

## **KOSOVO'S RIGHT OF SELF- DETERMINATION: A CRITICAL ANALYSIS**

**RESHMA SHIREEN JAFFREY<sup>1</sup> & ROSY TRIPATHY<sup>2</sup>**

### **ABSTRACT**

Kosovo independence has led to many debate and discussions regarding its legality and more specifically the right of self-determination. This paper focuses on the most important issue of whether the law of self determination can be applied in the case of Kosovo. This issue was not so clearly discussed by the International Court of Justice which if would have been discussed would have made a very significant change in the field of International law.

### **INTRODUCTION**

In the year 1999, NATO intervention in Kosovo gave rise to humanitarian concern from ethnic fighting between Serbs and Kosovo- Albanians.<sup>3</sup> To overcome this situation United Nation set up an interim administration under Security Council Resolution 1244. Security Council resolution 1244 was passed with an aim to set up a peaceful political situation and determine future status of Kosovo.<sup>4</sup> Preceding this situation attempts were made by UN secretary general's envoy, Martti

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<sup>1</sup> Advocate, Calcutta High Court can be reached at reshma\_jaf@yahoo.com

<sup>2</sup> Advocate, Orissa High Court can be reached at tripathy.rosy@gmail.com

<sup>3</sup> Ahmad Rusniah , L.Efevwerhan , “ The ICJ Opinion On Kosovo: Symphony or Cacophony” Indian Journal of International Law, Volume 50(2010), pp.545-559 at pg.545

<sup>4</sup> According to International Law of the Unilateral Declaration of Independence in respect of Kosovo, ICJ Reports 2010, July 22, Para 75.

Ahtisaari and Troika (USA, Russia and the EU) to reach to an amicable solution but their comprehensive proposal failed and was rejected by Security Council.<sup>5</sup>

Therefore on February 17<sup>th</sup>, 2008, 109 representatives of the Kosovo Assembly declared the independence of Kosovo from Serbia.<sup>6</sup> This declaration was recognized by 69 UN members. Serbia and Russia and other states condemned the declaration as violation of international norms.<sup>7</sup>

On the question raised by the states that condemned the declaration as violation of international law, Serbia posed the question before the UN General Assembly about the legality of the declaration and requested the General Assembly to refer the matter to International Court of Justice for its advisory opinion. The General Assembly adopted the resolution <sup>8</sup> requesting ICJ to give an opinion on the following question:

“Is unilateral declaration of independence by the provisional institution of self government of Kosovo in accordance with the International law?”

The court confined its decision only to the question posed to it and it did not venture into the most important issue which was related to the case of Kosovo, which is the issue of self-determination. On July 22<sup>nd</sup>, 2010, the court delivered its landmark judgment and it emphasized that it was called upon to decide whether the unilateral declaration of independence by Kosovo was in accordance with International law and not whether the declaration has established Kosovo’s statehood or the legal consequences of the declaration.<sup>9</sup>

The court in the course of its judgment did observe that self –determination was originally perceived as a right of independence to colonial people but that there have been instances where the right has been asserted by the people outside the colonial context in the form of secession, the court concluded that there is no rule of general International law prohibiting secession.<sup>10</sup>

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<sup>5</sup> supra fn.1, at pg.545

<sup>6</sup> Supra fn.2, Para 1

<sup>7</sup> Ibid , Para 14

<sup>8</sup> General Assembly Resolution A/RES/63/3 of Oct.8, 2008.

<sup>9</sup> ICJ Reports, para.51 also see supra fn.1, pg.546

<sup>10</sup> ICJ Judgment and supra, FN .1, pg.558.

## **LAW OF SELF- DETERMINATION : CONCEPT AND ITS EVOLUTION**

### **Law of Secession**

Secession occurs when part of an existing state separates from that state to become a new state or to join with another. In this way, secession is primarily a matter of fact rather than law. International legal issues arise, in relation to the seceding entity's legal personality as well as its rights and obligations under international law and the rights and obligations of third states as a consequence of that secession.<sup>11</sup> The legality of secession, and consequently of the seceding state, turns on the application of various legal principles rather than on a coherent "law of secession."<sup>12</sup>

