these conditions despite its full democratization and full acceptance of EU's values[14], it is logical to assume that not even Kosovo itself could guarantee those requirements to its internal national and ethnic minorities, with the Serbian as the largest, despite the full acceptance of the Ahtisaari Plan that avoids identification between state and nation. It is therefore safe to assume that the point n. 5 cannot be satisfied. In fact it should be remembered that, in regard to the safeguard of minorities, immediately after the proclamation of independence on February 17th 2008, the streets of Priština saw Albanian flags flying with their black eagle on red base, and not the Kosovo's official one with six stars on a blue base, created to express super--national values and inspired to the EU's own flag. In such an atmosphere of strong nationalism, that declaration was received with hostile silence by the minorities, while the Serbs north from the river Ibar had violent reactions against the Albanians and against international forces (Violante 2010, pg. 194–195).

In conclusion to this excursus, the position taken by Enrico Milano in regard to this issue is fully sharable: he claims that the auto-proclaimed Republic of Kosovo proclaimed on February 17th 2008 did not have the requisites necessary to "be fully affirmed as a new state from an international law point of view, and therefore to succeed to the Republic of Serbia on the territories of the ex Autonomous Province of Kosovo", especially if we consider the absence of any juridical requisite whatsoever in the Ahtisaari Plan that could legitimize such an initiative. In fact, the independence happened "in a territory under an international administration that was suppose to guarantee both the auto-government of the population and the respect of Serbia's territorial integrity" (Milano 2013, pg. 248, 252 and 261). In other words, the 1244 Resolution that at the time had been accepted by both parts (Belgrade and Priština) had been replaced by the Ahtisaari Plan supported by the EU through EULEX, despite the first one being still in force; however the latter has been rejected by the Serbs in a context that saw the UN in the background without taking a clear position.

[14] The EU values do exist, even if they are not formally declared. They are about the requisites that a state has to prove it has in order to be admitted in the very EU. Practically, these are the usual Western values, such as democracy, freedom of expression, human rights, market economy etc.

A consequence to such a change was the free pass for Kosovo not only when it came to the unilateral independence declaration, but they were also allowed to obtain a factual sovereignty that is now a reality impossible to ignore. In fact, when it comes to the ways of formation of states and the bases necessary for a political subject to be defined as "state", the international law is quite lacking[15]. In this matter there is only the Montevideo Convention on the Rights and Duties of States from December 26th 1933 that among other things is strictly regional and signed by 16 states of the American continent. Its Article 1 says: "The state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with other states". And the Article 3: "The political existence of the state is independent of recognition by the other states". Following these phrases we can see that at the moment of its proclamation of independence Kosovo had three out of four requisites indicated in the very Montevideo Convention while the point b) regarding a defined territory will be reached – as we shall see shortly – after the Brussels Treaty with Belgrade reached on April 19th 2013; in fact, according to the treaty the Serbian government would have legitimized the presence of the Kosovar government on the territory north of the river Ibar, which until then was controlled by Belgrade and international forces only. Another interesting point in our reflections is the article 3 of the Montevideo Convention, that explicitly says that the external recognition is not an essential requisite for a state to exist; and it is exactly the case of Kosovo, considering the uncertainty surrounding its juridical status, since in 2014 it is still not recognized by almost half of the planet's states.

However, a decisive step towards its independence can be found in the unwritten agreement that saw the Kosovar authorities accepting the fact that the supervision of their work would pass de facto from UNMIK to the States favorable to the application of the Ahtisaari Plan. This way, an informal group of states that made the so-called Steering Group (ISG)[16] has replaced the very EU in the matter of international monitoring of the young (and fragile) Kosovo's institutions; although we should precise that while UNMIK operated following the Resolution 1244 of the Security Council, accepted by both parts and the warrant of the Serbian sovereignty over entire Kosovo, the ISG was legitimized only by the Ahtisaari Plan that wanted for Kosovo a "guided" process that would have lead to its independence, which is exactly the reason why Serbia rejected the plan. During the period 2008–2012 the ISG power was ample, culminating in the right to nominate the International Civilian Representative for Kosovo (ICR); according to the Ahtisaari Plan and the Secretary General of the United

[15] In regard to this, Urrutia-Libarona, 2012, p. 122, and Milano, 2013, p. 61.

[16] The ISG has 25 States among those that already in 2008 had recognized Kosovo's independence: 15 among these belong to the European Union and 5 are extra-EU (Norway, Swiss, Turkey, USA and Croatia, that has joined the EU in July 2013).

