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**“Kosova’s Independence under International Law – a Factor of Peace  
and Stability in the Balkans”**

Let me first thank the LSE Student Union and the Albanian Society for having invited me to address this audience through a presentation, or lecture, as you may call it, on Kosova’s independence under international law. It is indeed a pleasure to be here with you today, in this School of high international reputation, and to have an opportunity to meet and exchange views also with a number of students from my country who are studying here. Studying here is a privilege; for Albania it is also a privilege to have Albanian students here. Your generation, with the solid background that this education is offering you, is going to take the reins of the country in its hands at some point in the future.

Having said this, let me return to the topic of my presentation today. The settlement of the Kosova status has, at various intensities, dominated the political and diplomatic negotiations over almost two decades now. It actually became a key issue, figuring high on the agenda of the international community and its major players in particular after what happened in the period 1998-99. These players have been keenly focused on and interested in bringing lasting peace, security and prosperity in the Balkans, the South-Eastern Europe and, as a result, Europe as a whole. They constitute the overwhelming majority.

A lot of noise continues to be raised by Serbia, which is understood, and one permanent member of the Security Council, which appears to be difficult to understand, allegedly that the solution proposed as the best, most viable and long-lasting, would violate international law, the UN Charter, legal frameworks, etc., as impairment of territorial integrity of a state. Their noise actually falls short of sound legal, moral and other arguments.

This school is the right venue where one would find the right audience to talk about an analysis, short as it may be, that this presentation will try to make, of certain key international documents that actually provide the solid basis to come to the right conclusions. We have reached the phase where the right decisions seem to have been taken and/or are about to be taken very

shortly, bases on those right conclusions mentioned a moment ago. Let me try to address some of these issues that indeed provide a full legal justification for Kosova's right to self-determination, i.e., independence.

It is not a novelty to say that much has been written about the international legal principle of self-determination. (See e.g. *Ved Nanda: The New Dynamics of Self Determination: Revisiting Self Determination as an International Law Concept: a Major Challenge in the post Cold War Area*, 3 *ILSA J Ind'l & Comp L* 443 (1997), Note 1) This is well established in international law as *opinion juris* (Frederic L. Kirgis, Jr. *The degrees of self determination in the UN Ear*, 88 *AJIL* 304 (1994) citing, Frederic L. Kirgis, Jr. *Custom on a sliding scale*, 81 *AJIL* 146 (1987), note 21). As one noted international legal scholar, Thomas Franck, stated in his "*Postmodern Tribalism and the Right to Secession*", "a minority within a state, especially if it occupies discrete territory, may have a right to secede - roughly analogous to a decolonization right - if it is persistently and egregiously denied political and social equality as well as the opportunity to retain its cultural identity."

Furthermore, "severe deprivations of human rights often leave no alternative to territorial separation", writes Ved Nanda (*supra* note 1, at 443). Such has been the problem that has confronted the people of Kosova. As stated above, not only does international law recognize a right to secede under certain circumstances, but numerous international legal scholars hold that under certain circumstances, it is well justified.

In a host of articles and books on the subject of self-determination, it is generally maintained by the authorities that a right to secede is not automatic or guaranteed, but, under certain circumstances, secession may be warranted, and that a blanket rejection of the right to secede - as one or two states are actually trying to do - is improper.

In addition, legal authorities hold generally that certain criteria must be satisfied before a claim for secession may be granted, such as 1) identifying the group claiming the right of self-determination (*Ved Nanda, Self determination under international law: validity of claims to secede*, 13 *case W Res J, Int'l L.* 257, 275 (1981), and what right is it; 2) what is the nature and scope of their claim; 3) what are the reasons behind the group's claim, and 4) the degree of the deprivation of basic human rights. These criteria encompass both objective and subjective elements. The objective criteria are: a common racial background, ethnicity, language, religious, history and cultural heritage, with another important objective factor being the defined group's territory, clearly defined, recognized and recognizable borders. The subjective criteria are: to what extent do the individuals within the group

perceive themselves collectively as a people, and lastly the degree which the group seeking self-determination can form a viable political group.

From all the angles one would wish to look at these criteria, they turn out to be both proven applicable and unique to Kosova; they make very apparent the viability of Kosova's self-determination bid and, very soon the decision for secession – i.e., independence.