### **Self -Determination**

Self-determination is an International legal principle that, if properly invoked, arms a population with the authority to choose its political fate.<sup>13</sup> Following World War I, the Allies introduced the concept of self-determination as a way to resolve the political status of various contested territories.<sup>14</sup> The most widely accepted interpretations of the right of self-determination under international law in brief, is the "principle of self-determination", formerly associated with the redrawing of Europe's borders following World War I, metamorphosed into a "right," the accepted meaning of "self-determination" also was transformed. It became a right of colonized territories to determine their political status. The "people" who enjoyed a right to secede were defined in territorial terms, and the territories whose populations could exercise the right of self-determination were colonies. Beyond this generally accepted interpretation, certain developments originating in the inter war period and continuing into the period of decolonization suggested that groups that were systematically repressed on a continuing basis: at least groups

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<sup>11</sup> William K.Watson, "When In The Course Of Human Events: Kosovo's Independence And The Law Of Secession", Tulane Journal of International and Comparative Law , 2008, pp.1-20, at p. 4.

<sup>12</sup> Ibid

<sup>13</sup> Fierstein Daniel, "Kosovo's Declaration Of Independence: An Incident Analysis Of Legality, Policy And Future Implications "Boston University International Law Journal, 2008, pp1-21, pg.4.

<sup>14</sup> Antonio Cassese, Self-determination of Peoples: A Legal Reappraisal, (1995), pg.23-27.

that were excluded from full political participation based upon their race and creed: might be entitled to secede.<sup>15</sup>

The right to self determination has long been celebrated for bringing independence and self-government to oppressed groups, yet it remains a highly controversial norm of international law.<sup>16</sup>

The principle of self-determination as stipulated in Articles 1 (2) and Article 55 of the UN Charter is part of modern international law and has evolved into a legal right<sup>17</sup>. In some guises the concept of self determination exists in a clearly defined form; in others it is ambiguous and uncertain. It has throughout the history meant different things to different people and continues to do so today. It was invoked by the founding fathers of the United States, the French revolutionaries , Lenin and Wilson during World War I, Gandhi and Nkrumah in the period of decolonization. The UN Charter placed self-determination in Article 1, linking it to the purpose of the organization<sup>18</sup>. But, while self-determination was transforming into something more than just rhetoric, it was still undefined. UN formulation of Principle from 1960 colonial declaration to the 1970 declaration on principles of international law and the 1966 international covenants on human rights stress that it is the right of “all peoples”.

The concept of self-determination definitively moved from an apparitional ideal to a recognized right when it was included in Article 1 of both the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), the cornerstone treaties of international human rights law. Article 1 of these treaties states: “All peoples have the right of self-determination. By virtue of that right they can freely

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<sup>15</sup> Orentlicher Diane F , “The Imprint Of Kosovo On International Law”, *ILSA Journal of International and Comparative Law* Spring, 2000, pp.1-7, at pg.2

<sup>16</sup> Shelton Dinah, “ Self-Determination In Regional Human Rights Law: From Kosovo to Cameroon”, *American journal of international law*, pp.60—81,at pg.60

<sup>17</sup> Brownie, *Principles of Public International Law*, 5th edition, 1998, at pg. 601.

<sup>18</sup> Article 1, paragraph 2 of the Charter states: “The Purposes of the United Nations are: to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples and to take other appropriate measures to strengthen universal peace.” United Nations Charter, Art 1. The UN reiterated its commitment to self-determination again in Article 55.

determine their political status and freely pursue their economic, social and cultural development.”<sup>19</sup>

While these treaties legalized the concept of self-determination, there was still the question of what the scope of this right would be—who can claim a right to self-determination and what does that right entail?

There were many views regarding the exact meaning and purpose of self-determination, general, and the consensus view of the law of self-determination is summarized as follows:

- Self-determination for a colonized people allows for the ability to separate the colony from the colonial state so that the colony may gain independence and become a sovereign state;
- For a state as a whole, self-determination means the right to be free from external interference in its pursuit of its political, economic, and social goals;
- For communities that are not colonies and are within existing states, self-determination means internal self-determination, the pursuit of minority rights within the existing state.
- Some argue that in non-colonial cases, self-determination may also allow for secession under ‘extreme cases’ and ‘carefully defined circumstances’.<sup>20</sup>

Whether self-determination gives a remedy of secession outside the colonial context is ‘the subject of much debate’.<sup>21</sup>

Article 20 of UN convention on civil and political rights stipulates as follows:

1. All people shall have the right to existence. They shall have the questionable and inalienable right to self determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.

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<sup>19</sup> International Covenant on Civil and Political Rights (1966), 999 UN Treaty Ser 171 (1967); International Covenant on Economic, Social and Cultural Rights (1966), 993 UN Treaty Ser 3 (1967).