Nations, this figure would have had "overall responsibility for the supervision, and shall be the final authority in Kosovo"[17]. Such a position that had the last word in matters of interpretation of the Plan, had also the power to "take corrective measures to remedy, as necessary, any actions taken by the Kosovo authorities"; measures that could have included "annulment of laws or decisions adopted by Kosovo authorities", and also the possibility "to sanction or remove from office any public official or take other measures, as necessary, to ensure full respect"[18] of the Plan itself and of its implementation. Therefore, a Kosovo legitimized not directly by the United Nations, but by a group of states united in an informal association, following a procedure that was not that different from the one used in 1878 by the European Great Powers at the Berlin Congress to create – with their international legitimacy recognized – the new Balkan states of Serbia and Montenegro. The final act that aimed to affirm Kosovo's full independence was the last meeting held by the ISG on September 10th 2012. It saw the dismissal of the International Steering Group, proclaiming Kosovo's full independence, because it was not legitimized anymore by the Ahtisaari Plan and by the countries that sustained the plan, but by the very Constitution of the newly created state produced on June 15th 2008. In other words, such act brought Kosovo from the position of international subject with derived rights to a fully sovereign subject *superiorem non recognoscens.*

In front of this evolution, even if on one hand Serbia did not renounce its claims of sovereignty over Kosovo, on the other it *begun to legitimize itself* Priština's authority, even in the territories north of the river Ibar, where previously the Kosovo government always failed to have any control. In fact, Serbia and Kosovo established a treaty on April 19th 2013 – with the mediation of the High Representative of the EU for Foreign Affairs – according to which the parts recognize the institution of the Association of municipalities with a Serbian majority; such an institution was destined to substitute the Serbian parallel government structures in north Kosovo operating in education, health-care, tribunals, administrations, that until 2013 were supported and financed by Belgrade but considered illegal by Priština and those States considering Kosovo a sovereign country[19]. This treaty that appears merely technical, in reality contains important political news. In fact, it allowed the Kosovar administration to enter the territory north of river Ibar with Belgrade's full consent – a fact unheard of up to then; on the other hand, Priština's government recognizes

[17] Letter dated March 26th 2007 from the Secretary General addressed to the president of the Security Council, art. 12-3, on-line at: www.unosek.org/docref/Comprehensive_ proposal-english.pdf.

[18] Letter dated 26 March …, annex IX, art. 2.1, c-d, on-line at: www.unosek.org/ docref/Comprehensive_proposal-english.pdf.

[19] In regard to this, the Italian newspaper „La Stampa", www.lastampa.it/ 2013/11/ 03/esteri/kosovo.

a Serbian identity with strong ties to Belgrade in a part of the Country's inhabitants. A part of this treaty was also the organization of the elections in the territory north from Ibar, managed by Priština and not anymore by Belgrade. Serbia also accepted integrated management of the border crossing points, valid and operative since December 2012; and it is not very important that Kosovo considers them to be "the line as a border", while Serbia "recognizes the line as an administrative boundary" (Milano 2013, p. 301). It is however fundamental that Serbia accepts the political control of Priština's government over the territory with a Serbian majority that Belgrade administrated until 2013, having previously refused the Kosovar jurisdiction over it.

4. Belgrade grows apart from northern Kosovo

However, the application of the April 19th 2013 treaty was not benevolently accepted by the Kosovo Serbs north from Ibar, that felt that Belgrade's government had betrayed them, the very capital of the country perceived by them as their only true homeland. This reality fully emerged during the administrative elections held in November 2013. Before then, northern Kosovo voting was administrated by Serbia and without any input from Priština's authorities. But in 2013 Belgrade asked the Serbian Kosovars to take part in the elections managed by Priština. Such an invite had been ignored, considering that in north Kosovska Mitrovica the electoral turnout stopped at around 10% of those with voting rights, while in the Serbian enclaves in the rest of Kosovo it settled around 50%. Furthermore, those elections were botched by violence and destruction in north Mitrovica constituencies[20] that have invalidated their democratic regularity. In regard to this, it is not important to determine if the responsibility of these disorders is to be attributed (or not) to the nationalistic political forces in Serbia, that were the opposition; on the contrary, it is good to notice how the violence and the almost inexistent participation in the voting are a sign of the feeling of frustration of the Kosovo Serbs, who have perceived the abandon of their Serbian Serbs brothers, who have "sold" themselves to the prospective of seeing the homeland Serbia admitted into the EU in future[21]. Such a low level of appreciation of the 2013 administrative elections is a natural consequence of the north-Ibar Serbs boycott of the census held in Kosovo in 2011 that was therefore considered only partially reliable. Its results showed around 1.700.000 inhabitants total, out of whom 92% Albanians, 5,3% Serbs and

[20] *Ibid.*

[21] According to Tatjana Lazarević (2014) a year after the April 19th 2013 agreements, despite the fact that the population continues to act as if everything had remained the same, privately among them the people say: "Serbia sold us for nothing, if they at least negotiated something…".

some minorities of Goranis, Bosnjaks, Turks, Macedonians, Roma, Ashkali, Jews, Vlachs, etc. In the northern Kosovo the Serbs have been estimated to constitute the 98% of the population, while in the south they were the majority in the municipality of Štrpce, with marginal presence in the rest of the Kosovar territory (Loi 2013). The sense of frustration deriving from the Serbian component of Kosovo, which was already clear in the refusal to take part in administrative initiatives of Priština, can be summarized in the words of a woman from Zvečan, Slavka Drekalović, that was 56 years old in 2013: "At the time Belgrade advised the Serbs not to take part in Kosovo's census, with the motivation that the Kosovo Serbs were Serbian citizens, but now we are excluded from the census [the one held in Serbia in autumn 2011] in order not to get into a conflict with the great powers who recognize Kosovo and Metohija's independence; now they have cancelled Kosovo's Serbs. We do not exist anymore" (Lazarević 2013).

