

Dren Doli

The International Element, Statehood and Democratic Nation-building

Exploring the Role of the EU and
International Community in Kosovo's
State-formation and State-building

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List of Abbreviations

AD	Anno Domini
AJIL	American Journal of International Law
AO	Advisory Opinion
App.	Application
Art.	Article
ASIL	American Society of International Law
BBC	British Broadcasting Corporation
BC	Before Christ
BYIL	British Yearbook of International Law
cf.	Compare
CFSP	Common Foreign and Security Policy
ch.	Chapter
Chinese JIL	Chinese Journal of International Law
CIA	Central Intelligence Agency
CIS	Commonwealth of Independent States
CoE	Council of Europe
e.g.	Exempli gratia
EC	European Community
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECHR	European Court of Human Rights
ed.	Edition/editor
eds.	Editors
EEAS	European External Action Service
EJIL	European Journal of International Law
ESDP	European Security and Defense Policy
et al.	Et alia
etc	Et cetera
EU HR	High Representative of the European Union for Foreign Affairs and Security Policy
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo

EUSR	European Union Special Representative
ff.	And following pages
FRY	Federal Republic of Yugoslavia
i.e.	Id est
Ibid.	Ibidem
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICLQ	International and Comparative Law Quarterly
ICO	International Civilian Office
ICR	International Civilian Representative
ICTY	International Criminal Tribunal for the former Yugoslavia
ILM	International Legal Materials
ILR	International Law Reports
INTERFET	International Force East Timor
ITU	International Telecommunication Union
KFOR	NATO Kosovo Force
KLA	Kosovo Liberation Army
KP	Kosovo Police
KRSJIA	Agreement between the Kingdom of the Netherlands and the Republic of Kosovo concerning the Hosting of the Kosovo Relocated Specialist Judicial Institution in the Netherlands
LDK	Lidhja Demokratike e Kosovës
LNOJ	League of Nations Official Journal
LSC	Law on Specialist Chambers
MFA	Ministry of Foreign Affairs
MPs	Members of Parliament
NATO	North Atlantic Treaty Organization
no./No.	Number
Nos.	Numbers
OSCE	Organization for Security and Co-operation in Europe
p.	Page
para./paras.	Paragraph/paragraphs
PCIJ	Permanent Court of International Justice
PISG	Provisional Institutions of Self-Government
pp.	Pages
REG	Regulation
Res.	Resolution
SAA	Stabilization and Association Agreement
SC	Security Council
SCSL	Special Court for Sierra Leone
Sec.	Section
Ser.	Series
SFRY	Socialist Federal Republic of Yugoslavia
SITF	Special Investigative Task Force

SRS	Special Representative of the Secretary General
TFEU	Treaty on the Functioning of the European Union
TRNC	Turkish Republic of Northern Cyprus
UÇK	Ushtria Çlirimtare e Kosovës
UDI	Unilateral Declaration of Independence
UK	United Kingdom
UN	United Nations
UNAMET	United Nations Mission in East Timor
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFICYP	United Nations Force in Cyprus
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNMIK	United Nations Interim Administration Mission in Kosovo
UNOMIG	United Nations Observer Mission in Georgia
UNPO	Unrepresented Nations and Peoples Organization
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
UNTAET	United Nations Transitional Administration in East Timor
UNTS	United Nations Treaty Series
UP	University Press
US/U.S.	United States
v.	Versus
VCLT	Vienna Convention on the Law of Treaties
VCLTSIO	Vienna Convention on the Law of Treaties between States and International Organizations
Vol.	Volume
ZaöRV	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht

Part I
Myths, Realities and Perspectives

Chapter 1

State Formation, State-Building and International Element



1.1 Introduction

Emergence of new states, throughout history, tends to be explained by rational interpretation of existing terms, definitions and rules of international law. Creation of states emerging out of exemptions (to the prevailing bulk of rules) are either embraced and therefore legitimized or habitually denied. New states created as a result of unilateral secession associated with widespread international support but questioned by parent states remain erratic. These atypical practices have prompted debates about the limits of international law, new borders of illegality and, perhaps, necessity for development of international law. Explaining the emergence of the state of Kosovo is thus an inquiry of both rational interpretations of international law, exemptions and international legal processes that shaped Kosovo's quest to statehood.

