

Political Aftermath of the ICJ AO on Kosovo

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* LL.B (Belgrade), LL.M (Connecticut), Ph.D (Union Belgrade); Lecturer, Union University Belgrade School of Law (e-mail: tatjana.papic@gmail.com). I would like to thank Milica Delević, Vladimir Djerić, and Marko Milanović for their useful comments. Thanks also goes to Lana Radovanović, Milica Kostić and Dušan Kanazir for their research support. All errors remain my own.

Introduction

This article will discuss political responses to the Advisory Opinion of the International Court of Justice (ICJ) on the declaration of independence of Kosovo. Firstly, it analyses how the opinion fitted into competing narratives on the independence of Kosovo. Secondly, it sheds light on the attempt of Serbia – pursued a week after the AO – to insist on the re-opening of the status negotiations with Kosovo through the United Nations General Assembly (UNGA). It will show how Serbia made a shift at the last moment to compromise with the EU states for the sake of its EU integrations ambitions. This resulted in the adoption of the UNGA Resolution welcoming the EU-led dialogue between Belgrade and Pristina. Thirdly, the article explores the current state of affairs between Serbia and Kosovo, attempting to understand what were the challenges and incentives that lead process forward. One of the agreements reached by the parties during these negotiations – on regional representation and cooperation – will be discussed in more detail. This is not only due to the fact that it explicitly refers to the ICJ's AO on Kosovo, but also because its adoption and implementation are indicative of the process of the EU-leg dialogue. It also shows how the position of the parties can solidify or evolve and how potential EU membership dangling in front of the parties influenced the dynamics of their relations.

1. Reactions to the Kosovo Advisory Opinion

At the very heart of the Kosovo advisory proceedings laid a dispute between Serbia and Kosovo over secession, with emotions running high. Because they were most interested in the outcome of the proceedings, it is important to see how Serbia and Kosovo reacted to the decision of the Court that the declaration of independence did not violate international law, but also what were reactions of other states and international organizations. This article examines these reactions, trying to establish to what extent the AO influenced the future policies of the concerned parties.

A. Reactions of Serbia and Kosovo

On the eve of the advisory opinion, both Serbia and Kosovo were adamant that ruling of the ICJ would not alter their respective positions on the issue of Kosovo's independence.¹ At the same time, both were confident, at least publicly, that the Court would rule to their advantage.² After the opinion held that the declaration of independence of Kosovo did not violate international law, its reception was very different in Belgrade and Pristina.

Kosovo authorities jubilantly welcomed the decision of the Court, cracking open bottles of champagne,³ while cheers erupted from cafes and bars when the ruling was announced on television.⁴ The prime minister of Kosovo, Mr. Hashim Thaçi, claimed a 'historic victory'.⁵ The president of Kosovo, Mr. Fatmir Sejdiu, asserted that the Court spoke 'explicitly on all counts in favor of the right to freedom and self-determination of

¹ Hyseni, 'Kosovo and Serbia React to ICJ Ruling', *BBC News*, 22 July 2010, <http://www.bbc.co.uk/news/world-europe-10733676> (27 September 2013).

² Collaku, Barlovac, 'Both Kosovo, Serbia Confident on Eve of ICJ Opinion', *Balkan Insight*, 21 July 2010, <http://www.balkaninsight.com/en/article/both-kosovo-serbia-confident-on-eve-of-icj-opinion> (28 September 2013).

³ 'K[osovo] Albanians Hail ICJ Decision as Big victory', *B92 News*, 22 July 2010, http://www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=07&dd=22&nav_id=68621 (18 September 2013).

⁴ 'ICJ Ruling on Kosovo; Independence Day', *The Economist*, 22 July 2010, http://www.economist.com/blogs/easternapproaches/2010/07/icj_ruling_kosovo (17 September 2010).

⁵ See S. Dowling, 'The World from Berlin: "Belgrade Must Rethink Its Destructive Kosovo Policy"', *Spiegel Online*, 23 July 2010, <http://www.spiegel.de/international/europe/the-world-from-berlin-belgrade-must-rethink-its-destructive-kosovo-policy-a-708126.html> (10 September 2013).

the people of Kosovo'.⁶ They all called upon states which had not recognised Kosovo as an independent state to do so⁷ and not to fear the possible precedential effect of such action, since 'Kosovo is a unique case'⁸.

There was one specific message directed towards Serbia: that it should come to terms with Kosovo's independence for the better European future of the region⁹ and be ready to 'discuss issues of common interest and importance,'¹⁰ on equal footing, i.e. on a State-to-State basis.¹¹

The mood in Belgrade was naturally very different. A defeat warranted a more elaborate response. The president of Serbia, Mr. Boris Tadić, said the decision of the ICJ was 'difficult for Serbia'.¹² And although the AO was a defeat, both the President and other officials tried to present more as a disappointment with the Court's narrow reading of the question posed by GA. They were focusing not so much on what the Court said but on what it did not say, as can be seen from the statement of the president Tadić:

It is clear that the court was not ruling on the right to secession, but that it decided to debate only the technical content of the declaration of independence. The court avoided to rule on [this] essential issue and decided to let the top UN organ debate that, and all the political implications.¹³

⁶ See the statement of the president, Mr. Fatmir Sejdiu, in 'K[osovo] Albanians Hail ICJ Decision as Big victory', *B92 News*, 22 July 2010, http://www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=07&dd=22&nav_id=68621 (18 September 2013).

⁷ See the official statement by the foreign minister of Kosovo, Mr Skënder Hyseni, 22 July 2010, <http://www.mfa-ks.net/?page=2,4,551&offset=1> (20 September 2013) and 'K[osovo] Albanians Hail ICJ Decision as Big victory', *B92 News*, 22 July 2010, http://www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=07&dd=22&nav_id=68621 (18 September 2013).

⁸ See the official statement by the foreign minister of Kosovo, *supra* note 7.

⁹ *Ibid.* and the statement of the president Mr. Fatmir Sejdiu in 'K[osovo] Albanians Hail ICJ Decision as Big victory', *supra* note 7.

¹⁰ President Sejdiu in 'K[osovo] Albanians Hail ICJ Decision as Big victory', *supra* note 7.

¹¹ Foreign minister of Kosovo Hyseni, *supra* note 7.

¹² 'President Reacts to ICJ Decision', *B92 News*, 22 July 2010, http://www.b92.net/eng/news/politics.php?yyyy=2010&mm=07&dd=22&nav_id=68619 (9 September 2013).

¹³ *Ibid.*

The Serbian Foreign Minister, Mr. Vuk Jeremić, echoed this statement while giving a bit more detail:

The Court neither endorsed the view that this unilateral declaration of independence was a unique case, nor Pristina's claim that Kosovo is a state. Moreover, the court failed to approve the province's avowed right of secession from Serbia, or any purported right to self-determination for Kosovo's Albanians.¹⁴

It was reiterated that Serbia would never recognise Kosovo, as it believed that 'unilateral and ethnically motivated secession is not in line with UN principles.'¹⁵

Moreover, Serbia's next moves were announced immediately: at the following regular session of the UNGA it would push for the adoption of a resolution in order to try to 'confirm the correctness of its policy' byway of 'calling for negotiations in solving this historical problem and conflict between Serbs and Albanians'.¹⁶ This sounded as if Serbia would urge for the re-opening of negotiations on the status of Kosovo, which was soon proved to be true.

Furthermore, Serbia's officials also raised a general concern for the well-being of the international order and other states in the aftermath of the AO. Playing the 'opening Pandora's box' card, they were trying to secure as much support as possible for their future move. So, they warned against misinterpretations of the Court's views as a 'legalization' of Kosovo's attempt at secession (as preached by Kosovo officials) that could have major implications for the secessionist movements worldwide.¹⁷ In their

¹⁴ Vuk Jeremić, 'Kosovo's Disastrous Precedent', Op-Ed, *Wall Street Journal*, 28 July 2010, <http://online.wsj.com/article/SB10001424052748703977004575392901873224526.html> (last visited 21 September 2013).

¹⁵ *Ibid.* and 'President Reacts to ICJ Decision', *supra* note 12.

¹⁶ In original: 'Ovakvo mišljenje Suda otvara mogućnost Srbiji da ispravnost svoje politike potvrdi na jesen u Generalnoj skupštini UN usvajanjem rezolucije koja će pozvati da se ovaj istorijski problem i konflikt reši srpsko-albanskim pregovorima'. See 'Tadić: Nastavak miroljubive borbe' ['Tadić: Continuing a Peaceful Policy'], *B92 News*, 22 July 2010, http://www.b92.net/info/vesti/index.php?yyyy=2010&mm=07&dd=22&nav_category=640&nav_id=447237 (9 September 2013).

¹⁷ See 'Tadić: Teška odluka' ['Tadić: Difficult Decision'], *Blic*, 23 July 2010, <http://www.blic.rs/Vesti/Politika/199626/Tadic-Teska-odluka> (24 September 2012); Jeremić, Op-Ed, *Wall Street Journal*, *supra* note 14 and 'Tadić: Nastavak miroljubive borbe', *supra* note 16.

mind, Kosovo was not a unique case (as claimed by many)¹⁸ but could establish ‘a universally applicable precedent that provide[d] a ready-made model for unilateral secession’¹⁹ if interested parties failed to reach a compromise solution.

Serbian and Kosovo officials differed fundamentally when interpreting the ICJ opinion, as they did on Kosovo’s independence as such. However, both sides tried to take the most of the AO for the purposes of their entrenched domestic and international political positions. Consequently, the ICJ AO was placed into their well-established narratives: Kosovo used it as hard proof that it was an independent state and Serbia used it to justify its continuing struggle against Kosovo’s independence. In this way, both Serbia and Kosovo kept their promise given in the wake of the ICJ ruling: they were not changing their position towards Kosovo independence regardless of the AO.

It should also be noted that there was yet another element to Serbia’s and Kosovo’s responses to the ICJ AO. Officials from both sides made sure to include the messages on the importance of preserving the peace.²⁰ In such a troubled region this was not just meaningless rhetoric.

B. Reactions of other states

There were no surprises either with the reactions of the other states to the ICJ AO. Those who were in favour of Kosovo’s independence naturally welcomed the decision and those who were against expressed reservations. Within these two camps, the substance and intensity of responses differed from state to state. Intensity depended on the extent of previous involvement in the issue of Kosovo independence, while the substance mainly echoed arguments already voiced when Kosovo declared independence.

¹⁸ Vidi MM piece + *infra* notes 41-47.

¹⁹ Jeremić, Op-Ed, *Wall Street Journal*, *supra* note 14.

²⁰ See Marzouk, Collaku, Barlovac, ‘Pristina, Belgrade React to ICJ Shock Decision’, *Balkan Insight*, 22 July 2010, <http://www.balkaninsight.com/en/article/pristina-belgrade-react-to-icj-shock-decision> and ‘President Reacts to ICJ Decision’, *supra* note 12 and ‘Serbia looks to UN GA after ICJ ruling’, *B92 News*, 22 July 2010, http://www.b92.net/eng/news/politics.php?yyyy=2010&mm=07&dd=22&nav_id=68617 (23 September 2013).

In addition, states from the region of the Western Balkans emphasized the regional perspective in the reactions to the AO, stressing that this decision could contribute to the regional peace, stability and progress (e.g. Albania,²¹ Croatia,²² Slovenia,²³ Montenegro²⁴).

There were three common issues around which states expressed their responses to the AO: (1) what did the ICJ AO said/did not say; (2) whether Kosovo was a precedent: (3) what should Serbia and Kosovo do after the AO.

