

The Impact of Kosovo Case on Quasi States

¹Hulya Arman

¹Adnan Menderes University, MA Candidate, Aydin, Turkey

Email: hulya.arman@yahoo.com

Abstract – The decision of International Court of Justice in terms of the independence of Kosovo at 22nd July 2010 gave birth to very important results regarding the international law. The term self determination was firstly used by Woodrow Wilson to express the new state order after 1st World War. With the start of decolonization process in the 1950s' a new are began for the self determination of colonized countries. Moreover by the end of Cold War some federal states disintegrated and a new self determination process has begun. However the Kosovo case is a unique example that a unitary state has disintegrated and the big amount of international recognized the new born state. In this paper the possible impact of Kosovo issue on quasi states will be examined.

Keywords – Kosovo, quasi states, statehood, Vienna World Conference on Human Rights, Turkish Republic of Northern Cyprus (TRNC), Taiwan.

1. Statehood in International Law

The Montevideo Convention on the Rights and Duties of States of 1933 is often accepted as the primary international legal instrument defining the concept of statehood (Kreuter, 2010, 365). According to the Convention a state must have:

- a) a permanent population,
- b) a defined territory,
- c) a government,
- d) capacity to enter into relations with the other states.

But these are not enough to be recognized as an independent state for an entity. After the Cold War, by the development of humanitarian law, the statehood was depended to the emergence of one of the two requirements. The first of these requirements is the essence of the right to leave of a federated state from the federal state in the founding agreement or Constitution. And the other is gaining the independence of a colonial state, from the coloniser state.

Yet there are some quasi states –“a designation given to regions that secede from another state, gain *de facto* control over the territory they lay claim to, but fail to achieve international recognition” - (Kolstø, 2006, 723) in the world which meets none of these two conditions. Turkish Republic of Northern Cyprus (TRNC) and Taiwan are the most known examples of these quasi states.¹ According to the United Nations (UN) system, there are understandable reasons why these states are not accepted as full members. If one consider that most of the nation-states in the world were born to a combination of

more than one ethnic group, the two criteria that were put as a condition of the UN's membership is understandable for breaking the separatist ethnic movements, which would turn the world into the hell of micro-nationalisms.

Indeed, the right to self-determination of nations emphasized in 1970, the UN General Committee Resolution 2625 “Declaration of the Principles of International Law” opened the door to the recognition of independence of the colonial states. Moreover 1993 Vienna World Conference on Human Rights adopted the following policy for the recognition of this right: “*In accordance with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, this shall not 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 peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.*” (Vienna Declaration and Programme of Action). This expression can be understood as, the citizens of a state which has not a democratic regime and persecutes its own citizens, have reached a right for self determination close to the recognition of the independence of the colonial states.

Besides thanks to the development of humanitarian law, the situation that human rights and freedoms violations by the state can reach up to heavy sanctions until the separation of the state and the recognition of the divided part of the state by the rest of the world. The foundation of South Sudan is one of the best examples of such

¹ Somaliland, Western Sahara, Laponia, Palestine are some of the other quasi states.

situation. Thus the decision of International Court of Justice decision on Kosovo can be characterized as the first practical application of this situation.

2. Quasi States

Besides, which consequences will emerge by this new situation, for the quasi states which are not internationally recognized such as the TRNC, Taiwan, or Western Sahara? To answer this question one might to look at the emergence of the circumstances under which the structures mentioned. To begin with Taiwan; Kuomintang Party in the mid 1940s, the people of Taiwan instituted with a military dictatorship. Hence, at February 28th 1947 the people of Taiwan has organized an armed uprising against the rule of the Kuomintang Party. So Kuomintang Party sent the troops to Jirong and suppressed the uprising bloodily. The event caused more than 30 thousand fatality, and it is referred to as "February 28th Event" in the history (Cook, 2005, 87). After this date, with the support of the United States, Taiwan existed as a non-recognized state until today. Besides, in Cyprus; as a result of the military coup in the Republic of Cyprus at 1974, ethnic massacres began in the island against the Turks. So Republic of Turkey has sent troops on the island by using her guarantor right in order to stop this massacre. Cypriot Turks, founded before the Federal Cypriot Turkish State, then the Turkish Republic of Northern Cyprus at the island which is de facto divided split after the Turkey's military intervention (Mavratsas, 1995).

3. Kosovo and the other Quasi States

When Yugoslavia Federal Army (JNA) attacked Kosovo after Bosnia, the international community did not allow Milosevic to commit crimes against humanity and JNA attack prevented by NATO forces. From 1999 to 1998, Kosovo was governed by UNMIK and at 17th February 2008 Kosovo declared her independence. As a reaction of the independence declaration Serbian government prosecuted to International Court of Justice in order the Court to interpret the legal position of the declaration. To conclude the Court decided that the independence declaration is legal at 22nd July 2010. Recently 91 states recognized Kosovo as an independent state.

In Taiwan and Cyprus cases, the people which were suffered from human rights violations by the related government, and by using their resistance right, they established their own states in order to protect from the related governments' violence. However, these two states have not been recognized by international community in accordance with the above-mentioned status of recognition of UN. Hence, a new discussion has been started about the recognition of quasi states by the issue

of Kosovo's recognition. Due to an international court's decision to constitute a precedent for similar cases, no doubt that, the decision should apply to others to conclude that certain events are applied to legally constrained.

4. Conclusion

The decision of the International Court of Justice is clearly consistent with the self determination comment of the 1993 Vienna World Conference on Human Rights. In other words, this decision is an evidence of the Court's a contrio interpretation of the expression that " *self-determination of peoples* [cannot be used within a] *Government representing the whole people belonging to the territory without distinction of any kind*". More clearly, this decision showed that the above statement should be read in the following way: The people who live in a non-democratic state which discriminate against the people, and do not represent the whole community, can benefit from the principle of self-determination and can create its own government. Of course, that decision will be practised by the nation states. Moreover, nation states who are the unique owner of the sovereignty will decide who she will recognize or not. However, it is clear that the legal obstacles for the recognition of the TRNC and Taiwan are very weakened by this decision. From this moment it seems that the turn is passed from law to diplomacy.

References

- [1] Kreuter, A. Self-Determination, Sovereignty, and the Failure of States: Somaliland and the Case for Justified Secession, *Minnesota Journal of International Law*, Vol. 19:2, pp. 363-397.
- [2] Cook, M. Taiwan's Identity Challenge, *SAIS Review* Volume 25, Number 2, Summer-Fall 2005, pp. 83-92.
- [3] Mavratsas, C. V. The Ideological Contest between Greek-Cypriot Nationalism and Cypriotism 1974–1995: Politics, Social Memory and Identity, *Ethnic and Racial Studies* Volume 20, Issue 4, 1997, pp. 717-737.
- [4] Kolstø, P. The Sustainability and Future of Unrecognized Quasi-States, *Journal of Peace Research*, November 2006 Vol. 43, No. 6 723-740.
- [5] Vienna Declaration and Programme of Action: <http://www2.ohchr.org/english/law/vienna.htm>