

Trends of Secession and Retrocession in International Politics: the Case of Taiwan and Kosovo

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Resumo

Tendências de Secessão e Retrocessão na Política Internacional: o Caso de Taiwan e do Kosovo

Após a 2.ª Guerra Mundial a tendência da política internacional tem sido as secessões: vários países nasceram em resultado da implosão de grandes Estados. No entanto, em casos específicos, a tendência foi exactamente a oposta: retrocessão, através da qual pequenas unidades integraram outros Estados bem maiores. A China permanece como uma excepção neste contexto de casos de retrocessão. Entre as décadas de 1920 e 1930, as concessões estrangeiras (com excepção de Taiwan, Hong Kong e Macau) foram-lhe devolvidas, após um longo período de controlo externo. Mais tarde, respectivamente em 1997 e 1999, Hong Kong e Macau foram inseridas na China encaixando no modelo de retrocessão. Este artigo foca-se em Taiwan, que pode tornar-se, pela segunda vez, um exemplo primário de retrocessão, concretizando a política chinesa de reunificação; ou pode transformar-se num caso de secessão, para satisfação de muitos taiwaneses. Ter-se-á em consideração o potencial efeito de dominó resultante da proclamação unilateral de independência por parte do Kosovo, o exemplo mais recente de secessão, o qual foi, ainda que durante um curto período tempo, seguido de manifestações pró-independência no Tibete. Através da análise das similaridades e diferenças entre os dois casos, este artigo defende que a declaração de independência do Kosovo abriu uma nova frente na antiga e extensa batalha diplomática entre a China e Taiwan. Os líderes chineses têm sido dos maiores críticos da independência do Kosovo, receando que tal precedente possa ser um perigoso catalizador para movimentos secessionistas em termos globais, mas mais especificamente para aqueles localizados em Taiwan, no Tibete e em Xinjiang.

Abstract

After the Second World War, the trend in international politics has been secession: several new countries were born as larger units broke down to give rise to independent states. However, in some unusual cases the trend was exactly the opposite: retrocession, through which small units joined bigger ones. China remains an exception in experiencing several cases of what is now termed retrocession. Through the 1920's and 1930's, China's foreign concessions (excepting Taiwan, Hong Kong and Macau) were returned to her, after a long period of foreign control. Later, respectively in 1997 and 1999, Hong Kong and Macau were absorbed into a larger country, fitting the retrocession pattern. This paper will focus on Taiwan that can become, for the second time, a primary example of retrocession, accomplishing China's policy of reunification; or can turn into a case of secession, to the content of many Taiwanese. It will take into account the potential domino effects of the Kosovo unilateral proclamation of independence, the most recent example of the secession trend, which was shortly followed by pro-independence demonstrations in Tibet. Analysing similarities and differences between the two cases, this paper will argue that Kosovo's declaration of independence has opened up a new front in the long-running diplomatic battle between China and Taiwan. The Chinese leaders have been among the biggest critics of Kosovo's independence, fearing it could set a dangerous precedent for separatist movements world-wide, but especially in Taiwan, Tibet and Xinjiang.

Introduction

Kosovo's declaration of independence has opened up a new front in the long-running diplomatic battle between the People's Republic of China (PRC) and the Republic of China (ROC) in Taiwan. It also underscores how Taiwan's key problem is one of recognition, not whether it should formalize its *de facto* independence. Beijing opposes Kosovo's independence, fearing it could set a dangerous precedent for separatist movements world-wide, but especially in Taiwan, Tibet and Xinjiang. That left Taipei with a potential new diplomatic ally in the heart of Europe – Kosovo. For decades the two sides of the Taiwan Strait have engaged in a global diplomatic game of attracting allies to their side with generous aid. Taiwan has only 23 left, poor countries – down from 30 allies in 2000.

This paper compares the situation of Kosovo and Taiwan, as both territories behave as sovereign and independent states. Taipei must have stopped short of a Kosovo-style formal declaration ratified by its legislature. But it is already formally independent of the People's Republic of China in the sense that the island is governed under its own Republic of China Constitution. For some politicians there is no need to declare independence, because Taiwan is already independent. Anyway, China will never tolerate such a declaration whereas Serbia is not a power that can exert that kind of pressure.

The key difference between the two territories is recognition. In Kosovo, the world is more evenly divided over recognizing the self-declared state, with the United States (US) and some major European powers supporting it, and with Russia, China and others opposing it. But Taiwan lacks recognition from any major powers. Taiwan's isolation is born of that lack of global political support – not from a failure to formalize its independence. A formal Taiwanese declaration of independence would be unlikely to win it more recognition, though it could spark a war with China.

The confusion is compounded by the way Taiwanese themselves talk about independence. Actually, what most Taiwanese mean by independence is the creation of a new "Republic of Taiwan", complete with a new Constitution, that would replace the current system imported from mainland China in the late 1940s. This is a dream for some, but has little public support.

There has been much debate among politicians and diplomats whether the recognition of the unilateral declaration of Kosovo independence is "unique" or should it be looked as a "precedent" in considering other conflicts and situations like Taiwan. While a direct line can be drawn between the Kosovo declaration of independence and its recognition by a large number of Western states, this paper

argues that in the case of Taiwan this is not possible due to the different context and interests involved: the US supported Kosovo independence and opposes Taiwanese independence.