Some supporters of Kosovo independence, such as the US,²⁵ France,²⁶ Germany²⁷ and Czech Republic²⁸, pointed out that the Court confirmed their view on Kosovo's declaration of independence as not being contrary to international law. France,²⁹ the UK³⁰ and the US³¹ urged states which did not recognise Kosovo to do so. On the other hand, some states which had opposed Kosovo independence (these included China,³²

²¹ 'UN Court Says Kosovo Independence Legal', *Radio Free Europe*, 23 July 2010, http://www.rferl.org/content/UN_Court_Says_Kosovo_Independence_Did_Not_Violate_International_Law/2107090.html (28 September 2010).

²² 'Josipović: Beograd i Priština u EU', *B92 News*, 23 July 2010, http://www.b92.net/info/vesti/index.php?yyyy=2010&mm=07&dd=23&nav_id=447479 (26 September 2010).

²³ 'Slovenia Hopes ICJ Opinion Will Improve Serbia-Kosovo Relations', *Slovenia Press Agency*, 22 July 2010, <http://www.sta.si/en/vest.php?s=a&id=1537018> (26 September 2013).

²⁴ 'Reactions to ICJ Kosovo ruling: To recognise or not to recognise', *The Economist*, 29 July 2010, http://www.economist.com/blogs/easternapproaches/2010/07/reactions_icj_kosovo_ruling (30 September 2013).

²⁵ Statement of the US Secretary of State, Ms. Hilary Rodham Clinton, 'Release of International Court of Justice Advisory Opinion on Kosovo's Declaration of Independence', 22 July 2010, <http://www.state.gov/secretary/rm/2010/07/145042.htm> (26 September 2013).

²⁶ Statement of the French minister of foreign and European affairs, Mr. Bernard Kouchner, 'Kosovo: ICJ Advisory Opinion', 22 July 2010, <http://www.consulfrance-newyork.org/Kosovo-ICJ-advisory-opinion> (26 September 2013).

²⁷ 'EU remains divided on Kosovo despite court opinion', *EU Observer*, 27 July 2013, <http://euobserver.com/news/30541> (26 September 2013).

²⁸ Statement of the Czech Ministry of Foreign Affairs on the publication of the ICJ Advisory Opinion, 22 July 2010, http://www.mzv.cz/jnp/en/issues_and_press/statements/x2010_07_22_statement_of_mfa_on_the_publication_of_the_icj_advisory_opinion.html (26 September 2013).

²⁹ Statement of the French Minister of Foreign and European Affairs, *supra* note 26.

³⁰ Announcement of the Foreign and Commonwealth Office, 'Foreign Secretary welcomes Kosovo ruling', 22 July 2010, <https://www.gov.uk/government/news/foreign-secretary-welcomes-kosovo-ruling> (26 September 2013).

³¹ Statement of the US Secretary of State, *supra* note 25.

³² Chinese Foreign Ministry spokesperson, Qin Gang's Response to the International Court of Justice's Advisory Opinion on the Kosovo Case, 23 July 2010,

Cyprus,³³ India,³⁴ Russia,³⁵ Romania,³⁶ Slovakia,³⁷ Spain³⁸ and Ukraine³⁹), explicitly said that they would not change their stance on the issue, despite the decision of the ICJ. Some of them explained that this was due to fact that the ICJ only considered the content of Kosovo's declaration of independence but not its consequences,⁴⁰ which was in line with Serbia's arguments.

The pro-Kosovo camp again reiterated that Kosovo was a unique case, which was not to set a precedent for the future (Bulgaria,⁴¹ France,⁴² Germany,⁴³ UK,⁴⁴ US,⁴⁵ Canada,⁴⁶ Italy⁴⁷).

The same message also came from Azerbaijan⁴⁸, a state in the opposite camp, which was due to the fact that AO could resonate with its internal secessionist challenges (with

<http://www.fmprc.gov.cn/eng//xwfw/s2510/t719113.htm> (26 September 2013). These negotiation should be led within the UN framework.

³³ 'Reaction in quotes: UN legal ruling on Kosovo,' *BBC News*, 22 July 2010, <http://www.bbc.co.uk/news/world-europe-10733837> (27 September 2013).

³⁴ 'India not to recognize Kosovo', *Thaindian News*, 9 August 2010, http://www.thaindian.com/newsportal/uncategorized/india-not-to-recognize-kosovo_100409649.html (28 September 2013).

³⁵ B. Barlovac, S. Arslanagic, 'World Reacts to ICJ Advisory Ruling on Kosovo', *Balkan Insight*, 23 July 2010, <http://www.balkaninsight.com/en/article/world-reacts-to-icj-advisory-ruling-on-kosovo> (26 September 2013).

³⁶ *Ibid.*

³⁷ 'Washington Wants EU unity over Kosovo', *B92 News*, 22 July 2010, http://www.b92.net/eng/news/politics.php?yyyy=2010&mm=07&dd=22&nav_id=68618 (27 September 2013).

³⁸ 'Spain in Fresh Kosovo Statement', *B92 News*, 24 July 2010, http://www.b92.net/eng/news/politics.php?yyyy=2010&mm=07&dd=24&nav_id=68664 (26 September 2013).

³⁹ 'Украина не признает независимости Косово' ['Ukraine does not recognise independence of Kosovo'], *Коммерсантъ Украина* [Kommesrant], 28 July 2010, <http://www.kommersant.ua/doc/1477476>

⁴⁰ As did Romania, see 'Cyprus, Romania on Kosovo after ICJ ruling', *B92 News*, 23 July 2010, http://www.b92.net/eng/news/politics.php?yyyy=2010&mm=07&dd=23&nav_id=68643 (28 September 2013).

⁴¹ See 'Bulgaria for Dialogue After ICJ Decision,' *B92 News*, 25 July 2010, http://www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=07&dd=25&nav_id=68668 (26 September 2013).

⁴² Statement of the French Minister of Foreign and European Affairs, *supra* note 26.

⁴³ 'EU remains divided on Kosovo', *supra* note 27.

⁴⁴ Announcement of the Foreign and Commonwealth Office, *supra* note 30.

⁴⁵ Statement of the US Secretary of State, *supra* note 25.

⁴⁶ 'Quebec sovereignty threat remains very real', *KosovoCompromise*, 3 September 2010, <http://www.kosovocompromise.com/cms/item/topic/en.html?view=story&id=3013§ionId=2> (26 September 2013).

⁴⁷ 'Italy: Kosovo talks must continue,' *B92 News*, 25 July 2010, http://www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=07&dd=25&nav_id=68669 (26 September 2013).

Nagorno-Karabakh). Other states with such challenges were prompted to stress how their situation did not resemble Kosovo's (Indonesia,⁴⁹ Moldova,⁵⁰ Spain⁵¹ and Cyprus⁵²). This was also one of the messages that came from Bosnia and Herzegovina (BaH).⁵³ However, being a deeply divided state BaH did not speak with one voice. The president of the Serb entity (Republika Srpska), sent the opposite message from the capital's: the ICJ's decision on Kosovo's declaration of independence had opened 'the possibility for [Republika Srpska] to secede from Bosnia-Herzegovina.'⁵⁴ At the same time he stressed that he would continue to prevent BaH from recognising Kosovo as an independent state.⁵⁵ This schizophrenic position was in part the result of a close relationship Republika Srpska and Serbia.

One common stance was widespread in both camps: that Serbia and Kosovo needed to negotiate. However, when it came what they should negotiate about, the positions again diametrically diverged. While the states opposing Kosovo's independence called for negotiations on the status of Kosovo within the UNSC Resolution 1244⁵⁶ framework (China,⁵⁷ Cyprus,⁵⁸ Russia,⁵⁹ Romania,⁶⁰ Spain⁶¹), those who supported it were adamant

⁴⁸ 'Baku says UN legal ruling on Kosovo sets no precedent', *1.News.az*, 23 July 2010, <http://news.az/articles/19703> (27 September 2013).

⁴⁹ 'ICJ ruling could inspire RI separatists', *The Jakarta Post*, 27 July 2010, <http://www.thejakartapost.com/news/2010/07/27/icj-ruling-could-inspire-ri-separatists039.html> (28 September 2013).

⁵⁰ 'И.о. главы Молдавии: Косовский прецедент неприменим к Приднестровью', ['Acting Head of Moldavia: Kosovo precedent does not apply to Transnistria'], *Regnum*, 23 July 2010, <http://www.regnum.ru/news/russia/1307836.html> (27 September 2013).

⁵¹ 'Spain in Fresh Kosovo Statement', *supra* note 38.

⁵² 'Cyprus, Romania on Kosovo after ICJ ruling', *supra* note 40.

⁵³ See the Statement of the president of the tripartite Presidency of BaH, Ms. Haris Silajdzic, in Marina Sadikovic, 'Oprečna tumačenja mišljenja o Kosovu' ['Conflicting Interpretation of Kosovo [Advisory Opinion]'], 23 July 2010, http://www.slobodnaevropa.org/content/oprecna_tumacenja_misljenja_suda_msp/2108144.html (30 September 2013).

⁵⁴ 'RS: ICJ decision and secession', *B92 News*, 25 July 2010, http://www.b92.net/eng/news/region-article.php?yyyy=2010&mm=07&dd=25&nav_id=68674 (30 September 2013).

⁵⁵ See 'Tadić: Teška odluka', *supra* note 17.

⁵⁶ SC Res. 1244, 10 June 1999, UN doc. S/RES/1244.

⁵⁷ China generally referred to the UN framework. See Chinese Foreign Ministry Spokesperson Qin Gang's Response, *supra* note 32.

⁵⁸ 'Spain, Romania, Cyprus and Slovakia reiterated they will not recognise Kosovo', *KosovoCompromise*, 26 July 2013, <http://www.kosovocompromise.com/cms/item/topic/en.html?view=story&id=2905§ionId=1> (27 September 2013).

that this was off the table (France,⁶² Germany,⁶³ Italy,⁶⁴ Slovenia,⁶⁵ UK⁶⁶ and US⁶⁷), since they viewed Kosovo independence as an irreversible matter.⁶⁸

Thus, as was the case with Serbia and Kosovo, the AO hardly made any difference with regard to states' attitudes towards Kosovo's independence, at least when it comes to those states that had previously declared a position.

C. Reactions of international organizations

Not many reactions came from international organizations. Only the organizations constituting the four pillars of the international presence in Kosovo – the UN, EU, NATO and OSCE – felt a need to issue a statement after the AO. All of them were careful not to take sides and were mindful of the respective roles they played in Kosovo.

The Secretary General of the UN urged Serbia and Kosovo to engage in a constructive dialogue and 'to avoid any steps that could be seen as provocative and derail the dialogue.'⁶⁹ He also announced that he would be forwarding the advisory opinion to the General Assembly for it to decide on how to proceed with the matter.⁷⁰

The NATO and OSCE were succinct: they took note of the decision, stating they would continue in carrying out their respective mandates in Kosovo – the former in promoting

⁵⁹ 'World Reacts to ICJ Advisory Ruling on Kosovo', *supra* note 35. Russia said that Both Russia stated that UNSC 1244 is the only legal frame

⁶⁰ *Ibid.*

⁶¹ 'Spain in Fresh Kosovo Statement', *supra* note 38.

⁶² Statement of the French minister of foreign and European affairs, *supra* note 26.

⁶³ 'EU remains divided on Kosovo', *supra* note 27.

⁶⁴ 'Italy: Kosovo talks must continue', *supra* note 47.

⁶⁵ 'Slovenia Hopes ICJ Opinion Will Improve Serbia-Kosovo Relations', *supra* note 23.

⁶⁶ Announcement of the Foreign and Commonwealth Office, *supra* note 30.

⁶⁷ Statement of the US Secretary of State, *supra* note 25.

