Section 3.
Legal Sciences

Dr. Stela Mecaj,
University "Ismail Qemali" Vlora, Albania
Olta Bregaj,
Specialist at Proof Service, Vlora Albania

INTERNATIONAL DISPUTES AND THE CASE OF KOSOVO

Abstract

International law has a wide scope, just like the states themselves, which require more regulation. All states are created within their territory and are under the power of a sovereign, who deals with the internal problems of this state. Another special moment is when the states enter the international arena to interact with each other. But the problem is that among them there is no sovereign to lead them and to create rules between them. Therefore, the only possibility remains intermediate negotiations. But if these rules established by their will are not implemented, exceeded or misused, who leads? Precisely at this moment, the need for an international regulator such as the International Court of Justice arises. But why are all these conflicts between countries arising? One reason may still be the profit and ambition of many states at the expense of each other. The role of the International Court of Justice is, in accordance with international law, to establish the

legal contexts presented to it by states and to give advisory opinions on legal issues referred to it by the competent bodies of the United Nations and specialized agencies. The nature of this subject gives you the opportunity to learn more about countries and international politics.

Keywords: Investigative commissions, International Court of Justice, The principle of state sovereignty etc.

1. Introduction

International law has a wide scope and has developed a lot in recent years. An important point is the conflicts[1] which our region has had many of, the freshest case being Kosovo. The Charter of the United Nations prohibits the use of force in relations between states. They must resolve all conflicts between them by peaceful means. Many authors divide disputes into: legal and political. Legal disputes are usually resolved through international judicial processes, and political ones through diplomatic forms. Throughout history, and even now, there have been, and still are, numerous conflicts between states. Conflicts can be of a territorial[2], economic, ideological, and security aspect. At the same time, forms and tools for solving them have been developed. Even many relevant international organizations have been formed for this purpose (in particular the League of Nations and the United Nations)[3].

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[1] Yaacov Bar-Siman-Tov. From Conflict Resolution to Reconciliation, Oxford University Press, 2004.

[2] Many forms of disputes in themselves simultaneously contain both legal and political elements.

[3] Article 33: The parties to a conflict, the continuation of which may jeopardize the preservation of international peace and security, first try to reach a solution to the conflict through negotiations, analyses, mediations, trials, court decisions, the involvement of regional institutions or agreements or through other peaceful means in the choice of parties".

Classical international law divides the means of resolving disputes into: peaceful and violent. So, if the parties have not been able to solve the problems peacefully then they have started the war[1], the Statute of the International Court of Justice defines legal disputes between states as: a) differences in the interpretation of any agreement; b) as a matter related to any problem related to international law; c) as an action related to non-fulfillment of international obligations; ç) as a matter related to the realization of compensation to any other international entity. However, political disputes are of a different nature and usually they are related to opposition of different interests between states and these disputes are usually resolved through other forms such as diplomatic means, which are not said to be resolved through the norms of international law. Usually, in these cases, the solutions to the problems are made by balancing the interests of the states in conflict.

2. Methodology

Methodology consists of the logical forms of the knowledge process and the possibility of their application in a certain science or in a certain scientific research. In this paper, the methodology represents the legal and institutional analysis of peaceful ways of resolving international disputes. Research methods are a set of logical and operational procedures, which allow the collection and interpretation of data for the verification of the hypotheses established in the research plan. In this paper, the main methodological approach applied is the normative approach. The paper will be based on the qualitative method, which consists in the collection and processing of data in order to compare and interpret provisions or policies that provide for peaceful ways of resolving international disputes. In this paper, the method of literature analysis, the method of interpretive and comparative analysis, the special case method was used.

[1] Cassese V. A. International Law, Oxford, 2001. – P. 218–222.

In this paper, several scientific research questions will be raised, such as: Have the peaceful ways of resolving international disputes been effective? What are the advantages or disadvantages of using them? What are the responsibilities of the state? How do conflicts arise between states? What is the mission of the International Court of Justice. The paper confronts and compares accountability with other principles and mechanisms by which stakeholders can respond to a violation of international law, such as the use of force and diplomacy. The objectives of the paper are: knowledge of the responsibilities of the state, knowledge of the way the conflict was born, reflection of the UN Charter and the mission of the ICJ, reflection of the reality of a problematic situation such as the case of Kosovo, which would be sent to the ICJ.