This paper is divided into three main parts. In the first one, the concern was to clarify the concepts of secession and retrocession regarding Taiwan and Kosovo situations. If in the case of Taiwan both processes may occur, in the case of Kosovo, only secession applies at this time – if the US weakens and Russia emerges strengthened, the Kosovo situation could be reversed, although this seems unlikely in our lifetimes. In the second part, the main differences of the historical and political backgrounds of the two territories are traced. We will argue that the differences are decisive to separate Kosovo from any other similar situation in the world including Taiwan. In this regard, we defend that Kosovo cannot be considered a precedent to Taiwan. Kosovo fulfills all the basic conditions that are necessary to be considered an actor of full right in the international system, and Taiwan does not.

Analyzing the process of negotiations and the impossibility to reach any consensus between the parties involved, the third part of the paper will focus the motivations and interests that are behind the reaction of the international community, in what concerns both cases.

Secession *vs.* Retrocession

After the Second War World, several new countries were born as larger units broke down to give rise to independent states. The trend in international politics was devolution and secession. Devolution implies the consent of the former sovereign while the absent of this consent leads to secession, revolutionary creations of new states.¹ Kosovo is the latest example of this secession trend, although it was not a previous colony occupied by an external country.

In February 2008, the Republic of Kosovo, declared independence from the Republic of Serbia. This act has been very divisive among nations all over the world, as the governments of various countries are unsure whether or not to recognize Kosovo as a new country. The uncertainty stems from the question of whether a people inhabiting a territory can declare independence from the government ruling that area due to ethnic, linguistic, historical or political differences.

The case for Kosovo's independence has been polemic in the fact that it directly challenges the principles of the 1975 Helsinki Accords of 'territorial integrity' versus

1 Crawford, 1979: 215 and 247 n. 1.

the 'self-determination of people'; two principles also echoed in the Charter of the United Nations.

Kosovo has been under UN jurisdiction since 1999. The Security Council Resolution 1244 sought to establish provisional institutions of local self-government and to determine the final status of the territory. Resolution 1244 stated a mutual agreement of all parties to resolve the dispute, while reaffirming the territorial integrity of Serbia, thus implying the eventual independence of Kosovo. It is evident that the final two points could not be met.² If seen from the Serbian point of view, Kosovo has always been an integral part of Serbia. Serbs argue that the UN Security Council's Resolution 1244 did not allow for the succession of Kosovo, and therefore, cannot declare independence under international law. Serbia stipulates that Resolution 1244 affirmed the territorial integrity of their sovereign territory, and object and warn that recognition of this state will set a precedent for what they deem as other "separatist movements."

However, under the 'right of self-determination of peoples', the title of a separatist movement is not applicable to the Kosovo case. Kosovo actions can in fact be designated as *sui generis* 21st century independence. As a result of the ethnic cleansing carried out by the Serbs, international law stipulates that "people whose right to internal self-determination has been thoroughly violated by a Government that does not represent the people" essentially have the inherent right to self-government.

Serbia and Russia argued that Resolution 1244 does not allow the secession of Kosovo without the agreement of Serbia. In particular, they refer to the resolution's preamble: "reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia."

The EU has taken the position that Resolution 1244 is not a bar to Kosovo's independence. In a memorandum written prior to approving the EU monitoring institution (EULEX legal assistance mission to Kosovo), it found that "acting to implement the final status outcome in such a situation is more compatible with the intentions of 1244 than continuing to work to block any outcome in a situation where everyone agrees that the status quo is unsustainable. Moreover, the EU contends that 1244 did not predetermine the outcome of final status talks.

2 The operative paragraphs of Resolution 1244, which the Security Council had enacted as a framework for resolving the status of Kosovo, focus on the cessation of military and paramilitary activities by all parties and the commencement of demilitarization of armed groups (paragraphs 3 and 15), the establishment of an international civilian presence under UN auspices to assist in interim administration (paragraphs 5 through 11), the commencement of international financial assistance to Kosovo, and setting out ongoing reporting requirements.

On balance, it appears that Resolution 1244 neither promotes nor prevents Kosovo's secession. Although operative paragraph 1 of Resolution 1244 states that a political solution shall be based on the principles of Annexes 1 and 2, those annexes are silent as to the governmental form of the final status.³ The annexes only state that an "interim political framework" shall afford substantial self-governance for Kosovo and take into account the territorial integrity of Federal Republic of Yugoslavia. Paragraph 11(a), states that the international civil presence will promote "the establishment, *pending a final settlement*, of substantial autonomy and self-government in Kosovo..."⁴ The document is therefore silent as to what form the final status of Kosovo takes.⁵

While international law does not foreclose on the possibility of secession, it does provide a framework within which certain secessions are favored or disfavored, depending on the facts. The key is to assess whether or not Kosovo meets the criteria for the legal privilege of secession.

The legal concept of self-determination is comprised of two distinct subsidiary parts. The default rule is "internal self-determination," which is essentially the protection of minority rights within a state. As long as a state provides a minority group the ability to speak their language, practice their culture in a meaningful way, and effectively participate in the political community, then that group is said to have internal self-determination. Secession, or "external self-determination," is generally disfavored.⁶

Any attempt to claim legal secession must *at least* show that: "[1] the secessionists are a people (in the ethnographic sense); [2] the state from which they are seceding seriously violates their human rights; and [3] there are no other effective remedies under either domestic law or international law".⁷ Here, there is a credible argument that favors Kosovo independence, which cannot be applied to Taiwan: it is impossible for Taiwan to show PRC has violated the local people's human rights as it was not under Chinese administration. In that sense the case is closer to Hong Kong and Macau although Taiwan was not directly under US Administration, which helps Taiwan's case.