<sup>20</sup> Reference re: Secession of Quebec opinion , 2 S.C.R 217 at Para 123 (1998)

<sup>21</sup> Shaw .N. Malcolm , International Law, at p. 271, 5<sup>th</sup> edition, 2003

3. All people shall have the right to the assistance of the states parties to the present charter in their liberation struggle against foreign domination, be it political, economic or cultural.

By analyzing Article 20, two kinds of groups of people are identified who are living under colonialism and oppression, and those that are not. The first group is entitled to independence and foreign assistance in the struggle for liberation (external self-determination). Other people are people are entitled to maintain their existence and exercise their self determination, but within existing states.<sup>22</sup>

Principle of internal self-determination can be used to expand democracy within a state and enhance the free participation of a state's entire population to the choice of that state's political and economic regime. If extended to include external self-determination, the principle can also be used to facilitate the emergence of new states by way of secession, if that is the freely expressed wish of the interested population. Since international law is essentially the product of the behavior of principle of self-determination of people, this principle of international law has been selective and limited in many aspects<sup>23</sup>.

As far as external self determination is concerned, it is mainly related to age of decolonization. This practice was strongly influenced by UN General Assembly resolutions adopted at a time when international relations were strongly characterized by the cold war between USA and its allies, on the one hand and the USSR and its satellites on the other. Therefore the majority of legal opinion favors the view that in customary international law external self- determination does not entail a 'right of secession' for all people, but only for a limited categories of people and most of the relevant practice relates to colonial people, it is usually recognized that external self-determination also benefits other people subject to 'alien subjugation, domination and exploitation'.<sup>24</sup> But the problem lies in determining precisely which people are included in this latter category.

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<sup>22</sup> Supra fn.14, at p.64

<sup>23</sup> Gioia Andrea, "Kosovo's statehood and the role of recognition", Italian year book of international law, (2008), pp. 1-35, at p. 28

<sup>24</sup> Ibid

In 1998 the Supreme Court of Canada issued an advisory opinion on the legal implications of hypothetical secession by Quebec.<sup>25</sup> The Court's opinion addressed, inter alia, the right of self-determination under international law. According to the Court, the importance of territorial integrity means that, in general, the right to secede comes from domestic rather than international law. However, the Court held that the principle of self-determination may give rise under international law to a right of secession. The Court acknowledged that the right to self-determination is held by peoples and that it is possible for a people to make up only a portion of a state's population. This right, the Court noted, is "normally fulfilled through internal self-determination--a people's pursuit of its political, economic, social and cultural development within the framework of an existing state." "A right to external self-determination arises in only" three possible situations: (1) colonialism; (2) when a people is subjected to alien subjugation, domination, or exploitation; and possibly (3) when a defined people is denied meaningful access to government.<sup>26</sup> The Court qualifies the third situation by noting that it may not be fully established within international law as a justification, and that if it is, secession remains a last-resort solution.<sup>27</sup>

### **Uti Possidetis**

As the principle of self-determination has matured in international law, so has its territorial counterpart, *uti possidetis*. According to the principle of *uti possidetis*, when a territory gains independence, new international boundaries should only be drawn where there previously existed internal administrative boundaries at the time of independence.<sup>28</sup>

The use of the principle served two primary purposes: (1) to establish agreeable international boundaries between self-governing entities within larger colonial territories and (2) to prevent the recognition of *terra nullius* open to European reconquest<sup>29</sup>. By adopting these lines, the new independent states were able to maintain the economic status quo while preventing questions over *de facto* control.<sup>30</sup>

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<sup>25</sup> Reference re Secession of Quebec, [1998] 2 S.C.R. 217 (Can.), also see, *supra* fn. 9.

<sup>26</sup> *ibid* Para, 126- 138,

<sup>27</sup> *Ibid* Para 134-135,

<sup>28</sup> *Supra* fn 9, at p.5

<sup>29</sup> *Ibid*

<sup>30</sup> *Ibid*

The most recent opportunities for the application of *uti possidetis* occurred with the end of the Soviet Union and its influence in Europe. The resulting dissolutions of Czechoslovakia, the Soviet Union, and Yugoslavia all occurred along preexisting internal borders. The Czech and Slovak parts of Czechoslovakia were historically very well-defined, the line chosen being the original border between Moravia and Austria-Hungary.<sup>31</sup>

### **APPLICATION OF THE RIGHT OF SELF-DETERMINATION IN THE CASE OF KOSOVO**

In the case of Kosovo, the issue of self-determination has many arguments for justifying whether they apply in this particular case or not. Various jurists have given the answers both in positive as well as in negative.

