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## KOSOVO INDEPENDENCE AS AN INTERNATIONAL ISSUE

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Nowadays the Balkans probably can be considered as one of the most problematic and unstable regions that causes instability and threatens regional security. The region presents a significant sphere of interest not only for the European Union and Russia, but also for the United States. This complexity might probably indicate one of the main causes of ongoing and not so successful attempts to establish peace in the region. It can be said that one of the most recent concerning issues in the Balkans, that attracted attention of leading international actors and caused strong antagonism is the case of Kosovo independence. This essay will consider why Kosovo case presents such a complicated problem and raises so strong contradictions. Process of disintegration of Yugoslavia and creation of new states will be examined together with paying attention to inter-ethnic relations in the region and the role of international actors in the events.

**Key words:** Kosovo, politics, security, Yugoslavia, Balkans, international law.

The unilateral declaration of the independence of Kosovo and Metohija by Albanians on February 17, 2008 appeared to be another — and perhaps not the last — milestone in the ongoing process of the collapse of some states and creation of other ones on the ruins of the Yugoslav federation. This event has potentially far-reaching geopolitical consequences of different levels (Global, European, Regional, etc.). With all the ambiguity of the Declaration of Independence of the Republic of Kosovo, a new state appeared on the world political map, and this state demands international recognition and gradually receives it (by November 2008 sovereignty of Kosovo was recognized by more than 50 countries). Kosovo constitutes complicated ethnic and religious entity consisting of a mix of groups (Albanian Muslims, Albanian Catholics, Orthodox Serbs, Catholic Croats and Roma) [1. P. 16]. The population of Kosovo is about 2.2 million people, most of whom are Albanians. And some experts argue that ‘Kosovo is an example of poor and oppressed by conflicts society’ [1].

Obviously, the beginning of disintegration processes on the territory of Yugoslavia coincided with the end of the Cold War. As noted by P. Sokolova, ‘Ethnoregional traditional Balkan conflicts began to take new forms of relationships with global processes because of increased interdependence of regions’ [2. P. 159]. The Balkan region in the 90-s of XX century was the scene of fierce radicalization of ethnic and national projects, and that provided a new look at the problems of nationalism, separatism, extremism, terrorism, and the rights of minorities. The events taking place in the Balkans in the last two decades are commonly the central theme of the media around the world and will remain to be popular subject of research for scientists of various fields for many years. Being at the crossroads of Europe and the Middle East, the Balkans, torn by internal conflicts, are extremely vulnerable to the emergence of new transnational threats to international security — terrorism and related other negative phenomena. At the same time,

the disappearance of the threat of global conflict and the ideological divide between East and West led the prerequisites for the creation of new mechanisms for international cooperation. The events taking place in Kosovo since the mid-90-s are commonly referred to as 'the Kosovo crisis'. However, the crisis was only a continuation of the breakup of Yugoslavia as a multinational state, which began in 1990—1991 years. The first step of this process can be characterized by wars in Slovenia (1991), Croatia (1991—1995), Bosnia and Herzegovina (1992—1995), that ended for these states with gaining independence, as well as Macedonia's peaceful way out of the Socialist Federal Republic of Yugoslavia (SFRY) in 1991. The second stage of the collapse not only affected the Federal Republic of Yugoslavia (FRY) that was created in 1992, but also raised the issue of the territorial integrity of Serbia. As S.A. Romanenko estimates, when in 2006 through a referendum Montenegro withdrew from the State Union of Serbia and Montenegro, it became apparent that neither Yugoslavia nor Serbia as ethnocentric states of Serbs could not remain in the existing borders, no matter what political party would be in power in Belgrade [2. P. 14]. The Kosovo crisis combined the process of disintegration of the Yugoslav state based on the idea of the regional Slavic community and long-term crisis of Serbian statehood, marking, in fact, the third stage of the breakup of Yugoslavia. On the one hand, this process highlighted the shortcomings of the unitary organization of Serbia and centralist tendencies in its domestic policy, on the other it was the result of changes in the ethnic and demographic situation in the country as a whole and in its particular regions. This crisis was both a cause and an incentive for the process of national self-determination of national minorities and the regional identity of Serbian population [2. P. 116]. During the tumultuous events in other parts of the Balkans — in Croatia, Bosnia and Herzegovina, the political upheavals in Serbia — Kosovo did not attract attention so much. Meanwhile, the region has long been presenting a society divided by ethnic clashes. Some experts argue that actions of Albanians who lived in the autonomous province of Kosovo, were the initial link in the chain of crisis dissolution of the Socialist Federal Republic of Yugoslavia [3]. The situation in Kosovo is a vivid example of the relationship in the political struggle between ideas of nationalism (both Albanian and Serbian) and the mobilization potential of the parties on ethnic grounds. The high intensity of the confrontation of forces in the region eventually led to the violation of the territorial integrity of Serbia. It was an indication of how the confrontation between the central government and the local elite, and, respectively, between representing them ethnic groups contributes to the growth of nationalist tensions and exacerbation of antagonisms. On the other hand, nationalism was one of the factors that increased the severity of the crisis and affected its character, at the same time nationalism intensified both opposition and political unity on ethnic basis. As John Burton states, ethnic and religious conflicts in which the central government is unable to control events, always deal with the issues of security of the group, its identification and recognition, as well as control over influencing that political processes [4. P. 23]. That is what we can observe in Kosovo. Inter-ethnic relations in the years of conflict became so strained that they may be qualified as openly hostile. The confrontation, which developed during several decades, evolved over time into an armed struggle and led to huge losses of life. Many residents of the region, both Serbs and Albanians, as a result of this confronta-

