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## **The Burden of Recognition in the Unilateral Declaration of Independence by Kosovo**

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**ABSTRACT:** *Fourteen years after its Unilateral Declaration of Independence (UDI), Kosovo is not still an international legal personality. The major challenge that Kosovo has is neither recognition nor non-recognition but the withdrawal of recognition (WR) by countries that hitherto recognised it after the UDI. Evidently, the recognition of Kosovo has not only stagnated but it is retarding because of WR by some states. On 13 May 2022, Serbian Foreign Minister declared that there is WR by four additional countries bringing the total number of WR to twenty-two. The specific objective of the study is to evaluate the circumstances that precipitated the UDI of Kosovo and the reasons why its recognition is retarding. Accordingly, the study is guided by four research questions. The constitutive theory of statehood is the theoretical framework of the study. The study adopted the quality research methodology. The quagmire generated by the UDI of Kosovo compelled the United Nations General Assembly (UNGA) to seek the advisory opinion of the International Court of Justice (ICJ). There are a couple of reasons why the recognition of Kosovo is stagnating. The most important reason is to forestall a dangerous precedent for other secessionist movements. Some states still hold tenaciously to the illegality of Kosovo's UDI despite the ICJ's ruling. On 30 July 2022, the Prime Minister of Spain declared that the UDI of Kosovo is a violation of international law. The study recommends that the United Nation should clearly spell out the conditions for secession and recognition of States.*

**KEY WORDS:** Kosovo, recognition, United Nations, States, UDI, security council

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### **INTRODUCTION**

Kosovo is not still an international legal personality, fourteen years after its Unilateral Declaration of Independence (UDI) was recognised by a lot of countries. It is not a member of the United Nations (UN), European Union, Interpol, etc. The major challenge that Kosovo has is neither recognition nor non-recognition but the withdrawal of recognition by countries that hitherto recognised it as a sovereign-State after the UDI. Evidently, the recognition of Kosovo has not only stagnated but it is retarding because of the withdrawal of recognition by some states. Very recently, precisely 13 May 2022, Serbian Foreign Minister Nikola Selakovic declared that additional four countries have withdrawn their recognition of Kosovo bringing the total number of countries that have withdrawn their recognition of Kosovo to 22.

The specific objective of the study is to evaluate the circumstances that precipitated the UDI of Kosovo and the reasons why its recognition is retarding in the light of international legal personality. Accordingly, the study is guided by the following **research questions**. Why did the Provisional Government of Kosovo declare a UDI from Serbia? What role did the United Nations Security Council (UNSC) Resolution 1244 play in actualizing Kosovo's UDI? What were the expectations of the UNGA when the UDI of Kosovo was dragged to the International Court of Justice? What are the recognition challenges of Kosovo?

The constitutive theory of statehood is the **theoretical framework** of the study. Major proponents of this theory are Hersch Lauterpacht, Lassa Francis Oppenheim, Dionisio Anzilotti, etc. The constitutive theory holds the view that recognition by existing sovereign States is required for a new State to be regarded as a sovereign State. The status of an international person subject to international law can only be conferred on a political entity when it has been recognised as such by existing countries. There is the necessity for the positive action of recognition by existing sovereign States on an entity that has declared as such to attain the actual status of international legal personality subject to international law (Lawteacher, 2022).

A country can be in existence without being recognised. As a matter of fact from the point of view of declarative theory, which is the second major theory of recognition; a political entity becomes a sovereign State by virtue of its defined territory, government, population and capacity to enter into relations with other States. However, being an international legal personality under the protection of international law is dependent on recognition (Hasa, 2021). "So, even if an entity possesses all the characteristics of a state, it does not get the status of an international person unless recognised by the existing States" (Pankhuri, 2019, p.7).

The constitutive theory does not despise popular legitimacy and State capacity but is of the opinion that these domestic factors have little weight in international relations when recognition is absent. This is because recognition is the major determinant of the practical exercise of statehood within the international community. Unrecognised States don't have diplomatic relations, full treaty-making powers, and cannot access international courts to vindicate their rights (Coggins, 2006). International Law takes notice of a country that is not recognised but does not declare that such a State is not in existence. Invariably, the international personality status of a State is the exclusive prerogative of recognition (Oppenheim & Roxburgh, 2005).

The constitutive theory evolved in the 19<sup>th</sup> century when recognition by other States was the premise for sovereign statehood and the bounties of international law (Hillier, 1998). The Final Act of the 1815 Congress of Vienna recognised only 39 sovereign States in the diplomatic

relations of Europe. The Congress firmly engrained the norm of recognition as prerequisite for the emergence of new States. It was such that a political entity that emerges as a State can only be regarded as such when practically recognised by one or more of the great powers in the Vienna system (Holsti, 2004).