⁶⁸ *Ibid.* See also Statement of the French minister of foreign and European affairs, *supra* note 26; Announcement of the Foreign and Commonwealth Office, *supra* note 30; 'EU remains divided on Kosovo', *supra* note 27.

⁶⁹ Statement attributable to the Spokesperson for the Secretary-General on the ICJ advisory opinion on Kosovo's independence, 22 July 2010, <http://www.un.org/sg/statements/?nid=4691> (28 September 2010).

⁷⁰ *Ibid.*

and monitoring human rights and strengthening democratic institutions,⁷¹ and the latter in preserving the security in Kosovo.⁷²

The EU response was the only one with a concrete proposal for the future action. Namely, after welcoming the Court's decision the EU High Representative for Foreign and Security Policy, Baroness Catherine Ashton, stated that the EU was

ready to facilitate a process of dialogue between Pristina and Belgrade. This dialogue would be to promote cooperation, achieve progress on the path to Europe and improve the lives of the people. The process of dialogue in itself would be a factor for peace, security and stability in the region.⁷³

Hence, despite its internal split on the issue of Kosovo recognition,⁷⁴ the EU was united on the position that Belgrade and Pristina needed to negotiate. Most of the EU states which recognised Kosovo thought talks should only include technical issues, while some of the member states which contested Kosovo's statehood were for the renewal of status talks.⁷⁵ For this reason, the EU proposal was drafted broadly and neutrally and did not specify what the substance of a dialogue it strived to facilitate would be. As will be seen, this would prove essential in building consensus in the phases that would follow.

2. GA Resolution on ICJ's Kosovo AO

The AO proceedings were of Serbia's own making. It was Serbia who pushed for the request to be submitted to the ICJ, and Serbia who drafted the question. Although the idea behind the AO was to buy Serbia more time in calming the crisis over Kosovo's

⁷¹ See 'OSCE Mission in Kosovo to continue work for benefit of all communities, says OSCE Secretary General', *Press Release*, 26 July 2010, <http://www.osce.org/sg/72112> (28 September 2010)

⁷² See 'Tadić: Teška odluka', *supra* note 17.

⁷³ Declaration by High Representative Catherine Ashton on behalf of the European Union on the International Court of Justice advisory opinion on Kosovo, EU10-153EN, 22 July 2010, http://www.eu-un.europa.eu/articles/en/article_9973_en.htm (28 September 2010).

⁷⁴ Cyprus, Romania and somewhat Spain, see *supra* notes 59, 60 and 61.

⁷⁵ *Ibid.*

independence, the quest for an advisory opinion raised expectations of Serbia's 'victory' as if a full fledged contentious case was on-going between Serbia and Kosovo. Hence, the main issue after the AO was what Serbia's next move would be.

Ever since Kosovo declared independence,⁷⁶ one of the main goals of Serbia's foreign policy⁷⁷ was to secure re-opening of negotiations on the status of Kosovo.⁷⁸ Ultimately, the AO was supposed to help achieve that goal.⁷⁹ Namely, Serbian officials were confident that the ICJ would uphold the territorial integrity of Serbia, which would imply that Kosovo Albanians did not have right to secede.⁸⁰ They hoped that a legal battle in the form of ICJ advisory proceedings could be won and that this would ensure political support needed for the re-opening of status negotiations. When they learnt that the AO proceedings did not bring the result they expected, Serbian officials nevertheless decided to push for status negotiations by submitting a draft resolution to GA that would call for them.

However, this could not be done without a huge cost to Serbia's other major foreign policy goal: joining the EU. The idea to reopen negotiations on Kosovo's status meant a confrontation with three major EU member states, which recognised Kosovo and were vigorously opposed to new status negotiations (UK, France and Germany).⁸¹ At the same

⁷⁶ Kosovo Declaration of Independence, <http://www.assembly-kosova.org/?cid=2,128,1635> (8 October 2013).

⁷⁷ According to the Serbian foreign minister, Mr. Jeremić, this goal captured all diplomatic efforts of the country. See 'International Court of Justice Rules On Kosovo Independence', *Radio Free Europe*, 22 July 2010, http://www.rferl.org/content/High_UN_Court_To_Rule_On_Kosovo_Independence/2106373.html (1 October 2013).

⁷⁸ There were already negotiations on the Kosovo status settlement between Belgrade and Pristina, led by the Secretary General's Special Envoy Martti Ahtisaari, which Serbia rejected. So called Ahtisaari's Plan envisaged internationally supervised independence of Kosovo (See *Comprehensive Proposal for the Kosovo Status Settlement*, see UN Doc. S/2007/168/Add.1 (26 March 2007), http://www.unosek.org/docref/Comprehensive_proposal-english.pdf (visited 8 October 2013). However, this plan failed, after it was not endorsed by the UNSC, primarily due to Russia's opposition to it. See MacDonald, 'Russia rejects plan for Kosovo', *Financial Times*, 13 July 2007, <http://www.ft.com/intl/cms/s/o/f3f09aae-30a0-11dc-9a81-0000779fd2ac.html#axzz1xqyDvwn9> (16 January 2013).

⁷⁹ Statement of the prime minister, Mr. Mirko Cvetković, in 'Both Kosovo, Serbia Confident on Eve of ICJ Opinion', *supra* note 2.

⁸⁰ See the Statement of Serbian president, Mr. Tadić, in 'International Court of Justice Rules On Kosovo Independence', *supra* note 77.

⁸¹ See Statement of the French minister of foreign and European affairs, *supra* note 26; Announcement of the Foreign and Commonwealth Office, *supra* note 30; 'EU remains divided on Kosovo', *supra* note 27.

time, only by unanimous decision of all EU member states Serbia could hope to proceed with its integration into EU.

The following part of this article will discuss Serbia's move to lobby for the UNGA resolution and show how and why the initial text had been changed. Moreover, it will put this move and its ultimate outcome (a UNGA Resolution adopted by consensus) into the broader picture of future relations between Serbia and Kosovo.

A. Homecoming –Kosovo's return to the UNGA

When the ICJ AO was made public, Serbian president Tadić explained to the domestic audience that, *inter alia*, the ICJ let UNGA decide on the right to secession and its political implications.⁸² Therefore, he announced, Serbia would push for a resolution in the UNGA, which would call for negotiations on the status of Kosovo. That resolution was of multifold purpose: to prove Serbia was right,⁸³ to prevent different interpretations of the ICJ opinion⁸⁴ and the creation of dangerous precedents in the future.⁸⁵

This idea was supported by the Serbian Government and the Serbian Parliament.⁸⁶ On the motion of the Government, the Parliament adopted the 'Decision on Continuation of Activities of the Republic of Serbia in Defense of its Sovereignty and Territorial Integrity'.⁸⁷ It called upon the Government to continue to defend the sovereignty and

⁸² See the text followed by *supra* note 13.

⁸³ See the statement of the president of Serbia, *supra* note 16.

⁸⁴ Full quote: "There would be no possibilities for different interpretations of the advisory opinion [once UNGA resolution adopted]." [In original: 'Nakon [usvajanja rezolucije u GS] neće više biti prostora za različite interpretacije sudskog mišljenja'] See 'Tadić: Teška odluka', *supra* note 17.

⁸⁵ 'Serbia's chances before UN GA "almost impossible"', *B92 News*, 9 August 2010, http://www.b92.net/eng/news/politics.php?yyyy=2010&mm=08&dd=09&nav_id=68971 (24 September 2012).

⁸⁶ 'Serbia's Parliament Calls For New Talks On Kosovo', *Radio Free Europe*, 27 July 2010, http://www.rferl.org/content/Serbias_Parliament_Calls_For_New_Talks_On_Kosovo/2110590.html (30 September 2010).

⁸⁷ Odluka o nastavku aktivnosti Republike Srbije u odbrani suvereniteta i teritorijalnog integriteta Republike Srbije, *Službeni glasnik Republike Srbije* ['Decision on the continuation of Serbia's activities in

territorial integrity of the country (point 1), and expressed its support for ‘submitting a resolution to the UN General Assembly, which adoption will open a venue for reaching a compromise solution for Kosovo-Metohija through negotiations (point 3 and 4).’⁸⁸

The Serbian Foreign Ministry was already working on a draft of the resolution. The foreign minister, Mr. Jeremić, claimed there were ‘consultations [...] underway with Russia, China and the European Union’ in preparing a draft (which later proved not to be the case),⁸⁹ but that the resolution would be written by Serbia alone.⁹⁰

While the Serbian president maintained that Serbia was not giving up its EU ambitions,⁹¹ it was hard to reconcile this position with the fact that a draft resolution that would call for status negotiations would mean an open confrontation with the states that recognised Kosovo, which were at the same time crucial decision-makers in the process of Serbia’s EU integration (UK, Germany and France).⁹² Accordingly, Serbia’s two principal foreign policy goals– joining the EU and keeping Kosovo – became mutually exclusive, regardless of what its president was claiming.⁹³

B. A fast and furious draft

Within a week from the day the ICJ delivered its AO on Kosovo independence, Serbia submitted its draft resolution to UNGA. This speed took the US and EU by surprise.⁹⁴

the defence of its sovereignty and territorial integrity, Official Gazette of the Republic of Serbia’], No. 51/2010. Available in English at http://www.b92.net/eng/insight/pressroom.php?yyyy=2010&mm=07&nav_id=68750 (1 October 2013).

⁸⁸ *Ibid.*

⁸⁹ See the text accompanied with *infra* notes 109 and 110.

⁹⁰ ‘Parliament Backs govt. Kosovo Policy’, *B92 News*, 27 July 2010, http://www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=07&dd=27&nav_id=68710 (30 September 2010).

⁹¹ ‘Tadić o daljoj politici prema Kosovu,’ [‘Tadić on future moves towards Kosovo’], *B92rtv*, 26 July 2010, <http://www.youtube.com/watch?v=1u7xXMBKR5Y> (4 October 2013).

⁹² Cyprus, Greece, Romania, Slovakia and Spain refused to recognise it due to their domestic concerns.

⁹³ ‘Tadić o daljoj politici prema Kosovu,’ *supra* note 91.

⁹⁴ ‘Serbia criticized over UN GA draft’. *B92 News*, 29 July 2010, http://www.b92.net/eng/news/politics.php?yyyy=2010&mm=07&dd=29&nav_id=68776 (4 October 2013).

The draft resolution's preamble stressed that 'one-sided secession' could not be accepted, and the operative part acknowledged the AO and called on 'the sides to find a mutually acceptable solution for *all disputed issues through peaceful dialogue*, with the aim of achieving peace, security and cooperation in the region.'⁹⁵

Obviously, this draft was highly divisive as it called for new negotiations on the status of Kosovo, which was unacceptable for the states that recognised Kosovo. As one could expect, these states criticized Serbia for sending such a draft to New York.⁹⁶ This was especially due to the fact that that Serbia after all did not consult the EU before doing so,⁹⁷ although Serbian foreign minister claimed the opposite⁹⁸. Kosovo officials predictably called for the rejection of Serbia's draft resolution.⁹⁹

Then EU states started working on their draft resolution, which would be supported from all EU member-states, including those which did not recognise Kosovo.¹⁰⁰ Belgrade again became a hot destination for Western high officials. British Foreign Secretary, Mr. William Hague, and German Foreign Minister, Mr. Guido Westerwelle, both traveled there to urge Serbia's officials to drop the policy of confrontation if they wanted to get their country closer to the EU.¹⁰¹ They both asked for Serbia's draft resolution to be withdrawn.¹⁰² The same message came from the US.¹⁰³ Serbia thus came under huge political pressure, one that was largely its own doing.