tion became refugees. The infrastructure of Kosovo was almost completely destroyed. Tremendous damage was inflicted on historical monuments of the region, many of which were acknowledged by UNESCO as masterpieces of world importance, and are now forever lost for mankind.

The declaration of Kosovo independence on February 17, 2008 was the third attempt of unilateral declaration of sovereignty, which received such a powerful resonance expressed through diplomatic support, above all, by a number of Western countries. The previous two attempts (first on September 7, 1990, when self-proclaimed 'Republic of Kosovo' was formed and it claimed to be separate from Serbia subject within Yugoslavia, and second on October 19, when Kosovo Albanians declared a temporary coalition government of the Republic of Kosovo, recognized by the People's Assembly of Albania) did not have big importance, although imposed a significant imprint on the developments in the region.

In fact, what took place in February 2008 was a partial legitimization of the forced separation of a large part of territory from Serbia (an area of 10908 sq. km.), which has already happened in 1999, when foreign troops were introduced in Kosovo, and the governance of the region was actually delegated to international protectorate of the UN mission. Despite of the fact that Kosovo formally for nearly a decade was a part of Serbia (this point is fixed in the Constitution of Serbia, and in Resolution 1244 of the UN Security Council in 1999, which reaffirmed the territorial integrity of Yugoslavia — and of Serbia as successor — and its sovereignty over Kosovo), in reality nobody had a doubt that sooner or later this will be taken from the Serbian state [5. P. 54]. Therefore, the fact of the declaration of independence by Kosovan Albanians, although it was received in Serbia and some other countries with strong indignation, presented no surprise. Kosovo's independence existed *de facto* (with certain reservations — taking into consideration an international protectorate and the UN administration), so it was partly transferred to the position *de jure*. However, even considering the recognition of Kosovo's independence by several dozens of countries, it is difficult to assume full sovereignty of this region, because it is recognized neither by Serbia (which continues to consider Kosovo and Metohija as an integral part of its territory), nor by a large number of foreign countries (including Russia and China — permanent members of the UN Security Council). According to the Serbian side (and Russia shares the same view), Resolution 1244 does not provide for the independence of Kosovo. In particular, the article 10 of the Resolution states about 'substantial autonomy within the Federal Republic of Yugoslavia' for Kosovo, which does not mean full independence. The question of the recognition of Kosovo's independence has caused a serious split in the international community between states that have expressed support for the formation of a new state on the Balkans, and the states that refuse to accept the diplomatic recognition of the 'Republic of Kosovo'.

The legitimacy of Kosovo's independence is challenged not only from the point of view of the legality of the act of unilateral declaration of independence, but also from other positions. From the point of view of international law, the Kosovo case presents a conflict of two basic concepts — the principle of territorial integrity and the right of nations to self-determination.

Among the most important notions when discussing the Kosovo problem there are such concepts as ‘precedent’ and ‘uniqueness’. The dispute over whether the Kosovo case is unique (does not create a precedent for other problematic regions) or, on the contrary, the independence of Kosovo creates a kind of model for other territories seeking independence (or recognition of it *de jure* by the international community) occurs mainly between Russian diplomats and politicians and their Western counterparts who support independence of Kosovo.

