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The Legal Status of Kosovo Under International Law: A Case Study on Self-Determination vs. Territorial Integrity

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ABSTRACT

This essay discusses the intricate legal status of Kosovo in international law, paying special attention to the conflict between the doctrines of self-determination and territorial integrity. The declaration of independence by Kosovo in 2008 precipitated an international discussion, and the legality of the declaration and its implications for international rules have been interpreted differently. The historical context of the dissolution of Yugoslavia and the UN administration is examined in this study to comprehend the peculiar situation of Kosovo's statehood. The study evaluates Kosovo's adherence to the conventional statehood criteria under the Montevideo Convention, such as permanent population, bounded territory, effective government, and ability to engage in relations with other states. The paper also examines the effect of Kosovo's recognition on international legal precedents, especially with regard to unilateral declarations of independence and the delicate balance between self-determination and territorial sovereignty. Through a thorough examination of international responses and legal views, including the ICJ's advisory opinion, the paper brings to the fore the continuing challenges and controversies surrounding Kosovo's legal status. The report concludes by noting the implications of Kosovo's case for future secessionist cases and the developing character of statehood in international law.

Keywords: Kosovo, Self-Determination, Territorial Integrity, International Law, Statehood.

I. INTRODUCTION

Kosovo was once the administrative and cultural center of the Serbian empire and was under Ottoman rule from the 14th century until the First Balkan War in 1912. In 1913, under the Treaty of London in May, this region was divided into Serbia, Montenegro, and Albania. During this time, an anti-Serbian sentiment persisted within Kosovo, as 64% of the population were Albanians. Therefore, hostility between Serbs and Albanians in Kosovo re-emerged, and Kosovo reappeared, and due to this, Kosovo urged the League of Nations for it to be united with

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Albania however, they did not take any action.³

Kosovo became an independent Serbian territory inside the Socialist Federal Republic of Yugoslavia after World War II. After Tito died in 1980, the tension between Serbs and ethnic Albanians intensified, which then led to widespread violence and discrimination. Later, in the 1980s, Slobodan Milosevic rose to power and gained complete control over the Serbian government. Milosevic withdrew Kosovo's autonomy in 1989, placing it under Belgrade's rule. Later, Serbia adopted a new constitution that, on the surface, protected a multi-party system, freedom of speech, and fundamental human rights.⁴ However, Milosevic ignored most of the constitutional provisions, and many of Serbia's minorities opposed this new constitution because they believed that it was a means to impose ethnically-based rule on the provinces.⁵

Albanians protested peacefully and nonviolently in the early 1990s in response to the loss of autonomy and numerous human rights violations. The situation worsened in 1997, when the (KLA) Kosovo Liberation Army launched a guerilla war and terror campaign to secure Kosovo's independence.⁶ In response, the international community initiated mediation efforts, leading to the Rambouillet Accords, which called for Kosovo autonomy and allowed NATO troops to enter Kosovo to secure peace.⁷

⁸Following this, on June 10, 1999, the United Nations Security Council adopted Resolution 1244, which formed the basis for the constitutional developments in Kosovo. The United Nation Interim Administration Mission in Kosovo (UNMIK) was responsible for eventually transferring its administrative responsibilities to democratically elected, interim autonomous government institutions. Due to this situation, Kosovo had little to no governing experience, especially after Milosevic had eliminated its autonomy.⁹ A Constitutional Framework for Provisional Self-Government in Kosovo was created by UNMIK in May 2001. It called for a 120-seat legislature to elect a president and a prime minister.¹⁰

Furthermore, in March 2004, violent demonstrations erupted within Kosovo, which resulted in the death of 19 civilians, and there were over 900 individuals who were severely injured and around 4,000 persons who were displaced Serbs. The third round of elections was held on

³ Constitutional History of Kosovo, CONSTITUTIONNET, <https://constitutionnet.org/country/europe-kosovo#:~:text=During%20the%20medieval%20era%2C%20Kosovo,1912%2D1913%20ended%20Ottoman%20supremacy.>

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id.

October 24, 2004, in Kosovo, with very few Serbs voting owing to violence.