⁹⁵ Emphasis added. 'Serbia Submits Kosovo Draft to UN GA', *B92 News*, 29 July 2010, http://www.b92.net/eng/news/politics.php?yyyy=2010&mm=07&dd=28&nav_id=68748 (16 September 2013). UN Doc. A/64/L.65.

⁹⁶ 'Serbia criticized over UN GA draft', *supra* note 94.

⁹⁷ *Ibid.*

⁹⁸ See 'Parliament Backs govt. Kosovo Policy', *supra* 90.

⁹⁹ In a letter to the member states of the UN and international organizations (Council of Europe, EU, OSCE, Organization of the Islamic Conference, The Arab League, the Organization of American States, etc), see 'Sejdiu, Thaci call on UN to reject Serbia's resolution', *B92 News*, 16 August 2010, http://www.b92.net/eng/news/politics.php?yyyy=2010&mm=08&dd=16&nav_id=69109 (4 October 2013).

¹⁰⁰ 'Serbia criticized over UN GA draft', *supra* note 94.

¹⁰¹ 'British FM favors withdrawal of resolution', *B92 News*, 31 August 2010, http://www.b92.net/eng/news/politics.php?yyyy=2010&mm=08&dd=31&nav_id=69406 (4 October 2013). 'Germany Urges Serbia to Accept Kosovo', *SETimes.com*, 27 August 2010, http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2010/08/27/feature-01 (4 October 2013).

¹⁰² *Ibid.*

C. Sobering up

Reactions from Belgrade were mixed. On one side were those saying that Serbia could not change its stance, such as foreign minister Jeremić¹⁰⁴ and deputy prime minister for EU integration, Mr. Bozidar Djelic.¹⁰⁵ On the other hand, the President's cabinet was apparently more flexible and issued a statement after his meeting with British Foreign Secretary Hague that Serbia was ready for a compromise, without recognizing Kosovo.¹⁰⁶ Some days earlier, another deputy prime minister, Mr. Ivica Dačić,¹⁰⁷ said Serbia was open to changes of the draft resolution. Moreover, his statement shed more light on the circumstances in which the draft resolution was submitted in the first place. Dačić said that the Serbian foreign minister had informed the Government¹⁰⁸ that the EU was consulted on the text of the resolution, but that 'clearly there was no agreement on the text of resolution'.¹⁰⁹ The statement of the British Foreign Secretary, Mr. William Hague, corroborates this.¹¹⁰ Therefore, it seemed that Serbian foreign minister Jeremić was the *spiritus movens* of entering into an open confrontation with the major EU states and the US, by submitting a draft resolution while knowing they would strenuously oppose it.

Vuk Jeremić was perceived by Western officials and diplomats as a person unwilling to compromise on the issues of Kosovo independence.¹¹¹ He was vigorously opposing Kosovo's independence and pushing for taking independence case to the ICJ, as

¹⁰³ 'Americans request recall of Jeremić', *Blic*, 26 July 2010, <http://english.blic.rs/News/6703/Americans-request-recall-of-Jeremic> (11 October 2013).

¹⁰⁴ See 'British FM favors withdrawal of resolution', *supra* note 101.

¹⁰⁵ 'Serbia "won't withdraw Kosovo draft", *B92 News*, 21 August 2010, http://www.b92.net/eng/news/politics.php?yyyy=2010&mm=08&dd=23&nav_id=69233 (5 October 2013).

¹⁰⁶ 'British FM favors withdrawal of resolution', *supra* note 101.

¹⁰⁷ "Serbia open to changes to UN GA draft", *B92 News*, 21 August 2010, http://www.b92.net/eng/news/politics.php?yyyy=2010&mm=08&dd=21&nav_id=69209 (4 October 2013).

¹⁰⁸ This was also noted in Serbian media, see *supra* note 90.

¹⁰⁹ "Serbia open to changes to UN GA draft", *supra* note 107.

¹¹⁰ See 'British FM favors withdrawal of resolution', *supra* note 101.

¹¹¹ 'Americans request recall of Jeremić', *supra* note 103.

corroborated by the number of hours he reportedly spent in air.¹¹² His peculiar combination of energy and divisiveness earned Serbia's foreign policy the depiction of a foreign policy on steroids.¹¹³

During the course of the advisory proceedings, he was incessantly raising the political stakes, as if a full-fledged contentious case was on-going between Serbia and Kosovo, and as if an outcome favourable for Serbia was never in doubt. He was beyond question a leading star of the advisory proceedings drama. Hence the ironic headline in the form of a personal thank you note¹¹⁴ – written in Serbian – that appeared on the cover of a Pristina daily newspaper when the ICJ AO was announced.¹¹⁵ It was a hard blow not only for Serbia but for him personally when ICJ did not rule as he expected. Nevertheless, in the aftermath of ICJ AO, his rhetoric did not change. His stated desire for Serbia's draft resolution was the UN concluding that the "secessionists were not right".¹¹⁶ It seems that he allowed no room for a compromise with EU states on the draft resolution.

However, it was clear that Belgrade could not hope to go forward in its EU integrations if it followed the track set by its Foreign Minister. On 2 September, a week before the GA session, it was reported that Belgrade wanted to establish a common ground with 22 EU member states which had recognised Kosovo.¹¹⁷ Firstly, opinions of the member states within the EU were harmonized.¹¹⁸ This served as 'guidelines' for reaching harmonized positions between the EU and Serbia in discussing the issue of Kosovo in the UNGA,

¹¹² He claimed that he spent 700 hours in air in 2008. See 'Serbia's busy foreign policy: Better troublesome than dull', *The Economist*, 22 October 2009, <http://www.economist.com/node/14710896> (30 September 2010).

¹¹³ *Ibid.* 'Serbia's busy foreign policy', *supra* note 112.

¹¹⁴ In original: 'Hvala Vuce'. See Pristina daily *Express* shown in Reuters Video at http://article.wn.com/view/2010/07/25/ICJ_ruling_to_sober_Serbia_Kosovo_premier_says/#/video (20 September 2013).

¹¹⁵ *Ibid.*

¹¹⁶ 'Parliament Backs govt. Kosovo Policy', *supra* 90.

¹¹⁷ 'Spain Working on changes to Kosovo resolution', *B92 News*, 2 September 2010, http://www.b92.net/eng/news/politics.php?yyyy=2010&mm=09&dd=02&nav_id=69434 (7 October 2013).

¹¹⁸ See 'EU harmonizes position on Serbian resolution', *B92 News*, 7 September 2010, http://www.b92.net/eng/news/politics.php?yyyy=2010&mm=09&dd=07&nav_id=69544 (7 October 2013).

which were presented to president Tadić in Brussels on 7 September 2010.¹¹⁹ The message was that the wording of the draft resolution needed to be amended in order to exclude views that were leading to a clear confrontation with those EU states which recognised Kosovo's independence and were against re-opening of status talks.¹²⁰

Two days later, on the very day when the GA was expected to discuss Serbia's draft resolution, Belgrade finally found a common ground with the EU. It immediately withdrew the draft resolution (from 28 July),¹²¹ and submitted a new one co-written and co-sponsored with the EU.

D. The ultimate text – Resolution 64/298 on ICJ's Advisory Opinion on Kosovo

Resolution 64/298¹²² was adopted by consensus.¹²³ In its operative part, the General Assembly acknowledged the AO and welcomed

the readiness of the European Union to facilitate a process of dialogue between the parties; the process of dialogue in itself would be a factor for peace, security and stability in the region, and that dialogue would be to promote cooperation, achieve progress on the path to the European Union and improve the lives of the people.¹²⁴

Phrases such as 'unilateral secession' and 'negotiation on all open issues' were gone.¹²⁵ What was left was wording that each party could interpret in line with its position on the

¹¹⁹ *Ibid.* See also brief statement from the EU issued on 7 September 2010, A 175/10, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/116326.pdf (7 October 2013).

¹²⁰ 'EU harmonizes position on Serbian resolution', *supra* note 118.

¹²¹ See *supra* note 95.

¹²² UN Doc. A/RES/64/29, 13 October 2010, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/64/298 (17 September 2013).

¹²³ *Ibid.* and 'Serbia, EU reach resolution compromise' *B92 News*, 9 September 2010, http://www.b92.net/eng/news/politics.php?yyyy=2010&mm=09&dd=09&nav_id=69564 (7 October 2013).

¹²⁴ GA Res. 64/298, *supra* note 122.

¹²⁵ 'EU harmonizes position on Serbian resolution', *supra* note 118.

issue of Kosovo independence, and this secured the common ground necessary for the adoption of the resolution.

The role of the EU welcomed by the UNGA Resolution fits with the framework set by the UNSC presidential statement of November 2008, which welcomed the efforts of the EU ‘to advance the European perspective of the whole of the Western Balkans, thereby making a decisive contribution to regional stability and prosperity.’¹²⁶

When introducing the draft resolution, Serbian Foreign Minister Jeremić said that the document strived to put the AO ‘in an appropriate international context that [would] contribute to all-around stability,’¹²⁷ and that the draft was a status-neutral document.¹²⁸ The latter was particularly important for Serbia to emphasize, since it allowed its position of not recognizing Kosovo’s independence to remain intact. After reiterating that Serbia was not and would not recognise Kosovo’s declaration of independence, he stated that the resolution would ‘help to create an atmosphere conducive to the establishment of comprehensive compact of peace between Serbia and Albanians through good-faith dialogue’.¹²⁹

This was a change everyone commended.

Besides Serbia, 14 states addressed the GA.¹³⁰ All of them were praising Serbia for its constructive approach and none, except Albania,¹³¹ even mentioned the first draft resolution of 28 July. Everyone also welcomed the compromise and stressed that only negotiations were to secure a durable peace in the Balkans.¹³² However, when it came to

¹²⁶ UN Doc. S/PRST/2008/44, 26 November 2008. At the time, this presidential statement it served to provide a nexus between UNSC Resolution 1244 framework and the EU Council’s Action Plan of February 2008, aimed to establish a civilian mission in Kosovo (European Union Rule of Law Mission in Kosovo, EULEX). European Union Council, Council Joint Action 2008/124/CFSP of 4 February 2008, OJ 2008 L 42/92, http://www.eulex-kosovo.eu/en/info/docs/JointActionEULEX_EN.pdf (13 October 2013).

¹²⁷ See UN. Doc. A/64/PV.120, 9 September 2010, at 1.

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*, at 2.

¹³⁰ These were Azerbaijan, Venezuela, Argentina, US, Turkey, Brazil, Russian Federation, China, India, Peru, Albania, Fiji, Indonesia and Iran. First three before and the rest after the resolution was adopted *Ibid.*, par 1–7.

¹³¹ *Ibid.*, at 5.

¹³² *Ibid.*

the issue of the substance of the negotiations, participants in the debate were again divided along the lines of their position towards Kosovo's independence.

Most of the states which addressed the GA were of the opinion that a durable peace should be achieved through status talks (Azerbaijan, Venezuela, Argentina, Russia, Brazil, China, India, Indonesia and Iran).¹³³ Two states were adamant these negotiations should only be on practical issues (US and Albania).¹³⁴ This balance was due to the fact that most of the states which participated in the debate did not recognise Kosovo.¹³⁵ This was also why the majority of the debate participating states emphasized importance of the principle of territorial integrity (Azerbaijan, Venezuela, Brazil, China, India, Indonesia and Iran)¹³⁶ or reiterated that they considered UNSC Resolution 1244, as a legal foundation for achieving a durable solution for Kosovo (Argentina, Russia, China and Brazil).¹³⁷

In order to retain common ground with the EU, the address of the Serbian Foreign Minister largely avoided these arguments. Only at the very end of his speech one could sense his past rhetoric on Kosovo:

The Assembly should not have no doubt that, come what may, Serbia's resolve shall not waver. We will not tire, because we must not fail. Although our challenges remain formidable, so do our strengths as we look to the future with conviction in the justice of our cause.¹³⁸

¹³³ *Ibid.* Azerbaijan, Venezuela (at 2), Argentina (at 3), Russia and Brazil (at 4), China and India (at 5), Indonesia and Iran (at 7).