3. The meaning of conflict

Before examining the ways of resolving the conflict in a peaceful manner in International Law, we must understand what is the international conflict itself. Conflict can be defined as a difference in the achieved and preferred outcomes of a situation of trying to reach an agreement. Conflict between states[1] is not an unusual circumstance, on the contrary, it is quite common and will certainly always exist. There are always two ways to resolve the conflict. The second way, war, is the solution to the conflict in a peaceful way or in opposition to the first. Practice has shown that resolving conflicts in the first way, i.e. their peaceful resolution, is always the simplest, most economical and therefore the most correct way. While the "solution" by war for many authors is not a solution, but simply a reason to start a conflict.

Thus, the famous Roman writer Seneca, about 2 thousand years ago, wrote about the war: "From the people of war, do not seek

[1] URL: https://dspace.aab-edu.net> bitstream> handle

the cause, but the end". Today this postulate is difficult to accept as political scientists are increasingly looking for the causes of war. However, what will be dealt with in this paper are the ways of resolving the conflict in a peaceful way, without violence, without war, this internationally accepted method and functional at first glance.

4. The emergence of conflicts between states

People during conflict may be inclined to solve the problem by compromise if the conflict has an essential character in some permanent structure. Whether it is accidental is based on circumstances. But conflicts need not destroy one or both parties when they are in harmony, and a temporary conflict can escalate to the level of violence. Controllable or uncontrollable, the typical case is that of wars. An essential conflict is to say something that is expected of its continuation in the future. When it is required that this conflict be put to an end, it must be controllable. Uncontrollable is to say about its limitation and about the risk of its escalation. The issue of Kosovo in the international arena, one of the Albanian issues discussed so much that it reached the trial at the International Court of Justice is the case of Kosovo. At first glance, there are three things we would like to know about any political conflict. First, can both sides in the conflict survive? Second, will it die out or will it continue to happen? And thirdly, can it be controlled and kept within acceptable limits, or can it escape all control and become itself the master of the destinies of those involved in it?[1] Within the context of the deployment of these three types of political conflicts, Kosovo does not belong to the first type, but relatively has passed the second type and remains to coexist without its will, every day, with the control of the conflict political, which is controlled and kept within acceptable limits, but whose forms of escalation, which are manifested in

[1] Karl W. Deutch. The analysis of International Relations. Englewood Cliffs, NJ: Prentice-Hall, Inc., 1968.

violence against the other community, turn it into, as Dejç would say, "the god of the fate of those involved in it".

Initially after the war, the North of Kosovo was put under increased military control by the international community, and it was likely identified as a source of inter-ethnic violence, which produces a political crisis depending on how these forces are organized, how they want to manifest their actions to gain as much political, financial and diplomatic support as possible, etc. Known as Serbian parallel structures in Kosovo, which have consolidated and gained the trust of most members of the community they belong to, have often challenged local and international institutions, reflecting negatively on the political scene, within a decade, they have managed to put into play a part of European diplomacy, which often declares in favor of the ideas for the division of Kosovo or increasing the degree of autonomy for the northern municipalities. When the functioning of the Serbian municipalities is consolidated, will a different approach of the Serbs begin in the integration of the new state of Kosovo[1], or will the Constitution and territorial sovereignty not be respected? Still without coming up with an answer, the Serbs in the north opened up another dimension of the problem, it turned out that there are quite a few who are rejecting integration into the institutions of Kosovo, and want to become an integral part of Serbia.

Before this undeniable fact, strategies, whether local or international, "crumble" like pyramids built from sand. The game, which continues to appear episodically, in the north, has entered a compromising stage for the institutions of Kosovo, which still do not have or are unable to give the response, because the political context has elements linked to international relations, which calls for unity in coordinated actions, which still remain "conserved" within the

[1] URL: https://www.usaid.gov/sites/default/files/documents/1863/CDCS_Kosovo_2014_ALB.pdf.

framework of diplomatic and military rhetoric. Silence and lack of reaction are phenomena that have accompanied us since the post-war period and those who are considered the opposite of this philosophy cannot say anything else; behind the forms of the offered options, the attitude of not always keeping the sword in one's belt, but to make a police, military reaction, qualified with radical political language: "eradication" of parallel structures and nothing more. More or less, the notion of parallel structures is known, but no one has made any accurate political calculation of the proportion of their extent and even less of the degree of credibility they enjoy from the Serbian community. And this makes the claim to conceive them in terms of "marginalized" groups and without influence, exclusionary and not at all realistic.

