

# A struggle for independence in Kosovo

The role of the international community in determining the region's future



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## Summary

After decades of conflicts, the Assembly of Kosovo declared its independence on 17 February 2008, some two years ago now. As of today, the state had been recognized by 69 states worldwide. This includes 22 out of 27 European Union Member States and 55 United Nations Member states. While not completely recognized, the Kosovo case calls for the question if Kosovo can be called a state. The main question of this research is: To what degree is Kosovo a state? The purpose of the research is to gain insight in the political status of Kosovo, according to influential foreign actors.

Kosovo was an entity within Serbia and previously within Yugoslavia. Unlike the rest of Serbia, the inhabitants of Kosovo are mainly of Albanian descent. The ethnical differences have been the cause of many conflicts in the region. Since decades, the Kosovar Albanians felt like they did not belong under Serbian rule, they had the wish for self-government. The region was firstly recognized as an autonomous province under Yugoslavian leader Tito in 1946. Milosevic ended this autonomy for Kosovo and placed it directly under the Yugoslavian regime. More and more Kosovar Serbs fled Kosovo, so the eventual low rate of Kosovar Serbs in the region decreased dramatically. In the time of Slobodan Milosevic, a nonviolent movement for more autonomy in Kosovo raised; the League of Kosovo. For the first time in 1990 the leader of the League of Kosovo, Ibrahim Rugova, declared Kosovo's independence. However, this independence was only recognized by neighboring country Albania. A few years later a more violent resistance group arose: the Kosovo Liberation Army. They tried to force the 'foreign' forces of Serbia and Yugoslavia out of the region with the use of violence. The conflict worsened and both sides got involved in a series of bloody conflicts. In 1999 the Serbian police were being accused of ethnic cleansing, which led to the intervention of foreign forces. On March 22, 1999 NATO started its bombing campaign with the goal to force the Serbs out of the region, to get the peacekeepers in and the many refugees back in the region. Although the operation was seen as rather successful, the conflicts did not stop. NATO and other western actors wanted to restore Kosovo's autonomy. This meant the start for years of negotiation over the status of Kosovo. Led by United Nations UNMIK government, foreign forces run the show in the region until today.

In order to answer the main question of this research, a framework is set up, consisting of theories from different approaches. This was the outcome of extensive literature review from different sources. Triangulation was used in order to create a well-balanced view on the

status of Kosovo. This meant that geographical, political and judicial sources were used to come up with the framework on which an analysis could be based.

In the presented framework it became clear that a state is hard to define. The most used definition is that of Weber. In short: An entity which has the monopoly on the legitimate use of force within a given territory. Furthermore, a state can be defined by its characteristics: a permanent population, a defined territory, a government and the capacity to enter into relations with the other states. While this gives a pretty good view on what a state is, it cannot be used as an indicator to judge whether newly formed states are actually states. The criteria for this are: Effectiveness, legality of recognition. It became clear that most states do not emphasize the effectiveness (can be imposed by foreign forces) or legality. Of those three, the most important is considered to be the recognition. This is a paradox, because a criteria for being recognized is the recognition itself. This paradox describes in essence the problematic process of becoming a state. Therefore it is useful to look at the arguments behind the recognition. Since recognition is crucial to a newly formed state, Kosovo became a puppet of foreign actors, discussing over their status.

The recognition of influential foreign actors can be either based on legal or political arguments. The legal arguments are based on aspects found in the theoretical framework. The influential players in this game of recognition are divided into two camps, the camp that opposes Kosovo's independence and the camp that supports that independence.

The most influential members of the opposition are Serbia, Russia, China and Spain. The opposition's main argument is that the secession of Kosovo was an illegal unilateral act, which is in breach with international law. Therefore, Kosovo cannot be recognized as a state. Also they fear the safety of the ethnical Serb minority will be threatened within a Kosovar Albanian dominated state. The government cannot guarantee the safety in the north of the region, where most Kosovar Serbs live. Russia argues that the case of Kosovo would set a precedent for other secessionist regions. It would encourage them to do the same. After analysis, that idea cannot be seen as a real argument but rather as an instrument of manipulation of other players. Spain and China however do not recognize Kosovo because they fear actions of their own secessionist movements. Recognizing Kosovo would give them the wrong impression that secession can be allowed.

The most influential supporters of an independent Kosovo are the United States, major European players such as France, United Kingdom and Germany and most other Western states. Their main argument is the principle of self-determination. This implies that a people can decide for themselves who governs them. According to the United States this is also applicable for external self-determination, and thus independence. Several law analyst

however point out that the principle form no legal basis for this secession. They react on Russia calling the Kosovo case a precedent by arguing that this case is unique and will form no precedent. Also NATO's credibility is in stake since the controversial bombing campaign of 1999. The Western actors feel the responsibility to finish what they had started, and help the people of Kosovo get what they want: independence.

The two sides of the conflict seem to follow their own political agendas, than caring for legal arguments. In this sense the matter of recognition is a political affair, rather than a legal one.

On the bases of legal definitions and criteria no definitive answer can be given to the main question. After the analysis of argument used by both sides, still no definitive answer can be given to the main question. As the matter of recognition remains crucial to the future of Kosovo, and a condition for this recognition is recognition itself, the answer on the main question depends on the arguments one favors. Kosovo can be either a real state, or no state at all, depending on the arguments. This makes that the main question has as many answers as states in the world, about two hundred.

# Table of contents

- 1 Introduction ..... 8
  - 1.1 Kosovo’s struggle for independence ..... 8
  - 1.2 Societal and scientific relevance ..... 8
  - 1.3 Methodology ..... 9
  - 1.4 Structure ..... 10
- 2 History ..... 12
  - 2.1 The conflict in a nutshell..... 12
  - 2.2 Actor analysis ..... 14
- 3 Aspects of the (newly formed) state..... 18
  - 3.1 What is a state and how does a state act? ..... 18
  - 3.2 Judicial interpretations of the state..... 21
    - 3.2.1 Definition of the state ..... 21
    - 3.2.2 Formation of states ..... 22
  - 3.3 Ambiguous nature of international law ..... 25
- 4 Analyzing both sides ..... 27
  - 4.1 Kosovo in the legal framework ..... 27
  - 4.2 Final status process ..... 29
  - 4.3 Argument analysis ..... 31
  - 4.4 Conclusions ..... 37
- 5 Conclusion ..... 40
  - 5.1 Conclusions ..... 40
  - 5.2 Critical reflection and point for further discussion ..... 42
- Literature ..... 44

Appendix 1: United Nations charter, Chapter 11: Declaration Regarding Non-Self  
Governing Territories. ....48

Appendix 2 : Declaration on the `Guidelines on the Recognition of New States in Eastern  
Europe and in the Soviet Union' (16 December 1991).....50

# 1 Introduction

## 1.1 Kosovo's struggle for independence

On February 28, 2008 Kosovo's independence from Serbia was declared by the parliament in Pristina. For Kosovo this meant a step closer to "a democratic, multiethnic state", as stated by the prime minister Hashim Thaçi in his speech on independence day. (Thaçi, 2008) After a long and bloody history of conflicts, the declaration of independence, based on the broader region. While Kosovars and many others celebrated this day, some others thought that Kosovo did not deserve this independence. Not every country can declare itself independent, and a lot of laws are in favor of protecting existing sovereignty and borders. Serbia claims the same territory and therefore objects its independence. Russia backs Serbia. Western actors however, such as the European Union (EU) and United States gave their approval and support and recognized Kosovo as an independent country.

Internally, Kosovo lacks some fundamental characteristics of a state, such a control over its own territory (Associated Press, 2008). Some see this as the most characterizing feature of a state. Additionally many other problems arise in this young democracy. The government seems not capable of handling the multiethnic conflict between the different groups, the Kosovar Albanians and the Kosovar Serbs. Those concerns call for the following question: Is Kosovo really a state?

Different countries, such as United States and Russia use the case of Kosovo to pursue their own geopolitical interests. The question if Kosovo has all the features of a state is unimportant to those states. However, for the people of Kosovo this is a very crucial one. Kosovo's political status not only derives from strict legal and geographical definitions and laws, but also from states that use Kosovo as an instrument to achieve the greatest self-interest. Crucial is what factors play a role in this process of the recognition of Kosovo. These could be, as said, either legal or geopolitical. What interests are at stake for foreign actors such as EU, United States or Russia? In this research I hope to *gain insight in the political status of Kosovo, according to involved foreign actors*. Therefore, the main question of this research is:

*To what degree is Kosovo a state?*

## 1.2 Societal and scientific relevance

The societal relevance of determining the political status of Kosovo is very high. This subject, about which the international community is still very divided deserves some further investigation. The motives of the actors involved form a crucial basis for any action taken in

the future by all involved actors, internal or external. It can explain the behavior of the involved actors as well as their goals. This is crucial to the future of Kosovo, but also for many other conflict areas in the world. In scientific sense, this research contributes to the existing literature on newly formed states. In the literature is written extensively about the earlier conflicts in the region, but since Kosovo has only been independent for 2 years now, not much research was done on the involved actors since its independence. This research is not only illuminating the situation of Kosovo, but can also help to better understand foreign actors in conflicts all over the world.

This research differs from other literature about Kosovo, as it combined both legal and political perspectives on the dispute. Most literature in the political status of Kosovo is written by scholars of an international law, background. While legal arguments can be very important in the recognition of states, international law is of not determining. This research focuses on the political game that is being played by international actors to determine the status. Ultimately in this game it is all about political arguments and discourse and not so much legal ones. It is very interesting and valuable to see the game of recognition that is being played by major international actors.

### 1.3 Methodology

In order to answer the research question, a qualitative literature study is conducted. In this research, focused on the Kosovo conflict, the Kosovo region was the subject of a single case study. Doorewaard and Verschuren characterize a single case study as a research method with a narrow focus on one particular case, in my research the Kosovo conflict and its status process. A single case study depth above width, as the only subject is researched intensively. The single case study has a few advantages above other research designs.

Firstly, the single cases study gives the researcher the possibility to give a complete view on the case. While only this one case is examined, this happens intensively and from different perspectives. In this research this means that the Kosovo case is analyzed from a political, geographical and legal perspective. These three perspectives combined give a well balanced view on this single case.