Very briefly, on self determination under the UN: the history of self-determination traces its roots to the Peace of Westphalia (1648); much later President Wilson proclaimed the concept to the League of Nations (1919), yet it did not become part of international instruments until the United Nations in the 1950s. In 1960, the Declaration on the Granting of Independence to Colonial Countries and Peoples stated, "all peoples have the right to self-determination, by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". However, self-determination in the Declaration was aimed solely at decolonization. It contained a clause prohibiting the disruption of the national unity and territorial integrity of a state (*See Micaela Pomerance, The United States and Self Determination: Perspectives on the Wilsonian Conception, 70 am.J Int'l L. 1( 1976)*). Why am I quoting this? Simply to illustrate that in, certain capitals, the thinking is unfortunately still back at the time when the UN was dealing with and adopting declarations to ensure that the process of decolonization moved ahead. Indeed, for years now, the Committee on Decolonization is no longer existent under the UN committee structures.

What is relevant to the Kosova situation? In the 1970s the General Assembly unanimously adopted the *Declaration on Principles of International Law Concerning Friendly Relations*. (Indeed, the Kosovar Unity Team offered to the Serb side a document on principles of friendly neighborly relations that was turned down by the Serbs!) One of the principles of the UN Declaration is that of "equal rights and self-determination" of peoples, stating that, "all peoples have the right freely to determine, without external interference, their political status and pursue their economic, social and cultural development, and every state has the duty to respect this right in accordance with the provisions of the Charter" (*supra note 1 at 269*).

A state owes a duty, under this Declaration, towards a people claiming the right of self-determination:

to refrain from any forcible action which deprives peoples... of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of

the exercise of their right to self-determination, such peoples are entitled to seek and receive support in accordance with the purposes and principles of the Charter.

With the moves so far and those that are to come shortly, a state seeking protection “must be possessed of a government representing the whole people belonging to the territory without distinction to race, creed or color”. The key word here is “government representing the whole people”. In the absence of compliance with the aforementioned, a government is in violation of and, therefore, is **not** entitled to protection from any action which would dismember or impair...(its) territorial integrity or political unity. Belgrade is not in compliance in this regard. Moreover, in the Kosova situation, the Belgrade Government, through its application of decades upon decades of continuous and programmed oppression, violations of all kinds of human and other rights, including through the application of martial law, and taking away the rights of the Kosovars solely because of their ethnicity, violates the Declaration quoted above.

Therefore, as logic follows, Belgrade should not expect its “proclaimed territorial integrity” to be protected. To look at it another way, a state that does not have a government that represents all the people, has impliedly waived its right to territorial integrity, the way it perceives it and, as such, has no right to seek international protection from secession. The Kosovars’ fight for freedom, resulting from the Serbs’ protracted barbarity which culminated with the eviction of 1 million people from their homes, the destruction and razing to the ground of thousands upon thousands of households and entire villages, has been assessed in terms of self-defense.

On the other hand, the action of the Serbs against the Kosovars should be looked at under the General Assembly’s definition of aggression: [N]othing in this definition ... could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration... particularly peoples under colonial rule and racist regimes... nor the right of these peoples to struggle to that end and receive support in accordance with the principles of the Charter and in conformity with the above mentioned Declaration (*G.A. Res. 3314, 29 UN GAOR, Supp (No 31) 142 UN Doc. A/0631 (1974)*).

We know that while the Declarations and other instruments were looked at the context of colonial rule (which, as a matter of fact, can be said was the case with Kosova, too, though not declared as such), the principles and rights that the UN sought and seeks to protect remain the same, whether a colony or repressive regime. In the case of Kosova, the logical interpretation

of the right to receive support must be construed as the international community recognizing the Kosovar Albanians' legitimate right to self-determination, i.e. secession, in other words - independence.

To rehash history and specific events is not the purpose of this presentation. What has happened is known by all and I need not re-elaborate. It is important to note, however, that since its inception, Kosova and its people have suffered and were subjected to the brutal whim of those in power. It is of paramount importance, therefore, to separate the *sui generis* situation of Kosova from the rest of the self-determination movements, which certain capitals and/or individual politicians evoke not infrequently. Until 1989, when Kosova was stripped of the autonomy in violation of the Constitution of that country which does not exist, it was an autonomous entity with a political status equal to the other six republics, meaning that a Kosovar Albanian headed, as has been the case, the Federal Republic as part of the rotating presidency.

The nature and scope of the claim of the Kosovars and the reasons for their claim are all tied together into a simple answer: acts of aggression have been committed upon them on a daily basis over a very long, protracted period of time, which Professor Nanda, as early as 1981, in his *Self Determination Under International Law: Validity of Claims to Secede*, has described as, "there must be little hope that any action short of separation would satisfy the sub-group's (i.e. Kosovars) desire for effective participation in the value process".

