

GEOPOLITICAL RISK MANAGEMENT IN THE BALKANS. LEGAL IMPLICATIONS OF KOSOVO'S INDEPENDENCE

Part II

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Abstract:

This paper aims to examine the legal aspects in determining the legal status of Kosovo, the importance of its recognition by many countries in the international community and analyze the situation in Western Balkans after Kosovo's declaration of independence.

Keywords: independence, human rights.

JEL Classification: D74, F51

3. Analysis of Human Rights from the perspective of international law

Human rights and their observance by all countries that compose the international community is one of the central pillars of the entire international legal order. Their recognition through an extensive network of treaties on human rights comes to emphasize the human person as the ultimate rationale of the law and also mark a milestone in the development of international law¹.

The most recent official expression of self-determination appears in the two Conventions on Human Rights adopted by UN General Assembly in 1966. These are the International Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights, both signed by virtually almost all countries².

Kosovo was an autonomous province and constitute an independent state, had no international legal personality and therefore could not be a signatory of international treaties on human rights.

However, the former Socialist Federal Republic of Yugoslavia ratified most of these human rights treaties, including the Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and the

¹ Novak, Fabian y Salmón, Elizabeth, Las obligaciones internacionales del Perú en materia de Derechos Humanos, Pontifical Catholic University of Peru, Fund Editorial 2002, p.25.

² De Obieta Chalbaud, José A. El Derecho Humano de la autodeterminación de los pueblos, Tecna Publishing, Madrid, 1985, p.

International Convention on the Elimination of All Forms of Racial Discrimination against Women against children, against genocide, against torture and other inhuman treatment¹.

FRY Constitution guarantees the right of minorities to enjoy their culture, to profess and practice their own religion, to use their own language, among other rights relating to ethnic minorities. However, these rights were seriously violated during the attack the Yugoslav army in Kosovo in 1998.

As you know, that every European country can accede to the Council of Europe, accession to the European Convention on Human Rights, signed in Rome in 1950 is a prerequisite. In this regard, first, that Serbia, as the last remains of the former State Federal Republic of Yugoslavia gained membership in the United Nations, and therefore subject to the original Charter. It also acceded to the European Convention on Human Rights, and is therefore obliged to respect the rights of Kosovo citizens, including rights and human right to self-determination.

In the domestic legislation of Kosovo, there is a constitutional framework for Kosovo's provisional government. Chapter 3 of the constitutional framework of human rights concerns. In this respect, it is noted that the institutions of provisional self-government in Kosovo shall observe and ensure internationally recognized human rights, including rights and freedoms guaranteed by²:

- Universal Declaration of Human Rights
- European Convention on Human Rights and Fundamental Freedoms.
- Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- International Convention for the Elimination of All Forms of Racial Discrimination
- European Charter for Regional or Minority Languages
- Council of Europe Framework Convention on National Minorities.

Also, when exercised by the United Nations Civil Administration in Kosovo (UNMIK) to administer the province have established a set of eight standards that must be achieved as a precondition for initiating dialogue on the issue of Kosovo's legal status. In this set of eight standards, the focus was primarily on respect for human rights without restrictions for the population and ethnic and religious tolerance throughout the province, as a condition for the coexistence of all ethnic groups throughout Kosovo.

4. Implications of "Recognition" of Kosovo

In accordance with international law, Kosovo can be recognized as a state where it is considered that it has elements of an independent state, ie population,

¹ The Belgrade Center for Human Rights, Human Rights in Yugoslavia 2001, Belgrade 2002, p.30.

² Ibidem, p. 391.

territory, government and capacity to develop international relations. Recognition is an expression of the will of a subject of international law by which it recognizes as valid a certain state of affairs or a particular claim. It is a unilateral act of a subject, however, is likely to produce legal effects in relation to other subjects.

Given the lack of compulsion in international law and the importance of State consent for the creation of international legal norms or situations and discretionary nature of recognition, it can be argued that recognition is a mechanism to ensure legal certainty by some legal proceedings flexible. Perhaps an excuse to allow maximum flexibility to the difficulty of a precise legal regulation. As stated by the General Secretariat and the United Nations on the possible consolidation of recognition, "the main reason that you can not, do not want the extension coding efforts to one of the main aspects of law in international relations, who Moreover, it is met with great frequency, the idea is widespread recognition that the problem is rather the political sphere than the right"¹.

When a new state is born, not necessarily the international recognition it needs to be able to pursue legal personality, which would allow the establishment of international relations. In Kosovo, the autonomous province of signed agreements and established commercial and technical relations with Albania, and is also involved, independently, in certain regional international organizations, so that we can say that up to a certain point there a tacit recognition by these subjects of international law. Kosovo participates in the Council of Europe, the Organization for Security and Cooperation in Europe (OECD) and European Union Committee of the Regions.

Recognition of gains particular importance, especially when the meeting is still unclear whether or not some features of a state, such as external sovereignty, independence and permanence. But in this "test", can interfere with some clearly political reasons. Thus, recognition of a State may consolidate and ensure the existence of a community, while in the same way, refusing to recognize its existence may weaken or even cause its disappearance.

Organization of American States Charter, adopted at Bogota in 1948, contains provisions regarding the rights among the fundamental duties of States, and the following Article 9.

"Existence of state policy is independent of its recognition by other states. Even before being recognized, the state has the right to defend its integrity and independence to ensure its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate concerning its interests, to administer its services, and to determine its jurisdiction and courts of law. The exercise of these

¹ Podesta Costa y Ruda, José Maria, *Derecho Internacional Público*, Publishing Printing, Buenos Aires, 1985, p. 62.

rights is limited only by the exercise of the rights of other States in accordance with international law."