Secondly, the single case study allows the researcher to be flexible in setting up his/her research. While no predetermined surveys or interviews are held, every aspect can be changed in the process of the research. This allows the researcher to maxim space for iteration, and to adjust its research design on the basis of new findings along the way. In this research, this allowed the researcher to shift from a primarily legal perspective towards a more diverse perspective.

Thirdly and finally they argue, a single case study will be more recognizable and accepted by professional that work in de field of the case.

A disadvantage could be the small level of external validity. One the basis on this single case it is often hard to make conclusions on other similar cases. After analyzing the case of Kosovo it is indeed difficult to say something about the cases of, for instance, South Ossetia or Basque Country, because every context is different (Verschuren & Doorewaard, 2007).

The single case study implies that various forms of generating data. This is indicated as triangulation. Triangulation is *“the use of multiple data sources with similar foci to obtain diverse views views about a topic for the purpose of validation”* (Denzin, 1989). Triangulation, thus improves the internatal vilidity of the research. It makes the line of reasoning more correct. In this research is choosen for data triangulation. Different sources form different backgrounds are used to get a more balanced view on the subject. In this research, academic sources are being comparted to analytical sources, news articles, official statements and speeces and laws and treaties. The combining and comparing of those sources leads to well-balanced findings. This approach is used in every part an chapter of the research. As can be seen in the theoretical framework, theories of political scientists, geographers and law analysts are used. The theoretichal framework forms the basis of the analysis that will be conductend in chapter four. In the analysis chapter of the research, many different sources are used to unravel the arguments of the involved actors.

The researcher also used a set of analysis to obtain this well-balanced view. To understand the conflict and the interests at stake in the Kosovo conflict, an actor analysis is used in the second chapter. In chapter four, an argument analysis and a little discourse analysis are used to create order in the jumble of argument and manipulation.

#### 1.4 Structure

The next chapter will be a short history of the Kosovo conflict. This region has for long been a region of conflicts and tensions. In the chapter we will examine the drive for the wish of the Kosovars to be form an independent country. We will also see de different roles of foreign actors in the past decades so we can get a grip on their motivations and aims in the region.

The third chapter will be a theoretical framework. It is important to get a grasp on what a state is in our modern days. Furthermore we will examine the legitimacy and recognition of the state. State must gain recognition in order to be seen as legitimate, but must also be capable of running a country, and so a state needs a bit of legitimacy to gain

recognition. But most importantly, states must be recognized in order to get recognized. More on this paradox in chapter three.. We will look at the formal of judicial definitions of a state and conditions a state must met in order to can be called a state. Other rules define whether states should recognize other states. But as we will see these rules and laws are often ambiguous and are often interpreted in that way that they be used by other states for their own interests.

The fourth chapter will be the analysis of Kosovo's political status as of today. Other involved states and other actors, such as EU and UN have their own visions on what is the best solution for the Kosovo conflict is. In the eyes of most Western actors, this is a fully independent Kosovo. The Kosovars themselves support this view. But others, such as Serbia and Russia oppose this view. This chapter will handle with the question why different answers are given to the question of Kosovo's solution. Different laws and rights are more important for one actor than for the other, why these differences?

The fifth and final chapter will be the conclusion. In this chapter a balanced answer to the main question will be given, as well as reflections of the author and points for further discussion or research.

## 2 History

On February 28, 2008 Kosovo's independence from Serbia is declared by the parliament in Pristina. One step closer for Kosovo to become, after a long history of bloody conflict, "a democratic, multiethnic state". Pristina's streets are filled with people celebrating as in many other places in the world, where Kosovar refugees gathered for the same reason.

Immediately different actors from the international community react: The European Union (EU) states the declaration is in line with their Ahtisaari proposal and calls on the leaders to maintain peace and stability, and United States President Bush says that he "will continue to work with our allies to the very best we can to make sure there's no violence". Serbia, however calls the declaration illegal and tries to contest Kosovo's independence in international law and Russia denounced the declaration by saying that it is a threat to new conflicts in the Balkans. (Associated Press, 2008)

This paragraph summarizes Kosovo's recent history, to be able to see the euphoria of the Kosovars and the mixed reactions of others in a broader view. Furthermore it presents the external actors that are involved in Kosovo and shows their role in the conflict.

### 2.1 The conflict in a nutshell

Kosovo was first recognized as an autonomous territory under Yugoslavian leader Josip Tito. He made Kosovo an autonomous province of Serbia in 1946. It became the Socialist Autonomous Province of Kosovo, within the Socialist Republic of Serbia. This status lasted until 1974. In this time, the rate of Albanians living in Kosovo, which has been a majority for decades, increased even more and the rate of Serbs decreased. This caused a series of inter-ethnic tensions and conflicts whereby more Serbs fled Kosovo.

When Slobodan Milosevic came to power in Serbia in 1989, he ended the status of autonomous province and empowered Serbian authority in the province. This led to a nonviolent campaign, led by the League of Kosovo, for independence. In 1990, on July 2, the Kosovar parliament declared Kosovo an independent country. Ibrahim Rugova, the leader of the League of Kosovo, was chosen president. Albania was the first and only country to recognize, so formally Kosovo was still a Serbian province.

In 1996 another resistance group arose, the Kosovo Liberation Army (KLA). Unlike The League of Kosovo, this group was violent and started attacking Serbian and Yugoslavian troops. The conflict worsened over the next years and both Kosovo Liberation Army as Serbian troops caused civilian casualties which led many Kosovars and Albanians to flee to neighboring countries. Serbia's police and army were being accused of ethnic cleansing. Meanwhile the conflict drew more attention from the international community.

The Organization for Security and Co-operation in Europe tried to establish a ceasefire, but when Serbia broke this ceasefire, more severe actions were taken by other international actors. NATO and other western actors wanted to restore Kosovo's autonomy. Therefore they wrote a peace agreement called the Rambouillet Agreement, in which they stated that Kosovo shall govern itself democratically. Serbia couldn't agree on such a far reaching agreement, which led NATO to start a bombing offensive to try to force Serbian troops out of Kosovo in 1999. After 78 days Milošević agreed to pull his forces out of Kosovo. Both Yugoslavian and Serbian forces withdrew from the territory. By then, about half of Kosovo's population, mainly Albanian Kosovars, fled the country and lived in refugee camps abroad. Only a few weeks after they left a massive flow of refugees returned to their destroyed villages. This led to other tension with Albanian Kosovars expropriating houses of Serbs and other non-Albanian minorities (Strohmeyer, 2001, p.46). The United Nations founded United Nations Interim Administration Mission in Kosovo (UNMIK) in the same year to govern Kosovo, by which an era of a United Nations governed Kosovo started (Tansey, 2009).

The presence of the United Nations and the United States in Kosovo was authorized by Security Council Resolution 1244. This resolution also authorized the UNMIK to govern for a given time, until they had found a solution for 'Kosovo's final status' (Perritt, 2010). This final status meant different things to different people as Perritt points out. The Kosovar Albanians expected the process to lead to independence and the Serbs expected that Kosovo would return under Serbian control. In the 2004 elections in Kosovo, under UNMIK authorization, a party of Kosovar Albanians won. The winners had a different view on Kosovo's democratic development than the UNMIK. They saw that UNMIK was still in charge and the transfer of power to the Kosovars was a very slow process. Discontent led to riots in 2004 all over Kosovo, which draw international attention. (Perritt, 2010) The United Nations saw that postponing the question of sovereignty was clearly a stimulus for discontent and conflicts. The final status of Kosovo should be discussed with all actors involved. (Tansey, 2009)

This was the start of international negotiations on the final status of Kosovo in 2006. The negotiations, led by Martti Ahtisaari, included both Serbian government, Kosovar Albanian leaders as well as the 'Contact Group'. This is a group of countries with interest in the Balkans and play a big role in peacekeeping in the Balkans consisting of United States, United Kingdom, Germany, France, Italy and Russia. A compromise was hard to reach, as Serbia wouldn't agree on full independence of Kosovo, and the Kosovars wouldn't agree on autonomy within Serbia. Ahtisaari made a plan in 2007 in which he recommended "independence, supervised by the international community". He proposed decent protection of the Serb minorities. Also he thought the role of the UNMIK would better be taken by the

EU. This plan was voted on by the United Nations Security Council, in which Russia, as one of the permanent members, used their veto to block the plan.

While Serbia and Russia were against Kosovar independence, the EU and United States supported Kosovar political leaders to write the declaration of independence. In this declaration close cooperation with the EU is planned as well as the implementation of the Ahtisaari plan, without direct UN involvement (Perritt, 2010).

## 2.2 Actor analysis

As seen above, different actors, and especially external actors played a big role in Kosovo's recent history. To get a more structured overview of the involved parties and their interests, a little actor analysis will be presented. Firstly the Kosovars themselves are discussed, divided in a pro and contra sides. Then the actors in favor of an independent Kosovo will be discussed, followed by their opponents.

Firstly the Kosovars themselves are discussed, though it is hard, or even impossible to speak of 'the' Kosovars. Mainly the Kosovars can be divided into two groups, the Kosovar Serbs and the Kosovar Albanians. This is not to say that their descent is strictly Serbian or Albanian. To illustrate this Detrez (1999, p.13) points out that Serbian have as much Albanian blood as Albanians and vice versa. The major difference is their languages, those are part of different language families. While Serbian belongs to the Slavic family, Albanian forms their own branch in the Indo-European languages. Furthermore, the two groups have their own religion, the Serbs are predominantly Orthodox and the Albanians are either followers of the Albanian Islamic or Albanian Catholic community.

As of 2006, Kosovar Albanians made up for 90 percent of the inhabitants of Kosovo. The Serbs represent 6% of the inhabitants (UNMIK, 2006). But this has changed a lot over time. In the twelfth century Kosovo was Serbs core in many ways, in religion and diplomatics. More recent, in the twentieth century the population was strongly decreased. Due to emigration of Orthodox people under the Ottoman rule, the Albanians became the dominant group. Furthermore, in the 1999 riots and later conflicts most Serbs living in Kosovo fled the area because of their security. Only 5 percent of the Serbs in Kosovo stayed,



Figure 1 Albanians and Serbs In Kosovo

which presents approximately a 100.000 people. The Albanians are now the vast majority and threaten the security of Serbs. The Kosovar Serbs almost all live in NATO's peacekeepers secured areas. (Detrez, 1999, p.13)

The Serbs, who saw their power over the territory decline over the past few decades, even centuries, now feel insecure in the Albanian dominated territory. They don't want to live in an Albanian dominated country and feel more for staying with Serbia. The Albanians though, are predominantly very happy with the newly independent state. Finally they don't live under a 'colonial' regime anymore. Also after the independence this led to major conflict between Serbs and Albanians. Serbian villages in Kosovo were occupied by Albanians after Serbs fled to secure their safety. Albanians opposed the return of the Serbs to their villages (Perit, 2010).