There are some obvious challenges with the constitutive theory which have attracted criticisms. The refusal to accord international legal personality on a State that has been recognised by more than half of the States in the international system because some States have not recognised it is one of such challenges. States recognise or don't recognise for a number of reasons. Recognition of a new State is often predicated on the benefits and advantages derivable from such conferment (Visoka, 2018).

Qualitative Method is the research methodology of the study. It consists of content and documentary analysis whereby data was gathered through mainly secondary sources like text books, journals, newspapers, internet materials etc. The gathered data were reviewed and critically analysed. The article is divided into five sections. We are already in the first section which is the introduction. The second is the unilateral declaration of independence by Kosovo; the third section is on UNSC Resolution 1244 and the independence of Kosovo; the fourth section is the recognition challenges of Kosovo while the fifth section is the summary of findings, conclusion and recommendation.

### **The Unilateral Declaration of Independence by Kosovo**

Sequel to the discrimination and oppression of the Albanian population of Kosovo by Serbian authorities a gruesome war erupted. The several years of bloodbath precipitated by the war attracted the intervention of Western forces and culminated into the unilateral declaration of independence by Kosovo from Serbia on February 17, 2008 (Crinic-Grotic, & Kasipovic, 2013). The independence of Kosovo marked the final disintegration of Yugoslavia (Qader, 2020). The independence of Kosovo remains a litmus test of remedial secession for self-determination under the law of nations. In the course of the Serbian conflict-resolution, the rules and regulations of self-determination, territorial integrity, sovereignty and non-interference in the internal affairs of a sovereign States were brought to the fore and tested (Siboe, 2020).

The former Socialist Federal Republic of Yugoslavia (SFRY) was made up six republics namely Serbia, Slovenia, Croatia, Macedonia, Bosnia, and Montenegro. Kosovo and Vojvodina were part of the SFRY as autonomous provinces but not republics. The SFRY was engulfed in protracted ethno-religious, economic and territorial conflicts in the 1980s and eventually disintegrated following the example of the implosion of the Union of Soviet Socialist Republic (USSR). The implosion of SFRY began in 1991 when Bosnia, Croatia, Macedonia and Slovenia declared independence leaving the Federation of Serbia-Montenegro

to be the successor state of SFRY as the Federal Republic of Yugoslavia (FRY). Kosovo remained an autonomous province of FRY. Montenegro eventually seceded from the FRY in 2006 and Serbia became the successor of FRY (Siboe, 2020).

Kosovo was not one of the republics of SFRY but an autonomous province that enjoyed over time, a wide array of liberty like the six republics of SFRY. The population and powerbase of the Serbs is far greater than the Albanians (Kosovo) in Serbia. Ethnic rivalry and conflict gradually manifested between the Serbs and the Albanians as the years progressed. Accordingly, Serbs were maltreating, persecuting, fighting and abusing the human rights of Albanians (Kaufman, 1999; Qader, 2020). The mistreatment and persecutions degenerated from bad to worse in the 1990s when the Albanian language was disbanded by Serbian authorities as a means of communicating in schools, socio-economic and political transactions etc. (Klemenčić, 1998). This was after the autonomous and self-rule status of Kosovo was questioned and rescinded by Serbian authorities (Woehrel 1999).

The Albanian population of Kosovo where massively sacked from their vast and varied gainful employments in Serbia. Also, secondary and tertiary institutions stopped the enrolment and admission of Albanian students in Serbia. Invariably, in the 1990s Serbian authorities inflicted an apartheid system on Kosovo that was not just discriminatory but absolute deprivation in every ramification (Bekaj, 2010; Siboe, 2020). The protracted aggression on Kosovo by Serbia propelled the clamour and agitation for independence despite their very low population of 120,000 people (Siboe, 2020).

The rise to power and reign of Slobodan Milosevic was very disastrous for the population of Kosovo as it orchestrated Serbian ultra-nationalists agenda which orchestrated gruesome persecutions on the population of Kosovo that triggered full blown war in which the Kosovo Liberation Army (KLA) fought with the Armed Forces of Serbia under the command of Milosevic (Siboe, 2020; Negash, 2013).

It translated to an intensified war of independence (1998-1999) that attracted the concern of the international community because of the gruesome level of atrocity perpetrated against the population of Kosovo by the forces of Milosevic. The international community led by the European Union, United States and Russia began a mediation process from August to December 2007 to no avail as no agreement was reached (Siboe, 2020). The remedial secession or independence of Kosovo was the greatest bone of contention. Serbia invoked the principle of territorial integrity to challenge the secession of Kosovo in the light of international law. This line of reasoning was supported by some countries such as Cyprus, Moldova, Romania etc. who were grappling with secessionist conflicts (Belkovich, 2015).

