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*Chair of Geopolitical Scenarios and Political Risk*

***THE FUTURE GEOPOLITICAL SCENARIOS OF  
KOSOVO.***

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# ***ABSTRACT***

Eleven years after the unilateral Declaration of Independence of Kosovo, this State is still in a precarious situation, fighting for its identity not only against some great superpowers, but also within its own territory, where, inter-ethnic conflicts, in particular between Serbs and Albanians, are anything but solved. The purpose of this thesis is to analyze the geopolitical value of the region and the possible future scenarios, starting from the policies and strategies of community integration, in depth. Furthermore, what I will try to highlight is how the contemporary international order of the region is capable of influencing the entire geopolitical chessboard, since the Balkans are still a territory in a precarious balance, even after the end of the bipolar world.

The traumatic passage, which is still ongoing towards the market economy, makes Kosovo a particularly interesting country to analyze, it being tightened between constant pressures from east and west, and having to fight for its recognition even in large international organizations like the United Nations. What this thesis wants to highlight is how this country is trying to put in place a process of democratization at a time when indeed the state building process, even if it is impossible to say nowadays that a State does not exist, is not yet fully defined. Moreover, analyzing the various recent diplomatic initiatives, I will try to establish what could be the future of Kosovo in the international geopolitical scenario, in the hope of the implementation of the normalization process.

Initially, I will illustrate the political and territorial history of this geographical area, in order to highlight the historical heritage of Kosovo, and also to trace the roots of the problems that still today are the source of inter-ethnic clashes and internal problems that this State is facing.

Through this path, I will show how everything that has shaken and affected Kosovo, and more generally the area of the Balkans, dates back to a much more ancient legacy, which weaves history, myth and religion, and to which the different populations of this area are still very closely linked. As it happens for many movements with a strong nationalistic cut, both for the Kosovars-Albanians and for the Serbs, the historical and heroic past of their peoples is an element that is often recalled, and which, in a sense, legitimizes the feeling of "supremacy" over a certain territory, and wipes out any doubt about the validity of the claims of the interested parties. At this point, I will place the emphasis on the relations between Belgrade and Pristina. This analysis will be useful for the purpose of discussing the possibility of Kosovo and Serbia's entrance in the European Union. The destinies of the two countries and of the people who live there, even in a first analysis, seem to be closely intertwined with each other.

Subsequently, in the first chapter, through a geopolitical analysis, which which will keep the physical geography of the area – therefore the spatial context (economic, cultural and social) and political actors, both national and international – in mind, I will try to answer to the first question on this thesis; why a so small territory represents such a coveted place? Obviously, to do this, I will have to take into consideration the geopolitical interests of the great world powers, taken individually, and within the major international organizations. As for the latter, I will underline the great importance and influence that some of them have had and still have on the territory, focusing in particular on the United Nations. At this point, despite the NATO intervention, following the serious events of 1998-1999, is now a *fait accompli*, I still consider important to examine it, because of the very special role it has played, changing the course of national and international history of this area. So, I will stop for a while on the law of humanitarian intervention that allowed the bombings of 1999, and the new political direction of the country following the facts listed above. At this point, because no State can be considered as such without the recognition of its existence by the international environment, I will focus on this aspect, and on the motivations that bring a great super power, such as Russia, not only not to accept the existence of Kosovo as an autonomous state, but also to block its access, thanks to its veto power, in the United Nations. But, if on the one hand there are countries that have not yet recognized Kosovo, there are others, among which are the ones of the European Union – albeit with some exceptions – that instead consider Kosovo an independent State. In this regard, since the time of the first friction that led to the Kosovo war, Europe, obviously some of its states with more momentum than others, has shown that it wants to invest its resources, military in a first phase, in the area, in order to be considered a real mediator.

In the second chapter, I will analyse the case of Kosovo through the international doctrine, the state building process and the problem of secession for the international law. At that point, I will focus on the decision of the International Court of Justice following the self-declaration of independence of Kosovo and the process of recognition that began from that moment onwards. To then finally enter the fulcrum of the thesis, I will focus in particular on another diplomatic initiative that has been going on for some years: the Brussel Dialogue. This process, which began in 2011, represents an EU-facilitated dialogue between Pristina and Belgrade, in which the European community poses as a mediator and also provides a real space for confrontation between the two countries. I will therefore focus briefly on the methods and strategies put in place by the Union as mediator in the trilateral dialogue. Beyond its objective importance for the normalization process of the area, it is also proof that the EU is very interested in playing a leading role within the Balkan countries. Indeed, there are some States in particular that have felt over time that the participation of the Balkans in the policies of the European community is a determining factor for their stabilization.

From a commercial point of view, the Community has already shown the desire to be an exchange partner with the countries of this area, and in particular Italy (with Germany) is the main trading partner of the countries of the region<sup>1</sup>. Unfortunately, the situation in the Balkans, twenty years after the end of the Kosovo war, is still unstable. In fact, I will point out that, despite the efforts of the EU, internal differences often become unstopable and the tension between the two states rekindles, blocking the negotiation processes and interrupting the Dialogue. After having highlighted the first great progress achieved through the Brussels Dialogue with the first agreement signed in 2013, I will dwell on the main issues that have regressed the process of normalization. These include in particular the last two measures of the Government of Pristina: that of imposing duties on imports from Serbia and Bosnia Herzegovina, and the approval of the law providing for the creation of a national army.

In the third and last chapter, finally, I'll focus the analysis on the possibility of Kosovo joining the European Union; trying to understand if this is an effective option or just an idea still very far from its realization. In order to do this, I will go through the most important criteria that each country must meet in order to become an EU Member State, and for each of them I will try to highlight the current condition of Kosovo.

*Key words:* Kosovo, Geopolitics, Diplomacy, process of normalization, EU, integration.

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<sup>1</sup> IAI. "La politica estera italiana a 150 anni dall'Unità: continuità, riforme e nuove sfide." 2011.

# ***INTRODUCTION: An Historical Overview***

## **I.1 KOSOVO DURING THE MIDDLE AGE**

Kosovo is one of the youngest States in the whole world, given that it achieved its independence only 11 years ago after a bloody war with Serbia. Its history is very tangled, but what is certain is that Kosovo has always existed, in some form or another. What we know of Kosovo's past already began during the Roman domination in the area. At that time, it was populated by an Illyrian<sup>2</sup> civilization known as the Dardans. But, for the purposes of this discussion, and for the achievement of the objectives of this thesis, what is interesting and relevant is the history that intertwines the destiny of Kosovo with that of its nearest neighbours. In this regard, the so-called period of "slavification" is the historical time that goes from about the VI to the XIV century a.C.

In this period, taking advantage of the commitment of the Byzantines in the wars against the Persians first, and against the Arabs later, the Slavs made their way through Poland and began to penetrate the heart of the Balkans. Moreover, over time, they divided into three different groups; Slovenians, Serbs and Croats. Obviously at that time Serbia was not a unified empire yet, and several sovereigns were fighting among themselves for the ownership of pieces of territories, that of course also included the area of Kosovo. It was only in 1216 that one of them, Stefano Prvoenčani, took control of the whole area, thus incorporating it under Serbian domination. This period is very important because it is precisely to this that the current Serbian nationalists refer to justify their possession claims over the area. In this century, in fact, Kosovo is not only part of the Serbian territory, but it becomes its beating heart; developing into a great commercial center, and the place where the Sovrans of the Nemanjić dynasty decided to build their capitals; in Prizren and in Pristina<sup>3</sup>.

Another important element to be considered at this time, as it will be part of the discussion later, is religion. This argument is very important because still today it is one of the causes of

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<sup>2</sup> The claim of the Albanians to have actually been the first to inhabit the region depends precisely on the fact that their historians identify a direct descent between the Illyrians and the Albanians, descendants of which there is no source in the history books of other Balkan countries.

Gashi, Shkëlzen. "The History of Kosovo; in the history textbooks of Kosovo, Albania, Serbia, Montenegro and Macedonia." *Alter Habitus - Institute for Studies in Society and Culture*. 2016. <http://www.alterhabitus.org/en/publikime/the-history-of-kosovo-in-the-history-textbooks-of-kosovo-albania-montenegro-and-macedonia/>.

<sup>3</sup> Malcom, Noel. *Storia del Kosovo*. Milano: Bompiani, 1999

tensions between the Serbs and the Kosovars-Albanians. Since the time I'm discussing now, Kosovo also becomes a religious center of the Serbian Orthodox Church, with the construction of some famous churches and monasteries still existing today. The Serbs maintained control over Kosovo until the fateful battle of 1389. This event is better remembered as "the battle of Kosovo Polje"; where the control of the territory passed to the Turks. They, indeed, took advantage of the fact that once again the Serbian sovereigns were in conflict against each other, and the territory was no longer unified; therefore, weaker and easier to penetrate.<sup>4</sup> In this way, Kosovo became part of the Ottoman Empire, for the next five centuries.

## **I.2 THE OTTOMAN DOMINATION**

From the demographic point of view, it is believed that it was during the Turkish domination that the number of the population of Albanian ethnicity greatly increased, due, on the one hand, to migrations from the north of Albania, and on the other, to the emigration of the Serbs. Moreover, it is precisely because of some Ottoman initiatives during the seventeenth century that religion became a matter of national identity. If at first the Turks proved to be liberal and permissive towards Christians in Kosovo, with time, instead, they began policies of forced conversion to Islam. When, between 1683 and 1699, there was a war between the Ottomans and the Holy League, the Serbs sided with the Habsburgs, from whom they obtained refuge, and began to emigrate *en masse* to the north, in places that today constitute some of the territories of the Serbian State, in order to escape reprisals and not to give up their religion. Unlike the Serbs, the Albanians accepted conversion to Islam, earning a leading role in Turkish society, and benefiting from the same rights as all the other citizens of the Ottoman Empire<sup>5</sup>. In this way, under the Ottoman domination, the Albanians replaced the Serbs as the dominant ethnic group of Kosovo, and the situation would remain so until today<sup>6</sup>, despite the Serbian territorial control re-gain after the First Balkan War of 1912<sup>7</sup>

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<sup>4</sup> in 1355 with the death of Stefano Dušan, who held the role of tsar of the Serbs, Vlachi, Greeks and Albanians, the imperial of uniforms in many small feudal states in conflict. it was the Mrnjavčević dynasty that ruled over Kosovo.

<sup>5</sup> Loi, Maruo. "La questione Kosovo – Dalle origini all'era Milošević." *Europae - Rivista di Affari Europei*, 2013.

<sup>6</sup>According to some estimates of 2011, the Albanians compose the 92.2% of the Kosovar population, and the Serbs only the 1.6%  
CIA. *Central Intelligence Agency (US)*. 2018. [https://www.cia.gov/library/publications/the-world-factbook/geos/print\\_kv.html](https://www.cia.gov/library/publications/the-world-factbook/geos/print_kv.html).

### I.3 THE BALKAN WARS AND THE BIRTH OF NATIONALISM

Inspired by those of Germany and Italy in the nineteenth century, at the beginning of the 20<sup>th</sup> century, it is possible to see the birth of the nationalist movements in this territory; movements that brought to the outbreak of the Balkan wars. To better understand the birth and development of ethnic nationalism that led to the Kosovo War, this seems to be the right time to illustrate some theories on the subject. Starting from the distinction between state and nation, it can be seen that it is precisely at the rise of the latter that the social fracture that brings to light the existence of different cultures and histories within a single State takes place. When the feeling of belonging to a different, unique nation becomes a political project, nationalism is born; at this point it can no longer just be a *feeling*, but it must become *action*<sup>8</sup>. According to Hroch, all nationalisms follow three stages of development; the first is characterized by a key role of the intellectual elite, guardian of national culture. It brings a common history to light, but elaborates and promotes it no longer as that of the State, but as the one which unites only a part of the community within it. A second phase would be characterized precisely by the promotion of these ideas, and the third and final phase is that in which the mobilization of people takes place, and what was just a thought becomes reality<sup>9</sup>.

At this point it is interesting to take the ideas of Anthony Smith, who sees the ethnic component as the focal point of nationalism, into account. This idea is particularly interesting in order to understand the matrix of Serbian nationalism. Ethnic nationalism is based on the myth of a common descent and history, always linked to a specific territory, but above all characterized by a sense of strong solidarity among the members of this group, which leads to the aggregation of the community, but which also leaves out all the *others*<sup>10</sup>. Therefore, ethnic, organic nationalism aspires exactly to this correspondence between ethnic and political nation. Participation in this type of nation lacks the voluntary character that most distinguishes another type of nationalism, which is

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<sup>7</sup> Franzinetti, Guido. *I Balcani*. Roma: Carrocci, 2001.

<sup>8</sup> Bassetti, Caterina. "Violenza etnica e mutamento politico ." In *Il Caucaso Meridionale. Processi Politici e Attori di un'Area Strategica*, by Gabriele Natalizia, 47-66. Roma: Aracne, 2016.

<sup>9</sup> Hroch, Miroslav. *Social Preconditions of National Revival in Europe: A Comparative Analysis of the Social Composition of Patriotic Groups Among the Smaller European Nations*. Cambridge: Cambridge university Press, 1985.

<sup>10</sup> Smith, Anthony. *The Ethnic Origins of Nations*. Oxford- Cambridge: Blackwell, 1996.

civic, typical of Western Europe<sup>11</sup>. In fact, it was for these nationalistic aspirations, that a group of States of south-eastern Europe (Serbia, Greece, Montenegro and Bulgaria), which had already obtained independence from the Ottoman empire, decided to ally themselves to drive the Turks definitively away from the Balkans.

Within a few months, the Balkan League inflicted a series of defeats to the Ottoman Empire, which consequently began to disintegrate, losing almost all of its territorial possessions in the region. Thanks to the mediation of the European powers the Treaty of London was signed on the 30<sup>th</sup> of May 1913. It ended the war and established the division of the conquered territories between the League's powers; instead Albania gained autonomy. So, due to the first Balkan War, Serbia returned to control Kosovo. From this moment onwards, the rivalry between Serbs and Albanians began to explode, as Albania set in motion the claim for the autonomy of Kosovo. Albania's request for autonomy depended on the fact that at the end of the first Balkan war, when the European powers decided to assign Kosovo to Serbia, the Albanian population constituted 60% of the Kosovar population, and the Serbs succeeded in completing their occupation only through massacres. These kinds of politics brought about from the Serbs, continued until the beginning of WWII<sup>12</sup>. In this period, however, following the occupation of the area by the Italian and German armies, the southern part of Kosovo was entrusted to Albania, which gave the Serbs the same treatment that they had reserved for the Albanians in Kosovo a few decades earlier. Only in 1944 Kosovo was liberated by the Yugoslavian Communists and its current borders were defined, becoming however an autonomous province of Serbia, in the Socialist Federal Republic of Yugoslavia.

#### **I.4 AFTER WWII; A MORE RECENT HISTORY**

In an initial phase in which Kosovo found itself, after the war, under the influence and the dominion of Yugoslavia, led in those years by Marshal Tito, anti-Albanian policies continued to be carried out, putting in place a series of revenges and claims, accompanied by a wider project of “*slavicization*” of Kosovo. The immigration of Serbs into the territory were in fact favored, while the Albanians were encouraged to emigrate to other territories, first of all Turkey. This type of

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<sup>11</sup> Ibid, 8.

<sup>12</sup> Ibid,7.

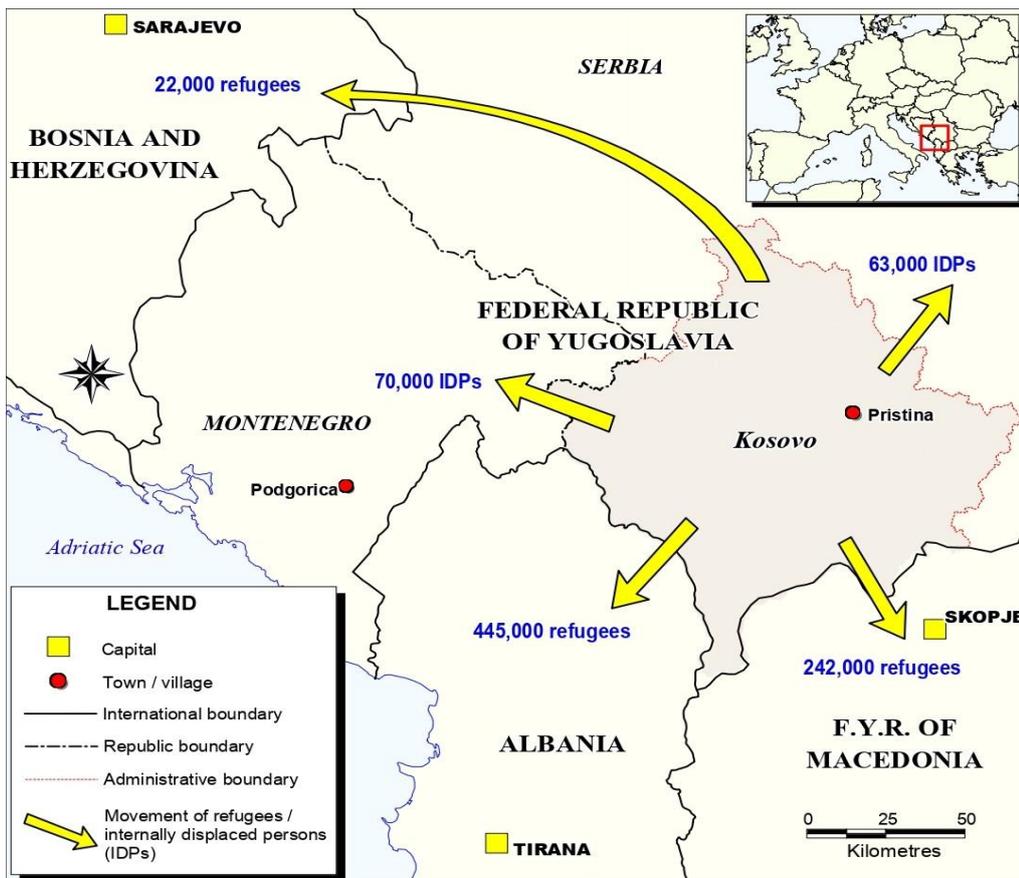
approach, however, began to change starting in the 1960s, after the detachment from the USSR following its intervention in Prague, and the entry of Yugoslavia, with a leadership role, in the movement of the non-aligned. The attitude towards the Albanians changed, and the population of this ethnicity returned to grow in Kosovo. Moreover, Kosovo was given some sort of autonomy already in 1974, with a Constitution and a proper flag. On the other hand, however, all this brought about a continuous shift of the Serbs towards the North. These facts entailed an accentuation of the Serbian feeling of oppression regarding their situation in Kosovo, which, among other things, they considered in a certain way the cradle of their historical and national identity. In this way the nationalist sentiment and the revanchist rhetoric, which will be heavily used by Milošević and led to the birth of the "Kosovo question", were renewed.

## **I.5 UNDER MILOŠEVIĆ'S RULE; THE KOSOVO WAR**

So, as it is possible to see, the problem of the relationship between Serbia and Kosovo, has ancient roots, but, has been particularly aggravated in the nineties, when Slobodan Milošević, a Serbian himself, took control of the region, causing a great confusion among the Albanian Kosovars, who felt deprived of their cultural identity and autonomy. From that moment on, strong ethnic tensions between the latter, led by the KLA (Kosovo Liberation Army) and the Serbs continued to grow. The Kosovar Albanians even created a parallel state, through a clandestine referendum following the abolition of its autonomous status by Milošević in 1989. This new autonomous Republic was led by the writer and intellectual Ibrahim Rugova. He tried, without good results, to pursue non-violent resistance. On the contrary, terrorist movements were created, responsible for numerous attacks in the late 1990s, led by the UCK (Ushtria Çlirimtare and Kosovës; or KLA). Milošević's answer was harsh and repressive. The Kosovo War had started. Tremendous and violent acts were perpetrated on both sides. Real massacres took place throughout the territory, with huge human losses<sup>13</sup>. The Kosovo War reached enormous dimensions, becoming a real humanitarian crisis from different points of view; both because of the countless killing of civilians, but also because of the immense migratory flows of refugees from Kosovo to the rest of the world, and in particular towards neighboring countries.

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<sup>13</sup> According to the *International Humanitarian Law Center in Kosovo*, in only two years (1998-2000), about 13548 people were killed, are missed or displaced; both Serbs and Albanians.



**Figure 1 Displaced population from Kosovo in neighboring countries (1999)**

Data source: (UNHCR s.d.)

The documents that bear witness to the suffering of those years are many, even if it is still very difficult to clarify some events. Furthermore, there are conflicting narratives, also exasperated by the media, that most of the time increase confusion and discord within new generations of Serbian and Albanian Kosovars.

The courts for Transitional Justice are struggling to take concrete shape in Kosovo. In the summer of 2018, in fact, the political leaders of Serbia, Kosovo, Montenegro and Macedonia have failed to sign the declaration for the establishment of the RECOM; Regional Commission for the Establishment of Facts on War Crimes and Other Serious Violations of Human Rights in the Territory of the Former Yugoslavia. Only a few have had to answer for their war crimes in the face of international justice; one of these was obviously Milošević, who was transferred to the Hague to be processed at the International Criminal Tribunal for the former Yugoslavia. The testimonies were innumerable, some of which became particularly famous for their dramatic contents. Today, one of the war witnesses hold prominent roles in the political and institutional panorama of Kosovo; one

among all is Saranda Bogujevci, a Vetëvendosje<sup>14</sup> deputy and a member of the Kosovo Assembly Committee on Human Rights, Gender Equality, Missing Persons and Petitions.

## **I.6 THE INTERNATIONALIZATION OF THE WAR AND THE END OF THE CONFLICT**

All this is only one of the last chapters of a national history that at a certain time, when the situation began to worsen, became international. At a certain point NATO decided to intervene, justifying its action by defining the war in Kosovo as a humanitarian war, and in the end putting Kosovo under the surveillance of UNMIK (United Nations Mission in Kosovo)<sup>15</sup>, with the support of international peacekeeping forces (KFOR; Kosovo Force). However, despite all this, a vast organized crime system, which still today continues to be a serious problem for the country, developed; and not even the dismantling of the KLA, stopped some extremist branches, that continued to perpetrate violence.

So, after several months of trying to take on the role of mediation, in March 1999 NATO began a military operation against Serbia, which eventually forced them to withdraw their troops from Kosovo. During the last year of the conflict there were many tragic events that brought the Kosovo war to international significance, such as the Racak massacre of 15 January 1999, which, despite the different justifications of the Serbian army, that defined the 40 victims as part of the Kosovo Liberation Army (UCK), and therefore the massacre as a lawful act of war, was not however considered as such by the international powers<sup>16</sup>.

Following this, the so-called Rambouillet negotiations were activated, but the outcome was very unsatisfactory. After the UN bombings, however, Kosovo was placed under a transitional administration by the Security Council, awaiting new decisions. The international negotiations to clarify the status of Kosovo, were accelerated by the continuous and constant attempts of the country to become independent, so that already in 2000 (October 28) there was a first election attempt, which was however bounced by a Serbian minority remained in the country.

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<sup>14</sup> Vetëvendosje is a Kosovar-Albanian center-left nationalist Party. Literally it means self-determination. It was founded in June 2005 and is based on principles of direct democracy and progressivism.

<sup>15</sup> UN Security Council Resolution n. 1244 (1999) (UN Security Council, Resolution 1244 on the situation relating Kosovo. 1999)

<sup>16</sup> This act was considered an aggression to civilians, which are protected under International Humanitarian Law.

Despite the mediation of the United Nations, the attempts of an accord between Serbia and Kosovo continued to fail, so that in 2007 the Vienna negotiations ended without a final agreement between the two. Finally, on the 17<sup>th</sup> of February 2008 Kosovo proclaimed itself an Independent State. Obviously, Serbia immediately called for the intervention of the United Nations, in the form of the International Court of Justice, requesting that Resolution 1244 be applied in its entirety, and that therefore the secession of Kosovo would be considered illegal. The UN, instead, split in the SC, as Russia strongly opposed to the independence of Kosovo, decided to remain neutral and to leave to every State the free will on the possibility to recognize or not the new Balkan State, the last to be born from the ashes of Yugoslavia.

To date, 111 countries of the UN recognize its existence, although among the opponents there are still some countries of the European Union, such as Spain and Greece, which by virtue of things cannot be favorable to secession movements, but also Syria , Ukraine, and as already mentioned Russia.

As for other large Organizations, Kosovo is an official member of some of them, such as IMF, the World Bank, FIFA and others, although it is not a member of the UN or NATO. Serbia's reaction, hostile, also raged against all Countries that had formally recognized the independence of Kosovo, whose diplomatic representatives were expelled from the capital. Subsequently, it was the European Union which played a greater role as a mediator, so as to push the two States to start a dialogue between themselves, and to formalize their relations. For a certain amount of time the diplomatic initiatives, which we will see later, have led to some progress, even if in the last period it seems that we have reached a standstill.

## **I.7 SERBIA AND KOSOVO TODAY**

Still today Serbia claims its possession on the territory, considering Kosovo as part of the Serbian State, albeit autonomous as established by annex 2, point 5, of UN Security Council resolution number 1244:

*<<Establishment of an interim administration for Kosovo as a part of the international civil presence under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, to be decided by the Security Council of the United Nations. The interim administration to provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo>>.*

On the other hand, the Albanian Kosovars claim their de facto independence, which goes on since NATO bombardments of 1999. This comes despite the fact that, thanks also to international diplomatic operations and the presence on the territory of KFOR, the situation has been somewhat sedated. Certainly, any fully implemented deal in order to start the path to a normalization process has not been reached yet; neither from the point of view of the population on both sides, nor from the diplomatic point of view between Belgrade and Pristina.

