KOSOVO, A “SECESSION” OF ERRORS

Javier Rupérez, Spanish Ambassador

The unilateral declaration of independence of Kosovo is clearly contrary to the Constitution and laws of Serbia, one of the member states of the United Nations. The foreign states that recognise said independence will not only have endorsed a manifestation contrary to the domestic law and will of a member state of the United Nations, they will also have placed the respect due to certain basic rules of International Law in serious doubt. These violations of International Law and its consequences are, among others, the following.
The “Declaration on principles of International Law concerning friendly relations and co-operation among States in accordance with the charter of the United Nations”, approved by the General Assembly on 24 October 1970 (Resolution 2625/XXV), states in its Preamble that “any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter”. And, under the principle of “equal rights and self-determination of peoples”, the Declaration emphatically proclaims that “every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country”.

Under the principle of “sovereign equality of the States”, the Declaration establishes that “States are juridically equal; each State enjoys the rights inherent in full sovereignty; each State has the duty to respect the personality of other States; the territorial integrity and political independence of the State are inviolable”.

“Helsinki Act: ‘The participating States regard as inviolable all one another’s frontiers as well as the frontiers of all States in Europe and therefore they will refrain now and in the future from assaulting these frontiers’”

The Final Act of Helsinki, signed in 1975 by the Heads of State and Government of the States that had participated in the First Session of the Conference on Security and Cooperation in Europe (CSCE, now OSCE), affirms in the First of the “Principles Guiding Relations between Participating States” – that is, the Principle relating to “Sovereign equality, respect for the rights inherent in sovereignty” – that “the participating States will respect each other’s sovereign equality and individuality as well as all the rights inherent in and encompassed by its sovereignty, including in particular the right of every State to juridical equality, to territorial integrity and to freedom and political independence”.

Under the Third of the Principles – “Inviolability of frontiers” –, the Act proclaims that “the participating States regard as inviolable all one another’s frontiers as well as the frontiers of all States in Europe and therefore they will refrain now and in the future from assaulting these frontiers”.

The Fourth Principle – “Territorial integrity of States” – demands that: “the participating States will respect the territorial integrity of each of the participating States. Accordingly, they will refrain from any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating State, and in particular from any such action constituting a threat or use of force...”.

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And the Eighth Principle – “Equal rights and self-determination of peoples” – instructs that: “the participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States”.

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The aim of NATO’s military intervention against the Yugoslavia of Milosevic, between March and June 1999, was to put a stop to the humanitarian crisis caused by the ethnic cleansing conducted against the Kosovar Albanians. The political and military forces behind the intervention – carried out without the authorization of the Security Council – emphatically stressed on various occasions that the objective of the intervention was not the declaration of an independent Kosovo. It is to be assumed that, had this not been the case, some of the countries that did intervene in the military actions, Spain among them, would not have done so.

At the end of the warlike activity the Security Council recovered its capacity to act and on 10 June 1999 adopted Resolution 1244, which placed the territory under a regime of international administration and included a clause reaffirming “the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2”.

The Resolution states that one of the main responsibilities of the international civil presence is to promote “the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords”. Annexes 1 and 2 of the Resolution refer on various occasions to the need to respect “the principles of the sovereignty and territorial integrity of the Federal Republic of Yugoslavia” within which the autonomy of Kosovo would have to be configured. The Rambouillet Agreement of 23 February 1999 for “Peace and Self-Government in Kosovo” was proposed by NATO in order to find a peaceful solution to the conflict that would avoid military action. The Kosovo War started when Yugoslavia refused to sign it.
“Resolution 1244, which places the territory under a regime of international administration, reaffirms “the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2”

The Agreement, later approved by the Security Council, recalls the International Community’s commitment to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the First Article of the Principles states that “National [Kosovar] communities shall not use their additional rights to endanger... the sovereignty and territorial integrity of the Federal Republic of Yugoslavia”. The First Article of the Constitution contained in the Agreement lists the areas over which the Federal Republic of Yugoslavia retains competence, including territorial integrity, the common market within the Federation, monetary policy, defence, foreign policy, customs, federal taxation, federal elections, etc.

