

T.C.
MARMARA UNIVERSITY
INSTITUTE OF SOCIAL SCIENCES
POLITICAL SCIENCE AND INTERNATIONAL RELATIONS
DEPARTMENT OF INTERNATIONAL RELATIONS

**BORDER ISSUES IN THE WESTERN BALKANS:
THE DEMARCATION PROCESS BETWEEN KOSOVO AND
NEIGHBORING COUNTRIES**

Master Thesis

MUHAREM SHTAVICA

Istanbul, 2019

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Supervisor: PROF.DR. NURAY BOZBORA

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T.C.
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Öğretim Üyesi Adı Soyadı

İmzası

1. Tez Danışmanı	Prof. Dr. NURAY BOZBORA	
2. Jüri Üyesi	Doç. Dr. HASAN KORKUT	
3. Jüri Üyesi	Dr. Öğr. Üyesi KADİR TEMİZ	

GENEL BİLGİLER

İsim ve Soyadı : Muharem Shtavica
Anabilim Dalı : Siyaset Bilimi ve Uluslararası İlişkiler
Programı : Uluslararası İlişkiler
Tez Danışmanı : Prof. Dr. Nuray Bozbora
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ÖZET

BATI BALKANLAR'DAKİ SINIR SORUNLARI: KOSOVA VE KOMŞU ÜLKELER ARASINDAKİ SINIR BELİRLEME SÜRECİ

Batı Balkan ülkeleri arasındaki çatışmaların barışçıl çözümü, Avrupa Birliği entegrasyonuna yönelik kilit konulardan biridir. Sınır sorunları gibi potansiyel engellerin kaldırılması, Batı Balkan ülkelerinin yerine getirmesi gereken zorunlu bir AB genişleme kriteridir. Fakat, tüm devletler bu görevi başarıyla yerine getirmemiştir. Hatta bazı ülkeler, bu görevi yerine getirememelerine rağmen AB'nin üyesiyken, Kosova hala Shengen bölgesinde vizesiz seyahate izin alabilmek için komşularıyla sınır problemini çözmeye çalışıyor. Yugoslavya'nın dağılması, hem halk için hem de uluslararası toplum için bir felaket oldu. İnsan ve maddi kayıpların yanı sıra, bir başka sorun da Yugoslavya'dan ayrılan cumhuriyetlerin ve özerk bölgelerin hakça sınır belirleme mevzusudur. Badinter Komisyonu, eski Yugoslavya'nın dağılmasından sonra barışçıl bir çözüm bulma konusunda sınır belirleme konusundaki en önemli değerlendirmelerden biri olmuştur. Bu tez, eski Yugoslavya'nın idari sınırlarının kronolojisine dayanarak, Kosova'nın komşu ülkelerle olan bağımsızlığının ardından sınır problemlerini incelemeyi amaçlamaktadır. Ana amaç; Kosova ile komşu devletler arasında belirlenmiş sınırın uluslararası hukukun ilkelerine uygun olup olmadığını ve sonuçta Kosova'nın kazanç ve kayıplarının ne olduğunu irdelemektir.

GENERAL INFORMATION

Name and Surname : Muharem Shtavica
Field : Political Science and International Relations
Programme : International Relations
Supervisor : Prof. Dr. Nuray Bozbora
Degree Awarded and Date: Master-August 2019
Key Words : Demarcation, Border issues, Yugoslavia, Kosovo

ABSTRACT

BORDER ISSUES IN THE WESTERN BALKANS: THE DEMARCATION PROCESS BETWEEN KOSOVO AND NEIGHBORING COUNTRIES

The peaceful settlement of conflicts between the Western Balkans states is one of the key issues towards European Union integration. Removing potential obstacles such as the border problems, is a mandatory EU enlargement criteria which Western Balkan countries has to fulfill. However, not all states have completed this task successfully. Some of them are even part of the EU, while Kosovo still strives to solve the border issues with its neighbors, in order at least to get a green light on visa-free travel in the Schengen area. The dissolution of Yugoslavia has been a great calamity for its people and international community as well. Besides human and material losses, another problem was to find the right border demarcation of successive republics and autonomous provinces. The Badinter Commission has been one of the most important assessments in finding peaceful solution after the disintegration of the former Yugoslavia. This thesis aims to study the border demarcation of Kosovo with neighboring countries after its independence, based on the chronology of the administrative borders of the former Yugoslavia. The main objective will be; finding out whether the demarcation between Kosovo and its neighbor states has been completed conform the principles of international law, and what are the gains and losses of Kosovo at the end of this phase.

LIST OF ABBREVIATIONS

BiH	: Bosnia and Hercegovina
CDU	: Croatian Democratic Union
CEFTA	: Central European Free Trade Agreement
CSCE	: Conference of Security and Cooperation in Europe
EC	: European Commission
EEZ	: Exclusive Economic Zone
EULEX	: European Union Rule of Law Mission
FRY	: Federal Republic of Yugoslavia
FYRM	: Former Yugoslav Republic of Macedonia
HSS	: <i>Hrvatska Seljacka Stranka</i> (Croatian Peasant Party)
ICJ	: International Court of Justice
ICO	: International Civilian Office
KDI	: Kosovo Democratic Institute
KLA	: Kosovo Liberation Army
LCY	: League of Communists of Yugoslavia
LDK	: Democratic League of Kosovo
NATO	: The North Atlantic Treaty Organization
NRS	: <i>Narodna Radikalna Stranka</i> (People's Radical Party)
OAU	: Organization of African Unity
OSCE	: Organization of Security and Cooperation in Europe
PAC	: Permanent Court of Arbitration
PCIJ	: Permanent Court of International Justice
RSK	: Republic of Serb Krajina
SCS	: Kingdom of Serb-Croats-Slovenes
SDP	: Serbian Democratic Party
SFRY	: Socialist Federal Republic of Yugoslavia
UN	: United Nations
YPA	: Yugoslav People's Army

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1. INTRODUCTION

In order our society to exist; it is crucial to have both physical and behavioral boundaries. Territorial boundaries are fundamental for organizing and directing property rights concerning individuals, families, organizations and states. The state border is the line that separates the territories of neighboring states within which their sovereignty extends. The importance and necessity of state border is expressed apparently in Article (1) of Montevideo Convention on the Rights and Duties of States: “*The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.*”¹

In essence, borders are integral part of a state, and almost all states in the world intend to expand their borders for strategic purposes such as; natural resources, defence and security. An example of big countries like; China, Russia and India, in the Asian continent, proves the fact that they can use any form of deterrence against their small neighbors due to vast territory and huge population. Normally, not neglecting political, military and economic power.²

In this confused multitude of circumstances, kinship, historical, linguistic, and cultural connections can be an extraordinary testimony to people living in harmony for years and centuries. However, there are times when mutual mistrust turns into hatred and this can bring about unprecedented unrest. The disintegration of Yugoslavia by seeking the right of self-determination on one side, may have been a good intention. But to achieve the sovereignty; which each republic has aimed, was paid with war, genocide and great human and material losses. When racism and ultranationalism in the former Yugoslavia started to become a part of politics, media and public, ‘*a boiling pot of gunpowder*’ was unavoidable where genocide in Bosnia and Hercegovina and Kosovo has been a vivid proof that the Communist state of Yugoslavia was in collapse.

¹ Montevideo Convention on the Rights and Duties of States, 26 December 1933, Montevideo, 3, <https://www.ilsa.org/Jessup/Jessup15/Montevideo%20Convention.pdf>.

² Kaiyan Homi Kaikobad, *Interpretation and Revision of International Boundary Decisions* (Cambridge: Cambridge University Press, 2007), 17.

There are two types of border terminology: One is referred as *frontier* and the other as *boundary*. But the latter terminology has found greater use because of advanced methods of geography, geodesy and cartography. Yet, the terminology of *frontier* has been much more applied when there were not sovereign states with accurate borders.³ Basically, the real borders were not fixed until 1648, when Western European states emerging from the ruins of the Holy Roman Empire, defined their modern borders at Peace Treaty of Westphalia.⁴ In addition to the importance of exact boundary setting, the Peace Treaty of Westphalia has also secured the ending of bloodshed which lasted thirty years.⁵ During different periods of time, the motives for expansion and domination of territories have been of various types. For instance, the fight between Israel and Palestine is deeply rooted on the element of ancient history and religion. The same can be said for the struggle between India and Pakistan, or if we add nationalist, linguistic and cultural concepts, then the wars that have taken place between the Yugoslav republics, are the best evidence to be expressed.⁶

Professionally and precisely defined boundaries could only be determined, once the disciplines of geography, cartography and geodesy have reached their scientific peak. During French Revolution, another success was added in the history of boundary issues. The definite natural boundaries; rivers, lakes, mountains, were moved beyond using technological advances which facilitates producing more accurate results.⁷

The delimitation of international borders is a political issue that must be in conformity with legal laws. A boundary assignment cannot be justified if both contracting parties are not satisfied with the procedural decision.⁸ Boundary delimitations can be made by bilateral and multilateral agreements. It has always been accredited by international law and geodesy experts, that the most accurate boundaries are those determined on the basis of natural-geographical elements (e.g. the US-Canada border is accorded on the basis of the 49th parallel/ or the America-Mexico boundary,

³ Omar Abubakar Bakhashab, *The Legal Concept of International Boundary*, 30.

⁴ *Ibid.*, 36.

⁵ Keykobad, *Interpretation and Revision of International Boundary Decisions*, 19

⁶ *Ibid.*, 20

⁷ *Ibid.*, 36.

⁸ Thomas H. Holdich, *Political Frontiers and Boundary Making*, (London: Macmillan and Co., Limited, 1916), 179.

whose longest dividing line is the Rio Grande River).⁹ In African continent, most of the borders were marked by the colonizing states, where the same borders still exists to this day. Because in most cases they are delimited not by natural and historical criteria, this provoked bloody tribal wars after their independence.¹⁰

The issue of inter-state delimitations and demarcations has always been delicate and subtle, with social, economic, political, historical, cultural and emotional importance. Still, it manifests the spirit of self-existence, self-defense and self-authentication.

The problem of the partition of the successors from the unraveled states, which is the case of Yugoslavia, draws many serious issues where partition of territory among the successors is the most sensitive issue. Accordingly, the first issue to be imposed is on what principles or on what basis will the territorial division be made? Among international law principles, the most prominent is *uti possidetis*, which was first used in the case of Latin American countries, who were mainly colonies of Spain and Portugal. At that time, in order to clear off conflicts between the successors over the territories, they applied the principle of *uti possidetis*, which means that the administrative lines that existed within the Latin American continent from Colombia to Argentina, established by Spaniards, will be converted into inter-state borders of the newly liberated countries.

With the dissolution of Yugoslavia, the Badinter Commission played a key role in the division of republics. This commission has used the principle of *uti possidetis* which is internationally accepted for dealing with the independence of newborn states. According to this principle, republics independent from Yugoslavia will preserve the same borders which were established since the end of the WWII until 1991-1992. However, the Badinter Commission gave the right to secession only to republics, but not autonomous provinces. This recognition for the separation and independence of the republics was conditioned by the respect of the administrative boundaries. This right for independence has also been used by Kosovo, first with the UN Resolution 1244, and in

⁹ Ibid.

¹⁰ SIR E. Hertslet, *Map of Africa By Treaty*, (London: By Harrison and Sons, 1909).

2008, with the declaration of independence, inside the same administrative boundaries as in the case of other federal units.

In practice, state borders are most commonly designated by relief (mountain ranges) or have any support in other geographic factors (rivers, canals, straits). Such are state borders between France and Italy (Alps), France-Spain (Pyrenees), China-India (Himalayas), China-Russia (Usuri River), Iran-Iraq (Shat-el-Arab) etc. Historically, such was also the administrative border between Kosovo and Montenegro, where the highest peaks of Çakorri and Zhleb mountain ranges, divided the Autonomous Province of Kosovo from the Republic of Montenegro.

In other words, according to the principles of international law, in order the border demarcation, or any kind of bilateral treaties that has to do with territory to be valid, two states has to be reciprocally recognized. Serbia still does not recognize its former autonomous province of Kosovo, and constantly lobbies against the recognition of its independence. Nevertheless, in the continuation of the peaceful dialogue between the president of Serbia, Aleksandar Vučić, and his Kosovar counterpart, Hashim Thaçi, it was inserted into agenda another highly startling and perilous issue which is ‘the exchange of territories’. This dangerous idea of two homologues has sparked great clamor in 2018-2019, among the leadership of the U.S. and the EU. But thankfully, German Chancellor Angela Merkel, in April 2019, at the Summit of the Western Balkan Leaders held in Berlin, has managed to curb the two leaders to give up this threatening approach, which would be disastrous not only for Kosovo and Serbia, but for all countries in the region. I will further discuss about the border demaraction issue and the ‘territorial exchange’ tentatives, in details, in the last chapter of this study.

This study is composed of three main chapters. The first chapter deals with the terminology of the basic principles of international law, and the settlement according to these principles. Particularly are stressed the concepts of *border*, *frontier*, *delimitation* and *demarcation*. Then, the principles of international law can be categorized into two groups; those pre-colonizing and post-colonizing ones. For instance, *treaty law*, *effective control*, *geographical*, *historical*, *cultural and economic* principles, date since the medieval ages and the period of kingdoms and principalities. Whereas *uti possidetis* and *self-determination*, are two consequent concepts that start with the de-colonization

of Latin America from Spain, and Africa from England and France. Later on, these two principles played very significant role in the time of the collapse of the Soviet Union and Yugoslavia. Furthermore, this chapter also explains different types of border disputes that states had throughout the history, and the role of the significant international courts such as; Permanent Court of International Justice (PCIJ) and the International Court of Justice (ICJ), in connection with international arbitral tribunals, to solve these problems peacefully and with dialogue.

The second chapter, is about the internal-administrative borders of the former Yugoslavia. It talks about the very beginning border settlement since the Kingdom of Serbs, Croats and Slovenes (SCS) ruled by the King Alexander of Serbia. To keep off the segregation of people, King Alexander drew the borders not upon the national and historical view, but rather, natural, economic and social condition. So, the administrations of the internal borders were made by districts (oblasts) and municipalities. Afterwards, by the Constitution of 1929, the official name of the state of SCS was changed from the Kingdom of Serbs, Croats and Slovenes in to the Kingdom of Yugoslavia, and the state territory was separated into nine administrative territorial units called Banovina. After the World War II, we have Communist state of Yugoslavia led by Josip Broz Tito. During his time, it is worth mentioning the Antifascist Council of the People's Liberation of Yugoslavia (AVNOJ). This council is very important because it has laid the foundations of the Yugoslav Socialist state, and defining the boundaries of republics has been established at this council. At the end of this chapter, I have also mentioned the disintegration of Yugoslavia after the death of Tito. And the role of the Badinter Commission, as a mediator to resolve the internal administrative borders into international ones, according to the principles of international law.

In the last chapter, the issue of border demarcation between Kosovo and neighboring countries has been analytically elaborated. To start with the demarcation between Kosovo and Macedonia, Kosovo and Montenegro, as well as the unresolved border problem with Serbia. Here I have used geographic, geodetic and cartographic data that the experts have implemented. Concerning the border line between Kosovo and Albania, this topic has not been discussed for the fact that it had been solved since the time of the Kingdom of Serbs, Croats and Slovenes, and later the Socialist Federal

Republic of Yugoslavia. Yet, the border between Kosovo and Albania has never been problematic and I believe that there will not be any speculation even in the future, knowing that the two countries share the same nation, culture, language and tradition.

The main aim of this study is; to determine whether Kosovo's state border has been appropriately demarcated. If not, what are the damages that Kosovo has suffered from measuring the border line with Macedonia and Montenegro, failing to respect the principles of international law. Yet, this thesis also discusses the attempt of the exchange of territories between Kosovo and Serbia, and the speculative consequences this project could have brought.

The present study is mainly guided by the following research questions;

1. Were the principles of international law respected during the demarcation process between Kosovo and neighboring countries, and, did Kosovo lose its territory?
2. What could the 'land swap' between Kosovo and Serbia bring, does it jeopardizes the new Western Balkan conflicts?

To be clear, this study is not a geographic, geodetic, cartographic, or the field of study that deals with the expertise of the principles of international law. Instead, this study deals with the border demarcation process of Kosovo with its neighboring countries, using the methods of the aforesaid disciplines within the framework of geopolitics and international relations.

The aforementioned project will employ a method of qualitative and descriptive approach, where the main sources are; literature review and conceptual analysis which I obtained via-online and hard copy. They are books, articles, academic researches and archive documents from Belgrade, Zagreb and Prishtina. In addition to this, the sources I have applied in this research stems from Albanian, being my native tongue, Serbo-Croatian that is my second language, and English which is the language of my studies.

The scope of this case study will be limited to the Kosovo border demarcation issues and the administrative borders of the former Yugoslavia. This study will not treat the borders of the Western Balkans' Countries separately, because this would require longer process and special approach.

Lastly, the main hypothesis of this study is; that during Kosovo's border demarcation with Montenegro, the Commission of the Kosovo side did not adhere to the principles of international law, and thus Kosovo has lost territory. Also, the maps used, overlap with the original maps of the Yugoslav Constitution, and the actual border was contrived with a new border in which 8,200 hectares of land were lost. As for the exchange of territories between Kosovo and Serbia, this is a dangerous game that, if implemented, would bring about new inter-ethnic conflicts in the Western Balkans.

2. INTERNATIONAL BOUNDARY ISSUES

Disputes over international boundaries come in various forms and shapes, and are usually intertwined together with other issues of law and politics, sometimes making it near impossible to seclude the strictly legal issues that might be treated in resolving the dispute. Until the end of the 18th century, *frontiers* were the main unit of delimitation of territories. Later on, separating element between the two components was launched by the new notion called *lines or boundary lines*. With the rapid development of science, new terms have been incorporated in the field of borders, where various voluminous works have been created in the fields of geography, politics, law and economics.¹¹

Although the concepts of *boundary* (border) and *frontier* have been misunderstood by the general public, experts of this field have come to define *boundary* as a line that divides two territorial components, and *frontier* is less commonly used in modern literature.¹² Phraseology of the word *frontier* can be described in both archaic and modern forms. During the medieval period of time, this concept was used to define the outmost edges of one village, principality or kingdom. And the delimitating marks were walls (The Great Wall of China), fences or castles. Nowadays, this concept might pertain to huge countries (e.g. Russia, China) controlled by governmental institutions such as national echelons.¹³

The terms *border* and *borderland* are equivalent words. Both show geographical regions of undetermined breadth that create the outermost portions of a country.¹⁴ For example, Lapradelle used to call such zones “*le voisinage*, meaning neighbourhood. He also uses the term *le territoire limitrophe* translated as the neighbouring or bordering area.”¹⁵

¹¹Victor Prescott and Gillian D. Triggs, *International Frontiers and Boundaries: Law, Politics and Geography* (Leiden: Martinus Pub, 2008), 1.

¹² *Ibid.*, 11-12.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

First pioneers in establishing the advanced theory of boundary making process are; Sir Henry McMahon, Charles Bungay Fawcett, Col. Sir Thomas Holdich and Lord Curzon. They hold a great merit particularly in distinguishing between the terms delimitation and demarcation. Throughout the history of preoccupation with border problems, it has been difficult to define the two basic concepts in this field which are delimitation and demarcation. McMahon has solved this problem by stating that: “...delimitation, I have taken to comprise the determination of a boundary line by treaty or otherwise, and its definition in written, verbal terms; demarcation to comprise the actual laying down of a boundary line on the ground, and its definition by boundary pillars or other similar physical means.”¹⁶ So, delimitation symbolizes drawings and delineations in paper, while demarcation is the physical work on land or maritime.¹⁷

Two geographers Jones and Lapradelle have different models in making the boundaries. Jones separates this modeling into four major levels: *Allocation*, *Delimitation*, *Demarcation*, and *Administration*, whereas Lapradelle cites as preparation, decision, and execution.¹⁸ Allocation means the primary accord of two or more negotiating units. Delimitation means defining the exact boundary line on the paper. Demarcation is setting of the border on terrain. And administration is the proper management of the defined boundary.¹⁹

Regardless of the fact that boundaries are one of the most precious elements in defining the peace among nations, still there is no agreed model allocating the boundary process. Nor aforementioned stages of geographers can function as definite basement. Therefore, states after long elusive disagreements are urged to act under public or international pressure in order to find solution in boundary-making process. Yet, people who lack proper knowledge and skills in this field can lead into fatal problems when

¹⁶ Henry McMahon, “International Boundaries,” *Journal of the Royal Society of Arts* 84, no. 4330, (November 1935), 4, https://www.jstor.org/stable/41360599?seq=3#metadata_info_tab_contents, accessed January 13, 2019.

¹⁷ Haim Srebro and Maxim Shoshany, “Chapter 1: The Process of International Boundary Making,” In *International Boundary Making*, ed. Haim Srebro (Copenhagen, International Federation of Surveyors (FIG), 2013), 17.

¹⁸ Ibid.

¹⁹ Prescott and Triggs, *International Frontiers and Boundaries*, 12.

demarcating states-borders. If border marking commission lacks the basic knowledge, it might cause other conflicts and even wars in the future.²⁰

2.1. Border Settlements and International Law

Obviously territory and border problems at every stage have been charged by so many conflicting circumstances, where states found themselves in challenge with respect to their common territorial rights. Some of these considerations are so stubborn to persist that they refused to cease their fights even after border adjustments have been made to preserve the *status quo*. To clean off calamitous fights between state actors, there exist official international tribunals, like International Court of Justice and (ICJ) and the Permanent Court of International Justice (PCIJ). These international courts are tasked to ideally resolve any disputes based on customary principles as well as bilateral or multilateral agreements between the parties. The agenda of the ICJ is incessantly engaged with such difficulties, as Oxman has named “the irresistible territorial temptation both to land claims and to an extended maritime jurisdiction.”²¹ Actually, the pundits have revealed the data, that about one third of the disputative occurrences submitted to the ICJ, dealt with boundary disputes.²² The editors of *Oppenheim* (Jennings and Watts) define territorial boundary of a state “as the imaginary lines on the surface of the earth which separate the territory of one state from that of another, or from unappropriated territory, or from the open sea.”²³ When talking about the concept and forms of sovereignty, we have to know that sovereignty is the sheer and constant power of a country. The etymology of the word sovereignty comes from the Latin *superus*, which means superior. In the subject area of politics, sovereignty is the absolute right of exercising an authority (legislative, legal, executive) in a region, in a country or over people. Furthermore, sovereignty in law and politics is a notion of general substance

²⁰ Haim Srebro and Maxim Shoshany, 17.

²¹ Bernard H. Oxman, “The Territorial Temptation: A Siren Song at Sea,” *The American Journal of International Law* 100, no. 4 (2006): 830-851, accessed February 12, 2019, https://www.jstor.org/stable/4126319?read-now=1&refreqid=excelsior%3A89718e131848e29fca086b9171670165&seq=1#page_scan_tab_contents

²² Prescott and Triggs, *International Frontiers and Boundaries*, 137.

²³ *Ibid.*, 139.

with application beyond human civilizations and with manifestations in time and space.²⁴

Cases about boundary disputes and call for settlements may come by an adjustment among two or more states, by a protocol provision committing disputes originating under the treaty to the court, or by the parties' statements of compulsory jurisdiction.²⁵ In addition, Article 38 of the ICJ (Statute) when determining occurrences about territorial disputes, must enforce:

- "international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;"
- "International custom, as evidence of a general practice accepted as law; the general principles of law recognized by civilized nations; subject to the provision of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."²⁶

When both negotiating parties agree with the court's ruling, then in the terminology of international principles, there is an expression called, "*ex aequo et bono*"²⁷ which is relevant to 'equity and conscience'. Generally, states rely on nine categories when affirming about international boundary disputes (*treaties, uti possidetis, effective control, economy, geography, history, culture, elitism, and ideology*).²⁸ But I will mention the five most common claimed before the ICJ. Those are; a) *treaty law*, b) *uti possidetis*, c) *effective control of the disputed territory*, d) *recognition, acquiescence and estoppel*, and e) *geographic, social, historic, economic and cultural links with the territory*.²⁹

²⁴ Gbenga Oduntan, *International Law and Boundary Disputes in Africa* (London and New York: Routledge, 2015), 23.

²⁵ Brian Taylor Sumner, "Territorial Disputes at the International Court of Justice", 1781.

²⁶ Statute of the International Court of Justice, 26.

²⁷ Sumner, "Territorial Disputes...", 1781.

²⁸ Ibid., 1779.

²⁹ Ibid.

2.1.1. Treaty Law

Any kind of agreement between two or more parties, must also carry with it features of the principles of international law. Treaty law is common expression for all sorts of accords made by; states, governmental and non-profit organizations, international organizations and so on.³⁰ The Vienna Convention (1969) elucidates the definition of treaty as “*an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.*”³¹ Treaties in international law are characterized by two attributes: a) The interceded ending consisted of three clear-cut levels (dialogue, signature, ratification); b) A single lawful tool (the operative text, appendices, etc.).³² A good thing about international treaties is, that they do not require the confirmation of the head of state, but it may be done by any deputy or authorized official.

The agreement of negotiating actors by treaty is the most legal and internationally accepted form. As that is because, if both sides agree on a particular territory, then eliminating the conflict on historical basis is easier.³³ After that, the parties to a treaty swear by these assumptions in fulfilling their own affairs, because they entered into the agreement voluntarily which would best fit their own interests.³⁴ Notwithstanding, many decisions of treaty laws drawn by international courts are ignored by the ‘losing’ state’. For example, out of twenty one South American states that have entered into a territorial conflict treaty, only ten have been able to comply with final rulings by the international court.

³⁰ Mr. Mahdi Boudjema, “International Border Delimitation,” in *Delimitation and Demarcation of Boundaries in Africa: General Issues and Case Studies*, ed. Ira Olaleye (Offenbach: Schulthesis & CoKG, 2013), 64-65.

³¹ What is Treaty Law, Organization for the Study of Treaty Law, <https://www.treatylaw.org/what-is-a-treaty/>.

³² Boudjema, International Border Delimitation.

³³ Sumner, “Territorial Disputes...” , 1782.

³⁴ Ibid.