Secondly, probably the most influencing external actor in the area is the UN. Involved since early 1999 while the ethnic cleansing of Albanian Kosovars took place, the UN tried to be the stable factor in the region. On 10 June 1999 the UN installed the UNMIK, as an interim administration. The mission was the result of resolution 1244, authorized by the United Nations Security Council (UNSC). In this resolution the UNSC "Decides on the deployment in Kosovo, under United Nations auspices, of international civil and security presences, with appropriate equipment and personnel as required..." (United Nations Security Council, 1999). The resolution was adopted by 14 votes. No state voted against the resolution, only China abstained from voting. The reasons for doing that was the critical attitude toward the NATO's bombing campaign. China stated that the conflict should be handled by the government itself and not by external actors, but since the Federal Republic of Yugoslavia did accept the plan beforehand, China would abstain from voting. (UNSC, 1999)

The UNMIK administration focused on four 'pillars'. Pillar I, interim civil administration was led by the UN itself, similarly with Pillar II, humanitarian intervention. Inside the UN this was allocated to the United Nations High Commissioner for Refugees (UNHCR). Pillar III, institution building was appointed to the OSCE, and Pillar IV, reconstruction was appointed to the EU (Perit, 2010, p.54). The biggest challenge for the UN was "the complete re-creation of the judiciary". (Strohmeyer, 2001, p.47). Other tasks included rebuilding public sector, reconstruction of education and health care, creating the necessary conditions for economic development, attraction of foreign investment, establishment of taxes, customs and many more. In short UN interests in the region are to create a stable and peaceful environment and to protect minorities and individuals based on their human rights. Though it is important that there is always discussion between UN members on the best strategy and

outcome of the UNMIK mission. As we have seen, a lot of UN member states haven't recognised Kosovo as an independent state.

The North Atlantic Treaty Organisation (NATO) got involved in Kosovo in 1999 as well. The NATO led the bombing campaign to force Serbia (and Yugoslavia) out of Kosovo, in order to protect the Albanian Kosovars. The NATO action was a response to the growing pressure from the international community to act. Diplomat Holbrooke, who was supported by NATO, succeeded in crafting a cease-fire with Milosevic. Again, the conflict heated again and KLA and Yugoslavian armies found themselves fighting. In 1999, Milosevic saw no other options than to withdraw from Kosovo's territory and to allow NATO stabilization forces in (Perrit, 2010, p.51). With the help of Martti Ahtisaari, both NATO, the Federal Republic of Yugoslavia and the Republic of Kosovo signed the Kumanovo Treaty, by which the war was ended. Under this agreement all forces were to leave and the NATO peacekeepers and an UN administration was to govern Kosovo (NATO, 1999). The Kumanovo accord was adopted by the UN as Resolution 1244.

NATO installed the Kosovo Force (KFOR) to create a stable environment in Kosovo. Its objectives were to *"deter renewed hostility and threats against Kosovo by Yugoslav and Serb forces; establish a secure environment and ensure public safety and order; demilitarize the Kosovo Liberation Army; support the international humanitarian effort; coordinate with and support the international civil presence"* (NATO, 2010) The KFOR was able to stabilize the territory for years, but as we have seen they could not prevent some later conflicts, like the 2004 riots. As of today the KFOR is still active with some 10,000 troops from 31 countries. The NATO is planning to stay until the UNSC decides otherwise. Since the independence the NATO also agreed to *"take on new tasks in Kosovo to support the development of professional, democratic and multi-ethnic security structures"* (NATO, 2010).

Serbia was for decades, both as independent country and as part of the Federal Republic of Yugoslavia, Kosovo's host. Although Kosovo had a special status from time to time, to Serbia, Kosovo has always been a part of the country. In Serbia's latest Constitution it stated:

The Province of Kosovo and Metohija is an integral part of the territory of Serbia, that it has the status of a substantial autonomy within the sovereign state of Serbia and that from such status of the Province of Kosovo and Metohija follow constitutional obligations of all state bodies to uphold and protect the state interests of Serbia in Kosovo and Metohija in all internal and foreign political relations. (Republic of Serbia, 2006)

It sees Kosovo as a UN-governed autonomous province within the republic. For Serbia, it has the same status as the province of Vojvodina, a multiethnic province in the north of Serbia.

But Kosovo is even more important to Serbia, as Kosovo is perceived as Serbia's cradle. This is described in a sort of myth of which many versions can be found. Once, in 1389 to be precise, there was a battle in 'the field of blackbirds', near Polje. The battle was between Orthodox Serbia and Muslim Turks. According to the story, the Serbian leader, Lazar, had to choose between a heavenly cup or an earthly one, he chose the heavenly one, which made the Serbs lose the battle. The Turks won power over the region. But according to the story, the Serbian leader prince Lazar exchanged his earthly life for a life in heaven by which he followed the agony of Jesus Christ. By this sacrifice made by the Serbian leader, the Serbs became a heavenly nation (Detrez, 1999, p. 20-24).

Furthermore, many Serbs think that an eventual secession, Kosovo will join Albania, and then they lost Kosovo forever to Albania, which is an unimaginable loss. This option is promoted by the radical Albanian nationalists (Detrez, 1999).

Another actor opposing Kosovo's independence is Russia. Russia, traditionally, wants to keep the old Soviet states together, rather than further disintegration in the region. If more states become independent, it argues, even more states will seek for independence, an unstoppable process. Historically, Russia has always been an ally of Serbia, and will undoubtedly stand on its side again. Russia wants to show that it can challenge the 'West' with the US, UN and NATO. By vetoing UNSC action taken for an independent Kosovo, Russia has an important role for the future of Kosovo (Perrit, 2010, p. 256-259). For many it is not clear what other reasons lie behind the non-recognition of Kosovo. These reasons and that of other actors will be discussed in the analysis of the research, chapter 4

### 3 Aspects of the (newly formed) state

In this chapter the theory behind the analysis of the case of Kosovo will be presented. Firstly we will discuss the concept of the state on itself. Presented assumptions on the state are ideas of political thinkers such as Weber and other scientists as geographers and sociologists, i.e. Ohmae and Sassen. These interlinked theories will be included in the first part of this theoretical framework. The second part will be about the judicial or legal definitions and assumption on 'the state'. These definitions help with the question when a state is legitimate and when a state should be recognized by other states. These are important to keep in mind when analyzing behavior of different states in the Kosovo conflict. As follows from this second part, not all actions and point of views can be explained by this legal framework. The question rises what other than laws influences states foreign policy towards the Kosovo conflict.

#### 3.1 What is a state and how does a state act?

Although there is continuous discussion between academics on the definition of a state, the essence of the definitions is widely accepted. Max Weber's definition is mostly used and carries out this essence:

The primary formal characteristics of the modern state are as follows: it possesses an administrative and legal order subject to change by legislation, to which the organized activities of the administrative staff, which are also controlled by regulations, are oriented. This system of order claims binding authority, not only over the members of the state, the citizens, most of whom have obtained membership by birth, but also to a very large extent over all action taking place in a area of its jurisdiction. It is thus a compulsory organization with a territorial basis. Furthermore, today, the use of force is regarded as legitimate only in so far as it is either permitted by the state or prescribed by it. The claim of the modern state to monopolize the use of force is as essential to it as its character of compulsory jurisdiction and of continuous operation. (Weber, 1968, p.56)

This definition includes several conditions a state must meet according to Weber to justifiably can be called a state. One of the main and obvious conditions is a 'territorial basis'. Furthermore these conditions include 'administrative and legal order' and imply authority of the state over everyone and every action within its territory. Subject to this authority are thus not only its own citizens, but also any action taken by other people or organizations. In a modern Western state this will probably mean the necessity of legislation. But legislation

cannot stand on its own; unfortunately a rule or law is not effective if there is no punishment in violating these rules or laws. For that reason, Weber added that, in the extreme case, a state should use violence to protect these laws. Which is of course not to say that a state or its staff should beat one up for violating, but punishments (in the extreme case) can include confinement or in some states administering the death penalty. Of course this legislation is subject to change, however Weber does not define in which way this legislation can be changed. According to Weber a state should be the highest source of authority within the territory. To enforce that authority, the state should be the only actor to legitimately use violence, in other words the state should have a legitimate monopoly on violence. He stresses the importance of both jurisdiction, so legislation can be maintained and continuity of the operating state. This authority should be organized in a bureaucratic form, as objective as possible, not to conflict with personal views. To ensure this objectivity, Weber adds that the organized activities by the staff of the state itself should be 'controlled by regulations'. (Gill, 2003)

Authority, or the power to influence or command behavior, implies sovereignty of the state. Sovereignty includes, besides its own citizens, also the authority of a state to govern itself. This implies that not only has a state the right to govern itself, but a state should be capable of self-governing. In theory this should be without any restrictions from other states, private organizations, NGO's or supranational institutions. In practice in modern states this is never the case. Even in the most powerful or self-centered states, restrictions from other countries or are taken into account. It is important to recognize the variations in the capability of self-governing and to act independently from other actors (King & Kendall, 2004, p.8-12). Countries, from North-Korea to the Netherlands differ a great deal when it comes to the influence of other actors. Furthermore, there is no such thing as a strict division between sufficient and not sufficient self-governing. To determine the degree of self-determination it is important to compare the different sectors of government on the subject of authority to determine whether a state is enough self-governed.

I think that self-governing does not imply 'no restrictions' anymore. Many states are 'failed', 'rogue', or 'quasi-states' and still they are recognized by most of the other states. These states are heavily influenced by other states, private organizations or both. Also, supranational powers such as the United Nations or the European Union impose major restrictions to states. I think the meaning of the state can vary much depending on time, so maybe not all the conditions mentioned above are 'twenty-first century-proof'. Many factors are influencing or altering the meaning, definition and 'global opinion' of the state. Authors

such as Ohmae and Sassen argue that the power of the state is in some way declining. Other actors, such as regions or market forces gain power instead.