Moreover, despite the intervention of the European Union as a mediator between Serbia and Kosovo, the situation continues to oscillate, alternating moments in which it seems that finally a process of normalization is taking place, and others in which a conflict is once again a possible scenario.

Particularly in the last year, there were two important events; the killing of Oliver Ivanovic, that ignited again the fear of a new wave of violence, which also led to the immediate withdrawal by Serbia of the delegation from Brussels, engaged in dialogue with Pristina<sup>17</sup>; and the missed meeting between Aleksandar Vučić and the Kosovar President Hashim Thaçi, scheduled in Brussels with the presence of the High Representative of the European Union for Foreign Affairs and Security Policy, Federica Mogherini.

At the moment, therefore, the situation has returned to being precarious, and the two States seem to be fighting a war not made of weapons and armies, despite the recent request by Kosovo to re-establish its own army, but rather on an economic and diplomatic level.

The most fitting example is that which sees these two planes meet and overlap. In fact, as early as last November, Kosovo established a 10% tax on all imported products from Serbia and Bosnia Herzegovina, but, following the failed entry of the new State into Interpol, which according to Kosovo is due to strong Serbian pressures, the Pristina Government has decided to increase the duties by 100%, and to prohibit the movement in the country to any type of product that is not labeled "Republic of Kosovo"; such as the official name of the Independent State.

In addition, Kosovo decided to keep these taxes on the amounts, despite strong pressure from the US and the EU, continuing to break the rules of the free trade agreement between the countries of Central Europe (CEFTA)<sup>18</sup>.

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<sup>17</sup> Susic, Luca. "Potenza di un Delitto." *LIMES*, 2018.

<sup>18</sup> Morina, Die. *Balkan Insight*. February 13, 2019. <https://balkaninsight.com/2019/02/13/kosovo-pm-rejects-us-ultimatum-over-import-taxes/>.

In light of the latest events, from which it emerges that a climate of tension and conflict is rekindling, the European Union continues to play a leading role in the Balkan territory and keeps trying to open up to dialogue with these areas, clarifying that, neither Serbia nor Kosovo can move towards a European membership if they do not solve their internal differences first.

The EU continues to encourage meetings between Kosovo's president, Hashim Thaci, and Aleksandar Vucic, hoping they could end up in a compromise and achieve the deal to finally make possible the so called "*land swap*"<sup>19</sup>, even if there are still some, even within the EU, who don't believe this represents a permanent solution.

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<sup>19</sup> The so-called "Brussel dialogue" that started in 2011 in order to facilitate relations between the two capitals, and that reached a turning point in April 2013, with a declaration of the principles that must govern this standardization process. On that date, 4 Serbian municipalities were established in the north of Kosovo and progress was also made in the judicial and security field, for the integration of the Serbian minority in the country and for the protection of the rights of all citizens.

# ***CHAPTER 1. The Geopolitical Interests at Stake***

## **1.1 KOSOVO AND THE LAW OF HUMANITARIAN INTERVENTION**

On March 24, 1999, NATO began the first of a series of bombings that hit the former Yugoslavia for the duration of a 78-day campaign. These bombings, and the intervention of NATO more generally, allowed Kosovo to be freed by Serbian and Yugoslav forces; but in what kind of legal framework can an intervention against a sovereign State be considered legitimate? That of Kosovo is in fact one of the cases that represented a turning point in the international legal doctrine, especially with regard to "humanitarian intervention".

To stick to a definition *<<international humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare>>*<sup>20</sup>. There were many topics discussed in this regard, and opinions of scholars were conflicting. In fact, the intervention of an international body against a sovereign State seemed to go against fundamental principles of international law, and obviously against the United Nations Charter itself.

However, these principles have undergone historical evolution, which has allowed the international community to intervene in the presence of certain special conditions. The merit of this, is due to illustrious names, including in particular the UN Secretary-General Kofi Annan, which I will discuss shortly in a while.

To clarify the dynamics that made the intervention in Kosovo justifiable in the eyes of the international community, I want to start from a simple principle; the responsibility to protect (R2P). According to the International Commission on Intervention and State Sovereignty (ICISS), an ad hoc commission created in 2001 to popularize the concept of Humanitarian Intervention, every sovereign State has the duty to protect its citizens, and, *<<when a State fails to protect its people – either through lack of ability or lack of willingness – the responsibility shifts to the broader international community>>*<sup>21</sup>.

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<sup>20</sup> ICRC, International Committee of the Red Cross. «What is International Humanitarian Law?» 2004.

<sup>21</sup> UN General Assembly. *Responsibility to Protect*. Ottawa: ICISS, 2001

Starting from this principle, in the early 2000s, therefore following the intervention in Kosovo, it became clear that there was a need to clarify the dynamics that made a similar action possible. In 2004, the High-level Panel on Threats, Challenges, and Change, were drawn up some criteria to rely on; such as the seriousness of the threat, the proportionality of the response, and the chances of success. The possibility, if not the necessity, of intervention by the international community was consequently clearly expressed, and was given the responsibility, exercisable through the Security Council, to use force, even if always as a last resort (Exhaustion of Non-Forcible Options).

As can therefore be observed, at the time of the mission in Kosovo, a doctrinaire framework that would allow the international community to orient itself easily and in which to find legitimacy for its intervention, was not already well defined; on the contrary, this was a decisive turning point for the developing of a general framework that would clarify responsibilities and duties of States in armed conflicts. Given the great involvement in the Kosovo conflict of countless civilian victims, and also in other tragic events in which the civilian population was involved, on the 28<sup>th</sup> of April 2006 the Security Council unanimously adopted the Resolution 1674 on the Protection of Civilians in Armed Conflict:

*<<deliberately targeting civilians and other protected persons as such in situations of armed conflict is a flagrant violation of international humanitarian law, reiterates its condemnation in the strongest terms of such practices, and demands that all parties immediately put an end to such practices>>*

In light of all this, it can be said that it is precisely at this point that two of the fundamental goals of the United Nations - the prevention of the use of force as a means of ending disputes, and the protection of human rights – met, and in a certain sense they seem to be incompatible with one another. The dilemma is clear; if it is the task of the members of the international community to defend human rights, will this goal be accomplished through any means? Including the use of force? Based on practice, it is clear that the answer is affirmative.

The prohibition of the use of force against another State, must be interpreted not as an absolute veto, but as a means to prohibit the use of force in an *unlawful* way; for example, to deprive a State of its sovereignty and independence. On the contrary, the interpretation given to the UN Charter is that an act of military force against a State on humanitarian grounds is not based on arguments contrary to the International Customary Law, but rather a gesture consistent with the

objectives of the Charter itself<sup>22</sup>. There is however, and there was also for the intervention in Kosovo, the need to adhere to some criteria, or standards. One of them is the need to ascertain the presence of repeated violations of human rights.

When the Security Council carried out its own assessments, a campaign that consisted in the forced and violent removal of the Albanian population to change the country's ethnic majority became clear. What declared the turning point in the conflict, and that allowed the international intervention, is the fact that, if at first the forces in the field saw the Serbian army clashing against the KLA, what was initially an operation of the police against another armed force, became to involve civilians, not as *collateral damages*, but with the purpose of a real ethnic cleansing<sup>23</sup>.

What is clear now, is that there has been an evolution of the concept of sovereignty, and that following the Second World War, the international law has placed many more duties on sovereign States, limiting them even in their own internal action towards their citizens, in favor of a broader concept of human rights and security. Sovereignty therefore implies also a dual responsibility; *external*, with regard to respect for the independence of other sovereign States, and *internal*, with regard to basic human rights within their own State; those who do not respect these two points may be subject to third-party intervention.

What the case of NATO in Kosovo shows us, is that when talking about the protection of human rights, and humanitarian intervention in a given area, the multilateral approach is fundamental, not just to give more effectiveness to the action, but also to legitimize it. The multilateralism of an action in which military force is used is an essential element, it seems almost to act as guarantor; to be the mirror of the "general will" of international society.

In spite of this, if we limited ourselves to analyze the question under a purely juridical point of *jus ad bellum* we would realize that effectively the intervention of NATO (unlike what could have been if the international community had acted under the aegis of the Nations Unite) does not fully reflect the characteristics necessary to be considered *legal*. The most exact definition that can probably be given to NATO intervention is the one given to it by the Independent International Commission on Kosovo (IICK); "*Illegal but legitimate*".

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<sup>22</sup> Benjamin, Barry M. «Unilateral Humanitarian Intervention: Legalizing the Use of Force to Prevent Human Rights Atrocities.» *Fordham International Law Journal*, 1992: 120-157

<sup>23</sup> Instead, what NATO did not take into account, giving a unilateral picture of the situation, were the abuses carried out by the KLA against the Serbs

NATO's intervention took place without seeking any kind of authorization from the Security Council, nor was it asking for a Resolution to be made by the General Assembly<sup>24</sup>. Furthermore, if one were to simply stick to the Constituent Charter of NATO, it would appear that the use of force is allowed only if one of the Alliance members is under attack. Whoever presents himself in favor of the intervention carried out by NATO, despite having overtaken the UNSC, raises the objectivity of the fact that in 1999 there were no other alternatives, if not NATO itself, taking into account that only a short time before the United Nations had failed in Bosnia<sup>25</sup>.

What legitimacy is then given to the use of force by NATO and where does it come from? It depends on the fact that the United Nations Charter is considered as the real text of international law, and it, despite prohibiting the use of force (Art 2), with the exception of the possibility of self-defense (Art 51), pays particular attention to the fact that the United Nations are the international organization that guarantees human rights, thus allowing, if we stick to a certain type of interpretation, armed intervention for these purposes.

Despite all this, the reluctance of some scholars, and even of countries like Russia, which is very sovereignty-oriented, is based on the fact that when the United Nations' Charter was drafted the prohibition of the use of force was probably the central element, to which Countries gave the highest importance. On the contrary, the possibility of acting in defense of human rights constituted an objective, but which was nevertheless left to a wider possibility of interpretation, without deciding on the specific criteria.

What must be said, however, is that during the course of these decades, the international community, thanks also to the intervention of NGOs, has expressed and worked very hard to create a reference framework and to build international standards for the protection of human rights. In this regard, the sovereignty of a State is no longer so sacred if on the other side of the scale are the human rights of a people. This does not mean that humanitarian intervention is always easy to codify and to implement, instead, it is always subject to interpretation and speculation, and must be

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<sup>24</sup> Thanks to the Uniting for Peace Resolution (377 A) the General Assembly of the United Nations, in the event that the SC is unable to act to maintain international peace and security due to the lack of unanimity in the five members with veto power, can act immediately and make recommendations.

<sup>25</sup> On the other hand, however, the failure of the UN in Bosnia also depended on the fact that NATO did not agree to act in temporally reasonable terms, and perhaps for this reason instead decided instead to act promptly in Kosovo, as another failure would have damaged it too much.

implemented only after a concrete reflection; particular attention must be given if the military intervention in question is massive, and if the chances of causing more damage are concrete<sup>26</sup>.

## **1.2 AFTER NATO INTERVENTION: WHICH AUTONOMY?**

So, NATO made its decision, and chose to intervene, using the humanitarian motivation to justify its choice. The summer of 1999, precisely the 10<sup>th</sup> of June, marks a fundamental turning point in the institutional history of Kosovo. On that day, with the official withdrawal of the Yugoslav troops, with the arrival of KFOR and the start of the UN protectorate on Kosovo, the United Nations with resolution 1244 created the structure for a completely new legal order in the area. Despite the fact that during the last decades Kosovo had experienced different institutional arrangements, surely the one established after the war was an absolute novelty, both for that area, but also for the United Nations itself.

The UNMIK mission is today the one with the greatest authority among all missions of a similar nature of the UN. Indeed, the United Nations covered all three levels of power; executive, legislative, and judicial, even if alongside a local body, consisting of 20 administrations, presided over simultaneously by an international head and a local one. Obviously, the field of security was strictly administered by international authorities; on the one hand there was, and still is, KFOR, which is directly under NATO, and on the other there was the UNMIK Civilian Police, whose Police Commissioner reports directly to the Special Representative of the Secretary General (of the UN).

This new structure created for Kosovo cannot and did not claim to be the beginning of a new independent State. In fact, the application of the Resolution, under Chapter VII of the Charter of the United Nations (which has to do with the restoration of peace and security), did not provide for the immediate implementation of any kind of democratic state-building process. The space for local actors was really scarce, if not completely non-existent, although the commitment to put in place temporary institutions for democratic self-government and with time transfer its administrative responsibilities to the local institutions was present.

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<sup>26</sup> IICK, Independent International Commission on Kosovo. *The Kosovo Report*. Oxford University Press, 2000.

In the two following years, in fact, democratic elections were held, which led to the formation of a Parliament, the Government and the President (Provisional Institutions of Self-Government), always obviously hampered by the presence in the territories or parallel institutions closely linked to Belgrade<sup>27</sup>. However, the road to the creation of the PISG (Provisional Institutions of Self-Government), following the 2001 elections, passed through another fundamental step, that of the Joint Interim Administrative Structure (JIAS). But let's proceed gradually.

Initially, though, the UN Secretary General interpreted Resolution 1244 extensively, defining the structure of the mission and creating a series of administrative organizations headed by UNMIK; such as the Office for Civil Affairs and the Office for Judicial Affairs. UNMIK therefore represented the greatest authority in the region, to which all administrative functions were attributed. In addition to this, the UNMIK mission presented a quadripartite structure, four in fact were the pillars on which it was based; Humanitarian Affairs, Civil Administration, Democratization and Institution Building, Economic Reconstruction.

Each of these Pillars was entrusted to a different authority. For example, the humanitarian aspect was under the direct responsibility of the UNHCR (United Nations High Commissioner for Refugees), while the United Nations had direct control on the second Pillar. What dealt with democratization and the process of institution building was the OSCE (Organization for Security and Co-operation in Europe), and finally the European Union had the arduous task of putting the State's economy back on its feet.

Obviously, the presence of so many different actors, even if all under the aegis of the United Nations, created many problems of coordination. To add to the difficulties inherent in the mission, there was the fact that UNMIK was always put under pressure by the presence of parallel structures, such as the Provisional Government led by the KLA, and the Republic of Kosovo led by President Rugova. These last two structures found their legitimacy in different sections of the local population, but UNMIK was the only one that had international support and derived its legitimacy directly from Resolution 1244.

However, coexistence with these other structures was necessary, and for this reason an important decision was taken; the creation of a consultative forum, the Kosovo Transitional Council.

The start-up of this new body was not easy, in fact it had to clash with the initial reticence of

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<sup>27</sup> Lulzim Peci, Ilir Dugolli, Leon Malazogu. *Negotiating Kosovo's final status*. Paris: Sciences Po, Centre de Recherches Internationales, 2006

Rugova's party, the DLK (Democratic League of Kosovo).

Nevertheless, when finally in August 1999 there was the first assembly with the participation of all the Kosovar political leaders who had a key position at that historical moment<sup>28</sup>, the Secretary General in his Report defined this meeting as a turning point for UNMIK. Thanks to the KTC (Kosovo Transitional Council) in fact, and to the representation of the major political forces, the local population could have direct representation in the decision-making process of UNMIK<sup>29</sup>. Despite this, after a short time it became clear that the KTC was little more than a failure. Indeed, political leaders used it as a forum to carry out their own political propaganda, rather than to proactively collaborate in the decision-making process of UNMIK.

When Hashim Thaçi announced that he would no longer take part in the Council meetings, the United Nations understood that there was a need for another immediate action, and that the UNMIK mission could only go ahead through recognition by the local population. The only way to do this was to create a shared government framework for the administration of the country. Therefore, since it was not possible to establish concretely what the effective support of each political faction was, the SRSG (Special Representative of the Secretary-General) decided to bring together the political leaders of the various Albanian Kosovar factions according to a principle of equal rights.

When Hashim Thaçi, Ibrahim Rugova and Rexhep reached an agreement, the creation of the Joint Interim Administration in Kosovo was implemented in December 1999<sup>30</sup>. The agreement for the creation of the JIAS was signed by the Special Representative of the Secretary General, Bernard Kouchner, in order to favor the administration of Kosovo in view of a future creation of genuinely local institutions. It was formed by different institutional apparatuses; Interim Administrative Council, Kosovo Transitional Council, Administrative departments, and the Municipal boards. The

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<sup>28</sup> Hashim Thaçi, Ibrahim Rugova, Momčilo Trajković and Bishop Artemije

<sup>29</sup> <<Since its deployment, UNMIK has made significant progress. It has established structures at various levels that allow the people of Kosovo to provide expertise and to share responsibility and accountability for the development and future of the province. Foremost amongst these structures is the Kosovo Transitional Council (KTC), which meets on a weekly basis under the leadership of [the SRSG]. This body brings together all major political parties and ethnic groups. Its establishment has given Kosovo residents an opportunity to have a direct input into the UNMIK decision-making process and to achieve consensus on a broad range of issues related to civil administration, institution-building and essential services, thereby creating a climate where participation in democratic processes is the norm.>> Secretary-General's Report on UNMIK, 6 September 1999.

<sup>30</sup> Brand, Marcus. *The development of Kosovo institutions and the transition of authority from UNMIK to local self-government*. Cluster of Competence, Geneva: Centre for Applied Studies in International Negotiations (CASIN), 2003.

role and functions of the JIAS, including its bodies, were set out in UNMIK Regulation 2000/1, of 14 January 2000.

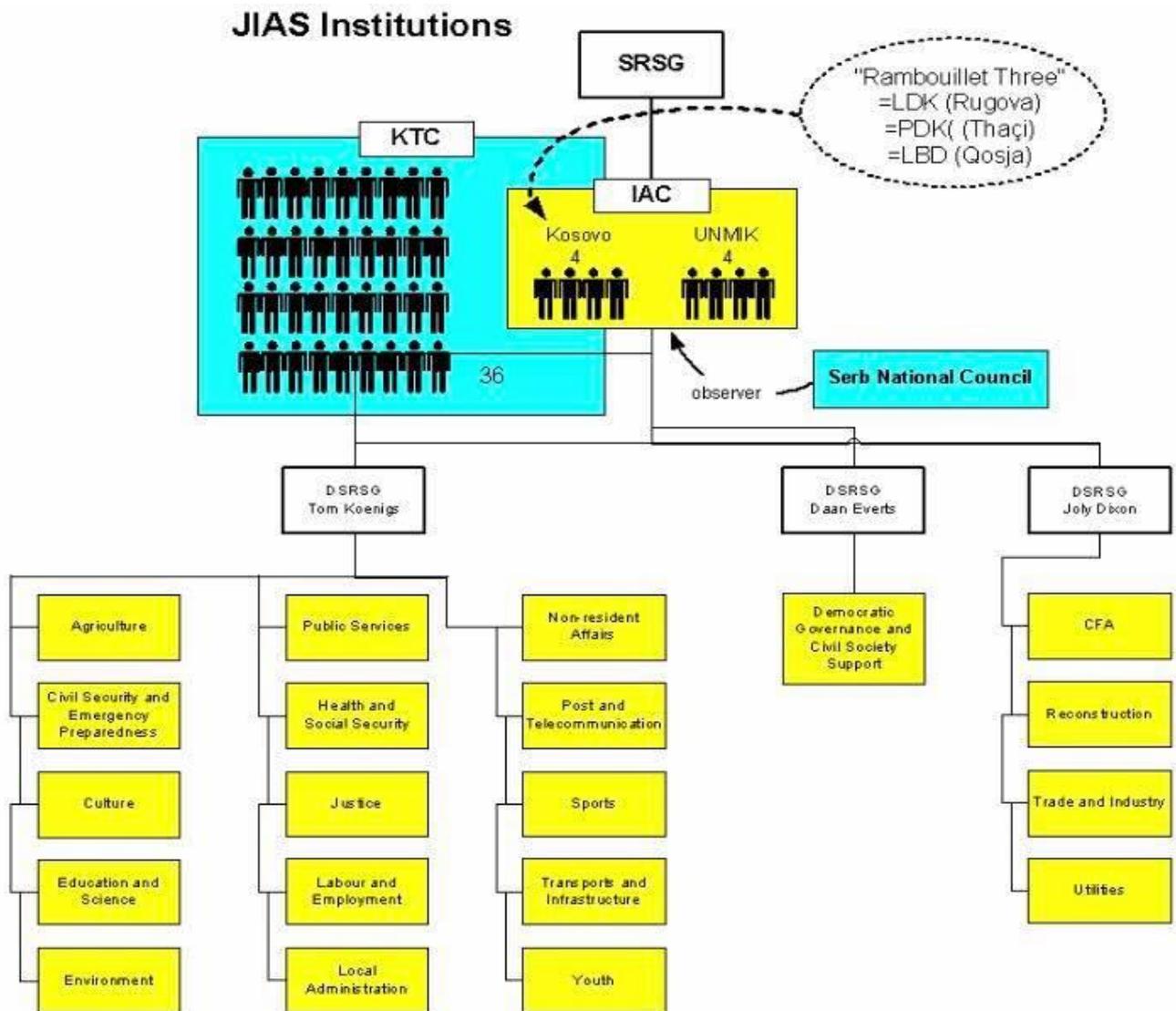


Figure 2; the structure of JIAS

Source: UNMIK<sup>31</sup>

<sup>31</sup> <https://web.archive.org/web/20080104004544/http://www.unmikonline.org/1styear/jiaschart.htm>

As previously mentioned, following the 2001 elections, the constitutional framework for the Provisional Institutions for Self-Government of Kosovo was outlined. The responsibilities once again were shared by UNMIK and the PISG, in view of a future clarification regarding the status of the region.

The period that went from the first elections of the PISG to the independence of 2008, was characterized by a series of explosions of violence between the two major ethnic communities of the country. For example, in March 2004 these conflicts led to the death of several people and the destruction of some Serbian properties in the Kosovar region. According to some sources, the UNMIK spokesman declared that the situation was completely out of control<sup>32</sup>. This series of clashes also put an end to Serbian participation in the provisional government of Kosovo, and UNMIK decided to act as quickly as possible to conclude the process of defining the status of the Country.

Despite the efforts, however, some years passed before seeing actual progress. The 2007 was a decisive year, from which November 17 elections, agreed by the UN-mandated Troika (composed by US, EU and Russia), Hashim Thaqi and his Democratic Party of Kosovo (PDK) resulted as winner<sup>33</sup>. At this point the new Kosovo Assembly embarked on the path to independence. However, that year the role of the international community remained fundamental. The UN Special Envoy for Kosovo, former Finnish President Martti Ahtisaari, presented a plan for Kosovo in two documents; *Report of the Special Envoy of the Secretary General on Kosovo's Future Status* and *Comprehensive Proposal for the Kosovo Status Settlement*.

What emerges from them is that there should have been procedures in the direction of creating an independent Kosovo State, but under the supervision of the international community; this therefore entailed the cessation of Resolution 1244 and the end of Serbian sovereignty, despite the Serbian community maintaining a certain degree of autonomy within its own municipalities, together with the KFOR protection of all those important cultural and religious sites<sup>34</sup>.

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<sup>32</sup> Ellena, Monica. «In Kosovo è tornato il caos.» *La Repubblica*. 17 Marzo 2004.

<http://www.repubblica.it/2004/c/sezioni/esteri/mitrovica/onumitro/onumitro.html>.

<sup>33</sup> Salihu, Mevlyde, e Elli Flen. «Kosovo's elections judged a success.» *OSCE*. 14 December 2007. <https://www.osce.org/kosovo/57646>.

<sup>34</sup> Ahtisaari, Martti. *Report of the Special Envoy of the Secretary General on Kosovo's Future Status (S/2007/168)*. UN Security Council, 2007.

### 1.3 THE DIFFERENT POSITIONS OF THE INTERNATIONAL ACTORS

The road that led to self-proclaimed independence was therefore long and not without obstacles. Since the outbreak of the Kosovo war the great International Powers were not on the same wavelength as far as the future structure of the Country was concerned.

It took more than six years since the NATO intervention in Kosovo before real negotiations began to clarify Kosovo's future. In 2006, at the headquarter of the mission in Vienna (UNOSEK; United Nations Office of the Special Envoy for Kosovo), the negotiation rounds between the two delegations of Pristina and Belgrade started.

Both sides at the beginning of the negotiations were not prepared to negotiate on the final status of Kosovo, remaining firm on their positions. On the other hand, there was the Contact Group, composed by Germany, France, Italy, Russia, the United Kingdom, and the United States, which put in place the so-called "guiding principles" for the negotiations<sup>35</sup>, and the UNOSEK which instead focused on the discussion of some important points regardless of the final decision on the status of Kosovo. It dealt for example with issues regarding political and security aspects, concerning the rights of the community or the protection of the property of the Serbian Orthodox Church.

As already mentioned, the 2007 *Comprehensive Proposal for the Kosovo Status Settlement*, submitted by the UN Secretary General, included a number of significant compromises; it provided independence for Kosovo, under the aegis of the international community, which would also have provided it with security; but at the same time it gave autonomy to the municipalities with a Serbian majority, protection to the important local sites of the Orthodox Church and a certain control over them by Belgrade. However, it was never applied, as it was rejected by Serbia and the United Nations had no possibility of adopting it because of Russian opposition in the Security Council<sup>36</sup>.