2.1.2. Uti Possidetis

The difficulties encountered by independent states of centuries-old colonialism in Africa and Latin America, brought about the new doctrine of international principles called *uti possidetis*- ‘as you possess, you shall continue to possess’.³⁵ This doctrine specifies that states emerging from colonialism will continue to exert their administrative boundaries, already recognized as (international ones), in order to maintain *status quo* and territorial stability.³⁶ Moreover, *uti possidetis* allows the new state to legitimately declare its territorial integrity at home and abroad, naturally not impinging the sovereignty of neighboring countries.³⁷ The principle of *uti possidetis* performs inside the circumstances of the transmittance of sovereignty and the existence of a new independent state and specifies that process.³⁸

The endorsement for the principle of *uti possidetis* was first entailed in Article 3 (3) of the 1963 Charter of the Organization of African Unity (OAU), in which “members pledged respect for the sovereignty and territorial integrity of each state and for its inalienable right to independent existence.” Afterwards, at the Conference of Heads of States and Governments at Cairo, in 1964, the concept of *uti possidetis* was embraced by African Union, as one of its central principles. *Uti possidetis* has been utilized even from emerging former states of USSR and ex-Yugoslavia.³⁹ It is important to be mentioned that *uti possidetis* cannot be expelled by the principle of self determination. European Community Arbitration Commission on Yugoslavia (Badinter Commission) has applied *uti possidetis*, though Serbian population of Croatia and Bosnia-Herzegovina has rejected it. Opinion No. 2 of this Commission decided that; there will not be any changes of frontiers at the time of independence (*uti possidetis juris*) unless the contracting parties agree.⁴⁰ In other words, opinion No. 3 of Badinter Commission claims as follows: “*Except where otherwise agreed, the former boundaries*

³⁵ Paul R. Hensel et al., “The Colonial Legacy and Border Stability: Uti Possidetis and Territorial Claims in the Americas.” Department of Political Science, Florida State University, 1-2.

³⁶ Malcolm N. Shaw, “The Heritage Of States: The Principle Of Uti Possidetis Juris Today,” <https://watermark.silverchair.com/67-1->(accessed February 15, 2019).

³⁷ Ibid.

³⁸ Ibid.

³⁹ Prescott and Triggs, *International Frontiers and Boundaries*, 143.

⁴⁰ Ibid., 144.

become frontiers protected by international law. This conclusion follows from the principle of respect for the territorial status quo and, in particular, from the principle of *uti possidetis*. *Uti possidetis*, though initially applied in settling decolonization issues in America and Africa, is today recognized as a general principle as stated by the International Court of Justice in its Judgment of 22 December 1986 in the case between Burkina Faso and Mali.”⁴¹ According to this, we might confer that only a vigorous application of *uti possidetis* by Badinter Commission, could forestall the attacks of former Yugoslavian states upon one another. ICJ and European Community Commission have always taken into account that the principle of *uti possidetis* dominates over that of self-determination, yet recognizing the rights of the minorities protected by the high-and-mighty international law norms. Of the contemporary concern, we can highlight the rights of the Dniestrans in the Republic of Moldova and Armenians in Nagorno Karabakh.⁴² In grievous fights between Burkina Faso and Mali (1986), the ICJ observed that the final decision should be taken; is principle of *uti possidetis juris*, which corresponds since the time of colonization.⁴³ More recent conflict was about maritime zone in Caribbean Sea between Nicaragua and Honduras (1999-2007), where the Court applied the principle of *uti possidetis juris* and the dispute was settled.⁴⁴

2.1.3. Effective Control of the Disputed Territory

If we were to be asked about the essential element of effective control, Savigny claims that the physical power of dealing with the subject is the most crucial component in possession of territory. This principle was applied by Portugal in Delagoa Bay Arbitration. They have built fortresses and factories which in international law is one of the strongest evidences in possession. Lord Salisbury also agreed that: “forts maintained in a condition of efficiency are undoubtedly a conclusive testimony that the territory on which they stand is in the military occupation, and under the effective dominion, of the

⁴¹ Alain Pellet, “The Opinions of the Badinter Arbitration Committee : A Second Breath for the Self Determination of Peoples”, <http://ejil.org/pdfs/3/1/1175.pdf>(accessed February 21, 2019).

⁴² Prescott and Triggs, *International Frontiers and Boundaries*, 144.

⁴³ Frontier Dispute (Burkina Faso/Republic of Mali), <https://www.icj-cij.org/en/case/69>.

⁴⁴ Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), <https://www.icj-cij.org/en/case/120>.

Power to which they belong.”⁴⁵ However, only the discovery of new land is not enough for title to *terra nullius* (Nobody’s land). Grotius concluded that even the possession is necessary in order to title the new land.⁴⁶ On the other hand, Vattel assumes that “The law of nations will not acknowledge the property and sovereignty of a nation over any uninhabited countries, except those of which it has really taken actual possession, in which it has formed settlements, or of which it makes actual use. Nations cannot exclusively appropriate to themselves more land than they have occasion for, or more than they are able to settle and cultivate.”⁴⁷ It is necessary to stress that, during the period of colonial expansion; there was no particular doctrine on which states would mark their borders. For example, with the colonization of Latin America by Spain and Portugal, the Church and Papacy were giving the main verdict in allocation of borders in the new occupied continent.⁴⁸ Only at the end of the 19th century states could establish an effective presence on their newly declared territorial claims.

Exactly, it was the Conference of Berlin in 1885, whereupon European states agreed to practice effective control in the territories of African countries through which they claimed sovereignty:

*“The signatory powers... recognize the obligation to ensure the establishment of authority in regions occupied by them on the coast of the African continent, sufficient to protect existing rights, and, as the case may be, freedom of trade and of transit.”*⁴⁹

The above mentioned quotation which was confined only for African countries was made ubiquitously relevant with the Convention of St. Germain in 1919.⁵⁰ This Convention refers to us; the agreement where states are obliged to notify other states upon their claims of territory, and preserve a position of confidence to protect gained rights and freedoms. Phillimore states that occupation of territory; as by settlement and

⁴⁵ M. F. Lindley, *The Acquisition and Government of Backward Territory In International Law: Being a Treatise on The Law and Practice Relating to Colonial Expansion* (London: Longmans, Green And Co. Ltd, 1926), 140.

⁴⁶ Prescott and Triggs, *International Frontiers and Boundaries*, 150.

⁴⁷ M. F. Lindley, *The Acquisition and Government of Backward Territory In International Law*, 140-141.

⁴⁸ Prescott and Triggs, *International Frontiers and Boundaries*, 151.

⁴⁹ Ibid.

⁵⁰ Ibid.

engagement with mercantilismlike grazing lands, fishery, working mines, are necessary to be considered as effective control upon certain territory. Twiss also agrees with Phillimore, except for settlement; he meant the creation of a colony instead of mere trade attempts.⁵¹

In order a state to claim sovereignty over a certain territory, the occupied land should be *terra nullius*. Or, it might execute the effective control if the people of that land agree the colonizers to exercise the occupation. Yet, the claimant must fulfill the “*duty of protection of the rights of other states and their nationals*”, as proposed by Judge Huber.⁵² To better understand this principle, we must know that the more a state is committed in protecting the rights of individuals, community and the values of that region, the more powerful is its title to effective control. And vice-versa, the more one state fails to show respect for international human values, it risks yielding the assigned territory to someone else (e.g. Kosovo’s independence from Serbia).⁵³

When it comes to the issues of *terra nullius*, one occupator cannot dominate one land if they found any tribe or any people there, while disembarking the first time. To be more accurate, the land which is not *terra nullius* possessing its own population, the people of that territory can raise the voice of self-determination against the ICJ. With regard to this issue, I would like to elaborate the example about the Western Sahara case raised between Spain, Morocco and Mauritania, to ascertain which of the contending countries had the higher claiming status.

Being affluent in phosphates and fishing resources, Western Sahara has been a Spain colony since 1884. In 1966, the General Assembly summoned Spain, alongside with its neighbours Mauritania and Morocco, to hold a plebiscite, to authorize the people of Western Sahara use their right of self-determination. The referendum occurred under the supervision of United Nations in 1975. Until then, Mauritania and Morocco have had historical claims about that region. The court was interrogated by the General Assembly to give careful consideration in two essential questions: a) Was Western Sahara a land

⁵¹ M. F. Lindley, *The Acquisition and Government of Backward Territory In International Law*, 141.

⁵² Prescott and Triggs, *International Frontiers and Boundaries*, 157-158.

⁵³ Ibid.

of no one at the time of colonization by Spain? ; b) What were the ties between this land, and the Mauritania and Morocco?⁵⁴

Answering the first question, the court has come to the conclusion that during the occupation of the Western Sahara by Spain, this land was not *terra nullius*, since there existed for a long time ago, the nomadic tribes which granted the Spanish colonizers the right to exert effective control. Calling on the second question, the court found that the insufficient number of tribes had some legal ties with the Sultan. Thus, evidence was uncorroborated to demonstrate effective control of either Kingdom of Morocco or Mauritania.⁵⁵

The ICJ ruling has to be praised for the fact that it has respected the doctrine of the *terra nullius*, where no state can claim a territory if there are people, even nomads, as in the case of the Western Sahara.⁵⁶ The ICJ afterwards, also confirmed the right to self-determination to many countries (East Timor, Western Sahara, Kosovo, South Sudan etc.), bearing in mind that this is a key principle of international law, but, by not giving it the right to prevail over the principle of *uti possidetis*.⁵⁷

2.1.4. Recognition, Acquiescence and Estoppel

The basic distinction between recognition and acquiescence is; that the former has an expressed or implied tendency towards title to territory. Whereas acquiescence is an applicable tacit permission to cease the territory to other state without any objection.⁵⁸ Boundary dispute between Thailand and Cambodia over the *Temple of Preah Vihear* case is one of the leading examples regarding international decision on the role of recognition. According to the Treaty for the Commission of Delimitation in 1904, the frontier “*Between Siam (Thailand) and Cambodia, starts on the left shore of the Great Lake, from the mouth of the river Stung Roluos [...] from there it follows the*

⁵⁴Ibid., 160-162.

⁵⁵Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid., 175-176.

*basins of the Nam Sen and the Mekong, and the Nam Moun on the other hand...*⁵⁹

Notwithstanding, the map of 1908 had been mistakenly represented showing that the temple lie on the Cambodian side. The ICJ found that Thailand had been given several opportunities to raise the voice of the line shown on the map, either by protesting or by making any reservation. But they failed to do so for more than fifty years, until 1958.⁶⁰ Such evidence of recognition, even though silent, played an important role of the ICJ, to leave the Temple on Cambodian side.⁶¹

Furthermore, on 10 July 1931, Norway announced the occupation of Eastern Greenland known as Eirik Raudes Land. Two days after the Norwegian proclamation, Denmark instituted legal proceedings to the PCIJ, and appealed the Court to adjudge that such action by Norwegian Government breaches the existing legal situation of Denmark's sovereignty over that land. Accordingly, the Danish Government declared it unlawful and invalid. Contrary, Norway further went on declaring that, firstly, Denmark had no sovereignty over Eirik Raudes Land, because at the time of occupation it was *terra nullius*, and secondly, Norway had assumed sovereignty over that territory. In its judgement the Court concluded that: "*in consequence of the various undertakings resulting from the separation of Norway and Denmark*", and also by signing, and being a party to, treaties "*in which Greenland [was] described as a Danish colony or as forming apart of Denmark or in which Denmark [was] allowed to exclude Greenland from [its] operation*", Norway had "*recognised Danish sovereignty over the whole Greenland*" and had "*debarred herself from contesting Danish sovereignty.*"⁶²

In addition, international tribunals can make a final decision and judge on behalf of one state that alludes to a particular territory, while the other state is quiet and does not express its opposition. There is an example of '*Grisbadarna*' where Sweden has placed the lighthouses and Norway did not show any protest, meaning that

⁵⁹International Court of Justice, Reports of Judgments, Advisory Opinions and Orders. *Case Concerning The Temple of Preah Vihear (Cambodia v. Thailand Merits)*. Judgment of 15 June 1962. Article I, 16.

⁶⁰ Nuno Sérgio Marques Antunes, "Estoppel, Acquiescence and Recognition in Territorial and Boundary Dispute Settlement," *International Boundaries Research Unit* 2, no. 8 (2000): 13-16.

⁶¹ Prescott and Triggs, *International Frontiers and Boundaries*, 176.

⁶² Nuno Antunes, "Estoppel, Acquiescence and Recognition in Territorial and Boundary Dispute Settlement," 8-9.

during the dispute of fishing banks, the court judged on the side of Sweden.⁶³ Other cases of acquiescence are the *Island of Palmas* where Netherlands has exercised its dominance while the U.S. without any protest accepted it in acquiescence. Also, the *Minquiers and Ecrehos* case between France and the United Kingdom is one of many other examples of acquiescence.⁶⁴ One important thing to indicate, as Judge Huber considers that “if the contestation is based on the fact that the other Party has actually displayed sovereignty, it cannot be sufficient to establish the title by which territorial sovereignty was validly acquired at a certain moment; it must also be shown that the territorial sovereignty has continued to exist at the moment which for the decision of the dispute must be considered as critical.”⁶⁵ Here Judge Huber did not intend to claim that sovereignty can not be founded wherever there is a protest, but rather, he was interested to study the consequences of a lack of protest. Norway’s objections, for example, could not stop Denmark’s title of sovereignty over *Eastern Greenland*. In other words, protests may not always be the best way to stop an usurper from effectively controlling a given territory. The decision of the international tribunal also plays an important role here.⁶⁶ The involvement in the *Anglo-Norwegian Fisheries* instance, if the United Kingdom would persistently and unequivocally protested the delimitation proposal of Norway; the imaginary lines would not have been appposable against it. In the case where territory is *terra nullius*, this can prevent another state to take on that land. We cannot always say, that protests are a guarantee against a territory not to be occupied. But if the contested region is *res communis* (thing of the entire community), then, the tribunal or the international community, can prevent one state from occupying that land.⁶⁷

Estoppel is another principle of international law, which prevents an actor (person, company, organization, state) from claiming something which is contrary to the

⁶³ Prescott and Triggs, *International Frontiers and Boundaries*, 176.

⁶⁴ Ibid.

⁶⁵ Reports of International Arbitral Awards, *Island of Palmas case (Netherlands, USA)*, 4 April 1928, 839, http://legal.un.org/riaa/cases/vol_II/829-871.pdf.

⁶⁶ Prescott and Triggs, *International Frontiers and Boundaries*, 178.

⁶⁷ Ibid.

previous entailed statement of that actor.⁶⁸ An important differentiation between recognition and acquiescence and estoppel is, that the latter in it is not a manifestation of consent but a *sanctio juris* that operates provided that certain prerequisites are met.⁶⁹ Judge Fitzmaurice in the case of *Temple of Preah Vihear* argues that: “Thailand’s silence, in circumstances in which silence meant acquiescence, or acted as a representation of acceptance of the map line, operates to preclude or estop her from denying such acceptance, or operates as a waiver of her original right to reject the map line or its direction at *PreahVihear*.”⁷⁰ So, Thailand has been excluded from its requirement for this religious object although the map proves to be part of it. But for the fact that Thailand has tacitly and without any objection, accepted for all those years the temple to be managed by Cambodia, then even the principle of estoppel was enforced to it.⁷¹

2.1.5. Geographic, Social, Historic, Economic and Cultural Links with the Territory

We know that throughout the history; hills and mountain ranges, lakes, rivers, seas and oceans have repeatedly divided countries and communities.⁷² Usually, boundaries that are determined on the basis of natural elements have not caused irreparable damage throughout history. They have been the cause of minimizing fierce inter-combat disputes and have not always required high-level patrols.⁷³ However, when it comes to precise delimitation and demarcation of these borders, there have often been conflicts between the parties. For the reason that natural formations can move

⁶⁸ Nuno Antunes, “Estoppel, Acquiescence and Recognition in Territorial and Boundary Dispute Settlement,” 4.

⁶⁹ I.C. MacGibbon. “Estoppel in International Law.” *The International and Comparative Law Quarterly* 7, no. 3 (July 1958) : 468-513, Cambridge University Press, https://www.jstor.org/stable/755277?read-now=1&refreqid=excelsior%3A3dd510656790c8711478c7a4896de83c&seq=8#page_scan_tab_contents.

⁷⁰ Separate Opinion of Sir Gerald Fitzmaurice, 63, <https://www.icj-cij.org/files/case-related/45/045-19620615-JUD-01-03-EN.pdf>.

⁷¹ Prescott and Triggs, *International Frontiers and Boundaries*, 178.

⁷² Sumner, 1783.

⁷³ Ibid.

(accretion, erosion and avulsion) they can make international boundaries difficult to be marked justly. Natural borders also have advantage, where in times of war it is difficult for armies to cross easily and reduce the states' budgetary costs in building fortifications and bulwarks. Nevertheless, this value sometimes renders states to take the step of expanding borders on the pretext of preserving their territorial integrity.⁷⁴

Effective control is the most legal basis of claims, but history forms the most emotional basis. History means memory, and the history of a nation forms the central core of its self-identity.⁷⁵ American geographer Samuel Whittemore Boggs asserts: "Boundary disputes in Europe, on the other hand, arise in many instances because too much history is remembered by both parties concerned. Such problems cannot be solved by any such simple means as making an accurate map, but require calm, dispassionate consideration of the present factors and the changing role of boundaries."⁷⁶

In other words, priority or duration in a certain land has a great significance in claiming title to territory in terms of historical principle. Discovery is the ultimate case of priority, but discovery by itself has generally not been enough to guarantee continued control.⁷⁷ Notwithstanding, unpredictable cases has given a discoverer an alternative to carry out control. For example, Stanley as a result of his transcontinental journey was able to offer the entire Congo to the King of Belgium. Likewise, in 1902, Otto Sverdrup offered several Arctic islands, which he had discovered and explored, first to Sweden and then to Norway.⁷⁸ With respect to priority, in Europe it meant to be "indigenous". The Serbs claimed that they were the indigenes in the Western Banat; they were there before the Magyars, Rumanians, and Germans.⁷⁹ Kosovo, being occupied by Serbia for almost hundred years, due to their medieval heritage (churches, monasteries, patriarchals, cemeteries, etc.) is pretended to be called by Serbs as their cradle of civilization or "Jerusalem of Serbia." On the other hand, Albanians have strong consideration over the Kosovo as a fact that they are autochthonous in this land dating

⁷⁴ Ibid.

⁷⁵ Andrew F. Burghardt. "The Bases of Territorial Claims." *Geographical Review* 63, No. 2 (April 1973): 225-245. https://www.jstor.org/stable/213412?read-now=1&seq=6#page_scan_tab_contents.

⁷⁶ S. Whittemore Boggs, *International Boundaries* (New York: Columbia University Press, 1940), 17, <https://archive.org/details/in.ernet.dli.2015.36445/page/n5>.

⁷⁷ Burghardt, "The Bases of Territorial Claims.", 230.

⁷⁸ Ibid.

⁷⁹ Ibid.

before the invasion of South Slavs in the Balkans (6th and 7th centuries). They strongly assert to be descendants of the ancient Illyrian tribe called Dardanet, and that this land is undeniably theirs.

Claims on a historical basis, usually occur with artifacts and cultural values of people in which they are based. They may have been reasoned with the vernacular of that place, with the villagers who live there and the lifestyle they make. The close affiliation of peasants to the land indicates man-land interdependence that should not be infringed politically.⁸⁰ The most substantial argument can be seen, when a certain nation call it motherland. The term “homeland” incorporates grandness and time span and demonstrates fundamental manifestation of man-land interdependency.⁸¹ Cultural circumstances are constructed on the “ethnic-nation” core, where demarcation of the border is argued on linguistic, religious and kinship aspects living in a particular country or region.⁸² Richard Hartshorne has defined nationality as: “a feeling on the part of the people in any area of more than provincial size that they belong together. Nationality than, is a feeling of loyalty to a particular country, *both land and people*.”⁸³ This definition does not comprise only nationalisms and their attendant irredentisms, but also all those ethnic, religious and cultural links binding people together.⁸⁴ Whereas in Europe, language has been the primary amalgamating draw over the past two centuries, in the Middle East, religion has enjoyed greater importance.⁸⁵ Namely, the diversity of peoples, languages, and geographical features is definitely very impressive. The significant factor is that the population of Eritrea is rather less than half Christian, and rather more than half Muslim. The Christians of the highlands made ardent request for immediate and unconditional union with Ethiopia. The Muslim lowlanders, rejecting union wanted independence through trusteeship. There was hence a complete and

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Donald L. Horowitz, *Ethnic Groups In Conflict* (California: University of California Press, 1985), 219-224,
[file:///C:/Users/lg/Downloads/Donald%20L.%20Horowitz%20%20Ethnic%20Groups%20in%20Conflict%20\(1985\)%20\(1\)_1985.pdf](file:///C:/Users/lg/Downloads/Donald%20L.%20Horowitz%20%20Ethnic%20Groups%20in%20Conflict%20(1985)%20(1)_1985.pdf).

⁸³ Burghardt, “The Bases of Territorial Claims.”, 233.

⁸⁴ Ibid.

⁸⁵ Ibid.

incompatible split of opinion into two groups, and the separating mark amongst them was religion.⁸⁶

Irredentism depends on the existence of compact areas occupied by members of an ethnic group, located just beyond the limits of a state controlled by that ethnic group. This type of cases has afflicted Europe often: The Italians in the Trentino, the Austrians in the South Tirol, the Sudeten Germans, The Magyars outside Hungary, and the Albanians in Kosovo. We can also postulate the potential examples elsewhere, for instance, Mexicans in the American South-West and the French Canadians in New England. Doubtless to say, the most current ethnic dispute is that between the Somalis and their neighbors.⁸⁷

The eventual cultural-political ideal is showed in the slogan “self-determination.” In practice this has meant the right of a group to have its own state or to share with ethnic kinsmen in the making of a state.⁸⁸ The case of Kosovo’s independence in 2008, from the Serbian century yoke, is the typical example of self-determination of the people for freedom and sovereignty. Paul Ignatus, a journalist, states that: “Self-determination, triumphant in Danubian Europe in the autumn of 1918 and after, meant that a few gentlemen in and round Paris told the peoples concerned what to ‘Determine’ about their own future; and this command was either meekly carried out, or degenerated into terror and gang warfare of the Biafra variety.”⁸⁹

Economic claims can be expressed by the importance of natural values and the feasibility of productivity that a given territory can contribute.⁹⁰ For instance, a particular territory may be necessary to enable internal and external traffic-routes, may bring economic benefits to the cross-border connection of oil and gas pipelines, may be a key destination in terms of tourism, or above all, there may be high incomes in the utilization of raw materials and natural resources.⁹¹

⁸⁶ F. E. Stafford, “The Ex-Italian Colonies.” *International Affairs* 25, no. 1 (January 1949): 47-55.

⁸⁷ Burghardt, “The Bases of Territorial Claims.”, 234.

⁸⁸ Ibid.

⁸⁹ Paul Ignatus, “Czechs, Magyars, Slovaks.” *The Political Quarterly* 40, no. 2 (1969): 188.

⁹⁰ Burghardt, “The Bases of Territorial Claims.”, 237.

⁹¹ Sumner, 1785.

2.1.6. Self-Determination

Self-determination is fundamental right, where people form their own sovereignty, adjusted by the doctrine of international law. Although there are many guarantees mentioned in General Assembly resolutions, the only legally binding document in which the right of self-determination is declared, is the International Covenant on Civil and Political Rights.⁹² The first paragraph of common Article 1 states: “*All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*”⁹³

The basic meaning of the principle of self-determination can be defined as a community’s right to choose its political destiny.⁹⁴ The principle of self-determination dates back to the early days, where even historians and legal analysts are ambiguous on the exact date. There are those who say that it dates back to the time of Prophet Moses, when he fought against Pharaoh, for the liberation of his people from the cruel tortures. Some historians associate it, with Peace of Westphalia, French Revolution, the United States Civil War, and so on.⁹⁵

The principle of self-determination was frequently termed as a political concept, where it was first formulated by the President of the USA, Woodrow Wilson.⁹⁶ The 14 key points in President Wilson’s statement have also been a precursor to the emergence of new states after the end of the First World War.⁹⁷ Succeeding the World War II, self-determination was enshrined in the United Nations Charter, initiating its transformation into a legal right under international law. In practice, this notion provided the justification and impetus for de-colonization and is often coalesced with

⁹² Hurst Hannum, “The Right of Self-Determination in the Twenty First Century,” *Washington and Lee Law Review* 55, no. 3 (Summer 1998): 773-780.

⁹³ International Covenant on Civil and Political Rights, Article 1, Paragraph 1.

⁹⁴ Wolfgang Danspeckgruber and Anne-Marie Gardner, “Self-determination,” in *Encyclopedia Princetoniensis*, <https://pesd.princeton.edu/?q=node/266>.

⁹⁵ R. Vashum, “Self-Determination, Meanings and Practices,” *Indian Anthropologist*, vol. 26, No.1 (June: 1996), accessed 25 July, 2019, 63-76, https://www.jstor.org/stable/41919794?seq=2#metadata_info_tab_contents.

⁹⁶ Tadeusz Gadowski, “The Principle of Self-Determination in the Context of Human Rights,” 25-36.

⁹⁷ Ibid.

independence. More recently, the term is associated with struggles by groups within a state for greater autonomy or independence-primarily ethno-nationalist claims or counter-reactions to oppression or authoritarianism.⁹⁸

2.2. International Boundary Disputes

The boundaries between nations (land, maritime and air), demonstrate lots of possibilities for international disputes. Land boundary disputes might engage discrepancy over explanation of relevant treaties that delimit the boundaries between two or more states.⁹⁹ The dispute can be affected by trespass of nationals of another state which can happen heedfully or unwittingly (such as the way in which up to 33 Nigerian small villages shifted and followed a receding lake, thereby crossing into Cameroonian territory without any governmental involvement).¹⁰⁰

Intentional incursion by military personnel would almost create serious contention and response from the territorial state (e.g. *Djibouti v. Eritrea border conflict*). With regard to the sea; adjacent or opposite states may disagree over the boundaries separating their respective maritime zones (e.g. *Qatar v Bahrain Maritime Delimitation and Territorial Questions* and the evolving situation in the Gulf of Guinea).¹⁰¹ One state may claim the right to lead naval manoeuvres in the Exclusive Economic Zone (EEZ) of another state, whilst the latter would generally refuse the existence of such rights. Also, another state might try to keep out fishermen from neighbouring states and exercise powers of arrest over them for many miles from its coast (*Africa-EU disputes* and *Namibia-South Africa*).¹⁰² With reference to the air, on an annual basis, states experience dozens of contradictory disagreements over the trespass of aircraft, drones and other aerial devices into national territory. Even though not as

⁹⁸ Danspeckgruber and Gardner, "Self-determination,".

