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## THE DEVELOPMENT OF SERBIAN STATESHIP IN THE CONTEXT OF INTERNATIONAL PUBLIC LAW AND THE ROLE OF THE GREAT POWERS

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**Abstract:** *Posing the question regarding the statehood of the Republic of Serbia and the role of the great powers is extremely important, in order to see possible directions of further development of the Republic of Serbia based on the study of the historical context of the various circumstances that affected the Serbian statehood as such. History points us to important factors that we should keep in mind even in the current circumstances of the new geopolitical order and the rules of international public law, which largely have their roots in history. Although the circumstances have changed, the position of Serbia in international relations was constant, the reason for this should be found in the fact remains that due to its position in the Balkans, Serbia is a very important strategic hub where the interests of the great powers of the East and West meet. The actions of those powers can be clearly seen, both directly in bilateral diplomacy, and indirectly, through the influence of their political, economic and military alliances on the development of Serbia, with a great tendency to directly influence the position of Serbia. In the course of its development, Serbia acquired various forms of political organization as well as geographical dimensions, again under the great influence of the aforementioned political axes. The ever-increasing changes in the relations of major players on the geopolitical scene affected the very position of Serbia, both on the Balkan Peninsula and on the wider political scene. In certain periods, a great influence has been noted, more precisely the dominance of the Ottoman Empire, then later the role of the Austro-Hungarian monarchy. In recent history, during the last century until today, the*

*direct influence of Russia and the USA has changed in different phases, so that we can say that. Serbia, whether independent in its organization or in the composition of other joint states, has always strived to secure its independence, sometimes with less and sometimes with greater success. It is important that in those battles of great powers, the country's leadership tried to recognize its own national interests and, accordingly, position itself as a bridge, not an obstacle or a bone of contention between these powerful actors. Certainly, it was not easy and simple to achieve, especially, it seems, in today's current events. The Republic of Serbia has never faced a greater challenge to defend its statehood, territorial integrity and sovereignty, especially considering the current issue of the status of the Province of Kosovo and Metohija, the issue of which has undergone major changes even though it is based on international UN documents, among other things, Security Council Resolutions. This issue has gained in importance all the more, especially considering the unilateral proclamation of the independence of the Serbian Province and the recognition of the same entity, mainly by the countries of the so-called collective West, although not all countries, especially those within the EU, are in full agreement. Such a state of disunity of the European Union on an important issue of foreign policy not only creates and fuels new hot spots on fragile European soil with a tendency to secede without the consent of the home states, but also leads to the issue of consensual settlement of disputes of national origin, which is one of the basic principles of functioning of the European Union*

**Key word:** *international law, right to self-determination, Serbia, Kosovo and Metohija, UNSC Resolution 1244*

### **YUGOSLAVIA AS A STATE (1929 – 2003)**

Yugoslavia as a state (1929 - 2003) experienced several transformations both in terms of federal structure and in territorial borders, as well as in internal political organization. The Kingdom is being transformed, marking the end of the monarchical system of the state. More important transformations followed on November 29, 1945, when this creation was embodied in the Federative People's Republic of Yugoslavia, and the Constitution of 1963 clearly defined the system as socialist, thereby changing the name of the state to the Socialist Federal Republic of Yugoslavia. The country had a federal composition consisting of six Republics and two Provinces functioning as federal units of the federation. Such a composition and structure lasted until the outbreak of disorder in the early nineties, which resulted in the succession of federal units and their declaration as independent states, except for Serbia and Montenegro, which remained in the union under the name the Federal Republic of Yugoslavia, under the Constitution of 1992. Further transformation of Serbia within the joint state concerns the creation of the State Union of Serbia and Montenegro with the adoption of the Constitutional Charter in 2003. That same document predicted the possibility of secession of Montenegro, which it actually did undertake and declared its independence.