Then there is the question what a state should do. This question is not an easy one. It is heavily subject to ideologies and changes in time. The degree of involvement of the state in society forms a major difference between different ideologies. Gill distinguishes three basic roles a state can have, namely the state as partisan, the state as guardian and the state as instrument.

The state as partisan is interested in pursuing its own interests and those of its staff. In this way, the state should be autonomous from other actors such as the private sector and its citizens. It can resist any opposition from within or outside the territory. As mentioned above, a totally independent state is not realistic in this age, so the state must give something, or enable other actors to pursue their interest in order to pursue their own. This vision of the state interacts with the idea of realism, as realism 'sees the state as a unitary actor relentlessly pursuing its interest in the international sphere'.

A guardian role of the state sees the state as not only pursuing its own interests, but also to stabilize the system overall. It sees the state as an actor whose is able to 'rebalance' social pressures. It should react only in that way that the system, or international order, stays stable. Objective staff should be able to determine the best interest for the system as a whole. This system should be stable in order to ensure individual rights. This vision can also be implemented in a more pluralist way, in which policy-making is seen as an interplay between different social forces and groups. The role of the state should be to maintain balance between those forces. The guardian vision interacts with liberal ideology, in which a state should remain neutral to protect rights of its citizens.

Others see the state as an instrument of forces outside the state. This implies that the state is neither autonomous or independent. These other forces can be of many kinds. An elite, as elite theorists see it, can be such force. Also in a democracy, the electorate, consisting of different groups competing for control over the state, can be seen as such a force. Besides elite theory and pluralism, this vision is consistent with Marxism. In this approach the state is seen only as an instrument of rule by the dominant class.

As follows from different visions on the state as presented above, different roles of the state are assumed. Whereas a state in the tradition of Weber is autonomous, states that derive from Sassen and Ohmae's trends seem to play another role. In Sassen's trend, the state becomes less involved in economy and law. Those are probably better regulated at the

global level. Ohmae sees even a further diminishing role of the state as economy gains more and more power over politics.

From these very varying views on the state it is impossible to extract a common definition of the state. These rather vague descriptions do not give conditions or draw a 'limit' on which you can judge whether an entity is a state. This gives no ground on which states can decide whether to recognize another state or not. For this ground we have to turn to the judicial aspects of the state. Even though those judicial aspects are also not always exactly accurate, they will help us to get a grip on the state.

### 3.2 Judicial interpretations of the state

Judicial definitions try to deal with the state's legitimacy and recognition. These interact in several ways. A state can be legitimate but not recognize of the other way round. Legitimacy can provide a basis for recognition by other states or recognition can provide a basis for legitimacy. Firstly judicial definitions of the state are presented. Thereafter the formation of states is discussed, in which the concepts of effectiveness, legitimization, legality and recognition are key concepts.

#### 3.2.1 Definition of the state

States are still one of the most important actors in international law, despite the creation and developments of several supranational institutions and stronger regional partnerships. But for this important actor, the state, no such thing as a globally accepted definition exists. Maybe the most commonly used definition derived from the Convention of the Rights and Duties of States in 1933 in Montevideo: *"the state as a person of international law should possess the following qualifications: a permanent population, a defined territory, a government and the capacity to enter into relations with the other states"* (in: Nollkaemper, 2007, p . 30)

This definition sums up four conditions which a state should meet in order to actually can be called a state. These four characteristics can be seen as benchmarks for a state to be seen as one by others. Firstly population is mentioned. Nowhere in international law is referred to a minimum number of inhabitants. A state should be able to grant citizenship to its inhabitants, in this way they are a constituent part of the state. States can refuse others than those people who obtained citizenship of the particular state, its own citizens have the right to use the territory and access to the state. When a person can be granted citizenship is up to national law. Secondly a state should have a 'defined territory', including territory on land waterways and possibly territorial sea. Again, there are no minimum restrictions to the size of the territory. Thirdly a state contains a government. This should be a set of institutions which

exercises public authority. How these institutions should be organized is up to the national level. A state can be democratic or not, led by a monarch, president or other forms of leadership. Even though democracy is legally no requirement, many states consider it as crucial and even promote democracy as a human right. The fourth condition is 'the capacity to enter into relations with the other states'. In order to enter these relations, a state should, in some degree, be independent, and thus sovereign. This is in line with the idea of sovereignty as discussed by above. Also a state should be recognized by other states in order to enter into relations with these states. If other states do not perceive the entity as a state they will not treat it as a state. (Nollkaemper, 2007)

### 3.2.2 Formation of states

But does the same counts for newly formed states? States can be formed in many ways. In the case of Kosovo this is formation by separation. Kosovo gains its independence from the state to which it formerly belonged, Serbia. Legally it is very difficult to actually gain independence this way. Many laws protect the sovereignty and borders of the existing state above the independence of the new state. Big states as China and Russia protect these laws as for their own self-interest. Yet there are some situations in which most states agree to recognize a newly formed country.

In order to decide if a state is in fact established, if a state can be called independent, generally three 'criteria' are used: effectiveness, legality and recognition. These conditions must be met by states in order to come to the definition of the state as presented earlier. If the state can prove to be effective, legally formed and recognized by other states, an independent state is established, on which earlier mentioned elements of the state apply. The criteria form an instrument on which judgment of newly formed states can be based (Nollkaemper, 2007).

An effective state is a state that can establish and maintain law, in other words, that has legitimate control over its own territory. Weber would say that a state is effective if it has a monopoly on the use of legitimate. Effectiveness is thus linked to legitimacy.

The definition of legitimacy has changed a lot since the emerge of the modern state and the development towards democratic states. A widely accepted definition was formulated by Lipset: "the capacity of the system to engender and maintain the belief that the existing political institutions are the most appropriate ones for the society" (In Dogan, 2004). Citizens should, thus, trust or believe in the state that is governing them.

Weber made a typology of legitimacy, in wich he distinguishes rational-legal legitimacy, traditional legitimacy and charismatic legitimacy. Traditional authority, the

existence of long-standing monarchs, religious structures and other customs kind almost vanished as a source of legitimization (it is only seen in a couple of countries such as Nepal and Morocco). Charismatic authority, based on charisma of the leader, also declined since the emerge of the democracy. Rational-legal authority, founded on the presence of formal rules and laws, however is still a very important source of legitimization. In modern democracies this is the main legitimization of its policy. The constitution plays a big part in this legitimization as it controls action taken by all government officials. But since this rational-legal type of legitimacy can also be applied to authoritarian regimes, which are often seen as unethical or at least not democratic, this can't be the only source of legitimization of modern democracies.

Additionally, Dogan points out that a measure for legitimacy is the trust people have in different particular institutions of the state. Of course someone can trust a police-officer and not the president, so this trust should not be seen as absolute. Always, some institutions gain more confidence than others. Also, as Lipset argues, people think of a state as more legitimate when it is effective. Lipset speaks of dynamics between legitimacy and effectiveness. For example a crisis in which a state can be seen as less effective can cause a decline in legitimacy, but does not have to. There is no such thing as a strict division between legitimate and illegitimate, so it is always a degree of legitimacy which derives from the combinations of different state sectors combined. The degree of legitimacy is thus always subject to discussion. (Dogan, 2004)

Also, the process of the formation of the state should be in accordance with international law. This implies two important principles. The formation of a state cannot be a result of violence against another state in order to create a state of its own. Furthermore, a state cannot violate human rights in the process of state-formation. This can cause international leader not to recognize the state. An example can be found in North-Cyprus, which was established as a state through the use of violence.

Recognition of other states is often seen as a sort of 'proof' that the state in question is really a state. It is a unilateral act of one state towards another to acknowledge its status as a fully independent political unit. There are no strict conditions that must be met in order for a state to recognize another country. Most countries use the criteria of effectiveness and legality, and, remarkably, the recognition of the state by others (Nollkaemper, 2007). This seems as a paradox, in order to be recognized, a state should be recognized in advance. In this way the recognition is used both as a criteria and a goal.

Legally, different laws can affect recognition. Members of the European Union use, among others, the UN-charter and obligations as formulated in the 1975 Helsinki Declaration on international law, democracy and human rights. These include: “Sovereign equality, respect for the rights inherent in sovereignty; refraining from threat or use of force; inviolability of frontiers; territorial integrity of states; peaceful settlement of disputes; non-intervention in international affairs, respect for human rights and fundamental freedoms (Including the freedom of thought, conscience, religion or belief); equal rights and self determination of peoples; co-operation among states; fulfillment in good faith of obligations under international law” (United Nations, 1975).

Furthermore, in several other laws or treaties, it is described that states are obligated to respect sovereignty and existing borders. Such as in the South-East European Cooperation Process is described: “Creating peaceful and good-neighborly relations in the region through reconciliation, recognition of the inviolability of the existing international borders and the peaceful resolution of disputes, on the basis of international law” (Perrit, 2010).

Additionally, guidelines have been created for the recognition of new states, such as the “Declaration on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union”, created in 1991. This guidelines requires conditions as a guarantee for the rights of ethnic and minority groups and an entity will not be recognized if it is a result of aggression. Again, these guidelines are written in ambiguous language, so states can interpret these in a way that suits them. (Rich, 1993)

All of this makes clear that it is a very delicate and difficult process for a state to become independent. However there is a special right and legal argument for nations that can support their wishes. This is the right to self-determination. In article 73 of chapter 11 of the UN Charter the subject of self-determination is discussed. It states that:

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories... (United Nations, 1945)

To this end, states should ensure just treatment, development to self-government, protect international peace and security. In this way they can protect the well-being of the inhabitants if needed. This article is interpretable in many ways.

### 3.3 Ambiguous nature of international law

If rules and laws exist concerning formation and recognition of states, a logical assumption is that all states would react in the same way. But, as we know, this is not the case in dozens of separation cases all over the world. This derives from the proliferation of different laws, rules, definitions and guidelines on states, formation and recognition. This implies that states use laws in a different way or use different laws. Some laws, like the obligation to respect sovereignty and existing borders and the right to self-determination of peoples seem to contradict each other. Moreover, laws are often formulated in a way that they can be interpreted in many different ways.