The study advocated a constitutional reform in Kosovo that would limit its sovereignty by enabling foreign civilian and military operations and requiring power-sharing agreements with minority parties. Russia, an ally of Serbia, refused to back the idea due to a lack of support from Serbians. Delegates from the United States, the European Union, and Russia undertook more discussions but could not come to an agreement on Kosovo's eventual status. Kosovo then declared independence in early 2008 when the assembly passed a declaration of independence on the advice of the Special Envoy of the United Nations, committing to establishing a democratic republic and embracing all commitments under the Ahtisaari plan, including the creation of a new constitution within 120 days.¹¹

The Kosovo assembly ratified a new constitution in April 2008, and it entered into force on June 15, 2008.¹²

The constitutional drafting process began in March 2007, with the formation of a Constitutional committee composed of a small, professional committee and substantial foreign participation. By the end of 2007, a draft constitution had been created, with several features drawn from the Ahtisaari plan. After Kosovo had proclaimed independence, the Constitution was made available for public discussion, with over 1000 comments submitted to the Commission for review. The final wording was finalised in April 2008, accepted by the Kosovo Assembly, and took effect two months later, on June 15, 2008. The new Constitution established a parliamentary republic with promises to safeguard minorities, with the president as head of state and the Prime Minister as head of government.¹³

Kosovo's diplomatic recognition is crucial to maintaining its sovereignty and desires to join the Euro-Atlantic zone, the United Nations, and other international organisations.¹⁴ Kosovo's political existence, geographical integrity, and integration with the European Union are jeopardized unless universal recognition is achieved. Kosovo has been formally recognized by 111 states, of whom 109 are UN members.¹⁵ Except for Serbia, all of its neighbours, the European Union, NATO, the G-7, and a number of nations from all continents recognize its sovereignty. Kosovo's independence has improved regional peace and stability, safeguarded minority rights, increased governmental capacity and facilitated self-determination.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶Between 2009 and 2014, Kosovo recognised 22 diplomatic and 14 consular missions in foreign nations. It has signed over 100 international bilateral and multilateral treaties, including over 70 involving treaty succession. Kosovo has established diplomatic relations with 70 countries that recognise its independence.¹⁷ Kosovo joined the International Monetary Fund and the World Bank in 2009, followed by full membership in the European Bank for Reconstruction and Development, the Regional Cooperation Council, the South-Eastern Europe Cooperation Process, and the International Olympic Committee. The EU and the US have supported Kosovo's candidacy for UNESCO membership.¹⁸

Traditional Criteria of Statehood

Several attempts were made to develop a comprehensive concept of statehood, but all were unsuccessful. The most accurate description of the constituent components of statehood is found in Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States, which specifies four basic requirements that must be met for determining statehood.¹⁹ These primary conditions include a defined territory, the operation of functional administration over that region, and the presence of a permanent population.

The traditional criteria are rooted in the Latin maxim '*ex factis jus oritur*', which means that certain legal consequences are attached to particular facts and are based on their effectiveness.²⁰ However, it must be noted that the importance of efficacy is not often fully appreciated. In "exceptional cases," a new legal criterion must be considered according to state practice. Finally, on February 20, 2008, Kosovo unilaterally proclaimed independence. This proclamation was later recognized by a number of states. Nonetheless, the creation of statehood occurs independently of recognition. For Kosovo to become a state, it must achieve the conditions of statehood stipulated in the Montevideo Convention. Another condition is for Kosovo to have been formed lawfully.

Permanent Population

In most scenarios, the first criteria of permanent population are not met. This definition encompasses the majority of the claims. Raic suggests two criteria for defining 'permanency':²¹ firstly, the population must intend to inhabit a particular territory permanently. Secondly, the

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Demola Okeowo, Statehood, Effectiveness and the Kosovo Declaration of Independence, SSRN Pg 1, 2 (15 Dec 2008).