Sequel to the failure of the mediation process in the Serbian Conflict, NATO bombarded the military stronghold of Serbia under the leadership of Milosevic (Bekaj, 2010; Qader, 2020). Conversely, Western forces under the leadership of the United States of America began the process of rebuilding Kosovo preparatory for a self-determination status. The intervention of the UN eventually paved the way for the June 1999 peace treaty and the passing of UNSC Resolution 1244. The UN faulted the unilateral intervention of NATO in Serbia and formed the UN Interim Administration Mission in Kosovo [UNMIK] (Weller, 2008; Qader, 2020)

In the process of NATO rebuilding Kosovo, its Provisional Government was formed. The mediation process between Serbia and Kosovo did not permit secession but on February 17, 2008 the Assembly of the Republic of Kosovo unilaterally declared Kosovo an independent and free nation. Kosovo as a new sovereign State was recognised by the United States and prominent European countries such as Britain and Germany (Qader, 2020; Almqvist 2009).

The tensions and controversies generated by the unilateral declaration of independence (UDI) of Kosovo ...made the UNGA to pass a resolution on October 8, 2008 opposing the UDI and seeking the International Court of Justice (ICJ) advisory opinion on the matter (Critic-Grotic, & Kasipovic, 2013). In specificity, the UNGA asked the advisory opinion of the ICJ on the question: "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?" (Lawteacher, 2022, p.2). "The ICJ confined itself to examining whether the Declaration of Independence was prohibited either under general international law or under the Security Council Resolution 1244" (Laurinavičiūtė, & Biekša, 2015, p.4).

On July 22 2010, the ICJ gave its judgment. In the advisory opinion of the ICJ, there was no violation of international law in the declaration of independence. Also, the Provisional Government of Kosovo are not bound by constitutional framework of UNSCR 1244 and the instrumentality of UNMIK because they are not members of the UN who are bound by its rules and regulations (ICJ Case 141, 2010).The ICJ concluded that the unilateral declaration of independence by Kosovo was not in violation of any rule of international law, as there is no international law proscribing declarations of independence (Arbour, 2010; Laurinavičiūtė & Biekša, 2015).

Some members of the UNGA and the international community had envisaged that the ICJ would decisively address the nexus between self-determination and remedial secession outside the box of decolonisation (Grotić,1991 & Qader, 2020). Some countries opposed Kosovo's unilateral declaration of independence on grounds that the authors of the declaration – the Provisional Government Kosovo; lacks the authority to do so. This is coupled with the fact that Kosovo is not declaring independence from colonial masters in a decolonisation process for self-determination. On the other hand, the proponents or supporters of the independence of

Kosovo were of the view that the declaration is justified considering the prolonged acts of aggression and atrocities committed against the population of Kosovo by Serbian authorities (Crinic-Grotic, & Kasipovic, 2013).

On the issue of the infringement on the principle of territorial integrity of sovereign states and the assumption that prohibition of remedial secession is implicit in it, the ICJ was of the opinion that the principle of territorial integrity as enshrined in the UN Charter was vital element of the international legal order but a blend of the 'Declaration on Friendly Relations' and the 'Helsinki Final Act' are pointers to the fact that the scope of the principle is limited to relations between states (Crinic-Grotic, & Kasipovic, 2013).

### **UNSC Resolution 1244 and the Independence of Kosovo**

UNSC Resolution 1244 was promulgated on 10 June 1999 in consonance with Rambouillet accords and other resolutions bordering on the Crisis in Federal Republic of Yugoslavia and the status of Kosovo (Resolution1244, 1999). The highlight of UNSC Resolution 1244 were the charge, with respect to the immediate and unconditional cessation of hostilities on Kosovo by FRY; the reaffirmation of the sovereignty and territorial integrity of FRY by members of the UN as well as an agreement for FRY to be a stakeholder in the maintenance of peace at Patrimonial sites and strategic border locations. UNSC Resolution 1244 created the United Nations Interim Administration Mission in Kosovo (UNMIK) and authorized Kosovo Force (KFOR) which was the NATO led international peacekeeping force that forestalled the atrocities perpetrated by FRY against Kosovo. Resolution 1244 commences with a preamble which recalls the humanitarian mayhem being perpetrated in Kosovo and the necessity to abide by former Security Council Resolutions (Milano, 2003).

Resolution1244 removes from the government of FRY the exclusive power and authority to use force in Kosovo as should be the case in tandem with the principles of sovereignty and territorial integrity. The resolution also deprives the government of FRY of the authority to decide the type of government that Kosovo will operate in the future (Schwabach, 2003). That is not to say that it authorized the UDI of Kosovo. On the contrary Resolution 1244 makes the following declaration: "Reaffirming 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 and annex" (UNSCR1244 1999, p.2).