*SERBIA UNTIL WORLD WAR II*

The issue of Serbian statehood can also be viewed in a broader context, long before the first formal international recognition as an independent state at the Berlin Congress in 1878. Namely, the elements of Serbian diplomacy can be recognized as early as the First Serbian Uprising in 1804, the intense struggle of Serbian diplomacy at that time for the independence of the Serbian state, which followed after several decades of struggle. At that time, from the Serbian archives, one can see the addresses, which take the form of classical diplomacy, of our diplomat Prota Matej Nenadović, who was very present with his addresses and requests for protection from Turkish slavery of the Serbian population. This was followed by a longer period of the struggle of the Serbian people against the Ottoman Empire (1798 - 1838), which was successfully completed by the acquisition of Serbian autonomy by Sultan Hatiserif in 1838. As already mentioned, independence in the form of recognition as a separate state creation followed at the Berlin Congress, so that the following period (1878 - 1918) the Kingdom of Serbia would be part of the Kingdom of Serbs, Croats and Slovenes. In this period, the first consulates of the great powers were opened in Belgrade, which means a formal diplomatic presence in a state independent from the Turkish Empire. Due to the strong influence of Austria, the first consulate was actually Austrian in 1836, followed by English, Russian, French and others. In the second round, the Kingdom established consular relations with Romania, Greece, Italy, Turkey, Belgium, the Netherlands and others. The mere fact that at that time diplomatic relations took place at the consular level does not diminish the importance of the interest of these powers in their presence in Serbia and the importance that Serbia has for them. In this sense, these are the first signs of the establishment of diplomatic relations in terms of international public law and the basis for cooperation with great powers and the establishment of Serbia on the world stage.

Between the two world wars, there followed a period of stagnation in diplomatic activities, because there were no significant movements on the world geopolitical scene, until the presence of Germany in the Balkans. In that period, the interest of Germany and other great powers was particularly pronounced, especially America, which is returning to the Balkans, and especially in Serbia, as a strategically important country on this peninsula. The outbreak of the Second World War marked the exile of the Government of the Kingdom in London. America continues to maintain diplomatic relations with the Kingdom and the Government in exile, in addition to the newly formed authorities of the People's Liberation Army in Yugoslavia. This clearly indicated that the United States of America supported the Chetnik movement of Draža Mihajlovic. This was the case for most of the struggle of the People's Liberation Army against the fascists, until the visit of the American delegation to the Supreme Headquarters of the People's Liberation Army of Yugoslavia on April 16, 1943. It was the first unofficial relationship between the US authorities and the new authorities in Yugoslavia.

Several more unofficial contacts followed until the written address of US President Roosevelt to Supreme Commander Josip Broz Tito in May 1944, on the eve of the main

combat activities of the People's Liberation Army of Yugoslavia. This dark period of the development of human civilization must be investigated more deeply, especially from the aspect of international public law. It is still unclear in its entirety how the world powers allowed the escalation of relations to go to this extent, dragging most of the world into bloody war clashes. A large number of human lives were lost on the military field, but also a large number of civilian victims who were targeted by the Nazis in previously determined phases. The question arises of the responsibility and role of the main actors in this conflict, who apparently still have their followers today in some new movements that resemble some forms of fascism, where the goal is the extermination of the entire nation, and the consequences can be even more devastating than those during the Second World War. It is unclear why America, despite certain diplomatic contacts with the newly formed authorities of the People's Liberation Army of Yugoslavia, massively bombarded entire cities and regions on the territory of Serbia in April 1944, immediately before the official address of American President Roosevelt to the leader of the NOV, Josip Broz Tito. On that occasion, a large number of civilian victims died, according to some data, that number exceeded ten thousand victims, of which almost half of them died in Belgrade. While the Japanese cities of Hiroshima and Nagasaki were massively destroyed, for the first time, by the use of nuclear weapons without any need, because the war was already at an end, and Japan, as one of the important allies of the fascist regime in Germany, had already been defeated, so to speak.