⁹⁹ Gbenga Oduntan, *International Law and Boundary Disputes in Africa*, 55.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

widespread as it is the case in the Middle East and Europe, the African continent has recorded many areal trespass disputes of its own.¹⁰³

When discussing the analysis of the outbreak of border conflicts, one has to supply informations on two facets. First, it is essential to reveal the cause of the dispute. Second is about finding a solution to a problem that has been for some time in vague and silent circumstances. This *trigger action* might change from active diplomacy to invasion (e.g. Invasion of Kuwait by Iraq). Sometimes the trigger action can be delayed without any agreement, which parties are obliged to submit the issue to the arbitration court. For example, Cambodia and Thailand, Burkina Faso and Mali, Belgium and Netherlands have all carried boundary disputes to the ICJ.¹⁰⁴ Once countries debate to find an answer about a territorial dispute or present it to arbitration, they demonstrate the most durable arguments. Much of these arguments can be seen in history, geography, ethnography and law. When boundary disputes are settled by negotiation, the scholar is generally left to guess about the arguments pressed by both sides and the extent to which some arguments were decisive.¹⁰⁵ When parties negotiate, then finding a harmonious solution for both parties is more common. Whereas, if the matter is referred to the arbitral tribunal, it is more likely that one party will win and the other will lose.¹⁰⁶

It is very important to take into account the results that may emerge after the border negotiations. Although expectations may not come out 100% according to the calculations and predictability we make, but at least we must know the circumstances which could increase or decrease the risk of border conflict. According to the experts of this field, conflicts may be less if the changed border does not have a long history of disagreements, if the population of that area is homogeneous with the state to be attached, and if its area's economy is related to the new state.¹⁰⁷ On contrary, if the border conflict dates for long time, if the population of that area is heterogeneous with

¹⁰³ Ibid.

¹⁰⁴ Prescott and Triggs, *International Frontiers and Boundaries*, 91-92.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid., 93.

the new territory, and if its economy is dependent on the state which is going to be disconnected, then the post-negotiation problems will be great¹⁰⁸

Usually conflicts around borders can be *territorial, positional, and functional* and the disputes stemmed from *resource development*. Territorial boundary dispute can be triggered when a state attempts to annex a particular area or province, because it may be profitable and strategic point (e.g. Alsace-Lorraine). Powerful states are able to acquire such strategic lands without any difficulty and need for negotiations.

In certain cases, the distinction between disputes concerning international boundaries and disputes arising out of the acquisition of territory are blurred. However, factual and legal differences exist between the two types of disputes. Conflicts over territories push two or more claiming states to make as many arguments as possible, so, that they can easily obtain the parcel they want.¹⁰⁹ Yet, territorial disputes arise when one government requests a neighbor to give up some territory for one of two reasons. It will argue either that the territory is held improperly, or, that it would be better for all concerned if ownership of the area was transferred.¹¹⁰ The second type of dispute is called *positional* boundary dispute. This type of conflict most of the time occurs when there is no precision in the designation and demarcation of the border point. Thus, both parties are at odds over the terminology of (allocation, delimitation and demarcation).¹¹¹ In order to resolve this conflict, the claimant must always appear victorious over the losing party.¹¹²

The other two types of border conflicts can be resolved without altering the borders. *Functional* conflict can occur when one side of the border is very thorough in its scrutiny and progress, while the other party shows no seriousness in terms of customs-border-crossing, or lacks high security monitoring. And the last type of conflict is due to *resource development*, such as seaports, mines, river banks, attractive tourist centers. This type of conflict could be settled through organizations which would

¹⁰⁸ Ibid.

¹⁰⁹ Gbenga Oduntan, *International Law and Boundary Disputes in Africa*, 65.

¹¹⁰ Prescott and Triggs, *International Frontiers and Boundaries*, 131.

¹¹¹ Ibid.

¹¹² Ibid., 94.

inspect the shares equally and proportionally.¹¹³ I will try to explain all these types of boundary dispute, with examples and arguments given by the experts of this field, in the last chapter related to the border demarcation between Kosovo and Montenegro, and the issue of the exchange of territories between Kosovo and Serbia.

There are three processes in the origin of territorial disputes. First, the boundaries may have been set without knowing the ethnic and topographic distribution of the population. Many frontiers in Africa and South America are allocated without any particular emphasis on information. There have been times, when tribal leaders have expanded borders to the detriment of other tribes, with the support of colonial states. Another origin of the conflict may occur after the end of the war, when the triumphant state annexes the territory of the capitulating state. In this case, the conflict may arise when the damaged state seek to reclaim the territory. The ideal case has been with the occupation of Austria's Tyrol by Italy after the fall of the Habsburg Empire. Later, Austria has sought to reclaim this region but was unsuccessful. And the last case may occur after the agreement has reached on the table. Over time, for demographic change and economic reasons, one state might raise its voice for a return to the forerunner border (e.g. Chile, Peru and Bolivian Wars, 1879-1884).¹¹⁴

Generally, when a war ends, the victor state may impose territorial regulations. For example, between the Great World Wars, European borders were changed in favor of triumphant states, such as; the case of Czechoslovakia, Poland and Yugoslavia.¹¹⁵ Another border dispute occurred after the decolonization process. Savage border wars have been conducted in South America by the republics covetous towards territorial gains.¹¹⁶

In addition, one might raise a question, what are the states' aims in opening all these territorial disputes? Well, when states start a dispute, first they actually want to obtain the territory and are confident that they can achieve their goal. States aim to fortify themselves by augmentation of territory. They manage to conquer territory by

¹¹³ Ibid.

¹¹⁴ Ibid., 96-97.

¹¹⁵ Prescott and Triggs, *International Frontiers and Boundaries*, 98.

¹¹⁶ Ibid., 98.

relying on the natural resources they find there, in the capable and vital population living in that country and by sea or mountain access. The second case is when a state, although it has no great hope of gaining territory, does it for other purposes that may be of the nature of internal and external affairs. For instance, when Malaysia wanted to form its own federation, the Philippines fearfully claimed a portion of the Sabah in their name. Sometimes, states also tend to introduce separatist schemes in order to reduce the territorial influence of their neighbors. If Afghanistan could achieve to create the territory of Pushtunistan and Balochistan, it might have profited in access to the Indian Ocean.¹¹⁷

In order to support territorial claims, there are a couple of arguments states should meet. Occupation of territory is one of the strongest basis enacting legal claims. This is based on the times of colonization where states have been able to set boundaries through effective control. Thus, the occupier's presence is a condition for arguing territory. Some states have established historical and religious monuments to assert their claims. Yet, territory may be claimed by attestations founded in history, geography and economics.

When border disputes occur, the claimant state will attempt in any form to protect its territorial extension through media, newspapers and other publications. The same thing will be done by the defense, which will collect the best anti-arguments in order the border not to be altered. With respect to the relations between two governments, they may be trouble-free without any sanctions on free-trade and other political economic relations. Or, they could be exacerbated by embargoes, deterrence and even invasion by war.¹¹⁸ If the reduction of tensions cannot be achieved through dialogue, then the parties will be summoned by the arbitral tribunal's judgment.¹¹⁹ Mr. Masataka Okano gives us some methods to solve land disputes or maritime delimitation issues. The most essential rule of sorting out the territorial disputes is that they should be done in accordance with international law, leaders' ambition to solve the dispute,

¹¹⁷ Ibid., 99-100.

¹¹⁸ Ibid., 112.

¹¹⁹ Ibid.

fostering mutual confidence between political leaders, secret negotiations, taking care in setting the negotiation stage, legal consistency etc.¹²⁰

With respect to positional boundary disputes, the nature of the territory and the landscape is not important in this kind of conflict, but the development and the performance of the border commission in the ground. So, if during the demarcation, the commission made a mistake, or if the calculations are defective, then it will lead to disagreement and dispute. The longer the defect is, the more complicated the situation will be, and, the faster the commission improves the error, the conclusion will be more reasonable.¹²¹ In addition, I will try to illustrate more broadly the demarcation process issues in the following chapters when talking about the borders in the Western Balkans, especially the border demarcation between Kosovo and Montenegro.

2.3. Border Settlements by Peaceful Agreements

Border disputes are unfortunately difficult to be solved peacefully and systematically. The consequences of judgements on border issues can be spontaneous, and political leaders often stay away to admit the risks of losing territory. Arbitration or mediation contribute into a more conciliatory and harmonic path to achieve adequate result, nonetheless their conclusiveness makes politicians agitated. Border disputes often burst out as a cause of economic and social interests. Disputed territories may contain important natural resources, such as hydrocarbon, mineral reserves,¹²² or water sources; provide access to the sea or shared terrestrial resources, such as grazing areas; or be a strategic location.¹²³ Sometimes, states are noncompliant to approve their dispute to international adjudication or arbitration, just for fear not to lose the aforementioned natural resources. Nevertheless, states are obliged to avoid the use of

¹²⁰ Masataka Okano, "How to Deal With Border Issues: A Diplomat-Practitioner's Perspective", 41-47.

¹²¹ Prescott and Triggs, *International Frontiers and Boundaries*, 116-117.

¹²² Following chapters, I will try to give more details about the; Disputed territory of the north of Kosovo between Serbs and Albanians due to Trepça minery.

¹²³ Approaches to Solving Territorial Conflicts: Sources, Situations, Scenarios, and Suggestions, May 2010, The Carter Center, Atlanta, www.cartercenter.org.

force or threat, and achieve the settlement by peaceful agreements. Articles 2.3 and 2.4 in the Charter of the United Nations state that:

- “All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.”
- “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”¹²⁴

Here the Security Council is, definitely the UN body with central power for the preservation of international peace and security¹²⁵ and the member states of the UN agree to implement the resolutions of the Security Council, in compliance with the present Charter.¹²⁶ Furthermore, the parties of any dispute which leads towards the endangering of international security and peace, shall “first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”¹²⁷

The succession of states and governments by great empires (e.g. Ottoman, Russian, British and French Empires) has carried disputes and instability on finalisation to the boundaries and frontiers.¹²⁸ The principle of *uti possidetis* has pushed states to continue their borders inherited by colonizing states, thus having no clarity based on nation, culture, language, religion or tribal relation. Resolving the conflict peacefully, by applying the methods of diplomacy, straightforwardness, trust and kindness, has always been a key formula in border issues.¹²⁹

Lawful border resolution exists when neighbouring states accord with their pertinent sovereign jurisdictions under international law.¹³⁰ Hence, border settlement is composed of three main aspects. The first one is that settlement requires international

¹²⁴ Charter of The United Nations and Statute of the International Court of Justice. 1945. *Chapter I Purposes and Principles*. San Francisco.

¹²⁵ Ibid., Article 24.

¹²⁶ Ibid., Article 25.

¹²⁷ Ibid., Chapter VI, Article 33.

¹²⁸ Kaikobad, *Interpretation and Revision of International Boundary Decisions*, 33.

¹²⁹ Ibid., 31-33.

¹³⁰ Andrew P. Owsiak, Allison K. Cuttner, and Brent Buck, “The International Border Agreements Dataset,” *Conflict Management and Peace Science* (2016): 1-18.

border agreements, and this also contains three main characteristics which are *agents*, *methods*, and *outcomes*. With regard to *agents*, they might be any actor which mediates between the disputed states. Generally, in international border settlements, these actors are arbitration judgements such as ICJ or Swiss Federal Council. *Methods* refer the tools that agents use when working on border delimitation. There are eight most noteworthy plans used in the delimitation process: (i) negotiation; (ii) mediation; (iii) arbitration; (iv) adjudication; (v) post-war conference; (vi) plebiscite; (vii) internal or administrative decree; and (viii) the use of force. Eventually, *outcomes* denotes the result (if any) from settlement endeavor. Outcomes in *inter alia* fall into one of four categories: full settlement agreements, partial settlement agreements, post-settlement agreements, and no product.¹³¹

Second aspect of lawfully border resolution, is that it cannot be done easily under international law or adjudicated flawless. However, *modus vivendi* or temporary agreements are better at least, when the parties are unable to find a final solution.¹³²

Finally, border resolution bids to land adjacent states. Only these states have land borders to solve. Pair states separated by third states settle their borders with these third states instead (e.g. Croatia-Montenegro, separated by Bosnia and Herzegovina), while those separated by bodies of water allow their land borders to be determined by the water that separates them (e.g. Italy-Croatia).¹³³

Although adjudication owns great importance today on account of the ICJ, it is arbitration, of course, which is the older of the two techniques of peaceful settlement. We can doubtless say that the history of arbitration is also the history of territorial settlements.¹³⁴ Therefore, one of the earliest recorded arbitrations took place around 4000 BC, between two ancient Sumerian cities, Shirpurla and Gishkhu. The dispute between these two cities was so acrimonious that it was necessary King of Kish, called

¹³¹ Ibid.

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Kaikobad, *Interpretation and Revision of International Boundary Decisions*, 53-68.

Mesilim, to arbitrate upon them. Same arbitration accounts had been done even during Greek and Roman civilizations over the centuries.¹³⁵

By the Middle Ages for example, we have another form of arbitration. Pope was the main figure to ‘arbitrate international’ disputes considering that he and his arbitrators were more conciliatory than judges in contemporary times. However, there have been numerous instances where the Priests have deviated from the exact delimitation of boundaries for one cause or another. For example, Pope Alexander VI in 1493, issued as arbitrator to demarcate the territories newly discovered by Christopher Columbus, satisfying Spain and damaging Portugal.¹³⁶ The best indicator of territorial conflict resolution may be the “Treaty of Jay” of 1794, between the United Kingdom and the United States of America. In this treaty, the settlement was not influenced by the two countries’ representatives and diplomats, but by the unbiased commissioners that both states have appointed.

The Permanent Court of Arbitration (PCA), has been the first subject in the arbitration adjudication of state problems, in order to find a peaceful solution. The PCA was established in Hague in 1899 during the first Hague Peace Conference. The Conference was formed by the initiative of Czar Nicolas II of Russia “with the object of seeking the most objective means of ensuring to all peoples the benefits of a real and lasting peace, and above all, of limiting the progressive development of existing armaments.”¹³⁷ The purpose of the conference was to stabilize and strengthen the international problem-solving system of whatever form it may be. This conference has proven that over the past 100 years, many states through arbitration have been able to find the best solution possible. In particular, it should be mentioned the “Jay Treaty” and the “Alabama Arbitrage”.¹³⁸ Article 16 of the 1899 Convention, acknowledged that “in questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle.”¹³⁹ PCA

¹³⁵ Ibid.

¹³⁶ Ibid., 58.

¹³⁷ Permanent Court of Arbitration, *About Us/History*, <https://pca-cpa.org/en/about/introduction/history/>.

¹³⁸ Ibid.

¹³⁹ Ibid.

has a resilient role in finding a viable solution. The accorded parties may present their model before the PCA, and negotiate more explicitly, where the process takes the form of arbitrary jurisdiction.¹⁴⁰ The sources of law for PCA arbitration do not differ from those to ICJ Statute, since both aim to find the best solution regarding the settlement of disputes.

Arbitration in general is becoming an increasingly wide used method in the settlement of international boundary disputes. A number of territorial conflicts have been adjudicated through arbitration, including Taba (Egypt/Israel),¹⁴¹ Rann of Kutch (India/Pakistan),¹⁴² Beagle Channel (Argentina/Chile),¹⁴³ Brcko (Federation of Bosnia and Herzegovina/Republika Srpska)¹⁴⁴. The ICJ decision in the Nicaragua/Honduras case, also preceded on the basis of an earlier arbitration by the King of Spain.¹⁴⁵

There are also two technical issues that should be considered with respect to arbitration. First, there are sources of law and policy to guide the arbitrator. The principle of *ex aequo et bono* (according to the right and good, or from equity and conscience), can also be put into service, of course with the consent of the parties. By this principle, it enables the arbitrator or mediator to use equitable assessments in achieving a decision on the merits. The sole power arbitrators have, is through the terms of reference agreed by the parties. Nevertheless, they have to be very careful to carry out their mandate and not to exceed it using *ultra viers* (beyond the legal power or authority of a person or official or body etc). Arbitrators are also required to pursue as *amiables compositeurs* (conciliator-unbiased third party), precisely as “friendly composers.” Such stipulation guides the arbitrator to resolve the dispute according to

¹⁴⁰ Approaches to Solving Territorial Conflicts., 10.

¹⁴¹ United Nations, Reports of International Arbitral Awards, “Case concerning the location of boundary markers in Taba between Egypt and Israel,” Volume XX pp. 1-118,29 September 1988, http://legal.un.org/riaa/cases/vol_XX/1-118.pdf.

¹⁴² United Nations, Reports of International Arbitral Awards, “The Indo-Pakistan Western Boundary (Rann of Kutch) between India and Pakistan (India, Pakistan),” Volume XVII pp. 1-576, 19 February 1968, http://legal.un.org/riaa/cases/vol_XVII/1-576.pdf.

¹⁴³ United Nations, Reports of International Arbitral Awards, “Dispute between Argentina and Chile concerning the Beagle Channel,” Volume XXI pp.53-264, 18 February 1977, http://legal.un.org/riaa/cases/vol_XXI/53-264.pdf.

¹⁴⁴ Office of the High Representative, “Brčko Final Award Office,” 26 May 200, http://www.ohr.int/?ohr_archive_taxonomy=brcko-final-award-office&paged=11.

¹⁴⁵ Approaches to Solving Territorial Conflicts., 15.

the legal principles they believe to be just, and being free from any particular national law.¹⁴⁶ Second, international judicial bodies such as the ICJ or regional courts, are those who gives arbitrators the potential enforcement of international arbitral awards.



¹⁴⁶ Ibid., 15-16.

3. BORDER ISSUES IN THE WESTERN BALKANS

In the late 1980s, Yugoslavia was gripped by severe political and economic tensions, as it would lead to the open frontal conflict between the nations of the Federation. The international community was preoccupied by other major problems such as the approaching break down of the Soviet Russia and the Gulf War. Actually, the secession of Slovenia and Croatia in June 1991 encouraged the U.S. and EU to be involved more thoughtfully and adamantly on this very subtle and delicate issue. The main international organization to be engaged in Yugoslavia's collapse emergency, at least in the preliminary phases, was the European Community (EC).¹⁴⁷ In the months anteceding the Slovenian and Croatian declarations of independence, the United States and international community vehemently opposed the secession and proposed the territorial integrity of Yugoslavia. During this time we faced a variance of some EC states like; Germany and Belgium affirmed the recognition of the independency of Croatia and Slovenia, whereas France and Spain were in favour of maintaining the Socialist Federal Republic of Yugoslavia (SFRJ).¹⁴⁸ The USSR on the other hand, being troubled by its own secessionist forces, was in support of Yugoslavia's unity. In addition to this, the then Foreign Minister of Soviet Union Aleksandr Besmertnykh claimed that: "Yugoslavia's integrity was one of the essential preconditions for the stability in Europe."¹⁴⁹

At the outset of the former Yugoslavia turmoil, the EC established Special Conference on 27 August 1991, where Lord Carrington, former Foreign Secretary of the United Kingdom was elected its Chairman. The authorization given to Lord Carrington involved three substantial considerations: "first, that there should be a genuine ceasefire; second, that none of the six republics would be recognized as independent and sovereign states except as part of an overall settlement, agreeable to all six republics; third, that there should be no change of boundaries except by peaceful means and by agreement."¹⁵⁰ By this statement of Lord Carrington, we understand that EC was

¹⁴⁷ Peter Radan, *The Break-up of Yugoslavia and International Law* (London: Routledge, 2002), 160.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Lord Carrington, "Turmoil in the Balkans: Developments and prospects," *The Rusi Journal* 137, no. 5 (October:1992): 1.

ascertained never to recognise the changes of any borders unless by peaceful agreements between congnated republics. Still, it is noteworthy to further interpretthe issue of how these borders of former Yugoslavia were defined and set. Following, I will point out some information about adjusting the state borders at the time of the Kingdom of Serbs, Croats and Slovenes (SCS), in order to continue with the decision-making process of the borders during the Titoist Yugoslavia and after its disintegration. Regarding the state border of former Yugoslavia with neighbouring countries, I will only mention the separation line with Albania knowing that the other countries are not part of the Western Balkans. Yet, administrative or internal boundaries of the former Yugoslavian republics are our main point of study and research.

3.1. Border Issues after the World War I

The process of establishing the state borders of the SCS lasted relatively long and was very difficult and complicated. The solemn proclamation of the state unity of SCS preceded the decisions of their representatives on unification. On November 25, 1918, the Grand National Assembly in Novi Sad brought the Decision on joining Vojvodina to the Kingdom of Serbia.¹⁵¹ Members of the Great People's Assembly of the Serbian People in Montenegro decided on November 26, 1918, in Podgorica, "That Montenegro with a brotherly Serbia is united in one single state."¹⁵² After these events, on November 24, 1918 in Zagreb, The committee of the National Council of SCS brought the decision to unite with Serbia. Finally, Regent Crown Prince Alexander, on December 1, 1918 in Belgrade proclaimed, the unification of Serbia with the countries of an independent state of Slovenians, Croats and Serbs into a single Kingdom of SCS.¹⁵³ The state of SCS was internationally recognized under the Treaty of Versailleson 18 June, 1919.¹⁵⁴

¹⁵¹ *Istorijske karte Jugoslavije - stalna izložba u holu zgrade Arhiva*, Arhiv Jugoslavije, http://www.arhivyu.gov.rs/active/sr-latin/home/glavna_navigacija/izlozbe/izlozbe_arhiva/izl_2009_stalna.html.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Latinka Perović, "The Kingdom of Serbians, Croats and Slovenians (1918–1929) /the Kingdom of Yugoslavia (1929–1941): Emergence, Duration and End," Belgrade 2015, 8.

Congress of Berlin in 1878, deciding on the division of Serbia and Montenegro with the Ottoman Empire.¹⁵⁶ However, the definite borders between SCS and Albania were determined only in April 1925. The border begins in the strait of the Bojana River in the Adriatic Sea; it tracks this line towards the lake of Skadar where one third of the lake belonged to Albania. Further, the border continues along the peaks of Žijovo, Jezerc and Deravica of Prokletije Mountains. From there, the border moved south reaching the highest peaks of Paštrik, Koretnik, Korab and Jabllanice. At the Ohrid Lake, it broke out on its west side, whereas St. Naum Monastery has been given to SCS. Further, this border cuts off the Galicica Mountain and descends to the Lake of Prespa, where there was a triangle between Yugoslavia, Albania and Greece. An average of two-thirds of both lakes belonged to the Kingdom of SCS.¹⁵⁷

When talking about internal border division, here we have two main opposing concepts. First, is the principle of historical and national law (defended by Croats), which is based on the preservation of history-shaped territories; the second is the principle of national self-determination (claimed by Serbs), which accounts above all on peoples. Analysing why we have such opposing principles; because Serbian population besides in Serbia, has been extensively dispersed in other Yugoslavian republics and districts such as: in Bosnia and Hercegovina 43.9%, in Banat, Backa and Baranje some 30%, in Croatia 24.1%, in Dalmatia 17% and so on. Thus, for them having the largest population considered in the former Yugoslavia, to ensure the territory beyond the borders of the republic has been essential. They did not want their compatriots at the outer borders to be subjected and margined. So, their preference was unitary state. On the other hand, Croatia envisaged to retrieve its territories by penetrating into Bosnian hinterland, taking back all Dalmatian littoral region, district of Slavonia, and some parts of Srem district (now under the patronage of Serbia). They pretended these lands to be Croatian according to history of their Catholic Churches (Holy Roman Empire, Frankish Empire, Habsburgs and Austro-Hungarian Empire). For other nationalities living in former Yugoslavia, the administrative border disputes has not been a big challenge due to smallest, undefined and distributed population into enclaves mixed

¹⁵⁶ Živko Avramovski, "Granica Kraljevine SHS s Albanijom," in *Istorija 20. Veka: Časopis Instituta za Savremenu Istoriju*, ed. Smiljana Đurović (Beograd: Institut za savremenu istoriju, 1992), 35.

¹⁵⁷ Milenković, "Državne Granice Kraljevine Srba, Hrvata i Slovenaca," 10-23.

with other nationalities. Such as: One part of Slovenian population has remained in Austria and Italy, Macedonian national consciousness has just emerged and substantial part of them disseminated among Bulgaria and Greece, Muslims in Bosnia and Herzegovina sought to maintain their identity again in the context of Bosnia-Herzegovina's "autonomy", whereas Kosovar Albanians have always dreamed of joining the great Albania.¹⁵⁸

Regardless of this, in order to avoid the separatism of people, boundaries conceived by the national and historical view, were eradicated with the establishment of the St. Vitus Day Constitution of June 29, 1921. According to the Article 95 of this constitution: "*The administration in the Kingdom shall be made by districts, counties, and municipalities. Division of the districts (oblast) is done by law according to natural, social and economic conditions. One district can have a maximum of 800,000 inhabitants...*"¹⁵⁹ By a ministerial decree, published on 28 April 1922, the Kingdom was divided into 33 oblasti.¹⁶⁰ The most fragmented republic was Serbia together with Vojvodina, Kosovo and Sandzak, which were divided into as many as 15 areas. All other provinces were divided within their "historical" borders: Slovenia in two districts-Ljubljana and Maribor; Croatia in four, including Zagreb and Osijek with the majority of the Croatian population, and Sremska and Primorsko (Littoral) districts with the majority of Serbian population; Dalmatia is divided into two districts, Dubrovnik and Split, which was inhabited predominantly by Serbian population (Knin and Benkovac). Bosnia and Herzegovina retained its "integrity" as a concession to the Muslims if they vote for the constitution. Thus, it was divided into six districts with a mingled national composition. Macedonia has also maintained its integrity holding three *oblasts*: Bitola, Bregalnica and Skopje. Whereas Montenegro represented one *oblast* – that of Zetska.¹⁶¹

By the Law on the Name and Division of the Kingdom in Administrative Areas of October 3, 1929, the official name of the state was changed from the Kingdom of

¹⁵⁸ Branislav Gligorijević, "Unutrašnje (Administrativne) Granice Jugoslavije Između dva Svetska Rata 1918-1941," in *Istorija 20. Veka: Časopis Instituta za Savremenu Istoriju*, ed. Smiljana Đurović (Beograd: Institut za savremenu istoriju, 1992), 27-33.

¹⁵⁹ Ustav Kraljevine Srba, Hrvata i Slovenaca – Vidovdanski Ustav (1921), Beograd 1921, Član 95.

¹⁶⁰ Radan, *The Break-up of Yugoslavia and International Law*, 138.

¹⁶¹ Gligorijević, "Unutrašnje (Administrativne) Granice Jugoslavije Između dva Svetska Rata 1918-1941," 29.

SCS to the Kingdom of Yugoslavia, and the state territory was divided into nine administrative territorial units -called *Banovina*.