The human rights issue is the final test defined as "to what extent a group suffers subjugation, domination and exploitation... and to what extent the individual members are deprived of the opportunity to participate in the value processes of a body politic because of their group identification". In this respect Professor Nanda writes again, "Severe deprivations of human rights often leave no alternative to territorial separation. The world community must respond effectively and efficiently to the consequences of such separation. There is a growing recognition of the close link between human rights and international peace and security".

I was only referring to the most notable minds of the international law and the relevant documents, recalling in this regard what all have seen on TV screens - thousands of thousands of refugees tracking hundreds of miles on foot to flee the rapes, the murders, the beatings, the plundering and burning of homes and the mass destruction of entire villages - horrendous, massive and planned human rights violations, in Kosova.

Let me mention at this junction two books, 300 pages plus each, on the human rights situation in Kosova in the pre-war period and during the war, compiled and published by ODIHR of the OSCE, the European inter-governmental human rights „watch-dog“. I would recommend a look at these published documents to all those who still may have some doubts on the above. These are official documents prepared by an international institution and made available to all its participating states. In short, not only does this type of behavior rise to the level of crimes against humanity, but it violates all the human rights instruments in force. It is thus fair to say that Kosova has met its burden under the “human rights deprivation” test.

Having dealt briefly with this aspect of international law, let me come a bit closer to our days and try to analyse several other aspects of international law. Kosova is an issue of vital importance for Albania. The final urgent settlement of the status of Kosova has been necessitated by the developments and the reality on the ground there and is being dictated by the interests of stability and security in the region and in Europe. It is only normal, therefore, that Europe has a vital interest in securing lasting peace, prosperity and cooperation in its territory. All are and should be interested, in fact, to ensure that peace, stability, prosperity prevails everywhere in Europe. Opposing a settlement along the lines of what is being expected to happen any day would leave room for any interpretation, including lack of interest to have a lasting, peaceful and secure Europe. That is why coherence, the unity of purpose between the USA and EU on this matter is highly valued and warmly applauded by Kosova and its people and by my country and its people.

We continue to hear that Kosova is not specific and should not be treated as a *sui generis* case. Indeed, examples continue to be cited which actually bear no comparison whatsoever with the issue in question. As most of the international community members and all but one member of the Contact Group have indicated, including the firm conviction of President Ahtisaari, we firmly believe it is a *sui generis* case for a number of reasons:

Firstly, because there were specific circumstances that relate to this specific issue, as outlined above, and as will be again underlined below, under a number of international law documents. Added to them is the non-consensual break-up of the former Yugoslavia; in fact it did break up through violence and bloody wars that were provoked by one country in the name of the unity and integrity of another country. Secondly, it resulted in massive violence, repression and mass expulsions of people from their homes and territories. I believe all would still have fresh in their mind's eyes images of trains loaded with thousands upon thousands of people, almost a million Kosovar Albanians, half of whom found refuge in neighboring

Macedonia and half in Albania. They were actually expelled at gun point, like in the time of *pogroms*. Thirdly, this followed constant, premeditated, programmed, all kinds of massive human rights violations over decades and decades, by the state apparatus until only 8 years ago.

That whole situation led to the intervention of NATO through a resolution of the Security Council. There was a debate over legality versus legitimacy of the intervention. I am refraining from entering into further discussion about legality versus legitimacy, because this is not the scope of my presentation and has already been dealt with very eloquently by others. We believe, however, the decision was both legitimate and legally grounded, the action that followed was also fully legitimate and grounded.

But let me try to draw a few comparisons with a particular legal aspect related to the issue in question. If, according to international law, reference is made of what were the legal aspects of the break up of the Socialist Federative Republic of Yugoslavia (SFRY) and what resulted afterwards, it is very clear that the constitution of that country, the so-called 1974 constitution, is what comes at play. A UN international commission – known after the name of its chairman as the Badinter Commission – established to give legal opinions on the break up of the SFRY, says about that country which the 1974 constitution was construed to serve, and upon which the whole domestic legislation of that country was built, and I quote from Legal Opinion No 8 of that Commission, “The SFRY has ceased to exist”. Automatically, all legal instruments linked to that country, beginning with the 1974 constitution and including Kosova’s relationships to it, have, together with that country and constitution, also ceased to exist! Reference to constitutional arrangements and legality do not have much ground and can hardly serve as justification.

