

## Fighting for a Seat at the Table:

### International Representation of Kosovo

#### Abstract

This article examines the issue of international representation of Kosovo as it evolved from the establishment of an international administration by UNSC Resolution 1244 in June 1999, to Kosovo's declaration of independence of 17 February 2008, until the present day. It summarizes external relations powers exercised by UNMIK and analyses the changes brought by Kosovo's declaration of independence. In particular, it deals with the issue of Kosovo's representation in regional fora. The article will also demonstrate how the issue of international representation has influenced the wider story of Kosovo's contested statehood and, in particular, its on-going dispute with Serbia. Moreover, it will also discuss the EU's involvement in the dispute and how the prospect of potential EU membership/association for Serbia and Kosovo, respectively, has served as a powerful incentive in the negotiations. In that sense it will show how this particular dispute has and can be managed by external and internal actors and what methods and incentives can facilitate compromise and agreement between the parties, how their own positions can either solidify or evolve, and how external mediators can either exacerbate the problem or contribute to the solution. The article also argues that conflicting attitudes towards international representation of Kosovo concern not just its external relations but also relate to the legitimacy of its independence, its statehood and its representatives. It shows that despite disputed statehood there is undoubtedly a 'creeping legitimacy' of Kosovo and its representatives even among those who are vigorously opposed to Kosovo's independence.

#### I. Introduction

1. Kosovo declared its independence from Serbia on 17 February 2008.<sup>1</sup> Immediately thereafter, Serbia rejected this declaration of independence as unilateral, considering it contrary to international law and the

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In this paper, the following abbreviations are used ARRC for "Agreement Regarding Regional Representation and Cooperation"; CEFTA for "Central European Free Trade Agreement"; PISG for "Provisional Institutions of Self-Government"; RCC for "Regional Cooperation Council"; SEETO for "South East Europe Transport Observatory"; SRSG for "Special Representative of the Secretary-General of the UN".

<sup>1</sup> See Kosovo Declaration of Independence ([www.assembly-kosova.org/?cid=2,128,1635](http://www.assembly-kosova.org/?cid=2,128,1635), visited 25 July 2013). Independence was declared when negotiations between Belgrade and Prishtina failed, after the Secretary General's Special Envoy Martti Ahtisaari's plan was not endorsed by the UNSC, primarily due to Russia's opposition to it (See N.

domestic law of Serbia and therefore null and void.<sup>2</sup> It views Kosovo as a part of its territory under the international regime established by the United Nations Security Council (UNSC) Resolution 1244<sup>3</sup> and consistently claims it will never recognize Kosovo as an independent state.<sup>4</sup> The US and most of the EU member states recognized the independence of Kosovo and consequently recognized it as a sovereign state. Until the end of 2012, 96 countries recognized Kosovo.<sup>5</sup> However, the rest, including China, Russia, India and some EU countries,<sup>6</sup> have not done so.

2. In these circumstances, Kosovo's participation in the international community and fora has been contentious. Kosovo and states that recognize it, consider Kosovo has the right to participate in international relations on an equal footing with other states. This is opposed by Serbia and the states that refuse to recognize Kosovo's independence. As a result, both Kosovo's international representation and the legitimacy of its representatives have been contested on various occasions. Co-operation within the region is particularly affected. It only started to gradually recover as of September 2012, primarily due to the EU sponsored negotiated arrangements on regional representation and co-operation between Belgrade and Prishtina.<sup>7</sup>

3. This article will discuss the issue of international representation of Kosovo as it evolved from the establishment of international administration in 1999, to Kosovo's declaration of independence of 17 February 2008, until the present day. The article will thus serve several purposes. First, it will collate a large