- Dravska Banovina headquartered in Ljubljana;
- Savska Banovina headquartered in Zagreb;
- Vrbaska Banovina headquartered in Banja Luka;
- Primorska Banovina headquartered in Split;
- Drinska in Sarajevo;
- Zetska in Cetinje;
- Dunavska in Novi Sad;
- Moravska in Niš;
- And Vardarska Banovina headquartered in Skopje.¹⁶²

The area of Belgrade with Zemun and Pancevo was separated into a special administrative unit, under the direct supervision of the Ministry of Internal Affairs.¹⁶³ The constitution of 1931 also has made a detailed demarcation between these banovinas. According to Article 83 of the Constitution, the aforementioned banovinas had these boundaries:

The *Dravska Banovina* encompassed the territory of the west and North of the country, bordering Italy, Austria and Hungary, to the place where the state border cuts the river Mura; from there, the border goes to the eastern and southern districts covering: Lendava, Ljutomir, Ptuj, Šmarje, Brežice, Krško, Novo mesto, Črnomelj, Kočevje and Logatec.¹⁶⁴

The *Banovina of Savas* bounded from the north by the river of Mura in the territory of Drava, and then further by the state border of Hungary to the place where it leaves the river Drava, proceeding towards the Danube. From the river of Danube to

¹⁶² Ibid., 30.

¹⁶³ Ibid., 30-32.

¹⁶⁴ Ibid.

Sava, the border goes east including Vukovar, Vinkovci, and Županje, further along the Sava River to the Una River meeting the southwest of Kostajnica. From this point to the Adriatic Sea (Moral Canal), the border crosses all the places of Vojnić, east of Slunj, Korenica, Donji Lapac, south of Gračac and Gospić. The boundary must go by the straits of Ljubaska, channel of Nova Poljana between the islands of Mion and Planik, in the north to the islands of Olib and Silva to the state border in the Adriatic Sea.¹⁶⁵

The *Banovina of Vrbas* extends north of the Dvor, to the river Una, it flows down into the Sava river, then, east of Derventa and Gračanica to the river Bosna near Dolce; where the border goes north from the riparian regions of Zepce, Zenica and Travnik to Mount Vlasic, then the eastern part of Lesina, through the Radanje Mountain Borders, it goes to Rakovce, from there a ridge over Suljaga, Demirovac and Crni Vrh to Mali Vitorog...¹⁶⁶

Primorska Banovina is bounded in the north by the banovinas of Savska and Vrbaska, all the way touching the triangle of Jajce, Bugojno and Travnik. From this direction, the boundary goes towards eastern edge of the Bugojno inclining to the northern edge of Konjic district, then east of the Mostar, to the triangle of the counties of Mostar, Stolac and Nevesinje. On the Adriatic Sea, the border passes through the channels of Neretva and Peljesac to the Adriatic Sea.¹⁶⁷

Drinska Banovina, on the western side is bounded by the borders of Primorska and Vrbaska Banovina, and from the north by the rivers Sava and Kolubara. From there, to the western border of the Primorska Banovina on the Treskavica mountain, whereas in the east of Obrenovac, it descends partly along the southern edge of the regions of Dragačevski, Arilje, Zlatibor, Višegradski, Čajnički, Rogatičko and Sarajevski, covering all these districts.¹⁶⁸

Zetska Banovina is bounded on the northern side, by the southern borders of the Primorska and the Drinska Banovina (Dragačevski, Žičko and Studeničko). From this

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

point to the state border with Albania, the border line goes along the eastern circumference of the rivers Studenica (Raska), Dežev (Novi Pazar), Mitrovica, Drenica (Srbica) and Podmoski, encompassing all these regions. The further line descends and goes to the state border with Albania to the Adriatic Sea.¹⁶⁹

The *Banovina of Danube*, from the south-western side is delimited by the marked borders of the Drina and Savska Banovina, and from the north and northeast it borders Hungary and Romania to the point where the Danube River runs out. It then goes down the Danube to the eastern edge of the district of Ramska, it turns south to the south-eastern edge of the region of Pozarevac, extends along the eastern edge of the Lepenica, Kragujevac and Gružan to Duleni Crnog Vrh peak in Gledicki mountains, from there to the northern border of Drinska banovina.¹⁷⁰

Moravian Banovina, from the north and east is delimited by the state borders of Romania and Bulgaria to the southern circumference of the region of Lužnica. From here, the border goes to the southern part covering all the regions of: Lužnicki, Niški, Dobricki, Prokupacki, Labski and Vučitrnski. Yet, covering the three-border regions of Vučitrn, Gracanica and Drenica, extending to the marked border of the Banovina of Zeta. Further, boundary goes to the north-marked boundaries of Zeta, Drina and Danube Banovina.¹⁷¹

The *Banovina of Vardar*, from the north is delimited by the marked borders of the banovinas of Zeta and Morava, and from the eastern, southern and western sides with the state border to Bulgaria, Greece and Albania.¹⁷²

On the basis of this administrative division; we see that the aim was demarcation of the provinces not according to the national and religious aspects, but rather to economic, political and cosmopolite one. However, Serbians have always complained that this division was a great damage to their national interest. Thus, the territory of Serbia is completely smashed and divided into five banovinas: That of

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid.

Danube, Morava, Drina, Vardar and Zeta; some parts of Bosnia and Herzegovina came into four banovinas: The Banovina of Vrbas, Drina, Littoral (Primorska) and Zeta. All other 'national provinces' has largely retained their territorial integrity: Croatia is generally divided into two banovinas: Savska and Primorsko (which also include some parts of Herzegovina); Slovenia, as a whole, remained part of one – that of Drava Banovina; as well as Macedonia within the Vardar Banovina, while Montenegro as a whole entered the territory of the Zeta Banovina. By territory and number of inhabitants, the largest one was the Savska banovina, with over 2.7 million, which is why it would include Croatia with Slavonia.¹⁷³



Figure 2: Map of the Kingdom of Yugoslavia, October 3, 1929.

Source: Arhiv Jugoslavije, *Istorijske karte Jugoslavije - stalna izložba u holu zgrade Arhiva*, http://www.arhivyu.gov.rs/active/srlatin/home/glavna_navigacija/izlozbe/izlozbe_arhiva/izl_2009_stalna.html.

¹⁷³ Ibid.

King Alexander's policy of integral Yugoslavism has begun to decline after the assassination of Croatian Peasant Party (CPP) representatives, by Serbian People's Radical Party (PRP) politician Puniša Račić. Yet, the proclamation of the January 6 Dictatorship and the suppression of nationalism met with harsh resistance. This event followed the formation of extreme parties with ultra-nationalist ideas, as was the case with the Croat Ustaša movement.¹⁷⁴ Croatian nationalists have been overwhelmed by the murder of their fellow party members, thus on October 9, 1934, as retaliation they organized the conspiracy in killing the King Alexander I of Yugoslavia.¹⁷⁵ Royal leadership had passed to Alexander's cousin Prince Pavle, since king's son was still a minor. The Prince Regent has envisioned that a rapprochement between Serbs and Croats is one of the most predominant interests. At the same time, he was under pressure from France and Britain, to settle inner state problems and save the territorial integrity from Nazi threat.¹⁷⁶ In the midst of this turbulence, on 23 August 1939, an Agreement (*Sporazum*) was signed between Dragiša Cvetković, appointed by Prince Pavle, and the leader of the CPP, Vladko Maček.¹⁷⁷ The agreement was an effort to resolve the so called "Croatian issue" by recognizing a separate Croatian administrative area, Banovina Hrvatska.¹⁷⁸ In the creation of a federal Croatian state were not comprised only the banovinas of Sava and Littoral, but rather the regions from other banovinas such as; Dubrovnik from Zetska, Derventa and Gradačac from Vrbaska, Travnik, Fojnica and Brčko from Drina, and Sid and Ilok from the Danube Banovina.¹⁷⁹ Therefore, a whole extension of previously established borders was disturbed: for the purpose of creating an enlarged Croatia based on the national principle, 13 Bosnian-Herzegovinian counties with more than 600,000 inhabitants were seceded.¹⁸⁰ Maček saw the *Sporazum* as the first step towards the self-determination of Croatian people within the frames of Yugoslavia. On the other hand, many Serbs felt that too much had

¹⁷⁴ Radan, *The Break-up of Yugoslavia and International Law*, 141.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Mihailo Stanišić, "Prilog Istoriji Ideja o Razgraničenju i Preuređenju Kraljevine Jugoslavije uoči drugog Svetskog Rata," in *Istorija 20. Veka: Časopis Instituta za Savremenu Istoriju*, ed. Smiljana Đurović (Beograd: Institut za savremenu istoriju, 1992), 83-94.

¹⁷⁹ Gligorijević, "Unutrašnje (Administrativne) Granice Jugoslavije Između dva Svetska Rata 1918-1941", 33.

¹⁸⁰ Ibid.

been granted to the Croats. Enraged by this national betrayal, on March 27, 1941, the Serbs plotted coup d'état against Prince Paul, and instead of him they named King Alexander's son Prince Petar (who was still a minor) as a King of Yugoslavia. This event was followed immediately with the annexation of Yugoslavia by the German Nazis, and consequently the fall of the state in April 1941.¹⁸¹ Simply, none of the three systems adopted to regulate internal borders has resolved the ethnic and national conflict between Serbs and Croats. The unitarist model was perceived by the Croats as a hegemonic Serbian idea in destroying their identity and culture. On the other hand, the *Sporazum* of 1939 was envisaged by Serbs, as the greatest unfaithfulness and deception of the Croats in the secession of the Serbian provinces.¹⁸² They feared that the fragmentation of Serbian territories into administrative banovinas would cut down Serb effect in the Yugoslav state, which they saw as their own creation.¹⁸³

3.2. Border Issues after the World War II

Discussing about border issues in the former Yugoslavia after the World War II, it is noteworthy to be mentioned the sessions of the Antifascist Council of the People's Liberation of Yugoslavia (AVNOJ), organized by the Communist Party of Yugoslavia (CPY). The first session was held on 27 November 1942, in Bihać, and the second on November 29 and 30, 1943 in Jajce. The decision taken at this session invoked that "Yugoslavia was to be founded on a democratic federative principle as a state of equal peoples."¹⁸⁴ According to this decision, it was emphasized that the federalization of the country will fulfill full democratic sovereignty for all the nation-forming peoples of the federation (Slovenes, Croats, Serbs, Bosniaks, Montenegrins and Macedonians).¹⁸⁵ The decision clearly recognizes that AVNOJ has unambiguously

¹⁸¹ Radan, *The Break-up of Yugoslavia and International Law*, 143.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Odluka Drugog Zasedanja Avnoj-aod 29. Novembra 1943. O Izgradnji Jugoslavije Na Federativnom Principu, 431-432.

¹⁸⁵ Bogdan Lekić, "Administrativne Granice u Jugoslaviji Posle Drugog Svetskog Rata," in *Istorija 20. Veka: Časopis Instituta za Savremenu Istoriju*, ed. Smiljana Đurović (Beograd: Institut za savremenu istoriju, 1992), 145.

decided to recognize six constituent people's nations and six federal units. There was no declaration about the internal borders, since this was an act that determined the basic principles of the future state arrangement. Anyway, it was natural to expect that AVNOJ will pay particular attention in determining administrative-territorial borders of federal units in the further process of federalisation of Yugoslavia. The first opportunity was during the constitution of federal units that lasted from March 29, until July 10, 1945, when Sandzak joined Serbia and Montenegro (for the reason that; it belonged to these countries even before the creation of Yugoslavia in 1918), and Vojvodina and Kosovo to Serbia based on their legitimately made decisions.¹⁸⁶ However, the internal administrative borders of communist Yugoslavia, has never been the topic of any state institution established by the 1946 Constitution.¹⁸⁷ The fact that the inter-republican borders (though they had internal-administrative character) have never been juridically legalized can be explained by the following reasons: first, the implementation of inter-republican borders would mean at the same time the jeopardize of a "national issue" that had exacerbated Yugoslavia since its establishment; second, the issue of the revision of borders would be raised on the basis of already known criteria (national); third, it was necessary to avoid inter-ethnic conflicts (revitalization of the genocide committed by the Ustasha against the Serbs, Jews and Gypsies) would open the Pandora Box, subsequently hindering other decision-making processes of the Yugoslav state; four, it was essential to prohibit the new actors contriving new territories, knowing that the present borders are defined by the will of the people and the legal authorities of the state, and five; inter-republican borders have never been the state borders, on the contrary they were internal-administrative borders of the communist Yugoslavia.¹⁸⁸

The borders of Yugoslavia were in essence determined at a meeting of AVNOJ held in 24 February 1945, which concluded that:

"Slovenia has taken the former Dravska banovina; Croatia the former Savska banovina with 13 districts of Primorska banovina and the Dubrovnik district of the Zetska banovina; to Bosnia and Hercegovina has been given the lands according to the Berlin agreement of 1878; Serbia in the borders before the Balkan wars with districts taken from

¹⁸⁶ Ibid., 145-146.

¹⁸⁷ Radan, *The Break-up of Yugoslavia and International Law*, 149.

¹⁸⁸ Lekić, "Administrativne Granice u Jugoslaviji Posle Drugog Svetskog Rata," 147.

*Bulgaria in the Treaty of Versailles; to Macedonia has belonged some Yugoslav territories including south of Kačanik and Ristovac; Montenegro in the borders before the Balkan wars with the Berane and Kotor districts and Plava and Gusinje.*¹⁸⁹



Figure 3: Six Republics of the SFRY, 1945-1946.

Source: Arhiv Jugoslavije, *The historical maps of Yugoslavia - permanent exhibition at the hall of the Archives building*, http://www.arhivyu.gov.rs/active/en/home/glavna_navigacija/izlozbe/izlozbe_arhiva/izl_2009_stalna.html.

The decision carried at the meeting of AVNOJ was based on the older historical borders, both as they existed in interwar Yugoslavia and in the former Austro-Hungarian and Ottoman empires,¹⁹⁰ especially in the cases of Slovenia and Bosnia and Hercegovina. Macedonia has been confined within the borders it has claimed to be its own historically. With regard to Montenegro, the borders were very similar to those established before the WWI, with one slight amendment where former Dalmatian district of Kotor had already joined Montenegro. As for Croatia, it has achieved to dominate vast territorial borders, almost similar to those it had during the (Trivune

¹⁸⁹ Radan, *The Break-up of Yugoslavia and International Law*, 149.

¹⁹⁰ Ibid.

Kingdom). In this case, Croatia was cut off from Vojvodina, where it was given to Serbia, and the territory of Kotor was given to Montenegro.¹⁹¹ Serbia's territory was lessened in the south with the creation of the Macedonian state, but extended its northern borders adding Vojvodina. Nevertheless, because the Serb population was extremely dispersed throughout Yugoslavia, the creation of a homogeneous Serbian unitary state was impossible at this time.¹⁹²

As mentioned earlier, most of the Yugoslav internal borders have been inherited since the period of the Two World Wars and earlier. The CPY has used its strategy of leaving the borders within their *satus quo*, in order not to wake up the expansionist nationalist question, and thus could easily gain the support of the people. Also, the alignment of republics and communities through the grants of unified Yugoslav identity, secured the interests of the CPY and the Federation in general. For example, the recognition of Macedonia as a Yugoslav republic has been intended to keep it away from embracing Bulgaria. Or the recognition of Montenegrin nationality was another blueprint to minimize the Četnik power in Yugoslavia. Still, the key element was that the three constituent peoples (Serbs, Croats and Slovenes), to be coordinated upon the main vein, which was national identity within the emblem of 'Yugoslavia'.¹⁹³ However, administrative boundaries have not played a major role, because the unification of all republics and populations was the greatest ideal that Tito and his Party have ventured during the Socialist Communist revolution in the former Yugoslavia. As Professor Peter Radan says: "The disciplined and centralised CPY was to be the real power centre. No real power was to be granted to the republics."¹⁹⁴

We witness no Serb objections in 1946, regarding the internal borders, since the Federal state was centralised and almost the whole power was in their hand. They have accepted this type of government, until the state has begun to slip away from the centralist-unitarist model.¹⁹⁵

¹⁹¹ Ibid.

¹⁹² Ibid.

¹⁹³ Ibid., 151-152.

¹⁹⁴ Ibid.

¹⁹⁵ Miodrag Jovičić, *Državnost federalnih jedinica*, (Beograd: Izdavačka zadruga Politika i društvo, 1992), 84.

In order to better comprehend the role and importance of internal borders in 1946, it might be seen by the Josip Broz Tito's speech in the congress of the Communist Party. Tito described the republic borders 'only an administrative division'. He postulated:

*"I do not want in Yugoslavia borders that will separate. As I have said 100 times, I want borders to be those that will unite our people."*¹⁹⁶

The reason why Tito made this statement is, because he wanted to reject the Serbian pretense as their republic was split apart. He argued that, if he wanted to split Serbs into republics and provinces, then it would be easy for him to do it with BiH.¹⁹⁷ Later in May 1945, in Zagreb, Tito reaffirmed his position stating:

*"Many do not yet understand what the meaning of federative Yugoslavia is. It does not mean the drawing of a border line between this or that federative unit... No ! Those border lines, as I see them, must be something like white veins in a marble staircase. The lines between federated states in a federal Yugoslavia are not lines of separation, but of union."*¹⁹⁸

The territorial – administrative division of Yugoslavia was not founded by any legal act of the competent Federal authority. Rather it was interpreted by the CPY slogan "that the borders of the republics are formal, since Yugoslavia is a Federal, unique and common state." This attitude towards one of the most vital issues in the field of internal organization of the state, could be unregulated only in a country where the political word was stronger than the legal system, and in which the unlimited power of the leaders prevailed at the top of the party and state pyramid. Despite this power of individuals, however, it was necessary to start some regulations of border disputes between the republics.¹⁹⁹

With regard to the adjustment of internal borders, the 1946 Constitution declared that the borders of the republic cannot be changed without the consent of all republics.²⁰⁰ Also, the Constitution of 1963 stated that the borders between the republics

¹⁹⁶ Petranović and Zečević. "Rezolucija o Osnivanju Antifašističkog Veka Narodnog Oslobođenja Jugoslavije,".

¹⁹⁷ Radan, *The Break-up of Yugoslavia and International Law*, 152.

¹⁹⁸ Ibid.

¹⁹⁹ Lekić, "Administrativne Granice u Jugoslaviji Posle Drugog Svetskog Rata," 147-148.

²⁰⁰ Ustav Federativne Narodne Republike Jugoslavije, Beograd, 1946, Član 12.

may be changed only on the basis of the consensual decision of the republican assemblies.²⁰¹ Whereas the 1974 Constitution stated that: The borders cannot be changed without the consent of all republics plus the autonomous provinces (Kosovo and Vojvodina).²⁰²

So, the borders have been almost intact (with only a slight changes) until the capitulation of the federation. The inviolability of these borders was sacred because it was gained with the blood of the martyrs in the national-liberation war, and these borders have maintained the territorial integrity of the Yugoslav state.²⁰³

Besides the six republics, with the establishment of the 1946 Constitution, were added also two autonomous provinces within the Republic of Serbia (Kosovo and Vojvodina). Their formation was not the idea of the AVNOJ sessions, but rather, the demand of these two provinces itself.²⁰⁴ For example, Kosovo was inhabited by a large majority of Albanian population (90%), and Vojvodina was justified on the basis of its historical connection with the former Austro-Hungarian Empire.²⁰⁵ This constitutional amendment has been restricted only to these two provinces and not to other republics of the former Yugoslavia. If the same criterion would be applied to other countries, then the district of *Istria* in Croatia, which had an affinity with Rome and Italy, would gain the same status. Or in terms of the national majority, it would apply to Albanians in Western Macedonia.²⁰⁶

²⁰¹ Ustav Socijalističke Federativne Republike Jugoslavije, Beograd, 1963, Član 109.

²⁰² Ustav Socijalističke Federativne Republike Jugoslavije, Beograd, 1974, Član 5.

²⁰³ Radan, *The Break-up of Yugoslavia and International Law*, 153.

²⁰⁴ Ibid.

²⁰⁵ Slobodan Samardžić, "Yugoslav federalism: Unsuccessful model of a multinational community," *International Review of Sociology* 6, no. 2 (1996): 250.

²⁰⁶ Ibid.



Figure 4: Political Map of the Former Yugoslavia, 1983.

Source: Mapsland, Detailed Political map of the Former Yugoslavia-1983, <https://www.mapsland.com/europe/yugoslavia/detailed-political-map-of-the-former-yugoslavia-1983>.

After the death of Tito in 1980, we have an overt nationalism and the start of the downfall of Yugoslavia (1980-1991). The first protests commence with the dissatisfaction and revolt of Kosovo Albanians, demanding the full right of the republic status.²⁰⁷ It is worth noting the incidents and demonstrations of 1981 and 1989. Milosevic's brutal regime in response, unprecedentedly stripped Kosovo from the full Autonomy it had gained during Tito's rule, and returned under the total surveillance of

²⁰⁷ Aleksandar Pavković, *The Fragmentation of Yugoslavia: Nationalism and War in the Balkans* (London: Macmillan Press, 2000), 86-87.

Belgrade. This savage act of Milosevic aroused fierce opposition from the former Yugoslav republics and international community in general.²⁰⁸

In the early 1990s, numerous conferences were held by the republican leaders in order to find a solution to the future status of the Federation. During this time, it was noticed the division among the proposals, where Serbia and Montenegro were in favor of a unitary federal state, whilst Slovenia and Croatia called for the secession.²⁰⁹ In the summer of 1990, a group of experts from Slovenia and Croatia worked to produce a draft of a *confederal* structure for Yugoslavia. In September, the Presidency of SFRY agreed that Croatia and Slovenia would prepare and present their draft for consideration, while the presidency itself would prepare a draft for a revised federal Yugoslavia. On October 4, the Slovenian-Croatian “Model of a Confederacy in Yugoslavia” was released publicly, and published in the general-circulation press.²¹⁰ The idea of confederacy, though intellectually and politically nonsense, may have had great appeal to these people in the division of republics with the status of independence.²¹¹

The post-election period, brought heavy storm-clouds in Yugoslavia. The elections had widened the gap among those who desired to maintain Yugoslavia and those who wished to destroy it. The U.S. and international community began to predict disaster as Yugoslavia was dying and its collapse was likely to be violent.²¹² In his visit to Yugoslavia on February 1990, Lawrence Eagleburger (Deputy Secretary of State), made it clear that human rights, freedom, and a market economy would be best advanced if Yugoslavia remained united. Further, he said that the USA would not support the breakup of Yugoslavia, but if it happened - would have no choice except to live with it.²¹³ Afterwards, during his stay in Yugoslavia, the US Secretary of State James Baker, appealed to all republics for self-control and made it clear that: unless

²⁰⁸ Miranda Vickers and James Pettifer, *Albania: From Anarchy to Balkan Identity* (London: Hurst & Company, 1997), 147-148.

²⁰⁹ Radan, *The Break-up of Yugoslavia and International Law*, 155.

²¹⁰ Robert M. Hayden, *Blueprints for a House Divided: The Constitutional Logic of the Yugoslav Conflicts* (University of Michigan Press, 2000), 53-65, <https://archive.org/details/blueprintsforhou00robe/page/64>.

²¹¹ Ibid.

²¹² Warren Zimmermann, *Origins of a Catastrophe: Yugoslavia and its Destroyers* (New York Times Books, 1996), 84-85.

²¹³ Ibid., 62.

they stop the violence, the United States would not intervene.²¹⁴ Some Slovenes took the deputy secretary's remark that the U.S. could live with the breakup of Yugoslavia as a green light to push a secession program. All Eagleburger had implied; was that the U.S. and NATO would not use force to keep Yugoslavia together.²¹⁵ In a couple of days, Slovenia and Croatia declared their independence.



Figure 5: The successive states of the Former Yugoslavia after 2008.

Source: United Nations International Criminal Tribunal for the Former Yugoslavia, <http://www.icty.org/en/about/what-former-yugoslavia>

To re-emphasize once again, internal-administrative borders of the former Yugoslav state, were not of great significance during Tito's rule. Due to the mixed population, it was impossible to create pure national republics, even if the CPY intended

²¹⁴ Radan, *The Break-up of Yugoslavia and International Law*, 156.

²¹⁵ Zimmermann, *Origins of a Catastrophe: Yugoslavia and its Destroyers*, 62.

to do so. Nevertheless, the republics were defined as sovereign domains of sovereign nations. Tito very well perceived that, any new demarcation of the internal borders would lead to inequality on the basis of nationalities, and this could also jeopardize the territorial integrity of Yugoslavia. For the CPY, the combat against Nazi-Fascist hegemony has been a sacred one. Hence, it was not the proper time for Yugoslav people to grapple about the border issues. In other words, this would lessen the image of the Partizan's sacrifice, and degrade the blood-shed for the liberation of the country from Nazi occupiers. If we stop for a while and scrutinise Tito's statements, "*I do not want in Yugoslavia borders that will separate... I want borders that will unite our people*" and "*Those border lines, must be something like white veins in a marble staircase*" we will understand that his aim was: to eliminate the possible nationalist and chauvinistic ideas, to approach all people under the famous shibboleth *Bratstvo-Jedinstvo* (Brotherhood and Unity), to create the economic development free of ethnic backgrounds, and to liquidate any kind of political movements other than that of The Communist Party of Yugoslavia. In relation to "How can boundaries connect people?" former fellow of Harvard University, Prof. Aleksa Đilas claims: "The borders can, at best, be opened in such a way that the divisions do not get deep. In fact, Tito actually reminded the Croats, that the republics were created primarily to break the fear of 'Serbian hegemony' over other nations, and Croats in particular. The borders, so understood, can really reduce the possibility of national tension and conflict."²¹⁶ He further points out that all decisions on the creation of republics and the determination of their borders were made in the centralized leadership of the monolithic CPY."²¹⁷

In a nutshell, Đilas professionally states, that neither communism as an ideology, nor a single-party monopoly on power as a form of government, will be able to permanently unite the peoples of Yugoslavia, and create a unique Yugoslav national consciousness. So, the national question will inevitably be opened up and bring with it the main component of the issue of national territories.²¹⁸

²¹⁶ Nebojša Popović, "Aleksa Đilas O Granicama Osporavane Zemlje," in *Istorija 20. Veka: Časopis Instituta za Savremenu Istoriju*, ed. Smiljana Đurović (Beograd: Institut za savremenu istoriju, 1992), 199.

²¹⁷ Ibid.

²¹⁸ Ibid., 200.