### **Yalta and Serbia**

On the beautiful coast of the Black Sea, the Allies met, led by their leaders, Stalin, Roosevelt and Churchill. Among other things, they agreed on a new division and their control in certain zones. Germany was divided into four zones, Poland, Hungary, Romania and Bulgaria were under Russian control, Greece was divided in a ratio of 70 to 30 percent in favor of the West, and the FNRJ was half and half in that division of the influence of the West and the East. That agreement was supposed to mark the end of hostilities, both between the great powers and in the countries that remained under certain control of the allies. Unfortunately, that agreement was short-lived, soon a new period of cooling of relations between the East and the West began, known as the period of the Cold War, which still has its elements today, in a different way in the form of the antagonism of the East and the West..

Serbia continues to function as part of Yugoslavia. The Paris Peace Conference (July 29 - October 15, 1946) resulted in the agreement of the allies, led by the USA on one side and the USSR on the other, that Hitler's coalition pay reparations, solve the issues of national minorities, and establish borders (Germany, Hungary, Finland, Italy, Romania and Japan). In this way, Serbia functions as a state with the provincial entities of Kosovo and Vojvodina in its composition. After this Conference, there followed a period of cooling of the relations between the main allies, and Yugoslavia found itself in this vortex of such strained relations.

The new period of relations between the two opposing blocs after the fall of the Berlin Wall takes on new contours. Actors in that period, George Bush and Gorbachev, “gentlemanly” agreed that the fall of this wall will never lead to the expansion of NATO’s influence on the territories that were under the influence of the former USSR. Time denied that agreement, so we are witnessing a drastic expansion of NATO borders, which today includes virtually all countries under the influence of the former USSR. For Russia, Ukraine and its request for NATO membership, despite its proclaimed neutrality, was a red line. After several appeals, both to NATO, i.e. the USA, and to Ukraine, as well as on the occasion of the protection of the Russian population in Ukraine, on February 24, 2022, the Russian Federation launched a special operation, which the Western partners called an aggression against a sovereign country. The self-proclaimed entities (Donetsk, Lugansk, Khersonsk and Zaporozhye Oblast) became new states by referendum and the Decision of the Russian Federation on annexation to the Russian Federation, for now only recognized by the Russian Federation and some smaller states. This combination of circumstances and development of events that threatens a wider international conflict, may very well reflect on the issue of Serbian statehood, in the context of the position of the Province of Kosovo. Given that many authors of public international law agree that the issue of self-proclaimed states must be resolved as a package, taking into account the specific circumstances of these two cases. It is understood that the circumstances of the declaration of independence are different and each entity has its own history, but one thing is common, and that is that all the mentioned areas declared independence without the consent of the mother state.

### **The Infrombiro period**

The Informburo period faced Yugoslavia with a great challenge and cooling of relations with the USSR as well as distancing from the leadership of the USSR. All this was followed by the termination of friendly relations, boycotts, termination of military, economic and political cooperation, until the open conflict between the USSR and the FNRJ. This cooling period ends with Khrushchev’s visit to Belgrade on May 25, 1955, when relations between the two countries began to consolidate.

The development of Serbian statehood within the framework of the then SFRY acquired new characteristics, which the Republic of Serbia still cherishes today. It is a non-aligned movement, which symbolically began in Belgrade, with the first conference of this Movement and the trio of leaders Tito, Nasser, and Nehru. The non-aligned group was a great chance for small countries, which did not have the primacy of the great powers, to achieve their economic, political and other interests through interest-based connections. This movement made a big step in connecting economic, human and even political potential. That’s how the so-called appeared on the scene. the third world, the world of neutral, politically undecided, who do not belong to any bloc.