It is interesting to see how the same laws are used in a different way by different states. The discrepancy between the theoretical rules and laws and the practice of recognition indicates a 'gaps between the judicial nature of states and the practical actions of states. States can decide on what they find more important. They have a free 'space' interpretation and pursuing individual goals. Kelman (1997) shows that the choice between protecting integrity and existing borders and the protection of human rights is not always an easy choice. And thus, some states will argue in favor of one side and other states of the other side. Some states would prefer one or the other, depending on the context. Kelman argues that the protection of human rights is always more important, but not all states would agree with him. Kelman shows different sides of the debate held during negotiations of new states. Different laws can serve as the most important, with different outcomes of these negotiations. Protection of minority rights, protection of existing borders and the principle of non-intervention can all lead to different outcomes, depending on what matters most for the negotiating states (Kelman, 1997). The fact that these differences exist between existing states is an outcome of their enormous variety. No such thing as a world government exist, that can make policy that is compulsory to every state. This means every state has a space of free choice, as well a a space of free interpretation. While institutions like the UN try in some situation to act like a world government, it is not accepted and wanted as one by the majority of the states. This creates space for states to pursue their own goals, rather than a common goal. This space can be used to fulfill their geopolitical goals.

In the next chapter we will look at how reasons other than judicial ones played a role in the Kosovo conflict. We will examine the different reasons both sides of the conflict have for their arguments. Russia, for example, will insist on different laws and rights than United States, according to their own interest in the conflict.

## 4 Analyzing both sides

In the previous chapter 3, different aspects and different approaches to the state were presented. As mentioned before, it is really hard to define the state. Even broken down in its characteristics there are no strict lines or borders to draw. On that basis it is impossible to judge whether a newly formed state can be called a state. Then the aspects of the newly formed states were discussed. Again, conditions that must be met in order to get recognized are ambiguous. The most important condition to get recognized is the recognition of other states itself. This paradox is crucial to every nation wanting to form a state. States use divergent and non-transparent reasons to justify their actions whether or not to recognize states. By using the theoretical and historical framework including the actor analysis, in this chapter the reasons behind the (non-)recognition of important actors will be examined. These reasons will be distilled from a variety of sources, such as official documents, speeches, and analyses made by experts of the region and academics. By using these sources in triangulation the arguments for (non-)recognition will become clear.

Firstly, in paragraph 4.1, the case of Kosovo is placed in the judicial framework as presented above. It becomes clear on what basis Kosovo is or is not to be called a state. The difficulties in such categorizing will become clear. Secondly the process of Kosovo becoming a plaything of foreign actors will be discussed. Since the interference of NATO in 1999, Kosovo has been heavily influenced by foreign actors. With influences from all over the world, divided in different 'sides', this has caused Kosovo to become a puppet of international politics. In recognition issues, the concerning state has of course a role in the process, but other states are crucial to its recognition, and thus its future. This process will be described in paragraph 4.2. Paragraph 4.3 will present an argument analysis of the most influencing or important states all over the world. To conclude in paragraph 4.4, these arguments will be compared to see what the core-arguments from the international debate are. Also it will become clear what focus different countries have in the Kosovo case.

### 4.1 Kosovo in the legal framework

As seen in article one of the Montevideo Convention on the Rights and Duties of States, a state of statehood is an entity that exists of: a permanent population, a defined territory, a government and the capacity to enter into relations with other states. Kosovo clearly has a permanent population and also the territory is widely accepted. It has a government, but in order to 'enter into relations with other states, the government should be somewhat sovereign, which cannot be said of Kosovo's government. Also, Kosovo does not have its own army and is military dependent on NATO. Still led by foreign forces, the government seems incapable of standing on its own and the rule of law is enforced by EU. The fourth

criteria is also questionable, since Kosovo is capable of entering into relations with the 69 states that recognized the country, but not with the approximately other 130 states. Kosovo is not recognized by every UN nor EU-member and thus cannot operate in those organisations as their presence as a state will be blocked by states such as Russia or Spain. Given that it is not possible to give a definitive answer to the question if Kosovo's government is effective. (Wilson, 2009, p. 459)

With regard to the newly formed states, three 'criteria' were mentioned to judge whether an entity is a new independent state: Effectiveness, legality and recognition. Firstly, the effectiveness of the new state of Kosovo is open to question. The government with foreign help is stable and effective, but is not yet ready to operate independently. Western actors will argue that the state of Kosovo is effective and will be effective on its own, while opponents will argue that Kosovo is not ready to be an effective independent state. On the matter of legality is also a lot of discussion. Two basic laws oppose each other in the secession-question. On the one hand, existing borders must be protected, and on the other hand, nations have the right to self-determination. No law or rule describes what should be more valued, so states make their own decisions concerning the legality of Kosovo. Serbia and later also the UN asked the International Court of Justice in The Hague to give a (non-binding) advice on the legality of Kosovo. The verdict is expected later this year, so still no consensus is reached on this legality (AFP, 2009). The third criteria, recognition, is as shown the most complex one, as it serves both as a criteria and a goal.

Then there is the concept of self-determination. It is often argued by academics that self-determination is primarily a concept used in colonies and people that wanted to break free of their mother-states. Others argue that this right is still very useful, but laws are again very ambiguous. Charney argues that it is most likely states support the claim on self-determination as the following conditions are met: 1. Exhaustion of peaceful options to resolve the dispute; 2. The claim represents the majority of the group; 3. The use of force and the call for independence should only be the last resort. In Kosovo, these conditions are met, and that is, according to Charney, the reason why (a part of) the international community will support Kosovo's claim on that right. Of course, other states will value the integrity of borders more than this right (Charney, 2001).

As stated before, on this legal basis it is difficult, if not impossible to judge on the basis of these legal instruments if Kosovo is a state. It all comes down to the interpretation of these laws by different states. Recognition from external actors remains crucial to the future of Kosovo. This recognition takes place in the space of interpretation of these laws, and is mostly led by geopolitical agendas of the concerning states. In the next paragraph is shown

hos Kosovo became dependent on this recognition and thus became a plaything of the international community.

#### 4.2 Final status process

Ever since 1999 it became clear to 'the international community' that the situation of Kosovo the way it was, was untenable. It was crucial to Kosovo, they thought, that the international community would negotiate over Kosovo's status. This process became known as the Final Status process. These negotiations started in 2006 and were led by the UN. They were held in Vienna, where the UN Office of the Special Envoy for Kosovo (UNOSEK) is located. The UN appointed diplomat Martti Ahtisaari to lead the negotiations. The different parties in the first round of official talks to determine the final status were, Serbia, led by its president Boris Tadic and Kosovo, led by its president Fatmir Sejdiu. There, in Vienna they both presented their position with their respective arguments. While no breakthroughs were obtained, positions became clear and the atmosphere was open. (Perrit, 2010, p. 121-137)

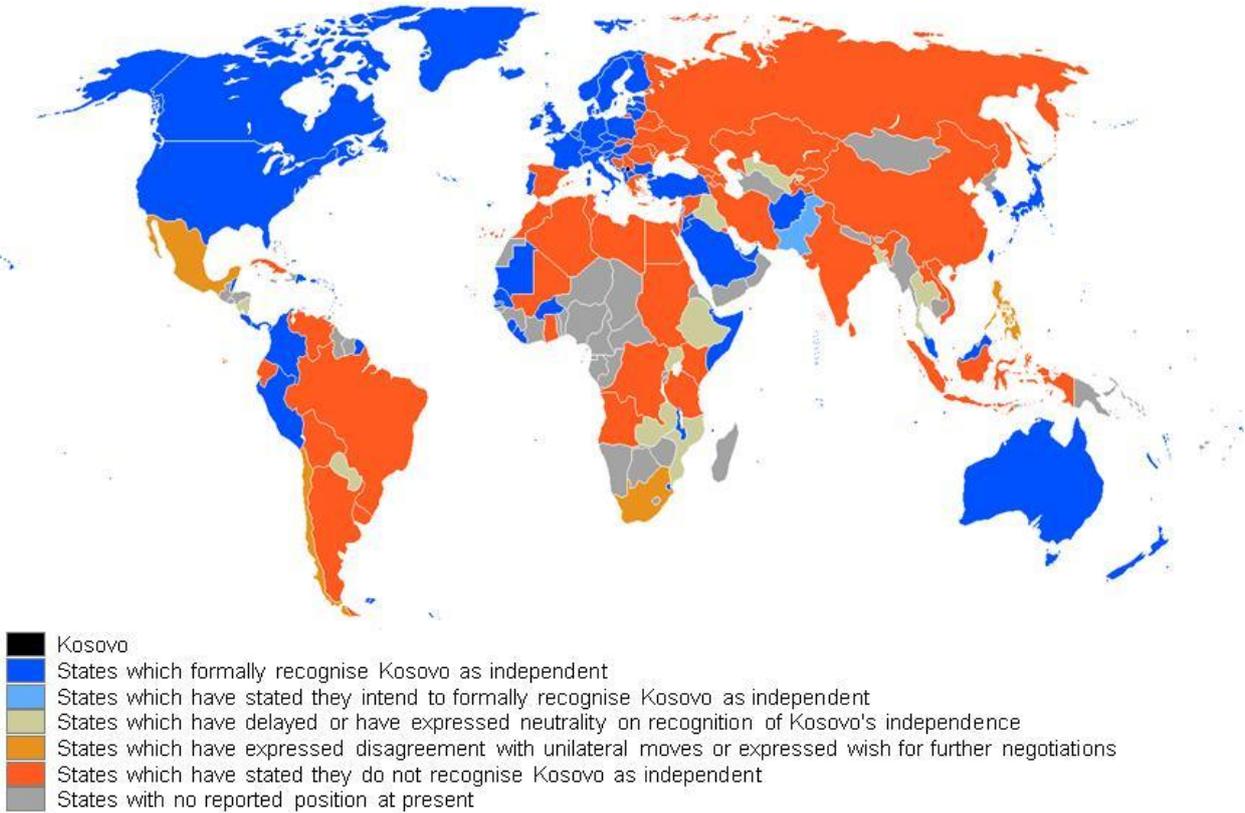
One month later, in September, Ahtisaari assembled the members of the Contact Group. This is a group of influential countries (United States, United Kingdom, France, Italy, Germany and Russia) with interests in the Balkan region. Together, the contact Group stated that they would work together towards a negotiated settlement for Kosovo. They embraced Ahtisaari's plan to work with. This plan, as mentioned before, would give Kosovo more freedoms. It did not mention the word independence, but it did already point in that direction. This plan however was not accepted by Serbia. Serbia saw this plan as 'illegitimate and unacceptable, ... violates the UN Charter by undermining sovereignty of Serbia' (Voice Of America, 2007). The United States and most European countries agreed with the plan. Sergey Lavrov, foreign minister of Russia said, in response to the plan: "We know that Kosovo is lost, but we need to talk about Abkhazia, Ossetia, Transnistria, Karabakh, and a few other places" (Perrit, 2010, p. 131).