In a nutshell, UNSC Resolution 1244 mandated international intervention in FRY through military and civil presence (Resolution1244, 1999). It may be deduced that the reference to the Helsinki Final Act and the Kosovo Status process in UNSCR 1244 were an affirmation of the territorial integrity and sovereignty of FRY. The Helsinki Accords also known as the Helsinki Final Act among other things advocated inviolability of frontiers and territorial integrity of

States in line with sovereign equality and respect for rights inherent in sovereignty as well as non-intervention in the internal affairs of States. It entered into force on August 1, 1975 (Ray, 2021; Morgan 2018). The literal understanding is that UNSCR 1244 would ensure internal independence of Kosovo in FRY. Stemming from this premise, the UDI of Kosovo “seems to contradict the ostensible commitment to the sovereignty and territorial integrity of Yugoslavia” (Schwabach, 2003, p7.).

The unwillingness of FRY to allow the deployment of UN peacekeepers to forestall the humanitarian crisis and looming genocide against Kosovo compelled NATO to forcefully intervene in the conflict through Kosovo Force (KFOR). Invariably, KFOR was the peacekeeping force for Kosovo under the auspices of NATO. Having achieved a modicum of peaceful enforcement, the UNSC passed Resolution 1244 which introduced UNMIK and authorised KFOR. Article 1(2) of UNSCR 1244 declares that the authorities of Serbia understand and agree to the deployment of international security force such as KFOR and UNMIK that should without hindrance operate within Kosovo for purposes of maintaining peace and security. The suspension of NATO bombing campaign is hinged on the withdrawal of FRY forces (Milano, 2003).

Despite the very good humanitarian intentions of NATO some members of the Commonwealth described the initial actions of NATO "in the territory of sovereign Yugoslavia, without the authorization of the UNSC, as a challenge to the current system of international relations.... " (Schwabach, 2003, p.4). The UNMIK) was created by UNSC Resolution 1244 as the officially authorized mission in Kosovo to effectively administer and manage the affairs of Kosovo for the attainment of set goals and objectives. The central objective of UNMIK was to create an enabling condition for peace, security and stability in Kosovo and promote regional stability in the Balkans (UNMIK Mandate, 1999).

UNMIK is to be headed by the Special Representative of the Secretary-General (SRSG) who coordinates the international civilian and military presence in Kosovo (Grazhdani, 2019). UNSCR 1244 established UNMIK “to administer the territory on an interim basis, and as a background it also recognised that FRY’s territorial integrity was not going to be disrupted. Independence for Kosovo was not envisaged” (Orakhelashvili, 2010 p.3).

In sum, UNMIK was a transitional administration of Kosovo under the auspices of the UN that demilitarized Kosovo, facilitated the wellbeing of refugees, created democratic institutions, organised elections and commenced the preparation of Kosovo for its ideal political status (Grazhdani, 2019). However, some of these laudable objectives have not being fully realized.

With the declaration of independence by Kosovo, UNMIK decided to reduce its staff strength by 70% and the European Union Rule of Law Mission in Kosovo (EULEX) filled the vacuum and took over most of the functions of UNMIK. The EULEX also operates within the mandate of UNSC Resolution 1244 and assists the authorities of Kosovo in the maintenance of peace, security and rule of law (Eulex, 2020).

EULEX was an assistance mission under the UNMIK and did not completely replace it. As a matter of fact Caroline Ziadeh that was the Special Representative of the Secretary-General (SRSG) arrived in Kosovo in January 2022 (UNMIK News, 2022). Unlike “other UN missions, which focus on building the capacities of rule of law institutions, EULEX had full jurisdiction and responsibility for restoring rule of law” (Grazhdani, 2019, p.4). In sum, the setting up of EULEX on February 2008 was for purposes of supporting local institutions in the rule of law. The signing of a five-point plan between Serbia and the UN heralded the approval of the formation of EULEX by the UNSC as a peacekeeping cum humanitarian mission that is not replacing UNMIK but augmenting its operations (Eulex, 2020).

UNSC Resolution 1244 and UNMIK have been criticized for lacking a clear exit strategy which gave rise to lack of public support. Interethnic tensions also increased despite the presence of UNMIK as manifest in the attacks on minorities in northern Kosovo (Grazhdani, 2019). The military forces and management of UNMIK didn't forestall the attacks on returning Kosovo-Serbs and non-Albanians by Kosovo Albanians (Gil-Robles, 2009). Consequently, those that survived the attacks fled and became refugees. As at the time of writing, a lot of Kosovo-Serbs were still afraid to return to their homes, generating around 250,000 refugees and internally displaced persons according to the government of Serbia (UNHCR, 2002). There were references to autonomy in articles of UNSCR 1244. This is an indication that the original desire of the UN when UNMIK was formulated was internal self-determination or an autonomous status for Kosovo reminiscent of what was obtainable before Milosevic became the President of Serbia. The radical departure to the unilateral declaration of independence is perceived as a dangerous precedent for potential secessionist.