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<sup>35</sup> These principles are based on the multi-ethnicity of the population of Kosovo and provided for the latter's participation in the government of the country. It was immediately clarified that there would be no return to the situation prior to the NATO intervention in March 1999 and that the final agreement should have been in accordance with the preferences of the population.

<sup>36</sup>Rohan, Albert. «Kosovo's Path to Independence.» *European Council on Foreign Relations*. 2 February 2018. [https://www.ecfr.eu/article/commentary\\_kosovos\\_path\\_to\\_independence](https://www.ecfr.eu/article/commentary_kosovos_path_to_independence).  
Ahtisaari, Martti. UN Secretary General. "Comprehensive Proposal For the Kosovo Status Settlement." February 2, 2007.

To begin a detailed analysis on the different positions during the negotiations and immediately after the Declaration of Independence of the other States towards Kosovo, it is necessary to clarify that the approach to the question, of all the actors belonging to the international system must be considered in the perspective that the decade of the nineties is characterized by a certain type of diplomacy and also of military intervention that in any case had to be consistent with the general framework of the fall of the communist States (or federations). Now what seems more appropriate is to start analyzing the different actors' positions perhaps from the most obvious one: Serbia.

### ***1.3.1 Serbia's position***

The position of the Government of Belgrade was for obvious reasons clear from the start; Serbia considers Kosovo as part of its national territory. But what was its attitude during international negotiations? At first, since the status of Kosovo was one of the first points of all international diplomatic agendas in 2004, Serbia was reticent about wanting to engage in an effective dialogue with the Pristina Government, but still tried in every way to impose its own Agenda in negotiations. However, Serbia failed to win the approval of the international community.

The second strategy that the Government of Belgrade implemented in the negotiations was the boycott; for example, by pushing the Serbian minority in Kosovo not to stand for election, with the strong support of the Orthodox Church, but thus worsening its international reputation even more.

When, in the second half of 2004 it was evident that they were heading towards a dangerous blind alley, finally, especially under pressure from the European Union, Belgrade began to cooperate. The approach was however very vague. Serbia's official policy towards Kosovo could be summarized in the formula "more than autonomy, less than independence". The then Prime Minister, Vojislav Koštunica, proposed to implement a particular type of State, in which Kosovo would have remained part of Serbia, but with a very high level of autonomy, thus creating an atypical state structure, but still acceptable following the end of Yugoslavia and consistent with the new state profiles emerged in the Balkans subsequent to this momentous event.

After the dramatic happenings and the violence perpetrated in Kosovo during the month of March (2004) against the Serbian minority, the Belgrade Government tried to exploit in its favor the indignation of the international community, which promptly condemned the violence. Serbia even sought to restore its security services in Kosovo, with the excuse of protecting its own nationals in

the area; obviously it was not allowed by the international community that preferred to continue to use his own resources<sup>37</sup>.

Thanks to the role of mediator of the European Community, of which Serbia is a candidate country and Kosovo a possible future candidate, over the years, despite some sudden stops, the dialogue between Pristina and Belgrade has made some progress, particularly with regard to more technical topics. Certainly, there have been moments of high tension, such as the exemplary arrest of Marko Djuric, Director of the Office for Kosovo, and the provocation of the train departed from Belgrade and arrived in Mitrovica with the inscription "Kosovo is Serbia". However, Serbia's position regarding the recognition of Kosovo as an independent State remains officially more or less the same as it was twenty years ago.

Although current Serbian President Aleksandar Vučić has publicly admitted that the Kosovo issue is the biggest challenge facing the Belgrade Government, the legal recognition of independence is still late in coming. If on the one hand a normalization of relations between the two countries would be the decisive turning point in Serbia's integration process into the European Union, at the same time it would certainly be an electoral suicide for the current Serbian political leadership<sup>38</sup>, in particular following the very high tariffs imposed by Pristina and which led to a new interruption of the dialogue between the two countries.

On March 4 of this year (2019), following the meeting between the President of the Italian Council Conte and President Vučić, the latter reiterated his willingness to resume negotiations with Kosovo only following the withdrawal of the tariff previously mentioned, and stressed how compromise is the only possible alternative to a disaster. President Aleksandar Vučić also wanted to make it clear, in an interview with ANSA, that Belgrade's approach to the problem is much more realistic than that of Pristina, and that Serbia is in favor of constructive dialogue to help stabilize the Balkan region. At the same time, it is clear that Belgrade will not recognize Kosovo as an independent State without receiving anything big in return<sup>39</sup>.

### ***1.3.2 Albania's position***

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<sup>37</sup> Helsinki Committee for Human Rights in Serbia. *Kosovo: The status Issue (EF.NGO/24/05)*. Annual Report 2004, OSCE, 2005.

<sup>38</sup> Fruscione, Giorgio. «SERBIA: Perché Belgrado dovrebbe riconoscere il Kosovo.» East Journal. 6 Giugno 2018. <https://www.eastjournal.net/archives/90650>

<sup>39</sup> ANSA. 6 March 2019. [http://www.ansa.it/sito/notizie/mondo/2019/03/06/kosovo-vucic-e-conte-soluzione-solo-attraverso-dialogo\\_78f0243a-51e3-4d1a-9334-4c5d516ae869.html](http://www.ansa.it/sito/notizie/mondo/2019/03/06/kosovo-vucic-e-conte-soluzione-solo-attraverso-dialogo_78f0243a-51e3-4d1a-9334-4c5d516ae869.html)

"*Një Komb Një Qëndrim*", "One Nation, One Decision", this is the key slogan that allows a good starting point for interpreting Albania's initial position on the Kosovo issue. Albanian nationalism was born in fact following the two World Wars, when the Albanians, disappointed by the outcome of the two Peace Conferences (Versailles 1919, Paris 1946) began to harbor a feeling of national revenge fueled by frustration, and found their more concrete arguments on the principle of self-determination of peoples.

Unlike what was written more and more times by the international press, the Albanian nationalists were appealing to a different concept than to the "Greater Albania"; or rather to *ethnic Albania*. This concept, to which the Kosovar separatists also referred during the war, concerns the dream of Pan-Albania, that is to say the reunification under the same motherland of all the Albanian people to implement a prospect of national *Risorgimento*.

The nationalistic arguments are based on reasons similar to those pursued by the Serbs; historical origins, violence suffered, and suggestive images<sup>40</sup>. The national territory that is claimed is the one referred to through a historical reconstruction; a connection between today's population and the population of that time.

The problem in the case of the Balkans is that similar claims overlap on the same geographical area. As far as the sentiments of the population are concerned, however, from the vote carried out in 2005 in Kosovo, it emerged that if 90% of the Kosovo Albanians were in favor of independence, only 10% of them would have enjoyed the union with Albania<sup>41</sup> which, however, as we can see from the statements of Martti Ahtisaari, the United Nations would never have supported.

At the time of the outbreak of the Kosovo war, however, while Albania still emerged from the suffering of the communist Hoxha regime, Albanian citizens looked to Kosovo with a certain indifference, while on the contrary the Kosovars felt Albania as their true cultural homeland. During the clashes the Albanian Government will line up with the Rugova Government and not the UCK. In any case, Albania has always had a special relationship with Kosovo, and in fact at the time of the self-declaration of independence, it was one of the first countries to recognize it. Albania has

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<sup>40</sup> Konomi, Arjan. «ALBANIA E KOSOVO POSSONO UNIRSI? (Il Triangolo dei Balcani).» *Limes*, 1998

<sup>41</sup> Cfr. Commissione internazionale per i Balcani, *The Balkans in Europe's future*.

always acknowledged the importance of the international presence in Kosovo, and thanked the UNMIK and KFOR missions several times for having protected its territorial integrity<sup>42</sup>.

In recent years, a sort of integration process between Kosovo and Albania has been carried out; for example by making the borders between the two countries more fluid and facilitating the circulation of goods and services, recreating a system based on the European Schengen model. During the meeting held on November 26, 2018 between Albanian and Kosovo Albanian leaders, Prime Minister Edi Rama issued controversial declarations that, apart from the great symbolic significance, also proposed the beginning of a common path for the two Countries, and the convergence of their foreign policies. Subsequently, following the obvious reactions of the Serbian leaders, and the question of the international community, Rama clarified that his statements do not hide irredentist sentiments, but that they are to be considered in the perspective of European integration of the Balkan area<sup>43</sup>.

### ***1.3.3 Neighborhood Countries' positions***

As for the policy of the other States in the Balkan region against Kosovo they have not always been clear, or consistent. For example, *Macedonia*, as well as other Countries in the area, had its primary interest in the question of Kosovo to be resolved, in order not to compromise the stability of the region and therefore slow down its integration into the European Union and NATO. Macedonia was initially, and only officially neutral, but, in reality, it was in favor of Serbia's position, due to the obvious links between Skopje and Belgrade.

Subsequently, however, when the preferences of the international community began to emerge, Macedonia changed its line, and started warmly to support a possible independence, favoring any kind of dialogue between Pristina and Belgrade, but always having as its first interest that of protecting its own territorial boundaries<sup>44</sup>. On October 9, 2008, Macedonia recognizes the independent State of Kosovo, which was welcomed with great joy by the Pristina Government and instead with a certain bitterness by Serbia, which invites Ambassador Aleksandar Vasilevski to

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<sup>42</sup> Galanxhi, Ambassador Gilbert. «Stamentente delivered by the Ambassador Gilbert Galanxhi at the Permanent Council Meeting No. 717.» *PC.DEL/514/08*. Vienna, 2008

<sup>43</sup> Gjergji, Orinaldo. «Kosovo e Albania: "mini-Schengen".» *Osservatorio Balcani e Caucaso*, 2019

<sup>44</sup> *Ibid*, 27

leave the country. Serbia criticized that Macedonia's decision was inconsistent with the abstention, which occurred only a few hours earlier in the United Nations vote on Belgrade's request to bring the issue of Kosovo's independence before the International Court of Justice<sup>45</sup>.

*Montenegro*, which in relation to Kosovo has made so much talk about itself in recent years due to the border demarcation problem, solved only recently by an agreement ratified (at the fifth attempt) under a strong push by the EU and USA<sup>46</sup>, initially declared itself neutral in the conflict between Pristina and Belgrade. In fact, it considered the unresolved status of Kosovo in a way detached from its own. Although, at that time, both were formally under the sovereignty of Belgrade.

Montenegro initially feared that its independence from Serbia could be compromised by their explicit support for the independence of Kosovo<sup>47</sup>. On the contrary, in the days when the referendum for the independence of Montenegro was being voted, Kosovo, despite politicians stressing over and over again that the fate of the two countries was still separate, looked with great interest at the outcome of the votes.

As for *Bosnia and Herzegovina* we know that it is made up of two different constitutional entities; The Federation of Bosnia and Herzegovina and the Republika Srpska. The latter, born from the peace agreements, immediately refused to recognize the independence of Kosovo. Moreover, in the same public declaration of February 21, 2008, the Republika Srpska declared that if the majority of the European Union and the United Nations had ratified the self-declaration of independence of Kosovo, this would have been used as a precedent, and they would use it to hold a referendum on their autonomy and eventually to join with Serbia. This declaration was immediately condemned by the current president of the Federation of Bosnia and Herzegovina, who declared illegal the possibility of such a referendum, although he nevertheless pronounced himself contrary to the recognition of Kosovo as an independent State<sup>48</sup>.

### ***1.3.4 Russia's position***

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<sup>45</sup> Karajkov, Risto. «La Macedonia riconosce il Kosovo.» Osservatorio Balcani e Caucaso, 2008

<sup>46</sup> The European Union has placed as a condition of absolute necessity the ratification of an agreement to establish the borders between Kosovo and Montenegro for the purpose of granting visas to Kosovar citizens to travel in the European Union.

<sup>47</sup> Ibid, 27

<sup>48</sup> Bastianelli, Rodolfo. *Chi ha Detto No all'Indipendenza del Kosovo*. Panorama Internazionale, Ministero della Difesa, 2009.

Russia's position on the question of Kosovo's independence is perhaps the most interesting. During these two decades not only the Moscow Government has managed to maintain the same position on the issue, but also has managed to exploit Kosovo's independence as a precedent for its own favor; for example, concerning the case of Georgia in 2008 and in Crimea in 2014. Since the time of the NATO bombings, Russia had shown itself strongly opposed to an intervention by the international community against Yugoslavia<sup>49</sup>, so much so that the tension in particular with the United States had grown to levels that had not been reached since the Cold War<sup>50</sup>. This also represented the first great crisis in multilateralism since then.

Russia interpreted the new NATO "Strategic Concept" in April '99 as a multilateral act of exclusion of post-Soviet Union Russia from Europe's strategic checkerboard. Furthermore, for President Putin, according to his statements at a meeting with his Foreign Minister in the Kremlin on 30 January 2006, the Kosovo issue had the same strategic importance as other important issues that were at stake in those years<sup>51</sup>. He was indeed so interested in the case, not because Kosovo itself represented a real strategic risk for Russia, but because the way in which the international community would deal with the problem was fundamental; this in fact would have affected all the geopolitical structure and strategy that post-Cold War Russian Federation would have implemented in its area of influence. Proof of this is the fact that Putin proved absolutely against considering Kosovo as a *casus sui generis*, on the contrary, he gave the order to the Foreign minister Lavrov to consider and support only proposals that were universal in nature<sup>52</sup>.

*<<On February 17, Kosovo's Provisional Institutions of Self-Government declared a unilateral proclamation of independence of the province, thus violating the sovereignty of the Republic of Serbia, the Charter of the United Nations, UNSCR 1244, the principles of the Helsinki Final Act, Kosovo's Constitutional Framework and the high-level Contact Group accords. Russia fully supports the reaction of the Serbian leadership to the events in Kosovo and its just demands to restore the territorial integrity of the country>>.* These have been the words that the Russian

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<sup>49</sup> Moscow in fact believed that the issue was an internal problem of Serbia, and in addition a kind of problem that Russia knew well, because it had similar cases in its territory.

<sup>50</sup> Kranz, Patricia. «KOSOVO'S WILDEST WILD CARD: MOSCOW.» *BusinessWeek*. 04/19/99, Issue 3625, 1999.

<sup>51</sup> Such as the Taliban in Afghanistan, or the stalled situation in the Middle East.

<sup>52</sup> Hughes, James. «Russia and the Secession of Kosovo: Power, Norms and the Failure of Multilateralism.» *Europe-Asia Studies*. Vol.65, N.5, July 2013: 992-1016.

Minister of Foreign Affairs pronounced in February 2008 concerning the self-declaration of independence<sup>53</sup>.

President Putin immediately declared his discontent about the incident. He and Russian Foreign Minister Lavrov believed that the case of Kosovo would constitute a <<terrifying precedent>> which would have turned the entire system of international relations upside down. According to the Russian Federation such a precedent would have caused a domino effect that already at that time began to show the first signs. The autonomist pressures of the Albanian speakers in Macedonia and the unrest in Tibet were indeed fueled by the Kosovo case<sup>54</sup>.

Russia and Serbia, historically, are strongly culturally linked by the presence and influence of the Orthodox Church. Also, for this reason, in all these years the position of the Russian Federation has never been changed, and according to the latest declarations, there is no intention to proceed otherwise. Thanks to its veto power in the Security Council, Russia has always blocked Kosovo's entry into the United Nations organization.

Moreover, the western area of the Balkans has over time become a theater of confrontation between the USA and its European partners on one side, and Russia on the other. The latter, in fact, considers the Balkan territory as its only possibility of penetration towards the European continent and the Mediterranean. Through a policy of cultural influence, Putin's Russia has tried over the years to recreate that link between the Great Power and some of the small States that dot the Balkan area; first of all of course Serbia, thus trying to revive the Russian alternative among the local population<sup>55</sup>. In the summer of 2018 Russia again demonstrated its solidarity with Serbia on the issue and through the statements of the Spokesman of the Minister of Foreign Affairs, Maria Zakharova, clarified that the Russian position will not change according to the situational changes. The reasons given are based on the fact that Moscow considers the declaration illegal and not in line with international law, both because the territorial sovereignty of Serbia and the rights of Serbian citizens, had been violated, and because the UN Resolution 1244 is still in force<sup>56</sup>.

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<sup>53</sup> Lavrov, Sergej Viktorovič. «Statement by Russia's Ministry of Foreign Affairs on Kosovo.» European Parliament. 17 February 2008. [http://www.europarl.europa.eu/meetdocs/2004\\_2009/documents/dv/d-ru20080313\\_/d-ru20080313\\_08.pdf](http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/d-ru20080313_/d-ru20080313_08.pdf)

<sup>54</sup> Ibid 48

<sup>55</sup> Natalizia, Gabriele. «La Russia e il “grande gioco” balcanico.» *Istituto per gli Studi di Politica Internazionale*. 20 November 2015. <https://www.ispionline.it/it/pubblicazione/la-russia-e-il-grande-gioco-balcanico-14223>.

<sup>56</sup> Zakharova, Maria. «Russia's position on Kosovo remains unchanged, says Russian diplomat.» *TASS Russia News Agency*. 13 August 2018. <http://tass.com/politics/1017064>.

Furthermore, the Russian Permanent Representative to the United Nations, Vasily Nebenzya, specified in a Statement to the United Nations, that according to Russia the results obtained in Kosovo in the light of ten years of independence are been really scarce. In fact, the new independent State would not have demonstrated any kind of economic awakening and would still represent the most turbulent area in the Balkan region. In addition, he believes that the United Nations should not give up, indeed instead continue to closely monitor the territory, which in recent years has become a recruitment space for religious radicals<sup>57</sup>.

### ***1.3.5 The EU's position***

In the case of Kosovo, it is clear that the international community, and more specifically the European Union, had not been able to prevent an escalation of the armed conflict. The intervention took place only at a later time and to end the violence. All this happened despite the fact that it was clear even before Milosevic that a certain type of tension was re-intensifying. However, He had started to use the Kosovo Serbs and their discontent as a political tool since the beginning. Politicalizing the ethnic issue, he decided to revoke the status of autonomy for Kosovo as early as 1989, with all that ensued.

The European Union seems to have followed developments in the region with great interest since 1996, so much so that the Irish Presidency, at that time, in answering to a question posed by the European Parliament on the situation in Kosovo said that there were high risks of clashes between the two groups<sup>58</sup>.

The Kosovo War has been very important for the European Union because it has meant one of the first real community efforts in the field of international security. At the same time, under US pressure, Kosovo was also used as a test to reinvigorate the cooperation of Western powers in the NATO alliance. In particular, both independently, and inspired by the direction taken by the United Nations under the leadership of Secretary General Kofi Annan, the EU and US have moved to emphasize their moral obligation to intervene following a humanitarian disaster.

As far as the European Union was concerned, it was clear from the beginning that it could not handle a regional conflict of that scale, in fact, as is well known, the military operations began

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<sup>57</sup> Nebenzya, Vassily. «Statement by Permanent Representative Vassily Nebenzya at UN Security Council meeting on the situation in Kosovo (7/02/2019)» 2019

<sup>58</sup> Baracani, Elena. «Il Conflitto del Kosovo.» In *L'unione Europea e la Prevenzione dei Conflitti. Un'analisi comparata di tre casi di studio: Cipro, Kosovo e Palestina.*, 157 - 191. Il Mulino, 2014.

in a US-led NATO operational framework. If, as stated on the Italian Foreign Affairs website <<due to its political, geographic, and cultural similarities, Italy's political relations with the Western Balkan countries represent a strategic priority of the Italian foreign policy>><sup>59</sup>, in a first moment instead, the Italian Government showed itself quite indifferent to the Kosovar-Albanian question.

Italy began to pay attention to it only when the conflict became a humanitarian issue and the international community was deciding to intervene. Italy had strong commercial relations with the Yugoslav Republic at the time, which included also lucrative contracts of important companies, such as FIAT<sup>60</sup>. Perhaps the initial reticence of our State could be attributed to this. However, the then President of the Council Massimo D'Alema, at a certain point, authorized what was the second Italian mission since the end of the Second World War<sup>61</sup>, opening up air space; it was precisely from Italy that most of the air-offensives of the operation "Allied Force" started<sup>62</sup>. He did all that in order to show his Atlantic loyalty.

In the question of Kosovo, however, the European Union, in addition to using what is usually called "hard power"; that is, military force, even in a multilateral context, has approached Kosovo with a "soft power"<sup>63</sup> strategy<sup>64</sup>. What can be said in general about the position of the European Union towards Kosovo is that it has played a fundamental role since the war. To date, a confirmation in the direction of it can be deduced from the fact that it is Brussels that is playing the very important role of mediator in the normalization process between Pristina and Belgrade.

Despite what I have just said is undeniable, it must be emphasized that not all members of the Union had, or have nowadays, a common line of action with regard to Kosovo. It has in fact been a very important test for the European Community's foreign policy capacity to act according to

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<sup>59</sup> [https://www.esteri.it/mae/en/politica\\_estera/aree\\_geografiche/europa/balcani](https://www.esteri.it/mae/en/politica_estera/aree_geografiche/europa/balcani)

<sup>60</sup> The collaboration began in 1953 with a cooperation agreement between the Italian factory and the Yugoslavian Zastava. In other forms it continues to this day, so much so that FIAT still represents 1% of Serbian GDP and occupies the automotive sector (among those with greater growth in the country) in a quasi-monopolistic regime. Fruscione, Giorgio. «SERBIA: Ecco perché l'Italia è il primo partner commerciale.» East Journal, 2015

<sup>61</sup> The fist was against the Saddam Hussein regime in Iraq (1991)

<sup>62</sup> Sacchelli, Orlando. «Quella volta che D'Alema fece bombardare la Serbia.» *Il Giornale*. 06 November 2015. <http://www.ilgiornale.it/news/mondo/volta-che-dalema-fece-bombardare-serbia-1179616.html>.

<sup>63</sup> The ability of a country to persuade others to do what it wants without force or coercion (Nye).

<sup>64</sup> Shepherd, Alistair J. K. «A Milestone in the History of the EU: Kosovo and the EU's International Role.» *International Affairs* Vol. 85, No. 3, *The War over Kosovo: Ten Years On*, 2009: 513-530.

a common strategy. All the more so because the greater its international weight, the greater the expectations of seeing Member Countries united on major external issues.

For the European Union, acting and making decisions through the highest possible degree of consensus is a fundamental aspect, but it is not always possible to reach unanimity. With regard to Kosovo, member countries can be divided into three lines of thought; there were those most likely to accept its statehood, those, on the other hand, who feared anyway the consequences it could have had on the rules of international law, but that were not completely against; and in the end those totally opposed to creating a dangerous precedent that could legitimize other secessionist forces in the European Union itself. Despite this, and although not all Member Countries have recognized the independence of Kosovo, the EU would still have a chance to implement a series of common policies for the mission to stabilize the territory. All this could have been possible thanks to the method of reaching the quorum through the "constructive abstention"<sup>65</sup>. But, at the beginning, and this for some aspects will change during time, the differences were so deep that the interests of one or the other Member Country would have been affected. Because of this lack of consensus, however, the European Union had to step aside and allow Russia and the United States to put in place the agenda.

As already known, the European Union played a somewhat secluded role until, following violent clashes in 2004, the United Nations partially lost control of the situation and the European Union returned as a valid alternative guide in the process of the final status talks.

At this point the Contact Group was formed, and in 2007 Martti Ahtisaari in his Final Plan explicitly considered independence. The European Union had to move quickly, and through unanimity, to lay the foundations for a possible EU mission to replace UNMIK. The Foreign Ministers who met in Bremen on March 30<sup>th</sup>, 2007 were well aware of this, but this time too it was clear from the start that opinions were very different<sup>66</sup>.

The foreign ministers of Cyprus, Greece, Romania, Slovakia, and Spain, the countries that still do not recognize Kosovo as an independent State, issued statements showing their disappointment, and making it clear that any decision should have been discussed not only with

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<sup>65</sup> If all the decisions regarding the Common Foreign and Security Policy are to be taken through unanimity, the "constructive abstention", or even positive abstention, is a mechanism that allows a Member State to abstain from voting, without however blocking the decisional process (Article 31 of the Treaty on European Union)

<sup>66</sup> Economodes, Spyros, e James Ker-Lindsay. «Forging EU Foreign Policy Unity from Diversity: The 'Unique Case' of the Kosovo Status Talks.» *European Foreign Affairs Review*. Vol. 15 Issue 4, 2010: 495-510.

Pristina, but also with Belgrade. This group of countries, which is called “the splinter group”, has similar views on the Kosovo issue as those of Russia.

At this point the German Foreign Minister was forced to declare to the United Nations that once again the European Union had not been able to reach a common agreement on the matter and called for a new UN resolution<sup>67</sup>.

The latter was fundamental for making progress in the Union's decision-making process. Many Countries, although favorable to the acceptance of Kosovo's independence, were skeptical about taking such an important step without the Security Council expressing itself on the matter. The United States on the contrary, were determined to recognize Kosovo's independence even without the support of the United Nations.

Unfortunately, however, the resolution did not arrive, and so it became clear that in order to proceed in the process of clarification of the final status, the international community would have to set up a dialogue that would take into account not only the interests of Pristina, but also those of Belgrade. So, The Troika was created under the advice of the German Government, and after the Contact Group communicated to the Secretary General the modalities with which it intended to continue with the dialogue and he accepted it<sup>68</sup>.