In accordance with international practice, recognition of a state has the retroactive effect of its actual birth, which means that it is seen as a subject of international law ab initio.

Another set of core issues covered by the doctrine refers to declarative or constitutive effects of recognition. Some authors attribute really only member recognition declaratory effect. In this sense, recognition is limited to the legalization of a previously existing situation¹.

On the other hand, believes that recognition is the formation of such a character, ie there is a valid legal status until there is a recognition by the international community. The new state would exist then, legally, just as a consequence of its recognition.

Countries that have recognized the new state of Kosovo will have to continue now with the new government relations, to strengthen high-level visits, promote investment, trade agreements and international cooperation, to show that independence is an irreversible process which will give confidence to the authority's new government to govern.

At the recent summit at Brdo pri Kranju - Slovenia, 10 June 2008, representatives of the United States and European Union have signed a declaration to support the regional integration of Kosovo and its institutional and economic development. President George Bush and Slovenian Prime Minister Janez Jansa, said that the United States will cooperate in the European EULEX mission to expand its degree of coverage over the entire territory of Kosovo.

5. Stability and Integration in the Balkans

It is important, finally, to analyze what might happen in the Balkans after Kosovo's declaration of independence.

If Kosovo will strengthen the statehood, will facilitate the formation of a solid regional bloc. The main factors that we can identify for regional integration in the Balkans would be common geography and territorial proximity of the countries that are in the south-eastern Europe, which would solve some common problems related to communications and infrastructure. In addition, most Balkan countries share similar historical experiences, as was the conquest and occupation by the Ottoman Empire, which printed the important cultural aspects of the region are reflected in popular culture today.

This process of integration would benefit from some intrinsic features, besides the common geography and territorial proximity, recent experience with a shared impact of communist political culture and economic structures in the Balkans.

¹ Pastor Ridruejo, José , Op. Cit., p. 295.

The existence of regional issues and common problems arising from the transition process, underdevelopment and lack of security is recognized as an important factor in stimulating regional cooperation.

There are also some obstacles, most notable among which ethnic nationalism is perceived as the main obstacle to cooperation in the Balkans. States and societies in the Balkans that followed communism are defined in particular in terms of ethnic entities. Ethnic conception of nation excludes all those who are not members of dominant groups and minorities tend to be regarded as second-class social groups.

Another manifestation of ethnic nationalism is highly centralized administration of states and that regionalism is refused by the central governments in the Balkans.

Also, one of the main reasons for the insufficient trade in Southeastern Europe is linked to trade structure and lack of complementarity between the economies of the region. Balkan countries are in general, similar products.

Informality business has always been associated with corruption, which has emerged as a structural feature in these countries. Corruption in turn, allowed the flourishing of organized crime, the region became a route to transnational crime, particularly drug trafficking, people and weapons.

On the other hand, if there is political integration between the Western Balkan countries, there are several factors in favor of an appropriate regional integration rather than against them. New Balkan leaders must become aware that their development will be more viable if they are beginning to integrate with their neighbors to solve common problems in the region.

Bibliography

1. Crawford, James, *The Creation of States in International Law*, Oxford, Second Edition, 2007, 870 p.
2. D'Angelo, Gustavo. Kosovo: Una independencia incierta, *Ideele*, Institute of Legal Defense Magazine, N° 185/2008, 108 p.
3. De Obieta Chalbaud, José A. *El Derecho Humano de la autodeterminación de los pueblos*, Tecna Publishing, Madrid, 1985, 456 p.
4. Forno, Giovanni, *Apuntes sobre el principio de la libre determinación de los pueblos*, *International Agenda*, Year IX, N 18, Pontifical Catholic University of Peru, the Institute of International Studies.
5. International Crisis Group, http://www.crisisgroup.org/home/index.cfm?action-conflict_search, visited on 09 June 2008.
6. Kuci, Hajredin, *Independence of Kosova/o*, Houston Texas, EEUU, 2005, First edition, 209 p.

7. Le Monde Diplomatique, Kosovo: En los Balcanes, precipitación diplomática es a veces sinónimo de catástrofe, Year I, Number 03, July 2007.
8. Malcolm, Noel, Kosovo: A short history, Pan Books, Oxford, 2002. 492p.
9. Malcolm, N Shaw QC, International Law, Cambridge University Press, United Kingdom 2003, Fifth Edition, 1286 p.
10. Novak, Fabian y SALMON, Elizabeth, Las obligaciones internacionales del Perú en materia de Derechos Humanos, Pontifical Catholic University of Peru, Fund Editorial 2002, 436 p.
11. Novak, Fabián y GARCIA CORROCHAO Luis, Derecho Internacional Público, Lima, Editorial PUCP Fund, Volume II, 382 p.
12. Pastor Ridruejo, José, Derecho Internacional Público, 1998, 456 p.
13. Podesta Costa Y Ruda, José Maria, Derecho Internacional Público, Publishing Printing, Buenos Aires, 1985, 435 p.
14. Remiro Brotons, Antonio, Derecho Internacional, McGraw Hill, First Edition, Madrid, 1997, 750 p.
15. Ruda Santolaria, Juan José, Sujetos de Derecho Internacional – Selección de Textos, Vol I y II, Pontifical Catholic University of Peru.
16. The Belgrade Center For Human Rights, Human Rights in Yugoslavia 2001, Belgrade 2002, 345 p.