However, despite such intransigent refusal by the Kosovo Serbs to collaborate with Priština's authorities, the elections brought a true change of the administrative structure of northern Kosovo, that happened following the governmental wishes, breaking the previous one based upon Belgrade's needs. In fact, the system of four Serbian municipalities north from Ibar and composed by the municipalities of north Mitrovica, Zvečan, Zubin Potok and Leposavić does not exist anymore when it comes to the territorial organization of the juridical administration: other than the above mentioned municipalities, also south K. Mitrovica, Vushtrri/Vučitrn and Skenderai/Srbica with their Albanian majority, refer to the local tribunal of Mitrovica. That way Priština broke the isolation of the Serbian area of Kosovo, forming a new administrative region whose population is ⅔ Albanian (Lazarević 2014). Another change happened when it comes to issuing ID papers north form Ibar, that were issued by Serbia until 2013 and have become Priština's jurisdiction since 2014; but when it comes to the administrative organization, the Kosovar government – following the Brussels Agreement – has shown availability to finance and recognize the single municipalities as Serbian, but not the Association itself. In fact, they are afraid (and not entirely wrong) that a true "association of Serb municipalities in Kosovo" could become not a way of integration of Serbs in the new state, but a "state inside a state" that could undermine Priština's authority in its own territory, making it impossible to function for the Kosovar institutions. In fact, there could be a situation similar to the one in Bosnia and Herzegovina (Martino 2014) where Republic of Srpska is a constant antagonist to the federal system whose part it actually is, paralyzing the activities of the muslim majority state (even though that majority is relative) with Sarajevo as capital city. Such a result would radicalize the confrontation between Serbs and Albanians in Kosovo, giving arguments to nationalists who hope for state-nation of Albanians by aiming for a political union with Tirana in order to create a "Great Albania", instead of a multi-national state where every single component has the same

rights of others. In every case, the Kosovo public acts appear to be more and more those of a sovereign state. It is also impossible to deny that Kosovo's statehood is consolidating, gaining all the prerogatives of a *superiorem non recognoscens* state. Furthermore, following this course of events, on March 4th 2014 the Prime Minister Hashim Thaci even announced that before 2019 the current "security forces" will become "Kosovo's army", counting 5.000 soldiers actively in service and 3.000 in reserve. Such a decision corresponds to the rights of a sovereign subject that, if it is really sovereign, has the right to manage its own defense *in its whole territory*; in fact, independence is either full with no restrictions, or it cannot be considered as such. However obviously after that declaration, Belgrade protested with the NATO (that is still the international organization managing Kosovo's safety) asking that the future Kosovar armed forces should be prevented from accessing the territory north from Ibar (*ibid.*).

Considering the route towards Kosovo becoming a state and the electoral confrontation as a true test of the Brussels Agreement, in the author's opinion it is obvious that by signing it, Serbia loosened it's influence over Kosovo's Serbs, benefitting Priština's authorities, *despite the fact that Belgrade does not recognize Kosovo as a sovereign state*. Therefore, E. Milano's thesis can be fully shared: it suggests that such Agreement meant that Serbia *implicitly* recognized Kosovo (2013, p. 303). Furthermore, in front of the prospective of establishing special relations with the Association of Serbian municipalities that Serbia accepted similarly to what Bosnia and Herzegovina did with Republic of Srpska, Serbia seems to have pushed itself into a dead-end street: in fact, if Bosnia and Herzegovina is a sovereign state in the eyes of Belgrade, and there can be inter--state relations with it, there could not be similar international relations between Serbia and Kosovo, since the latter – at least officially – is not a sovereign state for Belgrade. Consequently, in such a context, the integration of Serbs in Kosovo's institutional system can only grow stronger in time (Janjić 2013), considering the diminishing space that Belgrade has to intervene in northern Kosovo. In this situation that is still quite non-defined in the first half of 2014, one part of the Serbian population in north Mitrovica saw the results of the voting as a step forward the integration of the region into a Kosovar society; on the other hand, other inhabitants do not resign to an Albanian control of a Serbian region, wanting the Association of Serbian municipalities to become a sort of a tiny state (Lazarević 2013).

What is certain is that northern Kosovo seems to be more and more dependent from Priština's authority, that is however refused by a vast majority of the population. This situation has been greatly influenced by the so-called "international community" formed by the USA and the EU excluding those states (Spain, Greece, Romania, Slovakia and Cyprus) who have not recognized Kosovo's sovereignty, despite the opposition of other powers (China and