It soon became clear, however, that despite the genuine commitment and the myriad of possibilities examined, there was no possibility of agreement between the two parties, and in many European Countries, primarily Germany, the idea that they would recognize Kosovo anyway began to take hold. Even if Russia had vetoed it in the UNSC.

Finally at the end of 2007, and at the end of the Troika intervention, the European Union reached an agreement at least on the fact that the establishment of a European mission in Kosovo was to be considered separately from the will or not of all Member States to recognize a possible declaration of independence of Kosovo, which by now seemed much more reality than utopia. So in February 2008 the EULEX Mission was launched, and it was <<*the largest civilian mission under the Common Security and Defence Policy of the European Union*>><sup>69 70</sup>.

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<sup>67</sup> Rettman, Andrew, e Ekrem Krasniqi. «EU splinter group emerges on Kosovo.» *EUobserver*, 2007.

<sup>68</sup> ‘UN Secretary-General Welcomes Agreement on New Kosovo Initiative’, UN Press Release, SG/SM/11111, 1 Aug. 2007.

<sup>69</sup> EULEX's overall mission is to assist the Kosovo authorities in establishing sustainable and independent rule of law institutions. The Mission's current mandate has been launched to cover the period until 14 June 2020 based on Council Decision **CFSP 2018/856**. EULEX works within the framework of UN Security Council Resolution 1244.

<sup>70</sup>EULEX. «About EULEX.» *Eulex*. 2008. <https://www.eulex-kosovo.eu/?page=2,60>.

Only 24 hours later Kosovo proclaimed itself an independent State, and the EU was again divided in this regard, so much so that in the end the Council of European Union decides to leave the freedom to each Member Country to make an autonomous decision on whether or not to recognize Kosovo.

Up to this days the European Community is divided on this front, and the fact that there are still some Countries that do not recognize its independence certainly creates some problems in proceeding with the integration process of the Balkan region in the Union; even if we know that until relations between Serbia and Kosovo have normalized, neither of them will have the consent to become a Member State, which makes this eventuality still far away.

We know, however, that to date the EU is a fundamental actor in the region, and that for years it has been playing a huge mediating role between the parties, that I will discuss later on.

### ***1.3.6 The USA's position***

As for the United States and their relationship with Kosovo, I want to proceed differently. It is clear from what I have pointed out above that the newly born Balkan State found in this Great Super-power its greatest ally. In fact, the United States immediately backed the Kosovo independence project. Now I will try to highlight the real interests of the US in the region.

The Kosovo War happens ten years after the fall of the Soviet Union, ten years after the "official" end of the Cold War. The United States, who had maniacally perfected their "grand strategy", which at that time consisted in the *containment* of any element of communism, found themselves ten years later to still carry with them the aftermath of that strategy, trying to understand how to redesign the post-dualistic world. As usual, before any military foreign policy intervention, the debate between interventionists against neutralists is unleashed.

To intervene, to expel Milosevic's forces from Kosovo, appeared at a certain point as a struggle against a wider concept; the United States must intervene to affirm their values and principles once again, to show that they are capable of conforming the world to their own standards, and to prevent it from falling into chaos<sup>71</sup>. There was, moreover, the humanitarian factor. A country like the United States, which built its essence and its image on the principle of democracy and the

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<sup>71</sup> Miller, Judith. «Grand Strategy: Round and Round On U.S. Interests; Kosovo Rekindles a Debate, Dormant for Nearly a Decade, Of America's Global Role.» *NY Times*, 1999.

protection of fundamental rights, could not remain indifferent to what had just the appearance of an "ethnic cleansing".

In Kosovo, once again, US and Russia are on opposite poles, with their conflicting interests. Furthermore, the strategic aspect of the geographical position of Kosovo should not be underestimated. Because, if we said that Russia considered it a good penetration point in the Balkans, and therefore to increase its influence in Europe, on the other hand, obviously, the United States could not allow this to happen. Besides, Kosovo would be ideal, if we want to think of a typical reasoning that still carries with it the aftermath of the Cold War, to be a buffer state, in order to monitor Russia without being too invasive.

The fact is that the United States have been one of the first countries to recognize Kosovo unilateral Declaration of Independence, and that they have strategically used their soft power to increase their influence in the territory, even with great success. No other country in the world has such a high approval rating for the United States as Kosovo. The influence of American culture is very visible walking the streets of Pristina. There are even streets named after American Presidents; George W. Bush and Bill Clinton, to whom is also dedicated a statue more than 10 meters high.

Americans are seen as true liberators. With the advent of the new tenant elected to the White House, Donald Trump, however, there are those who have had some fear that his attitude towards Muslims could in some way divert the attention of the new Administration from the Balkans. Nevertheless, Kosovo still sees the US as one of its greatest allies.

## **1.4 CONCLUSION**

As we have seen, despite the strong opposition of some members of the international community, but also strong with the support of the United States and the majority of the Member States of the European Union, on February 17, 2008, Kosovo proclaimed its independence. As I have already pointed out, the reaction of the international community was not unambiguous. The fact is that Kosovo remains one of the most peculiar cases of a State formation process, on which the doubts of legitimacy have been many.

To this end, before continuing in my discussion, discussing the institutionalization and democratization processes, that are still underway in the country, it seems to me important to point out that, on 22 July 2010, the International Court of Justice stated that <<*the declaration of*

*independence of Kosovo adopted on 17 February 2008 did not violate international law*>><sup>72</sup>. This opinion of the Court was noticed with great astonishment by the entire international community that absolutely did not expect a similar verdict. In fact, it was Countries such as Serbia and Russia that pushed more to get the Court to speak, while the Countries most favorable to independence, such as the USA, continued to affirm that such an act was not the responsibility of the ICJ.

The General Assembly of the United Nations, on the basis of Art 96 par. 1 of the UN Charter, addressed a Resolution to the ICJ as early as 2008, setting a legal question<sup>73</sup>. The Court's opinion came only after a controversial question about its own legitimacy to address the issue, and if it had to for any discretionary reason, refrain from expressing its sentence<sup>74</sup>. At this point a dissertation began, which proceeded at different points.

First of all, the Court examined the issue in accordance with general international law. During the period that marked the end of colonialism, the Court states that in those contexts a right to independence of the peoples subjected to foreign domination has born. As for other contexts, there is no rule of international law that provides for such an act, but also nothing that prohibits it. Responding therefore to the concerns of those States that turning to the Court have affirmed that, on the contrary, a unilateral declaration of independence would be implicitly prohibited in the principle of territorial integrity of the States, the ICJ states that in practice the Security Council has certainly condemned some declarations of independence<sup>75</sup>, but they concerned a specific context, and also particular violations of the *jus cogens*. In the case of Kosovo, the Court affirms that these conditions<sup>76</sup> do not subsist.

In a subsequent passage the Court proceeds by examining the compliance of the act with United Nations Resolution 1244. To do this it is necessary first of all to establish the identity of the subjects declaring independence. Having ascertained that the Provisional Government bodies would not have acted as such, but releasing themselves from the obligations of the 2001 constitutional framework (which in turn derived from resolution 1244), and placing themselves outside the

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<sup>72</sup>International Court of Justice. Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo. Advisory Opinion, I.C.J. Reports, 2010.

<sup>73</sup> Resolution 63/3 (8 October 2008)

<sup>74</sup> Ibid 72; Par. 17-48

<sup>75</sup> For example; Southern Rhodesia (1970), Northern Cyprus (1983)

<sup>76</sup> <<the illegality attached to the declarations of independence thus stemmed not from the unilateral character of these declarations as such, but from the fact that they were, or would have been, connected with the unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character>> Ibid 68, par 81.

UNMIK regulation, the Court ruled that also in this case there were not sufficient conditions to declare the non-compliance of the act<sup>77</sup>.

According to the Court, the fact that the Provisional Government reiterated the international obligations of Kosovo, would be a further verification that they did not operate in the context of the aforementioned constitutional framework, in which it provided that relations with third parties were a prerogative of the Special Representative of the Secretary-General<sup>78</sup>.

Furthermore, Resolution 1244 itself establishes a *transitional regime* according to the Court, which while protecting Serbia's territorial integrity, suspends its sovereignty over Kosovo, and does not impose any kind of prohibition on a unilateral declaration of independence. Instead, it refers very specifically to the cessation of hostilities and to cooperation with the Criminal Tribunal for the former Yugoslavia<sup>79</sup>, not to mention the fact that it refers to a transitional period until a new political order is reached<sup>80</sup>.

A further fundamental step for Kosovo is marked in 2012, when it becomes independent not only under the formal plan, but also effectively. Crucial in this process was the International Steering Group<sup>81</sup> which decided, in September of that year, to cease its mandate and to definitively release Kosovo from the Ahtisaari Plan. Thus a fundamental passage takes place; Kosovo from an international law of secondary law becomes fully national, the Constitution (of June 15, 2008) represents the highest legal authority<sup>82</sup>.

At this point it is clear that Kosovo represents an extraordinary case, unique in its kind. If in fact, for all the reasons that can be deduced from the preceding paragraphs, Kosovo despite having a narrow territorial extension, represents for its intrinsic geography an interesting place where all countries decide to implement their geopolitical strategies.

A theater of confrontation therefore, which lent itself with an exceptional timing to become the new chessboard on which, even with less belligerent attitudes, the Post- Cold War powers were preparing to make their own move.

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<sup>77</sup> Ibid 72, par 119

<sup>78</sup> Ibid 72, par 106

<sup>79</sup> Ibid 72, par 121

<sup>80</sup> Ibid 72, par 118

<sup>81</sup> An organization, composed of 12 European countries, and other assisting countries such as the US, Turkey and Switzerland, established by the Ahtisaari Plan, aimed at guiding Kosovo towards democracy, multiculturalism and the rule of law.

<sup>82</sup> Milano, Enrico. «L'Indipendenza acquisita del Kosovo.» In *Formazione dello Stato e Processo di State-Building nel Diritto internazionale. Kosovo 1999-2013*, 287-292. Napoli: Editoriale Scientifica, 2013.

In the light of the previous analysis of the positions of the various international actors, it is clear that it represents such an important case because in a certain sense it legitimizes the hopes of secession and the independence pressures of some national minorities, even within the European Union itself, or better to say, to strengthen them, and to create that imaginative picture that is optimally composed for those who wish to achieve political goals by relying on feelings of ethnic belonging.

# ***CHAPTER 2. The International Status of Kosovo and the Brussel Dialogue***

## **2.1 THE “LAW” OF SECESSION AND THE STATE-BUILDING PROCESS**

At the time when Kosovo unilaterally declared its independence, it began *officially* its state-building process. Obviously for international law the case of Kosovo is an exceptionality; first of all because it comes from a process of secession, and secondly because it has been fundamentally guided and set by the international community. The deadlines of which I am talking about are in particular the two different phases in which the international community, the United Nations before, and the International Steering Group (ISG) later, had an important role.

From 1999 to 2008, thanks to the intervention of the UN, in a certain way, Kosovo was protected by the possibility of a Serbian revenge that wanted to restore its territorial integrity. After independence, instead, the ISG committed itself to the implementation and the achievement of the final status of Kosovo<sup>83</sup>.

The requirement of independence is fundamental for the final acquisition of the *status* of a country, and the relationship that exists in Kosovo between state-building and international intervention makes the matter more complicated. This is because the new local authorities at that time were in a relationship of dependence with respect to the international presence, from the economic point of view, of security and more. But in this regard, the independence that perhaps matters the most in a state-building process is the legal one.

The right of a new state must not be derived either from that of another state or from international organizations<sup>84</sup>. In order to clarify the issue, it is important to underline that in general the literature on the subject recognizes a very limited role to external actors in the process of state building of a country; this is because according to scholars, for the formation of a State to be

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<sup>83</sup>Milano, Enrico. «L'Indipendenza acquisita del Kosovo.» In *Formazione dello Stato e Processo di State-Building nel Diritto internazionale. Kosovo 1999-2013*, 287-292. Napoli: Editoriale Scientifica, 2013. Pg 1-10

<sup>84</sup>Ibid, 83; pp. 84 - 96

successful it must be a process that is implemented from within, without the international community putting in any way at risk local ownership, and the possibility for new institutions to learn to govern themselves. Therefore, it is usually preferred that state-building is carried out by an endogenous process rather than an exogenous one. In general, the international community is recognized as a facilitator.

Third parties can in fact provide all human resources, help with technical and economic support, and, in conflict scenarios also with the military. Having said this, it is also true that in international relations there is always a conditionality clause, which in some way can divert the state-building process from its natural path<sup>85</sup>. As far as Kosovo is concerned, perhaps the international community has not only become a facilitator at times, but also a leader. As we will see shortly and as I have already mentioned in the previous chapter, also arriving to assume a role of mediator between the local communities, and not only. What I will attempt to do now is a legal analysis trying to apply the rules of international law to the specific case I dealt with.

### ***2.1.1 The State as the subject of international law***

First of all, the State is the main subject of international law, which has three main characteristics; government, territory and population. In 1991, in the light of the dissolution of the Republic of Yugoslavia, the *Badinter Commission* expressed itself in this way: <<the State is a community, consisting of a territory and a population, under an organized political authority with sovereignty>>.

With regards to Kosovo and its Declaration of Independence, as is the case for all the processes of formation of new states, international law can simply acknowledge it according to the principle of effectiveness, as an historical event.

Having said so, a State body, in this case a newly born State, becomes the subject of recognition of the other already existing States, which with this act demonstrate not only the awareness of the existence of a new State, but also the willingness to relate to it<sup>86</sup>. Recognition is therefore a political act that shows that the formation of the State is not governed by a juridical norm but is a pre-judicial phenomenon<sup>87</sup>. The recognition, as far as Kosovo is concerned,

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<sup>85</sup>Scott, Zoe. "Literature Review on State-Building." Governance and Social Development Resource Center (GSDRC), May 2007.

<sup>86</sup>Ibid, 83

<sup>87</sup>Treves, Tullio. *Diritto Internazionale. Problemi fondamentali*. Milano: Giuffrè Editore, 2005.

according to some scholars of international law, might have happened too prematurely, since the day after the Declaration of Independence, Kosovo did not yet show that it possessed those elements that could guarantee a certain degree of effectiveness. The recognition can take place in several ways, and it can be explicit or implicit.

As for Kosovo, perhaps it is possible to reflect on this; if many pre-existing States have proceeded with a formal recognition, there are obviously, as we have already seen in the previous chapter, other States that oppose the formation of this new entity. To date, however, we know that Serbia has not yet officially recognized the existence of Kosovo as an independent State, but rather still considers it an autonomous province, but at the same time, it no longer has control over it, takes part in a negotiation processes and dialogue with this entity, that nevertheless shows its independence in the ability to make decisions. Then one might ask, isn't this also a form, albeit an implicit one, of recognition?

Kosovo can certainly be considered "socially" a State, as it has been recognized as such by many pre-existing States. The doctrine concerning the legal value of recognition has various positions; in general, what seems to be accepted by all is that this act certainly has a bearing on what will be the bilateral relations between countries, but it does not constitute the foundation of the legal status of the recognized State<sup>88</sup>. From 1990 onwards, after the end of the Cold War, the number of States has grown considerably, and this makes the topic of the formation of new States an issue much debated by scholars of international doctrine. We know that the State can be born in different ways, but what interests for the purposes of this thesis is the birth of a State following a secession.

### ***2.1.2 The birth of a State after secession***

The legal term secession means nothing more than the creation of a new State following a non-consensual separation from the pre-existing State, and the real paradox is found in the fact that this occurs frequently for an era always more characterized by globalization.

For its part, international law does not provide for a real discipline of the secession processes. Certainly, if it is true that in colonial contexts rights such as self-determination are

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<sup>88</sup> Milano, Enrico. «Il ruolo del riconoscimento nel processo di formazione dello stato.» In *Formazione dello Stato e Processo di State-Building nel Diritto internazionale. Kosovo 1999-2013*, 287-292. Napoli: Editoriale Scientifica, 2013. Pg 1-10

foreseen, and they seem somehow to make secession an at least acceptable act, outside these contexts, international law seems to be critical about these processes, although there is no real prohibition. It is evident that the doctrine proceeds to the analysis of the processes of secession analyzing them case by case, without creating a general framework, and focusing in particular not on the concept of secession itself, but rather on the process through which it is achieved.

The ICJ (International Court of Justice) itself, in its opinion on Kosovo's declaration of independence, failed to give comprehensive answers on specific topics, and despite it declared neutrality with regard to the concept of secession in international law, in some of its statements it was actually anything but neutral. In fact, to declare that, according to a strongly positivistic view, the principle of territorial integrity is protected by international law only with regard to relations between States actually shows a large fault in the protection of the territorial sovereignty of the State and widens the possibility of secession to non-colonial contexts. In fact, in its Advisory Opinion, the ICJ lefts uncovered all this side of the matter, and does not answer to the States' questions about the possibility of self-determination of peoples even outside the era of colonialism<sup>89</sup>.

To examine the case of Kosovo, like all other secession processes, there is therefore the need for an interaction between general principles of law; *uti possidetis*, self-determination of peoples, safeguarding of territorial integrity, prohibition of the use of force; with individual cases, to allow the international community to flexibly analyze and create *sui generis* and *ad hoc* solutions<sup>90</sup>.

If we take this into consideration, then the opinion of the International Court of Justice will also become clearer. In reference to the Security Council (SC) resolutions concerning other secession processes, such as those of Southern Rhodesia or Northern Cyprus, declared illegal, the ICJ' Opinion underlines the fact that the SC itself has never encountered this illegality in the case of Kosovo. This therefore confirms that it is not possible to create a unitary doctrine regarding these kinds of processes, since not even the practice of SC has approached them in a unitary way.

The conclusion is therefore that international law does not regulate secession itself, but that there are certainly general principles of international law that can be applied to secession processes

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<sup>89</sup> Dugard, John. *The secession of States and Their Recognition in the Wake of Kosovo*. AIL-POKET. HAGUE ACADEMY OF INTERNATIONAL LAW, 2013, p 262-284

<sup>90</sup> Milano, Enrico. «La ricerca (vana) di una disciplina generale e astratta applicabile alle secessioni; l'applicazione contestuale di principi e norme giuridiche.» In *Formazione dello Stato e Processo di State-Building nel Diritto internazionale. Kosovo 1999-2013*, 287-292. Napoli: Editoriale Scientifica, 2013. Pg 61-72.

in a binding way. In addition to legal principles, when we talk about secession and the consequent state- building process we must consider another element, of a factual nature; it is the effectiveness.

The latter consists in the ability of the secessionist country to govern itself without the support of the pre-existing State<sup>91</sup>. As far as Kosovo is concerned, however, it could be said that even at the dawn of international recognition, perhaps the principle of effectiveness was not yet entirely established, and the newly born State was struggling to become self-sufficient. Moreover, in 2008, as still today, the Pristina Government does not have full control over its entire territory; just think of the Serbian enclaves in the north of Kosovo, and the fact that some administrative roles still fell into the hands of international institutions (?), which bring us back to the issue of independence.

Before establishing whether the case of Kosovar secession was a case of success or not, there is one last point that is important to consider, and that has created some doubts about the applicability of the doctrine to this case. This is the *remedial secession*. This in fact finds numerous support both in the judicial practice and in the Resolutions of the United Nations and has been called into question several times with regard to the secession of Kosovo. What makes some think, however, is the timing of the secession. If Kosovo would have declared its independence in 1999 there would have been no doubt about the fact that it was a remedial secession, as the Kosovar Albanian citizens had first been deprived of their right to self-determination, and then they had even been victims of major human rights violations. The dispute on the other hand was born because in 2008 the situation in Kosovo was completely different. In fact, by that time the region had regained its own internal autonomy, under the aegis of the United Nations<sup>92</sup>.

The fact is that today the secession of Kosovo can be considered a success story, even if only partially, in fact it has been recognized by many States but is not a member of the United Nations. In this regard I will take up for a moment a topic only mentioned in the preceding chapter. Should the case of Kosovo be considered as a precedent?

We know that the countries that recognized its independence, first and foremost the United States, but also members of the EU such as Germany, UK and France, have stressed over and over again the fact that Kosovo was a *sui generis* case, which had particular characteristics that would made peremptory to consider this case independently from the general doctrine.

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<sup>91</sup> Treves, Tullio. *Diritto Internazionale. Problemi fondamentali*. Milano: Giuffrè Editore, 2005.

<sup>92</sup> Dugard, John. *The secession of States and Their Recognition in the Wake of Kosovo*. AIL-POKET. HAGUE ACADEMY OF INTERNATIONAL LAW, 2013, p 201-220.

On the contrary, Countries opposed to the recognition of Kosovo have obviously proved otherwise. Among these, in particular, Cyprus expressed itself by emphasizing how to consider a case in its uniqueness does nothing but weaken the general doctrine and put at the center of the process no longer the element of legality, but rather a political element<sup>93</sup>. This declaration of Cyprus, although by now the vast majority of countries in the world consider Kosovo an independent State, should not be underestimated. Already in the previous chapter it has become clear that in the Kosovo question the political, and also the strategic, element was fundamental in guiding the decisions of the States.

For the same political and strategic considerations that led States to recognize or not Kosovo in its statehood, some countries, and in particular I will focus on the European Union, have tried to influence the course of events with its diplomatic initiatives.

## **2.2 LATEST DIPLOMATIC INITIATIVES**

Despite the fact that in its Declaration of Independence in 2008 Kosovo declared "to be a democratic, secular and multi-ethnic republic", in reality it is a Country that still today is carrying out a process of consolidation of democracy, with the help of international organizations, such as the United Nations first, and then more consistently the European Union.

The latter focused more on the aspect of improving relations between Serbia and Kosovo, trying to establish a constructive dialogue between the two. Before starting my argument, we can say that in the mediation process carried out by both the United Nations and the EU, there were four different moments, characterized by four distinct diplomatic initiatives; The first in 1999 in which the UN Contact Group on Former Yugoslavia tried to put an end to the violence perpetrated in Kosovo (*Rambouillet Conference*); subsequently, in 2006/2007 there were *the Kosovo Status Talks* led by A Special Envoy Martti Ahtisaari, in which the EU had the role of observer; the *Troika process*, of which I have already spoken previously and which saw as protagonists the US, Russia and the EU (r), and finally the *Belgrade-Pristina dialogue* mediated by the EU since 2011 up to nowadays.

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<sup>93</sup> Ibid, 92

The purpose of this paragraph is to highlight the steps of the so-called Brussels Dialogue that represent the most important and also problematic European diplomatic intervention in Kosovo in recent years.

### ***2.2.1 The Brussels Dialogue***

The aim of this facilitated dialogue between Kosovo and Serbia had, and still has, the aim "to promote progress on the path to Europe and improve the lives of people"<sup>94</sup>. This process, started in 2011, is considered one of the greatest efforts, and at the same time successes, of the European Union under the Common Foreign and Security Policy (CFSP). At the head of this Dialogue, which aims to the normalization of relations between the two Countries, in view of a possible future participation in the European Union, there is the High Representative of the Union for Foreign Affairs and Security Policy, Catherine Ashton first, and Federica Mogherini later, personally led the Process, thanks to which Belgrade and Pristina held a dialogue for the first time.

The first milestone reached was two years later, on April 19th 2013, when the 'First Agreement of Principles Governing the Normalization of Relations' was signed; later known as the Brussels Agreement. But, before elaborating on the negotiated points, it is important to clarify the position of the European Union in the Dialogue.

The normalization process and the achievement of an agreement between the two States was, and is, the binding element for the purpose of the European integration process. It was indeed fundamental for Belgrade in order to start the negotiation processes as a Candidate Country, and for Pristina for participation in the Stabilization and Association Process through the achievement of the SAA<sup>95</sup> (only in 2015). This obviously put the Union in a position of strength, which facilitated it in mediation.

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<sup>94</sup>United Nations General Assembly (2010). "Resolution adopted by the General Assembly 64/298. Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law." *Press Release A/Res/64/298*, October 13, New York: United Nations General Assembly.

CFSP, EU Facilitated Dialogue for the Normalisation of Relations Between Belgrade and Pristina (2015)

[https://eeas.europa.eu/diplomatic-network/eu-facilitated-dialogue-belgrade-pristina-relations\\_en](https://eeas.europa.eu/diplomatic-network/eu-facilitated-dialogue-belgrade-pristina-relations_en)

<sup>95</sup> Stabilization and Association Agreement.

As a mediator, the European Union had to try to create a neutral environment, which could produce confidence in both sides, so that a constructive approach was possible. Furthermore, it was necessary to build a trilateral negotiation structure in which the Union could in some way dictate some fundamental conditions, thanks to its position. Precisely because the normalization process between the two litigants had in some way the objective of achieving acceptable standards in the eyes of the international community, and the EU in particular, the latter could put in place some persuasive means.

It could be said that in some moments the European Union has interpreted its role of mediator as a manipulator; fielding its resources to leverage the parts<sup>96</sup>, even if for the rest of the time its approach could be considered as formulative. The difference from the United Nations, however, is that the EU mediation process in the Pristina-Belgrade Dialogue, was not outcome-oriented but rather process-oriented. For this reason, as we will soon see, the first topics dealt with were technical issues, and the question of status was not even questioned. Unlike the Kosovo Status Talk led by Ahtisari, the European Union preferred to remain neutral on the topic. Thus, as already mentioned, between 2011 and 2013, the dialogue between the two Countries began by focusing on technical and technocratic aspects, as “freedom of movement, recognition of travel documents, car registrations, university diplomas, exchange of civil registry and cadaster records, customs and trade relations”<sup>97</sup>; and then evolving into a high-profile political dialogue between the Prime Ministers of the two States.