At the meeting of this movement in Brioni, the first document of this movement was adopted, and the continuity of the work of this organization was noted at the last

meeting, which was hosted by Belgrade two years ago. In spite of numerous fluctuations in the pocket itself, the reputation and influence of Yugoslavia in the world has grown significantly and thus SFRY has gained great recognition on the world stage. Although the relations with the great powers were brought into question, especially with America, and because of the suspicion of the West that Tito was leaning more towards the USSR, there is no doubt that politically and economically Yugoslavia established itself as an important partner in international relations.

### **THE ROLE OF THE EU AND SERBIA**

Offensive weapons and global security challenges marked the period at the very beginning of the 21st century. The most important of all programs that regulate world security is the so-called START nuclear agreement between the USA and Russia. In the 1970s, the world breathed a sigh of relief when this Agreement was concluded, as a means of communication between East and West, and after the Cuban crisis in the early 1970s. Diplomacy seemed to succeed in bringing broader security under control. START stands for Strategic Arms Reduction Treaty, the essence of which is the limitation of strategic offensive weapons, in the form of long-range armed missiles, or more precisely, nuclear warheads. START II envisaged the deactivation of intercontinental ballistic missiles with multiple warheads. In Trump's time, more precisely in 2019, the US administration abandoned the program banning the use of land-based medium-range missiles, and a year later the Agreement on Open Skies, which would have controlled the reconnaissance flights of the opposite party, was terminated. In the latest address of President Putin to the Federal Assembly on the occasion of the anniversary of the special operation over Ukraine, it was announced that the Russian Federation will suspend its participation in the Strategic Arms Agreement, the part of which is still in force after Trump's withdrawal. It is still not clear whether this Treaty has been suspended or terminated, although diplomats mostly agree that it is a suspension. With this act, Russia's hands are untied, and it could be interpreted as a message, that it will not take into account all limitations regarding the use of nuclear weapons in the conflict. It seems the world has never faced a greater challenge. Even during the Cuban crisis, when America protested the installation of Russian bases in Cuba and thereby threatened America's security, and America retaliated with its bases in Turkey, the "hot line" between the two presidents resolved quite a lot of tension. With this, a catastrophe of global proportions was solved through diplomatic means. This time, diplomatic channels have been largely cut or are on a very thin line, and it will be a great diplomatic success if this whole situation is resolved at the table and not on the battlefield. Why is it important for Serbia? First of all, in this phase of the crisis, the whole world is indirectly involved, and resolving the outcome at the table would lay new foundations and trust between the former allies, and thus the Kosovo issue could have its epilogue, of course, in accordance with the principles and principles of the international public rights.

**REPUBLIC OF SERBIA AND THE QUESTION OF KOSOVO**

The Republic of Serbia functions even today as an independent and independent state with its two entities in its composition, with the fact that in the meantime there was a unilateral self-proclamation of Kosovo and Metohija as an independent state, which is one of the most controversial moments in the history of international public law. The declaration of independence of the axes and Metohija was made without the consent of the mother state and the entity was recognized by a large number of countries as an independent state, especially from the so-called western countries. This was preceded by the NATO bombing of FR Yugoslavia in 1999, which is a precedent in the history of international public law that a community that did not have a mandate on any basis used force without the consent of the United Nations Security Council. This condition is strictly stipulated by the Charter of the United Nations. At the same time, disproportionate force was used to destroy civilian targets, with illegal ammunition. The Federal Republic of Yugoslavia turned to the International Court of Justice in The Hague and demanded responsibility for countries participating in NATO aggression, while this body rejected this claim as unfounded and declared itself incompetent, due to the fact that Serbia was not a member of the UN at the time. It is interesting that the same country was sued by Bosnia and Herzegovina, before the same court that accepted the jurisdiction of this country's claim on the application of the Convention on the Prevention of Punishment for the Crime of Genocide and thus accepted the fact that Serbia is a member of the United Nations. The judgment in the dispute to which it refers was made only in 2007. Of course, Serbia raised objections in both cases to the Court's decisions regarding its jurisdiction, but the court stood by its claim and processed the case against Serbia with a decision on the merits. In almost the same period of time, in an identical situation, the lawsuit filed by Serbia against the NATO member countries was initially dismissed due to the declaration of the court as having no jurisdiction. This is otherwise a very interesting legal situation, which legal science has not dealt with sufficiently and which must raise the question of the competence of this highest body of the world judiciary. Another detail that is very important, and which refers to the International Court of Justice and its decisions, is the advisory opinion regarding the unilateral self-declaration of independence of Kosovo, with the view that this decision does not contradict international public law. Such an interpretation is implicitly supported by the fact that this opinion should be interpreted only for this specific case, as *sui generis*. At the same time, it is well known that international public law is a mixture of both the continental legal system and the Anglo-Saxon precedent law, which relies on previously made decisions. Perhaps the proponents of this opinion refer to violated human rights, which is absolutely not the case, because at that time and even before that, Kosovo and Metohija functioned as a kind of protectorate under the auspices of the international community with temporary UN institutions. This is no longer an argument for self-secession based on the violation of human rights, especially since there is UN Resolution 1244 which guarantees the sovereignty and territorial integrity of the

