How much the international law can impact in resolving of Kosovo's issue?

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In international law, as opposed to internal law, there does not exist an initial, basic and essential norm (Hans Kelsen) or any kind of a first decision (Karl Schmitt), which we can say that represents the beginning of its birth. This means that, there is no norm or decision, which would end the development of this branch of law. Both the "the beginning" and "the end" of international law are in a state of continuous motion depending on the circumstances in time and space.

International law is not an external factor which impacts state behavior. As such, it follows the practice of states, not the opposite. The factors that have an impact on state behavior are connected with their interests and the configuration of power in international relations.. States follow their interests, and depending from their power they realize their interests in an anarchic environment having no centralized government. This means that states are rational actors, which act seeking to realize their own interests. What looks as a usual state behavior in international relations is nothing but a mispercepsion.. International law, every and each of its norms regardless of their source, reflects four categories, through which we could explain state behavior in international relations. These four categories are: coincidence of (the country respects international law, because its individual interests converge with those of other countries); coordination (the country respects international law, because it gains more if it takes actions in conformity with other countries 'actions); cooperation (the country respects international law because it benefits more if it undertakes actions which are not in its immediate interest, for the sake of long-term and mid-term benefits); and finally, compulsion (the country respects international law and takes actions which are contrary to its interests, as a result of the threat with the use of force).

The rhetoric over the applying and the practical role of the international law must be seen within the viewpoint of these four categories. This was seen even in the behavior of the states during the crisis and the tragedy in the former Yugoslavia since 1991, but also in other similar cases of solving the crisis related to the sovereignty and self-determination over the last decade, such as the Northern Ireland (The Good Friday Agreement), Israel and Palestine (Road Map), Western Sahara (The Baker Peace Plan), Sudan (The Machako Protocoll) and so forth.

The role and importance of international law and its norms have no reason to be different when applied for the solution of the issue of Kosovo. Just as in the above-mentioned cases, in Kosovo case too, the object of solution is the right to self-determination in all its forms , or the political contest over territorial sovereignty. Self-determination, in the current phase of the development of international law, is represented only as a principle , not as a predetermined norm. That is to say, in the case of Kosovo as well there is no an international norm which would impose a particular model of self-determination, be it internal or external. The fact that Serbs perceive the self-determination of Kosovo as an internal self-determination, which according to them derives from the UN SC Resolution 1244, is only one of the possible interpretations of the self-determination as a principle. The Serb interpretation claims that the defending of the principle of territorial integratiy is guaranteed under whatever conditions and circumstances. In international law, both self-determination and territorial integrity are presented as a principle not as an international norm applicable any time and in all cases. If it were so, there would be no breakup of Yugoslavia in 1991, while international community would have had to react in defence of sovereignty and territorial integrity of that country, as it did in Congo/Zaire at the beginning of 1960s when the UN suppressed by force the bid for independence of the province of Katanga, which took the life of the then UN Secretary-General Dag Hammarskjöld.

Applying in practice these two principles, which exclude each other, could result in confirmation of the existing abstract and general international norm, regardless of its source, but it also can lead to the modification or the creation of a new norm on self-determination and the territorial integrity. The final result shall depend on depends on which of the above-mentioned categories dominate the current policy of the Contact Group member states, which are involved in solving of the issue of Kosovo. This international body, informal from the standpoint of international law, was set up in 1994 to evade the role of the UN SC, which then proved incapable in stopping the genocide in

Bosnia and Herzegovina. Had international law been respected, the Contact Group would have never been formed, but more people would have died in Bosnia in Herzegovina. The same would have happened had NATO not intervened in Kosovo in 1999 withou the UN SC authorization. .

The transformation of the principle of self-determination into a mandatory international legal norm of self-determination binding on all parties and other relevant international actors requires the intervention of an arbiter. This was the practice of states in the past. This arbiter is called international community, and can take different forms of representation of the interests of the member states of this community. In 1815, it was called the Congress of Vienna, in 1918 the Conference of Versailles , during the decolonization – the UN and the OAU (The Organization of African Unity, now the Union of African Unity) and so forth.. In the case of former Yugoslavia (1991-1995), this arbiter was called the International Conference for former Yugoslavia, initially known as the EU Conference for Yugoslavia (1991-1992). This conference applied the principles of international law on self-determination and the succession of states. These principles have been transformed into a mandatory norms of international law only then when this body decided who the the subjects entitled to self-determination were, both internal and external, and when it received a general support by all international actors and the greatest powers of the time. The conference reflected the four above-mentioned categories and demonstrated that the approach of other states towards former Yugoslavia cannot not lead to the unconditional protection of its territorial integrity and that it was a need for finding new modalities and forms of Yougoslav self-determination . In this context, two form and modalities of self-determination were created, one internal and the other external.

