

‘NEWBORN’

**Kosovo’s Secession: *Sui generis* Case or
New Doctrine on Self-Determination?**

by

Jorge Alberto Grayeb Munayer

Supervisor: Dr. Eduardo Ruiz Vieytez

University of Deusto, Bilbao

E.MA 2008-2009

**To Paula and Regina,
To my family,
To Farah, always
To old and new friends.**

Acknowledgements:

I wish to thank my supervisor, Dr. Eduardo Ruiz Vieytez for his advice and commitment, and Dr. Felipe Gómez for being an excellent host and for his constant support.

TABLE OF CONTENTS

INTRODUCTION 5

CHAPTER I: SELF-DETERMINATION THROUGH THE KOSOVO LENS 11

 I.1: All *peoples* have the right of self-determination..... 12

 I.2: Internal and External Self-Determination 16

 I.3: Right to Secession and ‘Remedial Secession’ 20

 I.4: The will of the people..... 25

 I.5: Principle of Effectiveness..... 30

CHAPTER II: CAN KOSOVO BECOME A PRECEDENT?..... 34

 II.1: The legal precedent..... 35

 II.2: The political implications of Kosovo’s independence..... 39

 II.3: The precedent-setting potential of UNMIK 42

 II.4: The ICJ Advisory Opinion and its possible implications 48

CHAPTER III: COMPARED ANALYSIS ON KOSOVO’S PRECEDENT-SETTING POTENTIAL..... 54

 III.1: Is secession legitimate in democracy?..... 55

 III.2: The Basque Country through a closer precedent 57

 III.3: Is Kosovo a precedent for the Basque Country? 63

 III.4: Final thoughts on Kosovo’s resonance in other self-determination conflicts.... 69

CONCLUSIONS 74

BIBLIOGRAPHY 79

ABSTRACT

Kosovo's secession has been treated as a *sui generis* case by States and many scholars. This contribution argues that instead of an exception, Kosovo should be taken as the contemporary example to advance the legal and political understanding of self-determination and secession in the post-decolonisation era. For instance, the ICJ could positively contribute to the latter through a progressive interpretation on its advisory opinion on Kosovo's unilateral declaration of independence. Even if the legal implications of Kosovo's secession can be more easily limited by States, its political subjectivity might contain a spill over effect difficult to contain. In that sense, Kosovo has a precedent-setting potential that should not be neglected.

Kosovo's independence could push for the extension of the right to self-determination (with the possibility of secession) even for minority groups in democratic contexts. It has contributed to reopen the debate on secession particularly at European level. For countries like Spain, the precedent-setting potential of Kosovo's secession could disentangle obsolete debates, for example, in the Basque context. It could favour the development of innovative strategies to address claims for self-determination from less dogmatised perspectives.

**Secession has become both the attraction
and the tragedy of self-determination.**

(Cárdenas y Cañás, 2002)