3 Annex 1 to the resolution lists "general principles on the political solution to the Kosovo crisis" adopted by the G-8 foreign ministers in May 1999, and Annex 2 lists general principles on which there should be agreement in order "to move towards a resolution of the Kosovo crisis."

4 Borgen, 2008: 2.

5 *Idem*: 2-3.

6 *Ibidem*.

7 See Special Committee on European Affairs, *Thawing a Frozen Conflict: Legal Aspects of the Separatist Crisis in Moldova*. Available at http://www.abcnyc.org/Publications/record/vol_61_2.pdf

Thus, there are two main hypotheses for the future status of this island: it can be for the second time an example of retrocession, if China's policy of reunification succeeds; or it can finally reach full independence (secession) if Beijing agrees, which is very unlikely. We must not forget that one of the most important strategic aims of the Chinese Communist Party (CCP) is the reunification of Taiwan for nationalist reasons: on the one hand, China's population seems to bind around this cause; on the other hand, the independence of the island would set a dangerous precedent to the secession of Tibet and Xinjiang: in contrast to Taiwan, Tibet and Xinjiang are under Chinese Administration and thus human rights violations are easy to find. As for the Republic of China on Taiwan, the aim is beyond physical separation from the People's Republic of China, as it is the case of those two regions with separatist movements. Taiwan is already *de facto* independent; but rather *de jure* recognition by Beijing and the rest of the world. Besides, there is a significant minority in Taiwan opposing independence and a smaller minority that actually wants to unity under a more tolerant China; as there were those in Kosovo who were non-Serbs and also did not want independence.

The two sides have opposite approaches to the "one China" principle, although acceptance of this principle has maintained peace in the Taiwan Strait for decades. On the one hand, the Chinese policy of "peaceful reunification: one country two systems", as defined by Deng Xiaoping, states that "there is only one China and Taiwan is an inalienable part of China". On the other hand, for Taiwan "one China" does not mean its annexation by the PRC, but rather the Republic of China, established in 1912 and with sovereignty in all China. This position, of course, has evolved, following the Taiwanese loss of the battle for international recognition.

Differences and Similarities

Taiwan and Kosovo are *de facto* states (not *de jure*). They fulfill all the requirements that are considered necessary to become states, except one: international recognition. In international relations this distinction is important to assess their real sovereignty, capacity and prerogatives as full actors. Both territories declared independence, but do not have international recognition. China and Serbia, as sovereign states, contest these independences based on the United Nations principle of territorial integrity. So, is the situation of Taiwan and Kosovo legal regarding international law? Legal or not, many states have already recognized Kosovo as a sovereign state. On the contrary, Taiwan largely has failed in this diplomatic struggle. The interests of the

international community, especially those of major powers, in both processes are quite different, resulting in different outcomes.

The stability of Balkans in general and of Kosovo in particular, geographically in the backyard of Europe, is a strategic objective of the European Union, which suffers direct consequences of any conflict in the region. On the contrary, Taiwan does not represent any threat to Europe. On the one hand, it is an island in the Pacific with a good relationship with western powers. On the other hand, no one desires to upset China due to its economic and military power. Moreover, the fact that China is in the United Nations Security Council favors neither Taiwan nor Kosovo. Thus, there are not any expectations for the future of the territories regarding for example United Nations membership, symbol of recognition of sovereignty of a state in the international system. As members of the Security Council, China and Russia delay any solution to Taiwan and to Kosovo, as nothing can be decided without their agreement. Although Serbia does not have the same status as China, because it's a minor power in Europe compared to that of China in Asia, the Russian support is an important factor.

Historical Context

One main difference between Taiwan and Kosovo is the historical and political contexts that led to their independence. In the Taiwan question, international relations during the Cold War influenced the evolution of the process through the years. In the Kosovo's case, considered by many as "unique", its independence was possible due to the UN special situation of international administration, a novelty of the nineties.

Taiwan's history has been shaped by its geography. Separated from the People's Republic of China by a strait, the island is located between Japan and the Philippines. The Chinese Empire ceded it to Japan in 1895, obtaining the promise of non-occupation of Beijing by the Japanese army, and only recovered its sovereignty in 1945, with the surrender of Japan in the Second World War.⁸ In 1949, with the proclamation of the People's Republic of China in Beijing, the island, occupied by the nationalist troops of General Chiang Kai-Shek in 1945, moved their seat of government to Taiwan and maintained the name of the Republic of China, which was established by Sun Yat-sen in mainland China in 1912.⁹

⁸ See Mendes, 2004.

⁹ Bureau of East Asian and Pacific Affairs, "Background Note: Taiwan". U.S. Department of State, 2008, <http://www.state.gov/r/pa/ei/bgn/35855.htm>.