The appearance on the European map of the new state was the result of complicated process that took place in the former Yugoslavia in the late 80-s — early 90-s of the XX century. The emergence of the Republic of Kosovo at first glance can be put on a par with the appearance of such states as Croatia, Slovenia, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia. However, it should be noted that Kosovo is a special case, not only in the Balkans but also in the post-socialist space in general.

With all the drama of previous episodes of the breakup of Yugoslavia, in the case of the appearance of internationally recognized states the word is about acquisition of independence by republics that formed the Socialist Federal Republic of Yugoslavia. Similarly, the newly independent states emerged from the disintegration of the Soviet Union and the socialist Czechoslovakia, where the formation of sovereign states occurred by seceding from the federation.

In the case of Kosovo, we see the emergence of the state on the territory that had autonomous status (Autonomous Province of Kosovo and Metohija within Serbia). Attempts by other autonomous communities, particularly in the former Soviet Union, to gain international recognition of their *de facto* independence (Abkhazia, South Ossetia and the Pridnestrovian Moldavian Republic and the Nagorno-Karabakh Republic, at some point — Chechnya) turned out to be unsuccessful for a long time [6]. Only in August 2008 Russia officially recognized independence of the Republic of Abkhazia and of the Republic of South Ossetia. And in this act we can trace not only immediate reaction to the events of the Russian-Georgian conflict, but also reaction to the recognition of Kosovo's sovereignty by Western countries.

The recognition by a number of countries of the independence of autonomous entity, that Kosovo formally was as a part of Serbia, is a unique case, but it is creating a precedent. At the same time some European states and the United States do not accept this idea and claim that Kosovo case can not serve as a model for other breakaway republics.

Statements about the uniqueness of the Kosovo case do not seem to be convincing in terms of its historical roots. The main parameters of inter-ethnic and inter-confessional situation in Kosovo were formed during centuries of domination of the Ottoman Empire in the Balkans, and therefore have a common origin and manifestations with situations in Bosnia and Herzegovina, Macedonia, southern Serbia, and other «hot spots» throughout the region, that throughout the centuries experienced the intervention of the Great Powers. As pointed out by one of the leading Russian experts of the Balkans K.V. Nikiforov, ‘the Balkans for centuries have been a place of collision of foreign interests. Map of the Balkans was rearranged many times, ignoring the will of the inhabitants of the pe-

ninsula. This is where in many ways Balkans overlapping, incompleteness of ethnic and Interstate delineation of different nations, permanent crises and wars have roots' [7].

It should be mentioned that some experts see the root cause of conflicts, that repeatedly exacerbated during the last century and still remain unresolved, in the fact that none of the States in the Balkans, which managed to strengthen politically and expand geographically, covers the whole territory that is home to the respective nation [8. P. 140]. Such a situation creates a breeding ground for the occasional claims of great-power solutions for Albanian, Serbian, Macedonian, Greek, Montenegrin and other national issues by Balkan leaders. At the same time it requires a balanced approach and accurate settlement of inter-ethnic problems. Some experts argue that this fact has been completely ignored by Western mediators in negotiations on Kosovo's status as a territory with a historically complex composition of the population formed in close connection with the processes taking place on the Balkan Peninsula [8. P. 142].

So, considering the process of crisis settlement on the Balkans, it can be said that all models of the settlement of ethnic conflicts in the Balkans have one key factor in common: they do not fit into the post-World War II international law norms very well. Agreements reached in the region not so much solve the existing problems as generate new ones. Such a situation gives skeptical expectations about the prospects for the normalization of the situation in «hot spots» of the Balkans, and suggests the possibility of a repetition of the region's most dangerous scenario of a century ago.

At today's world political map there is no other area where the international community has experienced so numerous, varied and sometimes unprecedented from the point of view of international law models of settlement of ethnic conflicts as in the Balkans. After the bloody disintegration of Yugoslavia in the early 1990-s in the Balkan peacekeeping were in various shapes and forms involved all the world's leading institutions — the UN and its Security Council, OSCE, Council of Europe, European Union, NATO, the International Criminal Tribunal for the former Yugoslavia and the International Court of Justice. The range of offered and, more importantly, taken actions was unprecedentedly wide — from the deployment of international verification missions (Kosovo) and the establishment of direct multilateral negotiations between the parties of a conflict (Bosnia and Herzegovina) to bombing of a sovereign state (Yugoslavia) by NATO forces. All of the models and approaches have one key fact in common: they do not fit into approved after World War II international law norms.