It has been argued that the basic question of self-determination of Kosovo comes into the picture only when the recognizing states made a reference to this particular issue but unfortunately no reference was made by most of the recognizing states.<sup>32</sup> The principle of external self-determination cannot be applied in the case of Kosovo because the people of Kosovo were neither a colonial people nor a people subject to foreign military occupation, but rather a national minority within a sovereign state<sup>33</sup>. On the other hand this external self determination can be expanded in order to allow for remedial secession, i.e. unilateral secession but only to redress the denial of the people, minority or of there is violation of fundamental right by the incumbent government (denial of a group's right to take part in the state's decision-making process or to enjoy autonomy through some form of self-government). From political point of view right to remedial secession could have been justified in case of Kosovo during the events of 1990 when there was rule of Milosevic's regime which led to large scale human rights violation, but after the downfall of Milosevic's regime and establishment of international administration which led to certain political changes made it impossible to justify remedial secession.<sup>34</sup>

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<sup>31</sup> Ibid

<sup>32</sup> Supra fn 21, at p.27

<sup>33</sup> Ibid, 29

<sup>34</sup> Ibid.30



Endorsement of self-determination for an ethnic community and delimited geographic region within Serbia, which was not itself a sovereign state but a federal component of the former Federal Republic of Yugoslavia, has some destabilizing potentialities. If in the near future, Kosovo attains statehood in full sense, which is a virtual certainty, it will be an example of self – determination of the third degree, though not officially described as such. The first degree is at the level of a sovereign state, as when a society manages to achieve political independence and end colonial rule, the second degree is a domestically sovereign unit that constitutes federal states, such as that of Soviet Union and Yugoslavia. The third degree is an ethnic/geographic fragment of a federal sub state unit such as claimant movement in Chechnya, south Ossetia and Abkhazia.<sup>35</sup> Kosovo’s declaration of sovereignty amounts to a greatly enlarged view of the right of self-determination which is not officially described in the realm of international law and justification can only be gathered by existing circumstances and political scenario.

### **Self-Determination and Territorial Integrity**

Friendly Relations Declaration that is considered to be a repository of customary international law principle, reaffirms the right of people to self-determination, by giving a warning that “ nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of people as described and thus possessed a government representing the whole people belonging to the territory without distinction as to race, creed or color.”<sup>36</sup>

The above quotation singles out, as if for special protection, the territorial integrity of those states that conduct ‘themselves in compliance with the principle of equal rights and self-determination of people as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color’.<sup>37</sup>

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<sup>35</sup> Supra fn 14, pg. 58.

<sup>36</sup> GA Res.2625 (XXV)

<sup>37</sup> Mullerson Rein, “ Precedents In The Mountains: On The Parallels And Uniqueness Of The Cases Of Kosovo, South Ossetia And Abkhazia “Chinese Law Journal Of International Law, Volume 8, 2009, PP.1-25, At, P.19

When minority is oppressed, it is not only ethnically or religiously distinct from the rest of the population; it also becomes socially, economically and politically different from the majority; and when minority is discriminated against, or its identity is threatened, it is not participating together with the rest of the population in political life of the country. This may mean that such a minority can realize its right to self-determination i.e. right to be included in the political process, social and economic development of the country, not together with and as a part of the whole population of a given state, but separately.<sup>38</sup> Kosovo, raises a fundamental question, that is it possible to protect an ethnic minority against central authority without, at the same time, supporting and encouraging, at least de facto if not de jure, their striving for independence?<sup>39</sup> Kosovo's case is unique in this way at the same time there are no definite answers to these questions.

### **Recognition**

According to the international law declaration of any states depends upon its recognition by other states. This is based on the principle that international law forbids the recognition of illegal states. Applying this rule, the question arises in this context is that does Kosovo meet the criteria necessary to be a state?

There are two theories concerning the relationship between statehood and recognition. First is the constitutive theory in which statehood is granted by the act of recognition by other states. There are no qualifications or legal criteria under the constitutive theory for recognition, and unrecognized states would not enjoy the international legal personality of statehood.<sup>40</sup> Another theory is called declaratory theory which contends that statehood and international legal personality arises only when that state which has declared independence has met certain necessary criteria. These criteria are authoritatively defined in the defined in the Montevideo Convention on Rights and Duties of States as: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states."<sup>41</sup> If an entity has not met the criteria for statehood, recognition of that entity as an independent state would violate an obligation to another state to respect its territorial integrity.