### **The Recognition Challenges of Kosovo**

Recognition of State is the formal decision by a country to accept or acknowledge another political entity as being an international personality or sovereign State (Lauterpacht, 2012). There is a symbiotic relationship between recognition and sovereign statehood because the status of each State is connected to the other States in a process of mutual legitimization. Invariably, sovereign statehood is founded on the notion of mutual recognition (Strang, 1990). Actors may possess qualities and elements that are indicative of statehood but without recognition they are not States. “Without recognition, even the most internally sovereign actor cannot fully function as a State outside its borders” (Coggins, 2006, p.5).



Not taking into account the several States that announced the withdrawal of their recognition of Kosovo as made public by Serbia; Kosovo as at the time of writing in 2022 have been recognised by 117 countries. The recognition of Kosovo in 2021 by Israel was the last at this time frame and very significant (Aliju, 2022). It shows that despite hiccups, the Kosovo recognition process has not completely stagnated and may hopefully attain the two-thirds recognition of the States from the 193 members of the UN, which is the prerequisite for Kosovo to become a member of the UN (Choi, 2017).

However the obstacles are more intricate than the two-thirds recognition by the 193 countries that are member of the UN because it has to be approved by the UNSC. The five permanent members of the UNSC also have veto powers and can wield it to stall the recognition of Kosovo. To this effect Russia and China are adamantly opposed to the recognition of Kosovo and this is a major impediment and reason why Kosovo may not be a member of the UN in the near future. A joint statement denouncing the recognition of Kosovo was released in May 2008 by Russia, China, and India (Xinhua, 2008). The recognition application of Kosovo to “to the United Nations or to the Council of Europe has been barred by a strong opposition from states like Russia and Serbia” (Crinic-Grotic, & Kasipovic, 2013). As expected the UNGA has declared that the "United Nations has maintained a position of strict neutrality on the question of Kosovo's status" (UNSG, 2008).

Within the European Union, the strongest opponents to the recognition of Kosovo are Spain and Greece. The opposition of Spain is predicated on the challenges posed by the Basque and Catalan secessionist (Ferrero-Turrión, 2020). Greece has a historic relationship with Serbia (Armakolas, 2020). Slovakia, Romania and Cyprus are also opposed to the recognition. The opposition of these five EU members and the uncompromising cling to territorial integrity by Serbia constitutes the main obstacles for the admission of Kosovo and Serbia into the EU.

The broad mass of the Serbian population would not want the recognition of Kosovo even at the juicy offer of membership of the EU. “According to opinion polls more than 80 percent of the citizens of Serbia would not support the recognition of Kosovo even as a precondition for Serbia’s accession to the European Union” (Talmon, 2018, p.2). In 2018, fifty-one (51) countries led by Serbia also voted to block the bid of Kosovo to join the Interpol for the third consecutive time (Rferl.org 2018). “Kosovo still remains under the control of the United Nations therefore cannot claim to be able to enter into foreign relations on its own accord” (Siboe, 2020, p.2).

There are vast and varied reasons for the non-recognition of Kosovo by some States but these may be broadly compartmentalized under four categories namely:

i. Illegality of unilateral declaration of independence under international law.

This was the foremost reason for the non-recognition of Kosovo by some States. Azerbaijan had stated that it does not recognise the independence of Kosovo because secession and unilateral declaration of independence is illegal and violates international law (Reuters, 2008a). Spain is a major country in Western Europe that have not recognised Kosovo predicated on it

legality under the law of nations. This was the stance of Spain before the advisory opinion of the ICJ on the matter and thereafter. Prime Minister Pedro Sanchez of Spain very recently (July 30, 2022) declared that the unilateral declaration of independence by Kosovo is a violation of international law and would not be recognised (AlbanianDaily, 2022). In a joint statement the Foreign Ministers of Russia, China and India were of the view that unilateral declaration of independence by Kosovo is a contravention of international law hence illegal (Abel, 2020). Opponents of Kosovo's independence are of the opinion that in the context of traditional international law self-determination as independence was limited and ended with decolonization (Rrahmani, 2018). The dissolution of the Soviet Union and Yugoslavia actually broadened the non-colonial context of the right to self-determination for independence. But in the context of Kosovo the Constitution of Yugoslavia, whereby only the six republics had the right to secede impaired the legal right to independence. By the interpretation Kosovo have a right to internal self-determination but not a right to external self-determination as a sovereign State (Castellino 2000).