Therefore, in this book, it is noted that state formation and state-building have been two inherently connected issues surrounding the process of state creation throughout history. Their relevance has grown in the last decades, as the emergence of new states such as Kosovo has topped the agenda of the international community. This phenomenon has been the subject of numerous works of late, which have considered the role of the international community in supporting state-building and establishment of democratic institutions.¹ In principle, state formation and state-building are naturally a bottom-up phenomenon. Most states in the world have undergone these two developments under a strong local ownership, or at least under a locally managed process. The international element in these processes was either weak or too narrow to be seen as satisfactorily relevant for consideration. There are however very few examples marked by a profound international involvement in the

¹Sutter (2009), pp. 1–13; D'Aspremont (2012), p. 61 et seq; Heupel (2009), pp. 57–73; Glasius and Kostovicova (2009), pp. 127–153; Raue (2009), pp. 155–177; Weller and Wolff (2006), pp. 2–13; Crampton (2012), pp. 159–176; Wild (2012), pp. 261–275; Hehir (2007), pp. 125–141.

process of state formation and state-building.² The case of Kosovo is symbolic of those traits. It, therefore, falls well within the scope of these examples where the international element was deeply entrenched in the process of state formation and state-building.³

Kosovo remains a quintessential example of a complex process of state formation and state-building wherein the international element has played an important role not only in the design of the process but also the expression of that design. This book, therefore, is generally concerned with the law and practice of statehood, and focuses on the role of the “international element” in the creation of the State of Kosovo. Its essential aim is not to acknowledge whether international law recognizes such practice, but rather to elucidate the nature and scope of the involvement of the ‘international element’ into the Kosovo process of state formation and state-building in the purview of contestations and strategies to overcome them. But, to this end, this book examines the international process in Kosovo’s state formation and state-building primarily from a legal perspective, while exploring relevant policy issues if they are deemed relevant to respond to the legal question. For the purpose of the analysis pursued in this work, the ‘international element’ has the following meaning: the involvement of international actors in any form and by any means in the process of state formation and state-building in Kosovo—since the humanitarian intervention to the moments of writing this book—with a focus on developments, instruments and/or legal scenarios that prove to have left a legacy.

One should therefore note that the process of state formation and state-building in Kosovo has been supported, conditioned and managed by several international actors. There is a bulk of literature supporting this claim in general terms. To be more specific, the United Nations General Assembly, the five permanent members of the Security Council, the International Court of Justice, the European Union, the OSCE members have altogether played an important role in the process of state formation and state-building in Kosovo. Lacking local ownership can be observed as shaping the major events leading to Kosovo’s state formation under international law. Nevertheless, this process appeared to have developed itself through a rather undefined chronology that should be studied under a legal approach.

²International Community has continuously played a role in shaping statehood claims and managing creation of new states, as it is clearly shown through the Vienna Congress (1815), the creation of new states as a result of decolonization, or even by “managing” the dissolution of former federal entities such as Yugoslavia. For more see Crawford (2007), pp. 503–545. However the role of international community was either isolated or concealed compared with the dimension and profoundness of its involvement in the case of Kosovo (as it is clearly elucidated in the next chapters of the book).

³For example Ernst acknowledges that: ‘State-building in Kosovo is a negotiation process between “internationals” and “locals.” Its logic is more political than technical, the outcome contingent on the intentions of the international actors. The goals of “internationals” and “locals” differ, which results in fuzzy governance. In time the balance of power tilts toward the local actors. With the start of the status process, the relation between internationals and locals is depoliticized. The “peace-building” process excludes the warring parties and imposes a predefined settlement’ See Ernst (2011), abstract.

Considering specific and special patterns on how Kosovo's quest to statehood has been shaped and evolved, the book tackles the international process with regards to Kosovo's state formation and state-building primarily from a legal perspective, giving a special emphasis to the role of the EU throughout the course of these developments—especially in the aftermath of the declaration of independence. Although there is solid literature devoted to this topic from a political science and policy perspective, the literature that tackles this issue primarily from a legal perspective, and with an emphasis on the role of the EU after 2008, is insufficient and has not adequately explored the dimensions of EU's involvement in relation to Kosovo.