The foundation was laid when Western states recognized self-proclaimed independence of Croatia, Slovenia and Bosnia and Herzegovina. Among the major Western European states Germany was first to recognize Croatia and Slovenia on December 19, 1991 (immediately after Iceland). This recognition came into force at the EU level, together with similar acts of 12 member countries of the organization on January 15, 1992. Two days earlier — on January 13, 1992 — Croatia and Slovenia were recognized by Vatican. Such actions could be described as a direct violation of the UN Charter, as well as the Final Act of the Conference on Security and Cooperation in Europe, signed in Helsinki in 1975 and contained a provision stating that the borders can be changed only through peaceful means [9]. These actions created an international legal

framework for the subsequent escalation of hostilities in Croatia and its spread on the territory of Bosnia and Herzegovina.

The independence of Bosnia and Herzegovina was recognized by the EU countries on April 6, 1992, and the following day the same did the United States. If in Slovenia by that time the fighting has stopped, then in Croatia, and (especially) in Bosnia and Herzegovina ethnic conflicts only gained strength — because of the reluctance of a significant part of the local population, primarily Serbs to live by the laws of self-proclaimed independence. In all three cases, the international recognition took place without any prior legal consolidation of the principles of the internal national-state system and without ensuring the rights of national minorities. Thus, on the territory of the former Yugoslavia international organizations set a precedent of unresolved in terms of international law withdrawal of some regions from the federation [10. P. 228]. In fact, all appearing on the post-Yugoslavian space self-proclaimed states — with the exception of Kosovo — emerged against the background of power and law vacuum, when there was a new division of post-Soviet and post-Yugoslavian space. An expert in the field of Bosnian settlement P. Pickering noted that in the Balkans, as well as in some other strategic conflict areas of the world, international law actually was replaced by the actions of individual states [11. P. 5].

It can be said that nowadays on the Balkans is implemented scenario of ‘controlled chaos’. And an important role in the implementation of this scenario is assigned to the system of protectorates. Today, in contrast to the colonial era, they are established and implemented not by leading international organization — the United Nations, but by the Euro-Atlantic structures of NATO and the European Union, which also should be considered questionable from a legal point of view ‘achievement’ of the modern Balkan peacekeeping. At the post-Yugoslavian space at different times was created a system of international protectorates of ‘varying degrees of hardness’ with the only purpose to acquire ‘control’ [7. P. 289]. We can say that over the past 15 years on the Balkans were formed four types of protectorates: in Bosnia and Herzegovina, Macedonia, Serbia and Montenegro (during operation in the 2003—2006 of the ‘State Union of Serbia and Montenegro’), as well as in the Serbian province of Kosovo.

Consistent application of Bosnian-Dayton experience of settlement for ethnic conflicts in Kosovo, according to some experts, in fact means division of the region on Serbian and Albanian parts, like the Muslim-Croat Federation (now — the Federation of Bosnia and Herzegovina) and the Republika Srpska [7. P. 36]. However, this option is rejected a priori by the Albanian authorities of Kosovo and their geopolitical allies — the U.S. and the EU leadership. It is able to become popular only in the wake of the new escalation of Serb-Albanian relations in Kosovo, after which global diplomacy will again be forced to act with not proactive, but urgent methods.

In Dayton similar emergency measures helped in a short time to reach agreements that do not contradict the basic norms of international law, and even organically integrate the latest in a constitutional state and administrative framework of Bosnia and Herzegovina.

But in the case of Kosovo in recent years we can observe the erosion of the principles previously fixed at the level of the UN Security Council, and the principles themselves, in truth, leave loopholes for speculative interpretations.

First of all, it refers to the UN Security Council resolution number 1244 of June 10, 1999. This document was intended to form the foundation of the Kosovo peacekeeping. But the importance of the document was weakened because of different interpretations of it by the major world powers and organizations.

Central in this regard is the international legal definition of the status of Kosovo. The preamble of the resolution number 1244 of the UN Security Council reaffirmed 'the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act' as well as 'the call in previous resolutions for substantial autonomy and meaningful self-administration for Kosovo'. The resolution '[...] decides that a political solution to the Kosovo crisis shall be based on the general principles set out in annex 1 and as further elaborated in the principles and other required elements in annex 2'. The most important of these principles were declared 'A political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of the KLA' [12].