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MacDonald, 'Russia rejects plan for Kosovo', *Financial Times*, 13 July 2007 ([www.ft.com/intl/cms/s/0/f3f09aae-30a0-11dc-9a81-0000779fd2ac.html#axzz1xqyDvwn9](http://www.ft.com/intl/cms/s/0/f3f09aae-30a0-11dc-9a81-0000779fd2ac.html#axzz1xqyDvwn9), visited 25 July 2013)). Ahtisaari 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) ([www.unosek.org/docref/Comprehensive\\_proposal-english.pdf](http://www.unosek.org/docref/Comprehensive_proposal-english.pdf), visited 5 August 2013), that Serbia also rejected (C.S. Smith, 'Serbia Rejects Plan That Could Lead to Kosovo Independence', *New York Times*, 3 February 2007 ([www.nytimes.com/2007/02/03/world/europe/03kosovo.html?pagewanted=print](http://www.nytimes.com/2007/02/03/world/europe/03kosovo.html?pagewanted=print), visited 15 July 2013)).

<sup>2</sup> See Decision on the Annulment of the Illegitimate Acts of the Provisional Institutions of Self-government in Kosovo and Metohija on their Declaration of Unilateral Independence, *Official Gazette of the Republic of Serbia*, No. 19/2008 ([www.srbija.gov.rs/kosovo-metohija/index.php?id=83040](http://www.srbija.gov.rs/kosovo-metohija/index.php?id=83040), visited 15 July 2013). For the text in English, see *Letter dated 17 April 2008 from the Permanent Representative of Serbia to the United Nations addressed to the President of the Security Council*, UN doc. S/2008/260 (18 April 2008), at 19 ([www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kos%20S%202008%20260.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kos%20S%202008%20260.pdf), visited 15 July 2013).

<sup>3</sup> UN doc. S/RES/1244 (10 June 1999).

<sup>4</sup> See the statement of the former President of Serbia, Boris Tadić, to the UN Security Council of 18 February 2008 ([www.un.int/serbia/Statements/32.pdf](http://www.un.int/serbia/Statements/32.pdf), visited 15 July 2013) and incumbent President, Tomislav Nikolić, 'President Discusses Kosovo, EU, Regional Ties', *B92*, 16 January 2013 ([www.b92.net/eng/news/politics-article.php?yyyy=2013&mm=01&dd=16&nav\\_id=84187](http://www.b92.net/eng/news/politics-article.php?yyyy=2013&mm=01&dd=16&nav_id=84187), visited 15 July 2013). See also the Resolution of the National Assembly of the Republic of Serbia on General Principles for Political Negotiations with the Provisional Institutions of Self-government of Kosovo and Metohija of 13 January 2013, *Official Gazette of the Republic of Serbia*, No. 4/13, point 1(a), text in English at [www.b92.net/eng/insight/strategies.php?yyyy=2013&mm=01&nav\\_id=84141](http://www.b92.net/eng/insight/strategies.php?yyyy=2013&mm=01&nav_id=84141) (visited 15 July 2013).

<sup>5</sup> See [www.mfa-ks.net/?page=2,33](http://www.mfa-ks.net/?page=2,33) (visited 15 July 2013). Recognition by a number of states was given immediately after the declaration of independence of 17 February 2008. There were 47 states that recognized Kosovo, before the UN General Assembly, pursuant to Article 65 of the Statute of the International Court of Justice (ICJ), asked the Court to give an advisory opinion on the legality of the unilateral declaration of independence on 23 September 2008 (see UN Doc. A/63/L.2 (23 September 2008) (The question posed to the ICJ was: "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?"). While the advisory proceeding was pending before the ICJ, 22 countries recognized Kosovo. The rest recognized Kosovo after the advisory opinion was rendered, holding that declaration of independence was not in violation of international law (see *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 403 ([www.icj-cij.org/docket/files/141/15987.pdf](http://www.icj-cij.org/docket/files/141/15987.pdf), visited 18 July 2013).

<sup>6</sup> Cyprus, Greece, Romania, Slovakia and Spain did not recognize it.