²¹ Id. at 1.

mentioned territory must be habitable. Therefore, there is no particular limit prescribed to the size of a State's population. The State's municipal law decides who belongs to the state's population.²²

Territory

The second condition for territory is a bit more complex. According to Crawford, the right to become a state requires full political capabilities, regardless of the size or continuity of its territory. This is referred to as territorial sovereignty.²³ The *Island of Palmas Case* Court ruled that territorial sovereignty "involves the exclusive right to display the activities of a State."²⁴

Government

The challenge of territorial sovereignty is closely linked to the third condition of an effective government. A recognized state's claim to statehood is based on the existence of an institutionalized political, administrative, and executive organizational machinery that regulates community relations and upholds rules.²⁵ Effective governance necessitates the apparatus that governs communal relations and enforces norms. Effective governance necessitates the ability to wield governmental power over the claimed region and its population. However, to be effective, an entity or organ must be capable of establishing and maintaining a legal order throughout the territory. A lack of effective government can hinder the acquisition of statehood and even lead to the extinction of the state as an international person. International law does not prescribe the type of government in power, but it must conform with the right to self-determination of the governed. A government system in a specific territory indicates a certain legal status and is generally a pre-condition for statehood.²⁶

Capacity to establish relations with other states

The fourth condition is the ability to establish relations with other states, it isn't a prerequisite for statehood but rather a result of it. Furthermore, the ability to engage in foreign affairs is not limited to states; it also extends to international organizations and constituent portions of states (federal components).²⁷

Independence

The Montevideo Convention pertains to a treaty that established the independence of states and

²² *Id.* at 2.

²³ *Id.* at 2.

²⁴ *Island of Palmas Case* (1928) 1 RIAA 829, 839

²⁵ Demola Okeowo, *supra* note 9, at 2.

²⁶ *Id.* at 2.

²⁷ *Id.* at 3.

is often added to the criteria for determining a state's status. This condition is believed to be implied from the fourth requirement and states without independence, an entity cannot operate fully in the international sphere. The phrase 'independence' refers to the distinct existence of an entity within coherent borders that is not subject to the authority of another state or set of states. Independence is typically classified into three types: formal, actual, and real. Formal independence is achieved when the government's functions are delegated to the purported state's independent authority²⁸. On the other hand, actual independence refers to the bare minimum of genuine government authority necessary for an institution to be independent. Only when both forms of independence exist can an entity be classified as a state.

Traditional criteria in the case of Kosovo

The 1974 Yugoslav Constitution granted Kosovo autonomy with similar rights and responsibilities to the six Yugoslav Republics. However, after Milosevic's takeover in 1989, the degree of autonomy granted to Kosovo was reduced, and ethnic Albanian participation in public office was discouraged. Kosovo Albanian leaders withdrew from public institutions and declared Kosovo a sovereign and independent state on 19 October 1991.

In February 1998, the Federal Republic of Yugoslavia (FRY) launched a military campaign against Kosovo, leading to gross violations of human rights. NATO began a bombing mission in Kosovo (UNMIK) in FRY in 1999, which ended on 9th June 1999. The United Nations Mission in Kosovo was established and exercised all legislative and executive authority, including the judiciary administration.

On 15 May 2001, a Constitutional Framework for Provisional Self-Government gave certain powers to the Kosovo Assembly. On February 20, 2008, Kosovo proclaimed independence for the second time. Although Albania was the first to recognise Kosovo's independence in February 2008, numerous other nations, notably the United States and most European countries, have since recognised it.

Kosovo has a permanent population of around 1.9 million people and may engage in international interactions. It has a democratic government elected by its population in elections organised and overseen by the United Nations, the European Union, and other international organisations. The government operates through legal actions based on a constitutional framework and legislation established by legislative bodies recognised by the Special Representative of the United Nations Secretary-General. UNMIK oversees the court system, which employs foreign judges and prosecutors. Kosovo, which is under UN authority, is not

²⁸ Id. at 4.

totally independent and is unable to manage its own internal and foreign affairs.

Important reasons why Kosovo should be regarded as a sovereign state include the following:

The Self-Determination Principle: The majority of Kosovo was filled with ethnic Albanians, and they sought independence and claimed that their right to self-determination due to the historical oppression they had faced because of Serbia, particularly in the 1990s, when severe human rights violations took place under the regime of Milosevic. This international law principle of self-determination supports that a group may choose to form an independent state or separate if they face extreme oppression and denial of governance rights within an existing state. Despite the reservations about Kosovo's entitlement to full external self-determination, the dire past situation in Kosovo contributes to the legitimacy of this argument for statehood.²⁹

The impracticability of a Return to Serbia: The legacy of conflict and human rights abuses made a return to Serbian governance. Kosovo's declaration of independence in 2008 followed years of UN administration, during which Serbia had no effective control over the region. And since Serbia continued its sovereignty over Kosovo for a long time, it was deemed unfeasible due to the longstanding animosity and the political will of Kosovo's population for independence, further supported by the UK's position that reintegration with Serbia would not ensure regional stability or peace.³⁰