In 1954, the United States, that had supported the Nationalist Party during the Chinese civil war, signed a Mutual Defense Treaty with Taiwan, aimed at maintaining peace in the Strait and to avoiding China's invasion of the island.¹⁰ In 1971, the PRC replaced Taiwan as the official representative of China in the UN and most UN members gradually switched diplomatic allegiance from Taipei to Beijing. In 1979, the Mutual Defense Treaty was replaced by the Taiwan Relations Act, also aimed at defending Taiwan.¹¹

In the 1980's, under Chiang Ching-Kuo (Chiang Kai-Shek's son) and his successor, Lee Teng-hui, the Taiwanese regime gradually liberalized.¹² President Lee stated that the economic development of the Island was not compatible with a totalitarian regime. In 1991, after 43 years of hostilities between Nationalists and Communists, Taiwan accepted that mainland authorities were a legitimate political entity and the Council for National Unification (created in 1990) defined the Guidelines for National Unification:

- 1) The existence of the Republic of China is a reality that cannot be denied; 2) One China" means China as an historical, geographic, racial and cultural entity; 3) China is divided in two governments by Taiwan Strait, which is a temporary situation, and the combination of efforts will put inevitably China in the path of the unification. Both parts must thus eradicate the mutual hostility and resign to the force as a way to reach the unification; 4) Unification should be achieved through negotiation.¹³

At the same time, in the People's Republic of China Deng Xiaoping defined the policy of "one country, two systems". China never refused the use of force but replaced the strategy of military confrontation (called "force liberation" and then "peaceful liberation" by Mao Zedong) by a negotiation process. This process would define the modalities of the unification, giving a high level of autonomy to Taiwan. This politics of "pacific reunification: one country, two systems" can be summarized in 4 points:

10 Taiwan Documents Project (s.d) "Mutual Defense Treaty between the United States of America and the Republic of China". Taiwan Documents Project, <http://www.taiwandocuments.org/mutual01.htm>.

11 Republic of China (Taiwan), Portal of Diplomatic Missions, 25 July 2007, <http://www.taiwanembassy.org/ct.asp?xItem=456&CtNode=2243&mp=1&xp1=>.

12 The Martial law was abolished in July 1987; contacts with mainland were authorized; the Progressive Democratic Party, recently created, was legalized (the majority of its members where favorable to Taiwan independence).

13 "Relations across the Taiwan Straits", Mainland Affairs Council, Taiwan, July 1994, p.12.

- 1) There is only one China and Taiwan is an inalienable part of China; 2) There are two systems (the socialist of the mainland and the capitalist of Taiwan), that will coexist until they start to develop together; 3) Big autonomy: Taiwan will be an administrative region with an administrative, legislative and judicial independent power; 4) The reunification will be a pacific process.¹⁴

These eight points represents two different approaches to the same subject. The PRC defends the "one China" principle, as does Taiwan. However, for Taiwan "one China" does not mean that PRC annexes Taiwan but means the Republic of China established in 1912 and with sovereignty in all China. These opposite points of view avoid both countries adopting official negotiations¹⁵, and led them to non-governmental talks.

The background of Kosovo is significantly different from Taiwan's. Being a region of Southeast Europe, Kosovo is in the center of the European Union. Throughout its history, this region represented the main crossroad between East and West. The 1974 constitution of former Yugoslavia made Kosovo an Autonomous province and considered it an equal constitutional element of the Federation as one of eight federal units. Although not yet a republic, its authority within the Federation was now equal to that of Serbia. In 1989, amid rising breakaway movements throughout Yugoslavia, President Slobodan Milosevic revoked Kosovo's autonomy, through a series of constitutional changes,¹⁶ a step that deepened Serbian-Kosovar differences.

In 1998, the Serb government initiated police and military actions in the province, which resulted in widespread atrocities. After failed political negotiations to resolve the status of Kosovo and the rights of the Kosovar Albanians, NATO launched an air campaign to force the Serb government to withdraw the police and the military. In the aftermath of NATO's intervention, the UN Security Council passed Resolution 1244 (1999),¹⁷ which authorized the UN's administration of Kosovo and set out a

14 "The Taiwan Question and Reunification of China", Taiwan Affairs Office & Information Office State Council of the People's Republic of China, Beijing, August 1993: 17-19.

15 In 1990 Lee Teng-hui established an official organization, the National Unification Council (NUC), to co-ordinate the official strategy for the negotiations between the two sides of the Strait of Taiwan. In 1991, the Mainland Affairs Task Force (created by the Kuomintang in 1988) changed its name to Mainland Affairs Council (MAC) in order to define the global politics through the mainland. However, these state organizations could not negotiate directly with the PRC. See: Hughes, 1997: 76-77.

16 Through the constitutional reform, Serb authorities wanted to restore unity of the Serbia Republic eliminating the autonomy of Kosovo and Vojvodina provinces. Available at www.monde-diplomatique.fr/cahier/Kosovo/eclatement

17 This Resolution (UNSCR 1244) announced the Security Council's decision to deploy international civil and security presences in Kosovo, under United Nations auspices. Acting under Chapter

general framework for resolving the final political and legal status of Kosovo. For the next nine years, the UN participated in the administration of Kosovo, while political negotiations over the final status of the territory were largely inconclusive.

Since its inception in 1999, the United Nations Mission in Kosovo (UNMIK) has taken a number of fundamental steps to establish under its authority the Kosovo's Provisional Institutions of Self-Government (PISG) in a context of substantial autonomy. Although Kosovo was still an integral part of Serbia territory, this helped substantially to prepare and reach the independence.

The Process of Negotiations

Taiwan and Kosovo have different negotiation processes with China and Serbia, and suffer different interference from major powers. The antagonist positions and interests involved did not allow reaching any consensus in both situations. Moreover, the intervention of major powers and their behavior regarding the independence of both territories was significantly different and decisive in all the process. This can be accessed during the negotiations period through the decades, in Taiwan's case, or during the last months, in Kosovo's case.