<sup>7</sup> See below Section IV.C.

amount of primary material, ranging from Kosovo's representation at each UNSC meeting on the topic to regional and more technical meetings of various organizations or co-operation initiatives. Second, in doing so, it will explain how the narrow issue of international representation reflects on and influences the wider story of Kosovo's contested statehood and its on-going dispute with Serbia. Lessons can be drawn from this not only with regard to how this particular dispute has and can be managed by external and internal actors, but also for other secessionist entities. It is particularly important to see what methods and incentives can facilitate compromise and agreement between the parties, how their own positions can either solidify or evolve, and how external mediators can either exacerbate the problem or contribute to the solution.

In Section II the article will briefly summarize competences in the field of external relations of Kosovo as introduced by UNSC Resolution 1244 of 10 June 1999,<sup>8</sup> and in the Constitution of independent Kosovo of 9 April 2008.<sup>9</sup> Section III will give an overview of how external relations of Kosovo have been conducted from the establishment of the international administration until the declaration of independence (June 1999-February 2008). Section IV will describe and analyse the changes in exercising external affairs competences brought by Kosovo's declaration of independence and, in particular, the issue of Kosovo's representation in regional fora.

Section V the article will offer some conclusions on how the issue of Kosovo's international participation and representation will develop in the future.

## **II. External Relation Competences: Resolution 1244, Constitutional Framework and Kosovo Constitution**

4. Two legal regimes are relevant for the discussion of Kosovo's international representation. The first was set by the UN when the international administration in Kosovo was established by UNSC Resolution 1244 (1999)<sup>10</sup> and subsequently developed in the Constitutional Framework for Provisional Self-Government in Kosovo (2001) (Constitutional Framework).<sup>11</sup> The second regime has been laid down after the declaration of independence through the adoption of the Constitution of Kosovo (2008).<sup>12</sup>

### *II.A. Resolution 1244 and the Constitutional Framework*

5. From the establishment of international presence by the UNSC Resolution 1244,<sup>13</sup> Kosovo's international participation was conducted through the United Nations Mission in Kosovo (UNMIK), headed by the Special Representative of the Secretary-General of the UN (SRSG).<sup>14</sup> Resolution 1244 vested UNMIK, *inter*

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<sup>8</sup> Above n.3.

<sup>9</sup> It entered into force on 15 June 2008. Constitution of Kosovo is available in English at [www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf](http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf) (visited 19 July 2013).

<sup>10</sup> Above n.3.

<sup>11</sup> UNMIK/REG/2001/9 (15 May 2001).

<sup>12</sup> Above n.9.

<sup>13</sup> Above n.3. UNSC Resolution 1244 established a dual international presence: the civil administration was entrusted to the UNMIK and security administration to the NATO-led military forces, KFOR. *Ibid.*, at 2, points 5 and 7.

<sup>14</sup> *Ibid.*, at 2, point 6.

*alia*, with the execution of basic civilian administrative functions in Kosovo,<sup>15</sup> i.e. all legislative and executive powers,<sup>16</sup> including external relations that were implied.<sup>17</sup>

6. Since Resolution 1244 provided for the establishment of the provisional institutions of self-government (PISG) to gradually take over the UNMIK competences,<sup>18</sup> the SRSG adopted the Constitutional Framework in May 2011.<sup>19</sup> While transferring responsibilities in a number of areas to PISG,<sup>20</sup> the Constitutional Framework reserved for the SRSG the competences related to external relations with states and international organizations necessary for the implementation of the mandate.<sup>21</sup> This included the exclusive competence for the conclusion of agreements ‘in all matters within the scope of UNSCR 1244.’<sup>22</sup> The Constitutional Framework also required that in exercising external relations competences the SRSG was to consult and co-operate with PISG in the field of their functions.<sup>23</sup> On the other hand, PISG had limited responsibilities in respect to ‘international and external co-operation, including reaching and finalizing agreements.’<sup>24</sup> However, these needed to be coordinated with the SRSG,<sup>25</sup> who had exclusive competence in this area.