ii. Non-approval of UN especially the UNSC and respect for UNSC Resolution 1244

Respect for the UN Charter is the fundamental reason for the refusal of Chile to recognise Kosovo. Chile advocated the traditional diplomatic settlement of disputes under the auspices of the UNSC and the Council of Ministers of the European Union. This is also the case with Cyprus, Ecuador, Laos, Cape Verde, Brazil, Iran etc. Cyprus had declared that they would not recognise any unilateral declaration of independence that side-steps the UNSC and the entirety of the UN (Oeter, 2015). In the same vein Ecuador advocated uncompromising compliance to the rules and regulations of the UN Charter. Laos urged respect for UNSC Resolution 1244 as it pertain to Kosovo's internal self-determination in Serbia while Cape Verde declared that it will only recognise Kosovo when there is a consensus at the UNSC. In a similar vein, Brazil and Iran place high premium on the negotiations and resolutions of the UN and that there recognition of Kosovo would stem from the unanimous decision of the UNSC (Crawford, 2006; Almqvist, 2009).

iii. Dampen the Dangerous Precedence of secession

Countries such as Nigeria, Morocco, Cambodia, Kazakhstan, Kyrgyzstan, China, etc. that have separatist agitations and secessionist movements are adamantly opposed to the recognition of Kosovo because they view it as a dangerous precedent that can insight secessionism in their countries. Biafra secessionist agitations, is a damper for the recognition of Kosovo by Nigeria. The Western Sahara brouhaha with Morocco impairs it's recognition of Kosovo (Oeter, 2015). Cambodia equates the unilateral declaration of Kosovo with South Ossetia and said that it will be hypocritical to recognise Kosovo when South Ossetia has not been recognised (Penh, 2009). For Kazakhstan, there would be chaos if the right to self-determination is liberalised. For this reason they would not recognise Kosovo the same way with Abkhazia, South Ossetia, Donetsk,

Luhansk, nor any breakaway State (Kussainova, 2022). The claim of China on the nation of Taiwan is reminiscent to Serbia's claim on Kosovo. For this reason China does not recognise Kosovo and is opposed to unilateral declaration of independence (Reuters, 2008c). Kyrgyzstan would not recognise Kosovo because it is of the view that it would constitute a dangerous precedent for international secessionism. To buttress this point Russia following the example of Kosovo, sarcastically recognised the declaration of independence by Crimea – saying that the ICJ's decision on Kosovo is an indication that unilateral declaration of independence is not illegal in international law (Bytyci 2014). In a nutshell a lot of countries are not recognising Kosovo because of the impression that it would create a dangerous precedent and proliferate secession in the world (Abel, 2020).

iv. More negotiations to foster respect for the principle of non-intervention and territorial integrity

The Argentine delegation at the ICJ, were of the opinion that the UDI by Kosovo violates the principle of territorial integrity and non-intervention. It also breaches the obligation of peaceful settlement of conflicts through negotiation. For these reasons Serbia sovereignty over Kosovo should be respected. The Philippines advocated continued dialogue to ensure regional stability considering the prevalent sensibilities in the Balkans. They are not opposed to the independence of Kosovo but oppose a settlement that would not take into account the principles of sovereignty and territorial integrity (Reuters, 2008b). Respect for sovereignty and territorial integrity was also used by Kenya and Lebanon as reasons for the non-recognition of Kosovo. More countries have advocated the respect for the principle of territorial integrity and sovereignty of States as well as conscientious negotiations and bilateral agreement that forestalls UDI as criteria for the recognition of Kosovo (Abel, 2020).

The above reasons notwithstanding, a lot of countries have recognised Kosovo as a sovereign-State after the UDI. The reasons for the recognition of Kosovo may be broadly compartmentalized under six categories namely:

a. A *sui generis* case that would not be easily replicated

This is the reason for the recognition of Kosovo by the United States of America and some other States. The unique combination of factors that necessitated the self-determination of Kosovo constitutes a *sui generis* case because they are peculiarly in a class of their own. Countries using this reason are confident that the independence of Kosovo would not precipitate a dangerous precedent (Rahmani, 2018).

b. Ten years of international supervision with potentials of internationalizing the territory

Kosovo was under international supervision for close to ten years before the unilateral declaration of independence. The territory of Kosovo was internationalized within this period and ceased to be under the sovereignty of Serbia as it were the Trusteeship provisions of the UN Charter. Countries such as Germany, Italy, Sweden, Hungary, Afghanistan, etc. predicate their recognition of the independence of Kosovo on this premise (Crawford, 2006). “The essence to treat Kosovo as a special case emerges from the response of the international community and from the effective transformation of Kosovo into an internationalized territory” (Stahn 2001, p.533).

c. The autonomous status of Kosovo as the end of the dissolution of Yugoslavia for sustainable peace in the Balkan