¹³⁴ *Ibid.* US (at 4) and Albania (at 5).

¹³⁵ At the time of the time of the GA session these were Azerbaijan, Venezuela, Argentina, Brazil, Russian Federation, China, India, Fiji, Indonesia and Iran. All but Fiji remain on that position to the day of the completion of this paper. See Ministry of Foreign Affairs, Countries that have recognized the Republic of Kosova, www.mfa-ks.net/?page=2,33 (12 October 2013). States which addressed the UNGA and did recognise Kosovo at the time were US, Turkey, Albania and Peru. *Ibid.* See Ministry of Foreign Affairs, Countries that have recognised the Republic of Kosova, www.mfa-ks.net/?page=2,33 (12 October 2013).

¹³⁶ *Ibid.* Azerbaijan, Venezuela (at 2), Brazil (at 4), China and India (at 5), Indonesia and Iran (at 7).

¹³⁷ *Ibid.* Argentina (at 3), Russia and Brazil (at 4). More specifically, China was not referring specifically to the UNSC Resolution 1244, but to the 'framework of the relevant resolutions of the Security Council' (at 5).

¹³⁸ *Ibid.*, at 2.

One could not know for sure if Jeremić was borrowing the rather melodramatic ‘we will not tire’ turn of phrase from Winston Churchill¹³⁹ or from George W. Bush.¹⁴⁰

Nevertheless, rhetoric echoing such horrors as World War II or 9/11 was paradigmatic of Serbia’s approach to the issue of Kosovo until the point of the adoption on UNGA resolution. The rhetoric was likely more of a leftover from the speech prepared for the initial draft resolution Serbia had submitted. But such rhetoric had to be deflated if Serbia wanted to stay on the EU membership path. Moreover, if the EU-led negotiations between Belgrade and Pristina were to lead anywhere Serbia had to make some changes in its Kosovo policy. Let us now see if this in fact happened.

3. Relations between Belgrade and Pristina – EU sponsored dialogue

This part of the article will provide an overview of the developing relations between Belgrade and Pristina after the adoption of the UN GA Resolution on the ICJ AO, focusing on the on-going EU-facilitated dialogue between the parties. Although at the time of the adoption of GA Resolution the substance of the future dialogue was subject to different interpretations,¹⁴¹ it was undisputed that it should take place under the auspices of the EU in the light of the EU aspirations of both Serbia and Kosovo.¹⁴² This indeed had proved to be the most powerful incentive for parties to reach agreements that would otherwise be unattainable.

¹³⁹ ‘Give Us the Tools Speech’ given over BBC Radio on 9 February 1941 after pleading president Roosevelt’s support in the war against Nazi Germany, available at <http://www.winstonchurchill.org/learn/speeches/speeches-of-winston-churchill/97-give-us-the-tools> (11 October 2013).

¹⁴⁰ The address to a Joint Session of Congress and the American People on 20 September 2001 after 9/11 terrorist attack, Office of the Press Secretary, available at http://avalon.law.yale.edu/sept11/president_025.asp (11 October 2013).

¹⁴¹ See *supra* section 2.D.

¹⁴² See UN. Doc. A/64/PV.120, *supra* note 127.

A. Where we stand – an overview of the EU sponsored dialogue

The dialogue between Pristina and Belgrade started in March 2011,¹⁴³ and is still ongoing.¹⁴⁴ Initially, it was led by the political director of the Ministry of Foreign Affairs of Serbia¹⁴⁵ and the deputy prime minister of Kosovo,¹⁴⁶ with the facilitation of an advisor to the EU foreign policy chief, Baroness Ashton.¹⁴⁷ However, from October 2012 onwards, Ashton was personally in charge of the facilitation that was conducted at the highest level – between the prime ministers of Serbia (Ivica Dačić)¹⁴⁸ and of Kosovo (Hashim Thaçi).¹⁴⁹ As will be shown below, this was *per se* a huge step forward in the relations between Belgrade and Pristina, since Belgrade was previously refusing to meet Pristina representatives at the level of heads of states or Prime Ministers in any format.¹⁵⁰

On the eve of the negotiations, a high ranking EU official stated that they would cover three main topics: regional co-operation, freedom of movement and the rule of law.¹⁵¹ Ultimately, under these three topics, the negotiations dealt with more concrete issues of: cadastral registries, civil registry, regional trade and freedom of movement of goods,

¹⁴³ The first three meetings were held in Brussels on 8, 9 and 28 March and on 15 April 2011. See Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN Doc. S/2011/281, 3 May 2011, at 3, para. 12. (from this point reports of the Secretary-General on the United Nations will be referred to only by their UN document number). Some preparatory meetings were held earlier, to make up for the delay in start of negotiations due to extraordinary elections that were called in Kosovo after the government collapse. See UN Doc. S/2011/43, 28 January 2011, at 4, para. 15.

¹⁴⁴ At the time of the completion of this paper.

¹⁴⁵ Mr. Borislav Stefanović, see UN Doc. S/2011/281, 3 May 2011, at 3, para. 12.

¹⁴⁶ Ms. Edita Tahiri. *Ibid.*

¹⁴⁷ Mr. Robert Cooper, whose official function was the Counsellor of the European External Action Service. *Ibid.*

¹⁴⁸ It comes as a paradox that the first Serbian high official to meet a Kosovo high official was Dačić, since he used to be a close collaborator of Slobodan Milošević, whose policy against Kosovo Albanians prompted NATO intervention against SR Yugoslavia in 1999. Moreover, Dačić criticized former Serbian president Tadić for shaking the hand of Kosovo prime minister Thaçi just three months earlier at the Croatian Summit. See Barlovac, 'Thaci-Tadic Handshake Stirs Controversy,' *Balkan Insight*, 9 July 2012, <http://www.balkaninsight.com/en/article/thaci-tadic-handshake-stirs-controversy> (13 October 2013).

¹⁴⁹ See *EU-facilitated dialogue: Catherine Ashton meets with Prime Ministers Dačić and Thaçi to discuss*, http://eeas.europa.eu/top_stories/2012/191012_ca_dacic_thaci_en.htm (29 October 2013). See also See Barlovac, 'Dacic and Thaci Meet in Brussels, Make History,' *Balkan Insight*, 19 October 2012, <http://www.balkaninsight.com/en/article/dacic-and-thaci-make-history-attending-meeting> (12 October 2013).

¹⁵⁰ See *infra* section 3.B.

¹⁵¹ See "'Three main topics" in Belgrade-Priština talks', *B92 News*, 7 March 2011 http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=03&dd=07&nav_id=73106 (6 March 2013).

freedom of movement of persons, telecommunications, electricity, customs stamp,¹⁵² diploma recognition, and management of crossing points between Kosovo and Serbia.¹⁵³

As can be seen, these were not status talks that Belgrade had previously insisted on re-opening.¹⁵⁴ Pristina was constantly emphasizing that the talks in Brussels were merely technical,¹⁵⁵ while Belgrade was pointing out that there was a political dimension to the technical topics that were being negotiated.¹⁵⁶ This was, in turn, persistently denied by Pristina, probably because giving a 'political dimension' to the talks could be perceived as introduction of status issues through the back door and a way to undermine its independence.

The negotiations have been a bumpy ride: more than a few times they seemed to reach a dead end, only for a solution to be found.¹⁵⁷ In these moments, the incentive of potential EU membership dangling in front of both parties proved to be a game changer: this is why they managed to find common ground and overcome deadlocks.

Ultimately, the EU facilitated dialogue led to important and practical agreements between Belgrade and Pristina on: (1) regional cooperation; (2) civil registries; (3) freedom of movement (vehicle registration and insurance, driving licenses); (4) certification of diplomas; (5) cadastre records; (6) free movement of goods (custom stamps); and (7) normalization of relations between Belgrade and Pristina (integration

¹⁵² UN Docs. S/2011/281, 3 May 2011, at 3 and 4, para. 12-15; S/2011/514, 12 August 2011, at 3, para. 11-14; S/2011/675, 31 October 2011, at 3 and 4, para. 13-17; S/2012/72, 31 January 2012, at 3-4, para. 17-23; S/2012/275, 27 April 2012, at 3 and 4, paras. 13-18; S/2012/603, 3 August 2012, at 3-4, para. 13 and 14; S/2012/818, 8 November 2012, at 4-5, paras. 18 and 19; S/2013/72, 4 February 2013, at 1-2, para. 3-8; S/2013/444, 26 July 2013, at 1-3, paras. 3-15 and S/2013/631, 28 October 2013, at 2, para. 7.

¹⁵³ UN Doc. S/2012/275, *ibid.*, para. 56 and 57.

¹⁵⁴ See *supra* section 2.A and 2.B.

¹⁵⁵ Collaku, 'Kosovo Hails 'Victory' With UN GA Resolution', *Balkan Insight*, 13 September 2010, <http://www.balkaninsight.com/en/article/kosovo-hails-victory-with-un-ga-resolution> and 'Pristina "Will Not Discuss Division of Kosovo"', *Balkan Insight*, 26 April 2011, <http://www.balkaninsight.com/en/article/pristina-will-not-discuss-division-of-kosovo?amp> (26 October 2013).

¹⁵⁶ 'Belgrade: Status is up for discussion', *B92 News*, 12 March 2011, http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=03&dd=12&nav_id=73199 (26 October 2013).

¹⁵⁷ For example, in July 2011 scheduled negotiation session on custom stamps was cancelled due to this. Moreover, there were violent incidents related to this issue on two crossing points (Jarinjë/Jarinje and Bërnjak/Brnjak). See more in UN Doc. S/2011/675, *supra* note 152, at 1-4, para. 3-15.

of four north majority-Serb municipalities) and (8) telecommunications and energy.¹⁵⁸ Their content is beyond the scope of this article, as is their implementation that continues to be a challenge.¹⁵⁹

Reaching these agreements was lengthy, tough and exhausting for all parties, including EU facilitators. Having in mind the deep divergence between Belgrade and Pristina on almost every issue and the political risks their governments took in internal politics, nothing less could have been expected. Both governments were criticized by the opposition for agreeing to any dialogue in the first place¹⁶⁰ or for giving too many concessions on reports that the agreements were reached.¹⁶¹ Neither government could escape domestic political challenges and pressure. These contributed to the fortification of the existing political narratives, despite the dialogue and despite the agreements. Each agreement always had two interpretations: Pristina would claim that Belgrade recognised Kosovo's independence by reaching an agreement on a particular topic (e.g. regional co-operation, or the four northern municipalities), while Belgrade would claim that the agreements had nothing to do with Kosovo's statehood, which it would never, ever recognize.¹⁶² Note the paradox here in regard to the parties' initial positions on the nature of the dialogue. Pristina insisted that negotiations were not political but technical, yet was claiming the agreements reached very political outcomes (implicit

¹⁵⁸ See more UN Docs. S/2012/818 and S/2013/631, *supra* note 152, at 4-5, para. 19 and at 2, para. 7 respectively.