The contact group created guiding principles, based on the Ahtisaari Plan, to lead the negotiations. Perritt summarizes these guidelines as "the three no's: no partitioning of Kosovo, no going back to the status before 1999, and no merging with other states " (Perrit, 2010, p. 119) . Additionally, the settlement should: be compatible with international standards of human rights, democracy and international law, ensure multiethnicity that is sustainable in Kosovo, ensure te participation of all communities in government, both on local and central level, strengthen regional security and stability, and allow international civilian and military presence in Kosovo (Contact Group, 2005).

After other rounds of negotiations, Ahtisaari presented his final package of proposal on Kosovo's status. Mainline of document: *"Recommendation: Kosovo's status should be*

*independence, supervised by the international community”* (UNOSEK, 2007). This provoked a series of responses. Belgrade rejected the plan, the European’s parliament approved of it, Russia called for new rounds of negotiations led by another diplomat and the United States gave their full support. Based on this final proposal, members of the UNSC wanted to draft a new UN resolution to replace resolution 1244 and herald a transition period in which the UNMIK would withdraw from Kosovo. Russia, however, blocked this new resolution. After months, Russia would not agree with renewed negotiations with the goal to discuss the independence of Kosovo. Without Russia on board, the other UNSC members decided to discard the draft resolution. Ban Ki-Moon, as Secretary-General of the UN decides on a new round of negotiations with three leading parties; US, EU and Russia, also known as Troika. Unfortunately this still did not led to an agreement on Kosovo’s status.

With the prospects of foreign powers deciding over Kosovo’s future, and of Kosovo becoming UN or US puppet, the Kosovar assembly decided to take a lead. On 17 February 2008, without the support of the Serbs and Russians, but in line with the Ahtisaari plan, Kosovo declares its independence and the recognition may begin. Even after 17 February, countries such as Russia, China and India, called for new negotiations based on resolution 1244. The case of Kosovo divides countries from over the world. As of today the independent Kosovo has been recognized by 69 countries, as can be seen in figure 2.



**Figure 2 Recognition of Kosovo**

#### 4.3 Argument analysis

In this paragraph the different arguments of the most important actors will be set forth. Starting with the Kosovars itself, followed by foreign actors. Firstly the actors who oppose an independent Kosovo will be analyzed, followed by those who support the independence.

Firstly, the Albanian Kosovars demanded independence from Serbia. Their main argument for this claim is based on Article 73 in of the UN Charter, the declaration regarding non self-governing territories. In this article is described that the inhabitants over a non self-governing territory has the right:

*...to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement.* (United Nations, 1945, art. 73)

The Kosovars, and by that the Albanian part of the country, argue that they, as one people have the right to secession from Serbia. The Kosovar Albanians felt for decades the distance between themselves and the Serbs. According to Perritt, the Albanina part saw the Serbs as oppressors and foreign occupiers. This feeling grew more due to the ethnic cleansing under Milosevic. Also after Milosevic numerous conflicts took place, in 1999, 2004 and even till today, which broaden the gap between the two people. The Kosovar Albanians feel they have the right to govern themselves after decades of oppression. (Perrit, 2010, p.18)

Several prominent Kosovars have expressed the view that independence is the only solution that can lead to a peaceful stability in the region. With no independence in the foreseeable future, the riots would not have stopped, and the conflict would persist. According to prime minister Hashim Thaçi, this situation would do no right to the people of Kosovo. With independence, though under international supervision, Kosovo can enter upon better times. In the independence speech, the equality principle was stressed:

*We declare Kosovo to be a democratic, secular, and multiethnic republic, guided by the principles of nondiscrimination and equal protection under the law. We shall protect and promote the rights of all communities in Kosovo and create the conditions necessary for their effective participation in political and decision-making processes*

And as the prime minister ended this speech: “*As of today, Kosovo will be a democratic, multiethnic state moving rapidly toward EU and Euro-Atlantic integration.*” (Thaçi, 2008).

Although, not an argument, the fact that the Kosovars were suppressed by Serbia several times, helps Kosovo to gain the support of the international community. As Herbert writes:

*Any evaluation of Serbia's legal argument for retaining Kosovo must begin*

*with an assessment of its commitment to the state's constitutive obligations throughout the whole of its territory, including Kosovo. There is a strong empirical case to be made that Serbia has alienated its right to rule Kosovo through willful, protracted abuse of such obligations. It is also evident that post-Milošević Serbia cannot or will not take the necessary steps to cultivate trust among its Albanian citizens in Kosovo, undermining the possibility of Belgrade's renewed governance there. (Herbert, 2005)*

This 'case' changed the opinion of many people about the Kosovars and the Serbs. It has shown them that Serbia has not been a good government for Kosovo. For some of them, as Herbert, Serbia hereby lost the right to govern Kosovo. They feel sorry for all those oppressed Kosovar Albanians and take their sides rather than that of the Serbs, though the current Serbian government tries to implement a diversity – policy, accepting all citizens and protect minority rights.

Serbia, not surprisingly, opposes this independence and thus secession of Kosovo. The reaction on the declaration of independence from Serbian President Tadic was as follows:

*The Provisional Institutions of Self-Government of the southern Serbian Province of Kosovo and Metohija, under interim United Nations administration, unilaterally and illegally declared their independence on Sunday, February 17. This illegal declaration of independence by the Kosovo Albanians constitutes a flagrant violation of Security Council Resolution 1244 (1999), which reaffirms the sovereignty and territorial integrity of the Republic of Serbia, including Kosovo and Metohija. Serbia, let me recall, is a founding State Member of the United Nations.*

*If a small, peace-loving, and democratic country in Europe that is a United Nations Member State can be deprived of its territory illegally and against its will, a historic injustice will have occurred, because a legitimate democracy has never before been punished in that way. The Serbian state was born in Kosovo, and it represents the central part of our identity. I shall be frank with the Council: this is a situation in which a peace-loving country where a proud and European people lives is having a part of its identity, tradition, and history snatched away. This act annuls international law, tramples upon justice, and enthrones injustice. (Perrit, 2010, p. 217)*

As expressed by the Serbian President, the main argument Serbia uses to oppose the independence of Kosovo is the illegality of the independence itself. The Serbs use the territorial-argument. As mentioned in the UN Charter, this concept is used to protect existing borders and territories. By this is meant that the status quo of borders should not be changed, or no territory should be acquired by separatist movements or other states. The

secession of Kosovo is such a case according to the Serbs. This right or norm is more valued than the right to self-determination for the Kosovars. Though at the last states the Serbs are willingly to give Kosovo the highest degree of autonomy within Serbia, as expressed by Serbian leaders. The Public International Law & Policy Group wrote a briefing packet for the Serbian team in the negotiations, in which they expressed the minimum outcome of the negotiations: *“Preserve the status quo in which Kosovo remains under the de jure sovereignty of Serbia as enshrined in UNSC 1244’s reference to the FRY”*, (Public International Law & Policy Group, 2003) referring to *“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. (UNSC, 1999)* This refers to the following passage from the Helsinki Act:

*The participating States will respect each other’s sovereign equality and individuality as well as all the rights inherent in and encompassed by its sovereignty, including in particular the right of every State to juridical equality, to territorial integrity and to freedom and political independence. (United Nations, 1975)*

Secondly, the Serbs fear violation of the rights of the Serb minorities within Kosovo. The Kosovar Serbs living in the north of Kosovo are estimated to be around 100,000 people. Furthermore there are ‘enclaves’ of Kosovars Serbs in the south of Kosovo. Serbia is now afraid the rights of these minorities will be violated in a Kosovar Albanian dominated state. Serbian President Boris Tadić points out that the Serb minorities keep getting harassed and intimidated. He accuses the Kosovar government on not cooperating enough with the Serbian forces to protect the Serb minority. In history, he emphasizes, 205,000 Kosovar Serbs have been expelled, human rights were violated, and since the arrival of the UNMIK administrating, still 581 Serbs had been killed, 841 abducted and 960 seriously wounded. Furthermore, he says, 18,000 houses are destroyed (United Nations, 2008). Human rights reported a continuation of inter-ethnic conflicts in some areas. Within Serbia, Kosovar Albanians have been harassed, intimidated just after the declaration of independence on 17 February 2008. Furthermore, houses were attacked, while the ‘response of the Serbian authorities was inadequate. Serbs often cannot return to their homes outside the Serbian enclaves (Human Rights Watch, 2009).

Moreover, as mentioned by the Serbian President, Serbia feels that Kosovo is the ‘cradle’ of their civilization. Therefore Serbian leaders cannot let Kosovo go, as US envoy in the Troika negotiations, Wisner states. While not an argument, this sentiment plays a big role

in both Serbian and Russian decision-making. Wisner states that she thinks Serbia will *"deploy considerable political efforts to make sure that Kosovo doesn't take root in legitimacy. In other words, that Kosovo doesn't join the United Nations or regional institutions"* (Wisner, 2008). This is to show that in Serbia they still feel unjustly treated by the international community. Firstly the NATO bombing campaign, and now the taking over and promoting independence in Kosovo.

Russia favors Serbia's side of the conflict. The first reaction of foreign minister Sergey Lavrov was as follows: *"The decision of the leaders of Kosovo is fraught [with the danger of] an escalation in tensions and ethnic violence in the province, and new conflicts in the Balkans"* (Ria Novosti, 2008) Russia, as Serbia's ally, has declared to stand by Serbia's side in the Kosovo-dispute. Russia has several reasons oppose Kosovo's independence.