International Community's Support: Kosovo's independence has been recognized by as many as thirty-nine states, including influential ones like the United States, the United Kingdom, and several European Union members. Though recognition is not universal, it indicates significant international support. It suggests that Kosovo meets practical criteria for statehood, such as a defined territory, population, government, and independence in external relations. Moreover, many countries see Kosovo's independence as a unique solution rather than a precedent for another secessionist movement, emphasizing Kosovo's *sui generis* status and the need for stability in the Balkans.³¹

II. PRECEDENTS SET BY KOSOVO'S RECOGNITION

³²The territorial integrity principle underlies international law and the UN Charter Article 2(4) states that states must respect borders and sovereignty and cannot threaten or use force against any state's territorial integrity. ³³The UN and different international agreements, such as the

²⁹ Kosovo: International Law and Recognition, CHATHAM HOUSE, 1, 10 (22 April 2008).

³⁰ *Id.*

³¹ *Id.*

³² Shaw, M. N. (2017). *International Law* (8th ed.). Cambridge University Press.

³³ Montevideo Convention on the Rights and Duties of States, 1933, 26 Am. J. Int'l L. Supp. 19 (1933)

Helsinki Final Act of 1975 and the Montevideo Convention of 1933, usually reject unilateral secession except in cases of decolonization or blatant human rights abuses.³⁴ This principle is bolstered by the International Court of Justice in cases such as the Advisory Opinions on Namibia (1971) and the Wall (2004) since it presented states with the fact that they should not recognize territorial acquisitions made through unlawful means. The ICJ, however, ruled that Kosovo's declaration was not unlawful in its 2010 Advisory Opinion on Kosovo's independence. The court, however, declined to assert it as a right and dealt with words underlining recognition as a political decision.

The declaration of Kosovo's independence from Serbia in 2008 provoked mixed reactions around the world, as countries such as the United States and most EU members legitimized recognition of Kosovo based on humanitarian grounds, while others, like Russia and Serbia, refused to recognize it and insisted on territorial integrity. In this case, there was an apparent conflict between the claim of Kosovo for self-determination and the territorial rights of Serbia. Before this declaration, Resolution 1244 by the UN Security Council recognized Yugoslavia's territorial integrity, including Serbia. Proponents of Kosovo's independence argue that this gross breach of human rights demanded a self-determination claim. This principle was applied only in the colonial context but is today applied to extreme cases of oppression. This self-determination-territorial integrity conflict is still only partly resolved in international law, particularly from cases outside decolonization.

³⁵Kosovo's independence has created a precedent that will challenge traditional frameworks of statehood and their consequences for other secessionist movements. Condemned by some and hailed as a precedent by others, Kosovo's recognition has emboldened groups everywhere, like Catalonia and Abkhazia, who now quote Kosovo in support of their own causes.³⁶ Kosovo has revealed contradictions between rhetoric and practice on the international application of both self-determination and territorial integrity and that the latter extends beyond a purely legal standard to become, as well, a political instrument susceptible to changes in domestic and world national interests and geopolitics. Earning sovereignty or conditional sovereignty: This grants sovereignty, albeit under the supervision of the international community, over a period. "Conditional independence" is thus one case illustrated by Kosovo.³⁷ It had been under UN

³⁴<https://www.icj-cij.org/case/53#:~:text=In%20its%20Advisory%20Opinion%20of,to%20withdraw%20its%20administration%20immediately.>

³⁵ Rohan, A. (2018, February 2). *Kosovo's path to independence – European Council on Foreign Relations*. ECFR. https://ecfr.eu/article/commentary_kosovos_path_to_independence/

³⁶ Cassese, A. (1995). *Self-Determination of Peoples: A Legal Reappraisal*. Cambridge University Press.

³⁷ BBC. (2018, January 16). Kosovo profile. *BBC News*. <https://www.bbc.com/news/world-europe-18328859>

administration and was also supported by most world powers, and it shows how international support may strengthen a contested state, even though it is considerably weak in sovereignty.