The first one implied the right for a coexistence of all peoples of the former Yugoslav republics, without having a right to change the administrative republican borders, which were declared international ones since the very moment of the declaration of independence of the former Yugoslav republics. Serb efforts for the creation of two new entities through the ethnic cleansing were declared null and void from the standpoint of international law, meaning that such actions were not to be rewarded much in the same way as it had been done in Southern Rhodesia, during the Smith regime. The external self-determination implied the right of the former Yugoslav republics to become new sovereign and independent states within their administrative republican borders, including the right to an eventual association with other sovereign and independent states or the establishment of new sovereign and independent states from two or more former Yugoslav republics.

In fact, these two forms of self-determination were just a new implementation of the colonial self-determination in the contest of the dissolution of an existing sovereign and independent state – former Yugoslavia. The new implementation of these two forms of self-determination was strongly confirmed in Dayton (1995), because once again it was proven that the international law follows the practice of states , not the opposite. The 1995 Dayton model, for pragmatic reasons, provisionally endorsed all de facto actors , those pre-state entities resulting from violence, genocide and other actions against international law, (Republika Srpska in Bosnia and Republika Srpska Krajina in Croatia). The precedent of taking into consideration of these two pre-state entities and , later, other semi-legal movements while solving the problems of the former Yugoslav self-determination and succession was repeated later on in the Rambouillet talks over Kosovo (1999). NATO, a defensive alliance of the Cold War, took over the role of a guardian of the implementation of the new rules of international law coupled with the new protection of human and minority rights, the rule of law and democracy, while at the same time it protected the territorial integrity of the former Yugoslav republicsl. The perceptions of the parties over NATO intervention in former Yugoslavia are different, and this action has caused contradictory arguments among the parties. In the eayes of the Serbs 'eyes, NATO should defend territorial integrity of the FRY/SMU, as it did defend the territorial integrity and sovereignty of Bosnia and Herzegovina. Albanians and other non-Serbs see this as a sign of the new implementation of the principle pf territorial integrity and sovereignty due to the fact that this principle is not unconditionally protected and guaranteed by the UN Charter (1945), Colonial Declaration (1960), the Declaration on Friendly Relations (1970), 1966 Pacts and the Final Act of Helsinki (1975). These documents , so goes the Albanian and other non-Serbs argument, condition this protection with the respect of individual and collective rights of the population and the citizens of the existing sovereign states. This respect was lacking during the time of the Serb rule in Kosovo so that we can say that Albanians see this as a strong argument justifying their demand for full independence and sovereignty.

In addition to the above, international law is on the side of Kosovo and its majority population because in no case (except during the 1912-1913 Balkans Wars), Kosovo was part of Serbia and Montenegro: Kosovo Albanians were in no other case citizens of Serbia and Montenegro. These two countries have never had an internationally recognized subjectivity over Kosovo, except during that

period. The last in the line of arguments based on international law, which favors the realization of external self-determination of Kosovo, that is, its full independence and sovereignty, is that Kosovo's right to self-determination forms part of the former Yugoslav self-determination, and it cannot have other treatment. Every other approach is not based on the current stage of international law.

It remains to be seen which combination of the states' interests and which configuration of the forces among the Contact Group member states is going to be predominant during the interpretation of the UN SC Resolution 1244. It is difficult to believe that there will be any matching of interests of CG member states with the Serbian and Russian version of interpreting the UN SC Resolution 1244. In the case of Kosovo, the interpretation of the UN SC Resolution 1244 in international law must be innovative and set up a new precedent in every aspect, if the the aim is to have a better coordination and cooperation among CG member states. The opposite means that NATO would have to be ready to play a role of the Serbian military force, namely to protect Serb national interests in Kosovo and become a hostage to the dogmatic and arbitrary interpretation of the principle of territorial integrity , an integrity created by force in 1992 against the will of Kosovo, at the time when the FRY/SMU was set up by, the very state the UN 1244 Resolution referes to.

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