3.3. Arbitration Commission of the Peace Conference on Yugoslavia

Political and territorial disputes have been an irrevocable issue for the republics of the former Yugoslavia, until the international community has taken the right steps to resolve them. So, in August 1991, at a meeting in Brussels, the European Community decided on a Yugoslav Peace Conference, which brought together the Leaders of all Republics, the Presidency of the Federation, the Government Delegation and the Members of the Commission.²¹⁹ The Commission was led by Fench Lawyer, Robert Badinter, and other representatives of the International Tribunal, representatives of the German, Belgian, Spanish and Italian International Constitutional Courts.²²⁰ This Commission has elaborated 15 key points where they have explicitly clarified state law issues; based on principles of international law as well as the question of the right to secede from the Federation, without violating the territorial boundaries of the state-forming republics.²²¹

According to academic Peter Radan, the Badinter Commission made three essential rulings. The first ruling was questioning whether Yugoslavia was breaking up from the secession of its republics or was on the eve of disintegration. The second ruling was the issue of self-determination. And the third, connected to the principle of *uti possidetis*.²²²

In November 1991, Robert Badinter received a letter from Lord Carrington, where the latter asked for clarification on two issues: Whether Yugoslavia was experiencing separation of the republics, or was on the verge of the collapse as a Federation.²²³ In this regard, Serbia defended its assumption that states which wanted to declare independence on their own were in fact being separated from the SFRY, and Yugoslavia continued to exist still recognized internationally. Yet, with this view did not

²¹⁹ Maurizio Ragazzi, *Conference On Yugoslavia Arbitration Commission: Opinions On Questions Arising From The Dissolution Of Yugoslavia*, January 11 and July 4, 1992, 31 I.L.M. 1488.

²²⁰ Pellet, "The Opinions of the Badinter Arbitration Committee, 179.

²²¹ Matthew C.R. Craven. "The European Community Arbitration Commission On Yugoslavia." *British Yearbook of International Law* 66, no.1 (November 1996): 334-353, Oxford Academic, <https://doi.org/10.1093/bybil/66.1.333>.

²²² Peter Radan, "The Badinter Commission: Secession, Self-Determination and *Uti Possidetis*," in *The Break-up of Yugoslavia and International Law*, (London: Routledge, 2002), 204.

²²³ Pellet, "The Opinions of the Badinter Arbitration Committee- *Opinion No. 1*." 182.

agree large number of separatist republics, claiming that Yugoslavia as a state was being finished off, and that each republic would be treated equally as a successor of the Federation.²²⁴ Nonetheless, the Commission found some arguments in which claimed that Yugoslavia was on the verge of destruction. First, there were referendums held in BiH, Croatia, Macedonia and Slovenia calling for the declaration of independence of the republics. Second, the key bodies of the Federation such as the Presidency, the Federation Council, the Council of the Republics and Autonomous Provinces, the Constitutional Court, the Executive Council, and the Army, have already been disbanded and did not meet the criteria of holding regular meetings. And third, the inability of the authorities of the Federation and the Republics to take the army under its control, resulted in civil war, whereupon hundreds and thousands civilians lost their lives.²²⁵ Thus, *Opinion No. 8*²²⁶ puts forward that the republics are now detached from the Federation and the SFRY has ceased to exist.²²⁷ In addition, The Arbitration Commission has concluded some several factors regarding the dissolution. Such as; Serbia and Montenegro, after the partition of the republics, have declared their new state called 'Federal Republic of Yugoslavia' (FRY) and formed the new constitution. Many of the states separated from the SFRY, have recognized each other's independence and for them the constitution of Yugoslavia already did not have any impact. The compact territory of the former Yugoslavia, and its population have already passed into the hands of independent republics. BiH, Croatia and Slovenia were recognized by the EC and many of the international organizations admitted their membership.²²⁸

Among others, one might ask whether the Badinter Commission was justified in concluding that the SFRY ceased to exist. According to Oppenheim: "When a state breaks up so that its whole territory henceforth comprises two or more new states."²²⁹ But here rises the dilemma; what happens with the name of the extinguished state. After

²²⁴ Craven, "The European Community Arbitration Commission On Yugoslavia." 354.

²²⁵ Pellet, "The Opinions of the Badinter Arbitration Committee- *Opinion No. 1.*" 183.

²²⁶ Ragazzi, *Conference On Yugoslavia Arbitration Commission-Opinion No. 8*, 1521-1523.

²²⁷ UN Security Council Resolution 777 (1992), 19 September 1992, <http://unscr.com/en/resolutions/doc/777>.

²²⁸ Ragazzi, *Conference On Yugoslavia Arbitration Commission-Opinion No. 8*, 1523.

²²⁹ Robert Jennings and Arthur Watts, *Oppenheim's International Law, Volume I, Peace, 9th edition* (London: Longman, 1992), 206-207.

the end of WWI, Austria-Hungary was dissolved but two new states emerged with the same names. Whereas, in the case of Yugoslavia, nothing remained except its nostalgic name'. Normally the case of Yugoslavia cannot be compared with that of Austria-Hungary, because Yugoslavia was a Federal state created by heterogeneous people of different languages, cultures and religions. Austria-Hungary in general has been a nation state with the dominant Austrian and Hungarian populations. Crawford remarks that if the parent state allows the territory to be separated and become independent by agreement it will be respected and the rapid admission will follow by the UN. But if the central government opposes the secession, then the international support and recognition will be reluctant and indifferent.²³⁰ While Mr Craven claims that disintegration of the republics was simply an indicator that Yugoslavia has ceased to exist.²³¹ Herewith, we can consider that the declaration of the sovereign republics by itself meant also the death of the Federation. Yet, holding of plebiscites on sovereignty and independence was something very important due to the fact that the Federation was in the process of extinction. Notwithstanding, the Commission claimed that among most logical factors of the dissolution of Yugoslavia, was changing the name from SFRY to FRY and the adoption of the constitution.²³² Also the Commission asserted that the recognition of seceding republics to each other and their widespread recognition was additional evidence that the SFRY was dying. The loss of the territory and population is another element which the Commission claims to be the cause of the destruction of Yugoslavia.²³³ There are also some other factors which according to Badinter Commission arguments the dissolution of the SFRY, but I will stop here in order to continue with two very crucial opinions of the Arbitration Commission; *Opinion No. 2 (Self-Determination)* and *Opinion No. 3 (Borders)*.

In Opinion No. 2, Mr. Badinter received a letter from Lord Carrington, asking the Commission's opinion on the following question set by the Republic of Serbia:

²³⁰ James Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press, 1979), 417, <http://02103m1qa.y.http.eds.b.ebscohost.com.proxy2.marmaralibrary.com/eds/ebookviewer/ebook?sid=95690049-d3d1-4347-bcff-797b42f49bf3%40sessionmgr103&vid=0&format=EB>.

²³¹ Craven, "The European Community Arbitration Commission On Yugoslavia." 369.

²³² Branislav Milinkovic, *Novi ustavina thu bivše Jugoslavije* (Beograd: Međunarodna Politika, 1995), 7-38.

²³³ Radan, "The Badinter Commission: Secession, Self-Determination and *Uti Possidetis*, 213-214.

“Does the Serbian population in Croatia and Bosnia-Herzegovina, as one of the constituent peoples of Yugoslavia, have the right to self-determination?”

The Commission suggested that:

- “The Commission considers that international law as it currently stands does not spell out all the implications of the right to self-determination. However, it is well established that, whatever the circumstances, the right to self-determination must not involve changes to existing frontiers at the time of independence (*uti possidetis juris*) except where the States concerned agree otherwise.”
- “Where there are one or more groups within a State constituting one or more ethnic, religious or language communities, they have the right to recognition of their identity under international law.”²³⁴

One of the most crucial acts of this opinion was; that the self-determination could be given to the peoples of Yugoslavia, but the administrative boundaries will remain intact with the declaration of independence of the republics. So, the borders could not be altered except by agreement. Mr. Radan raises a question: If the borders of Croatia and BiH could not be changed, how could then borders of the SFRY be changed, in this case allowing the principle of self-determination? Professor of International Law Hurst Hannum suggests: “To ensure equity, minorities in a new state founded to preserve ethnic or cultural homogeneity should be granted the same rights of self-determination that were asserted by the seceding population. Legitimate self-determination can only be exercised on the basis of the consent of all involved parties, not just those who wish to separate. If neither international law nor politics offers a mechanism through which minorities trapped within a new ethnic state may rejoin their former state, or at least, create an autonomous region within their new home, rejection of the new borders by force may be seen as the only alternative.”²³⁵

Radan debates over the question why the Croats and Bosnian Muslims could change the international borders of the SFRY, and why their borders remain sacrosanct while not extending that same right to the borders of the SFRY. He argues that “Such a question is not addressed in *Opinion No. 2* of the Badinter Commission. In seeking an

²³⁴ Ragazzi, *Conference On Yugoslavia Arbitration Commission-Opinion No. 2*, 1497-1498.

²³⁵ Hurst Hannum, “The Specter of Secession: Responding to Claims for Ethnic Self-Determination,” *Foreign Affairs* 77, no. 2 (April 1998): 17.

answer to this question, it cannot be argued that the borders of the SFRY were irrelevant because that state was in the process of dissolution. We know that the process of dissolution started after Croatia and BiH claimed their independences. Maybe the SFRY was in that path of dissolution but not extinct yet. Also, if a minority group in Croatia and BiH could seek the right of self-determination but not altering the borders, then neither should minority groups within the SFRY have been permitted, pursuant to the right to self-determination, to alter the borders of that internationally recognized state.”²³⁶ On the issues concerning self-determination, rises the question whether a minority is a people and thus could seek the right to secede from a state. The Badinter Commission in *Opinion No.2* makes significant remarks which coherently stipulate that minority is a people but denies the right to secede from a state.²³⁷ To Mr. Radan, there is something unclear when it comes to the matter of minorities not having the right to secede. He claims that “if the Serbs of Croatia and BiH were peoples, then, according to international law, they would, in principle have the right of secession. To the extent that it limits the right of people, *Opinion No. 2* of the Badinter Commission should be rejected.”²³⁸

Following, I have made a table which corresponds to the republics and provinces which were pro self-determination and those which could not find a solution, or rejected due to different circumstances. We can see that the nationals who were the majority in a certain republic could easily proclaim their own sovereignty. However, for those who were not constituent people of the SFRY suffered grievous consequences, some of them even nowadays.

As for the six constituent nations of the SFRY (Serbs, Croats, Slovenes, Bosniacs, Macedonians and Montenegrins), it was in some circumstances easier to claim their own republics and sovereignty for the fact that they were protected and guaranteed by the Constitution. Remaining the Albanians, Hungarians, Turks and other minorities, were deprived of calling for the right of their own self-determination and demand of sovereignty. On this occasion, the scapegoat of all this turbulence was the

²³⁶ Radan, “The Badinter Commission: Secession, Self-Determination and *Uti Possidetis*, 218-219.

²³⁷ Ibid.

²³⁸ Ibid.

Albanian nation. Apart from the considerable number of people, they had also their own defined Albanian-majority territory in Kosovo and the Western Part of Macedonia which the grant of independence and the endorsement by the EC could be a milestone of a century. Yet, their case was left out in obscurity and deaf-mute where for a full decade they would have pay this blunder with persecution, murder, rape and genocide.

Countries and Provinces	Self- Determination
Slovenia	Yes- Dominant National Group
Croatia	Yes- Dominant National Group (Though significant number of Serb minority which sought their own republic within Croatia.)
Serbia	Yes- Dominant National Group
Bosnia and Hercegovina	No- Absence of Dominant National Group. All three constituent nations (Muslims, Serbs and Croats) wanted their own separated republics or conglomerate with their mother lands.
Montenegro	Yes- Dominant National Group.
Macedonia	Yes- But significant majority of Albanian minority was a major obstacle on this issue.
Kosovo**	Yes- Dominant Albanian National Group. Nonetheless, rejected by the Yugoslav Federation Council and the EC as being non-constituent people of the SFRY.
Vojvodina**	No- Hungarian minority was somehow willingness to self-determination but lacking the majority of people. Also not part of constituent people of the SFRY.

Table 1: Former Yugoslav Republics including two Autonomous provinces decide on self-determination.

Source: Peter Radan, *The Break-up of Yugoslavia and International Law*.

******Kosovo and Vojvodina as the two Autonomous provinces of Serbia.

Though the principle of *uti possidetis juris* mentioned in *Opinion No. 2*, the more detailed discussion of it is in *Opinion No. 3*, where Badinter received a letter from Lord Carrington, requesting again the Commission's opinion on the following question put by the Republic of Serbia:

*“Can the internal boundaries between Croatia and Serbia and between Bosnia and Hercegovina and Serbia be regarded as frontiers in terms of public international law?”*²³⁹

²³⁹ Ragazzi, *Conference On Yugoslavia Arbitration Commission-Opinion No. 3*, 1499.

According to this opinion, the new states emerged from the rubble of the SFRY which was in the process of disintegration; both internal and external borders of the SFRY could not be altered by force.²⁴⁰

When referencing the *status quo* of external borders, the Badinter Commission basis itself on various international law principles including the UN Charter and Helsinki Final Act. Whereas, with regard to the administrative borders of the SFRY, Commission was heedful in respecting the status quo and the principle of *uti possidetis* in general. Thus, to avoid new border conflicts, the Commission has stressed that the borders will remain the same as during the rule of Tito, unless the parties agree to change them peacefully.²⁴¹ Also, Badinter Commission's verdicts for not changing the borders of the SFRY were congruent with the Article 5 of the SFRY Constitution of 1974.²⁴²

The second international law principle relied upon by the Badinter Commission in *Opinion No. 3* was that of *uti possidetis*. As to the principle of *uti possidetis* being a basis for the Badinter Borders Principle, the Badinter Commission stated the following in *Opinion No. 3*:²⁴³

*"Except where otherwise agreed, the former boundaries become frontiers protected by international law. This conclusion follows from the principle of respect for the territorial status quo and, in particular, from the principle of uti possidetis. Uti possidetis, though initially applied in settling decolonization issues in America and Africa, is today recognized as a general principle, as stated by the International Court of Justice in its Judgment of 22 December 1986 in the case between Burkina Faso and Mali (Frontier Dispute, {1986} ICJ Reports 554 at 565): 'Nevertheless the principle is not a special rule which pertains solely to one specific system of international law. It is a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs. Its obvious purpose is to prevent the independence and stability of new states being endangered by fratricidal struggles ...'."*²⁴⁴

Besides the principles of international law, the Badinter Commission attempted to rationalise the relevance of the Badinter Borders Principle by reference to Article 5 of

²⁴⁰ Tomas Bartos, "Uti Possidetis Quo Vadis ?" in *Australian Year Book of International Law*, (1997), <http://www.austlii.edu.au/au/journals/AUYrBkIntLaw/1997/2.html>.

²⁴¹ Radan, "The Badinter Commission: Secession, Self-Determination and *Uti Possidetis*, 222.

²⁴² Ustav Socijalisticke Federativne Republike Jugoslavije, Beograd, 1974, Član 5.

²⁴³ Radan, "The Badinter Commission: Secession, Self-Determination and *Uti Possidetis*, 228.

²⁴⁴ Ragazzi, *Conference On Yugoslavia Arbitration Commission-Opinion No. 3*, 1500.

the SFRY's 1974 Constitution.²⁴⁵ The Commission asserts that the Badinter Borders Principle:

*“Applies all more readily to the Republics since the second and fourth paragraphs of Article 5 of the Constitution of the SFRY stipulated that the Republic's territories and boundaries could not be altered without their consent.”*²⁴⁶

In conclusion, the Badinter Commission has employed two significant issues; that of self-determination and the principle of *uti possidetis*. Concerning self-determination, the Commission was based on the assumption that every constituent people of the former Yugoslavia had the right to self-determination unless it violates the inherited administrative borders. When we analyze it more deeply, it might come to our minds a bit confusing as ‘how could a nation utilize the self-determination without setting its sovereign boundaries’. In order to escape this dilemma, and satisfy both the majority and minority people, the Commission requested a pledge from the independent republics (especially Croatia and BiH), to fulfill the rights of the minorities if they want to be recognized internationally and admitted in other international organizations. With respect to the principle of *uti possidetis*, the Commission has cautiously sought to address two important issues: First, to execute this principle which would be gratified by the international community, international tribunals and the constituent republics itself. And the last aim was to eliminate the border disputes, declaring that these borders are not an invention of the Badinter Commission but they are the heritage of the people of Yugoslavia itself, so there is no change without the consent of the parties.

²⁴⁵ Radan, “The Badinter Commission: Secession, Self-Determination and *Uti Possidetis*, 233.

²⁴⁶ Ragazzi, *Conference On Yugoslavia Arbitration Commission-Opinion No. 3*, 1500.

4. THE DEMARCATION PROCESS BETWEEN KOSOVO AND NEIGHBORING COUNTRIES

One of the most accepted reasons for the breakup of the former Yugoslavia; were the dissatisfaction of the population with government and their demand for self-determination, economic stagnation and large state debts, and the provocations of statesmen with ultra-nationalist and hegemonic ideas.²⁴⁷ Although Kosovo Albanians did not enjoy the right of recognition as a constituent people of the former Yugoslavia, in the late 1980s and early 1990s, seeing the danger of disintegration, Albanians too revolted in seeking the right to self-determination.²⁴⁸ Self-determination caused the war within the former Yugoslavia; whereas the war itself catalysed the international concern to handle the conflict, provide humanitarian assistance and make an effort to end the wars.²⁴⁹

In October 1998, The Kosovo Liberation Army (KLA) was clashed by the Yugoslav forces. However, due to the lack of ammunition and raw material, the KLA was forced to recede, and the Serbian paramilitary army in retaliation began to burn villages and expels civilians towards hills.²⁵⁰ Realising the danger that nearly half a million people have been evicted from their homes, now concentrated in the hills and forests, and that they could very quickly freeze to death. The International Organization engaged NATO to threaten Belgrade to give up this inhumane act. Accordingly, Richard Holbrooke began first talks with Milosevic agreeing to reduce the presence of the Yugoslav army in Kosovo and increase the influence of 'peacekeepers' appointed by the Organisation of Security and Cooperation in Europe (OSCE).²⁵¹ On 23 February 1999, both sides (Serbs and Albanians) were summoned to meet in Rambouillet (Paris), to negotiate a cease-fire (at least three years), and to give Kosovo the status of autonomy again. This dialogue was observed by the so-called contact group (America, Russia, England, Germany, France and Italy). The KLA-Kosovo Albanian side has

²⁴⁷ Spyros Economides, "Kosovo, Self-Determination and the International Order," *Europe-Asia Studies* 65, no. 5 (July 2013): 833-834.

²⁴⁸ Ibid.

²⁴⁹ Ibid.

²⁵⁰ Tim Judah, "Kosovo's Road to War," *Survival* 41, no. 2 (Summer 1999): 13-14.

²⁵¹ Ibid.

reluctantly accepted this agreement, but Milošević refused to sign.²⁵² This refusal was joined by the NATO bombing against Yugoslavia on 24 March 1999.²⁵³ The NATO bombing campaign lasted 78 days until Yugoslavia capitulated by the heavy loss, agreed the terms, and the UN Security forces deployed in Kosovo. On 10 June 1999, United Nations Security Council adopted 1244 resolution²⁵⁴ which authorised an international civil and military presence in the FRY, and established the United Nations Interim Administration Mission in Kosovo (UNMIK).²⁵⁵ The function of UNMIK still exists today though with minor influence since Kosovo declared its independence on 17 February 2008, and adopted its own constitution. It is crucial to point out, that the forerunner of Kosovo's independence declaration was the "Comprehensive Proposal for the Kosovo Status Settlement" (Ahtisaari Plan) created by the United Nations special envoy Martti Ahtisaari, on 2 February, 2007.²⁵⁶ Furthermore, Paragraphs 3.2 and 3.3 in Article 3 of the Ahtisaari Plan stipulates:

3.1 "The territory of Kosovo shall be defined by the frontiers of the Socialist Autonomous Province of Kosovo within the Socialist Federal Republic of Yugoslavia as these frontiers stood on 31 December 1988, except as amended by the border demarcation agreement between the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia on 23 February 2001."

3.2 "Kosovo shall engage with the Former Yugoslav Republic of Macedonia to establish a joint technical commission within 120 days of the entry into force of this Settlement to physically demarcates the border and address other issues arising from the implementation of the 2001 agreement between the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia. The work of the technical commission shall be completed within one year from the date of its establishment. The ICR and the IMP shall be represented on this commission to facilitate discussions between the two parties, and may participate in the process of border demarcation at the request of either party."²⁵⁷

²⁵² Radan, *The Break-up of Yugoslavia and International Law*, 200-201 ; See also Rambouillet Accords: Interim Agreement for Peace and Self-Government in Kosovo, https://peacemaker.un.org/sites/peacemaker.un.org/files/990123_RambouilletAccord.pdf.

²⁵³ Ibid.

²⁵⁴ United Nations Security Council Resolution 1244, 10 June 1999, [https://undocs.org/S/RES/1244\(1999\)](https://undocs.org/S/RES/1244(1999)).

²⁵⁵ UNMIK, <https://unmik.unmissions.org/>.

²⁵⁶ Alber Rohan, "Kosovo's path to Independence." *European Council on foreign Relations*, February 2, 2018, https://www.ecfr.eu/article/commentary_kosovos_path_to_independence#.

²⁵⁷ Comprehensive Proposal For the Kosovo Status Settlement, 2 February 2007, ANNEX VIII KOSOVO SECURITY SECTOR, Article 3, Paragraphs 3.2 and 3.3.

Article No. 3 demonstrates us that the European Union has made it clear to all Western Balkan countries on the new expansion strategy, that they cannot handle their problems and conflicts within the EU, and that they have to resolve them before claiming to membership in the coming years. So, demarcation or marking the border line between Kosovo and neighboring countries is a necessary process. Apart from the need for normalization of the inter-state relations, the demarcation is expected to be an EU condition in the integration processes for Kosovo and the countries of the region as well.²⁵⁸

Next, in this chapter I will try to elaborate the demarcation of Kosovo with the two neighboring countries; Macedonia and Montenegro. Here I will explain in details the beginning of these processes, the ratification of the demarcation by both states, and the stagnation of the work performance caused either by the opposition parties or other unidentified circumstances. Finally, I will discuss the issue of demarcation and exchange of territories between Kosovo and Serbia that has taken place in the last phase of the dialogue process. It is well known that Serbia has not yet recognized Kosovo as a state, and therefore, the opening of the demarcation topic between the two countries is a very perplexed and sufficiently controversial issue.

4.1. The Demarcation between Kosovo and Macedonia

On October 16, 2009, two countries, Kosovo and Macedonia, signed an agreement on border demarcation, where the next day it was ratified by the two respective governments.²⁵⁹ The deal signed on Friday, clearly demarcates 173 km length frontier between the two countries, and it is classified as a ground border.²⁶⁰ The border demarcation commission between the Republic of Kosovo and the Republic of Macedonia is based on the document of Ahtisaari Plan.²⁶¹ The genesis of the border

²⁵⁸ Arton Konushevci, “Kosova dhe Serbia të ‘shtrënguara’ të përmbyllin demarkacionin e kufirit,” *Radio Evropa e Lire*, last revised, July 22, 2018, <https://www.evropaelire.org/a/kosova-dhe-serbia-t%C3%AB-shtr%C3%ABnguara-t%C3%AB-p%C3%ABrmbyllin-demarkacionin-e-kufirit/29380975.html>.

²⁵⁹ See, “Kosovo and Macedonia sign border agreement”, *IBRU Boundary News*, Durham University, https://www.dur.ac.uk/ibru/news/boundary_news/?itemno=8872&rehref=%2Fibru%2Fnews%2F&resubj=Boundary+news+Headlines.

²⁶⁰ Murat Meha and Behar Selimi, “The Challenges of Border Demarcation Kosovo-Macedonia,” *TS 2A International Boundary Issues* (April 2010): 1-14.

²⁶¹ Comprehensive Proposal For the Kosovo Status Settlement, Article 3- Border.

demarcation between Kosovo and Macedonia dates back to the break up of the former Yugoslavia. In April 1996, Macedonia and Serbia signed the first agreement as two independent states, defining the border line between each other.²⁶² Later, as a result of the war in Kosovo, Serbia was forced to postpone this agreement, where finally in 2001, it was ratified by the two presidents, Boris Trajkovski and Vojislav Kostunica.²⁶³ The quick signing of the agreement was influenced by Macedonia's ambition to apply in NATO and EU membership. Considering, that one of the conditions for applying to these two organizations was; that the Western Balkan states must resolve all open issues with neighboring countries.²⁶⁴ However, as one proverb says '*Quick words did not always mean a quick mind*' this rush to delimitate the boundary line, has severely damaged Kosovo's surface losing about 2,500 hectares of land.²⁶⁵ International and local experts have stated that one of the causes of the March 2001 conflict in Macedonia, was also the mistake made on border demarcation between Skopje and Belgrade. Nevertheless, Macedonian officials during the new demarcation with Kosovo in 2009, used a justification that; In 2001, they were not able to demarcate the border with Kosovo, since it was still under the UN 1244 Resolution.²⁶⁶

The new border demarcation between Kosovo and Macedonia has been an indisputable issue between two countries. This, for the fact that Belgrade-Skopje Border Agreement of 2001, has kept the residents of the villages in the border, deprived of their properties. A zigzag slope lined with forests leads to Debelde, one of the 43 villages of Vitia, a municipality in eastern Kosovo. Around this hill-mountainous settlement lies the Kosovo-Macedonia border crossing, where over 2,500 hectares of Kosovo's villages for eight years remained 'no-man's land'.²⁶⁷

Ahtisaari's Plan envisaged the establishment of a joint technical commission from Kosovo and Macedonia, for the definition of the physical border line and for

²⁶² Mile Milenkoski and Jove Talevski, "Delineation of the State Border between the Republic of Macedonia and the Federal Republic Of Yugoslavia," *IBRU Boundary and Security Bulletin* (Summer 2001): 93-98

²⁶³ Ibid.

²⁶⁴ Ibid.

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ Ibid.

dealing with other affairs emerging from the execution of the 2001 agreement between the FRY and Macedonia. This agreement signed by former Macedonian President Boris Trajkovski and Yugoslav leader Vojislav Kostunica, according to the Kosovar side, has damaged Kosovo for 2,500 hectares, mainly private land of Albanian owners.