The aim was to find a compromise between the two in the most controversial and burning situations, to bring Serbia to eliminate the institutional structures parallel to those of Pristina, and at the same time Kosovo had to guarantee autonomy and respect for the Serbian minorities present on the territory. Thus, we come to April 2013 and to the signing of the "First Agreement of Principles Governing the Normalization of Relations".

### ***2.2.2 The Brussels Agreement in 2013***

This was composed by 15 points, which dealt with different topics; from the establishment of an Association / Community of Serbs majority municipalities in the north of Kosovo, to the

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<sup>96</sup> Bercovitch, Jacob. «Mediators and Mediation Strategies in International Relations.» *Negotiation Journal*, July 2007.

<sup>97</sup> Lilyanova, Velina. *Serbia and Kosovo: Normalisation of relations*. Brussels: European Parliamentary Research Service, March 2016.

creation of a single police force (Kosovo Police) which would also bring together the security officers of municipalities with a Serbian majority, to judicial authorities. Thus, the objective was to eliminate all parallel structures in northern Kosovo, a time schedule for the discussion of other topics was also established. In particular it is important to mention that both States agreed to refrain from blocking the path of European integration of their counterpart.

Obviously, given the sensitivity of the topics covered, the implementation of the Brussels Agreement was not easy. In fact, not all of its points were implemented completely. In particular, the question of the Association/Community of Serbs municipalities has caused the rise of many tensions.

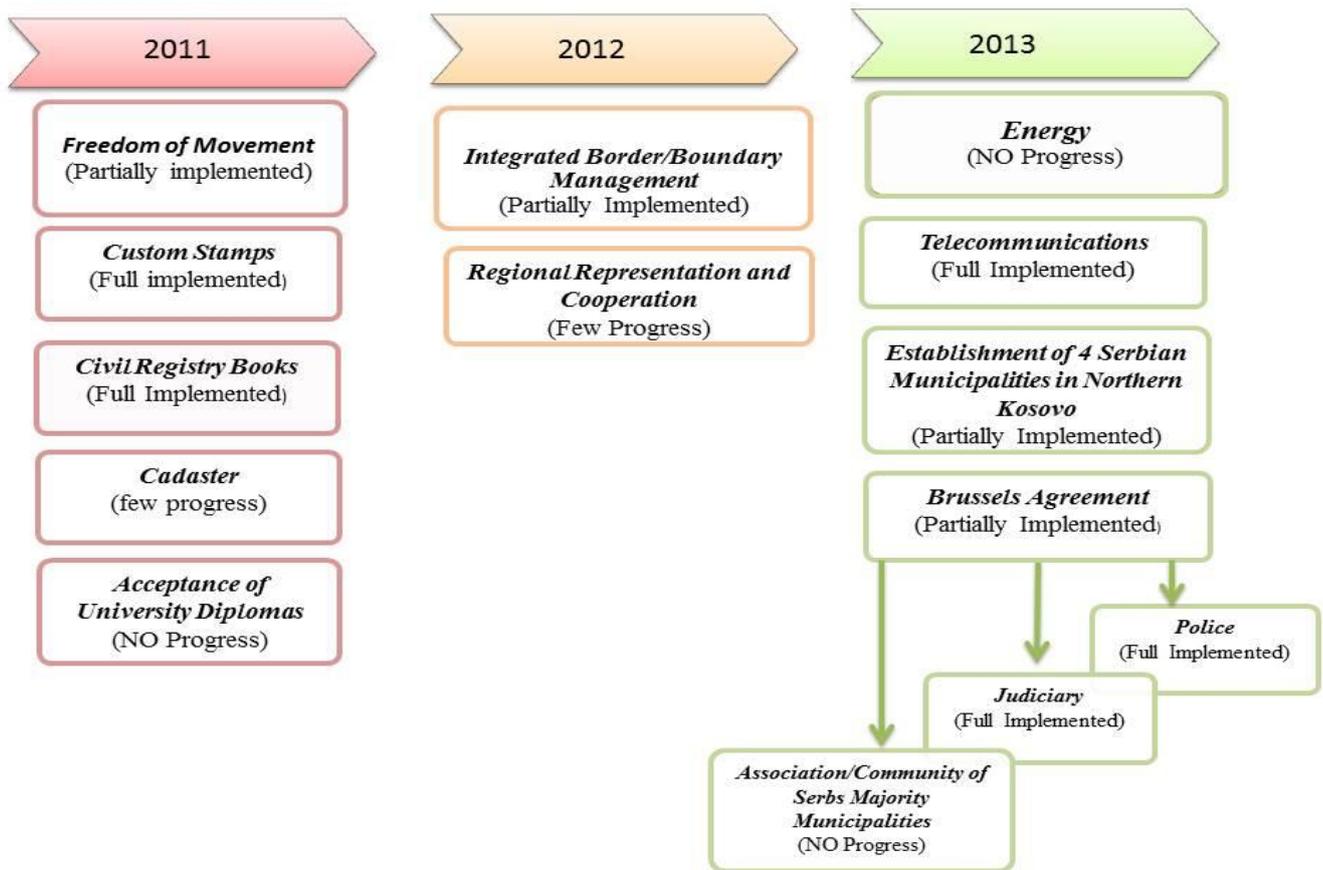
If the kind of rhetoric that political leaders used internationally focused on openness and compromise, at local level there was a strong national feeling, which did not appreciate the idea of a win-win logic, and any success of the Dialogue it was passed off on one side or the other as a total victory, and therefore somehow a "defeat" for the other State<sup>98</sup>. In any case, to pursue some of the points of the Brussels Agreement the two States had to provide themselves with adequate legislative means, so the process went on slowly. In 2015 there was another turning point, and Belgrade and Pristina signed four more deals on energy, telecommunications, the opening of Mitrovica Bridge (Ibar river bridge)<sup>99</sup> and finally the implementation of the Association of Serbian Municipalities. The latter, however, was challenged by the Kosovar opposition to the Government, which denounced this proposal.

In December 2015 the Kosovar Constitutional Court declared the Association/Community of Serbs in contrast with the Constitution due to the powers granted. Similarly, Serbia has not closed its parallel structures, which was a necessary condition for the creation of the Association/Community of Serbian municipalities. Negotiations in this regard are still at a standstill.

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<sup>98</sup>Donika Emini; Isidora Stakic. *Belgrade and Pristina: lost in normalization?* Brussels: European Union Institute for Security Studies (EUISS), April 2018.

<sup>99</sup> According to my personal experience, a month spent in Kosovo in July 2018 with the University and the Stato Maggiore dell'Esercito (SME), the Mitrovica bridge exists and for security reasons the surrounding area was closed to traffic and made totally pedestrian. But on the other side of the bridge, in the North, flags of Serbia are fanned, the spoken language is different. Serbs and Albanians have created a barrier at the ends of the Bridge with everything they could use, from sacks of sand to steel plates, and no one, adults or children, on either side, would cross it without risking their own safety.



**Figure 3: The steps into the negotiations of the Brussels Dialogue until the signature of the First Agreement.**

Another of the reasons why it is difficult to arrive at the implementation of the agreements reached in Brussels depends on the fact that the European Union in its role as mediator puts in place a "*constructive ambiguity*". This means that the agreements made are somehow interpretable, and that they carry with them a certain degree of vagueness. If on the one hand this slows down the process, on the other it is also the only way through which Pristina and Belgrade could agree in a bargain. The range of interpretation allows the two States to sign agreements that do not result as concessions, even if with something in return, because these would be challenged by the opposition within the Government of the Country<sup>100</sup>.

<sup>100</sup> Lilyanova, Velina. *Serbia and Kosovo: Normalisation of relations*. Brussels: European Parliamentary Research Service, March 2016.

However, this makes things even more complicated when it comes to the Association/Community Agreement. The respective Prime Ministers, Aleksandar Vučić<sup>101</sup>, and Isa Mustafa, have in fact interpreted the nature of the Agreement differently, failing to settle on what this really meant. For Belgrade it was a "Community" with executive powers; a real legal entity.

On the other side Pristina considered it an "Association", not governmental and without executive powers. In the Agreement it was written that the Association/Community of Serbs in northern Kosovo municipalities had the right to a budget of its own, and to a "full overview" (hence the ambiguity) on all those areas that I mentioned earlier. It therefore seems that the ambiguity that is necessary for some purposes is not always "constructive"<sup>102</sup>.

### ***2.2.3 The Dialogue at a stalemate***

The years that followed were characterized by a stalemate, due to the growing tensions between the two countries<sup>103</sup>. The tones became harder, and full of threats. The meetings scheduled in Brussels were repeatedly canceled or postponed at the last moment, until in 2018 President Aleksandar Vučić refused to meet the Kosovar President Hashim Thaçi following the introduction of tariffs on the import of goods from Serbia and Bosnia, act to which the President of Belgrade referred to as illegal. At the same time, several times the European Union, and in particular the EU External Action Service, have called the two Countries to abandon this bellicose rhetoric and to return to the path of dialogue towards normalization, with poor results. On the other hand, what the EU has offered in exchange for the two States to start a constructive dialogue, is precisely integration into the Union, but it is very interesting to look at the statistics on popular perception in the two countries on this subject.

The feeling of the citizens of the two Countries about a possible future in the EU differs a lot.

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<sup>101</sup> He became President only on the 31 of May 2017

<sup>102</sup>RELJIĆ, DUŠAN. «EU Facilitated Dialogue: Another exercise in constructive ambiguity.» *CEPS Commentary: Thinking ahead for Europe*. Brussels: Centre for European Policy Studies, 28 August 2015.

Bátora, Jozef, Matej Navrátil, Kari M. Osland, and Mateja Peter. "Normalization dialogue: constructive ambiguity." *The EU and international actors in Kosovo: Competing institutional logics, constructive ambiguity and competing priorities*. EUNPACK, January 2018.

<sup>103</sup> The "Kosovo is Serbia" Train in Jan. 2017, the murder of the politician Oliver Ivanović of Serbian ethnicity in Kosovo just one year later, and the expulsion of Belgrade representative, Marko Djurić, accused to enter Kosovo illegally

Only the 29% of Serbs look favorably to the entry of their country into the Union, on the other hand, almost all of the Kosovars (84%), instead, are in favor of membership. Both in Belgrade and in Pristina, however, the population does not look favorably on the dialogue between the two Countries, in fact the 81% of Serbs do not believe that Kosovo should be recognized, and 52% of Kosovars do not see how the population can benefit of this dialogue<sup>104</sup>. Perhaps the point probably consists in this; the fact that citizens are unable to perceive the benefits of this dialogue makes them skeptical and hostile towards it. Precisely for this reason, due to the opposition of public opinion, the political representatives who carry out the Dialogue cannot afford to make unpopular decisions, which would be turned against them.

#### ***2.2.4 The proposal of a “land swap”***

One of the last diplomatic efforts to solve this territorial, ethnical and national issue, is the proposal of a sort of "exchange of territories"(land swap). This should consist in the transfer of a geographic area, populated for the majority by Albanians, located in the south of the Serbian country (Preševo Valley). On the other hand, the independent republic of Kosovo should cede a part of its northern Serb-dominated territories, around the city of Mitrovica.

This solution was proposed in 2018 considering that the integration of the Serbian minority in Kosovo did not progress in the right way. In August 2018, at a meeting in Austria, at the Alpbach forum, the Presidents of the two Countries surprisingly agreed on the possibility of a settlement of this kind, which would consist essentially in a “correction” of the borders. Obviously, the international community is divided in this regard; the USA, France, and The EU High Representative Federica Mogherini are the most important voices in favor of this initiative, instead, on the other side there are Germany, UK, and also some of the neighborhood countries such as Albania and Montenegro.

Indeed, a similar agreement would have its advantages, but also its difficulties. If on the one hand it could primarily mean a new turning point and a recovery in the dialogue between Pristina and Belgrade, resolve the issue of the status of municipalities with a Serbian majority in Kosovo, and would put to an end the discrimination against the Albanian population in the south of Serbia and vice versa; on the other hand it could bring back instability throughout the Balkan region.

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<sup>104</sup>European Parliamentary Research Center. «Serbia- Kosovo relations; Confrontation or Normalization?» Brussels: European Parliament, 2019.

Paradoxically, but not surprisingly, the main opponents, are the Kosovars, both citizens and the Government.

The internal opponents argue that Kosovo would lose more than it would earn, both trivially in terms of the size of the territory, but also giving up strategic, highly industrialized geographical areas, such as the Trepca mines, and Lake Gazivoda, which supplies water to the entire State<sup>105</sup>. This solution, called "land swap", which is based on the principle of the mono-ethnic State, as well as being able to foment the nationalistic dreams of some areas of the Balkans, as in particular of the Srpska Republic, would also be a big defeat for Europe, in addition to the fact of being paradoxical; given the traditional conservatism of the Union. The fact that it could be a concordance of intent between Pristina and Belgrade would, however, in some way overlook the fact that international law is substantially against the borders designed at the table.

Despite this initial common will of the two Presidents, in the end other considerations prevailed. Starting from the beginning, Belgrade could still have obtained great autonomy for the Serbian communities in the north of Kosovo, even without such an agreement, but this probably should have meant recognizing the independence of Kosovo, and possibly for Belgrade the game was not worth the candle. This agreement instead included for Serbia the chance of a small revenge and the hope of a possible similar future settlement for the Srpska Republic. Kosovo, for its part, did not want to grant territories in order to have recognition, which according to Pristina would in any case be a duty, given its *de facto* independence.

For this reason, and in order to not guarantee a geopolitical revenge for Belgrade, it has put on the negotiating table the request for those areas mentioned above in southern Serbia. However, at a later time, the initial agreement in this regard was going to fade. This is because the Governments of the two Countries are too fragile and too based for their survival on the popular benevolence, so they had not shown themselves to be in favor of such a solution.

Geopolitically speaking, such a solution would not solve the problems of the region, indeed, by fully analyzing the question, it is easy to understand that when Germany claims that it would be a serious mistake to continue this agreement, maybe it is not wrong.

This exchange of territories would still leave the problem of minorities in the two countries unresolved. It is impossible to build it in such a way that no one is left behind. In fact, in the north of Kosovo there is only the largest concentration of Kosovars of Serbian ethnicity, but not the majority of them. Furthermore, there are in any case places in other areas of Kosovo that have a

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<sup>105</sup> Ibid, 102.

very important cultural value for Serbia, to which it is not inclined to give up. If the exchange would take place, there would still be the possibility of irredentism in the communities excluded from it. The very same effect would have the fact that this exchange seems to be based on the idea of a historical Kosovo, dating back to Ottoman rule.

So, what would happen in neighboring Countries? To begin with, let's consider the already mentioned problem of Republika Srpska, in Bosnia and Herzegovina. The Bosnian Serbs believe they have the same right to secede as Kosovo, and this exchange of territories would be considered by them as a definitive break with the borders of Dayton and a possible reunion with the "motherland".

In Macedonia, the Ohrid Agreements that ended a conflict in 2001 were based on an important principle; ethnic problems cannot have territorial solutions. Thanks to this principle, the Slavophone majority and the fierce Albanian minority managed to improve the conditions of coexistence, and also at the governmental level, both the Albanian and Macedonian (Slavic) parties worked, albeit with great difficulty (also due to the fact that the question was used several times as a field of comparison between the interests of the USA and Russia in the Balkans) to improve the conditions of inclusion of the Albanian minority in the territory. It is clear that the implementation of the land swap between Serbia and Kosovo would bring down the principle I was talking about earlier, with dangerous consequences<sup>106</sup>.

A short time ago, on April 28th 2019, there was a meeting in Berlin between the two Presidents, in the presence of Chancellor Angela Merkel and President Emmanuel Macron, to try to restart the normalization process which has now come to a standstill. The situation, if possible, became even more complicated due to the difference in views between the Kosovo President Hashim Thaci and Prime Minister Ramush Haradinaj. The latter in fact is completely negative regarding a possible exchange of territories.

If the President declares to be on good terms with the Prime Minister, and that there is no friction between the two, the latter instead stated in an interview with the Times that <<Experimenting with borders is unconstitutional. It has nothing to do with personality or power. It has everything to do with the fate of our nation. Whoever is advocating it on behalf of Kosovo, is wrong. It's not on behalf of Kosovo, but on behalf of one man only — the president.>> and he also added: <<If any piece of paper says that he had agreed to change the borders he will leave his

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<sup>106</sup>Quercia, Paolo. «Lo scambio di territori fra Serbia e Kosovo è una pessima idea.» *LIMES* (LIMES), September 17 September 2018.

*job*>><sup>107</sup>. In any case, the idea of redesigning the geopolitical boundaries of the territory was not one of the ideas on the agenda of the meeting, which was hosted precisely by Germany, and we know that Merkel has never considered the possibility of pursuing such an initiative. In this meeting, however, the Union's strong commitment to find a definitive agreement between the two countries was reiterated.

## **2.3 WHY HAS THE DIALOGUE STALLED?**

But there is still something else that complicates the scenario. That is to say that in December 2018 the Haradinaj Government approved a legislation to create a Kosovar army; and shortly before it also put in place the famous 100% duties on imports from Serbia and Bosnia.

### ***2.3.1 The Security Forces in Kosovo***

Before talking about this new initiative by the Kosovar Government, it is important to clarify how the security of the Country is currently guaranteed. Basically, there are three armed bodies in Kosovo, first of all of course KFOR, which has been engaged in the territory since June 12, 1999. This NATO mission, established under the auspices of the United Nations, was created with the aim of restoring and guaranteeing the stability and security of the territory. Furthermore, the presence of KFOR still plays an important role of deterrence. Of course, its task at the end of the war was even more delicate, when the Uçk was still active and had to be de-militarized.

At a time when this force was transformed into the Kosovo Protection Corps (Kpc), also under the command of NATO, and the borders with Serbia had become more stable, the role of KFOR focused more on the internal situation, therefore to guarantee the public order, to protect minorities and important places of worship<sup>108</sup>, and to provide support and security to OSCE, UNMIK missions in the area. Italy has a very important role in this case; in fact, the KFOR mission is the only NATO mission commanded by our Country. Since 1999, there have been as many as 14 Italians in command of the mission based in Film City. Over time, therefore, the objectives of the

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<sup>107</sup> Surk, Barbara. «Kosovo's Top Leaders Spar Over Deal With Serbia.» *The New York Times*, 30 April 2019: A8.

<sup>108</sup> For example the Italian soldiers of KFOR still today defend with the tanks the Deçani monastery, a UNESCO heritage site since 2006, 24 hours a day.

mission have changed according to the needs, just as the number of men engaged on the territory has changed.

Subsequently, in accordance with the Ahtisaari Plan, after independence there was the dismantling of the Kpc and the creation of a new security corp, called Kosovo Security Force (KSF). This force was not only trained by NATO since 2008, but it also proceeded to recruit candidates. After months of training, on September 15, 2009, the KSF began operating in the area, but only in 2013 reached the Full Operational Capacity (FOC).

The KSF is equipped with small arms, carries out civil protection and crisis response operations, and is conformed to NATO standards. However, it does not have military-type security functions<sup>109</sup>. There is therefore a third security force, the Kosovo Police, of which I have already spoken previously, as it was created following the Brussels Agreement in 2013; it has the task of maintaining public order, fighting crime, investigations, etc.

### ***2.3.2 The Kosovo Armed Force (KAF)***

The Pristina Government's project now is to transform the Kosovo Security Force into a real military force, with the name of Kosovo Armed Force. Already starting from December 2018, what was previously only a fleeting idea (since 2014), has begun to actualize. According to Kosovar political leaders, the national army represents a fundamental step for the independence of the State.

In reality this Army would be nothing but an extension of the KSF, in terms of personnel, equipment and prerogatives. This proposal was presented to the Parliament, together with that of the creation of a Ministry of Defense, precisely by the minister of KSF; Rrustem Berisha.

The motion was practically unanimously voted, in fact 107 votes out of 120 were in favor. The Serbian ethnic deputies were not present at the vote, as they abandoned the Parliament room. The Kosovar Albanian parliamentarians, who obviously represent the majority in Parliament, had to find a way to get this proposal through, and they managed to do it by adopting it at its first reading. In this way they have succeeded in surpassing the constitutional limits that provide for a *double qualified majority*, or the need for two thirds of votes in favor of all the deputies of the parliament, but at the same time also two thirds of the votes in favor in the 20 reserved seats to members of other ethnic minorities.

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<sup>109</sup> Quercia, Paolo. «Kosovo, la sfida dell'indipendenza.» *Limes*, 15 May 2007.

In light of this vote, the Belgrade Government immediately showed its disapproval, and both the President and the Foreign Minister called the issue to the attention of the United Nations, calling it an illegal act against Resolution 1244, and which can cause serious instability in the area. Serbian Prime Minister Ana Brnabic also underlined the possibility that Serbia could provide protection with its troops to ethnic minorities in northern Kosovo<sup>110</sup>. The response of Prime Minister Ramush Haradinaj was to try in some way to reassure Serbia and the international community, stressing that the creation of a Kosovo army does not constitute an act of war, but a legitimate act of an independent country. Furthermore, even this time with poor results, the Kosovar Prime Minister stated that the creation of the KAF should not jeopardize the dialogue with Serbia, and that instead of exposing the stability of the region, it would instead benefit, with the creation of a multi-ethnic army in order to prevent any security vacuum<sup>111</sup>.

For its part NATO since before the law was approved, had shown itself to be in favor of the continuous development of KSF's competences, but at the same time they clarified that a similar change had to be discussed first not only with all communities present in Kosovo and that therefore would be affected by the decision, but with NATO itself. Following the vote in the Parliament of Pristina, the Secretary-General of the Atlantic Alliance, Jens Stoltenberg, said he was deeply disappointed with the ways in which the Country decided to pursue the issue, without taking into account the concerns of the Alliance; precisely for this reason, he reiterates, the Council will have to reconsider its level of involvement in Kosovo.

The approval of the law to create a National Army therefore, not only sees opposition from the Serbian minority within the country, but also from some members of the international community. Moreover, if the dialogue between Belgrade and Pristina seemed to have relaxed again during the summer, with the proposal of the "land swap", the possibility of creating an army rekindled tensions, causing dialogue to precipitate again.

Russia also obviously responded by asserting its authority, arguing that such an initiative reveals Kosovo's bellicose aspirations, and that the United Nations should intervene to stop it and

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<sup>110</sup> Surk, Barbara. «Kosovo Parliament Votes to Create an Army, Defying Serbia and NATO.» The New York Times, 14 December 2018.

<sup>111</sup>M.Pajaziti. "Kosovo's PM says that the cration of the army will not jeopardize dialogue with Serbia" *IBNA: Independent Balkan News Agency*. 23 October 2018. <https://balkan.eu.com/kosovos-pm-says-that-the-creation-of-the-army-will-not-jeopardize-dialogue-with-serbia/>.

Morina, Die. "Kosovo hikes defence budget to fun new army" *Balkan Insight*. 13 February 2019. <https://balkaninsight.com/2019/02/13/kosovo-pm-rejects-us-ultimatum-over-import-taxes/>

Benazzo, Simone. "Sta per nascere l'esercito del Kosovo, ma i Serbi non ci stanno" *East West*. 23 November 2018. <https://eastwest.eu/it/opinioni/european-crossroads/kosovo-esercito-nazionale>.

proceed to demilitarization. Russia's Foreign Minister also said he was very shocked by the attitude of some European leaders, stressing that these latest episodes would be evidence of the fact that the European Union has failed in its role as a mediator. Furthermore, Russia identifies Kosovo as the major cause of instability in all the Balkans<sup>112</sup>.

The United States, on the other hand, through a declaration from its embassy in Pristina, demonstrated its support for the initiative, arguing that the establishment of a national armed defense is a right of Kosovo as a sovereign State. The United States also underlines that the fact that this bill has been approved does not sanction the immediate birth of the Kosovo Armed Force, but rather marks the beginning of a process that will still be long, and must be characterized by transparency, and the involvement of all ethnic groups. According to the Embassy statement, it is essential that the Government of Kosovo continues to cooperate with NATO and involves all affected communities in the project, thus ensuring stability in the region<sup>113</sup>. Once again the US approach calms the Pristina Government in having a strong overseas ally.

On the contrary, the European Union demonstrates its internal division also in this case. In fact, if on the one hand, Federica Mogherini and her entourage have hastened to blame Kosovo for the decision taken, for the ploy thanks to which the constitutional barriers have been crossed and for the fact that such a decision would certainly have further removed a possible one resumption of the Dialogue between Pristina and Belgrade, on the other, eight EU countries<sup>114</sup> in a joint communication have declared, after reaffirming their support for the continuation of the Dialogue between Serbia and Kosovo, that: *<<the initiation of the process of transition of the Kosovo Security Force is Kosovo's sovereign right. We take note of its commitment to gradually transform its security force, in close coordination with NATO and its partners>>*<sup>115</sup>.

### ***2.3.3 The Import Duties***

This very high tension in political relations also affects the economic sector. The two sectors cannot be considered separately from one another, on the contrary they condition themselves, and

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<sup>112</sup> Lavrov, Sergei. «Russia calls on UN Mission in Kosovo to disband armed units.» Moscow: TASS, Russian News Agency, 14 December 2018.

<sup>113</sup> U.S. Embassy in Kosovo. «Statement from U.S. Embassy Pristina.» Pristina, 14 December 2018.