## *II.B. Constitution of Kosovo*

7. After the declaration of independence, the Kosovo authorities were determined to put the UNSC Resolution 1244 framework aside. Unlike the declaration of independence,<sup>26</sup> the Constitution of Kosovo does not contain a reference to Resolution 1244 and does not mention any role for UNMIK,<sup>27</sup> let alone external relations.<sup>28</sup> This is understandable since the conduct of external affairs is one of the most important features of statehood, and this is what Kosovo was now claiming. Thus, the Constitution provides roles for the President, Government and Prime Minister in the matters of foreign relations.<sup>29</sup>

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<sup>15</sup> *Ibid.*, at 3, point 11(b).

<sup>16</sup> UN Doc. S/1999/779 (12 July 1999), para. 35.

<sup>17</sup> A. Zimmermann and C. Stahn, ‘Yugoslav Territory, United Nations Trusteeship or Sovereign State? Reflections on the current and future legal status of Kosovo,’ 70 *Nordic JIL* 423 (2001), at 449.

<sup>18</sup> Above n.3, at 3 and 4, point 11(a), (c) and (d).

<sup>19</sup> See above n.11. For the analysis of the Constitutional Framework see C. Stahn, ‘Constitution without a State? Kosovo under the United Nations Constitutional Framework for Self-Government,’ 14 *Leiden JIL* 531 (2001).

<sup>20</sup> Above n.11, chapter 5.

<sup>21</sup> *Ibid.*, chapter 8.1(o).

<sup>22</sup> *Ibid.*, chapter 8.1(m).

<sup>23</sup> *Ibid.*, chapter 8.1(o).

<sup>24</sup> *Ibid.*, chapter 5.6.

<sup>25</sup> *Ibid.*

<sup>26</sup> See above n.1, points 5 and 12.

<sup>27</sup> However, Arts. 143, and 146-147 of the Constitution (above n.9) referred to Ahtisaari Plan (above n.1) that provided international supervised independence which was terminated in September 2012 ([www.ico-kos.org/?id=61](http://www.ico-kos.org/?id=61), visited 13 March 2013).

<sup>28</sup> The Constitution, however, proclaims the continuity of “[i]nternational agreements and other acts relating to international co-operation that are in effect on the day this Constitution enters into force will continue to be respected until such agreements or acts are renegotiated or withdrawn from in accordance with their terms or until they are superseded by new international agreements or acts covering the same subject areas and adopted pursuant to this Constitution.” Above n.9, Art. 145(1).

<sup>29</sup> The President leads it, the Government proposes and implements it, and the Prime Minister needs to consult the President on the implementation of the foreign policy. *Ibid.*, Arts. 84(10), 93(1) and 94(9)).

8. Under the Constitution, Kosovo concludes international agreements, enters into international organizations and participates in international co-operation.<sup>30</sup> This seems to be inspired by the circumstances of Kosovo's legal position. Namely, the Constitutional Framework for Kosovo had given the exclusive competence for the conclusion of agreements to UNMIK,<sup>31</sup> so the drafters probably felt that they needed to include an explicit provision on Kosovo's international affairs competences, which would have been otherwise redundant for sovereign states.

### **III. External representation of Kosovo from the Establishment of International Administration until the Declaration of Independence (June 1999 – February 2008)**

9. Based on Resolution 1244 and the Constitutional Framework, UNMIK was representing Kosovo in its external relations from the establishment of the international administration in 1999 until the declaration of independence.