Moreover, the residents of Debëllde, a village on the border with Macedonia, continued to have their lands in the territory of Macedonia until November 2009, when final peaceful determination of border line between two states, had reached an agreement.²⁶⁸ The agreement ended an eight-year dispute over a border region that was used by Albanian guerrillas during Macedonia's rebel Albanian insurgency in 2001.²⁶⁹

Analysts in the United States estimated that the demarcation of the Kosovo-Macedonia border was a major diplomatic victory for the two countries that paved the way for recognition of Kosovo's independence from Macedonia, and made the latter the first former Yugoslav republic that demarcated all its boundaries with neighboring countries.²⁷⁰

Andrew Michaels, Advisor for Political and Security Affairs at the International Civilian Office of Kosovo, praised the process and its outcome as a major event for diplomacy in the Balkans, he stressed that border demarcation between the two countries is also beneficial for a number of practical issues. Such as; "Joint patrols along the border, which in some cases hinder cross-border smuggling and human trafficking, the creation of a new border regime that created the conditions for Macedonia to enter the Schengen list, and creating a new dynamic for the countries of the Western Balkans towards integration into the European Union." Regarding the political aspect, Michaels said that: "The two sides were totally committed to resolving the border demarcation problem, taking into account that both countries intend to integrate into Euro-Atlantic structures."²⁷¹

²⁶⁸ Meha and Selimi, 'The Challenges of Border Demarcation Kosovo-Macedonia'.

²⁶⁹ Andreas Illmer, "Macedonia and Kosovo break the ice in border dispute." *Deutsche Welle*, October 18, 2009, <https://www.dw.com/en/macedonia-and-kosovo-break-the-ice-in-border-dispute/a-4802159>.

²⁷⁰ "Demarkacioni i kufirit Kosovë-Maqedoni sukses i diplomacisë në Ballkan," *Telegrafi.com*, November 30, 2009, <https://telegrafi.com/demarkacioni-i-kufirit-kosove-maqedoni-sukses-i-diplomacise-ne-ballkan/>.

²⁷¹ Ibid.

Professor Murat Meha, vice president of Kosovo's delegation to the Joint Technical Commission, said that this was one of the most difficult challenges of the process. There were also cases when such a solution was not possible and this issue was dealt with special rules between the governments of the two countries to enable residents whose property remained on the other side of the border to continue administer them, or in some cases governments compensate the owners.²⁷²

In addition, the border demarcation between Kosovo and Macedonia is an expression of friendly relations with neighboring countries on the basis of mutual respect. They are also an expression of resolving all regional issues that remain open in accordance with the principles of sovereignty, territorial integrity, political independence, and peaceful settlement of disagreements between the countries of the region.

4.2. The Demarcation between Kosovo and Montenegro

One of the most difficult problems for the countries emerging from the war is the right definition of the border line with the neighboring countries. This definition is in most cases done through inter-governmental agreements, where the government-formed commissions are the principal character to prepare the final draft proposals.

Kosovo and Montenegro, signed on August 26, 2015, the agreement on the state border between the Republic of Kosovo and Montenegro. The agreement was signed for the Republic of Kosovo, by Deputy Prime Minister and Foreign Minister Hashim Thaçi, and Minister of Internal Affairs Skender Hyseni, and for Montenegro by Deputy Prime Minister and Minister of Foreign Affairs, Igor Llukshic, and Minister of Internal Affairs Rashko Konjevic.²⁷³ According to a statement from the Kosovo Foreign Ministry, it was said that the signing witnesses were; Kosovo Prime Minister Isa Mustafa, Montenegrin President Fillip Vujanovic and Austrian Foreign Minister

²⁷² Ibid.

²⁷³ Republika e Kosoves, Qeveria, *Komisioni Shteteror per Shenjimin dhe Mirembajtjen e Kufirit Shteteror*, "Permbledhje e dokumentacionit bazik ne percaktimin e territorit te Republikes se Kosoves", (Prishtine: 2015-2016): 84.

Sebastian Kurz.²⁷⁴ President Hashim Thaçi, then Minister of Foreign Affairs, said that the agreement is in “full compliance with the SFRY 1974 Constitution, the document of President Martti Ahtisaari and the Constitution of the Republic of Kosovo.”²⁷⁵

The State Commission for the Kosovo border with Montenegro was consisted by; Prof. Dr. Murat Meha (Chairman), Mr.sc. Syle Ukshini (Member of the Commission), Col. Shaban Guda (Member of the Commission), Mr.sc. Besim Kajtazi (Member of the Commission) and Prof. Dr. Tefik Basha (Member of the Commission).²⁷⁶

For border delimitation was used the cadastral documentation, there you can find the boundaries of cadastral zones, municipal boundaries and topographic maps. This documentation and various maps have been produced and published by state institutions of the SFRY at different time periods.²⁷⁷

The border line between the Republic of Kosovo and Montenegro, starts from the three-border point; Kosovo-Albania-Montenegro to the three-border point Kosovo-Montenegro-Serbia, with the length of 78 km.²⁷⁸ The extent of the border line between these two states is only on mountainous territory, ranging from high mountain ranges up to 2366m altitude. While the lowest point on the border line between Kosovo and Montenegro is about 1200m above sea level. Municipalities Junik, Deçan, Peja and Istog, have cadastral zones that at the same time define the border line with the neighboring municipalities in Montenegro.²⁷⁹

²⁷⁴ Ibid.

²⁷⁵ “Marrëveshja për Demarkacionin me Malin e Zi – ja çfarë thuhet aty! (Dokument),” Telegrafi.com, July 8, 2016, accessed July 01, 2019, <https://telegrafi.com/marreveshja-per-demarkacionin-malin-e-zi-ja-cfare-thuhet-aty-dokument/>.

²⁷⁶ Republika e Kosoves, “Permbledhje e dokumentacionit bazik...”.

²⁷⁷ Ibid.

²⁷⁸ Ibid.

²⁷⁹ Ibid.

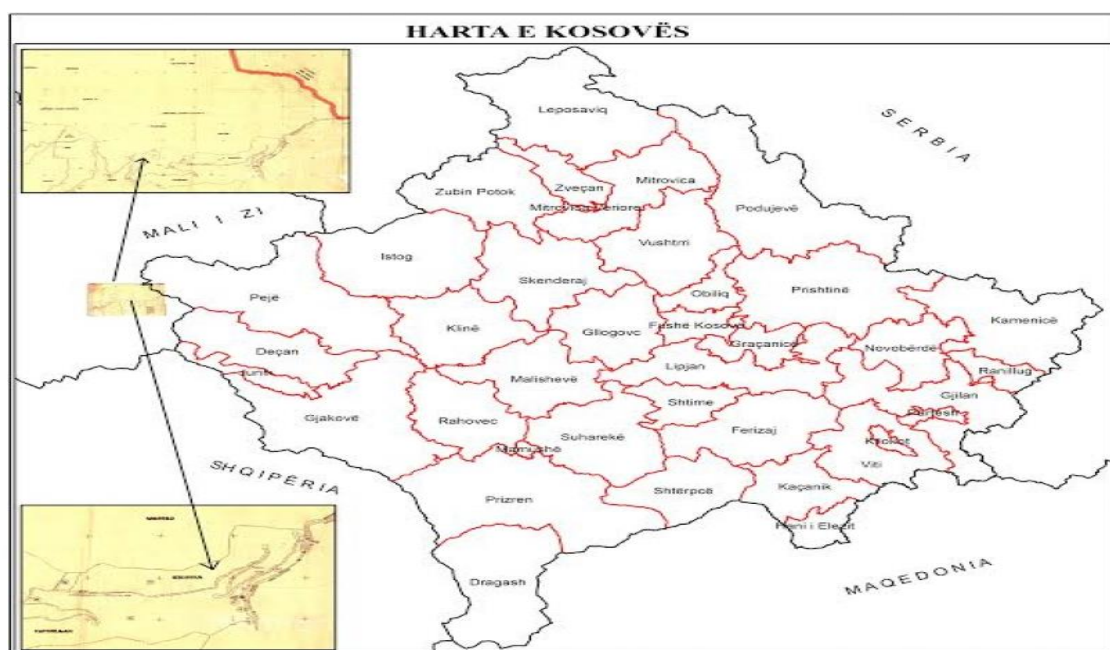


Figure 6: Map of Kosovo, 2015.

Source: Harta e Kosoves, Illyria: The Albanian-American Newspaper, <http://illyriapress.com/komisioni-shteteror-kufiri-kosove-mali-i-zi-ku-ishte-me-1974-e-1988-harta/harta-e-kosoves-2/>.

The authorities of this Commission have secured the Government of the Republic of Kosovo with its citizens, that it has handled each point separately at the border line, applying the principle of transparency. They also alluded that the border line with Montenegro, is in full compliance with the border line under the 1974 Constitution, the Ahtisaari Plan and the Constitution of the Republic of Kosovo.²⁸⁰

Montenegro has ratified the agreement signed on 26 August 2015, and has fulfilled the condition for entry into force. But, the agreement in Kosovo was awaited with great contradiction. Ratification of the agreement was not accepted by the opposition parties, claiming that Kosovo forgave Montenegro 8,200 hectares of land. With the belief that Çakorr and Zhleb would be lost, opposition signed a petition to abolish the agreement made in Austria by the Kosovar and the Montenegrin side.²⁸¹ For two years, this topic was a reason for the assembly to be blocked. The situation did not calm down either when former President Atifete Jahjaga, appointed the international

²⁸⁰ Ibid.

²⁸¹ "Historiku i demarkacionit – nga nenshkrimi deri sot," Gazeta Express, March 19, 2018, accessed July 8, 2019, <https://www.gazetaexpress.com/lajme-historiku-i-demarkacionit-nga-nenshkrimi-deri-sot-513567/>.

commission ‘Ad Hoc’, where they came up with their own findings, which did not differ much from those of the Murat Meha Commission. In other words, the Assembly of Kosovo has been blocked for three consecutive years by the opposition, preventing sessions in various forms, and the agreement was not voted by MPs until the government led by Prime Minister Isa Mustafa, was overthrown.²⁸²

On 9 September 2017, Ramush Haradinaj was elected the new Prime Minister of Kosovo, by getting the simple majority of 61 votes, against the strong opposition of Democratic League of Kosovo (LDK), and Self-Determination Movement (VV), with 58 votes.²⁸³ The first step of Prime Minister Haradinaj after he came to power was to dismiss Prof. Murat Meha from the position he was holding, and to appoint Prof. Shpejtim Bulliqi, as the new Chairman of the State Demarcation Commission.²⁸⁴ Prof. Bulliqi in a statement has expressed ‘his readiness for state duty and in the interest of the country’.²⁸⁵

Former Commissioner for Demarcation Mr. Murat Meha, in his statement has confirmed that “Bjelluha, Kulla e Zhlebit and Çakorr have always remained outside of the territory of Kosovo. They have never been registered as properties and have never been managed in the territory of Kosovo.”²⁸⁶ According to his claims, he is based on the maps of the former Yugoslavia of 1973, 1974, 1985, 1988, 2000 and 2015, which indicates that Çakorri, Bjelluha and Kulla e Zhlebit were places outside of the territory of Kosovo.²⁸⁷

²⁸² “Historiku i demarkacionit – nga nenshkrimi deri sot,” Gazeta Lajmi.net, March 19, 2018, accessed July 8, 2019, <https://lajmi.net/historiku-i-demarkacionit-nga-nenshkrimi-deri-sot/>.

²⁸³ Bekim Shehu, “Ramush Haradinaj kryeminister i Kosovës,” Deutsche Welle, September 9, 2017, accessed July 8, 2019, <https://www.dw.com/sq/ramush-haradinaj-kryeminist%C3%ABr-i-kosov%C3%ABs/a-40433043>.

²⁸⁴ Zyra e Kryeministrit Ramush Haradinaj, *Kryeministri Haradinaj shkarkon Komisionin Shtetëror për Shënjimin dhe Mirëmbajtjen e Kufirit Shtetëror* (Prishtine, Shtator 2017), <http://kryeministri-ks.net/kryeministri-haradinaj-shkarkon-komisionin-shteteror-per-shenjimin-dhe-mirembajtjen-e-kufirit-shteteror/>.

²⁸⁵ “Haradinaj shkarkon komisionin e Murat Mehës për Demarkacionin, emëron Bulliqin,” Gazeta Insajderi, <https://insajderi.com/haradinaj-shkarkon-komisionin-e-murat-mehes-per-demarkacionin-emeron-bulliqin/>.

²⁸⁶ Murat Meha, Republika e Kosovës/Kuvendi, *Transkript i debatit profesional-shkencor lidhur me marrëveshjen për shënimin e kufirit ndërmjet Republikës së Kosovës dhe Republikës së Malit të Zi, i mbajtur më 3 Gusht 2016* (Prishtine, Gusht 2016) 17-24.

²⁸⁷ Ibid.

But expert Shpejtim Bulliqi, has explicitly objected the demarcation project led by Murat Meha, asserting that this commission is in the wrong direction, losing Kosovo 8,200/ha of land. According to him: “In order the delimitation and demarcation to be valid, a particular state must rely on inter-state or international treaties, rely on natural geographic boundaries, rely on *uti possidetis*, effective control and other international law principles. But the border demarcation between Kosovo and Montenegro is the first ‘*sui generis*’ case, relied only on the cadastre situation. And, that the basis for this cadastral map, that Montenegro has offered to Kosovo’s government commission is the Banovina of Zeta dating back in 1930s, which belongs to the Kingdom of Serbs-Croats-Slovenes.”²⁸⁸ In these maps, maybe we might find that Çakorri, Bjelluha and Kulla e Zhlebit beeing part of Montenegro. However, these maps should not be taken into account for the reason that they seriously violate the 1974 Constitution of the SFRY, Martti Ahtisaari Plan, and the Constitution of the Republic of Kosovo.

Zejnullah Gruda, Professor of International Law, claims that: “Unlike the Commission led by Murat Meha, which leaves the Çakorr and other disputed areas out of Kosovo’s territory, this is something untrue and without argument. As in 1945 and during the 1970s, the Kosovo border with Montenegro was in Çakorr. This is a hundred percent true historical statement that is proved even by Milovan Đilas, who was the most important man in this process after Josip Broz Tito.”²⁸⁹ Here one might rise a question: Is it possible that Milovan Đilas being the Montenegrin himself, to determine the Kosovo border with Montenegro in Çakorr and Zhleb that would detriment and reduct the borders of his own republic (knowing his power as the second highest statesman after Tito in the former Yugoslavia). Also, at that time, it was easier to manipulate for the fact that Montenegro was a republic while Kosovo Autonomous Province administered by the state of Serbia. Nevertheless, by this we can understand that the boundaries were built on the natural geographical aspects, where Çakorr and Zhleb, together with the River of Bjelluha, have been the most suitable points for defining the borders between Kosovo and Montenegro.

²⁸⁸ Ibid., 31.

²⁸⁹ Prof. Dr. Zejnullah Gruda, “Aspekte Nderkombetare te Demarkacionit: Mesimet per rastin e Kosoves,” in *Demarkacioni Kosove – Mali i Zi (Aspekte Nderkombetare, Gjeografike, Politike dhe Historike)*, ed. Prof. Dr. Muhamet Sadiku (Prishtine: Friedrich Ebert Stiftung, 2015), 18.

In addition, all federal and republican constitutions of the SFRY since 1946, then 1963 and 1974, have emphasized that borders within Yugoslavia can not be changed without the consent of the respective unit; so far, no one has presented any document that such a change could occur. In 1974, there was only one difference in the juridical and constitutional aspect of Kosovo's political status, whereas, in the territorial aspect, no centimeter has been added to, or removed from Kosovo.²⁹⁰ In 1974, Kosovo's political status was elevated to federal units with multiple additional powers, including the right of Kosovo's institutions to be the only ones responsible for changes in its borders as the province.²⁹¹

Although the Kosovo Government has approved the report that says; Kosovo has a territorial area of 10,905.25 km² and as a result does not lose land in the Demarcation with Montenegro, this has been challenged several times by Florim Isufi. He says that: "The government has made a big mistake, because with the approval of this report Kosovo will lose 82 km² and Montenegro will grow."²⁹² In spite of that, the territory of Kosovo throughout the existence in the former Yugoslavia was not precisely defined. Sometimes was presented with 10,905.25 km² and sometimes with 10,887 km². But one thing was very certain, that in each military maps of the Yugoslav Army, Kulla e Zhlebit, Çakorri and Bjelluha, have figured to be inside administrative part of Kosovo.

The new Chairman of the border commission Mr. Shpejtim Bulliqi says that Montenegro has grown in territory while Kosovo loses territory with the demarcation. 'Historically, Montenegro, according to all the publications of the Federal Institute for Geodesy of the former Yugoslavia, and geodetic institutions of Montenegro from 1945 to 2015, had less land than after demarcation. According to the same results even after demarcation of the border, Montenegro should have 13,812 km², but after the signing of the agreement turns out to be more. Montenegro historically and throughout its time in all international organizations (UN, EU, NATO etc.), has applied and is accepted; by

²⁹⁰ "Fakte që dëshmojnë gabimet gjatë demarkacionit të kufirit Kosovë-Mali i Zi," *Gazeta Lajmi.net*, July 8, 2018, accessed July 8, 2019, <https://lajmi.net/fakte-qe-deshmojne-gabimet-gjate-demarkacionit-te-kufirit-kosove-mali-zi/>.

²⁹¹ Ibid.

²⁹² "Isufi: Qeveria po gabon, Kosova humb tokë," *Gazeta Zeri*, March 3, 2017, accessed July 8, 2019, <https://zeri.info/aktuale/133328/isufi-qeveria-po-gabon-kosova-humb-toke/>.

being presented as a state with a surface area of 13,812 km². However, if Kosovo ratifies the 2015 agreement, Montenegro will increase its surface for about 70 square kilometers, from 13,812 km² to 13,888.44 km².²⁹³ Bulliqi said that: “if someone says that Kosovo is not losing territory, then it has to clarify how Montenegro’s territory is growing?! If the relevant public and scientific structures of Kosovo, after the territorial measurement insist that Kosovo does not lose territory, it will be very difficult to justify the expansion of the territory of Montenegro, knowing that the demarcation of the Montenegrin border with the other states has been completed without any problems, whereas the separation from Serbia was done according to the agreement and without any territorial friction,” said Prof. Bulliqi.²⁹⁴ On the other hand, Prof. Florim Isufi claimed that the group of experts during the measurement of the territory of Montenegro has used the official maps of this state which, in his opinion, are very accurate. He states that: “The investigations he and his group of experts had used, were the official maps of the Republic of Montenegro, they are very accurate, and based on these facts, the true borders lays on the vicinity of Çakorr and in the basin of the Bjelluha River.”²⁹⁵

Following, I will present some maps which have been categorized by professors and experts, showing the accurate delimitation of the border demarcation between the Republic of Kosovo and the Republic of Montenegro.

In this map, dating back to 1946 of the Constitution of Montenegro, Professors Zejnullah Gruda, Florim Isufi, Shpejtim Bulliqi and Perparim Ahmeti, have compiled the data, showing that Kosovo is losing territory and that the demarcation according to the Commission of Murat Meha, is totally in wrong approach. The map has a scale of 1:50 000 and can be easily identified. The red line shows the original border of 1946, while the yellow line is the border delineated by the commissioners of the Republic of Kosovo, headed by Murat Meha. In the upper corner, above the map, is a yellow field that shows the lost territory of Kosovo.

²⁹³ Laura Hasani, “Ekspertët: Kosova humb territor, Mali i Zi rritet,” *Gazeta Zeri*, February 25, 2017, accessed July 9, 2019, <https://zeri.info/aktuale/132470/ekspertet-kosova-humb-territor-mali-i-zi-rritet/>.

²⁹⁴ Ibid.

²⁹⁵ Ibid.

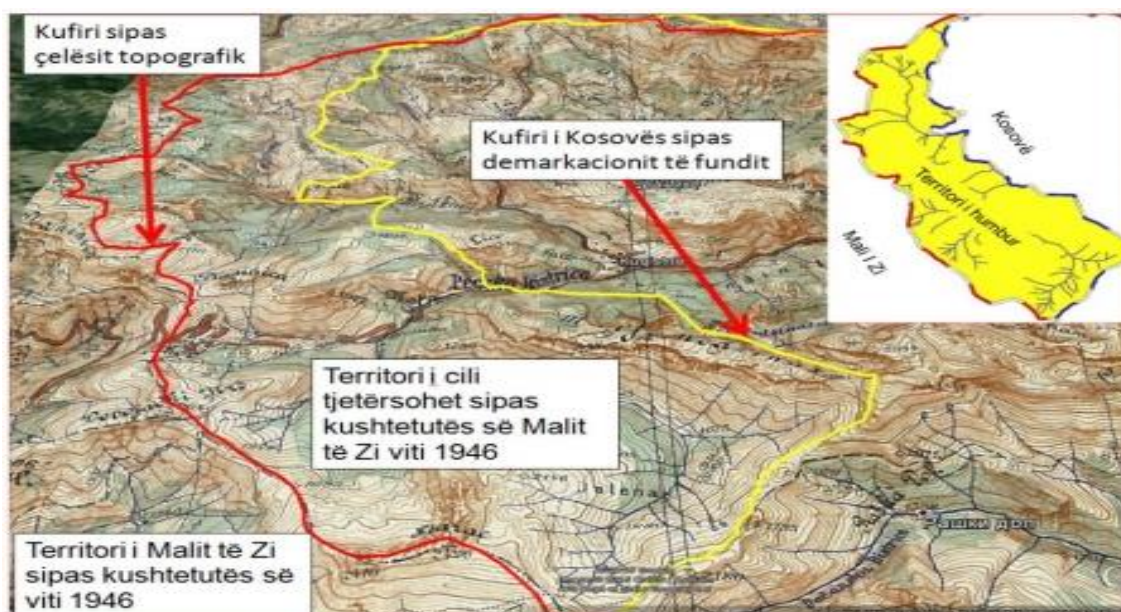


Figure 7: Map of the Constitution of Montenegro, 1946.

Source: Fakte të reja për gabimin me demarkacion, <https://telegrafi.com/fakte-te-reja-per-gabimin-demarkacion-dokument/>

According to professor of cartography Florim Isufi: “With this border demarcation process, Kosovo loses over 8,200 hectares of land or 82km². In the legend of one of the maps, it is written that Kosovo wins 761.18 hectares, while losing 8890.52. The difference between these two results gives us the loss of Kosovo which is 8229.34 hectares.”²⁹⁶

²⁹⁶ “Demarkacioni me Malin e Zi: Ja hartat e prezantuara nga profesori Florim Isufi,” *Telegrafi*, March 16, 2016, accessed July 10, 2019, <https://telegrafi.com/demarkacioni-malin-e-zi-ja-hartat-e-prezantuara-nga-profesori-florim-isufi-foto/>.

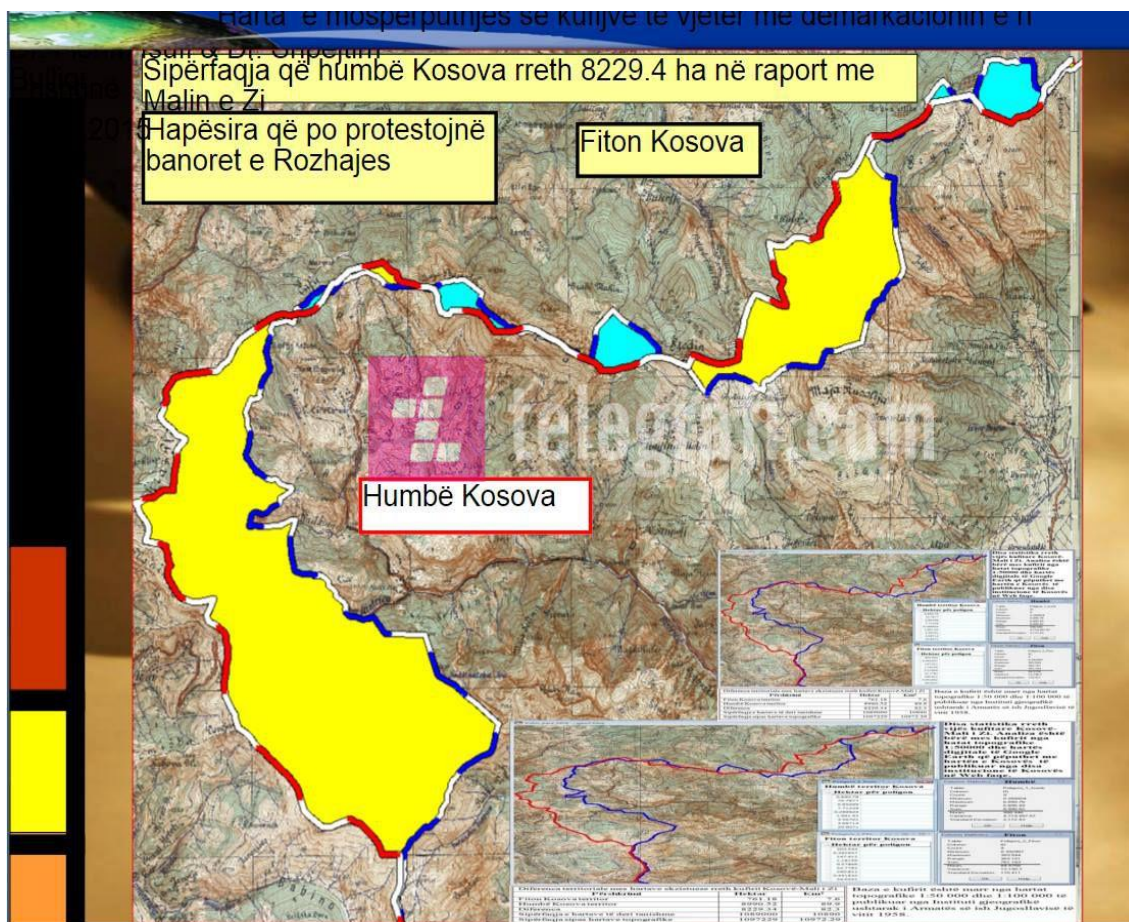


Figure 8: The area that Kosovo loses its territory.

Source: Demarkacioni me Malin e Zi: Ja hartat e prezantuar nga profesori Florim Isufi, <https://telegrafi.com/demarkacioni-malin-e-zi-ja-hartat-e-prezantuar-nga-profesori-florim-isufi-foto/>.

Again Prof. Florim Isufi, demonstrates another map which was printed by the Kosovo Information Center (QKI). This map was published in 1997, and sponsored by the former President of Kosovo Mr. Ibrahim Rugova and the Chairman of the QKI Mr. Enver Maloku. In this map, they were based on the delimitation of the border line according to the maps of 1945/1956, where Çakorri and other territories, numbering 8,200 hectares, are presented within the territory of Kosovo.²⁹⁷

²⁹⁷ “Isufi: Edhe Rugova e dinte se Çakorri është pjesë e Kosovës,” *Telegrafi*, April 19, 2017, accessed July 10, 2019, <https://telegrafi.com/profesor-isufi-edhe-rugova-e-dinte-se-cakorri-eshte-pjese-e-kosoves/>.