Kosovo was an autonomous province under Serbia though not a republic. The dissolution process of Yugoslavia broadened the scope of self-determination right beyond the colonial context (Castellino, 2000). This reason coupled with the fact that an independent Kosovo will put an end to the disintegration of Yugoslavia as well as strengthen the prospect of peace and stability in the Balkan region is what prompted some States to recognise Kosovo (Abel, 2020).

d. Self-Determination after Exhaustive Negotiations

In the recognition of Kosovo a lot of States including the US and UK have decried the exhaustion of negotiations with Serbia amidst gross human rights abuses as justification for self-determination. Invariably, failed-negotiations as well as responsibility for peace and security in Serbia were a major criterion for the recognition of Kosovo (Rrahmani, 2018). The recognition of Kosovo by Afghanistan, United Arab Emirates and Taiwan is also predicated on the principles of self-determination (Abel, 2020).

e. International Law and UNSC Resolution 1244

Serbia under the auspices of the UNGA dragged the legality of Kosovo’s UDI to the International Court of Justice (ICJ). In the opinion or judgment of the ICJ the UDI of Kosovo was not in violation of any rule of international law (Arbour, 2010; Laurinavičiūtė & Biekša, 2015). This ruling cleared the obstacle of illegality and encouraged some states to recognise Kosovo. Burkina Faso is one of the countries whose recognition of Kosovo is predicated on international law. There is also the occasional reference to UNSC Resolution 1244 as premise for the recognition of Kosovo (Abel, 2020).

f. Diplomatic pressures by Western forces under the auspices of USA

A 2020 study revealed that there is a correlation between strong ties with the United States and the recognition of Kosovo. Conversely, states that have ties with Russia are more likely not to recognise Kosovo (Siroky, Popovic, & Mirilovic, 2020). Some scholars are of the view that the process of recognising Kosovo is in its entirety an ideological move by Western forces under

the inspiration of USA. However, some governments that ought to have strong ties with USA also refused to recognise Kosovo. The Government of Jamaica in 2009 declined the request from USA to recognise Kosovo and had remained adamant on the issue to date. Conversely Armenia is not recognising Kosovo because of the influence of Russia (Abel, 2020).

The major challenge that Kosovo has is neither recognition nor non-recognition but the withdrawal of recognition by countries that hitherto recognised it as sovereign-State after the UDI. Evidently, the recognition of Kosovo has not only stagnated but it is retarding because of the withdrawal of recognition by some states. The Minister of Foreign Affairs of Serbia told Pink television that “the number of countries that consider Kosovo an independent state has fallen below 100” (Palickova, 2019, p.5)

In the month of March 2020, the Serbian Foreign Minister announced that eighteen countries have withdrawn their recognition of Kosovo and these include: Togo, Sierra Leone, Liberia, Ghana, Lesotho, Burundi, Dominica, Madagascar, Nauru, Grenada, Papua New Guinea, Central African Republic, Suriname, Comoros, Guinea-Bissau, Solomon Islands, Palau, and São Tomé and Príncipe (Izvor, 2020).

Very recently, precisely 13 May 2022, Serbian Foreign Minister Nikola Selakovic declared that additional four countries have withdrawn their recognition of Kosovo bringing the total number of countries that have withdrawn their recognition of Kosovo to 22 (Martin, 2022). Invariably, the number of countries that have recognised Kosovo dropped from 117 to 96 as at May 2022. Kosovo Foreign Minister Aleksandar Vučić have denounced the withdrawal of recognition assertions as Serbian propaganda or fake news (Pajaziti, 2018). On one of the occasions, the Foreign Minister of Kosovo “has denied receiving any notes from the respective states for revoking recognitions” (Cakolli, 2020, p.20). It can be logically deduced from this statement of the Foreign Minister of Kosovo that some diplomatic notes regarding recognition withdrawal were received and some may not have been received as at the time the statement was made.