One must recall that the process leading to Kosovo's independence and afterwards its state-building, both internally and externally, has been subject to legal and political dissensus. The aim of this book is therefore to look into the key developments demonstrating the role of the international element in Kosovo's state formation and state-building primarily from the lens of legal arguments modeled to oppose contestations around Kosovo's claim to statehood. It would not be original if the book provided merely a descriptive elaboration of the complete process. To the contrary, the original aspect of this book is that it provides a novel and original assessment of the developments surrounding Kosovo's state formation and state-building process by relying on the grounds of the existing literature and providing a legal perspective to the analysis relating to the role of the 'international element'.

As both Kosovo's state formation and state-building have been managed through a multitude of stakeholders, the timing, planning and engagement of these actors has had a major impact on Kosovo's developments towards statehood. Less influential developments and initiatives have not received sufficient focus, and, while not underestimating their relevance, the book aims to consider the most seminal processes and initiatives. It is not the intention of this book to provide an exhaustive perspective on the role of the international element in Kosovo's state formation and state-building process. Rather, the aim is to provide a legal analysis in the most tenacious developments that shaped the final outcome of Kosovo's statehood.

On this basis, one must recall that Kosovo endured several implications from within and outside, each of them interconnected in one way or another and interdependent in their relationship. To this end, the book explores both notions, namely state formation and state-building in Kosovo. Though inherently interconnected, and in a few cases, referring to the same core issues, I use the term state formation to refer to the emergence of Kosovo (as a state) under international law and the term state-building to refer to the process of institution building to ensure that Kosovo is able to fulfill the criteria of *statehood* and to stand as a sovereign entity according to international law and state practice. In this regard, this book strikes a balance⁴

⁴The book is based on the author's interpretation of developments and events leading to Kosovo's independence and state-building. As a citizen of the Republic of Kosovo, and considering the need to respect the principle of objective and neutral interpretation of these developments, I would like to express that in certain perspectives I follow a subjective line of reasoning. I make the two subjective points overt hereby in order to ensure that the reader is kept informed of what appears in the remaining chapters. I commit to be absolutely objective in the rest of interpretations, and rely heavily on literature to make sure this is the case. The two subjective positions I follow are the

between these two concepts, and emphasizes the EU's role in state-building and the depth of this role after 2008.

1.2 The Main Objectives and the Structure of the Book

The book covers two interconnected and interdependent aspects of Kosovo's state: the aspect of Kosovo's state formation and that of Kosovo's state-building, both from a legal perspective.⁵ The objectives of this book are simple. It explains state

following: (a) I support an independent state of Kosovo and I trust there is a legitimacy in domestic and international terms for it to be so, and, (b) I support the idea of secession under international law under the conditions of systemic violations of international human rights law and international humanitarian law. The idea of the preliminary notice on this issue is to make the flow of the argument transparent, and, as most authors do, ensure that the scientific contribution of this book is accurate and preliminarily noted to the reader.

⁵The book is primarily based on a positivist methodologic interpretation of law relating to the developments inside and outside Kosovo, considering the normative aspect as rather isolated from its political and social features. The use of positivist method is primarily noted in those parts where the author elucidates the legal texts and court decisions that played a major role in the process of Kosovo's state formation and state-building. It was in several cases accompanied with a doctrinal analysis over those positivist interpretations relying on relevant literature and landmark case-law interpretations. Besides the positivist methodology, the book uses descriptive methods to elaborate the flow of developments especially in relation to the historical parts of the book (part I) and those in the chapters relating to state-building in Kosovo (part III). The descriptive approach has helped this book by elaborating upon the ways developments flowed and the nature of position of the parties. Historical developments have been primarily considered from this position. In very limited scenarios, the book uses a prescriptive approach in providing recommendations for improving the situation in Kosovo, for both local and international stakeholders. The book uses several sources to analyze the developments and legal position of Kosovo under international law. First and foremost, UNSC resolutions concerning Kosovo's status are pursued in a chronological order. UNSC documents, including Secretary General Reports on Kosovo and other cases provide for the majority of this legal analysis. The UN documents are given a primary position in this analysis. In this regard, ICJ opinions and landmark cases have also been extensively used to interpret developments in relation to Kosovo, and to determine an understanding of several events that shaped Kosovo's position under international law, as well as others. Except for the ICJ, the book also relies on the legal texts and documents of the EU, considering that it often acted as an UN intermediary on Kosovar affairs, and, later on, as the key specialized organization internationally authorized to deal with the Kosovo state-building process. The decisions of the European Court of Justice have also been considered in some cases, with a view of interpreting the meaning of EU laws on several treaty bases whereby the EU framed its engagement on Kosovo. Legal texts and documents from Kosovar institutions and other third states have been used too, including interpretations provided by Kosovo's Constitutional Court and EULEX judges sitting on Kosovo's courts. Other texts relevant to Kosovo's regional context, such as documents and conventions from the Council of Europe, and European Court of Human Rights standards on the broader European human rights law architecture have been frequently cited in the book. The book also relied on a bulk of rich literature, comprising of books, journal articles and other policy articles relating to the international process on Kosovo. While there is a solid literature on Kosovo, this primarily tackles Kosovo's developments from 1998 to 2008. There is little, or far less, literature elaborating upon Kosovo's development in international law after 2008. Aspects of the Kosovo-Serbia dialogue, or the EU's role in Kosovo's