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<sup>38</sup> *ibid*

<sup>39</sup> *ibid*

<sup>40</sup> *Supra* Fn 10, at p.10

<sup>41</sup> *Ibid* at p.11, also see Montevideo Convention on Rights and Duties of States, art. 1, Dec. 26, 1933

Kosovo clearly meets three of the four Montevideo criteria and there is a doubt that whether Kosovo exercises effective government over its territory. Kosovo remains dependent on international administrative and military aid, is under the authority of UNMIK. But the new constitution has been adopted and has come into force in June 2008, four months after the declaration which was in accordance with the Ahtisaari Proposal. By doing so, Kosovo has satisfied the additional criteria, beyond basic statehood requirements, imposed by the international community.

### **Right of Kosovo**

In consideration of present and historical circumstances, Kosovo had a valid right under international law to declare independence on February 17, 2008, and to secede from the Republic of Serbia. The people of Kosovo were internally denied their right to self-determination in a manner which invoked an external right. Secession was a valid exercise of that right, particularly in the context of a continued "dissolution" of Yugoslavia. Also, the nature of the border of Kosovo within Serbia was such that Kosovo's secession did not violate the principle of *uti possidetis*. It is important to recognize that Kosovo's right depended on the reality of circumstances at the time of its declaration rather than at a prior time, such as the beginning of the dissolution of the SFRY in 1991 or the NATO intervention and beginning of U.N. administration in 1999. While the international presence in Kosovo for almost a decade surely confuses any understanding of Kosovo's rights vis-à-vis Serbia, it would be inappropriate to ignore the effects of that reality on the self-determination of the Kosovar people.<sup>42</sup>

One cannot say that international law makes secession illegal.<sup>43</sup> Thomas Franck, one of the five international law experts asked by the Canadian government to consider certain issues regarding a hypothesized secession of Quebec has written that:

"It cannot seriously be argued today that international law prohibits secession. It cannot seriously be denied that international law permits secession. There is a privilege of secession recognized in international law and the law imposes no duty on any people not to secede."<sup>44</sup>

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<sup>42</sup> Ibid

<sup>43</sup> Borgen J. Christopher, "Introductory Note To Kosovo's Declaration Of Independence", *International Legal Materials*, 2008, pp. 461-466, at p.462

<sup>44</sup> Ibid

In other words, international law is largely silent regarding secession.<sup>45</sup>

The problem of assessing whether Kosovo has a right to self determination or not is to find out whether Kosovar Albanians are a 'people'. But discussing this aspect does not lead us to a specific answer. Determining that the ethnic Albanians of Kosovo are a "people" is not a difficult task. The Supreme Court of Canada in *Reference re Secession of Quebec*, having determined that Quebec had no right to secede regardless, chose not to answer definitively whether Quebecers were a "people," but seemed to assume as much in its analysis.<sup>46</sup> The Badinter Commission was equally unclear. When asked whether the Serbian population of Croatia and Bosnia had a right to self-determination, the Commission responded by reiterating the principle of *uti possidetis juris* and the duty to protect the rights of minorities.<sup>47</sup> The Commission further held that "ethnic, religious or language communities have the right to recognition of their identity under international law." A direct answer to the question would have properly required a preliminary determination that the relative groups were "peoples," but the opinion did not answer the question asked. Nevertheless, by insisting on the application of *uti possidetis*, the opinion effectively assumes they are a "people" in order to have a right of self-determination that could be tempered by concern for territorial stability.<sup>48</sup>

Another helpful approach is to contrast a "people" with a "minority"; but question here again arises is 'are minorities 'people' in terms of the right to self-determination? In the UN Charter era, the distinction between peoples and minorities is reflected in the separate elaborations of the right of self-determination and minority rights, the former being expressed in the common Article 1 of the ICCPR and ICSECR<sup>49</sup> and the latter in Article 27 of the ICCPR.<sup>50</sup> In addition to the

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<sup>45</sup> Ibid

<sup>46</sup> *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, Para. 125 (Can.).