#### *III.A. UNMIK in bilateral and multilateral relations of Kosovo*

10. In the first half of 2000 UNMIK developed Kosovo's bilateral relations. At first, this included agreements on development of economic relations and police co-operation with neighbouring countries such as Macedonia (FYROM) and Albania.<sup>32</sup> A number of agreements were signed with these two countries.<sup>33</sup> This was followed by meetings and agreements with Slovenia,<sup>34</sup> Bosnia and Herzegovina,<sup>35</sup> Turkey<sup>36</sup> and Croatia.<sup>37</sup>

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<sup>30</sup> Art. 17 of Kosovo Constitution (*ibid.*) states: "1. The Republic of Kosovo concludes international agreements and becomes a member of international organizations. 2. The Republic of Kosovo participates in international co-operation for promotion and protection of peace, security and human rights." For competences in the matters of international agreements, see *ibid.*, Arts. 18 (1), (2) and (4), 84(7), 113(2.1) and (3.4).

<sup>31</sup> See above notes 21 and 22.

<sup>32</sup> See *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, UN Doc. S/2000/218 (13 March 2001), at 13, para. 61 (below UN Secretary General's reports will be stated only by UN Doc. reference and date). SRSG was meeting with Albanian high officials (see UN Docs. S/2001/218 (13 March 2001), at 13, para. 61; S/2001/565 (7 June 2001), at 3 and 4, para. 10; S/2003/675 (26 June 2003), at 8, para. 27 and S/2004/613 (30 July 2004), at 14, para. 52) and Macedonian authorities (UN Docs. S/2001/218; S/2001/565; S/2003/675; S/2004/613, *ibid.*; S/2002/436 (22 April 2002), at 9, para. 46).

<sup>33</sup> With Albania: Memorandum of Understanding (MoU) on Economic Cooperation, MoU on Police Cooperation and MoU on Motor Vehicle Insurance (UN Doc. S/2002/1126 (9 October 2002), at 9, para. 45), Agreement on Elimination of Double Taxation (UN Doc. S/2004/907 (17 January 2004), at 18, para. 49), Agreement on Medical/Dental University Education (UN Doc. S/2005/335 (23 May 2005), at 19, para. 77). Agreements signed with Macedonia were: MoU on Custom Cooperation (UN Doc. S/2000/878 (18 September 2000), at 3, para. 12)), Exchange of Letter on International Panel of Judges in Kosovo for KLA member Crimes Committed in FYROM (UN Doc. S/2002/779 (17 July 2002), at 4 and 5, para. 25), Agreement on Mutual Recognition of Vehicle Insurance and Exchange of Letters addressing the Practical Modalities Associated with the Opening of Two Temporary Local Crossing points between Kosovo (UN Doc. S/2003/675, above n.32, at 9, para. 32), and Agreement on Medical/Dental University Education (UN Doc. S/2005/335, above n.33).

<sup>34</sup> MoU on Mutual Recognition of Vehicle Insurance, see UN Doc. S/2002/1126, above n.33, para. 46.

<sup>35</sup> Free Trade Agreement, UN Doc. S/2006/906 (20 November 2006), at 6, para. 20.

<sup>36</sup> Investment Protection Agreement, UN Doc. S/2006/361 (5 June 2006), at 5, para. 12.

<sup>37</sup> Free Trade Agreement, UN Doc. S/2006/906, above n.35.

UNMIK also signed repatriation agreements with Germany, Switzerland and Sweden.<sup>38</sup> In 2004, PISG were started to participate alongside with UNMIK in the meetings,<sup>39</sup> negotiations<sup>40</sup> and in conclusion of agreements<sup>41</sup> with some of these countries.