Russia's main argument to oppose Kosovo's independence is that this case would be a precedent for separatist movements elsewhere. If the Kosovar Albanians could declare their independence from Serbia, this would be an encouragement for other people, including different movements within post-soviet countries. Foreign minister Lavrov stated that 200 other cases around the world are similar to that of Kosovo, where people want to break free of the mother nation, and of course it is unconceivable and unwanted to give them all independence. So, following Lavrov's reasoning, would Kosovo deserve this and other peoples not (Nielsen, 2009)?

Though this can hardly be called an argument. The domino-effect, as expressed does not have anything to do with the people of Kosovo, or doing them right. This idea is rather to scare the West and blaming them for conflicts in the future. As Putin expressed just after Kosovo's independence:

*The Kosovo precedent is a terrible precedent. Essentially it is blowing up the whole system of international relations which has evolved over the past not even decades but centuries. Undoubtedly, it might provoke a whole chain of unpredictable consequences. Those who are doing this, relying exclusively on force and having their satellites submit to their will, are not calculating the results of what they are doing. Ultimately this is a stick with two ends, and one day the other end of this stick will hit them on their heads.* (In: Toal, 2008)

This quote reveals two things: Russia accuses the West of acting against the rules of international law, and it blames the West for provoking new conflicts. By saying that this blows up the international relations, Russia positions itself and its allies as a black against the West. Russia uses the same argument as Serbia, calling the declaration an illegal act.

Russia stressed that only negotiated changes to the boundaries of Serbia can be made. By calling the Western actions illegal, Russia can blame the West for any problems within the region or even new conflicts that would arise from this recognition. Russia hedges itself for coming conflicts, because the West and not them let this happen. Another reason this precedent-idea cannot be called an argument is the inconsistency of Russia in recognizing the secession of South Ossetia and Abkhazia. Russia recognized both South Ossetia and Abkhazia on 26 August 2008, just six months after the declaration of independence by Kosovo, which it so expressly opposed. Strangely enough the argumentation behind this recognitions lies in mimicking the West after their recognition of Kosovo, by proving those cases were unique and would not form an precedent for other secessionist cases (Nielsen, 2009). It is clear Russia uses double standards for their argumentation of the different cases. What they cannot emphasize enough in the Kosovo case (being a precedent), they emasculate in what is to them a very 'similar' case. More on this argumentation will be discussed in the argument analysis of the Western actors.

The precedent-discourse cannot be called a real argument. Russia has other interests in stake to oppose the independence of Kosovo: the close Russian-Serbian alliance. Russia is in many ways trying to strengthen and maintain ties with Belgrade and the Serbian leaders. Serbia is one of the only Russian allies in Europe. This alliance stems from the affinity with the Orthodox Serbian people, the Russians being mostly Orthodox themselves. Another often heard reason for the close alliance with Serbia is that Russia wants to form a block against West and the NATO. The hostility towards the NATO in this case stems, among other reasons, from the discontent of the NATO bombing campaign in 1999. According to Antonenko (2007), Russia does not believe that Belgrade was primarily responsible for the conflict in 1999. Consequently, Russia thinks of the 1999 NATO bombing campaign as unjust and an attack on Serbia. Russia tries to strengthen the ties with Belgrade as they seem closer and closer toward European integration. Serbia would be eligible to join the NATO or EU and has even been offered an interim agreement on the path towards EU membership (BBC News, 2008). Furthermore, Russia's NATO ambassador Dmitry Rogozin stated that if Serbia were to join NATO, Russia will give up the fight for Kosovo. Adding: *"We cannot be bigger Serbs than the Serbs themselves"* Rogozin explains Russia's stance. He says he Russia would not understand Serbia's decision in favor of NATO (EGM Media Group, 2010).

One of the most used official arguments Russia uses to oppose Kosovo's independence is the fear of violation of the human rights of the ethnic Serbs within Kosovo. This argument, in line with Serbia's argument is completed with the 'demand' not to recognize Kosovo before the standards as outlined in UNSC Resolution 1244 are met. This

implies the safe return and guaranteed security of the ethnic minorities in Kosovo. This cannot be guaranteed yet by the Kosovar government and security forces. According to Russia, the accepting of Kosovo's independence could possibly lead to more ethnic cleansing. In that way, Russia speaks of a counterproductive step. Also, clear violations of the UN Charter and the Helsinki Final Act do not give Russia enough evidence the future of ethnic minorities in Kosovo will be a safe one (Antonenko, 2007, vol. 49).

The Western actors that support Kosovo's independence are among others the actors that were involved from 1999 onwards. Many argue that 'The West' decided Kosovo to be independent in 1999 and negotiated until 2008 to establish that (Perrit, 2010). The western actors, led by the United States and includes prominent members of the EU such as France and Germany, tried to bring freedom to the Kosovar people since stopping the ethnic cleansing in 1999. The states that support an independent Kosovo, the best part of Europe, Australia, and northern America, mainly use the same arguments.

Their main argument is the freedom of the Kosovar people to govern themselves. This has been expressed before under the principle of self-determination. They stress that under this principle the Kosovars have the right to govern themselves. This is strengthened by the grave oppression and violation of rights and trust before by the Yugoslavian and Serbian government. They argue that this oppression made returning Kosovo under Serbian government impossible. Ahtisaari expressed this by saying that Serbia lost Kosovo already in 1999, and there is no way back (Perrit, 2010). The Kosovars have the right to self-govern, because they are a people within a defined territory, the mother state (Serbia) has violated their basic rights, and no other solution is thinkable for them other than full independence. It becomes clear that these states favor the right to self-determination above the territorial integrity (Wilson, 2009). And resulting from the discussion between them and Russia, international law is indeed, ambiguous enough for both sides to make a legal argument.

Western actors reacted on Russia calling Kosovo a precedent for other similar cases with explaining the case of Kosovo is a unique case or *sui generis*. As a unique case, Kosovo cannot be seen as a precedent. This statement was repeated by every leader of an Kosovo-supporting state 'like a mantra' (Nielsen, 2009). Although emphasizes as a unique case, these leaders were not always consistent. The EU's High Representative for Common Foreign and Security policy Javier Solana firstly stated that Kosovo could be an precedent for the regions South Ossetia and Abkhazia, but later he said: "*the Kosovo problem is an issue, which cannot be compared with situations in any other regions*" (Nielsen, 2009). Ahtisaari reports stated that only parallels may be drawn with other regions that meet the following three criteria. The region should have been placed under international supervision after

violent events which split the territory of the existing state. The root of the conflict should involve a minority in term of ethnicity, culture, language or other grounds. And there cannot be any 'hope for holding together the union of these two parts of the state' (Jia, 2009). Only then, parallels may be drawn and can one speak of a precedent. No other case in the world (arguably besides East-Timor) suits the three criteria, and thus Kosovo is not a precedent for other cases, is the logic of Ahtisaari and partners. Secretary of State Rice expressed very similar statements to 'prove' the uniqueness of the Kosovo case (Secretary of State Condoleeza Rice, 2008).

As a reaction on Russia remarks that Resolution 1244 standards must be met before granting Kosovo its independence, Western actors stressed that under supervision of UNMIK an EU mission EULEX no such things will happen. Rather, *"granting Kosovo this supervised independence would be the best guarantee of stability and inter-ethnic peace, and no such thing can be achieved before the status issue is resolved"* (Antonenko, 2007, vol. 49). This implies blaming Russia, for upholding the whole status process and indirectly upholding actions to strengthen the security of minorities in Kosovo.

Not all 'Western' actors take the same stance. Leaders of Spain, Cyprus, Romania, Slovakia, Bulgaria and Greece have expressed concerns. Remarkably, all of them have their own minorities which could evolve into secessionist movements. This means thus that those states do not believe EU High Commissioner Javier Solana is saying that this case is no precedent. These states argue that granting Kosovo with independence would be inconsistent. Also they fear that such an position would encourage the movements to do the same (Kim & Woehrel, 2008). Also for China, who sees recognizing Kosovo as a possible precedent for regions such as Taiwan, this arguments counts most, and not the internal Kosovar situation (Israely, 2008).

#### 4.4 Conclusions

As seen above, the case of Kosovo divided the international community. Within the EU member states, of whom 22 out of 27 recognized Kosovo, no consensus could be reached. The same counts for the UN, 55? out of 192 member states recognized Kosovo. These divisions make it impossible to formally recognize the newly independent state. To summarize the most used and most important arguments and discourses:

Arguments supporting Kosovar independence

Arguments opposing Kosovar independence

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>• Self-determination</li> <li>• Minority rights will be handled better after independence</li> </ul> | <ul style="list-style-type: none"> <li>• Territorial integrity / illegality independence</li> <li>• Minority rights guaranteed before granting independence</li> </ul> |
|---|--|

Discourse used to support independent Kosovo

Discourse used to oppose independent Kosovo

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• Kosovo is an unique case</li> </ul> | <ul style="list-style-type: none"> <li>• No, rather precedent further secession</li> </ul> |
|--|--|

From this scheme it is clear what are the main arguments used on each side whether or not to recognise an independent Kosovo. The US, UNMIK and NATO favor self-determination above the territorial integrity as written down in many treaties. However, many scholars including Jia argue that self-determination is not a legal basis for secession from the mother state (2009). According to international law, they argue, internal self-determination is allowed, but not external determination, the right to govern themselves independently.

Russia also stresses this point, arguing that the principle does not allow portions of the state to secede. Also, after colonization, no other state declared itself independent of the basis of the principle of self-determination. The principle was without a doubt set up primarily for such cases. On this controversial matter a Canadian law expert once wrote (in the hypothetically case of a seceding Quebec): *“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”* (Borgen, 2008).