³⁸This reconfigured statehood corresponds well to trends such as e-governance, as is the case with Estonia and digital citizenship, and also the emergence of such non-state actors as multinational corporations. The experience of Kosovo further illustrates the impact that international organizations may have on transitional governance.³⁹ The Montevideo Convention criteria of statehood remain particularly difficult to apply in today's world, where partial international recognition and support from external governance can make statehood in such contentious contexts both possible and, as the case of Kosovo illustrates, even legitimate. Kosovo will thus serve as an example of the moving sands of international law towards a less rigid conception of sovereignty that may fundamentally alter global responses to future claims of self-determination.

III. INTERNATIONAL REACTIONS AND LEGAL OPINIONS

⁴⁰Kosovo's declaration of independence in 2008 proved the existing fault lines in the geopolitics of the world's major powers, each of which had its own geopolitical and ideological attachments. The United States quickly acknowledged Kosovo basing its decision on the principles of self-determination and humanitarian intervention. ⁴¹The U.S. maintained that Kosovo's predicament arose from ethnic cleansing of the Kosovar Albanians by the Serbs, which to them, justified a breach in the territorial integrity principle. Backing Kosovo was also in line with the American foreign policy in the promotion of democracy and stability in the Balkans, and curbing Russian ambitions in the region.

On the contrary, ⁴²Russia was antagonistic to Kosovo's quest for independence and supported Serbia's territorial integrity. Her position was determined to a great extent by her history of imperial dominion and the accompanying issues of separatism within those empires, such as Chechnya while also looking at her linking with regions like Abkhazia and South Ossetia in Georgia. ⁴³It claimed that recognizing Kosovo as an independent state would spur other nations with similar aspirations, further demonstrating the power projection agenda in the Balkans and

³⁸ Hardy, A. (2024). Estonia's digital diplomacy: Nordic interoperability and the challenges of cross-border e-governance. *Internet Policy Review*, 13(3). <https://policyreview.info/articles/analysis/estonias-digital-diplomacy-nordic-interoperability>

³⁹ *Montevideo Convention on the Rights and Duties of States*. (1933). <https://www.ilsa.org/Jessup/Jessup15/Montevideo%20Convention.pdf>

⁴⁰ Weller, M. (2008). *Contested Statehood: Kosovo's Struggle for Independence*. Oxford University Press

⁴¹ Ker-Lindsay, J. (2009). *Kosovo: The Path to Contested Statehood in the Balkans*. Bloomsbury

⁴² Sakwa, R. (2012). *Russian Politics and Society*. Routledge.

⁴³ Charap, S., & Troitskiy, M. (2013). "Russia, the West, and the Integration Dilemma." *Survival*, 55(6)

the resistance to the West.

The European Union (EU) and its member states had a similar and to some extent an opposite view, where some countries acted according to their own national interests.⁴⁴ Although Kosovo was recognized by the likes of Germany, France and the U. K., countries such as Spain, Slovakia and Greece refrained from recognition because they feared that recognition of Kosovo would encourage similar tendencies within their own borders. This is true for Spain which was wary of any ramifications for the Catalonian independence movement. This situation underlined the deep schism within the EU regarding its ability to adopt an internal approach on any aspect related to sovereignty. This tension was also evident in the regional context where the EU found it hard to strike a balance between preserving order and allowing for self-rule within its borders and its periphery.

The question of whether Kosovo had violated international law in its declarations of independence was considered in an⁴⁵ advisory opinion requested by Serbia and delivered in 2010 by the International Court of Justice (ICJ). As there is no overarching prohibition on declarations of independence made unilaterally, the court determined that Kosovo's declaration was in conformity with international law.⁴⁶ Nevertheless, the court neither recognized Kosovo as state nor legitimized Kosovo's Cartistan-style unilateral declarations of independence, indeed leaving the issue open. This Karen was considered by the army as a victory, but the legal opposition regarded it as a solely affirming the justification for the declaration and not for the secession itself. This lack of clarity illustrated the problems that exist in the implementation of international law in specific politically delicate situations.

⁴⁷Intergovernmental organisations like the UN, EU, and NATO have been instrumental in the state-building process in Kosovo. Following the intervention by NATO in 1999, the UN set up the United Nations Interim Administration Mission in Kosovo (UNMIK) and established a temporary administrative structure while officially maintaining the territorial claims of Serbia. The position of the UN on the question of Kosovo's independence has been one of neutrality in the sense that the UN has continued with peacekeeping and institution building activities through UNMIK rather than recognizing Kosovo's independence.⁴⁸ The EU implemented the EU Rule of Law Mission in Kosovo (EULEX), which aimed at strengthening the legal

⁴⁴ Ker-Lindsay, J. (2012). *The Foreign Policy of Counter Secession: Preventing the Recognition of Contested States*. Oxford University Press.