11. In 2001, UNMIK's activities regarding Kosovo's international representation continued to evolve to include multilateral relations: meetings and agreements with international organizations and regional initiatives. Inclusion of the PISG<sup>42</sup> into these encounters was gradual. UNMIK was attending meetings on behalf of Kosovo with international representatives, which included those of the EU,<sup>43</sup> NATO,<sup>44</sup> World Bank,<sup>45</sup> EBRD<sup>46</sup> and UNESCO.<sup>47</sup> Meetings with international organizations started to include representatives of the PISG in the UNMIK delegation from 2002.<sup>48</sup>

12. From 2004, UNMIK started being active in the regional initiatives (Stability Pact,<sup>49</sup> South-Eastern Europe Cooperation Process,<sup>50</sup> Energy Community,<sup>51</sup> and the South East Europe Transport Observatory (SEETO)<sup>52</sup>), with the involvement of PISG officials from the end of that year.<sup>53</sup> UNMIK entered into a number of multilateral agreements within regional initiatives, such as the Memorandum of Understanding on the Development of the South-East Europe Core Regional Transport Network,<sup>54</sup> the Multilateral Agreement on the Establishment of the European Common Aviation Area<sup>55</sup> and the Central European Free Trade Agreement (CEFTA).<sup>56</sup>

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<sup>38</sup> See MoU between The Government of the Kingdom of Sweden and UNMIK, SÖ 2005: 29 (16 November 2004) ([www.government.se/content/1/c6/06/54/92/3e4fbd17.pdf](http://www.government.se/content/1/c6/06/54/92/3e4fbd17.pdf), visited 25 March 2013). For the rest see Human Rights Watch, *Rights Displaced: Forced Returns of Roma, Ashkali and Egyptians from Western Europe to Kosovo*, October 2010, at 29-31 ([www.hrw.org/sites/default/files/reports/kosovo1010webwcover\\_1.pdf](http://www.hrw.org/sites/default/files/reports/kosovo1010webwcover_1.pdf), visited 25 March 2013).

<sup>39</sup> With Albania and Macedonia, UN Doc. S/2004/613, above n.32.

<sup>40</sup> With Macedonia: negotiating free trade agreement (UN Doc. S/2005/88 (14 February 2005), at 18 and 19, para. 73.

<sup>41</sup> With Albania: Agreement on Cooperation in the Field of Energy and Agreement for the Construction of a new 400 kV Connection Line between Kosovo and Albania, UNMIK signed together with PISG (UN doc. S/2006/906, above n.35).

<sup>42</sup> As designated by the Constitutional Framework, above n.11, Art. 1.5(b) and (c) and chapter 9, section 2 and 3.

<sup>43</sup> Meeting with EU High Representative CFSP (UN Doc. S/2001/565 (7 June 2001), at 4, para. 11) and participation in various meetings within EU auspices (see UN Docs. S/2003/113 (29 January 2003), at 11, para. 45; S/2004/907, above n.33, para. 50 and S/2005/88, above n.40, at 19.

<sup>44</sup> Meeting with NATO Supreme Allied Commander/Europe, UN Doc. S/2001/565, *ibid.*

<sup>45</sup> UN Doc. S/2003/113, above n.43.

<sup>46</sup> UN Doc. S/2005/335, above n.33, at 15, para. 54.

<sup>47</sup> UN Docs. S/2006/45 (25 January 2006), at 5, para. 12 and S/2006/906, above n.35, at 4, para. 15.

<sup>48</sup> Meetings with World Bank and European Commission (UN Doc. S/2003/113, above n.45) and UNESCO (UN Doc. S/2006/45, *ibid.*).

<sup>49</sup> See UN Docs. S/2004/613, above n.32; S/2004/907, above n.33; S/2005/88, above n.40, at 19, para. 73, S/2006/361, above n.36; S/2006/707 (1 September 2006), at 6, para. 27.

<sup>50</sup> UN Doc. S/2006/707, *ibid.*

<sup>51</sup> UN Doc. S/2007/768 (3 January 2007), at. 5, para. 19.

<sup>52</sup> *Ibid.*

<sup>53</sup> UN Doc. S/2005/88, above n.40, at 18.

<sup>54</sup> Un Doc. S/2004/907, above n.33.

<sup>55</sup> UN Doc. S/2006/707, above n.49.