¹⁵⁹ *Ibid.*

¹⁶⁰ Especially hard pressure on Kosovo government continues to be imposed by the radical movement Vetëvendosje ('Self-Determination'), which opposes any talks with Belgrade and frequently protests against them. See UN Docs. S/2011/514 and S/2013/444, *supra* note 152, at 4, para. 16 and at 2, para. 9 respectively. As to Serbia see, 'DSS traži prekid pregovora s Prištinom i nove pregovore u UN' ['Democratic Party of Serbia requests discontinuation of the negotiations with Pristina and initiation of new ones in the UN'], *Blic*, 7 November 2011, <http://www.blic.rs/Vesti/Politika/288070/DSS-trazi-prekid-dijaloga-sa-Pristinom-i-nove-pregovore-u-UN> (12 November 2013).

¹⁶¹ See Brunwasser, 'Kosovo and Serbia Reach Key Deal', *The New York Times*, 24 February 2012, <http://www.nytimes.com/2012/02/25/world/europe/25iht-kosovo25.html> (31 October 2013) and 'PM: We Have Chance to Defend Interests Differently', *B92 News*, 26 April 2013, http://www.b92.net/eng/news/politics.php?yyyy=2013&mm=04&dd=26&nav_id=85903 (13 November 2013).

¹⁶² Cf. 'Kosovo and Serbia Reach Key Deal', *supra* note 161 and 'Negotiator: Serbia has not recognized Kosovo'. *B92 News*, 25 February 2012, http://www.b92.net/eng/news/politics.php?yyyy=2012&mm=02&dd=25&nav_id=78966 (31 October 2013). See also "We have not, and will not recognize Kosovo", *B92 News*, 19 April 2013, http://www.b92.net/eng/news/politics.php?yyyy=2013&mm=04&dd=19&nav_id=85798 (31 October 2013).

recognition of Kosovo). On the other hand, Belgrade was arguing that the negotiations were political, and not just technical in character, but was adamant that the agreements reached were ultimately only technical.

In the first half of 2012, while some agreements were negotiated their implementation was challenging due to lack political will. This was indicative, especially on the part of Serbia, of no true shift in attitude towards the issue of Kosovo, despite the on-going dialogue and the agreements reached.

After the elections in May 2012, a new government was formed in Serbia, which showed political will to push the dialogue further. In the attempt to secure international legitimacy, this government made up of former nationalists redefined the way Serbia approached the issues raised and the agreements reached within the EU led dialogue. This can be clearly seen on the example of the regional co-operation agreement and its implementation, which will be discussed in the next part.

B. Past, present and future of the dialogue: the regional co-operation agreement

After Kosovo declared independence from Serbia, regional co-operation suffered a major setback.¹⁶³ Modalities of the representation of Kosovo became controversial,¹⁶⁴ due to conflicting attitudes of Serbia and Kosovo on the issue.

From the establishment of the international presence by UNSC Resolution 1244, Kosovo's international participation was conducted through the United Nations Mission in Kosovo (UNMIK).¹⁶⁵ However, after the declaration of independence, Kosovo authorities argued that it was their prerogative to represent Kosovo, not UNMIK's.¹⁶⁶

¹⁶³ UN Doc. S/2010/401, 29 July 2010, at 9, para. 47.

¹⁶⁴ UN Doc. S/2010/562, 29 October 2010, at 11, para. 54.

¹⁶⁵ See more T. Papić, 'Fighting for a Seat at the Table: International Representation of Kosovo', 12 *Chinese Journal of International Law* 543 (2013), at 548-553.

¹⁶⁶ *Ibid*, at 553-557.

After the ICJ AO, they were actively resisting UNMIK facilitation role, viewing it as a limitation of the sovereignty of Kosovo.¹⁶⁷ Consequently, they refused to participate in a number of meetings alongside UNMIK, which were requiring its facilitation.¹⁶⁸ On the other side, Serbia insisted that Kosovo could only be represented by UNMIK and refused to participate in the meetings to which representatives of Kosovo were also invited.¹⁶⁹

Naturally, Serbia's policy regarding joint participation in the meetings with Kosovo representatives was at its most rigid immediately after Kosovo declared independence: at first it even included leaving meetings where Kosovo representatives were present as a part of an UNMIK delegation and were given the floor by UNMIK.¹⁷⁰ In 2009 Serbia's policy started to soften, and was embodied in the position not to attend meetings at which Kosovo representatives were not part of the UNMIK delegation in accordance with Resolution 1244.¹⁷¹ However, even this policy was not applied consistently.¹⁷² Moreover, it seemed that the level of government officials was crucial for Serbia in deciding whether to attend a certain meeting or not. As mentioned earlier, Serbia's representatives never attended along with Kosovo representatives the meetings at the

¹⁶⁷ UN Doc. S/2010/562, *supra* note 164.

¹⁶⁸ See for meetings hosted by the Regional Cooperation Council (RCC), UN Docs. S/2011/43, 28 January 2011, at 10, para. 47 and S/2011/281, 3 May 2011, at 11, para. 56.

¹⁶⁹ For Warsaw Summit, see: Dempsey, 'Serbia Insists on Summit Boycott', *New York Times*, 26 May 2011, http://www.nytimes.com/2011/05/27/world/europe/27iht-east27.html?_r=1 (14 February 2013). For Croatia Summit, see: 'Croatia Summit 2010 Opens in Dubrovnik', *SE Times*, 9 July 2010, http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/newsbriefs/2010/07/09/nb-02 (14 February 2013). For meeting at Brdo kod Kranja, see 'Slovenian FM: Serbia too sensitive', *B92 NEWS*, 23 March 2010, http://www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=03&dd=23&nav_id=65996 (18 February 2013).

¹⁷⁰ See 'Tadić demonstrativno napustio samit' ['Tadić left the summit'], *Politika*, 22 May 2008, <http://www.politika.rs/rubrike/Svet/Tadic-demonstrativno-napustio-samit.lt.html>, visited 18 February 2013).

¹⁷¹ See *infra* note 175.

¹⁷² Namely, Serbia would sometimes ask for an additional condition to be met in order to attend a certain meeting (i.e. application of *Gymnich formula*, where denomination of the participants of a meeting is by their personal names, rather than by the names of the states they represent). Nevertheless, even when this criterion was met, at some occasions Serbia chose not to attend certain meetings after all (this was the case with a meeting at Brdo near Kranj, see *supra* note 169).

level of heads of state or government,¹⁷³ while they sometimes attended those of foreign ministers.¹⁷⁴

Serbia's policy was motivated by its refusal to recognise Kosovo as an independent state and the misconception that it could implicitly recognise Kosovo solely through the joint participation at international meetings.¹⁷⁵ This ill-founded fear was premised on the idea that recognition can be given accidentally without an intention to recognise.¹⁷⁶ That dubious position was also shared at some occasions by Slovakia¹⁷⁷ and Romania,¹⁷⁸ states which also did not recognise Kosovo as an independent state.

Since there was no agreed template for Kosovo's representation which would reconcile conflicting positions, *ad hoc* modalities of identification of participants at regional fora were arranged.¹⁷⁹ However, this also led to disputes and absence from events of some of the invited parties.¹⁸⁰

These circumstances created a major obstacle to functional and inclusive regional co-operation which was important for the stability in the troubled region and also served as

¹⁷³ This was the case at Warsaw Summit, Croatia Summit, meeting at Brdo near Kranj, see *supra* note 169.

¹⁷⁴ Sarajevo conference organized by EU in June 2010, see 'EU-Western Balkans conference in Sarajevo,' *B92 News*, 2 June 2010, http://www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=06&dd=02&nav_id=67528 (13 March 2013).

¹⁷⁵ See the statement of then president of Serbia, Boris Tadić, of 14 March 2010 on the question on the participation of Serbia at Brdo near Kranj meeting, available at the website Ministry of Foreign Affairs of the Republic of Serbia (http://www.mfa.gov.rs/Srpski/Bilteni/Srpski/b150310_s.html; summary in English: www.mfa.gov.rs/Bilteni/Engleski/b150310_e.html, both visited 18 February 2013). This position does not have support in international law. See Lauterpacht, *Recognition in International Law* (1948), at 308; Ruda, "Recognition of States and Governments" in M. Bedjaoui, (ed.), *International Law: Achievements and Prospects*, Part I (1991), at 452; *Oppenheim's International Law*, Longman, (9th ed., 1992), at 170-174; Malanczuk, *Akehurst's Modern Introduction to International Law* (7th rev. ed., 1997), at 88; Crawford, *Brownlie's Principles of Public International Law*, Oxford University Press (6th ed., 2012), at 149; Shaw, *International Law* (2003), at 387; Dixon, *Textbook on International Law* (6th ed., 2007), at 126; Aust, *Handbook of International Law* (2010), at 28.

¹⁷⁶ *Ibid.*

¹⁷⁷ This was the case at Warsaw Summit in 2011, see the statement of the spokesperson of the president of Slovakia, Marek Trubac, in Pop, 'Serbia Boycotts Obama Meeting over Kosovo', *EU Observer*, 25 May 2001, <http://euobserver.com/887/32390> (15 March 2013).

¹⁷⁸ See Bryant, Cienski and Buckley, 'Warsaw summit faces boycott', *Financial Times*, 25 May 2011, <http://www.ft.com/intl/cms/s/0/434af2ca-8705-11e0-92df-00144feabdc0.html#axzz2O5doauOA> (13 March 2013).

¹⁷⁹ UN Doc. S/2010/169, 6 April 2010, at 9, para. 37. As a rule, the organizers were requesting the presence of an UNMIK representative; generally, he was the one first being given the floor, and then Kosovo's authorities were invited to intervene. *Ibid.*

¹⁸⁰ *Ibid.*

a component of the EU integration processes of the countries of the Western Balkans. Indeed, this was the reason why regional co-operation was designated as one of the three major topics to be discussed in the framework of the EU facilitated dialogue between Pristina and Belgrade.¹⁸¹

The attitude towards joint participation at international meetings with Kosovo representatives created a major challenge for Serbia's EU integration process,¹⁸² which required inclusive and functional regional co-operation. The European Commission in its Opinion on Serbia's application for membership of the EU of 12 October 2011 stated that it was a priority for Serbia to achieve progress in this respect.¹⁸³ It was clear that Serbia needed to collaborate in finding a solution for Kosovo's regional representation. Only in this way could it hope to become a candidate country for EU membership. Against this background, with the prospect of candidacy being a major incentive for a shift in Serbia's position, a solution that would allow both Belgrade and Pristina to develop functional regional co-operation was sought and in that context it looked more attainable.

1. The footnote saga: Arrangements Regarding Regional Representation and Cooperation of 24 February 2012

¹⁸¹ See "Three main topics" in Belgrade-Priština talks', *supra* note 151.

¹⁸² See European Commission, *Communication from the Commission to the European Parliament and the Council, Commission Opinion on Serbia's application for membership of the European Union*, Brussels, 12 October 2011, COM(2011) 668 final, {SEC(2011) 1208 final}, at 8 (http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/sr_rapport_2011_en.pdf, visited 18 March 2013). See also European Commission, *Commission Staff Working Paper, Analytical Report*, Accompanying the document *Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's application for membership of the European Union*, Brussels, 12 October 2011, SEC(2011) 1208, {COM(2011) 668}, at 33-35 (http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/sr_analytical_rapport_2011_en.pdf, visited 18 March 2013).

¹⁸³ See EC, *Serbia 2010 Progress Report*, Brussels, 9 November 2010, doc. SEC(2010) 1330, {COM(2010) 660}, at 19-20, http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/sr_rapport_2010_en.pdf (18 March 2013).