5. The principle of state sovereignty and the right to self-determination

Sovereignty is the exclusive right to exercise supreme authority over a group of people, geographical region. In international law, the most important concept of sovereignty (Lipušček, 2008) refers to the exercise of authority by the state. If the question is raised about the specific elements that make up a democratic social community, one inevitably comes to the statement, according to which democracy is the rule of the people. The translation of the word "democracy" from the Greek means the same thing. In every democratic constitution, in one form or another, there is a statement according to which the people are the ultimate bearers of all sovereignty. According to her, power is legitimated in a democratic way only if it came out of the free will and with the approval of the people. If the government of the people through the people is impossible due to internal and external reasons, then it remains as a concretization of the sovereignty of the people, first of all, the election of representatives, who then responsibly lead the government according to the

will of the people and with his approval. Self-determination gives a people the right to define its own political, economic, social and cultural system, without outside interference. Based on this, some think that the right to self-determination belongs to every group that forms a people, that is, every group whose members have social, cultural, spiritual proximity, etc. It is clear that this rule gives this right to the peoples.

The main debate here is which principle limits the other, and the answer depends on a case-by-case assessment. The Kosovo issue is a classic example of this dilemma. Both sides, the Kosovar Albanians and the Serbs, insist on their rights. Based mainly on the historical reason, the former demand the right to self-determination in the form of a state, while the latter demand the right to keep the province of Kosovo in the framework of Serbia. Historical reasons, or historical rights, are an outdated concept. The modern concept of self-determination enables Kosovar Albanians the right to self-determination. State sovereignty is no longer an absolute concept as long as it is directly related to the respect of human rights. Although self-determination cannot be compatible with international law, the Kosovar Albanians have the right to self-determination and their own state as long as they were oppressed by the Milosevic regime. Self-determination continues to be a radical concept of this time, and its application depends on a case-by-case basis, taking into account various factors.

6. The case of Kosovo in the International Court of Justice

In order to appease its public opinion, buy time and slow down the process of recognizing Kosovo, the Serbian government began what appeared to be a cunning diplomatic maneuver. In early October 2008, the Serbian delegation succeeded in passing a UN General Assembly resolution requesting an advisory opinion from the International Court of Justice regarding the compatibility of the "unilater-

al declaration of independence" with international law. Declarations of independence are facts related to the internal constitutional and political order of states, while international law is silent on this issue, neither allowing nor prohibiting such declarations of independence. In addition, Kosovo's declaration of independence was not really unilateral in its essence, because the words and timing of its adoption were coordinated with the five Western powers, including three permanent members of the UN Security Council. By approving this document, Kosovo announced its intention, but in practice it did not become a sovereign state. According to Serbia's declaration, the illegality of Kosovo's declaration stemmed from the violation of the principle of respect for the territorial integrity of states, the inapplicability of the principle of self-determination for Kosovo and the violation of UN Security Council Resolution 1244 (which presupposed the continued sovereignty of Serbia over Kosovo).

Regarding the first point, there are three observations. First, Serbia itself had seriously violated the principle of territorial integrity of a neighboring state (the Ottoman Empire) when its armed forces attacked and occupied Kosovo in 1912. The Ottoman Empire and its legal successor, the Republic of Turkey, did not recognized the leaving of Kosovo and no international treaty was reached regarding this. Thus, the Serbian occupation of Kosovo was itself illegal. It was also illegal, since Serbia made that invasion against the will of the majority Albanian population. This invasion was accompanied by massive massacres of Kosovo Albanians and serious violations of international humanitarian law. Kosovo was not legally annexed to Serbia as it should have been, in accordance with the Serbian Constitution in force in 1903 and then that of the Kingdom of Serbs, Croats and Slovenes in accordance with its "Vidovdan" Constitution. The third invasion (liberation) of Kosovo in 1944 was also accompanied by armed violence against the Kosovar Albanians. The act of annexing the lands of Koso-

vo to Serbia was approved in April 1945 under the circumstances of the law of war, by a "Regional People's Assembly of Kosmet", which was appointed, with applause, without a vote and without any speech alone (because there was no question of discussion or debate). The composition of this Assembly was completely unrepresentative (142 appointed members, among whom only 33 were Kosovo Albanians). All the appointed deputies were communists and the majority were Serbs, who represented about 20% of the population of Kosovo. There was no preliminary election or referendum in Kosovo. This Stalinist travesty of legality was thus entirely without democratic legitimacy. Second observation, the real major violation of Serbia's territorial integrity did not occur in February 2008, but nine years earlier, in March 1999, when NATO began its armed intervention. The Federal Republic of Yugoslavia made a claim at the time against the "illegal use of force" by NATO members. The court rejected this motion and declined to review the legality of NATO's "humanitarian intervention." According to the terms of the Kumanovo Protocol signed with NATO in June 1999, the Federal Republic of Yugoslavia withdrew its army, police and civil administration from Kosovo. Thus, in the summer of 1999, the Federal Republic of Yugoslavia lost three elements of its sovereignty: control over Kosovo's territory, population and borders. The declaration of independence of February 18, 2008 only legislated expost facto, with an internal action, the secession of Kosovo from Serbia. Third, thinking about the process of decolonization, international law has relativized the validity of the principle of territorial integrity. When it conflicts with the right of peoples to self-determination, the latter is given priority. This development is expressed in a number of international legal documents, including the International Convention on Civil and Political Rights and the Declaration of the UN General Assembly on the granting of independence to colonial peoples.