<sup>114</sup> Belgium, France, Germany, Italy, the Netherlands, Poland, Sweden and the United Kingdom

<sup>115</sup> Benazzo, Simone. «A chi conviene l'esercito del Kosovo.» *Limes*, 20 December 2018.

because of their interconnections they amplify each other. As we can see, the decision to raise duties, which came shortly before the vote in the Parliament of Pristina to create a national Army, is at first glance an economic decision, but in reality it is profoundly dictated by the political situation and the relationship between the two States. It in turn has repercussions both in the economic sector and in the political sector, intensifying tensions.

The question of duties began on 6 November 2018 when the Pristina Government imposed 10% customs duties on goods imported from Bosnia and Serbia due to the fact that the latter had carried out an "aggressive campaign" for some small States to withdraw their recognition to Kosovo, and both of them had also obstructed the newborn State in the possibility to become a candidate for the Interpol organization (for whose membership Pristina also spent more than a million in lobbying activities)<sup>116</sup>.

According to some, Serbia was afraid that joining Interpol would have allowed the Kosovar police to arrest members of the Serbian army suspected of committing war crimes during clashes in the late 1990s<sup>117</sup>. Once the candidate's application had been refused, and the possibility of joining the Organization was therefore abandoned, Kosovo decided to increase its duties even to 100%, and the PM also reiterated that the duties would remain in force until Serbia had not recognized Kosovo as an independent State.

The consequences of this decision are very serious, in fact Kosovo represents about 3% of Serbian exports and contributes to its GDP with 440 million. In particular, this provision causes more problems for industries than for consumers, who would still be able to replace Serbian manufactured products with local or other countries. The citizens who will lose the most are those of Serbian ethnicity living in the north of Kosovo. Moreover, if initially these protectionist measures can create benefits, in the long run they will lead to a reduction in internal competition<sup>118</sup>.

The international community has reacted very badly to the Pristina decision, as this represents a real break with the international obligations dictated by its participation in CEFTA. The High Representative of the EU, Federica Mogherini, immediately expressed herself as follows: <<*Today's decision of the Kosovo Government to increase the tax on goods from Serbia and Bosnia and Herzegovina to 100% is a clear violation of the Central European Free Trade*

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<sup>116</sup>BBC. *Kosovo hits Serbia with 100% trade tariffs amid Interpol row*. 21 November 2018. <https://www.bbc.com/news/world-europe-46287975>.

<sup>117</sup>Rudic, Filip. «Serbia's Fears about Kosovo Joining Interpol 'Unfounded'.» *Balkan Insight*, 4 August 2017.

<sup>118</sup>Aliu, Majlinda. «Kosovo-Serbia, scontro sui dazi.» *Osservatorio Balcani e Caucaso*, 29 November 2018.

*Agreement (CEFTA) and of the spirit of the Stabilization and Association Agreement between the European Union and Kosovo. It further exacerbates the situation following the initial imposition of 10% tax increase last week. The Kosovo government has to immediately revoke these decisions*>><sup>119</sup>.

The United States have repeatedly declared that it is opposed to this decision by the Pristine Government and has openly asked several times to eliminate these measures. A US delegation formed by the Director for European Affairs at the National Security Council, John Erath, and the director for the Balkans, Brad Berkley, were sent to Pristina to try to carry on a dialogue with both the President and the Kosovar Prime Minister, in order to persuade the head of the Pristina Government to abolish the new commercial duties.

Despite international dissent, and this time even without US support, Kosovo maintains its own measures. From this situation, internal differences between President Hashim Thaçi and Prime Minister Ramush Haradinaj emerged again. The former in fact, in light of the clear position of the United States has incited the Government to take responsible decisions<sup>120</sup> and not to make reckless moves that could affect the relationship with international partners. Thus the President and the Prime Minister take two different positions, one softer (President Hashim Thaçi's), and the other harder (Prime Minister Ramush Haradinaj's) and more effective at winning the public favor<sup>121</sup>.

### ***2.3.4 The Kosovar police operations and Serbia's reaction***

Finally, a last and more recent episode, clarifies once again the fact that the possibility of resuming the dialogue at this time seems very distant. The international community is particularly concerned about the direction the situation is taking, and the European Union is worried about the possibility of the region being dragged back into a series of destabilising inter-ethnic clashes. In fact, on 30 May, a Kosovo police operation in northern Kosovo, in order to combat organised crime, led to the arrest of about twenty people. This operation, which is justified by the Prime Minister of Pristina as a simple operation of the local Police in the performance of his duties, has been viewed with

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<sup>119</sup>Mogherini, Federica. «Statement by High Representative/Vice-President Federica Mogherini on the Kosovo Government decision on taxing goods from Serbia and Bosnia and Herzegovina.» Brussels: European Union External Action, 21 November 2018.

<sup>120</sup>ICE. Italian Trade & Investment Agency. «IL GOVERNO INSISTE SU DAZI NONOSTANTE APPELLI USA.» 1 Marzo 2019.

<sup>121</sup> ICE. Italian Trade & Investment Agency. «IL GOVERNO INSISTE SU DAZI NONOSTANTE APPELLI USA.» 1 Marzo 2019.

suspicion by Belgrade. The Serbian President considered that behind it there were discriminatory activities against ethnic Serbs in that part of the country. In response to this threat, he increased the state of alert of his army. Of course, Serbia is well aware that intervening with its own armed forces would cause it many problems with the international community, and particularly with Europe. This does not, however, make the situation any less tense. It is also interesting that a Russian UNMIK official is involved in this incident. This person has helped the Serbian population to create real barricades to obstruct the Kosovo police operation. The latter was immediately declared *persona non grata*.

On May 31, 2019, the Minister of Foreign Affairs of Kosovo, Behgjet Pacolli, decided to prohibit the Serbian PM from entering the country. This decision is often in response to Ana Brnabić's latest statements, which were considered racist. <<*My fear is that we have to deal with the worst type of populists, with people who literally came out of the woods*>> these were his words, for which the Serbian PM did not apologize. Instead, later added about it that <<*People who are willing to stop the flow of goods are ready to stop the freedom of movement*>><sup>122</sup>.

## 2.4 CONCLUSION

United Nations, European Union and United States have been actively involved in the process of state-building and democratization of the country, especially if we intend the latter with the creation of legislative and judicial instruments that contribute to creating a protection for minorities. At the end of the conflict, when the state-building process begins, Kosovo will find itself facing many difficulties on the road to independence, and its path will be strongly conditioned and timed by the international community. Eleven years after the Declaration of Independence, the doctrine has not yet reached a unambiguous decision on some aspects concerning the controversial essence of this country.

What is certain is that Kosovo has led to a process of secession, which in international law, although it is certainly not encouraged, is not even explicitly denied. The secession of Kosovo has led those Countries that were unfavorable to its independence to declare, before the International

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<sup>122</sup>Istrate, Dominik. "Serbia PM banned from entering Kosovo over 'racist' comments" *Emerging Europe*. May 31, 2019. <https://emerging-europe.com/news/serbia-pm-banned-from-entering-kosovo-over-racist-comments/>.

Begisholli, Blerta. "Kosovo Bans Serbian PM, Russian UNMIK Staffer" *Balkan Insight*. May 31, 2019. <https://balkaninsight.com/2019/05/31/kosovo-bans-serbian-pm-russian-unmik-staffer/>.

Court of Justice, that the act performed by the Assembly of Pristina, such as the self-declaration, was to be considered as an illegal act. This was stated by supporting the thesis that, outside the colonial context, in which the right to self-determination of peoples is maybe the most important principle, practice shows that the international community has condemned and rejected other secession processes, and furthermore that with such an act, Kosovo would violate the principles of Resolution 1244.

What is finally clear is that the ICJ will never find a way to refer to a specific international doctrine, and that cases of secession, as always are examined by the Security Council of the United Nations. Even the latter has never expressed itself generically against acts of secession, but has always approached them considering them separately, in their uniqueness. The opinion of the International Court of Justice, as well as clarifying that what is judged in secession processes are precisely the methods and the procedures with which they are completed, will mark a turning point for Kosovo. At this point another problem arises on the international scene because of the self-declared independence of Kosovo; it will be considered by some countries, and in particular by Russia, as a precedent.

In this first chapter I have also tried to analyze how, in the birth of a new State, international recognition is fundamental. Indeed, although it is not the legal basis for the status of a newborn State, it does, in a way, represent its baptism in international relations.

As was initially pointed out, the European Union, besides having failed in conflict prevention, was not a central player in the mediation process established at the end of the war. On the contrary, the United Nations, which already had a longer and more consolidated tradition of mediation, was. However, over time, the European Union has played an increasingly important role in relation to Kosovo, since the establishment of the EULEX mission, helping the country in building its own institutions and establishing the rule of law; also acting as mediator between it and Serbia. As I have already said, and as I shall go into in more detail in the next chapter, it is essential for the two Countries to move towards normalizing their relations with a view to European integration.

What emerges from this chapter is that the European Union has a particularly advantageous role in this mediation process, both because it represents a neutral body, given that most member States have recognized the independence of Kosovo, but there are still five European States that have not yet made progress in this direction, and because the European integration was since the beginning one object for both the Balkan States.

In this chapter I wanted to focus my attention on the latest European diplomatic initiative, the Brussels Dialogue, which has been going on since 2011. This Dialogue, although it has

immediately borne fruits, bringing the two States together, in particular on the more purely technical issues, until the signing of the Brussels Agreement in 2013, has then suffered countless interruptions. This is because the tensions between Serbs and Kosovo have been revived several times during the time, but perhaps also because the European Union may have made mistakes in its leadership of the normalization process.

Finally, the role of the United States in the recent events that led to the precipitation of the dialogue, despite the last steps forward that seemed to have been made during the summer with a view to a possible exchange of territories, was fundamental. In fact, Kosovo, with regard to the transformation of the KSF into a real national army, has been strengthened by the support of the most powerful of its allies. In this context, the European Union has not been able to speak with a single voice, showing once again that it could be not homogeneous in its preferences. If heterogeneity in unity is perhaps one of the most special and characteristic aspects of the Union, when it comes to foreign policy, perhaps it was necessary to succeed in reaching a common decision.

The reflection that comes spontaneously, however, concerns in particular the reasons for this departure from the tracks of the process of normalization. In fact, in recent events, and in particular in the "punitive" duties that Kosovo has imposed against Serbia and Bosnia, it is clear that both on the one hand and on the other, feelings of revenge and the desire to "win", prevail over the good intentions and declared aspirations for a compromise that would speed up the true path of the European Union. That the European perspective has become less attractive for the two States, particularly Serbia? Or could it be that the integration process is so distant and full of conditions that both the citizens and the authorities of the two States have lost confidence that it can ever take shape?

The fact is that the Governments of the two countries, but first and foremost under the strong leadership of the European Union, should be able to make clear and evident, how many and what the benefits of normalizing relations would be for all citizens. With popular support, and with a lowering of the heated media tones by the broadcasters of both factions, the Governments of Pristina and Belgrade would perhaps be able to be engaged in a trilateral dialogue, in which the third player is obviously the European Union, to finally deal with the most controversial issues.



# ***CHAPTER 3. Kosovo and the Chance of a European Future***

The third chapter of this thesis is at the heart of it. Here I will try to understand how and if Kosovo can become a member of the European Union, and what this would mean for it and for the Union itself. There are three main questions to which this chapter intends to find answers, and they are; *Is it possible a process of integration of Kosovo in the EU? Will this integration have a positive outcome for the relationship with Serbia? what would it mean for the EU?*

## **3.1 ENLARGMENT AS A TOOL TO EXTEND EUROPEAN GEOPOLITICAL INFLUENCE**

Despite the fact that there are still many doubts on the possibility that an enlargement that includes Kosovo can take place, if not in a very long time, analyzing the evolution of the European foreign policy towards the Country, it is possible to observe that since the end of the war an alignment of the preferences and interests of the political class of the Member States has taken place, and as already observed, the European Union has begun to exercise an ever greater role in the area.

This probably depends on the geopolitical interests of the Union, and on the fact that, at a certain point, it became clear that the enlargement policy could not only be an instrument of stabilization of the country, although certainly not to be considered as the magic wand that solves deep and ancient problems, but also a good strategy to increase its influence in the Western Balkans. After the conflict, in fact, the stabilization of Kosovo became one of the main objectives of the Union's CFSP (Common foreign and Security Policy), which led to a change of approach towards this area, trying to play an important role and leaving behind the inability to manage the situation that contributed to the outbreak of tensions.

The stabilization of this area had become essential because Europe could not fail again, another failure would have penalized it both economically and geopolitically. The European Union

was struggling to refine its diplomatic and operational tools to reaffirm its global role in perhaps the only geographical area in which it could truly demonstrate its strength<sup>123</sup>. This is precisely why the EULEX mission in Kosovo was implemented, despite the fact that not all EU member States had decided to recognize Kosovo's independence after 2008. This was because a certain consensus had arisen among the political elite that it was better in any case for Kosovo to be a stable Country, and not at the mercy of criminal organizations. It is thanks to the EULEX mission, which some define as the largest CSDP (Common Security and Defence Policy) mission ever promoted by the EU, that the importance of the Balkans and Kosovo for the EU became evident. Enlargement policy, or the promise of enlargement, can therefore be looked at in two different ways. On the one hand it can, as I said before, be considered as a tool to increase the geopolitical power of the European Union, to increase its influence also territorially, and one could think that this is the line of thought adopted by the members who have decided to recognize the declaration of independence of Kosovo. On the other hand, perhaps more strategically, there are other Countries that could consider this *promise* of enlargement, rather than its concretization, as a way to be able to spread, thanks to the principle of conditionality, European values in this region.

Thanks to the High Representative of the European Union, the Union's foreign policy, and therefore enlargement, has begun to be directly intertwined with the Common Foreign and Security Policy, thus allowing an interaction between elements and instruments, both intergovernmental and supranational. Moreover, the case of Kosovo and the relative ideological convergence of the States, which has allowed to go ahead despite the non-alignment on the issue of recognition, has meant that HR could assume an independent political role of great value, both as regards the enforcement of European policies, but also as a stimulator of new appropriate policies<sup>124</sup>.

### **3.2 HOW TO JOIN THE EU**

Over the years, the European Union has progressively devised a number of principles on which its enlargement process must be based. Before negotiations can be concluded, the candidate countries must be prepared and, above all, ready, having been equipped with certain instruments, to provide them with the capacity to recruit and carry out the obligations arising from their status of

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<sup>123</sup> Viceré, Maria Giulia Amadio. "The High Representative and EU Foreign Policy Integration." Roma: Palgrave Macmillan, 2018

<sup>124</sup> Ibid,123. Pg 109-175.

Member States. Afterwards, we will not only see that a candidate country has to implement some reforms, as well as the strengthening of institutions, but also that, well before being a candidate to join the European Union, a country has a path to follow, longer or shorter depends on its specific characteristics. This is in fact the case of Kosovo, to which we will come later in specific terms.

The European Union does not expect a country that wants to join the Union to carry out these processes on its own, on the contrary, over time it has developed tools to accompany them on their path towards enlargement. This therefore only happens at the end of a process of legislative adaptation. In particular, the Instrument for Pre-accession Assistance (IPA) was created by the European Union to help and financially support<sup>125</sup> the countries involved in the enlargement process in their path of reform, in order to achieve certain standards. At the moment IPA II is in force for the period 2014-2020 and among the beneficiary countries<sup>126</sup> there is also Kosovo. Although, as we will see later, it is not already a candidate country, but a *potential* one.

The novelty of IPA II stems from the fact that it provides for "Country Strategy Papers", which allow action to be taken in targeted sectors in each of these countries, also allowing them to increase their ownership by managing better the reforms necessary for Europe and coordinate them with their development agenda.<sup>127</sup>

The legal basis for the accession process is Article 49 of the Treaty on European Union (TEU), which states that <<*Each European State which respects the values referred to in Article 2<sup>128</sup> and is committed to promoting them may apply to become a member of the Union. The European Parliament and the national Parliaments shall be informed of this application*>>. Therefore, the country that wishes to apply must, first of all, be geographically part of Europe and then respect certain values. In particular, those values on which the European Union is founded: freedom, democracy, respect for human rights and fundamental freedoms, and the rule of law<sup>129</sup>.

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<sup>125</sup> "For the period 2007-2013 IPA had a budget of some € 11.5 billion; its successor, IPA II, will build on the results already achieved by dedicating € 11.7 billion for the period 2014-2020." European Commission. "*Overview - Instrument for Pre-accession Assistance*" European Neighbourhood Policy And Enlargement Negotiations.

[https://ec.europa.eu/neighbourhood-enlargement/instruments/overview\\_en](https://ec.europa.eu/neighbourhood-enlargement/instruments/overview_en)

<sup>126</sup> Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, Serbia, and Turkey

<sup>127</sup> Ibid, 125

<sup>128</sup> "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail"

<sup>129</sup> Lisbon Treaty, Art 6, signed in December 2007, entered into force in 2009.

Candidate countries must be able to take on board the *acquis communautaire* and be ready to join the single market. In addition, a country wishing to become a member of the European Union must change its internal legal system so that national legislation can easily transpose EU rules.

All the criteria to be met by the candidate country have been defined over time, and in particular they are the subject of the Copenhagen European Council in 1993 and subsequently of the Madrid European Council in 1995. On the other hand, the Union itself also needs to be ready for any enlargement and to all that this process may entail; therefore, it has to be prepared for any changes, by providing itself with functioning policies and institutions<sup>130</sup>.

Any country wishing to apply for membership of the European Union must submit its application to the Council, which has to consult the Commission and seek the assent of Parliament before expressing its opinion. Finally, the Council must take a decision, that has to be unanimous. It will then be the Council, also on the basis of consultations with the Commission, which will decide whether or not to open negotiations with the requesting country. Only then, following a positive decision, would accession negotiations begin. But even though it has been accepted as a candidate country, this does not mean that negotiations are opened immediately.

These are negotiated individually, without specific time criteria, but this will depend on the specific situation of the candidate country. It will be the Council which, on a proposal from the Commission, will determine the succession of negotiations. First of all, there will be an initial phase, also called a preparatory or screening phase, in which the Commission will analyze the *acquis* together with the candidate country, establishing the next steps on the basis of a number of benchmarks. Each negotiation, which is considered bilateral, between the candidate State and the European Community, considered as a single body, constitutes a chapter, which will be closed only when the above reference criteria are deemed to have been met. Once all the chapters established have been concluded, and all the Governments of the Member States are in agreement and satisfied with the progress made by the State in question, then the negotiations can be said to have been concluded, even if it will once again be the Council which, after consulting the Commission and the Parliament, will unanimously decide that the process can be considered to be complete. Only now it will be possible to proceed to the drafting of the

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<sup>130</sup>European Commission. "2018 Communication on EU Enlargement Policy (COM(2018) 450 final)." COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS. Strasbourg, April 17, 2018.

Accession Treaty. Now, the first question of this thesis, that one concerning the possibility of Kosovo's accession to the European Union, could seem to have been clarified, and the answer would seem to be affirmative. The fact, however, that the European Union provides for the possibility of an accession process does not mean that it is necessarily possible for Kosovo to take part in it. In fact, as we have seen up to now, and as I will point out later, the steps to be taken are numerous and not particularly easy for a young State still governed by fragile Institutions.

In 2018, the Commission drew up a Communication regarding the progress made by the Countries of the Western Balkans, and the related setbacks, since November 2015, when the medium-term strategy for the process of enlargement of the European Union was launched. For the purposes of this thesis, it may be very interesting to analyze this document in order to become aware of the requests that the EU is asking to possible future Member States, and therefore its considerations on Kosovo. This will make it easier to answer the main question in this chapter, which perhaps at this point must be based not so much on Kosovo's possibility of joining the European Union, but on the *probability* that this will happen.

### ***3.2.1 The 2018 Commission Communication on EU Enlargement Policy***

In this Communication, the Commission reiterates that the enlargement process, once started, does not necessarily proceed in a straight line, as it may be subject to stops, and must in any case be built on strict criteria to which it is bound by a bond of conditionality. Each country must therefore continue to implement the necessary reforms in all those areas in which the European Union continues to find shortcomings. In this regard, the Commission reiterates that there are still <<structural shortcomings> to be addressed in the Countries concerned, and therefore also in Kosovo, in the details of which I will go down later<sup>131</sup>.

It is precisely because these areas represent the basis of any political system, and are therefore difficult to restructure, that enlargement should be seen as an intrinsic long-term objective. The negotiations that are being conducted, and the related reforms, must be considered in the broader perspective of a project for the modernization of the countries involved; which will benefit

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<sup>131</sup> Ibid, 130

them not only because they represent a step forward towards European integration, but because the citizens will be the first and most direct beneficiaries<sup>132</sup>.

In February 2018 the European Union, through the Commission, demonstrated to the Countries of the Western Balkans that it was genuinely committed to the prospect of a European future for the region. In this regard, however, perhaps also to send a clear message to the political leaders of this specific geographical area, who in recent times to pursue their political goals have moved away from the process of Europeanisation, the Commission is addressing making it clear that they <<*must leave no doubt as to their strategic orientation and commitment*>><sup>133</sup>.

In "*A credible enlargement perspective for an enhanced EU engagement with the Western Balkans*" it is underlined for the umpteenth time that the Balkan Countries have to put in place procedures for regional cooperation policies and cultivate friendly relations between each other and that only at this point, based on a perspective that is based on merit, they can aspire to membership.<sup>134</sup>

Therefore, the Commission proceeds to analyze all those strategic and crucial areas for the implementation of the enlargement project started in 2015.

These considerations are fundamental to the purpose of this thesis, because they will provide the canons of guidance for a more specific analysis of the path of Kosovo towards (maybe) the European Union. They clarify what would be the point of arrival towards which all the countries interested in enlargement should try to converge; because it is according to these canons that they will be judged. Moreover, the achievement of certain standards regarding the fundamental values of the EU will not only condition the integration in it as a member State, but, the failure of the countries in some fundamental areas could also compromise the relationship with the EU as a commercial partner.

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<sup>132</sup> Ibid, 130

<sup>133</sup> Ibid, 130

<<joining the EU is a choice. It needs political and societal consensus and the support of the hearts and minds of the people. There can be no ambiguity by leaders about where the Western Balkans belong and the direction in which they are heading. This is necessary to secure and sustain the support of their own and of EU citizens, and must be reflected in leaders' communications and outreach to citizens>>. European Commission. Strasbourg, February 6, 2018.

<sup>134</sup> European Commission. "A credible enlargement perspective for and enhanced EU engagement with the Western Balkans." *COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS*. Strasbourg, February 6, 2018.

### 3.2.2 *The standards required*

The *rule of law* is the first field analyzed by the Commission; and its strengthening does not only involve institutional reforms, but also, <<it requires societal transformations>><sup>135</sup>. In this field, the Commission focuses in particular on the fact that, in order to join the European Union, the Balkan Countries still need to make great strides in the reform of the judicial system. The latter is a particularly sore point for Kosovo. In fact, some problems arose from the beginning; that is, since after the arrival of the UNMIK mission in 1999, and the process that led to the formation of the Interim Advisory Council (IAC), judges and prosecutors were appointed. The problem was that of all these specialists, very few were members of minorities. The Serbs in particular; as they were driven by Belgrade to refuse to be part of the Kosovar judicial system. These new courts began to deal in particular with war crimes, without the creation of separate institutions dedicated to them, and also showed a lack of impartiality in the trials. For this reason, the SRGS (Special Representative of the Secretary-General) decided to integrate international judges to the indigenous training<sup>136</sup>. All these years have passed and some progresses have been made, although in comparison with European standards the Kosovo judicial system is still at an early stage.

The Commission considers that further progress, following the integration of the Serb minority in this area, needs to be made in making the system more independent from political pressure, faster and more effective.<sup>137</sup>

Corruption and organized crime still remain serious illnesses in the enlargement Countries. For this reason, there is a need for strong institutional structures that respect the principles of the European *acquis* and combat corruption, particularly at the highest levels, ensuring transparency in areas where it is most prevalent, such as the management of public funds. As far as organized crime in the Western Balkans region is concerned, this is a huge problem, as there are powerful criminal organizations involved in illegal trafficking and money laundering. In this regard, there is a need for greater cooperation with international and European agencies such as "Europol".

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<sup>135</sup> Ibid 130

<sup>136</sup> Humanitarian Law Center (HLC). "AN OVERVIEW OF WAR CRIME TRIALS IN KOSOVO IN THE PERIOD 1999-2018." P 284-286. Pristina: 2018.

<sup>137</sup> Ibid, 130

Corruption in Kosovo is rampant and pervades many areas; from politics to business. According to the Corruption Perception Index 2018 of Transparency International, the European Union's Anti-Corruption Helpdesk, Kosovo has a score of 43, on a scale where 0 represents the highest level of corruption, and 100 the highest level of transparency<sup>138</sup>. Clearly, the high poverty rate combined with the unemployment rate are nothing more than a point in favor of the spread of corruption and organized crime. << Corruption has made Kosovo almost impermeable for other businesses, except for those with political connections>> is how a Kosovar NGO, which is engaged in the fight against corruption, expressed itself<sup>139</sup>.

It must be acknowledged, however, that in Kosovo in recent years there have been attempts to combat corruption, in particular to make the economic sector, and more generally the business sector, more permeable. From a legal point of view, a new civil code and a new penal code have been approved in this area. Although, it is imperative to create a legal framework that allows public officials and political representatives involved in corruption, and who use their influence to gain improperly, to be tried and punished appropriately.