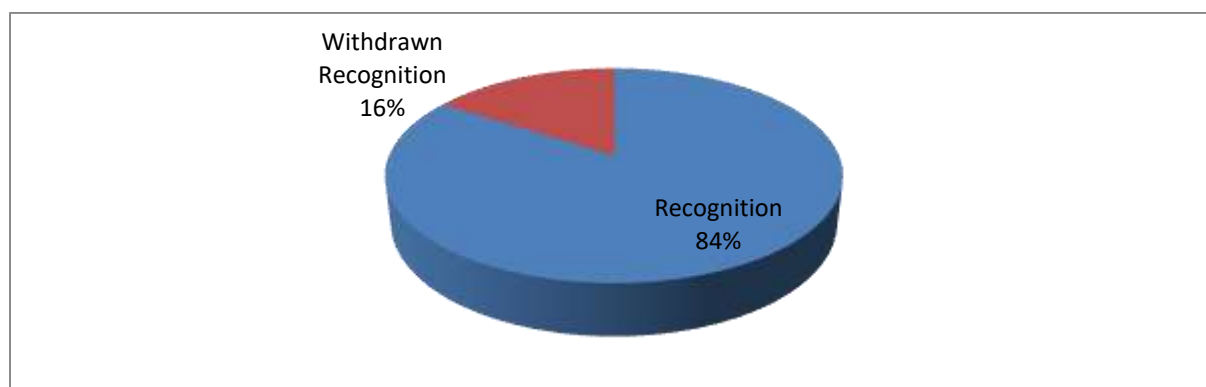


Figure 1: Pie Chart showing withdrawal of recognition on Kosovo

The Washington Agreements brokered by USA on September 4, 2020 for Serbia and Kosovo is a pointer to the fact that the United States was concerned about the withdrawal of recognition by some countries. As part of the moratorium Serbia agreed to suspend its dissuasion of other countries in the recognition process of Kosovo for one year. On the other hand, Kosovo was advised not to apply for membership of international organisations for that same period. (Martin, 2022)

The diplomatic entreaties by the United States for Serbia to desist from taking actions that would lead to more withdrawal of diplomatic relations shows that countries were actually withdrawing their recognition of Kosovo. There was a withdrawal of the recognition of Kosovo by Liberia in June 2018 but this was revoked after some days (Palickova, 2019). Considering the strong ties of USA and Liberia it may be argued that the diplomatic entreaties of USA compelled Liberia to revoke the withdrawn recognition. The success of Serbia in arousing countries to withdraw their recognition of Kosovo has been criticized by the authorities of Kosovo (Palickova, 2019).

## **SUMMARY AND CONCLUSION**

The status of international personality subject to international law can only be conferred on a political entity through recognition by existing countries. In the 1990s Serbian authorities inflicted an apartheid system on the Albanian population of Kosovo that absolutely deprived them of the rights and privileges of citizenship. The situation went from bad to worse under the watch of Slobodan Milosevic and the disastrous persecutions triggered full blown war in which the Kosovo Liberation Army (KLA) fought against the Armed Forces of Serbia. The gruesome war incited agitations for autonomy and eventual UDI by Kosovo.

UNSC Resolution 1244 mandated and created international intervention and presence in Kosovo through KFOR, UNMIK and EUFLEX. By so doing it removed from the government of Serbia the exclusive power and authority to use force in Kosovo and also deprived the authority to decide the type of government that Kosovo will operate in the future from Serbia. The UDI of Kosovo was not part of the mandate of UNSC Resolution 1244 as it reaffirmed the sovereignty and territorial integrity of Serbia. The adamancy of Serbia in granting autonomy to Kosovo apparently prompted the Provisional Government of Kosovo to take advantage of the international-presence mandate of UNSC Resolution 1244 to declare UDI for Kosovo.

The quagmire generated by the UDI of Kosovo compelled the UNGA to pass a resolution on October 8, 2008 opposing the UDI and seeking the International Court of Justice (ICJ) advisory opinion on the matter. Some members of the UNGA had envisaged that the ICJ would decisively address the nexus between self-determination and remedial secession outside the

box of decolonization. Some countries also opposed Kosovo's unilateral declaration of independence on grounds that the authors of the declaration – the Provisional Government of Kosovo; lack the authority to do so. Some members of the UNGA had craved for the ICJ to oppose the UDI of Kosovo to forestall a dangerous precedent that can be emulated by other secessionist movements.

There are a couple of reasons why the recognition of Kosovo is stagnating. These include: (1) Illegality of unilateral declaration of independence under international law (2) Non-approval of UN especially the UNSC and respect for UNSC Resolution 1244 (3) Dampen the dangerous precedence for secession (4) More negotiations to foster respect for the principle of non-intervention and territorial integrity.

The recognition of the UDI of Kosovo is a burden because it has not only stagnated but is retarding sequel to the withdrawal of recognition by some states. It is not a member of the UN, European Union, Interpol, etc. The major challenge that Kosovo has is neither recognition nor non-recognition but the withdrawal of recognition by countries that hitherto recognised it as a sovereign-State after the UDI. Very recently, precisely 13 May 2022, Serbian Foreign Minister Nikola Selakovic declared that additional four countries have withdrawn their recognition of Kosovo bringing the total number of countries that have withdrawn their recognition of Kosovo to twenty two.

In conclusion the recognition of Kosovo is becoming a burden and a tough case as it has not only stagnated but is actually retarding. The most important reason for this is to forestall a dangerous precedent for other secessionist movements. Some states still hold tenaciously to the illegality of Kosovo's UDI despite the ICJ's ruling. Prime Minister Pedro Sanchez of Spain very recently (2022) declared that the unilateral declaration of independence by Kosovo is a violation of international law and would not be recognised. The study recommends that the UN should clearly spell out the conditions for secession and recognition of States.

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