The States and International Organisations that recognise the independence of Kosovo will be contributing to the setting of a terrible international precedent, namely, that the territorial integrity of a member state of the United Nations can be altered as a result of the unilateral and minority declarations of a part of the population, capriciously accepted by a certain number of countries and against the clearly expressed will of the Government which nationally and internationally represents the country that has suffered the imposed partition, in this case Serbia, the successor to the Federal Republic of Yugoslavia.

Statements issued by the speakers of the European Union in an attempt to downplay the precedent set by Kosovo are completely lacking in credibility and reveal the moral and political failings of the wrongly-named foreign and security policy of the Union, which, when all is said and done, remains an instrument at the service of the leading nations.

On the contrary, those who believe that a precedent has been set and that it favours their interests, have wasted little time in capitalising on the results of this faux pas. The first of these is Russia, which ever since the break up of the Soviet Union has done all in its power to prevent the territorial integrity of Georgia and Moldova – supporting secessionist movements in the regions of Abkhazia and South Ossetia in the former and Transnistria in the latter – and which now has an objective excuse to continue with this policy. In addition to these they are now supporting Armenian secessionists in the Azeri region of Nagorno Karabakh.
“The States and International Organisations that recognise the independence of Kosovo will be contributing to the setting of a terrible international precedent, namely, that the territorial integrity of a member state of the United Nations can be altered as a result of unilateral and minority declarations of a part of the population, capriciously accepted by a certain number of countries”

But the fact that Moscow is supporting Belgrade’s anti-secessionist stance for reasons of personal interest – reaffirmation of Centre-European influence, Pan-Slavism, orthodox religious community – cannot be used as an excuse to endorse the secession of Kosovo. Nor can it be used as an excuse to ignore the fact that the precedent does exist, however heavily it may weigh on the European Union, and that the Russians, among others, are more than prepared to use it to their advantage in the pursuit of their own ends. Who can now deny the right to independence of pro-Russian minorities in Abkhazia, South Ossetia and Transnistria? And on what basis? Won’t Moscow now be tempted to take advantage of this precedent and incite the Russian-speaking population of the Baltic Republics? It has already done so on far lesser pretexts.

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The countries that believe that such a precedent does exist and that it is detrimental to their interests – Spain, Bulgaria, Romania, Slovakia, Cyprus – have rightly announced that they will not recognise the independent Kosovo on grounds of its violation of international law, but appear extremely reluctant to explain their fears and convictions. Inexplicably, the massive number of countries that have recognised the independent Kosovo, headed by the United Kingdom, as ever the sad master of partitions, and the United States, for circumstantial and incomprehensible reasons, and have pushed the group of discontented countries into a corner.

Muslim solidarity prevailed in the Organisation of The Islamic Conference when faced with the possibility of acquiring a new member in the centre of Europe. Even Turkey, who could have much to fear from the creation of an independent Kurdistan, has chosen to jump on the bandwagon. If the small group of countries that are officially discontented – because there are clearly many more that do not dare reveal their names – does not stand firm in its rejection, international law, which lost its innocence many centuries ago, will have finally broken down beyond repair.
“What guarantees do we have that the same abdication of the need to follow these principles will not also occur in the future before Basque nationalists or Catalans of similar tendencies?”

Those that claim that the independence of Kosovo closes the circle of violence in the Balkans are clearly displaying their naivety. The Serbs in Kosovo will waste no time in calling for the reunification of the territory they live in with the Serbian fatherland. The Serbs in Bosnia may also be tempted. The Croats in Bosnia, meanwhile, will feel the call of Zagreb. The Albanians in Montenegro and in Macedonia will once more call for their independence, or else join with the Kosovars and Tirana to call for the reunification of the never abandoned design of the Greater Albania.

The independence of Kosovo and the decision of those that support it are destined to be remembered as a giant step backward in the history of European societies, whose greatest achievement had been the creation of multi-ethnic, secular and tolerant societies. The situation we currently have before us is the complete opposite.