Russia)[22]. More specifically, the "point of no return" for the fait accompli of Kosovo's independence was not the 2007 presentation of the Ahtisaari Plan despite the fact that it contained the possibility, or the declaration of political sovereignty by Priština's Parliament in February 2008, and neither it was the ICJ opinion in July 2010 that said that the independence itself was not illegitimate. On the contrary, the crucial step was the declaration of dismissal of the ISG in September 2012 that saw the passage of full powers over the territory from the international organizations to Kosovo's institutions. By allowing this, violating a basic principle of current international law – the auto-determination of peoples – there was a serious *vulnus* towards the local northern Kosovo population who did not want to exit Serbia just to be integrated into the new Kosovar state. In this case there was no will in international offices to apply the right to auto--determination, despite the fact that it was the very reason that from 1999 on allowed the "international community" guided by the USA to make possible for the Albanian Kosovo population to exit the Serbian state, even if that meant breaking another fundamental principle – that of the intangibility of state borders in absence of shared treaties[23] as established in the Final Act of the Conference on Security and Co-Operation in Europe (CSCE), held in Helsinki on August 1st 1975[24].Therefore, these principles have both been violated, damaging the Kosovo Serbs of the north: the right to auto-determination was never seriously considered both when it came to the will to inhabit the region north from Ibar (where the Serbs are the majority) in a Kosovo under Belgrade's sovereignty, and in the case of a detachment of north Kosovo from the new state governed by Priština. Furthermore, the intangibility of borders was similarly disrespected but in this case favoring only Albanians; they were allowed the secession of Priština from Belgrade, but there was no secession of Mitrovica from Priština that would have been appreciated by the Serbian population. This injustice was not made right with the Brussels Agreement in April 2013, which was a mere corollary of the Kosovar independence. It aimed to "neutralize" the heavy political

[22] In media and political language there is the term "international community" which is used to indicate groups of countries where the United States are always present. Other political giants such as Russia and China are considered part of it when they are sided with the USA; but when that does not happen, they are out of the "international community" similarly to any other State that is not aligned with the USA positions.

[23] The author does not share the thesis according to which the principle of states' territorial integrity, especially when it comes to inter-state sphere, cannot be applied to peoples but only to relations between states (Urrutia-Libarona 2012, p. 135). In fact the Helsinki 1975 Final Act that constitutes the base of this subject matter does not specify such a distinction that therefore is valid just as a supposition without any certain proof. On the other hand, it is a certainty that Serbia's territorial integrity had been altered without Serbia's own consent; such a fact is not allowed by Helsinki or the UN Chart.

[24] In matter of the Helsinki Final Act applied to the Kosovo case, see Violante 2014, pg. 137–138.

contradiction of the Serbian refusal to accept Kosovar (and therefore, following a logic of national juxtapositions, *Albanian*) hegemony in their territory; it has used "technical" means such as the integrated and joined management of borders, but has not solved the fundamental political issue: the one of the Serbian population in northern Kosovo that feels betrayed and abandoned by Belgrade, and whose will has not been considered. All of this inside a "process of dialogue promoted by the EU" (Milano 2013, p. 315), started exactly with the Brussels Agreement.

5. Two international crisis compared

In a quick description of the context of the international situation in the aftermath of the Russian occupation of Crimea and its annexation into the Russian state, we can notice that the Kosovar secession did not constitute a separate case without any possible analogies with others happening in Europe and the rest of the world. In fact, in Kosovo's case the "international community" recognized its sovereignty with the acquiescence of the UN that since 2008 – after the failure of negotiations directed by the Troika from August to November 2007 – has maintained a low profile of neutrality in the issue. The independent Kosovo – recognized by almost every western country – has produced two negative consequences that saw the western society as the main responsible: 1) failure to respect the sovereignty of a state (Serbia) over a province included in its own territory; 2) failure to respect of the rights of a population – the northern Kosovo Serbs – to auto-determination. In fact, we should consider that such population has been denied the possibility to stay politically united with Serbia, while it has been forced to become a part of a state whose majority nationality is Albanian, and that was pursued by this component, *in the name of the right to their auto-determination* that was however denied to the Serbs. But there is more: the Serbs were forced to live in a state with an Albanian government, while the climate of reciprocal hatred is still deep-rooted between the two nationalities, despite the official appearance of the state whose capital is Priština that is inspired to a "civic nation" and not to a nation based on Albanians' nationalism. A proof of the persistence of such hatred is the necessity for the NATO military to defend still in 2014 the Orthodox monasteries and other sacred medieval places that are perceived by the Serbs as symbols of their national identity, while the Albanians see them as the signs of a hated domination that is to be eliminated even physically.

While considering the annexation of Crimea to Russia, it happened with a strong opposition from the USA and the EU that had been obvious through the lack of invitation to Putin's Russia to the G7 that had been held in Brussels on June 4th and 5th 2014, where (even though in a bland way) there was the menace of sanctions against Moscow. The seven most economically advanced countries

contested to Russia both its violation of Ukraine's territorial integrity that preceded the annexation of Crimea, and the support given by Russia to the pro--Russian militias in the civil war that devastated the east of the country and resulted in the escape of 110.000 people from Russia at the end of June 2014[25]. On the other hand, Russia had used the very Kosovar case to invoke the full legitimacy for its initiatives. In fact, according to it's point of view, if the Western society considered "legal" Kosovo's secession from Serbia, the detachment of Crimea from Ukraine should have been accepted the same way along with the right to political auto-determination of its inhabitants. The two regions (Kosovo and Crimea) have some significant analogies: 1) they both have a majority of inhabitants that through affirmation of national identity refuses political cohabitation with the nation that bears the same name of the one they have been (or *are*, depends on the interpretation) part of[26]; 2) they both have maintained (or still do) a condition of strong autonomy[27] from the central state; 3) they maintain in their territory national and ethnic minorities that *however refuse* the secession from the central state[28]; 4) both their parliaments have declared unilaterally the independence from the central states[29]; 5) both Kosovo and Crimea have never been sovereign states in their history; 6) their respective

[25] This data has been revealed by the United Nations High Commissioner for Refugees (UNHCR), according to who there are also 54.000 internal refugees from Ukraine. The spokesperson of the agency Melissa Fleming added that only 9.500 refugees in Russia had asked officially for asylum, in order to avoid bureaucratic complications and out of fear of possible retaliation in case of their return in Ukraine („Corriere della Sera", June 28th 2014, p. 5).