<sup>47</sup> *Supra* fn 9, at p.7

<sup>48</sup> Ibid

<sup>49</sup> See International Covenant on Civil and Political Rights Art. 1; International Covenant on Economic, Social and Cultural Rights Article. 1

1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. (2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. (3) The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

ambiguity surrounding the definition of people, there are also questions of how minorities are to be distinguished from peoples and when members of a minority group can constitute a people and thereby become beneficiaries of the right of self-determination.<sup>51</sup>

The most justifiable answer to this issue will be that the term people do include minorities as long as they are part of a sovereign territory and they do have a valid right to self determination if their rights are not being recognized properly by the existing government. Serbian Foreign Minister Vuk Jeremic , In his address to the Permanent Council of the Organization for Security and Co-operation in Europe on February 19, 2008 , he stated that that an independent Kosovo would establish a precedent that "transforms the right to self-determination into a right to independence."<sup>52</sup> This statement might imply that, even in view of Serbia, Kosovo Albanians qualify as a people for the purpose of the right of self-determination.

There are two tests to find out whether Kosovo had a right of self-determination or not. First is to find that Kosovars are a people and second is to assess whether they have recently been, are currently, or have credible fear for the recurrence of serious human rights violations if they stay integrated to Serbia.<sup>53</sup> Whether Kosovar are people or not has already been dealt and it is cannot be denied that they are not people. Resolution 1244 noted that there was a 'grave humanitarian situation' and a 'threat to international peace and security. Reasons for NATO's intervention in the year 1999 were mass human rights abuses. <sup>54</sup> It can be also argued that international presence in Kosovo is evident enough that the situation in Kosovo was and is highly volatile and cannot be solved by domestic political structure. These two tests are highly dissolved by arguing the political facts persistent at that time. Serbia and Kosovo failed resolve their differences and the troika have declared the political negotiations a failure. Does this mean that just because the political situation and others factual situation could not directly declare that Kosovo had a right of self determination, the right persistent in international law has vanished this right in the particular case of Kosovo?

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<sup>50</sup> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

<sup>51</sup> Vidmar Jure, "International Legal Responses To Kosovo's Declaration Of Independence", Vanderbilt Journal of Transnational Law , 2009, pp.1-56, at p.12

<sup>52</sup> Vuk Jeremic, Minister of Foreign Affairs of the Republic of Serb., Address to the Permanent Council of the Organization for Security and Co-operation in Europe 3 (Feb. 19, 2008), *ibid*, fn 47

<sup>53</sup> *Supra* fn 46, at p 463

<sup>54</sup> *Ibid*

### **CONCLUSION**

The right to self-determination gives peoples a free choice that allows them to determine their own destiny.<sup>55</sup> This right can be exercised in a variety of ways, and traditionally a distinction has been made between external and internal self-determination. Self-determination is a universal human right which is applicable outside the colonial context, and should be defined as broadly as possible, including both internal and external aspects. For reasons of international peace and security, the right of self-determination needs to be balanced with other principles of international law, in particular the sovereignty and territorial integrity of States. That is why, outside the colonial context, the emphasis must be on the internal aspect of self-determination. Kosovo fulfils the valid right of internal self determination. But this is not a formal recognized right in the field of international law. As the Canadian Supreme Court recognized, self-determination may be granted internally; it is for those seeking secession to show that no just or viable alternative remains. Ultimately, a law of secession that strikes the proper balance between self-determination and territorial integrity will promote the greatest stability by providing peaceful means to address ethnic disputes and bringing de facto independent pseudo-states into the light. The loss of its cultural heartland is a harsh consequence for Serbia's transgressions and, while it is little comfort to Serbia, other states may have learned a lesson along with them about the importance of human rights in the midst of ethnic tension.

Kosovar right to secede had numerous hurdles to pass. Perhaps the tallest one is the belief by many international lawyers that, outside of decolonization, there is no right to secession. Secession may exist as a fact but it cannot be claimed as a right or remedy.<sup>56</sup>

Thus what could be the reasonable solution in case of Kosovo? The most justifiable solution would be that, since de jure sovereignty will rest in Serbia and the Serbian belonging to the de facto (interim administration) sovereignty of Kosovo will be transferred to Serbia which will lead to ethnic cleansing but it may be the only realistic option to guarantee stability in the region<sup>57</sup>

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<sup>55</sup>Christine Griffioen , “The Relevance of the Right to Self-Determination in the Kosovo Matter: In Partial Response to the Agora Papers Cedric Ryngaer”, Chinese Journal of International law, 2009.

<sup>56</sup> Supra fn , at p.463

<sup>57</sup> Supra fn 52, at p. 12