In February 1991, Taipei created a Non-Governmental Organization (NGO), the Strait Exchange Foundation (SEF), corresponding to the Association for Relations Across the Taiwan Strait (ARATS) in the mainland. Bilateral contacts, especially business ones, were developed through these two institutions. The Koo-Wang conversations (Koo Chen-fu was the president of the SEF and Wang Daohan the president of the ARATS) took place in Singapore, in April 1993¹⁸. However, the results were worse than expected, due to different points of view and the lack of flexibility of both parts.

VII of the UN Charter, the Security Council also decided that the political solution to the crisis would be based, among others, on the following principles: an immediate and verifiable end to violence and repression in Kosovo; the withdrawal of the military, police and paramilitary forces of the Federal Republic; deployment of effective international and security presences, with substantial NATO participation; establishment on an interim administration; the safe and free return of all refugees; a political process providing for substantial self-government, as well as the demilitarization of the Kosovo Liberation Army; and a comprehensive approach to the economic development of the crisis region. UN Security Council Resolution 1244, 10 June 1999. About the UN in Kosovo see Yannis, 2004: 67-81.

18 Koo Chen-fu and Wang Daohan signed two technical agreements; a protocol about the meeting; and a document foreseeing regular talks between the two NGO.

In August 1993, the PRC published the White Book¹⁹, developing the position, the principles and the policies of the Chinese government, regarding Taiwan: "All Sovereign State has the right to keep the national unit and the territorial integrity". In January 1995, President Jiang Zemin updated the Chinese position, talking about: "one China, one Nation, two sides". His speech, known as the "eight points" of Jiang Zemin, brought something new. For the first time a Chinese leader tried to "sell" (and not to impose) the idea of unification to the Taiwanese.²⁰ He changed the image that Mao and Deng had created about the Chinese leaders, referring to "the respect for the differences of the way of life, for the legitimate rights and for the interests of the compatriots in Taiwan"²¹.

The Taiwanese President formally rejected this proposal. During a meeting of the Council for National Unification, Lee Teng-hui presented six points arguing that Taiwan and China were two separate identities and that negotiation could only take place Beijing refused using the force:

1. Only by respecting the fact that Taiwan and mainland China have been governed as two political sovereign entities since 1949 can the unification problem be solved.
2. Chinese culture has been the pride of all Chinese people. Both sides should therefore cherish this brotherhood and enhance bilateral exchange.
3. Bilateral trade and communication should be expanded. Taiwan's economy should regard the mainland as a market and a place which provides raw materials and labor, while the mainland economy can look to Taiwan as an example. Taiwan is willing to offer technology and experience to help the mainland's agriculture and improve its economy and living standards. Bilateral trade can be discussed when both sides are ready.
4. Both sides should participate in international organizations, and Taiwan does not rule out the possibility that leaders from both sides can meet at international *fora*, such as APEC meetings.
5. The mainland should demonstrate its goodwill by announcing a willingness to forgo a military solution. This is the basis for bilateral peace talks to end hostility between the two sides. To use "foreign interference" and "Taiwan independence" as an excuse to maintain a military option is to ignore and distort the ROC's nation-building spirit.

19 "The Taiwan Question and Reunification of China", Taiwan Affairs Office & Information Office State Council of the People's Republic of China, Beijing, August 1993.

20 See "Jiang Zemin's 'Eight Point Plan'" in <http://www.taiwandc.org/twcom/65-no2.htm>.

21 *Ibidem*.

6. The two sides should jointly ensure democracy and prosperity in Hong Kong and Macau.²²

Another way of rejecting the “eight points” speech was Lee’s decision of visiting the United States in 1995, despite the protests of the Chinese diplomacy. After this visit, Sino-Taiwanese relations remained tense and the CCP modified its strategy towards Taiwan. Unable to convince the government of Taiwan about the Chinese proposal for pacific unification, China decided to use intimidation. During the Taiwanese legislative elections in the end of 1995 and the presidential elections in March 1996, the PRC adopted three different methods: criticizing Lee Teng-hui; organizing military exercises near Taiwan; and interpreting in a pejorative way what Americans said in the press of Hong Kong.

The highest tension took place before the presidential elections of 1996. The People’s Liberation Army started military exercises, sending missiles to the waters of the biggest Taiwanese ports (Keelung and Kaohsiung), firing artillery and using the Air Force. If we consider that China involved very low levels of military technology in the exercises, we can conclude that the aim was mainly to remember the Taiwanese leaders that the RPC would not accept Taiwan independence.²³ The PRC aimed at: intimidating the Taiwanese people to make them vote against Lee Teng-hui; pushing the president of Taiwan to set up a date for reunification with mainland China; forcing Taipei to abandon efforts to enter in the United Nations and in the World Trade Organization and to be recognized by individual States. However, this strategy failed. Not only the Chinese missiles did not influence the result of the elections, but also made China less popular among in many countries.

The relations between the two sides of the Strait continued tenses until the Congresses of their own parties. During the 15th Kuomintang Congress, in August 1997, the CCP sent a telegram to Taipei suggesting the end of the hostilities between both parts. The telegram stated the Chinese principle of “one China” in order to achieve peaceful reunification, and denied the principle of “two Chinas” and Taiwan independence. This message was different from the others, not in its content, but in a formal aspect: it was signed by the Chinese President, Jiang Zemin. The aim was to avoid a personal relationship with Lee Teng-hui, maintaining the door open for better relations. Since then, even the Kuomintang members recognized that relations between the two sides improved.²⁴

22 “Lee Teng-hui responds to Jiang Zemin”, *Taiwan Communiqué*, No. 66, June 1995, in <http://www.taiwandc.org/twcom/66-no4.htm>.