[26] The Albanians, 92% of Kosovo's population, refuse the cohabitations with Serbs in the same state – Serbia; the Russians, 58% of Crimea inhabitants, refuse the cohabitation with the Ukrainians in the same state – the Ukraine.

[27] Kosovo is Serbia's autonomous province according to the 2006 constitution; Crimea is an autonomous republic inside the Ukraine state, except for Sevastopol that is an administrative unit separate from the very Republic of Crimea.

[28] According to the 2011 census data, in Kosovo the 5,3% is of Serbian nationality, and there is a 2,7% of inhabitants is of ethnic groups (especially Goranis and Roma) that are different from the two majority (the Serbs are a national minority in Kosovo compared to the Albanians, but are also one of the two majority groups compared to the minor ethnicities (Goranis and Roma) ones (Albanians and Serbs); In Crimea there is a bit more consistent national minority of about 25% of Ukrainians, with a 12% of Tatars.

[29] The Priština Parliament on February 17th 2008 and Crimea's Parliament on March 11th 2014. The Crimean local authorities then followed with a referendum held on March 16th 2014, asking if Crimea should adhere to the Russian Federation or remain within the Ukrainian state. The response was a 97% of votes favorable to the annexation to Russia.

central states, Serbia and Ukraine, had signed international acts that guaranteed their territorial integrity[30].

Despite the numerous analogies in the two cases, the West lead by the USA on one hand and Russia on the other had assumed completely opposite positions in the issues of Kosovo/Serbia and Crimea/Ukraine. The first ones sustained Kosovo's independence, and have considered Crimea's right to auto-determination to be illegitimate, exiting Ukraine to be united with Russia. On the contrary, the latter never recognized Kosovo' secession from Serbia while it has fully accepted Crimea's detachment from Ukraine, with full support from its regional allies[31]. All of this was based on also completely opposite motivations. The West encouraged and then recognized Kosovo's independence in the name of the right to auto-determination of peoples, while it has considered illegitimate Crimea's secession from Ukraine in the name of the principle of intangibility of state borders. Russia did not accept Kosovo's secession following the principle of intangibility of borders, but has welcomed Crimea's secession based on the right to auto-determination.

In such a contrast of positions, Russia used further motivation to sustain its own thesis. Before the Ukraine crisis had escalated in 2014, Russia used international legality to explain its support for Serbia's territorial integrity. Yet after the Crimea Parliament had declared independence on March 11th 2014 and after the referendum that saw around 97% of the inhabitants expressing their will to separate from Ukraine and to be united with Russia, Putin justified Moscow's policy in the issue by using the very Kosovo's declaration of independence from Serbia (Martino 2014). Such a turning point in Russia's attitude in favor of the right to auto-determination can be fully seen also in a statement of the Russian Ministry of Foreign Affairs on April 1st 2014 that could be resumed this way: 1) the current Kiev government came to power following an anti-constitutional coup d'état; 2) that very new regime broke Ukraine's unity because of their discriminatory policy towards national minorities; 3) during the OSCE summit

[30] For Serbia, it was the 1244 Security Council Resolution in 1999 and for Ukraine it was the Memorandum on Security Assurances signed in Budapest on December 5th 1994. The latter, signed by Russia, United Kingdom, USA and Ukraine, saw Kiev's commitment to dismantling nuclear weapons in exchange for their independence from Ukraine and the intangibility of its territory; and considering the USA and United Kingdom's participation in the Memorandum (both nuclear powers) these two countries should have been warrants for Ukraine's sovereignty.

[31] The Kazakhstan accepted the March 16th referendum results favoring a union of Crimea with Russia, defined by the Kazakh president Nursultan Nazarbayev as an opportunity for the Crimean people. Perfectly aligned with Moscow's positions was also the president of Republic of Srpska Milorad Dodik; in an interview made in the occasion of the referendum that has been transmitted by Bosnia's main media, he said that Crimea had always been a part of Russia and that the referendum could create a new guideline in matters of auto-determination of peoples, becoming a model for Republic of Srpska too.

held in Budapest in 1994 (confront note 31) Russia never committed to forcing a part of Ukraine (meaning Crimea) to remain within the country (governed by Kiev) against the local population's will; 4) the Crimea secession had been caused by complex internal reasons that have nothing to do with the commitments that Russia took with the Budapest Memorandum and regarding Ukraine's sovereignty; 5) the same thing cannot be said of the western countries that have ignored Ukraine's sovereignty during the "Maidan" events; 6) the states that signed the Memorandum did commit to contrast the growth of nationalism; yet Ukraine did not comply and it proceeded to grow an aggressive nationalism that induced the Crimea population to auto-determination, all the way to their entrance into the Russian Federation[32].