Republic of Serbia with Kosovo as part of it. The behavior of the Western Powers under the leadership of the USA for the second time in history, after the bombing on the eve of the end of the Second World War in the former Yugoslavia, as well as on the occasion of the re-bombing of the FRY in 1999, is unclear. The biggest enigma is the attitude of America and most of the EU, which are not faced with the issue of self-determination, on Serbia's persistent insistence on the recognition of Kosovo. The latest initiative in the form of the German-French proposal does not explicitly demand the recognition of Kosovo by Serbia, as stated in the text that is available to the public, and should serve as a framework for negotiations between Belgrade and Pristina. Serbia is requested to refrain from preventing Kosovo from becoming a member of international organizations.

The issue of the status of the autonomous Province of Kosovo greatly affects the territorial integrity and sovereignty of the Republic of Serbia and the role of the great powers. It seems that it comes to its strongest expression in determining the country's statehood. This is a very complex issue and deserves comprehensive attention and analysis, so in a limited space it is difficult to give a comprehensive answer to the question of how much the involvement of great powers is a relevant factor in the destruction of a country's statehood and how much these efforts to resolve disputed issues are conducted within the framework of international public law and international customs. The question is to what extent the issue of territorial integrity and sovereignty is respected and when entities can be invoked for the right to self-determination. Whether the principles and principles of international public law will be respected or whether disputed relations will be resolved within the international community on an ad hoc basis depends on several factors, which are very difficult to predict at this moment.

It is particularly noteworthy that serious tectonic changes are taking place at the moment with devastating consequences not only in European, but also in the world's security structures. All this is happening in the hot atmosphere of extremely damaged relations between the great powers, which have never been antagonistic to such an extent as before in history. The issue of Crimea, which the authors mentioned in earlier works as a possible domino effect, by the International Court of Justice, as well as the recognition of Kosovo as an independent state by the collective West, is only a confirmation of the thesis about the danger of recognizing Kosovo. On the other hand, the attitude of one part towards this issue, which has a completely opposite attitude towards the secession of Crimea, is that the secession was achieved by the will of the people in the referendum, and not by the decision of the temporary branches, as was the case with Kosovo. There is another important difference in the motives of secession, namely, that in the case of Kosovo there were alleged violations of human rights. The fact that this would not be possible with the presence of the international community, therefore there was no reason for the act of secession, especially since Prishtina had its own University and other institutions that enabled the unhindered enjoyment of the rights of minorities in Kosovo.

In the case of Crimea and other entities (Donetsk, Lugansk, Zaporozhye and Kherson regions), the alleged motives for this act are the crimes of extermination of the Russian



population, in addition to the abolition of the right to the Russian language and other cultural heritage, which were guaranteed by the Minsk Agreements.