The International Court of Justice issued its non-binding advisory opinion on July 22, 2010. This court avoided dealing with most of the issues raised in Serbia's request and in comments by Kosovo and nearly thirty other states. The International Court of Justice limited its task only to the close examination of the claim presented. It was widely accepted that the opinion of the International Court of Justice would fall somewhere between the two opposing sides and their arguments, completely satisfying neither side. The court surprised many with its straightforward conclusion that Kosovo's declaration of independence had not violated international law, UN Security Council Resolution 1244 and the Constitutional Framework issued by the UN Interim Administration. What was also unexpected was the strong majority of ten votes against four votes by which the opinion of the court was approved. The political impact of the decision of the International Court of Justice was immediately clear, this brought about the loss of Serbian diplomacy and the legitimacy of Kosovo's position. The court has announced that while examining the legal competence, it is not guided by political motives in such matters and does not take it into consideration. The advisory opinion is not binding on the states, to which the highest court of the United Nations responds to the questions of the UN General Assembly: "Is the unilateral declaration of independence by the temporary institutions of government in Kosovo in compliance with international law?"

This is the first time in the history of the UN's highest judicial body that it has declared about a secession attempt. The issue of the legality of the unilateral act of the governing institutions in Kosovo before the ICJ was raised by the UN General Assembly in October 2008 at the initiative of Serbia. During the oral hearing that lasted from December 1 to December 11, 2009 at the court in The Hague, 14 countries, in addition to the Pristina authorities, assessed that the

declaration approved on February 17, 2008 was legal, while 12 other countries, together with Serbia, claimed that international law was violated with the statement. This advisory decision, according to which the declaration of Kosovo's unilateral declaration of independence did not violate international law, is a historic decision for all Albanians. Citing Security Council resolutions, Serbia asserts that the obligation to respect territorial integrity also regulates non-state actors and prevents them from declaring independence, whether peacefully or not. But none of the resolutions he cites support this assertion. The declaration of independence was an ultra vires act by the Assembly of Kosovo 60 will not constitute any violation of international law.

Facts and statistics of the recognition of the Republic of Kosovo It has been recognized by 103 out of a total of 193 UN member states, or by {{Percentage|103/193} 53.37% of them. Seeing that many countries have recognized the independence of Kosovo, a simple logic leads me to think how the independence of Kosovo could not be legal, this recognition is not only from the countries of the region but also from distant continents. Such a simple thought makes you wonder how a state that has all the elements of a state can be illegal, even more complete than states that have gained independence for years[1] .

7. Conclusions

International law has a wide scope and has developed a lot in recent years. International law aims to resolve disputes on political, diplomatic and judicial grounds. To avoid the chances of getting out of wars, it offers certain measures and tools. Among which the above are peaceful means of resolving disputes. But international law also recognizes some coercive or compulsive means of settling disputes

[1] Andrew C. Tillman, Brigitte Sauerwein, Jim Patton, Richard M. Ogorkiewicz, Wolfgang Flume, David Miller, Jane's Information Group, 1994.

in exceptional cases when international peace and security is endangered. If negotiations fail and no agreement is reached, the parties may seek other peaceful means to resolve their dispute. Other possible procedures, such as mediation, conciliation are optional and require the consent of both parties to the dispute.

The difference between peaceful diplomatic means of resolving disputes is not clearly defined. There are few characteristics that distinguish them. First of all, the absence of the obligation to choose them, conclusions and reports have a non-binding effect on the opposing parties. On the other hand, the use of some of the judicial means is also optional, but their decisions are binding and they must be implemented. There are differences in procedures between an arbitral tribunal and the ICJ. One of the main characteristics of arbitration is its flexibility and adaptability according to the wishes of the parties, primarily regarding the rules of procedure and the choice of arbitrators. Compared to the ICJ, its procedures are definitely more strict and inflexible, the procedure is defined by the ICJ Statute and the Rules of Procedure, and the Court takes a decision based on the law. Practice confirms that diplomatic means of resolving disputes are the most used, and the list of cases before the ICJ is also remarkable.

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