The perception that the Kosovar citizens themselves have about the level of political corruption in the Country is very negative; from this it follows that they do not trust the Government and their political leaders, by whom they obviously do not feel totally protected and represented. "Political parties are perceived as the second most corrupt institution in the country, only behind the judiciary"<sup>140</sup>. Fortunately, the last parliamentary elections held in 2017, according to the European Commission's estimates, were fairly competitive and administered in a transparent manner almost everywhere in Kosovo, although, as usual, the northern part of the country is always the biggest challenge.

In general, in order to adapt to the standards required by the European Union for all its members, Kosovo must seek to create an all-encompassing strategy and increase the rule of law with laws that guarantee transparency and accountability in all those areas where there is now a lack of clear legislation and therefore it is easier to manipulate and corrupt.<sup>141</sup>. For example, the rules concerning the financing of political parties, the management of polling stations, the conflict of

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<sup>138</sup> Transparency International . *Kosovo score of Corruption*. 2018.  
<https://www.transparency.org/country/KOS>.

<sup>139</sup> Bertelsmann Foundation. 2014. "Bertelsmann Transformation Index – Kosovo Country Report 2008".

[www.bti-project.de/uploads/tx\\_jpdownloads/BTI\\_2014\\_Kosovo.pdf](http://www.bti-project.de/uploads/tx_jpdownloads/BTI_2014_Kosovo.pdf)

<sup>140</sup> Ibid, 139

<sup>141</sup> Ibid, 130

interests, should be defined and, in addition, the law concerning the immunities of members of Parliament and Government should be clarified. In light of all this, it is possible to say that this is one of the most painful keys for Kosovo and one of the most difficult areas to manage, considering also that the departure conditions are quite disastrous.

Terrorism is a further threat to the rule of law and, as far as the Balkans are concerned, it is particularly linked to the phenomenon of returning foreign fighters. We know that the Balkans are important in relation to terrorism because they are a crossroads and a crossing point for people and weapons. For example, in the terrible attack at the Bataclan in Paris in 2015, it was discovered that the attackers had managed to return to their own European homeland by crossing the Balkans, and there they also managed to obtain the weapons used on the evening of the 13th of November. Peter Neuman, the Director of the International Centre for the Study of Radicalisation at the King's College in London, believes that there are structural problems that have a very strong impact on society and that make other types of fiction so attractive. Young people's feeling of not having better prospects in their own country makes them more sensitive to this kind of fascination<sup>142</sup>. The fight against radicalization, with appropriate policies aligned with European standards, remains one of the main objectives for the Western Balkans. In fact, in 2017, in partnership with the European Union, the "Western Balkans Integrated Internal Security Governance" was formed, with the aim of favoring the sharing of information and improving capacity-building security governance<sup>143</sup>. With regard to this last point, in an interview with General Cuoci, the 22nd Commander of KFOR, he stressed the fact that nowadays no country can consider itself immune from the threat of terrorism and that the living conditions in Kosovo are particularly favorable to a risk of radicalization. It is the region with the highest number of foreign fighters leaving to train in Syria in relation to the number of inhabitants of the State<sup>144</sup>.

Another essential point is that of *fundamental rights*. The European Union cannot accept countries in which certain freedoms are still violated. The Commission's commentary reiterates that freedom of expression is the basis of democracy; a country in which the media are not free is not a democratic country. For this reason, the European Union supports all those civil organizations that

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<sup>142</sup>Neuman, Peter. "Terrorism and Foreign Fighters. An Enduring Challenge?" In *The Western Balkans at a Crossroads*. Roma: Nato Foundation Defence College, 2017.

<sup>143</sup> Ibid, 130

<sup>144</sup>Santaguida, Maria Teresa. "Conversazione in esclusiva con il generale a capo della Kosovo Force, l'unica missione Nato a guida italiana." *Qual è la reale situazione in Kosovo. Intervista al comandante Cuoci*. Agenzia Giornalistica Italiana (AGI), November 5, 2018.

fight to defend this right and all the other fundamental rights, and that for this reason unfortunately sometimes are victims of intimidation.

The Governments of this region must try to carry out reforms against any kind of discrimination and guarantee equal rights for all. Over the past year, progress in increasing the protection of human rights has not been sufficient. This area needs to be analyzed by taking note of several important aspects; first of all, in a context such as Kosovo is the treatment of ethnic minorities.

Ethnic minorities still have difficulty in accessing basic social services, such as health care, or simply adequate education. All this because there is at the bottom a huge difficulty in acquiring the personal documents needed to use these services. Furthermore, inter-ethnic tensions in the northern part of Kosovo continue to these days, even with very serious consequences, and police investigations are most often unable to get to the point of accusing the perpetrators. Similarly, the response of the local police forces is truly inconsistent when it comes to protecting women's rights, and with them also the judicial system does not produce appropriate responses to cases of domestic violence; on the contrary, many judges are sometimes reluctant to convict for these crimes<sup>145</sup>. It is easy to see from some cases that Kosovo needs to adopt new and appropriate legislation on State responsibility for the protection of fundamental rights.

One of the most sadly known cases is the one that dates back to 2011, when a woman, named Diana Kastrati, denounced to the Court the constant threats of her partner, requesting emergency protection, which was immediately denied to her, and she was killed by the same a few weeks later. Three years after the incident, the Kosovo Constitutional Court declared that the Court had failed to protect the fundamental rights of the individual, in this case even the right to life, failing in one of the most important duties of the State, the protection of its citizens. This case, which represents one of the cases in which the State becomes responsible for a lack of protection of fundamental rights, and not only, in the subsequent stage is not able to compensate adequately the families of the victims<sup>146</sup>, is clearly due to the enormous legislative gaps in the still fragmented landscape of the Kosovar law<sup>147</sup>.

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<sup>145</sup>Human Rights Watch. *World Report: Serbia/Kosovo events 2018*. 2019. <https://www.hrw.org/world-report/2019/country-chapters/serbia/kosovo>.

<sup>146</sup> in this case, no compensation has been provided for.

<sup>147</sup>Muharremi, Robert. *"Governo del Kosovo, in ritardo sui diritti umani" Osservatorio Balcani e Caucaso*. April 1, 2019. <https://www.balcanicaucaso.org/aree/Kosovo/Governo-del-Kosovo-in-ritardo-sui-diritti-umani-193496>.

A contradiction in this field results from the fact that the Constitution of Kosovo states that all international human rights instruments (as for example the Universal Declaration of Human rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms) are directly applicable in Kosovo, but all these instruments provide for compensation following a human rights violation. In this regard, the Kosovar Minister of Justice, in a speech on December 7, 2018, promised to add two new laws to the 2019 legislative program; one concerning the State's responsibility for fundamental rights, and the another providing for the possibility for the Constitutional Court to grant reparations in the event that the State itself or its authorities have not been able to provide the protection of rights to its citizens. To date, there has been no progress on this issue<sup>148</sup>.

As far as the protection of human rights is concerned, the case of Kosovo is very particular, in that it merges international standards within it, which become a founding part of its national Constitution, even though it is not a State recognized by all and therefore had not been able to officially sign such Conventions<sup>149</sup>. Reading the Constitution and its Articles, one can understand that it is fundamentally focused on human rights, both collective and individual, as they are present in all Chapters, and are guaranteed equally to all citizens, regardless of their ethnicity. It can therefore be said that there has been a 'Constitutionalisation' of the principles of international law, so that even though Kosovo is not a signatory to such Conventions of international humanitarian law, its general norms will become binding also for Kosovo, and that the latter will therefore meet European and international standards of protection. All this happened in 2008, with the drafting and signing of the Constitution, but it does not depend solely on the desire of the Kosovar constitutionalists; rather, this process must be read in the broader and more general participation of the international community in the state-building process, of which the Constitution represents the culmination<sup>150</sup>.

A third very important point that the Commission stresses is that of the presence and functioning of *democratic institutions*. It is easy to understand that this is a particularly important

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<sup>148</sup>Muharremi, Robert. *Kosovo 2.0 "THE GOVERNMENT OF KOSOVO IS FAILING ITS HUMAN RIGHTS OBLIGATIONS"*. March 13, 2019.

<https://kosovotwopointzero.com/en/the-government-of-kosovo-is-failing-its-human-rights-obligations/>.

<sup>149</sup>Hert, Paul de, and Fisnik Korenica. "The New Kosovo Constitution and Its Relationship with the European Convention on Human Rights: Constitutionalization "Without" Ratification in Post-Conflict Societies." 143-146. Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2016.

<sup>150</sup>*Ibid*, 149

point for a newborn State such as Kosovo, which finds itself having to structure its institutions and make them work in a way that is consistent with what is stated in its Declaration of Independence, but which is not so easy to implement. In particular, as far as political dialogue in Parliament is concerned, we know that by law it is mandatory for the Government of Pristina to be composed in such a way as to include a representation for ethnic minorities<sup>151</sup>, but this is not enough to make governmental institutions democratic, nor is it enough for dialogue. Just think about the “trick” that the members of the Parliament have found to exclude members of the Serbian minority from voting, or rather to ensure that their vote was not necessary as laid down in the Constitution. As the European Commission also points out, dialogue is often conducted without the inclusion of all parties and with excessive use of urgent parliamentary procedures. On the other hand, the functioning of the Institutions is often hindered and boycotted to the point of creating real systemic paralysis. Furthermore, the Public Administration needs to be reformed and made more transparent and rational.

The last two criteria to which the Commission refers and which may be of interest in analyzing Kosovo are the *economic criteria*, and the *good neighborly relations criteria*, which I have discussed in detail in the previous chapter. With regard to the first aspect, the Commission considers that Kosovo has made progress towards developing a market economy, which is essential if it is to consider becoming a potential EU candidate. However, the black market and the informal economy still remain serious burdens on the country. Furthermore, the labor market is still struggling to take off, and the unemployment rate is still very high, particularly for women and young, low-skilled workers; and let us remember that Kosovo is the country with the youngest population in Europe. All these young people, however, despite the fact that Kosovo is beginning to align itself with the standards of competitiveness typical of the European market, do not have the skills to be competitive enough on the labor market. Unfortunately, the economy is slowed down by a lack of infrastructure, particularly as regards the supply of electricity and the transport system,

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<sup>151</sup> In the Parliament of Pristina there are in all 120 members, of these sets 20 are reserved for the ethnic minorities within the state, and in turn 10 of these 20 seats are reserved for the Serbian minority.

both by road and rail<sup>152</sup>. As regards bilateral trade relations with other countries, Kosovo has a high export rate, but this is not sufficient to avoid a trade deficit<sup>153</sup>.

Finally, there is one last point which I have not yet mentioned and which perhaps deserves a separate and more specific mention with regard to the enlargement of Europe in the Balkans; it concerns migration and, more generally, *security*.

In this specific field, in addition to the great commitment on the part of the Countries concerned, there is a need for strong support from the European Union. In this regard, the Union, in order to promote cooperation, the exchange of information and to implement the effectiveness of the Agencies concerned, has proposed among all the other Flagship initiatives, one that concerns migration and security. In particular, in recent times, the two aspects are strongly intertwined; both as regards the criminal activities which are often hidden behind the processes of migration, such as, for example, trafficking in human beings, and more "simply" the fact that sometimes the asylum seekers can be criminals involved in terrorist activities.

European cooperation with the Countries of the Western Balkans, and therefore also with Kosovo, even if it is not part of the Union, is beneficial to both sides. Let us say that my reasoning is based at this point on the fact that without an European perspective, the Countries of the Western Balkans are more exposed not only to being easily the battleground for the fight of the interests of the great Powers, but at the same time are more vulnerable to the penetration of extremism, whether religious, if we want to remain on current topics, but also of other kinds. Not only that, in a world where phenomena are predominantly global, no country can deal with events and problems of such magnitude individually, and the European Union is fully aware that it cannot have a conflict zone right outside its borders. For this very reason, integration is probably the best option to make the area more stable and consequently to lower security risks even within the Union. It is also sufficient to think that during the period of the serious conflicts in the Balkan region the European Union was carved by a wave of migration from these countries, while now the migratory flows that most

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<sup>152</sup> if all this can be considered a disadvantage, and certainly an inconvenience for local activities that suffer from the lack of appropriate infrastructures, at the same time this constitutes a good investment opportunity for foreign business partners.

<sup>153</sup>for example, "trade between Italy and Kosovo has seen an appreciable expansion in recent years. In particular, Italy is among Pristina's main economic partners. Relations between the two countries are still marked by a certain imbalance, since Kosovo imports much more from Italy than it exports to you".

Farnesina, e Diplomazia Economica Italiana. *Info Mercati Esteri*. s.d.  
[http://www.infomercatiesteri.it/paese.php?id\\_paesi=73](http://www.infomercatiesteri.it/paese.php?id_paesi=73).

interest the European Union are those that affect all those categories of migrants who do not depart from the Balkans, but rather cross the so-called "Balkan route".

Before discussing why the enlargement of the Union is essential to ensure the security of the region, it is important to say that as regards Kosovo, from 2015, many of its citizens have taken advantage of the great migratory current that crossed (and still crosses) the Balkans, to join the flow. Germany was the main destination Country, which for a period reached up to 1500 asylum applications per month from Kosovo alone. To try to counter this speculation, for example, Germany started a policy of repatriation, motivating the fact that there were actually nationalities in need of asylum at that time, such as the Syrians<sup>154</sup>.

Since 2010, some countries in the Balkan region, such as Kosovo, as I mentioned earlier, have become sensitive places for the recruitment of fighters that leave to Syria and Iraq. Islam has obviously been very present in the region since the time of Ottoman rule, but the Ottoman sultans managed to guarantee a flexible line for long periods, in particular thanks to the Hanafi School. But when the Balkan region was shaken by the conflicts in the near past, the Islamic States showed their sympathy and practical support for the Countries of the area. In particular, they have been very present in Bosnia Herzegovina, with the arrival of numerous fighters to help them with their cause. The Islamic States provided financial support and, with the excuse of guaranteeing humanitarian aid, succeeded in integrating themselves into the structures of the Country, to the point of even being able to supply Bosnian passports to fighters belonging to terrorist organizations; so much so that "four of seven terrorists responsible for 9/11 attacks had been fighting in Bosnia and Herzegovina and had a citizenship of the country"<sup>155</sup>. At this point, of course, after the attack to the Twin Towers, there was a growing concern about the risk of terrorism and radicalization in the Balkan area. Immediately after the Kosovo war, in fact, a certain number of Muslim missionaries from Saudi Arabia arrived in the Country, with huge amounts of money in order to rebuild the mosques destroyed during the war, and to offer to the faithful summer religious courses, which would be held in Saudi Arabia. Almost immediately, however, it became clear that all this was part of the proselytizing plans of Saudi Arabia, which had been trying for some time to spread Wahhabism and its hard line in the field of political Islam in the European continent.

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<sup>154</sup>Quercia, Paolo. "Flussi migratori attraverso i Balcani Occidentali: la rotta balcanica." Centro Alti Studi per la Difesa (CASD); Centro Militare di Studi Strategici(Ce.Mi.S.S.), July 2, 2018.

<sup>155</sup>Gelencsér Ildikó Éva. "WHY EU ENLARGEMENT IS ESSENTIAL IN THE BALKANS FROM SECURITY ASPECT." 14. Academia, May 2019.

It is in this way that thanks to the generous donations and the activity of the missionaries a more radical line of Islam has spread in Kosovo, which paradoxically was "among the most pro-American Muslim societies in the world"<sup>156</sup>. What used to be a highly tolerant and liberal Muslim society, which for 500 years had followed the Ottoman tradition of the Hanafi school of Islam, after the end of the war, when it had not yet stopped reckoning with inter-ethnic radicalism and hate, immediately found itself to be the victim of another type of radicalism, that of religion. Charitable works were never just such; in fact, behind them there were conditions. "*Families were given monthly stipends on the condition that they attended sermons in the mosque and that women and girls wore the veil*"<sup>157</sup>. As time went by, attacks on the more moderate members of the Islamic community began and the influence of radical clerics grew exponentially. The highest point of the Islamic-Saudi propaganda came when the war broke out in Syria and through the use of the media, from radio to television, the precepts of the jihad were exalted, trying to incite young faithful to join the cause and leave to join the fighters, with considerable success<sup>158</sup>.

Why the Western Countries have not been able to grasp the first signs of threat, or have not wanted to act promptly against the propaganda of the Islamic States, it cannot be established with certainty, the fact remains that today, the concern for the radicalization of the area remains very high and represents a direct threat in the first place to Europe. Of course, it is easy to imagine the link between terrorist organizations and organized crime. In fact, in order to be able to grow on the ground and finance themselves independently, terrorist organizations are usually able to finance themselves precisely through lucrative criminal activities, and certainly the smuggling of arms during the Kosovo war has given them a particular possibility of profit, together with the trafficking of drugs and human beings. For this reason, the security and stability of Kosovo, as well as of the other Countries in the region, is not only important for the security of the Balkan area but is also a matter for the security of European citizens.

The persistence of illicit trafficking offers a great deal of profit and now represents a real multi-million-dollar industry, intertwined with criminal and terrorist activities of various kinds, whose finances, thanks to the international monetary system, most of the time manage not to be traced by the competent international authorities. The fact that there is a sectoral approach to criminal activities on the one hand is a positive element; different types of illegal acts, require

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<sup>156</sup>Gall, Carlotta. "How Kosovo Was Turned Into Fertile Ground for ISIS." *The New York Times*, May 21, 2016.

<sup>157</sup> *Ibid*, 156

<sup>158</sup> *Ibid*, 156

specific knowledge, on the other hand, this unfortunately most of the time does not allow us to grasp what are the links between the different sectors of organised crime and also of terrorism<sup>159</sup> .

If the Union therefore defines itself as a provider of peace and stability, then it must play a leading role in the Balkans. That is why, in reality, only greater integration of the region into the Union could in some way reduce the various attacks on the security of the area. Among these, in particular, integration would be able to counteract the interference of external powers, and improve cooperation between neighborhood States, inserting it into a European framework. In this regard, the Union should have an overall strategy for the region as a whole, and this strategy should perhaps also be made more credible, which is particularly complicated to date, especially for Kosovo, as it has not even received recognition from all the Member States<sup>160</sup>. However, from the point of view of security, if on the one hand this would certainly bring benefits to the countries of the Western Balkans, therefore to Kosovo, but also to the European Union because it would allow to stabilize the area; on the other hand it would create great challenges for the Agencies that deal with security in the European Union. Just think that if Kosovo, let us remember, a country with the highest number of foreign fighters per capita, were to join the European Union, the latter would need to have both eyes open on the risk that it would be easier for the returning fighters to cross the borders.

At this point, it is clear that the inclusion of Kosovo in the European Union, even if, as already mentioned, the negotiations to this end take place on a bilateral level, cannot be considered if not in a wider project of integration of the entire Western Balkans area.

### **3.3 THE IMPACT OF BREXIT AND THE CATALONIA REFERENDUM ON THE EU ENLARGMENT PROJECT**

Another aspect to consider, however, is that the European Union, at this precise moment in history, find itself to face some not insignificant separatist pressures within itself. Both as regarding the Union as a whole, with the Brexit question, and because some Countries within the Union are

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<sup>159</sup> Freeman, Tobias. "Illicit Trade as Common Security Threat and Strategic Opportunity for the Western Balkans, Europe and NATO." In *The Wester Balkans at a Crossroads*, 57-60. Roma: NATO Foundation Defence College, 2017

<sup>160</sup> Ibid, 156

dealing with internal independence impulses, and which certainly have direct repercussions on the European front, just think of the problem of Catalonia.

On the one hand, the Union is losing one of its members and is experiencing an internal crisis under the impact of the national Governments of some Countries, including, unfortunately, Italy, which are becoming more and more sovereigntist. On the other, the impact of Brexit on Europe will therefore necessarily also have an impact on the enlargement process. The fear of many in recent years has been that the EU would focus its efforts and attention on Brexit, taking away time and commitment from the enlargement process in the Western Balkans. Moreover, as it has already been possible to see, Great Britain has had a very important and proactive role on the territory, in particular in Kosovo, where it has been one of the most important supporters of the process of recognition of its status. *"Furthermore, with Britain leaving the EU, the Countries of the Western Balkans are losing a key advocate of enlargement. As many member States have become critical towards enlargement, the UK has promoted both enlargement and reforms in the region vigorously"*<sup>161</sup>. Mainly the political consequences will be more important than the economic ones; as the UK has never been a big contributor from the point of view of investments, and also the exports to Great Britain are lower than those to other EU countries, such as Italy and Germany<sup>162</sup>.

As far as Catalonia is concerned, this could have several effects. Certainly, as with Brexit, the first thought would be that the issue could distract the Union's attention from the project of enlargement. Going more specifically, however, it is easy to imagine that for Kosovo things are becoming more complicated, and the possibilities of receiving recognition from Spain, which is necessary on the basis of Article 237 of the Treaty of Rome<sup>163</sup> of the Treaty of Rome in order to obtain the green light for accession, are diminishing. In fact, Spain, which has always been followed by the shadow and fear of the secessionist forces, now that its fears have materialized, will all the more not be able to give its support to a Country that it continues to associate with Catalonia.

In this regard, while there are those like Serbia who believe that Europe is applying double standards, there are those who believe that the two processes are absolutely not comparable.

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<sup>161</sup>Gazmend Qorraj, Suada Ajdarpašić. "Brexit Implications for the Eu Enlargement of the Western Balkans." Pristina: University of Prishtina, November 2017.

<sup>162</sup> Ibid, 161

<sup>163</sup> "Any European State may apply to become a member of the Community. It shall address its application to the Council, which shall act unanimously after obtaining the opinion of the Commission. The conditions of admission and the adjustments to this Treaty necessitated thereby shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the Contracting States in accordance with their respective constitutional requirements"

As we have already said in the first chapter, secession is an act that is strongly debated at international level and that does not find a unanimous judgment in its regard. The fact is that in order to be accepted there are conditions that the country that wants to secede must prove, such as demonstrating that its population is a victim of atrocities and human rights violations. It is clear that this seems true for the case of Kosovo, and not for Catalonia, which is nonetheless governed by the rule of law, but which has decided to carry out a destabilizing separatist project, not only for the Madrid Government, but for the whole of Europe, which obviously immediately expressed itself negatively in this regard. The different responses of the international community to these two secessionist processes, therefore, are to be found in the fact that the histories of the two regions are totally different, and not even the aggressions suffered by the Catalan population during the holding of the referendum are comparable to those suffered for years and years by the Kosovar Albanians. Despite this, the issue of Catalonia still negatively affects Kosovo's hopes of aspiring to become a Member State. Spain has in fact decided to apply the same strict line of rejection against any hypothesis of secession, fearing that its concession could be legitimately challenged by the claims of the Basque Country or Catalonia<sup>164</sup>.

Despite this, the Union's commitment to the enlargement process towards the Balkans continues, notwithstanding the difficulties. In particular, the High Representative, the European Commission and the political leaders continue to push for a fresh start to the dialogue between Belgrade and Pristina. In the light of the above, perhaps the time has come to give an answer to the last research questions of this thesis through some important final remarks.

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<sup>164</sup>Wesslau, Fredrik. *"Spain's Kosovo-Catalonia conundrum"*. *European Council on Foreign relations, e CFR.eu*. November 24, 2017. [https://www.ecfr.eu/article/commentary\\_spains\\_kosovo\\_catalonia\\_conundrum\\_7240](https://www.ecfr.eu/article/commentary_spains_kosovo_catalonia_conundrum_7240).



## ***FINAL REMARKS***

We've finally come to the point where we can sum it up. What we can see is that, as far as Kosovo is concerned, it is clear that the international presence has always been very strong. For a long time now, the various strategic interests of the world powers have been meeting, and sometimes clashing, in the region.

Over time, however, since the establishment of the UNMIK administration, Kosovo has cultivated a desire to become independent. It finally came to declare its own Declaration of Independence in 2008. This has once again led to the emergence of the different positions of the international community, which were manifested in the recognition or otherwise of this unilateral act of the Government of Pristina. The European Union has succeeded in acquiring an increasingly important role on the territory, to the point of becoming probably the most influential actor, also with regard to the promotion of the Dialogue between Pristina and Belgrade.

The European Union represents for the Countries of the Western Balkans a promise of peace, stability and security, after decades of war. For the same reason it is clear that this opportunity represents for Kosovo an attractive proposal. As I have pointed out, Kosovo has many problems at the international level. Difficulties are found both to become part of the International Organizations, and to be able of becoming a Member State of the European Union. This is because, all the structural problems affecting the Country are still nowadays clearly visible, and the path toward the Membership status is even steeper if we add the non-recognition by some States that are already part of the Union.

Moreover, as we have seen, the status of candidate country currently includes Serbia and instead does not include Kosovo. If in 2025 the Government of Belgrade will have opened and closed all the 35 necessary chapters successfully, we can imagine that for Kosovo it becomes almost unimaginable to think that it could join the European Union. This is because, despite the fact that the enlargement to Serbia requires a normalization of the relationship with its now ex-province, it seems impossible for the government of Belgrade to easily welcome the new independent State as a member on an equal footing. On the other hand, as far as Kosovo is concerned, the European enlargement process represents in itself a possibility to implement reforms and modernize its Institutions, and therefore represents a positive element in itself, regardless of the final objective, which is of course the actual accession. Although it is true that, despite the fact that a large percentage of Kosovar citizens are young people, who look at the European Union as a promise of

freedom, education and security, it is discouraging to realize how limited the chances of this happening are. In the above-mentioned European Commission document *"A credible enlargement perspective for an enhanced EU engagement with the Western Balkans"*, Kosovo is considered only as a potential candidate. For the Government of Pristina, it is therefore clear that although Kosovo and Serbia share a common EU facilitated dialogue as a binding condition for access, Serbia enjoys a different and, in this case, more favourable position.