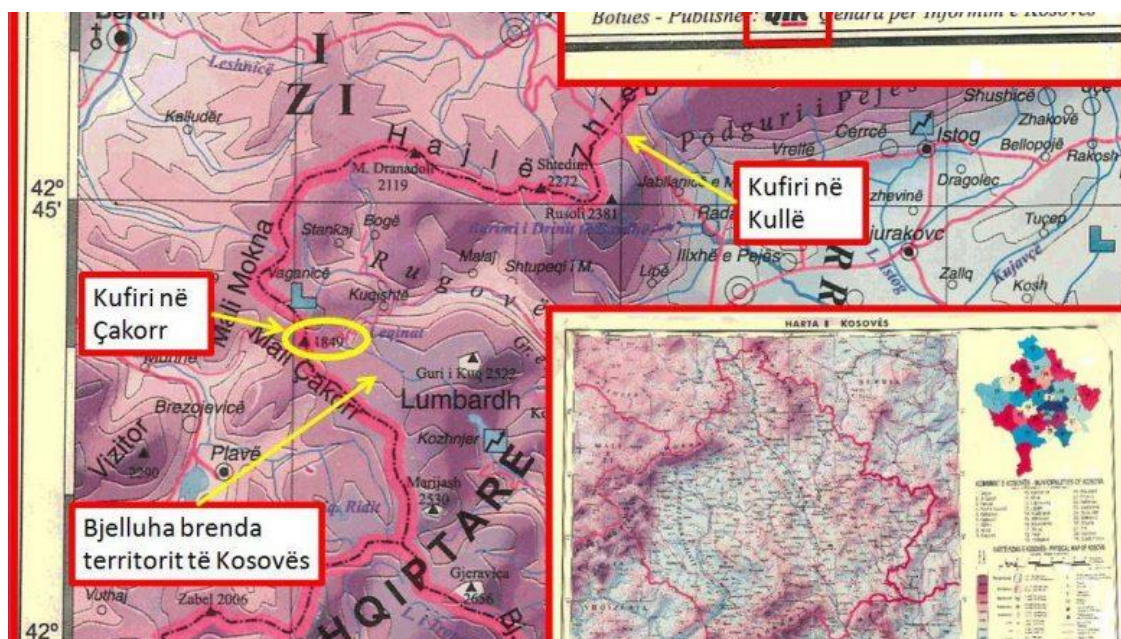


Figure 9: Map of Kosovo, Center for Information of Kosovo, 1997.

Source: Isufi: Edhe Rugova e dinte se Çakorri është pjesë e Kosovës, <https://telegrafi.com/profesor-isufi-edhe-rugova-e-dinte-se-cakorri-eshte-pjese-e-kosoves/>.

Furthermore, Professors Bulliqi and Isufi, call that it is a state obligation to transfer the borderline from terrain to map and vice versa, then to monitor and manage the border line. This is not a task of municipalities, because they are only administrative territorial units.²⁹⁸ Each analysis and mapping for the territory of Kosovo in general, and its special parts belongs to the central institutions, while the smaller administrative units respect and use them. Prof. Bulliqi assures us that every where in the world, when demarcating inter-state boundaries, topographic and administrative maps are those which needs to be taken into account, and never the cadastral maps. Also, if cadastral maps collide with topographic and administrative maps, then cadastral maps are those that should be eliminated. Prof. Gruda also states that cadastral map is not a criterion of international law.

Maps, especially those where the state border is defined, cannot be processed by the municipality nor by any working group of experts without the relevant state permits.²⁹⁹ To reconsider once again, Professors Bulliqi and Isufi had used all relevant

²⁹⁸ “Rezultate të reja shkencore për vijën kufitare Kosovë - Mali i Zi,” *Koha.net*, September 14, 2015, accessed July 10, 2019, <https://archive.koha.net/?id=&l=74944>.

²⁹⁹ Ibid.

and authentic maps such as; The map of 1948, published by The Yugoslav Military Geographic Institute, than, the map of 1962, published by the Encyclopedia of Yugoslavia in Zagreb, the map of 1974, published by the Military Encyclopedia of Yugoslavia and so on, where in all these maps, Çakorri, Kulla e Zhlebit and Bjelluha River, belonged to the territory of Kosovo.³⁰⁰

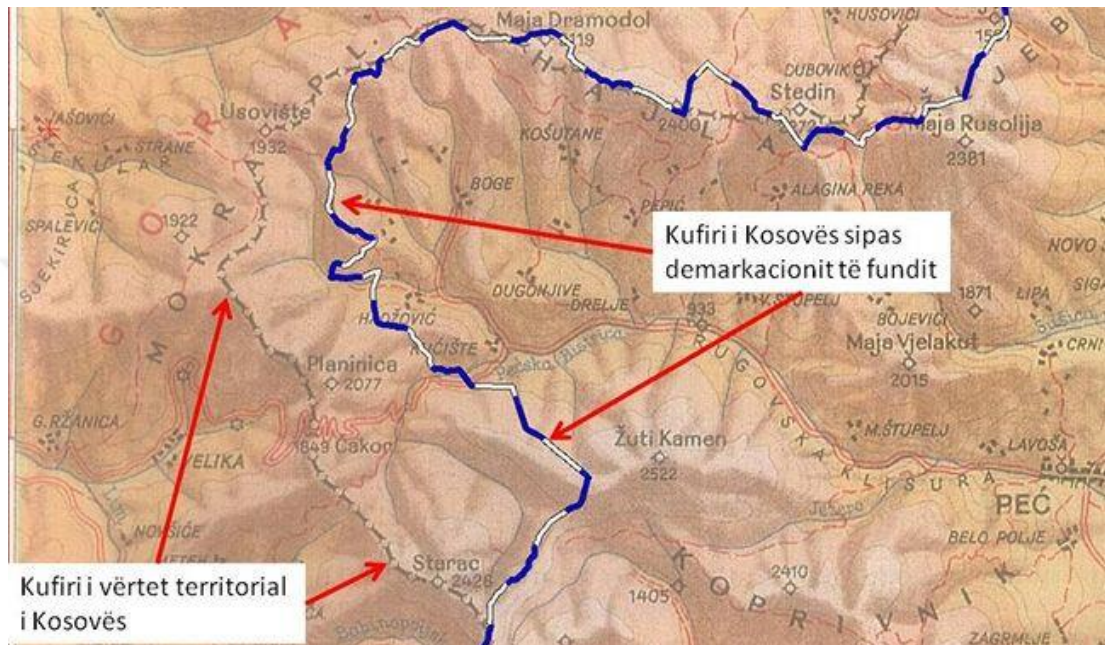


Figure 10: Harta e vitit 1962, botuar nga Enciklopedia e Jugosllavise ne Zagreb.

Source: Dialogplus, Rezultate te reja shkencore per vijen kufitare Kosove-Mali i Zi, <https://dialogplus.ch/rezultate-te-reja-shkencore-per-vijen-kufitare-kosove-mali-i-zi-64857>.

To be clear, it should be stated that the first border delimitations between Montenegro and Kosovo, in fact Serbia, were set up in 1946, then, 1948, 1949, by the Military Geographic Institute of the Socialist Federal Republic of Yugoslavia, with the map-scales 1:100 000. Experts, who have carried out this work and this obligation, were experts of the Yugoslav Army.³⁰¹ In all the maps which were created by the Federal Constitution of Yugoslavia, and the Yugoslav Army, the Çakorri, Bjelluha and Kulla e Zhlebit were part of Kosovo. And how could it happen for the first time, that the Demarcation Commission headed by Mr. Murat Meha to declare the afore-mentioned territories as part of Montenegro?!

³⁰⁰ Ibid.

³⁰¹ Shpejtim Bulliqi, Republika e Kosoves/Kuvendi, *Transkript i debatit profesional-shkencor lidhur me marrëveshjen për shënimin e kufirit ndërmjet Republikës së Kosovës dhe Republikës së Malit të Zi, i mbajtur më 3 Gusht 2016* (Prishtine, Gusht 2016) 30-31.

Two experts Bulliqi and Isufi have given several reasons the commission has deviated in finding the exact delimitation of the border-line:

- Because they only used the cadastral, and neglecting the topographic and administrative maps, whereby the measurements were wrong³⁰²
- The principles of international law have been left in obscurity, indeed they have been violated, such as the principle of *uti possidetis*.³⁰³
- Natural and geographical boundaries are the most reliable borders that do not incite inter-state conflicts. But the border-line set up by this commission does not correspond according to the mountain slopes and drainage water-lines.³⁰⁴
- No scientific seriousness of all actors (individual and institutional). Who in their publications, be it university books, scientific works, etc. have misrepresented the surface of Kosovo, never based on its verification.³⁰⁵
- It might have been any secret agreement between Serbia and Montenegro in exchange of territories to the detriment of Kosovo between 1981 and 1999. So, if these maps exist today, they might be used intentionally or accidentally by the said commission.³⁰⁶

Mr. Bulliqi on a TV show for the public has said that ‘The State Demarcation of Kosovo from the very beginning has been defective and with an erroneous approach. Here, for the fact that they have contrived a new border that has seriously damaged the territory of Kosovo. The commission should not sign a new border-line because there has been a legitimate administrative boundary since the end of the WWII. This demarcation process has encroached the principles of international law, especially that of *uti possidetis*.³⁰⁷ Also, if we look from the historical aspect, we will see that all investments in infrastructure, maintenance and asphaltting of roads, have been made by

³⁰² Ibid., 30-31.

³⁰³ Ibid., 50.

³⁰⁴ Ibid., 31.

³⁰⁵ Prof. Dr. Florim Isufi and Prof. Dr. Shpejtim Bulliqi, “Te dhena hartografike mbi kufirin Kosove – Mali i Zi,” in *Demarkacioni Kosove – Mali i Zi (Aspekte Nderkombetare, Gjeografike, Politike dhe Historike)*, ed. Prof. Dr. Muhamet Sadiku (Prishtine: Friedrich Ebert Stiftung, 2015), 44.

³⁰⁶ Ibid.

³⁰⁷ Shpejtim Bulliqi, “Kojshia Show – Emisioni i 127,” Yotube, 59:07, <https://www.youtube.com/watch?v=W7AgQ3TBdYc> (accessed July 10, 2019); “Te gjitha te gjeturat vertetojne se Kosova ka humbur territor,” RTV21, December 8, 2017, accessed July 11, 2019, <http://rtv21.tv/te-gjitha-te-gjeturat-vertetojne-se-kosova-ka-humbur-territor/>.

the Government of Kosovo. All the villages of that contested area have been part of the municipality of Peja. All issues related to courts and jurisdictions of that area have met the district of Peja. And all billings in electricity, drinking water, pastures and real estate, have been paid in the city of Peja.³⁰⁸ With regard to the border check stamps, until 2009 it has been written as Kula-Rozaje, so, Kula has been a border separation point between Kosovo and Montenegro, whereas with the final demarcation made, perhaps will belong to Montenegro.³⁰⁹

Next, I will present a table to clarify whether this demarcation with Montenegro has followed the steps of the principles of international law. As you can see in the table, none of the international law principles has been implemented in the Kosovo demarcation process. Indeed, they have been ignored, and for this reason the delimitation of the state border has taken the chaotic and invalid form.

Border demarcation between Kosovo and Montenegro	
Treaty law	First treaties on the border demarcation between the Republic of Montenegro and the Republic of Serbia (*Kosovo as an autonomous province) started in 1946, under the auspices of Milovan Djilas. Then in 1973/74 under the Constitution of the SFRY. And the last one in 2015, as two independent countries of Kosovo and Montenegro. Despite this, the accurate maps of these treaties have not been used during the demarcation process between Kosovo and Montenegro.
Effective control of the disputed territory	Physical power of dealing with the subject, is the most crucial component in possession of territory. Albanian villagers of the Çakorri and Kulla e Zhlebit areas, have built fortresses, huts, lodges and pastures, which in international law is one of the strongest evidences in possession. ³¹⁰ Albanian villagers of this area, have been the owners of the real-estates for hundred years. Also, all taxes and billings, these people have paid in the city of Peja. ³¹¹
Recognition and acquiescence	The Rugova area; including Çakorr, Kulla e Zhlebit and Bjelluha have been controlled by the government of Kosovo for almost 70 years, and the Montenegrin side recognized and acquiesced, and never interfered on the issues of Kosovo's internal affairs.
Geographic, social, historic, economic and cultural links with the	The mountain ridges of Zhleb and Qakorr, as well as the Bjelluha River Basin have been the geographical and natural positions that have separated the border line between Kosovo and Montenegro. Historically, the above-mentioned contested lands, have been inhabited by Albanian peasants and the certain area was not <i>terra nullius</i> (nobody's land). Also, the inhabitants of this area, have survived most of time from the incomes of their pastures, selling wool, meat and milk products, and so on.

³⁰⁸ Ibid.

³⁰⁹ Ibid.

³¹⁰ "Banorët e rajonit të Rugovës ankohen se po u merren 12 mijë hektarë nga Mali i Zi," *Bota Sot*, June 4, 2015, accessed July 22, 2019, <https://www.botasot.info/kosova/412787/banoret-e-rajonit-te-rugoves-ankohen-se-po-u-merren-12-mije-hektare-nga-mali-i-zi/>.

³¹¹ Prof. Dr. Muhamet Sadiku, "Demarkacioni Kosove - Mali i Zi: Aspekte Nderkombetare, Gjeografike, Politike dhe Historike," *Friedrich Ebert Stiftung*, (Prishtine: 2015), 3-91.

territory	
Uti possidetis	“As you possess you shall continue to possess.” In fact, with the last border demarcation, Kosovo did not continue to possess the territory of Zhleb, Çakorr and Bjelluha. So, this principle has been violated by both parts in the agreement. Unfortunately, Kosovo lost its sovereignty in that zone of Rugova.
Status quo	By giving 8,200 hectares of land to Montenegro, Kosovo actually altered its <i>status quo</i> and lost its territorial integrity in that area.

Table 2: Border Demarcation between Kosovo and Montenegro according to Principles of International Law.

Source: Prof. Dr. Florim Isufi and Prof. Dr. Shpejtim Bulliqi, “Te dhena hartografike mbi kufirin Kosove – Mali i Zi,”

It is true that all the countries that have emerged from the collapse of the former Yugoslavia have gone through the border-determination phase with their neighboring states. But it should be born in mind that; ‘Kosovo was the only country in the Balkans, which the European Union imposed the border demarcation in exchange for visa liberalization’. So, if we take the case of the former Yugoslav republics such as; Slovenia, Croatia, Serbia etc. all have had more prolonged and complicated border problems than Kosovo, but none has been asked to solve border problems with their neighbors as a pretext for integration into the EU.

To sum it up, the European Union’s Foreign Policy Minister, Federica Mogherini, repeatedly stressed that if the Kosovo Parliament proceeds and votes the demarcation, citizens of the Republic of Kosovo will soon be able to travel in Europe without visas. Yet, the Government of Kosovo headed by Prime Minister Ramush Haradinaj and Kosovo Parliament deputies, on March 21, 2018 have voted for this demarcation, but the citizens of Kosovo disappointed are still waiting for visa liberalization.

However, delaying the visa liberalization process, imposing difficult conditions for Kosovo has been deliberate in order to postpone the issue of liberalization. Probably, the demarcation has been an EU *alibi* for Kosovo to meet other important conditions such as; the fight against corruption and organized crime. Still, the formation of the association of serb municipalities, the resolution of the status of Mitrovica, among

others, are the additional criteria that Kosovo needs to complete in order to get the green light towards the EU.

4.3. The Issue of Territorial Exchange between Kosovo and Serbia

Demarcation or marking of the border line between Kosovo and Serbia will be a necessary process for both countries. Apart from the need for normalization of the reports, demarcation is expected to be an EU condition also in the integration processes for Kosovo and Serbia. As we have mentioned earlier, The European Union has made it clear to all Western Balkan countries on the new expansion strategy, that they can not handle their problems and conflicts within the EU, and that they have to resolve them before claiming membership in the following years.

Since Kosovo's declaration of independence in February 2008, Serbia has not yet recognized Kosovo as a state, and strongly lobbies in the international arena against this issue. The EU facilitated dialogue between Belgrade and Prishtina, which officially began in March 2011. Popularly known as the Brussels negotiations, this dialogue certainly represents one of the most important political processes in the Western Balkans.³¹² The first phase of the dialogue took the form of the so-called technical dialogue that lasted from March 2011 to February 2012. After parliamentary and presidential elections in Serbia in 2012, the dialogue entered a new phase, widely known as political dialogue. During this time, one of the most important agreements reached between Kosovo and Serbia was the Process of Bilateral Normalisation Principles. The third phase of the dialogue started in March 2015, where after the elections in both states, Isa Mustafa became Prime Minister of Kosovo and Aleksandar Vučić Prime Minister of Serbia, while High Representative of the Union for Foreign Affairs and Security Policy, Mrs. Federica Mogherini, took up the mandate for the EU.³¹³ The fourth phase of this dialogue is considered to be the milestone of the whole process, which on August 25, 2015, an agreement was reached on four major issues that

³¹² Artan Murati, "The Brussels dialogue is important, but it needs to change." *Kosovo Two Point Zero*, October 24, 2016, <https://kosovotwopointzero.com/en/the-brussels-dialogue-is-important-but-it-needs-to-change/>.

³¹³ Ibid.

had obstructed the negotiations for a significant amount of time. The agreement specified: Association of Serb Majority Municipalities in Kosovo, Telecommunications, Energy and Freedom of Movement over the Mitrovica Bridge.³¹⁴

The negotiation process witnessed also the stages of stagnation, where both countries failed to reach the final phase of this prolonged process. For example, In January 2018, the killing of a Serbian community politician in Kosovo, Oliver Ivanović, created massive clashes with mutual accusations between Pristina and Belgrade. As an excuse for this, Serbia made the dialogue to be suspended a while. Then, the so-called Kosovo office director in the Serbian government, Marko Đuric, illegally entered Mitrovica. He was detained by Kosovo authorities in one of the most professional operations of Special Forces; accordingly, this was used as a ‘self-justification’ by President of Serbia Aleksandar Vučić to forestall the dialogue process. After that, Serbia harshed the campaign against Kosovo (*violating the agreement, as one of the points in the Brussels dialogue says that: no party has the right to block the other party in international membership*) by blocking membership in international organizations. Faced with this situation, the Prishtina government would take the first punitive measure: establishing a 100% tariff on Serbian goods.³¹⁵ Since the inforce of these customs fees by Prime Minister Ramush Haradinaj on 21 November 2018, the EU’s foreign policy Chief Federica Mogherini, said that ‘The Kosovo government has to immediately revoke these decisions because it violates Central European Free Trade Agreement (CEFTA) and the Stabilisation and Association Agreement between the European Union and Kosovo, which Western Balkan countries are included in’.³¹⁶ U.S. and EU has several times urged Prime Minister Haradinaj to lift the tariffs on imports from BiH and Serbia. Especially, US Ambassador in Serbia Kyle Scott said that Pristina should take off the tariffs on goods from Serbia, in order the dialogue between Belgrade

³¹⁴ Ibid.

³¹⁵ “Dialogu Kosovë-Serbi, 8 vite negociata, marrëveshja finale ende larg,” A2 CNN, February 17, 2019, accessed July 15, 2019, <https://a2news.com/2019/02/17/speciale-dialogu-kosove-serbi-8-vite-negociata-marreveshja-finale-ende-larg/>.

³¹⁶ “Kosovo hits Serbia, Bosnia with 100% customs fees after Interpol snub.” *Euroactiv News*, November 22, 2018, accessed July 15, 2019, <https://www.euroactiv.com/section/enlargement/news/kosovo-hits-serbia-bosnia-with-100-customs-fees-after-interpol-snub/>. ; Maja Kocijancic, “Statement by Federica Mogherini on the Kosovo Government decision on taxing goods from Serbia and Bosnia and Herzegovina,” *European Union External Action*, November 21, 2018, accessed July 15, 2019, https://eeas.europa.eu/headquarters/headquarters-homepage/54242/statement-federica-mogherini-kosovo-government-decision-taxing-goods-serbia-and-bosnia-and_en.

and Pristina to recommence.³¹⁷ The President of Kosovo Hashim Thaçi has also requested from Haradinaj to listen Washington's commands and lift the taxes, since the US has been historically the main Kosovo's strategic partner.³¹⁸ Serbian authorities headed by President Vučić have stated that there will be no dialogue in Brussels as long as the tariffs are in force.³¹⁹ But Prime Minister Haradinaj announced that such a decision could not be taken this moment and the tariffs will not be removed until Serbia recognizes Kosovo.³²⁰

Whatsoever, being in this standstill, in the range of Kosovo-Serbia talks, there is also another idea that seems to be dangerous enough for both countries and for the Western Balkans as well. It is the idea of territorial exchange between Kosovo and Serbia. This idea has been discussed widely and vaguely by presidents Thaçi and Vučić, whereby they have received support as much criticism from domestic and international experts. It is about the northern municipalities of Kosovo (Northern Mitrovica, Zvečan, Zubin Potok and Leposavić), and the southern part of Serbia, namely the Presevo Valley (Presevo, Medvedja and Bujanovac). Both leaders did not specify which territories would be included in such an agreement, but it is widely believed to include the 'transfer' of northern Kosovo, where ethnic Serbs are the majority, to the Presevo Valley, populated by ethnic Albanians. Regrettably, President of Kosovo, Hashim Thaçi every time has declared its evasive statements saying that 'there is no division along the ethnic line, but rather regulation and correction on the border between Kosovo and Serbia, and an agreement which would result in Serbia's recognition of Kosovo'.³²¹ His statements are indeed tendentious and disingenuous when he insists that the Presevo Valley will join Kosovo, and that the north of Kosovo will remain a part of it. Plainly, such declarations have never been spoken to the public by his counterpart Vučić, nor

³¹⁷ "Scott: Prishtina ta heq taksën, BE vazhdon të udhëheq dialogun," *Telegrafi*, July 8, 2019, accessed July 15, 2019, <https://telegrafi.com/scott-prishtina-ta-heq-taksen-vazhdon-te-udheheq-dialogun/>.

³¹⁸ Julija Simić, "Kosovo to keep tariffs until Serbia grants recognition, insists PM." *Euro Activ*, January 24, 2019, <https://www.euractiv.com/section/enlargement/news/kosovo-to-keep-tariffs-until-serbia-grants-recognition-insists-pm/>.

³¹⁹ "Taksa dhe dialogu Kosove-Serbi: Thaçi takim koke me koke ne ambasadorin e SHBA," *Gazeta Tema*, February 13, 2019, accessed July 15, 2019, <https://www.gazetatema.net/2019/02/13/taksa-dhe-dialogu-kosove-serbi-thaci-takim-koke-me-koke-me-ambasadorin-e-shba/>.

³²⁰ Julija Simić, "Kosovo to keep tariffs until Serbia grants recognition, insists PM,"

³²¹ "Thaçi sërish mbron qëndrimin e tij: Nuk ka shkëmbim të territoreve, por korrigjim të kufirit," *Telegrafi*, August 6, 2018, accessed July 15, 2019, <https://telegrafi.com/thaci-serish-mbron-qendrimin-e-tij-nuk-ka-shkembim-te-territoreve-por-korrigjim-te-kufirit/>.

would Serbia accept such a misery loses. On the contrary, knowing its expansionist and hegemonic politics, Serbia would hardly recognize Kosovo's independence without any territorial swap.

Next, I would like to clarify where this idea of territorial exchange between Kosovo and Serbia came from. Academician Rexhep Qosja affirms that the designer of the partition of Kosovo was Serbian politician and writer Dobrica Ćosić.³²² The same opinion shares also the leader of the Self-Determination party in Kosovo, Albin Kurti³²³, and the former Prime Minister of Albania, Sali Berisha. Mr. Berisha states that this is a Serbian game to achieve its goal in forming the Greater Serbia. The formation of the Republika Srpska in BiH, and the division of the north of Kosovo from its part, is openly the greatest initiative that Serbia aspires to achieve in these last years. Besides this, Berisha affirms that northern Kosovo is a land rich in water (*Lake of Gazivoda, a large reservoir that supplies water and electricity to central Kosovo.*),³²⁴ and minerals (*Trepça mines*) that, if this territory divides from Kosovo and joins Serbia, then all the sacrifices of the war for liberation will collapse and Kosovo will go straight to bankruptcy.³²⁵

³²² "Rexhep Qosja: Jam pro shkëmbimit të territoreve me Serbinë, kundër ndarjes," *Koha.net*, November 28, 2018, accessed July 16, 2019, <https://www.koha.net/arberi/131381/rexhep-qosja-jam-pro-shkembimit-te-territoreve-me-serbine-kunder-ndarjes/>.

³²³ Albin Kurti, *Programi i Adi Krastes*, (Youtube, February 4, 2019), 5:46 min., <https://www.youtube.com/watch?v=9cJzEo4m6XY>.

³²⁴ Sali Berisha, "Argati i Serbise po ben pazar me territoret e Kosoves," *Opinion TV Klan*, (Youtube, September 13, 2018), 4:12 min., <https://www.youtube.com/watch?v=unGuFAJwByU>.

³²⁵ Sali Berisha, "Çfarë synon Serbia në Ballkan me shkëmbimin e territoreve me Kosovën," *Ora News*, (Youtube, February 5, 2019), 3:04 min., <https://www.youtube.com/watch?v=4vY2bx7gX1s> ; "Shkëmbimi i territoreve Kosovë-Serbi, jo koncept europian," https://www.youtube.com/watch?v=fnfHD_qIX88.



Figure 11: Map of Kosovo including The Valley of Presevo.

Source: The Proposed Territorial Exchange between Serbia and Kosovo, *Insight Turkey*, <https://www.insightturkey.com/commentaries/the-proposed-territorial-exchange-between-serbia-and-kosovo>.