<sup>56</sup> UN Doc. S/2007/134 (9 March 2007), at 5 and 6, paras. 19.

13. UNMIK also concluded agreements with regional human rights treaty body monitoring mechanisms of the Council of Europe in 2004,<sup>57</sup> and fulfilled its obligation thereunder.<sup>58</sup> This was warranted by the inability of a state party (Serbia) to these treaties to fulfil its obligations related to Kosovo.

On the same grounds, UNMIK submitted reports to the respective UN treaty bodies on the implementation of the International Covenant on Civil and Political Rights<sup>59</sup> and the International Covenant on Economic, Social and Cultural Rights<sup>60</sup> in Kosovo.

14. The Head of UNMIK (SRSG) was invited to attend and speak at the UN Security Council meetings on Kosovo since the establishment of the international administration in 1999.<sup>61</sup> This was done under Rule 39 of the Provisional Rules of Procedure of the UN Security Council,<sup>62</sup> which allows the Council to invite members of the Secretariat or other competent persons who can provide information and assistance to it. The UNMIK

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<sup>57</sup> The Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (CPT) and Advisory Committee on the Framework Convention on the Protection of Minorities (ACFC). See *Agreement between the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Council of Europe on technical arrangements related to the Framework Convention for the Protection of National Minorities* of 23 August 2004 ([www.coe.int/t/dghl/monitoring/minorities/6\\_Resources/PDF\\_Agreement\\_UNMIK\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/6_Resources/PDF_Agreement_UNMIK_en.pdf), visited 22 January 2013) and *Agreement between the United Nations Interim Administration Mission in Kosovo and the Council of Europe on technical arrangements related to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* of 23 August 2004 ([www.cpt.coe.int/documents/srb/2004-08-23-eng.pdf](http://www.cpt.coe.int/documents/srb/2004-08-23-eng.pdf), visited 22 January 2013). Furthermore, the CPT also concluded the agreement with NATO in respect to its mandate related to NATO run detention facilities. See CPT, *Council of Europe Anti-Torture Committee gains access to NATO run detention facilities in Kosovo*, Press Release, 19 July 2006 ([www.cpt.coe.int/documents/srb/2006-07-19-eng.htm](http://www.cpt.coe.int/documents/srb/2006-07-19-eng.htm), visited 22 January 2013).

<sup>58</sup> UNMIK submitted two reports to the ACFC – in June 2005 (see Doc. ACFC(2005)003, 2 June 2005 ([www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_Report\\_Kosovo\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_Report_Kosovo_en.pdf), visited 22 January 2013) and June 2008 (see Doc. ACFC(2008)001, 10 December 2008 ([www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_UNMIK\\_ProgressReport\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_UNMIK_ProgressReport_en.pdf), visited 22 January 2013), in which preparations’ PISG participated (*ibid.*, at 2). UNMIK also submitted responses to the CPT on its reports on the visits to Kosovo in March 2007 (Doc. CPT/Inf (2009) 4, 20 January 2009 ([www.cpt.coe.int/documents/srb/2009-04-inf-eng.pdf](http://www.cpt.coe.int/documents/srb/2009-04-inf-eng.pdf), visited 22 January 2013) and June 2010 (Doc. CPT/Inf (2011), 6 October 2011 ([www.cpt.coe.int/documents/srb/2011-27-inf-en.pdf](http://www.cpt.coe.int/documents/srb/2011-27-inf-en.pdf), visited 22 January 2013). In its 2010 response to the CPT, UNMIK noted that ‘the Committee should note that realities on the ground in Kosovo have effectively removed UNMIK’s ability to compile and provide information on implementation of the human rights conventions in Kosovo’ (*ibid.*, at 3).