Following the "Maidan" events (named after the Kiev square that saw the beginning of the uprising against the government) at the beginning of the 2014, there has been a further shift to the east of the new "iron curtain" post-1989 that first had moved from Berlin to the river Bug's banks (the eastern EU border), entering Ukraine and de facto dividing it in two parts, with a divisor line that loosely follows the Dnieper[33]; the United Nations appeared to be divided too and

[32] *Statement by the Russian Ministry of Foreign Affairs regarding accusations of Russia's violation of its obligations under the Budapest Memorandum of 5 December 1994*: "…The current 'government' in Kiev, which came to power as a result of an anti--constitutional coup, by their policy, primarily with regard to national minorities, has in fact itself broken the unity of Ukraine and literally pushed an entire region out … At the OSCE summit in Budapest in 1994 … Russia did not undertake to force part of Ukraine to stay in it against the will of the local population, but the provisions of the Budapest Memorandum are not applicable to the conditions which have become a consequence of actions of foreign policy or social and economic factors … Ukraine's loss of its territorial integrity was a result of complicated internal processes, with which neither Russia nor its obligations under the Budapest Memorandum have anything to do. The Russian Federation strictly observed and still observes its obligations under the Budapest Memorandum to respect the sovereignty of Ukraine, including during the many months of political confrontation in Kiev, which cannot be said about the policy of western countries, who openly neglected this sovereignty during the events on the 'maidan' … a joint statement was adopted in Budapest by the leaders of Russia, the United Kingdom the United States and Ukraine, which, inter alia, confirmed the importance of obligations within the OSCE, which are envisaged to counteract the growth of aggressive nationalism and chauvinism. It is absolutely clear that Ukraine has not fulfilled these obligations and had been conniving in the growth of extremely aggressive nationalism for many years, which finally led to the self-determination of the Crimean population by entering the Russian Federation…" (from the Ministry of Foreign Affairs on the Russian Federation – official site – statements and speeches, 01/04/2014; available online at: www.mid.ru/brp_4.nsf/main_eng).

[33] The western one with Kiev facing the EU, and generally pro-western, opposed to its eastern part and Crimea facing Moscow. However, it is not a clear divisor line: there are Ukrainian nationalists also east from Dnieper and pro-Russian ones west from the

consequently incapable (at least at the beginning) of assuming a shared position. This was fully evident in a Security Council Resolution of March 15th 2014 requested by the USA and other 41 states following Crimea's secession: it has ended without a result because of the Russian veto, despite 13 votes in favor and China's abstention[34]. On the other hand, the other international organizations have all assumed contrary positions regarding Crimea's secession, and consequently, "unconditionally" in favor of Ukraine's territorial integrity. In fact, the OSCE President, the Swiss Didier Burkhalter, considered that the referendum was not coherent with the Ukrainian Constitution and was therefore to be considered illegal. Such illegality was confirmed also by Herman Van Rompuy, the President of the EU European Council. The President of the European Commission José Manuel Barroso, in a declaration in the name of the G7, denied any legal value of the referendum and has affirmed that the Russian annexation of Crimea went against the principles of the UN Basic Chart. The illegitimacy of this referendum has been also pointed out by the European Council Venetian Commission, a day before it took place on March 16th 2014. Therefore, unconditional support to the pro-western Ukraine and the condemnation of the Crimean secessionism, despite the defenestration of Viktor Yanukovyč, regularly elected in 2010, through a single Kiev riot. But there is more regarding this western support to Ukraine's territorial integrity, compared to the support offered to Kosovo's secession and therefore contrary to Serbia's integrity. In fact, with the civil war that erupted in Ukraine where the forces of the new government opposed the pro-Russians of the eastern country's regions,

river. It is significant that the main cause that resulted into the Maidan square riots that provoked first the fall of Yanukovyč and then the civil war, was Ukraine's refusal to sign the Stabilization and Association Agreement (SAA) with the EU at the end of 2013. The pro-western country's population saw in this treaty the possibility of being admitted in the future into the EU; however the SAA, as it was observed by the Italian political analyst Sergio Romano, was something wanted by those countries – especially Poland – that were trying to "avoid the reconstruction of a Russian area of influence next to their borders": political motivations rather than economical, and following a classical cultural and identity juxtaposition between the east and the west. In fact, with this agreement the EU did not consider Ukraine's energy dependence from the Russian gas given at a political price, and also the fact that the industrial production of the eastern region of the country cannot exist without the Russian market (Romano 2014a, p. 33).

[34] After all was done, on March 27th 2014, the UN Assembly General expressed its disapproval regarding the Russian annexation of Crimea with 100 votes in favor, 11 against and 58 abstentions. This is however a mere expression of opinion with no juridical value. Furthermore, despite putting Russia in a minority position, this voting allowed its representative in the UN Vitaly Churkin to highlight how Russia was not internationally isolated, because of the 69 contrary and abstaining votes (in regard to this, E. Sii 2014).

the latter had been defined "terrorists"[35] by the Western media. In other words, they were not recognized the status of fighters in a "symmetrical" war, regardless of the reasons and wrongdoings of each of the two parts; by defining them as terrorists they were *a priori* denied any kind of legitimacy not only when it came to their actions, but also regarding their cause: this way the cause not only was presented as wrong, but was criminal to begin with. The western treatment of the separatists was entirely different in the case of the Albanians from the Kosovo Liberation Army rioting in 1999 against Serbia: the western saw them transformed from terrorist to patriots, benefitting also from a NATO war launched against Serbia that supported their cause. After the conflict and 78 days of bombings against Yugoslavia (Serbia and Montenegro) had stopped, their leaders even had the possibility to form the bases of the institutions that would regard the future Kosovar state. All of this despite the fact that the West and especially the USA well know that the Kosovo Liberation Army was financed by the European drug trade, also through collaboration with the Albanian mafia (Battista 2011, pg. 150–151).