One might ask, does the territorial swap violate Constitution of the Republic of Kosovo? Obviously, it violates because Article No. 1 of this Constitution defines that ;“(1.) *The Republic of Kosovo is an independent, sovereign, democratic, unique and indivisible state [...]* (3.) *The Republic of Kosovo shall have no territorial claims against, and shall seek no union with, any state or part of any state.* Yet, Article No. 2 states; (1.) *The sovereignty of the Republic of Kosovo stems from the people, belongs to the people and is exercised in compliance with the Constitution through elected representatives, referendum and other forms in compliance with the provisions of this Constitution [...]* (2.) *The sovereignty and territorial integrity of the Republic of Kosovo*

is intact, inalienable, indivisible and protected by all means provided in this Constitution and the law.”³²⁶

Aside from the Constitution of the Republic of Kosovo, the territorial exchange infringes the Ahtisaari Plan³²⁷ which was the basic framework for the Declaration of Kosovo’s Independence. Also, it is against the 1974 Constitution of the SFRY, which indicates that: “*The borders of the Socialist Federal Republic of Yugoslavia can not be changed without the consent of all republics and autonomous provinces.*”³²⁸

Former Chairman of the Constitutional Court of Kosovo, Enver Hasani has stated that the exchange of territories is unconstitutional and illegal. He also said that the ICJ recognizes Kosovo with the borders proclaimed on the Day of Independence, and thus if we go out of the ICJ policy game, Kosovo accepts the standards set by Serbia for disengagement of the territory.³²⁹ Late member of the commission for drafting the Constitution of Kosovo, Professor Arsim Bajrami says: “The Kosovo Constitution stipulates that sovereignty in the Republic of Kosovo is realized in two ways, through elected representatives of the people, namely the Parliament, and through the free expression of the will of the people, so the referendum. This means that the referendum as an institution exists and possesses a constitutional category, and there is no obstacle in the Constitution of Kosovo for the specific issue to be declared by the people in the referendum. But preliminarily, there should be a law which determines modalities of the referendum implementation process.”³³⁰ When it comes to the eventual achievement of a final agreement between Kosovo and Serbia, which might clash with the Constitution of Kosovo, according to Professor Bajrami, it must also contain the arrangement to the Constitution, which does not go to referendum, but runs directly through the Assembly (by two-thirds of the majority vote and two-thirds of the

³²⁶ See Constitution of the Republic of Kosovo, Chapter I – Basic Provisions, Articles 1 and 2.

³²⁷ See Comprehensive Proposal For the Kosovo Status Settlement, Annex VIII Kosovo – Security Sector, Article 3 – Border, 2 February 2007.

³²⁸ See Ustav Socijalisticke Federativne Republike Jugoslavije, Clan 5.

³²⁹ “Ndryshimi i kufijve përbën shkelje kushtetuese,” *Indeksonline*, September 11, 2018, accessed July 16, 2019, <https://indeksonline.net/ndryshimi-i-kufijve-perben-shkelje-kushtetuese/>.

³³⁰ “Referendumi për korrigjimin e kufirit të Kosovës kërkon ndryshimin e Kushtetutës,” *Telegrafi*, October 1, 2018, accessed July 16, 2019, <https://telegrafi.com/referendumi-per-korrigjimin-e-kufirit-te-kosoves-kerkon-ndryshimin-e-kushtetutes/>.

minority vote).³³¹ “For any process that goes beyond the Constitution of Kosovo, besides the referendum, there must be a process of revision or amendment of the Constitution. So, in this case, the referendum does not replace the Constitution,” claims Bajrami.³³²

One thing is certain that President Thaçi has not exactly defined what is meant by “border-correction”. He stresses that there will be no territorial swap between Serbia and Kosovo, but we want the Presevo Valley to join Kosovo, since it is Kosovo’s historical region and the Albanians living there deserve to be a part of us. President Thaçi always says that the Presevo Valley should join Kosovo but never mentions what will we give in exchange of it?!

Analysts of Political Affairs at the Kosovo Democratic Institute (KDI) illuminates that ‘If all citizens were to be asked whether they are about joining the Preshevo Valley with Kosovo, the overwhelming majority would say yes. But if it is the question of territorial swap, then the dilemma and confusion would arise among the citizens’.³³³ Regarding this issue, it would be appropriate for President Thaçi not to take personal decisions but to find a partnership and compromise with the government of Kosovo and its deputies. Again, the idea of territorial exchange or “border-correction” as President Thaçi calls was encountered by harsh criticism from almost all deputies of the Parliament of Kosovo, especially from the opposition. In November 2018, MPs of the Democratic League of Kosovo (LDK) had demanded that the draft resolution be voted on, in the Parliament, in order to prevent President Thaçi from his tendency for the exchange of territories or “border-correction” in the dialogue between Kosovo and Serbia. Unfortunately, this draft resolution was voted only by the opposition parties (LDK, VV and PSD) with the 50% of votes, while the ruling parties (PDK, AAK and NISMA), were opposed to this resolution. However, deputies of the Alliance for the Future of Kosovo (AAK), and other ruling parties, pronounced that none of the state personalities has the right of speaking to the territory of Kosovo, as this issue is regulated by its constitution. The LDK’s proposed resolution had only one point,

³³¹ Ibid.

³³² Ibid.

³³³ Ibid.

defining the territory as indivisible, where neither the president nor anyone else has a mandate to discuss this matter.³³⁴ Still, the most rigorous confrontation has been made between two key figures of the Republic of Kosovo, that of President Thaçi and Prime Minister Ramush Haradinaj. While Mr. Thaçi obstinately defending his idea of this dangerous movement, Prime Minister Haradinaj unshakably opposes it, saying that: “Redesign of borders and exchange of territories, is an invitation to new tragedies in the Balkans.”³³⁵ Furthermore, Haradinaj said that: “Changing the borders of Kosovo can only be done by war, and the only issue that can be discussed with Serbia is mutual recognition.”³³⁶ The opposition party of Self-Determination, on September 29, 2018, has organized in Prishtina a peaceful protest, whereby, a considerable number of citizens shouted out against this project of President Thaçi.³³⁷ The leader of this party, Mr. Albin Kurti, has several times argued that this is a longstanding game of Serbian leaders for the creation of a Great Serbia. In addition, Serbs aim to take the north because it is the richest part of Kosovo with natural resources. Mr. Kurti also notes one very essential matter that; if Serbia achieves to divide the north, then, it will also seek the Association of Serb Majority Municipalities (which is one of the negotiating points in the Brussels agreement), hence, this makes Serbia to extend its power in the entire Republic of Kosovo.³³⁸ Among others, Kurti says that: “are fooled those who say that an agreement on ethnic boundaries will bring peace. The best evidence is the case between Milošević and Tuđman, when they negotiated on the table for borders of peace, whereas combatting on the ground.” So, we have to be very vigilant, because the border game is a dangerous tool that can bring fatal consequences to both countries. Despite

³³⁴ “Kuvendi nuk miraton Projekt-rezolutën e LDK-së kundër Thaçit,” *Telegrafi*, November 01, 2018, accessed July 16, 2019, <https://telegrafi.com/nuk-kalon-projektrezoluta-e-opozites-per-dialogun/>.

³³⁵ Mimoza Sadiku, “Betejë fjalësh mes Thaçit e Haradinajt për kufirin,” *Radio Evropa e Lire*, August 31, 2018, accessed July 16, 2019, <https://www.evropaelire.org/a/hashim-thaci-ramush-haradinaj-korrigjimi-i-kufirit-/29463606.html>.

³³⁶ “Haradinaj, kundër Thaçit: Kufijtë ndryshohen me luftë,” *Top Chanel*, August 07, 2018, accessed July 16, 2019, <http://top-channel.tv/2018/08/07/haradinaj-kunder-thacit-kufijte-ndryshohen-me-lufte/>.

³³⁷ Adeline Sahiti, “Protesta e 29 shtatorit, matje apo jo për Vetëvendosjen,” *Fakte Plus*, September 25, 2018, accessed July 16, 2019, <https://fakteplus.net/protesta-e-29-shtatorit-matje-apo-jo-per-vetevendosjen/>.

³³⁸ “Albin Kurti: Bisedimet për kufijtë të çojnë drejt luftës,” *Lexo*, August 13, 2018, accessed July 16, 2019, <http://lexo.com.al/albin-kurti-bisedimet-per-kufijte-te-cojne-drejt-luftes/>.

the opposition of Kosovo,³³⁹ even a part of the opposition in Serbia, is against the partition of Kosovo. Serbian People's Party Chairman Vuk Jeremić has affirmed that redefining borders on ethnic basis in Kosovo could be the cause of new conflicts in the Balkans. He called on the international community to prevent such a thing.³⁴⁰

Also, Serbian Patriarchate has explicitly voiced against the territorial division of Kosovo. Patriarch Irinej condemned any kind of concession regarding the Kosovo issue. He strongly believes that the south of Kosovo is as much important as the north, because there are the first foundations of the Serbian state. 'Monastery of Visoki Dečani, Patriarchate of Peč and the Monastery of Prizren are Serbian holy symbols since the Middle Ages'.³⁴¹

Regarding to the analysis of international experts, the U.S. leadership seems to be more moderate compared to that of Germany and the United Kingdom. U.S. national-security adviser John Bolton, on August 24, 2018, on a press conference in Kyiv, emphasized that: "United States would not oppose a territorial exchange between Kosovo and Serbia to resolve their long-running dispute."³⁴² In order to better understand why Americans hold a neutral stance, the expert of the German association Deutsche Gesellschaft für Auswärtige Politik (DGAP), Milan Nič, declares that the Americans are no longer interested in the Western Balkans, especially in Kosovo, since the coming to power of President Donald Trump. They see the exchange of territories between Kosovo and Serbia as an alternative solution to end a century-old conflict of these two peoples.³⁴³ Milan Nič, further expresses, that he feels skeptical that this exchange of territories would end there. This could open new ways in the ethnic

³³⁹ Ibid.

³⁴⁰ "Jeremić: Korrigjimi i kufijve mes Kosovës dhe Serbisë shkakton konflikte të reja në Ballkan," *Telegrafi*, October 07, 2018, accessed July 17, 2019, <https://telegrafi.com/jeremij-korrigjimi-kufijve-mes-kosoves-dhe-serbise-shkakton-konflikte-te-reja-ne-ballkan/>.

³⁴¹ "Crkva i Vučić o Kosovu: Klanovi, pritisci, podrška, osuda..." VOA, May 19, 2019, accessed July 17, 2019, <https://www.glasamerike.net/a/crkva-i-vucic-o-kosovu-klanovi-pritisci-podr%C5%A1ka-osuda-/4923442.html>.

³⁴² "Bolton Says U.S. Won't Oppose Kosovo-Serbia Land Swap Deal," *Radio Free Europe*, August 24, 2018, accessed July 16, 2019, <https://www.rferl.org/a/bolton-says-u-s-won-t-oppose-kosovo-serbia-land-swap-deal/29451395.html>.

³⁴³ "Nič: Nëse fillon shkëmbimi i territoreve Kosovë-Serbi, 'loja' nuk do të përfundonte me kaq," *Telegrafi*, September 4, 2018, accessed July 17, 2019, <https://telegrafi.com/nic-nese-fillon-shkembimi-territoreve-kosove-serbi-loja-nuk-te-perfundonte-kaq/>.

division of BiH and Macedonia. In the long run, this exchange of territories on an ethnic basis is also seen as a step towards a Greater Albania and Greater Serbia.³⁴⁴

Concerning the EU officials, we have a schism of opinions among those who back and those who are against the territorial division of Kosovo. For instance, German Chancellor, Angela Merkel has vehemently rejected any changes to borders in the Balkans. She interpreted that: “The territorial integrity of the states of the Western Balkans has been established and is inviolable.”³⁴⁵ On the other hand, EU enlargement commissioner Johannes Hahn alongside with EU foreign policy chief Federica Mogherini, have “endorsed the idea of a potential Kosovo-Serbia border change, going against Germany and breaking a former ‘taboo’.” They claimed that ‘whatever outcome is mutually agreed, both countries will get the support which goes in line with international law’.³⁴⁶ However, three former High Representatives for Bosnia and Herzegovina (Paddy Ashdown, Christian Schwarz-Schilling and Carl Bildt), conveyed a strong worry regarding the proposals made by the EU officials, defining that this solution will not solve divisions but would deepen them instead.³⁴⁷

Luckily, on 29 April 2019, at the ‘Western Balkans Summit’ held in Berlin, Chancellor Merkel told all leaders of these states that ‘the exchange of territories should be buried once and for all here in Berlin’. In this case, the old attitude of the EU’s top foreign policy chiefs has changed. The concept was supported by Mrs. Federica Mogherini, EU Commissioner Johannes Hahn, US Security Adviser, John Bolton and others. Concerning the North of Kosovo, Chancellor Merkel suggested a special status

³⁴⁴ Ibid.

³⁴⁵ Andrew Gray, “Angela Merkel: No Balkan border changes.” *Politico*, August 13, 2018, <https://www.politico.eu/article/angela-merkel-no-balkan-border-changes-kosovo-serbia-vucic-thaci/>.

³⁴⁶ Federica Marsi, “EU backs Serbia-Kosovo land swap idea.” *The National*, August 31, 2018, <https://www.thenational.ae/world/europe/eu-backs-serbia-kosovo-land-swap-idea-1.765540> ; Andrew Rettman, “EU commissioner goes against Merkel on Balkans borders.” *EU Observer*, August 27, 2018, <https://euobserver.com/enlargement/142655>.

³⁴⁷ Mladen Lakic, “Former Bosnia Governors Condemn Kosovo-Serbia Land Swap.” *Balkan Insight*, August 29, 2018, <https://balkaninsight.com/2018/08/29/former-high-representatives-call-eu-to-abandon-plans-on-swapping-territory-08-29-2018/>.

that was anchored in the idea of the Association of Serbian Municipalities, where both sides agreed in Brussels in 2013, but not being implemented yet.³⁴⁸

But the dilemma stands; what will tomorrow happen when Kosovo and Serbia as two mutually recognized states, open the subject of genuine border demarcation issue? Prof. Shpejtim Bulliqi and the Deputy of the Kosovo Parliament, Glauk Konjufca, assume that ‘No other individual or institution except the Kosovo Assembly has the right to discuss the issue of the national borders. Also, Kosovo should not cede the lake of Ujmani (Gazivoda) to Serbia, for the reason that it was built with the funds of the former Socialist Autonomous Province of Kosovo, and that 75% of the surface of this lake belongs to the territory of Kosovo. Among others, Pančić’s Peak, at the Mountains of Kopaonik, is a strategic point in the territory of Kosovo, which Serbia has usurped it and activated the air-radar center at an altitude of 2.017m above sea level, where it controls the entire airspace of Serbia, Kosovo and Albania. Likewise, the case of Karaqeve, which is a border village within Kosovo, Serbian gendarmerie forces have entered it and have made many provocations against the Albanian population. Despite this, the north of Kosovo remains the most fragmented and alarming part, where Serbia hasn’t yet cleaned off its parallel structures. On the contrary, it finances a lot in organized crime and smuggling, only to reduce the stability and territorial integrity of Kosovo’.³⁴⁹ I think that the demarcation agreement with Serbia will be really perturbing, knowing that we had problems with a country that has recognized us such as Montenegro, *let alone* Serbia which still considers Kosovo its inseparable province. Due to the fact that all cadastre and administrative maps of the former Yugoslavia are in the possession of Serbian archives, it will be hard enough to negotiate with compromise and without incident.

³⁴⁸ “Në Berlin >varroset< ideja e shkëmbimit të territoreve – Merkel propozon status të veçantë për veriun e Kosovës,” *Telegrafi*, April 17, 2019, accessed July 21, 2019, <https://telegrafi.com/der-standard-ne-berlin-varroset-ideja-e-shkembimit-te-territoreve-merkel-proponon-status-te-vecante-per-veriun-e-kosoves/>.

³⁴⁹ Glauk Konjufca, “Nje vit nga demarkacioni me Malin e Zi,” *Express intervista KTV*, (Youtube, March 21, 2019), 19:10 min., <https://www.youtube.com/watch?v=hfy52edY8lo>. ; “Maja e Pançiqit pritët të jetë problematike gjatë shënjimit të kufirit me Serbinë,” *Aktivpress*, <https://aktivpress.com/maja-e-panciqit-pritet-te-jete-problematike-gjate-shenjimit-te-kufirit-me-serbine/>.

In addition, I would also like to express my opinion about this ‘*taboo*’ issue if I could call it. The question of territorial exchange is indeed a sensitive topic that has affected the entire public within Kosovo and beyond. After all the wars of the former Yugoslavia, and after all that sacrifice to bring peace, it would be really nonsensical to talk about territorial exchange in the ‘negotiating table’ where people would suffer in the most tragic form.

Admittedly, all the countries that emerged from the ruins of the former Yugoslavia went through the route of marking the state borders. But one thing needs to be clarified, that Kosovo is the only one country that has been required to demarcate its borders in exchange for visa liberalisation. So, if we take the case of Slovenia and Croatia, the demarcation process between these two countries lasted for more than 25 years, and is still pending at the International Court of Arbitration. But the European Union never sought them to conclude the demarcation, as an exchange for visa liberalization. Today, both Slovenia and Croatia are part of the EU. The same border problems face Bosnia and Hercegovina, Montenegro, Serbia etc. However, they move freely in the Schengen zone, while Kosovo is still isolated from the visa regime. What a surprise that Mrs. Mogherini alongside with Commissioner Hahn, promised that as soon as Kosovo ratifies the border agreement with Montenegro, would immediately gain the status of visa liberalization. It passed more than a year since the Parliament of Kosovo ratified the border agreement with Montenegro, and the citizens of Kosovo disappointed, still waiting for a green light of the EU. I think, this is an EU game against Kosovo that even after the demarcation; visas will not be taken away until 2020, whereas Serbia and Montenegro will not join the EU by 2025. Just like the former European Commission President, Jean-Claude Juncker said: Kosovo cannot be a part of the European family unless carries out all the talks with Serbia.³⁵⁰

Opening of talks on the concept of ‘territorial swap’ based on ethnicity is nothing other than opening of the *Pandora Box*. This affinity would encourage the Albanians of Macedonia and Montenegro to join Albania, Republika Srpska with Serbia

³⁵⁰ “Juncker: No chance for membership of Serbia and Kosovo without solving the dispute,” *European Western Balkans*, June 12, 2019, accessed July 21, 2019, <https://europeanwesternbalkans.com/2019/06/12/juncker-no-chance-for-membership-of-serbia-and-kosovo-without-solving-the-dispute/>.

and the Croats of BiH with Croatia. Therefore, this would be a big chaos that would lead to a new inter-ethnic war in the Western Balkans. Also, the idea of two-party agreement on the border correction could make sense only if Serbia recognizes Kosovo in the borders it has today. I am afraid that this could also be a dangerous Serbian game supported by Russia, since Putin after not succeeding its coup d'état attempt in Montenegro and Macedonia, could accomplish profitable assets separating North of Mitrovica from Kosovo and giving it to Serbia.



5. CONCLUSION

Throughout the history, borders and territories have been the biggest cause in spurring the bloodiest wars. But peaceful dialogue and the neglect of the personal interests of individuals, cities, provinces and states, have made borders and frontiers a symbol of '*crossing bridges*' instead of '*dividing walls*'. The first instigators establishing border making process were famous: Lord Curzon, Henry McMahon, Col. Thomas Holdich and Charles Bungay Fawcett. They hold great deserve in identifying the differences between delimitation and demarcation.

Borders are one of the most precious components in determining the peace among nations. But, when there is no peace between the contested countries, then, International Courts are placed to resolve the dispute by the most legitimate way possible. Major International Courts in settlement of disputes between countries are; Permanent Court of International Justice (PCIJ), International Court of Justice (ICJ) and International Arbitral Tribunals (IAT). When states fall in to the disputes about their borders, they call the ICJ, and confirm to be judged in harmony with the principles of international law.

Mostly, territorial and boundary disputes in the world happens for these reasons; territorial extension and gain of power, natural resources, political and economic reasons, supply *entrée* to the sea or shared terrestrial resources, strategic intentions etc. The most fundamental rule of settling the territorial disputes is; that they should be done in accordance with international law, leaders's ambition to solve the dispute, breeding mutual confidence among political leaders, secret negotiations, taking care in setting the negotiation stage, legal consistency and so on.

The former Yugoslavia's administrative borders, date before coming to power of Communist leader Josip Broz Tito. So, the first foundations of these borders, have been laid since the time of the Kingdom of Serbs, Croats and Slovenes, which were not based on ethnic criteria. With the formation of the Second Yugoslavia (1945), Tito continued the same pace, that the borders of the republics not to be defined on ethnic grounds, but rather on economic, social and provincial ones. For Tito, the borders of the former Yugoslav republics were never seen as truly republican borders. On the contrary,

they have played the role of administrative boundaries where the main aim was to merge the various Yugoslav nationalities under the famous socialist umbrella called 'Brotherhood and Unity'. Indeed, until Tito's death, in the former Yugoslavia there were no incidents of ethnic divisions. But this appears shortly after his death.

With the start of the Yugoslav wars, the European Community established the Badinter Commission, which called for the immediate cessation of ethnic wars, and the delimitation of republican borders. The Badinter Commission in its two first *Opinions* stated that any community emanating from the Federal state of the former Yugoslavia, has the right to self-determination, but the administrative boundaries (now changed into international ones) will not be altered and will continue as they were during the Constitutions of the former Yugoslavia. So, this Commission intended to eliminate new wars on ethnic grounds, and to put into place the principles of international law where the most important was *uti possidetis*. The Badinter Commission made it clear to all republics that borders will not be altered unless they themselves agree to alter them.

The Marti Ahtisaari's plan defined the territory of Kosovo according to the Constitution of SFRY which stood on 31 December 1988. The Ahtisaari Plan, evidently urges all borders between Kosovo and its neighbors should be completed respecting the Constitutions of the former Yugoslavia (1974-1988) and the Badinter Commission.

When it comes to our first research question, the border demarcation between Kosovo and Macedonia did not face a big challenge, except that which was previously demarcated between Serbia and FYRM in 2001, whereby Belgrade and Skopje by mistake violated the territory of Kosovo, giving to Macedonia 2,500/ha of land. Therefore, the principles of international law were not applied and Kosovo's territory was violated. Whatsoever, this was resolved in 2009, one year after Macedonia recognized Kosovo as a state. With this new demarcation, Kosovo reclaims lost land, and the problem was resolved in accordance with international law on border measurements.

Much more difficult was the border demarcation between Kosovo and Montenegro, signed by both parties on August 26, 2015, in Austria. Current President of

Kosovo, Hashim Thaçi, at that time Minister of Foreign Affairs, announced that the agreement was in full conformity with the SFRY 1974 Constitution, the document of Ahtisaari, and the Constitution of the Republic of Kosovo. The authorities of the border Commission led by Prof. Murat Meha, have secured the Government of Kosovo with its citizens, that the border line is precise, and employing the principle of transparency. The Commission also alluded that the border line with Montenegro is in full harmony with the border line under the 1974 Constitution, the Ahtisaari Plan and the Constitution of Kosovo. Notwithstanding, according to the arguments of the two experts Prof. Shpejtim Bulliqi and Prof. Florim Isufi; the demarcation project led by Murat Meha, is in wrong direction and losing Kosovo 8,200/ha of land. My evidences that Kosovo lost its territory are based on the findings of the two aforementioned experts. So, in order the delimitation and demarcation to be valid, a particular state must rely on inter-state or international treaties, to rely on natural geographic boundaries, on *uti possidetis*, effective control and other international law principles. The Commission of Kosovo neglected all of this. Furthermore, the border demarcation between Kosovo and Montenegro, directed by Prof. Murat Meha, is the first case relied only on the cadaster situation. And, that the basis for this cadastral map that Montenegro has offered to Kosovo's Government Commission, is the Banovina of Zeta dating back in 1930s, which belongs to the Kingdom of SCS. These maps should not be taken into account because are out-of-date and seriously violate the 1974 Constitution of the SFRY, Marti Ahtisaari Plan, and the Constitution of the Republic of Kosovo. The maps of 1945 and 1970s, indicates that the disputed areas of Çakorri and Kulla e Zhlebit every time belonged to Kosovo. These are arguments demonstrated by original maps of the SFRY archives.

Afterwards, Montenegro after the Demarcation Commission of Prof. Murat Meha has grown, while Kosovo shrinks. In addition to this, Montenegro historically had 13,812 km², but after the signing of the agreement it grew to 13,888.44 km². Also, Montenegro used to apply in to all international organizations (UN, EU, NATO, etc) with an area of 13,812 km². Hence, with the ratification of this agreement, Kosovo will lose territory to some 70-80 km². Everywhere in the world, when demarcating inter-state boundaries, topographic and administrative maps are those which should be adopted, and never the cadastral maps. And if cadastral maps collide with topographic

and administrative maps, then, cadastral ones should be eliminated. Yet, cadastral maps are not criteria of international law. In *inter alia* I might give some other reasons Kosovo lost its territory: Neglecting the topographic and administrative maps, and relying only on the cadastral ones; Leaving out the principles of international law, especially the principle of *uti possidetis*; Border lines set up by the Commission of Meha, does not correspond to the mountain slopes and drainage water-lines; No scientific seriousness of all actors (individual and institutional), who in their publications misrepresented the surface of Kosovo, never based on its verification; And the last one, it might have been any secret agreement between Serbia and Montenegro, between 1981-1999 on behalf of Kosovo damage.

Again, the State Demarcation with Montenegro, from the very beginning has been defective and with erroneous approach, because the Commission has contrived a new border that has seriously damaged the territory of Kosovo. Even the villagers of that disputed area have proved that Çakorri, Bjelluha and Kulla e Zhlebit have been part of Kosovo attached to the municipality of Peja for at least hundred years. With full confidence and arguments, the peasants of Rugova admit that all grazing lands, real estates, huts and towers in those mountains are theirs. Yet, from the historical aspect, the investments in infrastructure, maintenance and asphaltting of roads to these areas have been made by the Government of Kosovo.

Concerning our second research question, the ‘territorial exchange’ between Kosovo and Serbia, is another serious matter, that if endorsed, it could bring major consequences not only for Kosovo and Serbia, but for the whole countries in the region. Although this topic in the beginning was backed by the USA and some EU member states, realizing the negative results that could bring, it was cancelled at the Summit of the Western Balkans States, held in Berlin, on 29 April 2019. German Chancellor Angela Merkel has made it clear to all leaders that: “The issue of territorial exchange must be buried once and for all here in Berlin.” The exchange of territories is against the Constitution of the Republic of Kosovo, the Ahtisaari Package, the Badinter Commission and the 1974 Constitution of the Former Yugoslavia. In my opinion, the ‘exchange of territories’ could have been a dangerous game of Serbia in cooperation with Russia. Because the north of Kosovo possesses large reserves of natural resources including the

Trepça mine and the Lake of Ujmani (*Gazivoda*). The division and exchange of territories on an ethnic basis is a very dangerous issue for the entire Western Balkans. This has been acknowledged by international experts as well. If the Presevo Valley would attach to Kosovo and the North of Kosovo to Serbia, then the Albanians of Macedonia and Montenegro would also seek union with Albania. The Republika Srpska of Bosnia and Herzegovina would seek union with Serbia as well as Bosnian Croats with Croatia. This would result in new conflicts where the situation would also lead to new inter-ethnic wars.



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