It is interesting to see the debate on what seems to be arguments, but are rather discourses, used to manipulate other states. As seen before, the ‘precedent’ idea serves another underlying goal. Russia was inconsistent by recognizing South Ossetia and Abkhazia. In Serbia this news was received negative, as an Serbian commentator reported:

*...not even Moscow is consistent, thus the Russian Foreign Minister Sergey Lavrov was ‘caught’ by the Western media describing Kosovo as a ‘sui generis’ example, which is the American, and not the Russian position. All that confusion is the result of the application of double standard when the US and the EU from one side, and Russia from the other, in harmony with their own interests from case to case differently support the integrity of existing states (Moldavia, Serbia, Azerbaijan, Georgia...) or, respectively, the right to ‘self-determination’ of minorities and nations. Serbia, which in [the case of]*

*the defence of Kosovo yielded the monopoly to Russia, now is in a uncomfortable situation because an ever stronger Russia (after the success in Georgia but also because of the new possibilities which the Kosovo precedent opens in Ukraine) has ever more interests in also itself supporting the secession of some minorities. (In: Nielsen, 2009)*

Furthermore, Antonenko (2007) stresses that the alleged alliance between Russia and Serbia is one-sided. Serbia surely can use some allies in the Kosovo dispute, but the real interests of Serbia lie within the EU and NATO. Serbia wants to become a part of the European integration and is then probably willingly to give up the 'alliance with Russia. Russia however tries everything in its power to keep Serbia on their side. Economic ties are strengthening, Russia had an active role in rebuilding Serbia after the NATO bombing campaign and the two share gas lines of the South Stream and signed a contract on the construction of a new pipeline: Blue Stream 2.

The two sides of the conflict seem to rather follow their own political agendas, than caring for legal arguments. First of all, Serbia does not want to bid Kosovo farewell. They feel that Kosovo is the cradle of their nation and feel robbed by the 'international community' ever since 1999. Russia, moreover seems to care mostly about the one-sided alliance with the Serbs. The Kremlin has vital economic and strategic interests in Serbia, such as the Serbian market and blocking NATO and its partners.

The United States on the other side are showing of their power as the world's leader in national building and the saving power of NATO's credibility. Since 1999 the United States could not permit to take another stance in the conflict, since that would condemn the controversial bombing campaign of 1999. Other big European powers such as Germany, France and the United Kingdom, side with the United States, as their most important partners in NATO and UN.

Kosovo, even though presenting arguments for their independence does not have a say in this whole process. Kosovo is the pawn, but not a player in this game of recognition.

## 5 Conclusion

In this concluding chapter the main question that was raised in the introduction will be answered: *To what degree is Kosovo a state?* This question was raised in order to gain insight in the political status of Kosovo, according to the different involved actors in stake. Furthermore some critical notes will be added on the process of the research. In doing this research it is almost impossible to not wander a bit from the actual subject and end up on a sidetrack. These deviations, combined with the research limitations offer a few interesting subjects for further discussion or research.

### 5.1 Conclusions

To answer the main question of this research a framework was created with sources of very different perspectives. In this framework it became clear that even though many scholars of different background tried to create definitions, conditions and criteria, 'the state' as a concept is almost undefinable. The most used definition of a state is Webers definition, in short: An entity which has the monopoly on the legitimate use of force within a given territory. Even though this definition can give a pretty good idea of what a state is, it is no indicator on the basis of which can be decided whether a newly formed state can actually be called a state. Exploring more definitions and criteria, the main concept in stake for yet to be recognized states is the recognition itself. Recognition in this sense is used both as a criteria and a goal. This paradox describes in essence the problematic process of becoming a state. Therefore it is useful to look at the arguments used to recognize or deny a state's independence. Those arguments can be either legal or political. As mentioned in the introduction, this research distinguishes itself from others in a way that it does not fixate on merely legal arguments and aspects, but takes both political and legal aspects in consideration.

The different actors in stake in the Kosovo dispute have a crucial role, as they determine the state's future, by recognizing or denying that a state has established. Since the international community is divided over the final status of Kosovo, no formal recognition can take place. And while no formal recognition can be reached, the question if Kosovo is a state cannot be answered with satisfied certainty.

Serbia and Russia argue that the secession of Kosovo was an illegal unilateral act, and thus Kosovo must not be recognized or accepted as a state. It is rather still a province of Serbia. The Serbs and Russians attach more value to the principle of territorial integrity as written down in many treaties than to self-determination of the Kosovar people.

Besides this legal argument, other arguments are used to oppose this independence. The ethnic Serb minority would not be safe in a Kosovar Albanian dominated state. Therefore it is important to keep Kosovo under Serbian rule. Russia argues that the case of Kosovo would set a precedent for other regions. If Kosovo would get recognized as an independent state, this would encourage other secessionist movements to declare their independence too. According to Russia's Minister of Foreign Affairs Lavrov, 200 similar cases currently exist in the world. For this reason it would be irresponsible to grant Kosovo with independence. Russia lost credibility for this argument when they recognized South Ossetia and Abkhazia by saying these cases were unique and should not serve as a precedent. This rhetoric is exactly how the 'West' responded on the precedent-idea.

Western actors, headed by the United States, favored the principle of self-determination above the territorial integrity. Even though many scholars proved that self-determination is no legal argument for allowing Kosovo to secede from Serbia, the United States, and many others maintain their position. Responding to Russia calling Kosovo an precedent for further conflicts, the 'West' responded by repeating that this is a unique case. This case, with international actors involved and with no other imaginable solution than total independence, would not encourage other movements to do the same. Yet, some Western states such as Spain refused this stance and did not recognize Kosovo, because this would give a wrong impression to their own secessionist movement within Spain. Furthermore the credibility of the NATO was in stake in 1999, and its initiators could not afford to change sides.

While many scholars keep emphasizing the importance of the legality of Kosovo's secession, the analysis made clear that political and not legal arguments are most important. Later this year, the International Court of Justice will report on the legality, it is not expected this will change the international opinions in a way that states will swap sides. In the end, the matter of recognition is a (geo)political affair, rather than a legal one.

For answering the main question this implies that Kosovo is either a real state, or no state at all, depending on what side and which arguments are being used. Serbia argued the illegality of the secession, but this did not keep 69 other states from recognizing the state. It is for each to decide how much recognition is needed in order to be a state. Is this half of the states, is it only one or just the world power states? This makes that the main question of the research has as many answers as states in the world. About two hundred.

## 5.2 Critical reflection and point for further discussion

Conduction this research was at some points like walking a bumpy road. The author had to tailor the subject and research question a few times in order to shape the research as a logical whole. In its way, many subjects passed that seemed necessary, but were not in answering the main question of this research. Those subjects however can form a basis for very interesting discussions on the subject of newly formed states. Those discussions are crucial to any newly formed states.

While exploring the meaning of the state, the author came across different opinions on what a state is in our modern days. Both Sassen and Ohmae see a diminishing role for the state. As Sassen (2006) describes in her book, globalization has a major impact on the state. The domain of the state apparatus is “a crucial domain for some of the transformations ushering the global age” (Sassen, 2006, p.408). She describes that there is a decline in public authority and a rise in private authority. She points out that this doesn't only effect the state as a whole, but it lead to differences in power within the state. She describes the process of shifting public and private powers. Historically there was a formalized division between the ‘apolitical private market domain’ and the ‘public political realm’, which served as a highly valued norm of liberal democracies (Walzer in Sassen, 2006, p.184). She point out that form of authority that historically belonged to the public domain, are shifting towards the private sphere. This also implies ‘corresponding normative recoding’. She stresses that this is an outcome of a globalization process, which in her opinion is partial, as it does not encompass all components of society.

Ohmae has an even further-reaching opinion on states. *“The nation state has become an unnatural, even dysfunctional, unit for organizing human activity and managing economic endeavor in a borderless world”* (Ohmae, 1993). He explains that the modern nation state is an “inadequate mechanism for dealing with the threats and opportunities of a global economy”. When citizens well-being was dependent on the ability to exploit natural resources, with the use of military violence if needed, the state was a very important instrument. But now this well-being is provided through the knowledge-driven economy, such national military force is no longer needed, according to Ohmae. States are much focused on ‘national interest’, which is not in the interest of global economy, let alone people's interest (Ohmae, 1995, p.59-70).

If Ohmae's plea forms an adequate process in the world, maybe the discussion of Kosovo being a state or not does not matter that much. If regional entities make up the world most important actors, why bother to proclaim an independent state. Apparently, the leaders

of Kosovo, and many other world leaders still think the states is an important actor. The proof being the fierce discussion and conflicts derived form Kosovo's declaration of independence.

For the author the importance of legal arguments was being overestimated in the beginning of the research. The flexible research design however allowed the author to create a more actual combination of the legal and political aspects to analyze the main arguments. The research formed a bumpy, but very interesting and revealing road and a important insights is the game that is being played by major political players.

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Figure 1: <http://www.economist.com/node/16283317>

Figure 2: [http://upload.wikimedia.org/wikipedia/commons/0/0a/Kosovo\\_relations.png](http://upload.wikimedia.org/wikipedia/commons/0/0a/Kosovo_relations.png)

Chapter Eleven of the *Charter of the United Nations*  
Signed in San Francisco, California on June 26, 1945

Article 73

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

- a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
- b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;
- c. to further international peace and security;
- d. to promote constructive measures of development, to encourage research, and to cooperate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and
- e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

Article 74

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighbourliness, due account being taken of the interests and wellbeing of the rest of the world, in social, economic, and commercial matters.

Appendix 2 : Declaration on the 'Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union' (16 December 1991)

Declaration on the 'Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union' (16 December 1991)

In compliance with the European Council's request, Ministers have assessed developments in Eastern Europe and the Soviet Union with a view to elaborating an approach regarding relations with new states.

In this connection they have adopted the following guidelines on the formal recognition of new states in Eastern Europe and in the Soviet Union:

The Community and its Member States confirm their attachment to the principles of the Helsinki Final Act and the Charter of Paris, in particular the principle of self-determination. They affirm their readiness to recognize, subject to the normal standards of international practice and the political realities in each case, those new States which, following the historic changes in the region, have constituted themselves on a democratic basis, have accepted the appropriate international obligations and have committed themselves in good faith to a peaceful process and to negotiations.

Therefore, they adopt a common position on the process of recognition of these new States, which requires:

- respect for the provisions of the Charter of the United Nations and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights
- guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE
- respect for the inviolability of all frontiers which can only be changed by peaceful means and by common agreement
- acceptance of all relevant commitments with regard to disarmament and nuclear non-proliferation as well as to security and regional stability
- commitment to settle by agreement, including where appropriate by recourse to arbitration, all questions concerning State succession and regional disputes.

The Community and its Member States will not recognize entities which are the result of aggression. They would take account of the effects of recognition on neighbouring States.

The commitment to these principles opens the way to recognition by the Community and its Member States and to the establishment of diplomatic relations. It could be laid down in agreements.