formation and state-building primarily through the lens of international law. The book covers only those parts of state formation and state-building where the international element is predominantly evident and seminal in the process. And finally, this book covers those processes in which international element is influential in shaping the process of state-building in Kosovo. As an example, the book covers the ICJ Advisory Opinion on Kosovo's Declaration of Independence more thoroughly compared to the role of ICO under the Ahtisaari Plan. The book argues that the ICJ Opinion has a far deeper significance and universal impact on Kosovo's statehood compared to the role of the ICO which was more unilateral and domestic in the process of Kosovo's state formation and later state-building.

The book aims to respond to this main question: What legal significance does the "international element" bear in Kosovo's contested and unilateral state formation, with a peculiar outlook on the EU's engagement in Kosovo's post-2008 state-building process and the disputes that followed? As one could see, the main question poses two directions for examination: namely, the state emergence and state-building. It focuses on the EU's role after Kosovo's independence, considering that it takes over the burden to run some of Kosovo's essential sovereign attitudes in internal and external affairs.

However, there are several intermediary issues arising in this background. What were the narratives that framed Kosovo's legal position in internal and international law? What were the key legal frameworks under which the state of Kosovo emerged? What was the legal function which the UNSC tasked to its subordinate mission(s) in regards to Kosovo's status settlement? What were the legal foundations on which Kosovo's state emergence relies, and do they play a role in Kosovo's position in international law today? What is the specific legal position of the EU's role in Kosovo? How beneficial it is for Kosovo's legal sovereignty internally and externally? What is the specific legal impact of the EU-induced and managed Kosovo-Serbia dialogue in this relationship, and what significance does it bear for Kosovo's longer term state-building and stability? What place does the EU-engineered special court for Kosovo occupy in Kosovo's internal legal order and international law, and what does it mean for Kosovo's consideration by the EU nowadays? What would be

internal, and external state-building, have only been rarely examined by relevant literature. To this end, the book makes an extensive review of the existing literature, selecting literature on pre-2008 developments in Kosovo on the basis of legal relevance for Kosovo's independence and state-building. The literature covering the post-2008 legal developments has been used quite exhaustively. To this end, the book relies on a large bulk of literature in an attempt to ensure that it takes into consideration a depth of scientific knowledge on the issue. The original contribution of the book on the topic relies profoundly on this ground; it, however, draws upon this on the basis of the author's interpretation and the narrow research question. One must note that, however, most authors have chosen a rather similar pattern of explanation with regards to the meaning of the ICJ Opinion on Kosovo's Declaration of Independence. While there is similarity between all authors on this interpretation, the study aims to depart from that line of interpretation to offer a more nuanced argumentation on the topic. The part concerning Kosovo's state-building post-2008 and the legal consideration of this perspective is of course more novel than the previous part due to the fact that state-building developments in a legal perspective remain rather silent in the current literature.

a fair theoretical conclusion on the legal place that the “international element” occupied in Kosovo’s state formation and state-building process? While several of these questions seem narrow in their legal perspective, the analysis to respond to these questions is definitely based on supporting fields such as policy, politics and security.