[35] On the other hand, the picture painted by the mainstream of the western line of thought is completely different when it comes to the Kiev riots. It is that of "young Ukrainians dying in Maidan square flying the starred flag [obviously, the European one]", that appeared in a review (published in the „Corriere della Sera", June 28th 2014, p. 45) of the theatre pièce by Bernard-Henri Lévy named *Hôtel Europa* and performed in Sarajevo's National Theatre on June 27th 2014. The French philosopher, considered to be one of the strongest critical voices of the western society that pays too little attention (according to him) to the protection of human rights, laments in his pièce with victimism rhetoric the passivity of the politics (especially European) in front of the violence happening in the world. However, it is only the non-western violence the one that needs safeguarding, while the West (and only the West), that almost because of its own nature knows at all times what is right and what is wrong, has the right to intervene, even militarily. As an example, the European war against Libya in 2012 invoked by Bernard-Henri Lévy and presented to the western public opinion as a humanitarian intervention aiming to free the Libyan people from Gheddafi's regime. According to such logic, on the contrary, the possible independent initiatives in the South and the East of the Earth, without the support of the West and non approved by the UN, are always acts of aggression and are to be condemned as such. Therefore, going back to Maidan square, it is not important that the rioters were champions of a nationalism with multiple faces, that saw even the revival of the Nazi collaborationism and among other things had tried to cancel the Russian as the official language in Ukraine; in the eyes of the European conscience (and policy) the insurgents were "the victims" and therefore "the good guys", and that was enough to start a rhetoric of a "unique" line of thought that followed a simplified juxtaposition between the "good" and the "evil", with no space for doubts in the issue of different interpretations of a political situation that was particularly complex.

The comparative analysis of the cases of Serbia/Kosovo and Ukraine/Crimea recalls the international legality in its application[36]. In regard to this, starting with Kosovo's case, E. Milano wrote how "the principles of generic international law, characterized by their generic nature and vagueness but also adaptability and flexibility, 'descended' on single cases with *sui generis* particular solutions, that interact with the most classical factual Montevideo requisites" (Milano 2013, p. 63). Following this line of thought, we could add through Borgen that in the current vagueness of norms "while some states are able to be influential norm makers, most states are resigned to usually be norm takers" (Borgen 2009, p. 30). Such a state of matters corresponds to a *negation of the very juridical principles*, if they are to be interpreted it as a system of norms that safeguards not the strong ones but the weak, that through fixed rules are protected from the judgment of those in possession of means to bend reality as it fits them, both ignoring existent norms and creating extemporarily new ones ad hoc. In fact, according to Borgen's disillusioned considerations, the weak ones sustained international legality because they saw it as a break from the uncontrolled exercise of power; on the other hand, the big powers and especially the USA under the Bush Administration, have tried to break free from the limits of international law and to grow the vagueness of the norms. By acting this way, they not only presented their own actions as legitimate, but they also had the possibility to change the rules of the game and even the very laws (Borgen 2009, p. 31). The USA and Russia in the above mentioned cases and also during other international crisis played both the rules of supporters of the principle of intangibility of state borders, of the champions of the right to auto-determination of peoples, but also warrants of legality and international safety (and sometimes even of democracy) even if that meant starting "humanitarian" wars in defense

[36] These two cases compared are only two in the middle of many more that we could consider in order to prove the uncertainty of international law when it comes to the existence (or non-existence) of the right to secession. By confronting the cases of Kosovo's exit from Serbia and the South Ossetia's exit from Georgia, Wojciech Janicki recognized too "a lack of clear rules of International acceptance of newly born states" (Janicki 2014, p. 105). Janicki also noticed that despite the similarity of the two situations, considering that a large number of states had recognized Kosovo's statehood while few of them recognized South Ossetia's one, from an international point of view two different criteria were applied for two similar situations. The principle of territorial integrity has been considered less important than the right to auto-determination in Serbia's case, while it was decisive in the case of Georgia (*ibid.*). This situation appears to be perfectly symmetrical: Serbia is supported by Russia in its claim to sovereignty over Kosovo and is opposed by the USA and more generally by the West, while Georgia on the other hand in the matter of South Ossetia is supported by the latter and contrasted by Russia. Furthermore Kosovo is recognized as an independent state by the West (with some exceptions) but not by Russia, while South Ossetia is recognized by Russia but not by the West.

of such values, and finally as champions of peace "tout court": all of this following logic that was dictated by mere political interests, beyond any observance of coherent juridical scene. Alessandro Vitale is even more bitter while reflecting on this issue: he follows with a thesis by Gianfranco Miglio and observes how "the conflicts, the agreements between political units, are all dealt with following solely the power balance, without even pretending to waste time to cover this with 'juridical' argumentations" (Vitale 2009, p. 264).