Despite all this can understandably irritate Kosovar citizens and political leaders, in recent periods they have behaved in a way that in reality only worsens their condition in relation to Serbia, and I refer first of all to the unilateral willingness to create their own army and the madness to raise duties to 100%. It is also clear that Kosovo has been an independent State only for 10 years, and that the European Union can understandably wish that its members meet certain standards and have an institutional system that can accommodate European regulations without struggling too much. For the EU it is also necessary to ensure that its members have an institutional system capable of accepting the European rules at the national level without too much effort. But when or if this integration will happen will this have a positive outcome for the relationship between Kosovo and Serbia? Considering the entry of both countries into the European Union, in my opinion, this would represent only a first step towards solving the problems between Serbia and Kosovo.

Of course it is clear that looking at the highest political level this would mean that the territorial borders would become less rigid, there would be more freedom of movement, and the two countries could even begin to consider common objectives from a Europeanist perspective. Having said that, however, it would be very difficult to have a prompt social response to the way in which the citizens of both countries are accustomed to living their daily lives in relation to each other. It is very unlikely that they will decide to cross their national borders without fear of repercussions. It is more likely that this will be done more frequently by citizens of the respective minority groups in one State and another, who will have the opportunity to do so. I believe, however, that in order to combat social conventions so rooted in the mentality of the members of these two different ethnic groups, joining the European Union could be a starting point. This could mean more opportunities for young people to meet and exchange in neutral territories.

The latest proposal of the Brussels Dialogue, that is, the exchange of territories, which in any case seems temporarily shelved given the recent events, in my opinion does not represent a definite solution. On the contrary, it would reopen a Pandora's box, and could lead to the outbreak of new clashes given the dissatisfaction that will surely grip those who for obvious reasons will be "left behind". We should also remember that in the Balkan region, the borders between Serbia and Kosovo are not the only hot spots. We could just think about Bosnia-Herzegovina and northern

Macedonia. Moreover, if the European Union was born not just for economic reasons, but also as a response to the nationalism and extremism that had shaken the whole world during two World Wars, redrawing borders at the table, on the basis of ethnic belonging, seems to be truly in contradiction with its founding values. Doing so would mean to promote a concept of society characterized by homogeneity, rather than pluralism<sup>165</sup>.

For the interests of the European Union, it is fundamental to consolidate its influence in the Balkans in order to affirm its geopolitical power and to guarantee its own security and that of the region. For this reason, Kosovo becomes fundamental, because even if it is not universally recognized, it is *de facto* an independent State, and it cannot be left aside in this project of enlargement to the Western Balkans. The only alternative to an European and Atlantic association for the Balkans is probably characterized only with the prospect of a tightening of nationalism, and a new wave of revanchism. This is doubly true for Kosovo, because the alliance with the other major player in the region, Russia, is not even a viable solution.

Furthermore, the Pristina Government is facing a double process, which has an inherent contradiction within it. On the one hand this is characterised by the affirmation and consolidation of its own borders, the internal construction of its sovereignty and national institutions, typical of any process of formation of a State. But, at the same time, the preparation takes place for a hoped-for future characterised by the abolition of rigid borders and the transfer of sovereignty to a supranational context and institutions<sup>166</sup>. While the EU has contributed to the Country's growth through its assistance to the Government of Pristina through the EULEX mission, at the international level Kosovo remains a victim and at the mercy of the veto power of some States.

As I have already said for the purpose of relations between Pristina and Belgrade, membership of both countries would be very important to ensure the free movement of citizens of both States, in particular allowing the Serbian Orthodox to return to sites for them of particular religious and cultural importance, and who knows that perhaps belonging to a common supranational context does not ease tensions a bit. However desirable it may be that the accession to the European Union represents the resolution of the resentment between these ethnic groups, that all too often resurfaces, it still seems too utopian.

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<sup>165</sup>Bergamaschi, Paolo. *Balcani Caucaso*. May 25, 2019.

<https://www.balcanicaucaso.org/aree/Kosovo/Kosovo-terra-di-scambio-194679>.

<sup>166</sup> Kyuchukov, Lyubomir. «The Western Balkans in the EU: Will the When Be Reduced to an If? .» In *The Western Balkans at a Crossroads*, 35- 38. Roma: NATO Foundation Defense College, 2017. (Gelencsér Ildikó Éva 2019) (Kyuchukov 2017)

As long as the political leaders of the two countries continue to face each other with veiled words of challenge, and not so veiled actions characterized by a strong desire for revenge; and as long as the media of both countries will not stop doing propaganda by focusing on inter-ethnic hatred, the desire of many young people to move forward and start again, leaving behind the atrocities of war, making peace with what is ultimately a common past, will probably remain unfulfilled.

In the same way, however, the European Union must not give up on continuing and intensifying its role in the region, trying to keep in mind that the prospect of a European future is the best option for the Balkans to fight and hope for.

In the light of all this, however, it is clear that Kosovo is currently far from being able to meet the criteria necessary to become a member of the European Union, both at the level of the readiness of the institutions, but also of the economic system, which would not be able to stand behind current European standards and constraints. Of course, it would also be a foolhardy decision for Europe to decide to welcome among its members a country that is not yet mature for such a step. Certainly, and despite the latest reckless decisions of the Pristina government, which have irritated EU political leaders, Kosovo should know well that Europe represents its best ally, even better than the United States, that during the latter Administration have diverted their attention away from Kosovo and this geographical area. Kosovo can aspire at best to have them as a protector or guarantor, rather than as an associate; on the contrary, it could happen once joined the European Union, feeling like a real and concrete part of something bigger.

In conclusion, it is clear that the road is still long and full of obstacles, but if Kosovo decides to continue along this path by showing its commitment to community values, the European Union membership represents the most valid opportunity for its future. More importantly, the process of modernization and improvement that it would face on the road to membership would be worth it on its own.



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## *Summary*

Kosovo is a small region in the heart of the Balkans with a very troubled past. Its history and its future prospects make it the subject of attention from the international community.

This geographical area has been subject to different dominations over the centuries, and it is because of this diversified and overlapping set of pasts that even in modern times it has been open to different vindications. At the root of the latter, which led to the infamous conflict that broke out at the end of the 1990s, there is a growing ethnic nationalism. It mostly began to develop at the beginning of the 20<sup>th</sup> century, and finds its roots in myth and legend, in an idealized heroic past. It was when nationalism became a political project that the ground is fertile for the outbreak of the Kosovo war. The situation began to get worse when Slobodan Milošević, who had made nationalism his main form of political propaganda, took control of the region and revoked all the autonomies previously granted to it. At this point the ground was ready, and the clashes between the Serbian army and the Kosovo Liberation Army (KLA) began.

The violence was considerable on both sides. Real massacres of the civilian population were carried out, so much so that from an internal crisis the war in Kosovo became an international one, also because of its humanitarian importance. At this point NATO decided to intervene, justifying its action with the fact that the Kosovo War had become a real humanitarian crisis. The United Nations tried on several occasions to put an end to the conflict through diplomatic actions, but the results were really unsatisfactory. Finally, the conflict ended only after a series of NATO bombings, which forced the Serbian army to withdraw. From that moment on, Kosovo became an area under international supervision, with the presence of a permanent United Nations mission (UNMIK).

Still today, however, relations between Pristina and Belgrade are rather tense, and the Serbian Government continues to reaffirm its sovereignty over Kosovo by appealing precisely to a United Nations Resolution. In particular to the annex 2, point 5, of UN Security Council Resolution number 1244, that provides for the *<<establishment of an interim administration for Kosovo as a part of the international civil presence under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, to be decided by the Security Council of the United Nations. The interim administration to provide transitional administration while*

*establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo>>.*

However, on February 17, 2008, Kosovo declared its independence autonomously, and since then it has been recognized by 113 of the members of the United Nations. Nevertheless, this State has great difficulty in joining the international organizations, because of the obstructionist campaigns carried out by some of its powerful opponents. Suffice it to say that Russia, having the veto power in the Security Council (SC), continues to deny access to Kosovo to the United Nations Organization.

Before discussing the interesting positions of the various international powers with regard to Kosovo, the thesis focuses on another important point, which has often been the subject of discussion among scholars in the field. According to what principle was it possible to interfere in what could be considered an internal conflict?

The legitimacy of intervention against a sovereign State seems to be contrary to international doctrine and therefore to the United Nations Charter itself. This principle, however, has evolved over time, and the case of Kosovo is indeed one of those cases that have contributed to such development. The concept of "humanitarian intervention" has definitely changed the rules of the game, and the revolution it has brought is due to very influential names, first of all that of UN Secretary-General Kofi Annan.

The legitimacy of armed intervention in Kosovo is rooted in the principle of "responsibility to protect" (R2P). In this regard, the International Commission on Intervention and State Sovereignty (ICISS) has established that every sovereign State has the duty to protect its citizens, and that at the moment it is unable, or unwilling, to do so, the protection of the civilian population becomes directly a responsibility of the entire international community. Obviously, before being able to intervene through the use of force, it is essential for the legitimacy of the action that the Exhaustion of Non-Forcible Options has taken place.

However, at the time of the Kosovo intervention, the doctrine on this matter was not yet so developed. This event was fundamental for its progress, and also led to the adoption of some SC Resolutions aimed at the protection of the civilian population (Resolution 1674 on the Protection of Civilians in Armed Conflict). Therefore, the prohibition of armed intervention against a sovereign State no longer represents an absolute veto but prohibits the use of force in an *unlawful* way. If we refer to the Charter of the United Nations, we realize that a humanitarian intervention, therefore, is not contrary to the Customary Law, but is consistent with the principles and values of the Charter itself.

Before intervening on the basis of a humanitarian emergency, however, there are criteria that must be highlighted, and in the case of Kosovo at some point it became clear that the ethnic Albanian civilian population was repeatedly the target of attacks aimed at carrying out an ethnic cleansing project.

Despite looking at the general picture at this point it is clear that the intervention could be justified on humanitarian grounds, if we stop to analyze the intervention of NATO only from a perspective of *jus ad bellum*, we would realize that it does not really have all the characteristics of legality.

NATO intervention in fact took place without requesting any authorization from the UN Security Council, nor was there a General Assembly Resolution. Moreover, from the NATO Constituent Charter, it is clear that armed intervention is possible only if one of its members is under attack. At this point NATO involvement can only be explained by appealing to a criterion of necessity. Therefore, it may be appropriate for NATO action to be defined as it was by the Independent International Commission on Kosovo (IICK): "*Illegal but legitimate*".

Following the intervention, Kosovo was declared an autonomous province, even if its political leaders continued to put in place a project that aimed at full independence. This happened several years later, in February 2008, after Kosovo had experienced several transitional administrative arrangements. With the beginning of the UN protectorate, implemented by Resolution 1244, and the arrival of KFOR began a completely new legal order in the area. From that moment on, Kosovo began to experience different institutional arrangements, which initially did not provide for a handover into the hands of local actors, nor even the beginning of a democratic process of state building. Nevertheless, in the following years democratic elections were held, which allowed the formation of Provisional Institutions of Self-Government, with a Parliament, the Government and the President (2001).

The path that led to independence from this moment on was characterized by moments of resumption of tensions between the two major ethnic communities of the region, and the role of the international community remained fundamental. The year 2007 was a decisive one. Following the approval by the UN-mandated Troika (US, EU and Russia), elections were held on November 17, and the winner was Hashim Thaqi and his Democratic Party of Kosovo (PDK). At this point the General Assembly set in motion the process that led a few months later to independence.

From then on, the international community began to seriously question what the future status of Kosovo should be. In this respect, a very important role was played by the UN Special Envoy for Kosovo, former Finnish President Martti Ahtisaari, who in his "Report on Kosovo's Future Status and Comprehensive Proposal for the Kosovo Status Settlement" foresaw a cessation

of Serbian sovereignty over the territory, and consequently the end of Resolution 1244. Although the international community should have maintained an important role, especially through the KFOR mission, to continue to ensure stability and security on the territory. Moreover, according to Ahtisaari's plan, the Serb community should have continued to enjoy its autonomy.

From the Kosovo Declaration of Independence it became clear that the world powers had conflicting interests in the territory. They began to implement their own geopolitical strategies. Of course, Serbia's position was clear from the start. Belgrade considered Kosovo to be its province and was reluctant to enter into a dialogue with the Government of Pristina, also with the support of the Orthodox Church. The government of Belgrade has never accepted the independence of Kosovo, and its position can be summarized in the formula *"more than autonomy, less than independence"*.

The European Union played a key role in softening the Serbian position. But, despite the two Governments have been engaged into the Brussels Dialogue, Serbia's position has not particularly changed. Even if, recently, President Aleksandar Vučić admitted that the Kosovo issue is the biggest challenge Serbia is currently facing.

Albania, for its part, one can well understand that ideologically was one of the main allies of Kosovo. Even if, from an active point of view, did not have the opportunity to expose particularly, as it was still suffering the consequences of the communist regime of Hoxha. The fear of a project whose ultimate goal was the construction of the "Greater Albania" can be easily denied by the fact that after the conflict between 90% of the Kosovars in favor of Independence, only 10% of them saw favourably a union with Albania. Subsequently, a process of integration between these two States was put in place, but this was always explained in the light of a broader objective of European integration.

As far as neighboring States are concerned, whether or not they were close to the cause of Kosovo's independence was very much linked to their relations with Serbia. It is therefore clear that Bosnia and Herzegovina has never shown its support for Kosovo. On the contrary, Republika Srpska stated from the beginning that it would use the case as a precedent for reuniting with Serbia if the majority of the international community recognised Kosovo's independence. With regard to Macedonia and Montenegro, however, it emerged that their main concern was the stability of the region, and the fear that this event might harm their national interests.

Russia, on the other hand, has shown an enormous closeness to Serbia. It has not only maintained the same tough position towards Kosovo from the very beginning but has also managed to use this case as a real precedent in the cases concerning Georgia (2008) and Crimea (2014). Russia obviously has very important strategic interests in the territory, as well as having historical

affiliations, including cultural ones, with Serbia. Moreover, the line that the international community would have taken regarding the issue would have conditioned the strategic assets of post-Cold War Russia. For this reason, it was fundamental for the Moscow Government to be able to maintain its influence in the Balkans, strategic both from a purely geographical point of view and obviously because of its proximity to Europe. As far as the European Union is concerned, it initially failed to play an important role in Kosovo, and as we can see, it failed to prevent the outbreak of a bloody conflict towards its own borders. Over time, however, it has assumed an increasing role, until it becomes the mediator between the two States in a project of normalization, which between progress and stalemate periods is officially still open. In Kosovo, it has not only deployed the use of military power, but has also tried to focus more on its "soft power".

When Kosovo declared its independence, however, the European Union was once again divided. For some of its Members, who have to cope with the secessionist pressures within their own national borders, recognising the independence of Kosovo without in any way legitimising such nationalist pressures, seemed impossible. For this reason, the European Union decided to continue to carry out its role, leaving each member free to decide independently whether or not to recognise Kosovo as an autonomous State. So, before starting the Brussels Dialogue in 2011, it set up the EULEX mission (2008). To date, the position of the European Union on the subject is not yet unanimous, but there has nevertheless been a conciliation of intentions between the states that has allowed the continuation of these initiatives. Its strength on the ground depends on the attractiveness that the European project has on both States, and from the element of conditionality inherent in its action. Serbia and Kosovo can only aspire to European membership if their relations are fully normalised.

The United States was perhaps from the outset the greatest ally of the government in Pristina, immediately recognising its independence. This move was obviously not only driven by an act of solidarity with the suffering experienced during the war years by the Albanian Kosovars. For the United States, it was in fact essential to experiment with a new strategy that would replace the "containment" typical of the Cold War years, but that would still be effective enough to keep Russia away from the European continent. The intervention against Milosevic during the war took on a wider appearance and aimed once again at affirming the capacity of the US to intervene to make its values and standards triumph again. The influence of the American soft power is still strongly visible just walking through the streets of Pristina, and despite the fact that with the Trump Administration there has been a downsizing of the involvement of the United States in these territories, they still represent ideally for Kosovo a strong ally.

The question of the legitimacy of the state-building process in Kosovo is based on the fact that it derives from a process of secession. Kosovo, as an independent State, is in fact the result of a process of nonconsensual separation from a pre-existing State. The doctrine was in difficulty in those years, this is because there was not, and still does not exist, an all-encompassing discipline that establishes the legality or not of these cases. Certainly, starting with the decolonization process, certain principles were outlined, such as the self-determination of peoples, according to which secession becomes an act in some way acceptable.

In order to clarify the different positions and questions regarding the legitimacy of the Kosovo Declaration of Independence, the International Court of Justice was finally asked to intervene. In spite of expectations, it expressed itself in 2010 declaring that <<*the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law*>>. Proceeding by order, the Court established that effectively the principle of territorial integrity to which the States opposed to the independence of Kosovo appealed, was to be considered binding only in cases of external aggression by another subject of international law.

Subsequently, the ICJ Opinion refers to the fact that, although there are general principles governing these processes, each case must be considered in its uniqueness and peculiarity. In doing so, it refers to the practice of the Security Council, which, although it has declared some cases of secession, such as that of Southern Rhodesia or Northern Cyprus, illegal, has never found illegality in that of Kosovo, and has never approached cases of secession in unitary matters. Considering each case in its ad hoc nature was precisely what the opponents of Kosovo's independence feared most. Of course, even in cases of secession there is a need for integration between the general principles of international law (e.g. *uti possidetis*, self-determination of peoples, safeguarding of territorial integrity, prohibition of the use of force) and the specific cases. Only in this way can a satisfactory decision be taken. As far as Kosovo is concerned, there is certainly a weakness in its process of secession and in the subsequent state building. This weakness concerns a practical aspect; the principle of effectiveness. The latter refers to the ability of the newborn State to govern on its territory. If we look at Kosovo at the dawn of its Declaration of Independence, it is clear that international intervention was still very necessary, particularly in those northern areas inhabited by the majority from Serbs. Despite this, as we have seen before, the recognition of Kosovo by many countries did not take long to arrive.

From that moment on, for the European Union, which has perhaps become the most influential actor on the territory, the main objective is to guarantee the stability of the region, and to encourage a constructive dialogue between Pristina and Belgrade. That's why the famous Brussels Dialogue began in 2011. This initially led to the achievement of important objectives, especially as

regards the more technical aspects of the process of normalization, and finally in 2013 came the signing of the Brussels Agreement. As its known, however, not all the points of this Agreement have been fully implemented. In particular the question of the Association/Community of Serbs municipalities has caused the rise of new tensions.

Over the years, the Dialogue between the two countries has undergone numerous stops and some restarts, although in the last period it seems to have reached a standstill. Although the achievement of a normalisation of relations between the two Countries is a fundamental condition for them to aspire to join the European Union, in the last period this no longer seems a sufficient motivation to continue the Dialogue. Among the most important episodes that can be remembered is the decision of the Government of Pristina to raise 100% the duties against imports from Serbia and Bosnia Herzegovina, following their obstructionism in the negotiations for its entry into Interpol. This is also an open violation of the CEFTA participation agreements. Furthermore, Kosovo's decision to create its own national Army has particularly irritated and worried Belgrade. The international community is obviously not indifferent to these events, but this time the perhaps reckless decisions of Pristina are criticised almost unilaterally.

More recently, some Kosovar police operations in the northern part of Kosovo have created what appears to be the biggest diplomatic crisis of recent times. In fact, these police operations, which led to the arrest of about twenty people, were considered highly discriminatory by the Government of Belgrade. The latter provided for the state of alert of its army. What is interesting is that in this case there is also the involvement of a Russian UNMIK official, who has tried to hinder operations by helping the Serbian population to form barricades.

These latest events have also led to the precipitation of the latest proposal for an agreement, strongly supported by Federica Mogherini, the High Representative of the Union for Foreign Affairs and Security Policy, which provided for an exchange of territories between the two States. This revision of the borders on an ethnic basis, the “land swap”, however, had not been welcomed with such enthusiasm by all the Members of the European Union, could perhaps be considered as a contradiction with respect to the values of pluralism typical of the Union. More importantly, however, the latest episodes have rekindled a state of alert from the international community and in particular the European Union, on the possibility that the area will be destabilized again by the clashes between the two ethnic groups.

Finally, arriving at the prospects for the geopolitical future of Kosovo, despite everything a potential enlargement of the EU towards the Western Balkans remains standing, and it is perhaps through this that we could achieve an improvement in relations between Pristina and Belgrade. Moreover, for the European Union, which is experiencing a very difficult time due to the presence

of increasingly sovereign governments within it, enlargement can also be considered as an instrument of foreign policy to expand its geopolitical influence. The Commission has expressed itself on this possibility several times in recent years, and we know that referring to the Treaties of the European Union a process of integration is possible, according to Article 49 of the Treaty on European Union (TEU). How likely that is, it's another matter.

We know that in order to join the European Union, countries must respect certain standards. These cover a number of key areas, from the rule of law to human rights, from democratic institutions to the fight against corruption and organised crime. As far as Kosovo is concerned, in 2018 the Commission in its *"A credible enlargement perspective for an enhanced EU engagement with the Western Balkans"* analysed all these points in relation to the current situation of the State.

What is clear is that Kosovo still has a long way to go before it can acquire candidate status and open negotiations, as Serbia has already done. The weak points that are most highlighted are, for the rule of law, the functioning of the judicial system and the level of corruption in the institutions as well. As far as fundamental rights are concerned, Kosovo needs to make a great deal of progress, especially as regards the treatment of ethnic minorities. This may seem to be the most obvious difficulty in the field, seen the recent history of Kosovo, but unfortunately it is not the only fundamental rights area in which Kosovo is struggling to achieve acceptable standards. The Commission in fact, would also like to stress the importance of ensuring greater freedom of expression. The paradox of Kosovo is precisely the fact that the Constitution has made the most important human rights Conventions a national primary law, despite the fact that it was not a signatory State, but then in the practice it has difficulty to fully implement them.

Security is another very important area in terms of EU enlargement, including Kosovo. This State, much like the Western Balkans in general, has become a crossroads of people, but also of illegal trafficking, increasingly connected to the most recent events affecting Syria. Since the Balkan conflicts, this territory has become easy to penetrate for extremists, and the Balkan route is now a particular concern for the European powers. It is enough to say that, already in the attack to the Twin Towers in 2001, four of the seven terrorists had fought in Bosnia and obtained the passport of that country, or that, as far as the Bataclan in Paris was concerned, the attackers had crossed the Balkans to return to Europe, and it was there that they had obtained the weapons necessary to carry out the attack. The fight against radicalisation remains a very important point, both for the EU and for the Balkans themselves.

The future of Kosovo in the European Union is therefore still very uncertain today. What remains clear is that the European perspective is still the best option for Kosovo. However, there are some thoughts to be made about this. It is clear that Kosovo's position is not the most favourable,

not only in terms of its starting position with respect to the criteria of the *acquis communautaire*, but also because there are still five members of the Union (Cyprus, Greece, Romania, Slovakia, and Spain) who do not recognize its status as an independent State.

Moreover, if Serbia were to join the European Union before Kosovo, despite this possibility is based on the achievement of a normalisation of relations between the two, the possibilities of Kosovo would be further reduced. We know, in fact, that membership of the EU requires the unilateral consent of all its Member States. For this reason, if a prospect of enlargement towards the Western Balkans is not just an utopia, would it not be important to make even more effort to help the improvement of regional cooperation, and to envisage a collective enlargement, even if this would certainly take longer?

Having said that, it remains clear that Europe represents for Kosovo, and for the Balkans in general, a promise of peace and prosperity. As far as relations between Pristina and Belgrade are concerned, on a high political level, the accession of both Countries to the EU would allow greater scope for movement and a widening of their borders. On the effective level, however, there are many doubts as to whether the citizens of both Countries will decide to cross their respective national borders with serenity. In any case, this would certainly represent an opportunity for the younger population to leave the past behind, and to learn to know each other in neutral territories.

The main alternative to a European future for Kosovo is a scenario that probably envisages nothing other than the strengthening of nationalism and the feeling of revenge. It is also for this reason that it is important for the European Union to continue to involve Kosovo in the integration process, to try to prevent the region from becoming unstable again, and to continue to guarantee the security of the area and of the Union itself.

Unfortunately, the recent actions of the political leaders of the two Countries have highlighted that perhaps integration into the European Union is no longer one of the primary objectives, or more likely, that considering the possibility that this may happen still seems a long way off in time; they are no longer confident about it. This type of behaviour, however, establishes a vicious circle, and distances the possibility for the two Countries, and in particular for Kosovo, to actively engage in a process that would bring many benefits. To conclude, it is clear that the geopolitical future of Kosovo is not yet certain to be identified. What can be said with certainty, however, is that the European Union is the best possible ally for the Country. Moreover, it is important to underline that the integration process represents a valid instrument in itself, in order to allow the modernization of the territory, from the institutional point of view and with regard to the achievement of international standards, and the first beneficiaries of this would be the Kosovar citizens.