23 Hu, 1997: 375.

24 Baum, 1997: 24.

In the 15th Congress of the CCP, in September 1997, Jiang Zemin took much more time to speak about Taiwan than in the previous Congress²⁵. He tried to be more careful than his predecessors, saying that the concept "one country, two systems", under which the reunification of Hong Kong with the mainland had been made, was primarily formulated for Taiwan. In December 1997, Beijing accepted (not officially) that a reunified China could have a new name (that not PRC) and even a new flag, but Taiwan rejected this proposal.

Beijing stated its position in Article 8 of the Anti-Secession Law, adopted in 2005, declaring the possibility of military action in case of Taiwanese declaration of independence:²⁶

Article 8: In the event that the "Taiwan independence" secessionist forces should act under any name or by any means to cause the fact of Taiwan's secession from China (...) the state shall employ non-peaceful means and other necessary measures to protect China's sovereignty and territorial integrity.

Beijing never specified under which circumstances would use the force. A military intervention is expected in the following cases: Taiwan declares the independence *de jure*; other countries help Taiwan to become independent; a big rebellion dominates Taiwan; Taiwan postpones indefinitely talks about unification. For the moment, the best short-term solution for the conflict in the Strait is the maintenance of the *status quo*. In the actual circumstances, it is highly unlikely that the PRC adopts military action to settle the conflict in the Taiwan Strait, due to its economic and military consequences. Yet, if China wants the reunification with Taiwan, diplomacy is not strong enough to be used as the only weapon. Therefore, the PRC conjugates periods of military tension and psychological pressure with periods of political initiative, in order to isolate Taiwan.

At the same time, Beijing tries to catch as much Taiwanese investment as possible, making some enterprises sectors of the island dependent on the Chinese market. Despite the low levels of political integration, there is a strong economic connection between the two sides of the Strait, as the ROC and the PRC are major trade partners. This is part of the Chinese strategy, as it allows Beijing to achieve convergence without military action. The Chinese authorities believe that the forthcoming years may be positive to China, allowing it to attain military superiority.

25 Cheng, 1998: 59.

26 "Anti-Secession Law", National People's Congress, People's Republic of China, 13-14 March 2005, Article 8.

In the future, the United States and Japan may even hold a less assertive approach towards the Taiwan question.²⁷

The Government of Taiwan continues to improve its capacity of defence according to the military development of the PRC, even refusing the use of force as a mean to reach unification. At the economic level, Taipei limits cooperation with the PRC, in order to assure its political autonomy. At the social level, the Taiwanese people developed a strong conscience of their identity; they feel independent from the mainland and the majority prefers the maintenance of the *status quo*. The new Taiwanese President, Ma Ying-jeou, is willing to hold negotiations with China about issues related to Taiwan's sovereignty. Elected in 2008, Ma brought a new approach to the conflict, holding a more flexible and pragmatic attitude towards the mainland, bringing a lot of expectations on the settlement of the issue.

For the contrary, there are not any expectations of consensus in Kosovo case. The developments in this region, confirm that the process of further settlement between Kosovo and Serbia authorities regarding the independence will be extremely difficult. Under the circumstances, the coordinated efforts of the international community and the joint search for mutually acceptable solutions regarding the status and the stability of the region it will be difficult if not impossible to reach.

After mediating negotiations between the parties for fifteen months, UN Special Envoy Martti Ahtisaari submitted in March 2007 the *Comprehensive Proposal for the Kosovo Status Settlement* - "the Ahtisaari Plan". The Plan envisioned Kosovo becoming independent after a period of international supervision. Serbia rejected it while the Kosovar Albanian leadership endorsed it. The United States supported this proposal but Russia categorically rejected it. As the Troika (European Union, Russia and the United States) reported on December 2007, "the parties were unable to reach an agreement on the final status of Kosovo. Neither party was willing to cede its position on the fundamental question of sovereignty over Kosovo".²⁸

In the aftermath of the Troika's announcement of the collapse of negotiations, several countries grappling with some type of secessionist issue in their own domestic politics, argued that Kosovo's secession and/or its recognition would be a breach of international law.²⁹

27 Mendes, 2008: 109.

28 Report of the EU/ U.S./ Russia Troika on Kosovo, para. 1 (Dec 4, 2007). Available at <http://www.ico-kos.org/pdf/Report%20of%20the%20EU-US-Russia%20Troika%20on%20Kosovo.pdf>

29 These state where: Serbia, Russia, Romania, Moldova, Cyprus, Greece, Slovakia, Spain and China.

International Community

The international community is in general reluctant when it comes to the question of recognizing new states. The principle of self-determination is usually seen as subordinate to that of territorial integrity. In this context, the independence of Kosovo for some countries is perceived as constituting a dangerous precedent that would destabilize other countries in the region (especially those who have ethnic Albanian minorities), or even out of Europe.

State and sovereignty are mutually constitutive concepts. As F. H. Hinsley reminds, “[i]n a word, the origin and history of the concept of sovereignty are closely linked with the nature, the origin and the history of the state.”³⁰ States define the meaning of sovereignty through their engagement in practices of mutual recognition, practices that define both themselves and each other. At the same time, the mutual recognition of claims of sovereignty is an important element in the definition of the state itself (although there is a school of thought within international law that maintains that states can exist without formal recognition by other states).³¹

Sovereignty entails the external recognition (by states) of claims of final authority made by other states. Differentiating internal and external dimensions of sovereignty, it is considered that the domestic dimension generally refers to the consolidation of the territory under a single authority and the recognition of that authority as legitimate by the population, while the external recognition generally refers to recognition by other states. Both Taiwan and Kosovo have already internal recognition: the population elected a government and the institutions are considered legitimate. Nevertheless, to maintain territorial control and fulfill international obligations is not enough. The external recognition, that determines who is allowed to be the main agents in international affairs, is still missing on both cases.