Even in earlier works, it was pointed out that the problem of the final solution of the status of Kosovo is not only the national interest of Serbia, but also of the entire world community. "The current situation with Crimea in Ukraine, as well as in other regions of Europe with separatist movements, inevitably raises many questions from the point of view of whether these same regions have the right to self-determination based on the "Kosovo criteria" of independence and whether, consequently, the unilateral declaration of Kosovo's independence it can cause the risk of domino effects in Europe, but also around the world. This is especially important because of the consensual solution in the EU itself, which itself initiates it for such sensitive issues, and we already know that there is no consensus in Europe itself regarding the recognition of Kosovo."

One of the possible solutions for Kosovo and Metohija is the solution of the issue based on the subsidiarity of the German concept of statehood. Instead of such a proposed text for resolving the status of Kosovo and Metohija, it would surely be better to make a proposal that would be along the lines of subsidiarity, which is, after all, the basic principle of the relationship between the central authorities of Germany and its federal units, a principle on which the European Union itself rests. , as a system of relations between the central authorities in Brussels and the internal law of the EU in relation to the member states. If such a relationship is applied in solving the problems of Belgrade and Pristina, those same relationships could be the basis for solving the issue of autonomy of the self-proclaimed republics on the territory of Ukraine. "The importance of the institute of subsidiarity is reflected in the possibility of the accession process to the European Union of Serbia, whereby the status of Kosovo would be treated decentralized within the Republic of Serbia". How much this approach corresponds to the interests of the great powers is a matter for each individual, but the fact remains that only by resolving this type of conflict in principle, which Europe is rich in as a minefield, can it prevent further escalations of ethnic cleansing, destruction on a huge scale with possibilities that do not exclude the world disaster.

UN Resolution 1244 is the basic determinant of further negotiations, and it is explicit about the fact that Kosovo is part of the RS. Everything else, including initiatives like the German-French proposal, has no legal basis and can be interpreted as an ultimatum for the consent of the home state in return for further progress in the negotiations on accession to the European Union, and what is even more certain as an ultimatum for economic sanctions and the withdrawal of Western capital from Serbian economy. In no context can this mean anything else, but it is nothing else but a forced way of obtaining Serbia's consent for the independence of its part, which is currently under the total control of NATO.

The recognition of Kosovo by Western countries as an independent state is also questionable due to differences in the effectiveness of the government of the entity that declared independence. The fact that it is one of the key conditions for existence and as such, Kosovo does not have its own authorities, they are temporary. As a classic form

under a protectorate, this entity can neither be a member of the UN nor the EU, all the more so since in the case of the EU, consensus is sought on this issue, and in the case of the UN, the consent of the Security Council. Thus, in the beginning, every initiative of the West to force the creation of a state is not only questionable, but compromising for the basic values and principles of this community, which is the principle of legality. Kosovo cannot be an independent state due to the fact that there is no will of the mother state to give consent. Everything that is a condition for the Serbian government in the sense of: "EU or Kosovo" is the ultimate approach and therefore legally subversive, without legal effect in every respect.

### **Conclusion**

Serbian statehood is very rich and the dynamics of the rise and fall of the Serbian state depended to a large extent on the world constellation. At the same time, regarding the most difficult relations between East and West, Yugoslavia was the one that, together with Egypt and India, was a cohesive factor, having a leading position in the new movement that was like a buffer zone between the hot lines in the cold war. This war lasted for over forty years and the flames of this damaged relationship between East and West are felt to this day. That is precisely why, as observed in history, Serbia has always been targeted by both the East and the West, and always managed to make its own position. And not only that, it also managed to be one of the stability factors regarding such a disturbed balance. The unresolved issue of Kosovo also obliges our country to continue to do so. This issue is very difficult to resolve, therefore we must insist on resolving it on the basis of public international law. This issue cannot be resolved in another way in order to ensure stability as well as, at the same time, coexistence both in the region and in the wider world community.

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