Furthermore, after the Dayton Accords, which actually left Kosova out of the package, but it is not my intention to deal with the reasons why that was the case, the Rambouillet process started, a document was drafted, not endorsed by Belgrade, which stated amongst other things that the settlement of the future status of Kosova will be based on the expressed will of the people of Kosova. It led afterwards to Resolution 1244 of the Security Council, which was tailor-made to serve that specific period and offer only a framework for the settlement of the Kosova status. United Nations resolutions are not *sacro sanct* and/or cast in iron. They are compiled by people and are supposed to be amended, as may be necessary, by people once circumstances change. This said, however, it seems that Resolution 1244 has long served its days, has become redundant and overtaken by events and developments, also from the legal point of view. Why?

Firstly, because UNSC Res. 1244 makes reference to FRY (Federal Republic of Yugoslavia), and Kosova, directly and indirectly, as part of it. Just as the SFRY „has ceased to exist“, according to Badinter's stated Legal Opinion No 8, quoted a moment ago, so has the FRY ceased to exist, this time without a Badinter Commission report. In 2005 the FRY, for its part, also ceased to exist and became the State Union of Serbia and Montenegro which, UNSC Res. 1244, as a legal framework, does not make any mention of or indirect reference to, therefore does not recognize it. That „state union“ also has „ceased to exist“ following the referendum in Montenegro, which gave the tiny Balkan country independence and which was immediately recognized by the international community. Still UNSC Res. 1244 does not recognize, nor does it make reference to, Serbia alone, but refers to a Federation which has legally and practically „ceased to exist“ two times, in two different forms, and within a matter of only a few years.

Notwithstanding this, the UNSC Res. 1244 was not even taken up for discussion as having lived its days or as having reached a point that warrants amendment to it. To make this missing process and what comes afterwards look even funnier, there still are certain or a couple of capitals that continue to refer to UNSC Res. 1244 as *the* legal framework to settle the question of the final status of Kosova. As if this were not enough to invalidate references to this resolution, Serbia adopted in 2006 a constitution which some hastened to applaud. That constitution, just as Milosevic unilaterally stripped Kosova of its former autonomy in 1989, totally ignoring 2 million Albanian in Kosova, stipulates, by a unilateral decision in Belgrade, that Kosova is part of Serbia, again totally ignoring the will of 2 million people of Kosova,, as if they were nonexistent. This kind of political behaviour and decision, a perfect repetition of the past, puts a big question mark on the whole issue of the legality of that constitution with regard to Kosova. Politically, too, the argument is very weak, indeed. The Kosovar elected representatives were absolutely right to say it had not anything to do with and not affecting the issue of Kosova, thus ignoring it.

Let me also remind that another international commission set up by the former Secretary General of the United Nations, Kofi Annan, under the co-chairmanship of the then Swedish Prime Minister and Judge Goldstone, the first head of the International Criminal Tribunal on the former Yugoslavia (ICTY) in the Hague. This commission was composed of 11 renowned international lawyers from all major countries. It analysed the whole dynamics and developments in Kosova in the last 100 years or so, and came up in the end with five possible alternative conclusions. After analysing and considering invalid the first four alternatives, the report comes to the fifth conclusion as the only viable one for the solution of the status of Kosova: „conditional independence“, or supervised independence, as we hear it being



called today, is the only viable solution proposed by this independent commission, because, as it said, among other things, with all what has happened in Kosova, there is no way Kosova could return to any kind of Serbian rule.

There are no double standards when it comes to the interpretation or implementation of the OSCE's fundamental document – the Helsinki Final Act or the Decalogue, either, as Serbia and the Russian Federation claim. Although the OSCE is only a regional organization under Chapter VIII of the Charter of the United Nations, if reference is made to only one paragraph of the Final Act in relation to the Kosova issue – „territorial integrity and sovereignty of states“ - in order to justify their position against Kosova's bid for independence, may I recall that there is also another paragraph in that same Final Act that evokes the right of self-determination of peoples, to which I also referred above under a host of United Nations documents. This principle has a universal character, whereas the principle of not-changing borders through violence, i.e., the means used only are limited, has a non-universal character. Suffice to mention that in 1988 the United Nations numbered 147 states, whereas in 1998 the figure reached 180 states, to illustrate this process of continuous border changes.

Why Kosova's independence would contribute to and benefit long lasting peace, security and stability in the Balkans? As it would be evident for anyone, the conflict between the Albanians and the Serbs has not been an institutional or constitutional conflict, it has not been a conflict between democracy and dictatorship, it has not been a conflict between various ideologies, it has not been a purely historical conflict to determine solely historical truths. Nor has it been a conflict between one person, e.g., Milosevic, as some would try unconvincingly to simplify the issue, and a people, but between two peoples and nations, two distinct cultures, languages, traditions and historical identities, at the root of which, basically, lied and lies political reasons: this conflict has been between efforts on the part of the Serbs to preserve their domination over the Albanians, and efforts on the part of the Albanians for freedom, for political state independence.