The Chinese strategy to isolate Taiwan has only allowed it to take part in a reduced number of international organizations, such as APEC (Asia-Pacific Economic Cooperation) and the Asian Development Bank. Taiwan requested to enter the World Trade Organization (WTO) in 1990 (Taiwan abandoned GATT in 1950). As China created problems for it to join WTO as a separate state, Taiwan gained entry as a “Separate Customs Territory” in 2002. In the United Nations (UN), the ROC was one of the founding members in 1945 but was replaced by the PRC in 1971. The Taiwanese leaders consider the island as an active participant in the maintenance of the international order, in the proportion of its economic cooperation and

30 Hinsley, 1986: 2.

31 Shaw, 1997: 146-7.

humanitarian aid.³² In China, Taiwan's participation in any UN body is a highly sensitive issue, so the Taiwanese bid for joining World Health Organization (WHO) and Taiwan's ultimate goal of gaining UN membership are still being blocked by Beijing. This difficulty in joining international organizations, namely getting UN membership, is related with the concept of sovereignty. Thus, although domestically the Taiwanese government is considered sovereign, it is only recognized by 23 countries, which is not enough to give Taiwan international sovereignty.

On the contrary, a large number of states have already recognized Kosovo's independence rejected by Serbia. Even if the Report of the UN Secretary General on the situation in Kosovo that followed Kosovo's declaration of independence clearly states that resolution 1244 is still in force until the Security Council decides otherwise and that UNMIK will continue to operate under its mandate, 69 countries (out of 192 members of the United Nations) have formally recognized Kosovo. Moreover, the perplexity of the situation is evident in the framework of the European Union (21 out of 27 member states of the European Union have already recognized Kosovo's independence) not to mention the Security Council itself where three out of five permanent members have proceeded to formal recognition, while Russia and China, together with India, released a joint statement in May 2008 where they called for new negotiations between the authorities of Belgrade and Pristina.

Kosovo's independence and its recognition put forward the territorial legitimacy once again, rather than the national one. The international organizations that have recognized Kosovo have rejected any discussion of a compromise with Belgrade that envisages a partition of Kosovo as a compromise solution, whereby regions with predominant ethnic Serb population would be left under the authority of Belgrade, in return of its recognition of the sovereignty of Albanian inhabited regions.

One of the motives for the EU to support Kosovo's independence was (and still is) its fear of growing Albanian nationalism which could once again destabilize the delicate balance of the political map of Southeast Europe. In Kosovo, the EU has been arguing that ethnic repression (Serb repression of Kosovo Albanians under Milosevic) justify the legitimacy of a territorial entity, and not ethnic separatism or national self-determination. Two main consequences of the Kosovo independence are: "the devaluation of the idea of autonomy as a compromise solution. Belgrade's proposal (of more than autonomy, less than independence) was rejected by Kosovo Albanians, backed by EU countries and the US. To avoid a Russian veto at the

32 "The case for participating of the Republic of China in the United Nations", Ministry of Foreign Affairs, Republic of China, July 1994:1-7.

UN Security Council on Ahtisaari Plan, in favor of “supervised independence” for Kosovo, the US and the EU preferred unilateral recognition.

For the actors of the international community, namely EU and NATO, independence was the solution against instability in the case of Kosovo, yet the threat to stability elsewhere. European politicians who were in favor of Kosovo’s independence, and who insisted on its “unique” case, feared that it could lead to further destabilization outside the Balkans. More specifically, they feared it would be taken as a “precedent” in other regions of the world. In announcing the recognition of Kosovo by the United States, Secretary of State Rice explained:

The unusual combination of factors found in the Kosovo situation – including the context of Yugoslavia's breakup, the history of ethnic cleansing and crimes against civilians in Kosovo, and the extended period of UN administration – are not found elsewhere and therefore make Kosovo a special case. Kosovo cannot be seen as precedent for any other situation in the world today.³³

By contrast, the Russian Duma issued a statement that read, in part: “The right of nations to self-determination cannot justify recognition of Kosovo's independence along with the simultaneous refusal to discuss similar acts by other self-proclaimed states, which have obtained de facto independence exclusively by themselves”.³⁴

It can be argued that Kosovo is different from other secessionist claims because the territory has been under international administration as the international community considered the situation so volatile. Reintegrating such a territory is different from assessing a claim by a separatist group that, on its own, is seeking to overturn the authority of the pre-existing state and unilaterally secede. While secessions are primarily an issue of domestic law, Resolution 1244 internationalized the problem. It also moved Kosovo from being solely under Serbian sovereignty into the grey zone of international administration.

It may be possible to argue that Kosovo is both unique and a source of precedent at the same time. Two reasons are cited for Kosovo's uniqueness:

33 U.S. Recognizes Kosovo as Independent State, statement of Secretary of State Condoleeza Rice, Washington DC (Feb, 18 2008). Available at <http://www.state.gov/secretary/rm/2008/02/100973.htm>. Moreover, In a statement to the UN Security Council following Kosovo's declaration, British Ambassador John Sawers said that “the unique circumstances of the violent break-up of the former Yugoslavia and the unprecedented UN administration of Kosovo make this a sui generis case, which creates no wider precedent, as all EU member States today agreed”.