“Moratinos has had the rather unfortunate idea of combining the announcement of our position with a critical reminder of the presence of Spanish troops in Iraq after the military intervention”

The part of the international community that intervened so decisively to prevent Milosevic from forcibly removing all Albanians from Kosovo has shown itself unable to fulfil its promises and require the beneficiaries of the intervention to adhere to the principles that govern the domestic and international relations between States.

What guarantees do we have that the same abdication of these principles will not also occur in the future before Basque nationalists or Catalans of similar tendencies, or the Hungarians of Transylvania in Romania, or those of Vojvodina in Serbia, or the Russians in Latvia, or the Turks in Cyprus, or the Sardinians in Sardinia, Italy, or the Corsicans in Corsica, France, or the Flemish in Belgium? Who in the European Union has been assigned the task of deciding the good and bad precedents and what guarantees do they have that their authority will be respected? Who is ultimately responsible for the parthenogenic madness of populating Europe with state units of doubtful validity, and whose first governmental action will inevitably be to come begging to the international community for the means of subsistence they lack and which they will presumably never be capable of providing themselves?
“Neither London nor Paris nor Berlin have listened to our claims – assuming they were issued at the right time and with the insistence the matter warrants – and the absence of any discourse with Washington – in the past so attentive to our concerns and so willing to take on board our interests – explains why the decision adopted by the U.S. is the worst that Madrid could have expected.”

At the very end of the day, the Spanish government found and adopted the position that corresponds to our interests and principles. It is a shame that they left it so late because an early announcement of our intentions could have served to show the Spanish people that the government had something to say in the matter – during the many months in which this unfortunate outcome was unfolding it appeared as if the Ministry of Foreign Affairs had slunk into the shadows – and could have shown our partners and allies that Spain was not to be trifled with in this matter. But neither London nor Paris nor Berlin have listened to our claims – assuming they were issued at the right time and with the insistence the matter warrants – and the absence of any discourse with Washington – in the past so attentive to our concerns and so willing to take on board our interests – explains why the decision adopted by the U.S. is the worst that Madrid could have expected.

“The Spanish socialist Government should now announce the withdrawal from Kosovo of the Spanish troops in the territory and the withdrawal of all assistance from the illegally created State apart from the strictly humanitarian”

And although the saying that it is “better late than never” holds true, Miguel Ángel Moratinos, the Spanish Minister of Foreign Affairs, has had the rather unfortunate idea of combining the announcement of our position with a critical reminder of the presence of Spanish troops in Iraq after the military intervention. He has even said that the Government, as ever in defence of international law, is now doing what it previously did in defence of said law, thereby implying that the recognition of an independent Kosovo is as illegal as our presence at the time on the banks of the Tigris.

Although political licence may be understandable at election time, precision and rigour should never be expendable. The Spanish troops that were dispatched to Iraq in 2003 did so pursuant to and in response to Resolution 1483 adopted by the Security Council on 22 May of that year. The First Article of the Resolution appealed to “Member States and concerned organizations to assist the people of Iraq in their efforts to reform their institutions and rebuild their country, and to contribute to conditions of stability and security in Iraq in accordance with this resolution”. 
The Spanish socialist Government was within its rights to withdraw the troops, but had no right to raise confusion about the legitimacy of their presence. And instead of once more using the manoeuvre of confusion, the Spanish socialist Government should act in accordance with its impeccable judgement on the illegality of Kosovar independence and announce the withdrawal from Kosovo of all military troops and Spanish police forces deployed in the territory and the withdrawal of all assistance from the illegally created State apart from the strictly humanitarian. Because otherwise Spain would be assisting a fraudulent State, and that is indeed illegal.

“If Zapatero were to win on 9 March, how long would it take for the Spanish socialist Government to recognise the independence of Kosovo? The bets are on”

Naturally, bearing in mind who we are dealing with, a radical doubt of methodological character springs to mind: would the Spanish socialist Government have announced its intention not to recognise the independence of Kosovo if there had been no general elections scheduled for 9 March 2008? And a final doubt: if Rodríguez Zapatero were to prolong his stay in La Moncloa, how long would it take for the Spanish socialist Government to recognise the independence of Kosovo? The bets are on.