After long and excruciating talks, the Arrangements Regarding Regional Representation and Cooperation (ARRC)¹⁸⁴ were adopted on 24 February 2012.¹⁸⁵ This enabled the European Council to grant Serbia candidate status for membership in the EU¹⁸⁶ and approve a launch of Kosovo's feasibility study for a Stabilisation and Association Agreement.¹⁸⁷

The EU mediation managed to bring together diametrically opposite positions – Serbia insisted that Kosovo could participate in regional co-operation only within the framework of Resolution 1244¹⁸⁸ and Kosovo was adamant that this was not an option, since it was an independent state, a position that was, in its view, supported by the ICJ Advisory Opinion.¹⁸⁹ The ARRC stipulates that the only denomination to be used within the framework of regional co-operation is

‘Kosovo*’

with a linked footnote that reads:

‘This designation is without prejudice to positions on status, and is in line with UNSC 1244 (1999) and the ICJ Opinion on the Kosovo declaration of independence.’¹⁹⁰

¹⁸⁴ ARRC, http://www.b92.net/eng/insight/pressroom.php?yyyy=2012&mm=02&nav_id=78973 (18 September 2013).

¹⁸⁵ See EU, *EU facilitated dialogue: Agreement on Regional Cooperation and IBM technical protocol*, Press Statement, 24 February 2012, 5455/12, PRESSE 9, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/128138.pdf (20 March 2013).

¹⁸⁶ Decision of 1 March 2012, EUCO 4/3/12 REV 3, 8 May 2012, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/128520.pdf (4 March 2013).

¹⁸⁷ Council conclusions on Enlargement and the Stabilisation and Association Process, 3150th General Affairs Council meeting, 28 February 2012, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/128255.pdf (13 November 2013). For the substance of the Study, see Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo*, {SWD(2012) 339 final}, COM(2012) 602 final (10 October 2012), http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_feasibility_2012_en.pdf (20 November 2013).

¹⁸⁸ ‘Kosovo must be represented under 1244’, *B92 News*, 28 January 2012, http://www.b92.net/eng/news/politics-article.php?yyyy=2012&mm=01&dd=25&nav_id=78453 (20 March 2013).

¹⁸⁹ *Ibid.*

¹⁹⁰ ARRC, *supra* note 184, points 2 and 3.

This is an interim solution (point 11 of the ARRC) for denomination and representation of Kosovo in the *regional* context (points 4 and 10), covering regional meetings and institutional forms of regional co-operation, and existing and future agreements (point 5). The ARRC provides that Kosovo can speak on its own account (point 4). As for the agreements already signed by UNMIK on behalf of Kosovo, the ARRC states that it cannot be interpreted as prejudicial to UNMIK's legal rights and that it is for the UNMIK to decide whether to attend the meetings within their framework (point 6).

The ARRC provides that these arrangements 'should be reflected in the practical organization of regional meetings.'¹⁹¹ However, the ARRC did not contain a specific provision on the ways in which this footnote is to be used, which for a period of time was a major issue between the parties and prevented the ARRC's implementation.

2. Different interpretations of the ARRC – What's in a name?

Within a month of ARRC's adoption, different interpretations of its application surfaced. According to Belgrade the Kosovo nameplate at a meeting should always include the text of the footnote,¹⁹² while Pristina claimed that the footnote should only be included in the agreements and official documents of the relevant regional meeting or organizations.¹⁹³

¹⁹¹ *Ibid.*, point 8.

¹⁹² See *Zaključak o Instrukciji za postupanje predstavnika Republike Srbije na određenim skupovima posvećenim regionalnoj saradnji na kojima učestvuju predstavnici Privremenih institucija samouprave u Prištini* ['Instruction for action of the representatives of the Republic of Serbia on specific meetings dedicated to regional co-operation in which representatives of the Provisional Institutions of Self-Government in Pristina] (hereinafter: Government of Serbia Instruction of March 2012), No. 06-1954/2012-004 of 20 March 2012 (on file with author).

¹⁹³ Furthermore, Pristina insisted that the Albanian version of Kosovo's name, i.e. 'Kosova', should be used on the nameplates, which Belgrade did not agree to. (see 'Misunderstandings mire Kosovo representation agreement', *SE Times*, 16 March 2012, http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2012/03/16/feature-02 (16 March 2013), see also UN Doc. S/2012/275, *supra* note 152, at 4, para. 14). Initially, Kosovo hoped the footnote will melt 'like a snowflake, when it gets warmer'. See the statement of Edita Tahiri, the chief of Pristina team in the EU-facilitated negotiations with Belgrade in 'Edita Tahiri: Fusnota je pahuljica' ['Footnote is a Snowflake'], *B92 News*, 24 February 2012 http://www.b92.net/info/vesti/index.php?yyyy=2012&mm=02&dd=24&nav_category=640&nav_id=585368 (22 March 2013).

Indeed, the Government of the Republic of Serbia on 20 March 2012 adopted an instruction for its representatives¹⁹⁴ that restricted full application of the ARRC to the informal meetings of the Balkan region organised by EU (point 2(g) of the Instruction). As to the other meetings, it specified that the nameplate needed to be ‘Kosovo*’ followed by the text agreed in ARRC, which had to be ‘sufficiently visible and legible, and written in English’ (point 1). There should be no display of the symbols of the ‘Republic of Kosovo’ (point 2). If representatives of Serbia failed to secure these conditions with the host of a meeting, they were to leave (point 2(b)). This instruction not only offered an interpretation of the ARRC that was at odds with its provisions but also raised doubts as to Serbia’s good faith in the application of the agreement. Moreover, it shows that attitude of Serbia towards Kosovo essentially did not change, despite the process of EU-led dialogue.

The mutually exclusive positions of Serbia and Kosovo led each of them to boycott some meetings.¹⁹⁵ Hence, UNMIK’s decision to decrease its presence and not to attend certain regional meetings¹⁹⁶ soon after the ARRC was negotiated seemed premature. As noted by the UN Secretary-General, it was clear that there were ‘inherent shortcomings in the mechanisms to ensure implementation of [ARRC].’¹⁹⁷

After the first dispute on the outlook of the nameplate (March 2012), the EU had sent a message that it was up to the organizers of the meeting ‘to decide where to put a footnote.’¹⁹⁸ Eventually, few months later (June 2012), the EU facilitator in the

¹⁹⁴ Government of Serbia Instruction of March 2012, *supra* note 192.

¹⁹⁵ See Latković, ‘Delegacija Srbije zbog nedostatka fusnote napustila Sarajevo, a prištinska zbog fusnote otišla iz Beograda’ [‘Serbia delegation left Sarajevo because there was no footnote, while Pristina delegation left Belgrade because there was’], *Blic*, 15 March 2012, <http://www.blic.rs/Vesti/Politika/312244/Delegacija-Srbije-zbog-nedostatka-fusnote-napustila-Sarajevo-a-pristinska-zbog-fusnote-otisla-iz-Beograda>, visited 25 March 2013; Aliu, Andric, ‘Kosovars Storm Out of Regional Forum in Serbia’, *Balkan Insight*, 15 March 2012, <http://www.balkaninsight.com/en/article/kosovo-delegation-left-regional-forum-in-belgrade> (25 March 2013).

¹⁹⁶ See UN Doc. S/2012/275, *supra* note 152, para. 56. ‘UNMIK to attend regional meetings "if necessary"’, *B92 News*, 29 February 2012, http://www.b92.net/eng/news/politics-article.php?yyyy=2012&mm=02&dd=29&nav_id=79036 (4 March 2013).

¹⁹⁷ UN Doc. S/2012/275, *supra* note 152, at 4, para. 14.

¹⁹⁸ See the statement of Maja Kocijančič, spokesperson for the EU Foreign Policy Chief, Baroness Catherine Ashton, in Barlovac, ‘EU Urged to Save Crumbling Kosovo-Serbia Deal’, *Balkan Insight*, 22

Belgrade-Pristina negotiations, Robert Cooper, took the side of Pristina, claiming that the Belgrade authorities were misinterpreting the ARRC.¹⁹⁹

However, it seems that Belgrade was not the only one to blame for the deadlock. It was evident that the EU facilitator did not secure a clear agreement on the location of the footnote, which was crucial considering an almost complete lack of trust between the parties and the contentiousness of the issue. Indeed, Cooper admitted that the issue of placing the text of the footnote on the nameplates was raised by the Belgrade team during the negotiations and that Pristina neither agreed nor completely disagreed with it, so 'it is hard to say that there was an agreement on that issue.'²⁰⁰ This indicated that the EU facilitator was aware or must have been aware that the place where the text of the footnote would stand was a matter of great concern for both parties, but apparently chose to leave it unresolved. Leaving the issue unresolved made the difficulties in the ARRC's implementation at least partly the EU's own fault.

3. Epilogue: the footnote and beyond

Finally, in September 2012, the newly elected Government of Serbia changed its interpretation of the ARRC. It adopted a new instruction,²⁰¹ which provided that the footnote need only stand in the official documents of a meeting and not on the Kosovo

March 2012, <http://www.balkaninsight.com/en/article/kosovo-serbia-interpret-brussels-deal-differently> (6 February 2013).

¹⁹⁹ 'Belgrade misinterpreting footnote deal, EU facilitator says', *B92 News*, 14 June 2012, http://www.b92.net/eng/news/politics-article.php?yyyy=2012&mm=06&dd=14&nav_id=80751 (6 February 2013).

²⁰⁰ Cooper continued: "The question was raised and the answer was a silence. When we opened this issue in the bilateral contacts in Pristina, looking for their opinion on it, we were told that it is extremely hard for them to accept an asterisk and that it was unacceptable for them for a nameplate to contain the text of the footnote." Translation from the Serbian version of the interview, Đorđević, 'Kuper: Nema fusnote na pločici' ['Cooper: No footnote on nameplate'], *Večernje novosti*, 21 June 2012, <http://www.novosti.rs/vesti/naslovna/aktuelno.289.html:385261-Kuper-Nema-fusnote-na-plocici> (6 February 2013). Published as: 'Teško je reći da je oko toga bilo sporazuma. Pitanje je bilo potegnuto, a odgovor je bilo - ćutanje. Kada smo bilateralno u Prištini otvorili ovo pitanje, tražeći njihov stav, rekli su nam da je za njih ekstremno teško da prihvate zvezdicu i da im je neprihvatljivo da na pločici stoji fusnota.'

²⁰¹ See *Instrukcija za postupanje predstavnika Republike Srbije na skupovima posvećenim regionalnoj saradnji na kojima učestvuju predstavnici Privremenih institucija samouprave u Prištini* ['Instruction for action of the representatives of the Republic of Serbia on meetings dedicated to regional co-operation in which representatives of the Provisional Institutions of Self-Government in Pristina] (hereinafter: Government of Serbia Instruction of Sept. 2012), No. 06-5592/2012-004 of 2 September 2012 (on file with author).

nameplate (points 1 and 2).²⁰² Moreover, this instruction gives discretion to the Government, when there are highly justified reasons, to allow representatives of Serbia to attend a meeting even when the conditions set in the Instruction are not met (point 7(a)).

The position of the new Serbian Government allowed both Belgrade and Pristina to jointly participate at regional meetings, breaking the tension in regional co-operation. Soon thereafter, a new phase of the EU sponsored dialogue was launched. It was again on technical issues, but this time it was at the highest level: on 19 October 2012, the Prime Ministers of Serbia, Ivica Dačić, and of Kosovo, Hashim Thaçi, met in Brussels under the auspices of the EU foreign policy chief, Baroness Ashton.²⁰³ Moreover, the Presidents, Mr. Tomislav Nikolić of Serbia and Ms. Atifete Jahjaga of Kosovo met on 7 February 2013.²⁰⁴

Belgrade and Pristina agreed to appoint liaison officers to monitor implementation of the agreements reached within EU led negotiations. The liaison officers, who work at the EU premises in Belgrade and Pristina, were exchanged in mid-June 2013.²⁰⁵

The new approach of the Serbian Government signifies that Belgrade, for the sake of its EU membership aspirations, has finally managed to overcome its opposition to Kosovo's participation in regional meetings, which was not only politically motivated but was

²⁰² However, September 2012 Instruction still contains provisions which are at odds with the ARRC. See more in Papić, *supra* note 165, n. 153.