⁴⁵ ICJ Advisory Opinion on Kosovo, 2010.

⁴⁶ Crawford, J. (2006). *The Creation of States in International Law*, 2nd Edition.

⁴⁷ Ker-Lindsay, J. (2009). *Kosovo: The Path to Contested Statehood in the Balkans*. I.B. Tauris Publishers.

⁴⁸ Weller, M. (2009). *Contested Statehood: Kosovo's Struggle for Independence*. Oxford University Press

institutions and governance of Kosovo, while also aiming at Kosovo within the framework of its Stabilization and Association Process. The presence of NATO through the Kosovo Force (KFOR) is indicative of NATO's intent towards the stability of the Balkan region. All these different forces pointed out Kosovo's 'conditional sovereignty' which means that the state functions and stability of Kosovo depend on the support of the international community which is not consistent with conventional views on sovereignty and recognition of statehood.

The question of borders still remains in question as contested Kosovo boundaries are still claimed by Serbia, which continues to be a threat to Kosovo's stability. Ethnic Serbs in Kosovo, especially in the northern region, have historically refused to be governed by Kosovars, aggravating the situation at times into skirmishes and violence. The Serbian government has been calling for these areas to be given wide-ranging autonomy, which in itself hampers efforts of border control and raises concerns over the boundaries delineated for Kosovo. Attempts have also been made to resolve these problems, notably the talks held under EU auspices, but the parties are not even close to reaching agreement on mutual recognition.

⁴⁹Kosovo has also been plagued by challenges with regard to ensuring minority rights, with a special focus on the rights of ethnic Serbs. Ethnic Serbs constitute around 5% of the population of Kosovo but have to grapple with underrepresentation and cultural rights abuses. The Association of Serbian Municipalities established by the mediator the European Union is supposed to allow for Serbian dominated regions, which has been a vexation and remains in suspension. ⁵⁰Some Kosovar Albanians are concerned that it will undermine the central government and give rise to a 'state within a state' option. Other marginalized groups such as the Roma and Ashkali communities experience similar constraints in that they face discrimination and have very limited economic opportunities which creates difficulties for the social integration and governance of Kosovo.

Events in Kosovo and the entire Balkan region are still defined by ethnic politics, nationalism, and the regional geopolitical configuration, hence the possibility of conflict still looms large. Intermittent conflicts and protests point to the existence of deep-seated animosity between Serbs and Kosovar Albanians. The relationship between Serbia and Russia is very close, and this adds tension, as Kosovo has the support of the West; tensions are nuanced also because the situation is closely monitored by EU and NATO as there is a fear that if the situation worsens, it could spill out to the regions with ethnic tensions such as Bosnia and Herzegovina.

⁴⁹ Bieber, F. (2015). *The Serbs and Albanians: Nationhood and Statehood in the Balkans*

⁵⁰ Judah, T. (2008). *Kosovo: What Everyone Needs to Know*

Examining the processes of state formation through Dutch Nationalist historical revisionism through the case studies of the Republic of South Sudan, East Timor, and Eritrea serves to instead shed light on the case of Kosovo.⁵¹ The declaration of independence of South Sudan from Sudan in 2011 was achieved after years of civil strife which managed to garner considerable external assistance. However, even today, the young state is still facing threats such as inner conflict as well as governance difficulties, and hence this is demonstrative that being independent does not cure the societal political ills.⁵² The proclamation of independence by East Timor was made following a United Nations organized referendum in 1999 and therefore enjoyed high level of United Nations assistance, with the only problem coming from Indonesia. As opposed to Kosovo, the issue of independence in East Timor enjoyed widespread international support, this has to do with the way support for independence in East Timor is to a great extent different from support for independence in Kosovo which is about colonialism.⁵³ Eritrea obtained independence from federal Ethiopia in 1993 and similarly enjoyed plenty of international recognition even though territorial conflicts ensuing after that eventually led to a bloody conflict, this example indicates that sovereignty is not the end and that borders are important even when independence has been obtained.