34 Kulish; Chivers, 2008.

- (1) Kosovo has been under international administration since 1999;
- (2) the Kosovar Albanians are an ethnically homogenous enclave, physically separate and ethnically different from the Serbs.

Conclusion

This paper analyzed the concepts of secession and retrocession in international politics, taking Taiwan and Kosovo as case studies. Those apparently conflicting trends may be framed within the general re-thinking of the Westphalian model: on the one hand, new forms of regional integration emerge; on the other hand, some states vindicate sovereignty and some regions fight for autonomy. For the Chinese government, the respect for sovereignty and territorial integrity is a unnegotiable principle. However, the People's Republic of China is arguably evolving from a traditional Westphalian state into a new pattern of regional integration, in order to keep ambiguous parts of its territory: Tibet, Macau and Hong Kong are some examples and Taiwan may become one as well. Although we can consider Hong Kong and Macau very different from Taiwan, this does not stop China from framing the island under the "one country, two systems" formula. From a legal point of view, Taiwan could be framed within a retrocession process, as in the past it retroceded from Japan to mainland China: it was a *de facto* US colony from the early 1950s.

As for Kosovo, if the "one country, two systems" formula had been applied, it would have avoided the split: there was only one country (Serbia) with two systems, the Serb and the Kosovo system, and this territory would be ruled by its own people with a high degree of autonomy, like the Special Administrative Regions of Hong Kong and Macau. However, holding the support of much of Western Europe, the Kosovo's retrocession to Serbia is very unlikely; it may rather integrate into the European Union, along with the rest of the Balkans. Thus, in Kosovo's case, where both secession and retrocession are a source of conflict, this third category - union - may be the solution.

As should be clear from this analysis, the basic framework provided by international law permits arguments for and against secession. In the interest of systemic stability, international law, set up by established powers, has a bias against secession. However, if we take as a given that secession is not absolutely prohibited by international law, then the case of Kosovo presents a set of facts that may be persuasive: an ethnic group (though perhaps not a "nation"), within a region with historically defined boundaries (Kosovo as a province), after an international intervention to prevent a humanitarian disaster being caused by the predecessor state,

and after negotiations with the predecessor state leading to a complete deadlock, that seeks independence via a declaration that is coordinated with, and supported by, a significant segment of the international community.

It thus stands in contrast to other claims of a "right" to secede, such as those of Taiwan, which due to different material facts would fail under the same legal analysis. The Taiwanese are now considering themselves to be another polity and, perhaps for many, another people. However, while Kosovo Serbs were a minority, the so-called Mainlanders in Taiwan see themselves as largely Han-Chinese ethnically, only with minor cultural differences. Kosovars see themselves as Albanian and definitely not Serb. That is a big difference and one of the problems that politicians have had at establishing a Taiwanese identity, although not an impossible one.

Kosovo was somewhat artificially 'helped along' by NATO that has always been hostile to Serbia, which it sees as culturally and perhaps politically as part of the Russian sphere. Kosovo had no history of separation from Serbia, as Taiwan has regarding China. Kosovo's independence was thus in part a US/NATO-induced successful split of Serbia, a creation of power politics taking advantage of a large Albanian-ethnic population.

During the mediation efforts to determine the status of Kosovo, major powers in charge of the Kosovo negotiations came to think that there was an urgency to find a political solution before the situation in Kosovo would go out of control. Basically, the West dictated the political framework in which Serbia and Kosovo Albanians could negotiate the question of Kosovo status: accept Kosovo independence and negotiate the details. A number of factors led to this conclusion, but the basic reason was the European desire to stabilize the situation as soon as possible. The UN administration, as well as some European leaders, increasingly felt that it was impossible to keep the status quo in Kosovo, that a major explosion could happen in case the political status was not addressed, and a political solution was needed to address the social and economic problems of the province.

Obviously Kosovo does not represent a new wave of self-determination of nations and oppressed minorities, as it happened after the First World War or anti-colonial revolts, but an act to stabilize the Balkans and put the last piece of "puzzle" over the European map. However, although Kosovo declaration of independence and its recognition should not be seen as "precedence" to other conflicts and encourage the breaking down of the nation-state models elsewhere, it is difficult to contain the impact of this example.

The Kosovo conflict is still far from over. The underlying cause of the dispute – the contest between Serbia's sovereignty and Kosovo's independence – has not yet been settled, and neither local nor international consensus exists on how to resolve

it. The international administration looks set to stay in Kosovo. In the short run, it will most likely have to continue struggling to preserve the peace. In doing so, it will have to reconcile Kosovo Albanian declaration of independence with the protection of the Serbs living in there. During the last nine years, the UN led an ambitious institution building effort which has created a unique status quo for the area: it dispatched the territory's public sector from the Serbian state apparatus without making any progress in the domain of political compromise for the final status.

As it was stated in this paper, Kosovo fulfils basic conditions to be a full actor in the international system. It has a particular ethnicity, with its own language, culture and history, perceived as such by its members as well as by the Serbs and the rest of the world. Also they form a big majority in a clearly defined territory, which is under their *de facto* control. They exercise local government and have basic institutions such as schools and universities. Kosovo was even recognized as an autonomous region within Serbia during former Yugoslavia, which just strengthens its case. Moreover, the political situation prior to the declaration of independence did not appear to offer any realistic alternatives to secession. These basic conditions do not apply to Taiwan. China has merely been forced to at least temporarily accept the divide, although not agreeing with it.

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