Hence, the best and only lasting solution would be the one that is in conformity with, guarantees and consolidates fundamental values, such as, freedom, justice, equality, peace, security, etc. Of all options, independence is the one that would guarantee all these values. No autonomy would guarantee lasting peace, security and stability. Kosova has experienced all forms of autonomy, none has secured peace and security, but has produced troubles. Any form of autonomy would only preserve a *limbo* situation of insecurity, “an untenable situation”, as the December EU Declaration stated.

In addition, the Serbs, as history has proven, have not demonstrated that they can coexist, on an equal footing, with other peoples and cultures. This was the case with the Croats and Slovenes in the Kingdom of Serbs-Slovenes-Croats before WWII, during which the efforts of the Serbs for domination led to bloody political events. That was the case with the SFRY after WWI, that was the case with the FRY in the last decade. Serbs have all along tried with all forms and manner of means to dominate others and place them in an unequal position. History has proven that there has not been one single southern-Slav nation and people that wanted to live with or under another southern-Slav nation. All went their own ways to independence and, rightly so, were recognized such independence by the international community. Why, in the end, should a non-Slav nation not be given and recognized the same right, when the development of events has been such that all international documents speak loudly in favour of their right to become independent?!

Having said all the above, it can be said that a solution would be a real one when it is legitimate, and a solution would be legitimate when it represents the free will of the people. That is exactly what is the case with Kosova's independence. It therefore would guarantee lasting peace and security in the region because it would, technically, in addition to all other elements, bring about the so-called equilibrium of forces (not necessarily and only in the classical sense of armed forces, but more broadly so), it would bring about equality in the status of peoples and nations, and it would bring about emancipating consequences. Regarding the latter, let me recall a saying by Tito's right-hand ideologist and adviser, Milovan Gilas, who is quoted to have said that, "Serbia would never become democratic until it would take off the yoke of Kosova from its neck".

The independence of Kosova would play an important emancipating role for the Serbs. Balance in power associated with equality in status between the Albanians and the Serbs would make the Serbs free themselves from the conviction that they possess enough power to keep other peoples under domination and to deserve to have a status that is higher than and dominant on others. These elements are important because unbalanced force, inequality among peoples and nations and the lack of democratic emancipation of Serbs, in particular when it comes to the question of Kosova, are among the most powerful sources of instability of peace and security in the Balkans.

Still technically speaking, a conflict between equal states, as subjects of international law, with more or less balance of force at play, highly increases, and indeed it guarantees, the chances for more security, peace and stability than when the situation allows one state to believe it still has

the right and the power to keep under and quell the rights of a people and nation for freedom. Kosova's independence is thus a principal factor to achieve democracy in all its values and elements that accompany this political system. It serves the democratization of Kosova itself as well as Serbia. It will ultimately free Serbia from the myths of the past and lead it to where it deserves to be – in the main trend of Euro-Atlantic integration processes.

Albania salutes very warmly the readiness of the United States, the European Union, the great efforts and clarity of position of the United Kingdom, and other states, to come to a coherent and unified position in favour of Kosova's independence and to assist in the implementation of the status settlement. We can only hail the political decision taken by the EU a few days ago to send an ESDN force. Another more specific decision is expected on 18 February 2008 in that regard. All this is in fact an endorsement of the Ahtisaari package proposal, which someone threatened to bloc and invalidate, when all believe that it is the best package.

Albania sees no alternative to that package proposal. It sees it as the only solid, viable and practical proposal and the only one that has the chance to be implemented with success. When, for the solution of an issue under international administration and supervision, there is no consensus, a solution has to be found and a decision has to be made to provide that solution. The only decision endorsing Ahtisaari's proposal would truly bring about a lasting solution that would serve not only Kosova, but, we believe, it would also serve Serbia, it would serve the Balkans and it would serve Europe. Kosova in the end is in Europe, not somewhere else.

Finally, when all international juridical arguments in the long run speak in favour of a decision for Kosova's independence, and yet someone still stubbornly persists in trying to create obstacles, these obstacles can be overcome by a political act – by the recognition of Kosova's independence. Recognition is a political act which is not subordinate to or dependent on international law. It solely depends on the political will of individual sovereign states. The international community did take appropriate steps and is now prepared to take the very final step in order to legitimize Kosova's independence thus offering true lasting peace to the Balkans. It seems it is only a matter of days. History would prove that this is the right decision, just as it has proved, in hundred of ways, that attaching Kosova to Serbia then was a wrong decision.

I thank you all for your indulgence and attention.