The book is organized into three parts. The first and second parts pertain to an analytical perspective elucidating the issues falling under the scope of the research question. The first two parts provide an elaboration based on evidence, as opposed to being prescriptive in nature. The third, thus the final part, is more concluding in nature and offers authors theoretical observation on what one can learn from this process of analysis in a deduced form.

On the basis of these three criteria, the book starts with a historical review of developments that framed the discourse on Kosovo and its entitlement to statehood/nationhood, it describes the process of the international humanitarian intervention in 1999 and the rule of Kosovo under UNMIK—the process which led to the declaration of independence and the impact of state recognitions and the ICJ Opinion on this declaration. This comprises the first part of the book, and is considered from a legal perspective alone, with few empirical observations.

The first part starts with four chapters, one on the historical narratives that framed the legal question for Kosovo, one on the international humanitarian intervention in Kosovo and the aftermath administration of Kosovo under the UNSC 1244 Resolution, and the declaration of independence and the process leading to Kosovo’s state emergence—with the interpretation of the ICJ Opinion as the cornerstone of this debate. The idea of beginning this part with a historical review, which is primarily of legal background, is to ensure that the discourse that framed the question on Kosovo and the following disagreements on its legal status to statehood is further evaluated. It would be unsustainable if legal contestations on the issue of Kosovo are not first given a historical consideration, one which guides the reader to the origins of today’s disagreements both internally and externally. The chapters following the historical part flow in a chronological sequence of developments surrounding Kosovo’s path to and after independence. As one could observe, the first part tackles the aspect of Kosovo’s state formation through the lens of legal contestations concerning it, wherein the position of the ‘international element’ is considered from a more universal perspective.

The second part consists of the developments relating to the state-building process, post-2008, after Kosovo declared its independence. This part tackles more substantially the role of the EU in Kosovo’s state-building efforts, with an emphasis on the most influential development of the Kosovo-Serbia dialogue, the EULEX Mission in Kosovo, and the latest EU-engineered Specialist Court located in the Hague. The second part is considered through the lens of an analysis that is primarily legal, one that insists in deconstructing the legal aspects of the implications that affected Kosovo’s state-building and the role of the EU therein.

The second part covers the EU’s peculiar engagement in Kosovo’s state-building perspective, both internally and externally. It is less universal than the first part, considering the EU’s more regional perspective of engagement. The reasons for this

change in attitude are twofold: first, after Kosovo's independence, the EU was transformed—and as a result took over—the international responsibility for supervising and dealing with Kosovo's state-building issue, and, second, the EU's engagement was not anymore primarily external but also internal, in the sense that it also became an actor in charge of supporting the internal aspects of Kosovo's state-building and horizontal relations with Serbia. This is the reason that makes the second part more oriented towards aspects of state-building and a more internal rather than international approach to the issue. The second part begins with an observation of the means which the EU used to frame its engagement with Kosovo, theorizing on the nature of this engagement and the support it offered to Kosovo's internal and external state-building. Three peculiar aspects of this engagement are considered in more depth, each through an independent chapter, namely the Kosovo-Serbia dialogue, the EULEX Mission in Kosovo and the EU-engineered specialist court. It is argued that paving the path from the process of Kosovo's state emergence to the central parts of Kosovo's state-building in the context of the role of the EU is both logical and a natural flow of the relevance of the "international element."

The last part of the book presents a theoretically legal observation in the form of a concluding remark for the complete process of state formation and state-building in Kosovo in regards to the role of the 'international element' with a special emphasis on the role of the EU. The last part is grounded on an original overview by the author, drawing upon previous parts that have been developed under a significant bulk of literature and legal analysis. In the final part of the book, author argues that the role of the "international element" in Kosovo's state formation and state-building process has had a constitutional significance. The constitutional nature of this significance could be observed both in the process of state emergence and state-building.

The third part of the book, therefore, offers a theoretical contribution in regards to the legal disagreement raised and the function that the 'international element' played in the process of Kosovo's state formation and state-building. It explores the peculiarities of this engagement, the discourse it provided on Kosovo's status in international law and internal law, and the EU-engineered processes in Kosovo. This theoretical chapter makes a connection between the first and second part, paying specific attention to the meaning the ICJ Opinion provides for Kosovo's entitlement to statehood and the legal implications and benefits deriving from the EU's role. The theoretical observation drawn in the third part contributes to an original, larger answer to the central question of the book.