So, repeated several times in the text of the resolution principle of the 'sovereignty and territorial integrity of the Federal Republic of Yugoslavia' (and not Serbia, even though according to the Constitution of Serbia Kosovo was a part of the country) has become the cause which the Albanian separatists used after in 2003 the Federal Republic of Yugoslavia ceased to exist, and in 2006 its successor the 'State Union of Serbia and Montenegro', that was created with help of then-EU High Representative for the Common Foreign and Security Policy Javier Solana, and was actually a vague confederation, came to an end. The substitution of notions of the resolution 1244 allows to defy the Constitution of Serbia that defines Kosovo as 'an integral part of Serbian territory'. The formal pretext was that this particular article of the constitution was adopted unilaterally at the height of the 'political process' over Kosovo's status, and is therefore invalid. But the international community over the past years did not manage to articulate any other agreed international legal documents specifying to some if any extent the status of Kosovo.

This also applies to the decision of the International Court of Justice, adopted on July 22, 2010. Although Serbia and Russia had some expectations from this organization, its decisions could not be mandatory. In addition, the International Court of Justice made the object of its conclusions not actually the status of Kosovo, but the declaration of independence adopted by the Kosovo Assembly on 17 February 2008. The International Court of Justice gave a legal assessment of the actions of the representative body of the provisional authorities of Kosovo, but refused to interpret the subsequent recognition by the dozens of UN member states. The Court held that the adoption of the declaration of independence on 17 February 2008 did not violate fundamental international law, UN Security Council resolution 1244 of 1999 or the Constitutional Framework (adopted by the United Nations Mission Interim Administration Mission in Kosovo.

In the argumentation of the decision the International Court of Justice emphasized that the above declaration did not violate international law simply because international law contains no prohibition on declarations of independence. In particular, the UN Security Council resolution 1244, does not prohibit the authors of the declaration of independence to take such acts [13]. All future international legal conflicts over Kosovo the court simply refused to consider, though without acknowledgment by Western states the Declaration of Independence would have remained another unilateral declaration of separatists, that they made repeatedly since the early 1990.

Even if we accept the argument that the need for declaration of Kosovo's independence is the only way to cut the 'Gordian knot' of conflicts in the Balkans, we have to admit that the Kosovo problem has not disappeared. The unilateral declaration of a new state in the Balkans is described by some experts as akin to a delayed-action mine [6. P. 44]. Despite the fact that the independence of Kosovo was presented as the main condition for achieving stability in the Balkan region, it is clear that the attempt to solve the problem of relations between Serbs and Kosovan Albanians in such way creates new offenses and prepares the ground for new conflicts in which a variety of actors can be drawn even who are geographically remote from the Balkans. In light of these concerns it can be said that without the unilateral declaration of independence of Kosovo and its recognition, Russia probably would not make a risky and controversial foreign policy action — recognition of sovereignty of Abkhazia and South Ossetia.

All in all, we have to admit: the Kosovo case can still be considered as remaining unsolved. Moreover, it also appeared to deepen the antagonisms between the West and Russia. The ways of dealing with problems of the region do not seem to provide stability and security. It can be said that all the actions made to settle Kosovo case are not enough and it will further pose an important issue to deal with for international actors.

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## НЕЗАВИСИМОСТЬ КОСОВО КАК МЕЖДУНАРОДНАЯ ПРОБЛЕМА

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В настоящее время Балканы, вероятно, можно рассматривать как один из самых проблемных и нестабильных регионов, что вызывает беспокойство и является угрозой региональной безопасности. Регион представляет собой сферу интересов не только для Европейского Союза и России, но и для Соединенных Штатов. Эта сложность, вероятно, указывает на одну из главных причин продолжающихся и довольно неудачных попыток установления мира в регионе. Можно заявить, что одним из главных вопросов на Балканах, который привлек внимание ведущих международных игроков и вызвал сильные противоречия, стал вопрос о независимости Косово. В статье рассматривается, почему независимость Косово представляет собой довольно сложный казус и влечет за собой массу разногласий. Также в работе освещены проблема процесс распада Югославии и создания новых государств, особое внимание автор уделяет межэтническим отношениям и роли международных игроков в регионе.

**Ключевые слова:** Косово, политика, безопасность, Югославия, Балканы, международное право.

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