⁵⁴One necessity that is illustrated in this discussion is the importance of looking at Kosovo in connection to these other cases while also placing particular emphasis on the issues of legal aspects and the response to the situation by the international community. Whereas Kosovo has been defined as *sui generis* in order not to risk creating other precedents for secession – South Sudan and East Timor were regarded as cases of self-determination, with all the humanitarian considerations which this implies. Yet, even today, there is no unanimous verdict about recognition of the statehood of Kosovo with the exception of Serbia and Russia, and there is still no UN Security Council Resolution that has recognized Kosovo as a sovereign state. The main conclusion from this is that the response of the international community to separatist movements is influenced more by geopolitics and humanitarian concerns rather than the legal ones.

When discussing Kosovo's statehood, various theoretical frameworks can be applied.⁵⁵ Legal positivism is, perhaps, the dominant reason that discrimination does not offer a solid ground for Kosovo's case for statehood and recognition per international law which requires state consent

⁵¹ Pinaud, C. (2020). *South Sudan: The Untold Story from Independence to Civil War*.

⁵² Taylor, J. G. (1999). *East Timor: The Price of Freedom*.

⁵³ Iyob, R. (1995). *The Eritrean Struggle for Independence: Domination, Resistance, Nationalism 1941-1993*.

⁵⁴ Coggins, B. (2011). "Friends in High Places: International Politics and the Emergence of States from Secessionism." *International Organization*, 65(3), 433-467.

⁵⁵ Grant, T. D. (1999). *The Recognition of States: Law and Practice in Debate and Evolution* (Praeger)

and unfilled in Kosovo's case. This theory promotes the ideas of state sovereignty and territorial integrity, which is the position taken by Serbia and Russia that could not be supported by the law.⁵⁶ On the other hand, natural law, which is concerned more about right and wrong, can provide a legal justification for the secession of Kosovo for moral reasons and self-determination law in general since it has been abused so much by the Serbs; especially during the period of their rule. Nevertheless, seen through a critical legal theory framework, wherein the power relations embedded within the law are scrutinized, it could be also argued that Kosovo's independence is equally a product of legal and non-legal geopolitics given the existence of powerful states that change the rules for other purposes.

⁵⁷To address these theories in the real world, statistical methods can be used to examine the rate of international recognition in other similar situations and how those rates may impact economic development through variables such as GDP growth or foreign direct investment in regions experiencing either recognition or isolation. Other methods like assessment of diplomacy, analysis of targeted policy interviews within governmental structures and others could explain actually how some states defend positions on Kosovo or other similar cases. This line of inquiry could benefit the comprehension of factors that underpin international opening such as law, ethics and politics.

IV. CONCLUSION

The proclamation of Kosovo as an independent state symbolizes the clashing and overlapping elements of law, ethics, and politics and hence addresses the challenges in the principles of territoriality and sovereignty.⁵⁸ The Kosovo issue has seen some form of recognition, which has created and continues to create, more secessionist ambitions and based tensions over the principles of self-determination, particularly in the areas that are not marked for de-colonization processes.⁵⁹ Maybe, international systems would be able to counter the problems by stating conditions upon which new independent nations shall be recognized, in a way incorporating human rights concerns and sovereignty principles. Placing more emphasis on such organizations as the UN and the EU in governance of the transition period would make it

⁵⁶ Falk, R. (2002). "Kosovo, World Order, and the Future of International Law," in *The Kosovo Tragedy: The Human Rights Dimensions* (edited by Ken Booth).

⁵⁷ Koskenniemi, M. (2005). *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press)

⁵⁸ Richards, D. & Gelleny, R. (2011). "The Economic Costs of Political Violence and Non-recognition: The Case of Kosovo," *World Development*, 39(6), 1109-1119.

⁵⁹ Tancredi, A. (2009). "The Legality of Kosovo's Declaration of Independence in International and Comparative Law," in *Kosovo: A Precedent? The Declaration of Independence, the Advisory Opinion and Implications for Statehood and Recognition* (edited by James Summers)

possible to tackle the problems related to statehood in a more principled manner. Derivatives of the Kosovar case indicate that it is critical to create more dynamic systems of recognition of states as relatively they are based on legal conception but appreciate the relationship between human rights, and international politics, which can be complex.