It is important to underline that the connection between parts and chapters follows a legal skeleton, as it interconnects aspects of international law, EU law and Kosovo's internal law. Such interconnection is considered from the current legal narrative surrounding the debate on Kosovo's legitimacy and legality as a state, the internal state-building process accompanied with the role of the EU therein, and contestations drawn by Serbia against Kosovo's entitlement to regulate its own affairs in domestic and international dimensions. In addition, though the function of domestic law may not seem directly relevant for analysis, Kosovo's image plays a

central role in recognition, accession to international organizations and diplomatic relations.

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Chapter 2

History, Identity and Myths. How Narratives of the Past [Are] Shape[ing] the Present?



2.1 The Myth, Identity and Nationhood

It is true for many international disputes that where one stands today depends from where one starts. This proposition has a particular salience in the Balkans.¹

Discussions concerning the ‘ownership’ over Kosovo throughout centuries have mainly been fashioned by historical narratives which rely on specific references to the legal status of the territory at various time periods.² Yet, it remains unclear whether these narratives have a role in shaping Kosovo’s current claim to statehood, or in answering legal questions surrounding Kosovo’s claims to statehood.³ Today, however, these narratives tend to crystallize the position of both Albanians and Serbs over Kosovo’s independence, a State recognized by 116 countries, but opposed by Serbia and its traditional allies.⁴

As this book intends to clarify, in terms of international law, these historical contentions are complex, and to some extent, have influenced the perspectives and principles with which the international community chooses to outline the main issues surrounding the legal status of the present-day territory of Kosovo under international law.

¹ Warbrick (2008), p. 675.

² To some extent similar patterns are manifested throughout Europe, see Brubaker (1996), p. 55 et seq. According to Vickers ‘The actual name ‘Kosovo’ is of Turkish-Albanian origin and was used to designate the Kosovo vilayet which, before the Balkan War of 1912, covered the territory of Sandjak, Gornje Polimlje, Kosovo and Metohija, as well as northern Macedonia up to Veles, and eastern Macedonia up to the Bregalnica catchment.’ Vickers (1998) Introduction, pp. xiv, xv.

³ For the role that narratives have in shaping the future solutions see Marko-Stöckl (2010), pp. 327–352; Kaplan (1993), pp. 29–45.

⁴ These narratives, except used in popular parlance, are also part of the official standings of both Albanians and Serbs with regard of the Kosovo issue. This is best explained by referring to the submissions of the Government of Serbia and Government of Kosovo in the International Court of Justice Advisory proceedings. See Written Comments of the Republic of Serbia, pp. 51–72.

Historical claims over the territory of Kosovo have been used to define and structure many of the legal arguments concerning territorial integrity, self-determination and statehood. This is notably demonstrated by various submissions in the ICJ Advisory Opinion proceedings on Kosovo's unilateral declaration of independence's accordance with international law.⁵ The history of Kosovo is important in understanding why Kosovo still matters for both Kosovars and Serbs. Therefore, in the following part, briefly, the book exposes the key historical moments that persistently shaped the future of Kosovo. It particularly depicts the legal status of Kosovo throughout eighteenth, nineteenth and twentieth centuries, and elucidates how concepts of nationhood and independence interplay between the old and new ideas of statehood and identity. Though this chapter does not directly question the role of the 'international element' in the Kosovo's state formation process, it still demonstrates the way which paved later the relevance and the necessity for the 'international element' to engage with the Kosovo status question. Author argues, therefore, that without a historical narrative—as maintained in Chap. 1 too—that surrounds the later involvement of the 'international element', the book would have fell short of providing a proper causal and generic perspective that elucidates the contestations on Kosovo's statehood.

While there are numerous narratives, two prevailing stories about Kosovo's history and at present, its claim for statehood, dominate the debate. Unsurprisingly, these narratives reflect in many respects the myths, truths and falsehoods concerning Kosovo's history and origin, which both Albanians and Serbs utilize in order to reinforce their claims over it.