6. Conclusions

Considering the analyzed cases, we could deduce that according to today's reality as it is – and not as it should be in a world where every state respects others' sovereignty with relations inspired by at least formal parity criteria – new geopolitical hierarchies were formed despite not being formally institutionalized. In them, a state is "a regional power" when it is able to violate international legality without excessive risks of sanctions, *but only in its own macro-region*. On the other hand, a "global power" is the one able to violate international legality in the whole world or at least to introduce new rules to its own benefit: and all of this not only with no sanctions against such power, but also with the support of countries that effectively sustain its initiatives[37]. It is superfluous to specify that since 2014 there is only one country of the latter type: according to a clear reflection by Sergio Romano (2014b, p. 1) this country considers itself "indispensable" and has the right to assume initiatives that are prohibited to any other. It promulgates extra-territorial laws under the USA jurisdiction even when the presumed crime has been committed outside the USA territory; it demands that all the airlines of the world provide the American Services information regarding their passengers; furthermore it imposes complete immunity for its military in missions abroad.

On the other hand, Russia[38] is a regional power, because it has little political weight outside the Euro-Asian continent, has no international allies loyal to it a priori except for a small number of traditional ones (Belarus, Serbia, Republic

[37] A hierarchy between states that is not so different from the one presented here, also in V. Zawilski (2014, p. 82).

[38] But the 2014 Russia does not accept being defined as such, and it considers such a name to be an insult, because of its global aims and its own vision of the world due mainly to the economical growth in Putin's era. Among other things, according to the opinion of Aldo Ferrari, who studies Russian history and culture (in Limes 2014, ph. 68–71) Russia does not think of its post-1991 borders as definitive, but it considers them to be the base to the rebuilt of its ex-imperial and the Soviet space.

of Srpska in Bosnia, etc.). However it annexed Crimea[39] with no sanctions from the EU, G7 or NATO – and obviously UN – despite numerous menaces by western countries. In this hierarchy that is not openly declared but is consolidated if we judge by the reality of things, there are the so-called "rogue states": they have violated international legality or have been accused of doing so[40] but the "international community" does not only menace or to actuate sanctions (as it happens with the "powers") but sometimes it uses military intervention[41].

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[39] In regard to this there are two points of view: either violation of international treaties following the pro-western line of thought, or depending on a correct interpretation of the mentioned treaties, following the Russian opinion.

[40] Examples of this: Afghanistan against the Taleban government until 2001, Iraq and Saddam Hussein, Gheddafi's Libya, Iran, North Korea, Assad's Syria.

[41] The menaces that were not followed by concrete military action can bee seen either when economical motivations do not favor an armed intervention (typical case: Iran), or when the "rogue state" is defended by a regional power (North Korea defended by China and Syria protected by Russia). While the weight of Chinese and Russian powers is sufficient to safeguard an ally, it is not enough to influence a "unique line of thought".

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PORÓWNANIE PAŃSTW I NARODÓW. SPRAWY KOSOWA I UKRAINY W POLITYCE ŚWIATOWEJ

Streszczenie

Poklamowanie w 2008 roku niepodległości Kosowa, szybko uznanego przez wiele państw, w tym prawie wszystkie kraje Zachodu, wykazało, że nie istnieje już szacunek dla legalizmu międzynarodowego. W rzeczywistości, na oczach tzw. „społeczności międzynarodowej" albańska większość dokonała secesji Kosowa, pomimo oporu lokalnej mniejszości serbskiej (oraz działań rządu w Belgradzie), a także wbrew

mniejszościowym grupom etnicznym (Gorańców i Romów). Jest to już dziś fakt dokonany, do którego społeczność międzynarodowa się przysłużyła. Jednak przypadek Kosowa może być interpretowany jako niebezpieczny precedens mogący zagrozić integralności terytorialnej wielu krajów, które mają mniejszości narodowe aspirujące do secesji. Autor twierdzi, iż dokonało się to w niezgodzie z prawem międzynarodowym, które nie dopuszcza jednostronnych aktów secesji terytorium, a przewiduje jedynie ewentualność wspólnie uzgodnionych separacji politycznych. Przykładami tego rodzaju mogą być próby secesji wschodnich regionów od państwa ukraińskiego oraz skuteczna secesja Krymu, uzyskana dzięki wsparciu Rosji. Takie inicjatywy były już wcześniej wspierane przez Rosję i wywoływały sprzeciw Zachodu. Nastąpiło więc w Kosowie swoiste odwrócenie ról, które może być tzw. drugą stroną medalu. W tych odwróconych rolach, w porównaniu do kryzysu ukraińskiego, w Kosowie Zachód (USA i większość państw UE), były pozytywnie nastawione, a nawet wspierały albański secesjonizm z Serbii, natomiast Rosja prezentowała się w roli strażnika międzynarodowego legalizmu, gdy wspierała legitymizację suwerenności Serbii nad Kosowem.

Słowa kluczowe: *kraje wschodzące, uznanie międzynarodowe, Kosowo, Ukraina, kryzys międzynarodowy*

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