²⁰³ See *EU-facilitated dialogue: Catherine Ashton meets with Prime Ministers Dačić and Thaçi to discuss*, http://eeas.europa.eu/top_stories/2012/191012_ca_dacic_thaci_en.htm, visited 19 February 2013). See also See Barlovac, 'Dacic and Thaci Meet in Brussels, Make History,' *Balkan Insight*, 19 October 2012, <http://www.balkaninsight.com/en/article/dacic-and-thaci-make-history-attending-meeting> (20 February 2013).

²⁰⁴ See Barlovac, 'Kosovo, Serbia Presidents Hail Outcome of Talks,' *Balkan Insight*, 7 February 2013, <http://www.balkaninsight.com/en/article/kosovo-and-serbia-presidents-pledge-to-normalise-relations> (11 February 2013).

²⁰⁵ Pristina officer sits at the EU Delegation in Belgrade and Belgrade officer at the EU Office in Kosovo. See "Pristina Appoints New Liaison Officer in Belgrade," *B92 News*, 21 June 2013, http://www.b92.net/eng/news/politics.php?yyyy=2013&mm=06&dd=21&nav_id=86708 (30 July 2013).

based on a legal misconception that Serbia could accidentally recognise Kosovo merely by encountering its officials, especially those of the highest rank.²⁰⁶

Paradoxically, this step forward was made by an, at least nominally, more nationalist government than the previous one. This new Government appeared more flexible in its general approach towards the EU-led dialogue with Kosovo. It could afford to give more concessions and secure better implementation of existing agreements than its predecessor partly due to the fact that the domestic political pressure lost its edge, as the strongest party in the government was the former main nationalist opposition party which criticized the negotiation process in the past (Serbian Progressive Party – SPP). Moreover, past political affiliation of SPP's leaders (now president and deputy prime minister of Serbia) to the Serbian Radical Party, an extreme nationalist anti-EU party whose main leader is an indicted war criminal,²⁰⁷ made them in a desperate need of international legitimacy. This was also a reason why they were ready to concede to more than the previous Government, which had no such legitimacy challenges.

A further important step was taken on 19 April 2013 in Brussels, where Prime Ministers Dačić and Thaçi initialled the First Agreement of Principles Governing the Normalisation of Relations (also referred to as the Brussels Agreement).²⁰⁸ Many hailed this 15 point agreement as historic.²⁰⁹ From the political perspective it indeed signifies normalization and thawing of relations between Belgrade and Pristina. However, despite its name, the Agreement mainly deals with the integration in Kosovo legal system of four northern Kosovo municipalities with overwhelming Serb majority,²¹⁰

²⁰⁶ Cf. text accompanied by *supra* note 173.

²⁰⁷ Vojislav Šešelj is on trial before the ICTY.

²⁰⁸ The text of the agreement is available at http://www.b92.net/eng/news/politics.php?yyyy=2013&mm=04&dd=19&nav_id=85799 (31 July 2013).

²⁰⁹ See for e.g. the statement of the president of European Commission, Mr. José Manuel Barroso, http://europa.eu/rapid/press-release_MEMO-13-353_en.htm (31 July 2013).

²¹⁰ See point 1-11 of the Brussels Agreement, *supra* note 208. These points provide for the the establishment of a Community/Association of Serb municipalities with representation at the central government (points 1-6); integration of judicial and police authorities within Kosovo's legal framework while there would be regional police commander and an appellate court for these four Serb-majority municipalities (points 7-10); municipal elections to be held in them in 2013 with the facilitation of OSCE (point 11). Points 12 and 15 deal with the implemenation of the Agreement, while point 13 provides for

which were not recognising Kosovo authorities. It contains only one point that can be linked to its official name – point 14 – which provides “that neither side will block, or encourage others to block, the other side's progress in the respective EU paths”.²¹¹ This phrase represented a compromise with respect to the earlier draft that referred to “accession to international organisations,”²¹² which Belgrade thought could lead it to its formal recognition of Kosovo.²¹³

Immediately thereafter, the Brussels Agreement secured the opening of negotiation on EU accession to Serbia²¹⁴ and on the Stabilisation and Association Agreement with the EU to Kosovo.²¹⁵

While Belgrade claimed that it did not recognise Kosovo by concluding this agreement, Pristina again claimed it did.²¹⁶ As for the international community, it did not view the conclusion of the Brussels Agreement as recognition.²¹⁷ The reason is that an intention to recognize,²¹⁸ which is an indispensable element of recognition of statehood in

discussion of energy and telecoms to be intensified and completed by 15 June 2013. However, until the completion of this paper this was not the case.

²¹¹ Point 14, *ibid*.

²¹² See “Agreement initialed, Serbia's demands accepted”, *B92 News*, 19 April 2013, http://www.b92.net/eng/news/politics.php?yyyy=2013&mm=04&dd=19&nav_id=85797 (31 July 2013)

²¹³ See ‘Dačić: Tači minirao pregovore’ [‘Dačić: Tači Sabotaged Negotiations’], *B92 News*, 18 April 2013, http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=04&dd=18&nav_category=640&nav_id=706110 (31 October 2013).

²¹⁴ However, the exact date will be granted in spring 2014 upon the assessment of the implementation progress and improvement in the relations between Pristina and Belgrade. See Delegation of the EU to the Republic of Serbia, *Press Release*, ‘The date for the beginning of the negotiations will be granted next spring’, <http://www.europa.rs/en/mediji/najnovije-vesti/1751/The+date+for+the+beginning+of+the+negotiations+will+be+granted+next+spring.html#sthash.N33pv5qi.dpuf> (20 November 2013).

²¹⁵ See European Commission, *Press Release*, ‘Serbia and Kosovo*: historic agreement paves the way for decisive progress in their EU perspectives’, 22 April 2013, http://europa.eu/rapid/press-release_IP-13-347_en.htm (31 October 2013).

²¹⁶ See the statement of Serbian Deputy Prime Minister, Mr. Aleksandar Vučić, and Kosovo Prime Minister, Mr. Hashim Thaçi, “We have not, and will not recognize Kosovo”, *B92 News*, 19 April 2013, http://www.b92.net/eng/news/politics.php?yyyy=2013&mm=04&dd=19&nav_id=85798 (31 July 2013).

²¹⁷ See the statement of the US Ambassador to Belgrade, Mr. Michael Kirby, „Kirbi: Srbija nije priznala Kosovo, a nismo to ni tražili“ [‘Serbia did not recognise Kosovo nor we ask for it’], *Večernje novosti*, 25 April 2013, <http://www.novosti.rs/vesti/naslovna/politika/aktuelno.289.html:431198-Kirbi-Srbija-nije-priznala-Kosovo-a-nismo-to-ni-trazili> (31 July 2013). See also „Breakthrough at Last“, *The Economist*, 20 April 2013, <http://www.economist.com/blogs/easternapproaches/2013/04/serbia-and-kosovo-o> (31 July 2013).

²¹⁸ See *supra* note 175.

international law, is missing in this case. However, Serbia did recognise the legitimacy of the institutions of Kosovo, which at least psychologically brings it a step closer to recognise Kosovo's statehood.

Conclusion

The AO itself could not and did not alter the competing narratives surrounding the issue of independence of Kosovo. It simply fitted into them. Nevertheless, the AO proceedings did help calm down huge tensions surrounding the issue of Kosovo declaration of independence by keeping it, at least for a while, at the dock of the ICJ. Moreover, the delivery of the AO offered possibilities for opening a new dialogue between Serbia and Kosovo.

A watershed point was UNGA resolution 64/289, adopted as a follow up to the AO, which signified the beginning of a slow change in Serbia's policy towards Kosovo. Paradoxically, this came as a consequence of Serbia's action aiming at something quite different from what was to be the ultimate outcome in the UNGA. Initially, Serbia made an attempt to use the UNGA as a means of pressuring for the re-opening of negotiations on Kosovo's status. This was in direct opposition to the views of major EU member states which recognised Kosovo (UK, Germany and France) and viewed Kosovo's independence as irreversible. At the same time, these states held the key to Serbia's EU aspirations. Submitting the draft resolution without prior consultation with them could have meant that Serbia finally made a choice between its two principal foreign policy goals – keeping Kosovo and getting to the EU – and that it chose Kosovo over EU, indeed a mostly fictional hold over Kosovo over the very real benefits of EU accession. But a more likely explanation is a more pedestrian one: Serbian officials recklessly thought they could get away with this and that the submission of the draft resolution opposed by most EU member states would not influence Serbia's EU integrations. When it was realized, under intense political pressure, that this was not to be, Serbia was forced to make a U-turn, if it wanted to remain on the EU membership track. Thus, it

withdrew its draft resolution and submitted a new one, this time jointly co-sponsored with the EU states.

The new text, which welcomed the readiness of the EU to facilitate a process of dialogue between the parties, and thereby politically opened the way for negotiations, was adopted by consensus. It was drafted so to allow all interested parties, in particular Serbia and Kosovo, to interpret it in the light of their existing narratives towards the Kosovo issue. The adoption of the UNGA Resolution was a political climax in the immediate aftermath of the AO proceedings. This was also a defeat of Serbia's policy of active opposition to Kosovo's independence. Moreover, this event marked Serbia's de facto renunciation of this policy which was the price to be paid for its EU aspirations.

The EU-facilitated negotiations that followed led to important and practical agreements between Belgrade and Pristina. Reaching these agreements was a lengthy and tough process. The incentive of EU membership proved crucial when the dialogue seemed to reach a dead end. It should be noted, however, that despite the achievements of the EU-led dialogue, the political narratives adopted by Serbia and Kosovo did not change. The parties have continued to interpret the agreements so that they fit into their overarching positions. What did change, however, was that they were willing to take practical steps on issues that needed to be resolved as a condition for their further EU integrations. Thus, there has been a huge difference between what Serbian and Kosovo officials are saying and what they are doing in practice.

Nevertheless, one would be mistaken to think that this change in the attitude of parties was immediately brought about by the EU facilitated dialogue. On the contrary, the negotiations frequently stumbled and agreements reached were slowly implemented or not implemented at all. As was shown on the case of regional co-operation agreement and the Brussels agreement that followed, the change of government in Serbia gave a new impetus to the negotiations and the implementation of the agreements between the parties. Despite this one should be careful in describing this change as a complete departure from Serbia's previous policies towards Kosovo. Only time will show if this

will, on the long run, bring a paradigm shift necessary for the long term progress in relations between the parties.

From today's perspective, it can be claimed that the AO and the UNGA resolution that followed it ultimately produced a positive effect on the relations between Serbia and Kosovo. It presented a new opportunity and gave impetus to politicians and diplomats to initiate a EU sponsored dialogue between the parties that has had important practical results – although for Serbian and Kosovo politicians this did not come naturally but as a consequence of international pressure. More generally, it can be said that the advisory proceedings as an instrument of the UN system have fulfilled their function and made a contribution in dealing with what seemed insurmountable challenges arising from the situation in Kosovo, which still constitutes a threat to international peace and security.

On the other hand, the on-going dialogue between Serbia and Kosovo shows that, as a mediator, the EU can deliver solutions once it has something to offer in return. However, both Serbia and Kosovo should be aware that the issues of their relations currently discussed under the regional co-operation item as a condition to the EU membership will resurface in every chapter of the progress assessment and negotiations phase they enter with the EU. One is only left with hope that they would be rational enough to realize it sooner than later and to act accordingly for the sake of the troubled region of the Western Balkans.