In general, the debate over Kosovo disregards international law and focuses on history and myths over reality. Within this narrative, the dispute between Albanians and Serbs over Kosovo dates back in centuries.⁶ On the one hand, (Kosovo) Albanians rightly argue that their origins stem from the Illyrians and Dardanians, suggesting they were the first of the two to inhabit the region.⁷ On the other hand, Serbs as descendants of Slavs, arrived in the middle of the sixth century A.D., following the great Slav exodus into the region.⁸ With regards to the very first origins, historical information suggests that the first inhabitants of the Balkan Peninsula are Illyrians and the Thracians. To this account, Jelavich confirms that:

The first inhabitants of the peninsula about whom a body of information is available are the Illyrians, who lived in the region generally west of the Morava valley to the Adriatic, and the Thracians, who settled east of the river in lands stretching from the Aegean to north of the Danube. Both of these peoples, with Iron Age civilizations, had tribal organizations. The Thracians established an organized state in the fifth century B.C. The Dacians, a branch

⁵ See Written Comments of the Republic of Serbia, pp. 51–72; Written Comments of the Republic of Kosovo, pp. 39–51.

⁶ Judah (2008), p. 18.

⁷ Carnegie Endowment for International Peace (1914), p. 21; Forbes et al. (1915), p. 84.

⁸ For more on the Slav arrival in the Balkan Peninsula and the Serb origin see: Forbes (1915 [2015]) in Forbes et al., pp. 12–23.

of the Thracians, were to become a basic element in the formation of the Romanian nationality. The Illyrians were the ancestors of the modern Albanians.⁹

As one could observe, Jelavich notes that the Slav invasion into the Balkans, especially in areas inhabited by the Albanians, had several consequences. In particular, she notes that the ‘great prosperity experienced during Roman times came to an end with the invasions. The Slavic advance in particular deeply affected the Albanian lands. The native Illyrian population, however, was not Slavicized’.¹⁰ On the other hand, the Serb historical narrative starts from the thirteenth century, much later compared to the accounts provided by historians confirming the records supported by Albanians.¹¹ The Serb narratives assert that Kosovo became the heart of their medieval Nemanjić’s Kingdom. It was only after the arrival of Ottomans, they argue, starting in 1389, that the Albanians began to migrate into Kosovo from modern day Albania.

However, claims over Kosovo become even more relevant when assessing arguments that make Kosovo an inner part of the Serbian national narrative. Although those arguments do not relate to the present situation, they, however, help explain this orientation. Tim Judah, for example, argues that at the beginning of the nineteenth century, Kosovo became an immutable part of the Serbian historical narrative.¹² The nineteenth century narrative functions as a critical source to shape three of the most important identity principles of the Serb nation.¹³ According to Judah, the narrative depicts the relationship of the first medieval Serbian kingdom and the church; it helps bond the Serbs to the Orthodox Church doctrine, and, in conclusion serves as a means to “unfold the truth” about the sanctity of Kosovo.¹⁴

The earliest accounts documenting Kosovo as a sacred place, according to Serb history, first date back to the thirteenth century.¹⁵ During the thirteenth century, Stefan Nemanja, the founder of the Serbian Kingdom, led efforts to establish a State and was particularly noted for the establishment of the autocephaly (i.e. independent jurisdiction) of the Serbian Orthodox Church in 1219. This initiative allowed

⁹Jelavich (1983b), p. 4.

¹⁰Jelavich (1983b), p. 25. Moreover, Vickers determines that: ‘In Kosovo, especially in its eastern part, most Albanians were gradually assimilated into the Eastern Orthodox faith by numerous methods, including the baptism of infants with Serbian names and the conducting of all religious ceremonies such as marriages in the Serbian language. In Montenegro entire tribes such as the Kuc, Bjelopavliq, Palabardha, Piprraj and Vasovic were assimilated; those who resisted assimilation retreated into the hills of what is now northern Albania.’ See Vickers (1998), p. 8.

¹¹ See for more Vickers (1998).

¹²Judah (2008), pp. 21–23.

¹³It is contended that the origins of Balkan nationalism can be traced back in the late eighteenth and early nineteenth centuries, a process that according to Kitromilides is a ‘mental construction of nations’, which he refers to as ‘imagined communities’, See Kitromilides (1989), p. 149 et seq. In similar vein see Kitromilides (1996), pp. 163–191.

¹⁴ See for more Judah (2008), pp. 21–23.

¹⁵ See Vickers (1998), p. 6.