

The analysis of the motivations included in these letters of recognition show that this political confusion is translated by considerations and legal arguments which are eccentric, to say the least.

It is true that since the beginning of the process of dismemberment of the Yugoslav Federation, the responsible European and American officials have deployed a wealth of imagination to persuade their public opinions, and particularly other governments, of the legality and in particular, legitimacy of their most delicate decisions, particularly those which are linked to questions of sovereignty and territorial integrity. With the 1999 bombing campaign, they had a tendency to consider that what was in their eyes legitimate should in a certain way be considered as legal and a means of justifying the circumvention of the UN Security Council.

The discussions which have preceded the decision to recognize have also shown a tendency to put aside considerations based on the respect of international law to the profit of «moral considerations» (Serbia has lost a moral right to exercise its authority of Kosovo) or “pragmatic” (negotiations have been unsuccessful).

With the recognition of Kosovo, we are assisting a new manoeuvre, which not only means a departure with the common principles of secession and state recognition, but even more, is based on absurd and paradoxical argumentation.

In fact, most of the EU states and the US have recognized Kosovo as a sovereign and independent state while, at the same time, they have referred to the implementation of the plan of Martti Ahtisaari which, in fact, neutralises the sovereignty and independence of the state. This plan was never accepted by the UN Security Council, and thus is not legally binding. Nevertheless, the US and France consider that its dispositions are legally binding for the Kosovo authorities. In a way, they make out of a renouncing to the principle of sovereignty, a condition for their recognition of a new state which was qualified as sovereign and independent. In fact, the recognition is mainly dealing with the separation from Serbia and is not in accordance with common practice and doctrine.

The recognition of a state is, certainly, a discretionary political act, but it is generally justified in two ways. The first one is based on the simple statement of the existence of a political entity which presents all the characteristics of a State, which is capable of being independent, and

which power is effective on the whole of the territory and the population. This is certainly not the case here, since the EU and the US believe they have to supervise and accompany the Kosovo authorities on the path to independence, and that one part of the territory escapes its control. In the second case, the recognition follows the creation of a new state which is itself the result of the implementation of the right to self-determination (in the case of decolonisation). The exception is made by Albania, which mentions very explicitly the right to self-determination, while the others are just evoking the will of the people of Kosovo and the declaration of the assembly from February 17, 2008.

Finally, in the case of secession, states generally expect that a central state renounces its rights on part of its territory, which is certainly not the case of Serbia. We should remind ourselves that the admission to the UN of the former Yugoslav republics was given a go-ahead after the adoption of a new constitution proclaimed in April 1992, which permitted the existence of new republics issued from the dismemberment of the former Federation. At one time, Kosovo Albanian officials tried to achieve the recognition of their declaration of independence (July 2, 1990), but in vain. In particular, the declaration of independence and the decisions to recognize have clashed with the dispositions in the resolution 1244, which are considered by all as applicable. It serves in fact to justify the presence of NATO and particularly of the deployment of the EU mission EULEX, although European officials have for months estimated that the vote for a new resolution is indispensable to provide a legal basis of the mission. The authority of the UN resolution 1244 from Serbia not to interfere in Kosovo affairs yet another in a long series of contradictions.

The recognition appears often in the official declarations of states which have recognized Kosovo as the end of a process of dissolution of the former Yugoslav federation, a happy ending of the period of ethnic cleansing and promise of a brighter future. In most related declarations, the responsible officials are making a bet for a harmonious cohabitation between all ethnic groups which, finally reconciled, will start their integration in the Euro-Atlantic family. As mentioned here, the recognition should however mention the state of a political and legal situation at the specific moment and not of hypothetical hopes. It appears that the justifications brought in this case seem to avoid pronouncing the situation which really exists in the field, in order to focalise especially on the past (humanitarian drama of the Albanian population in Kosovo) or the future (NATO and EU membership thanks to a multiethnic character of the state). Worthy of mentioning is the argument of "good sense" conceived by the French foreign minister Bernard Kouchner who does not hesitate, on this occasion, to congratulate himself of this victory of the "international community" (who?), of the UN (really?) and of multilateralism! One should wonder whether these words still have any meaning.

Statistics suggested by those favouring Kosovo's independence like to show figures under which it was recognized by the world's most performing and wealthy democracies. This

Between the eccentric and the absurd

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tendency to focalise on the political and economic strength of states which have decided to recognize is obscuring the fact that the justifications and the arguments of those who have not done so are much better founded, in fact and in law, and that they represent to this day an overwhelming majority.

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