<sup>59</sup> The reports were submitted to the UN Human Rights Committee (HRC) in January 2006 and February 2012 (see UN Doc. CCPR/C/UNK/1 (13 March 2006) and S/2012/275 (27 April 2012), at 10, para. 54), on the basis of the HRC requests from 2004 and 2011 (see *Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding Observations of the Human Rights Committee, Serbia*, UN Docs. CCPR/CO/81/SEMO (12 August 2004), at 2, para. 3 and CCPR/C/SRB/CO/2 (20 May 2011), at 1, para. 3).

<sup>60</sup> See *Implementation of the International Covenant on Economic, Social and Cultural Rights*, Document submitted by the United Nations Interim Administration Mission in Kosovo under articles 16 and 17 of the Covenant, Kosovo (Serbia), UN Doc. E/C.12/UNK/1 (15 January 2008).

<sup>61</sup> Sometimes the addresses on Kosovo were of the Assistant Secretary-General for Peacekeeping Operations or Under-Secretary-General. See transcripts of UNSC meetings ([www.un.org/Depts/dhl/resguide/scact.htm](http://www.un.org/Depts/dhl/resguide/scact.htm), visited 25 March 2013).

<sup>62</sup> See Provisional Rules of Procedure of the Security Council, UN doc. S/96/Rev.7, adopted by the Security Council at its 1st meeting and amended at its 31st, 41st, 42nd, 44th and 48th meetings, on 9 April, 16 and 17 May, 6 and 24 June 1946; 138th and 222nd meetings, on 4 June and 9 December 1947; 468th meeting, on 28 February 1950; 1463rd meeting, on 24 January 1969; 1761st meeting, on 17 January 1974; and 2410th meeting, on 21 December 1982, New York, 1983 ([www.un.org/en/sc/about/rules/](http://www.un.org/en/sc/about/rules/), visited 23 March 2013).

delegation began including the representatives of the PISG<sup>63</sup> since the beginning of 2006.<sup>64</sup> They were not allowed to take the floor until December 2007,<sup>65</sup> two months before the declaration of independence. As in the case of the SRSG, the invitation to participate was based on Rule 39,<sup>66</sup> with neither Serbia nor any UNSC members objecting.

#### **IV. External representation of Kosovo after the Declaration of Independence (17 February 2008 onwards)**

##### *IV.A. General*

15. After Kosovo's declaration of independence of 17 February 2008, UNMIK's role in external relations of Kosovo diminished. The new situation was prompted on one hand by the position of the Kosovo authorities, who claimed that they were to assume UNMIK's role<sup>67</sup> and exercise the prerogative to represent Kosovo in international and regional fora<sup>68</sup> and, on the other hand, by the attitude towards Kosovo independence of other actors in international relations. Those who were against independence insisted on the Resolution 1244 regime, refusing to participate in international co-operation with Kosovo without UNMIK present; those who supported independence were happy to see UNMIK go.

16. As will be shown, the Resolution 1244 regime, while legally still in force, was substantially compromised by the political reality on the ground. Thus, the Kosovo authorities with a competence in foreign relations as provided by the Constitution of Kosovo<sup>69</sup> assumed the role in developing bilateral relations with states that had recognised Kosovo. A number of international agreements were signed<sup>70</sup> and diplomatic missions and offices were opened.<sup>71</sup> In 2009, Kosovo became a member state of the International Monetary Fund (IMF)<sup>72</sup>

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<sup>63</sup> See above n.42. The persons who were members of SRSG delegation were those who had a function of the Prime Minister of Kosovo or the President of Kosovo (see UN Docs. S/PV.5373 (14 February 2006); S/PV.5470 (20 June 2006); S/PV.5522 (13 September 2006); S/PV.5588 (13 December 2006) and S/PV.5654 (3 April 2007)).

<sup>64</sup> *Ibid.*, at 2.

<sup>65</sup> These addresses were at the closed meeting of the UNSC: in December 2007 and January 2008 (see UN Docs. S/PV.5811 (19 December 2007) and S/PV.5822 (16 January 2008)).

<sup>66</sup> See above n.62 and the text that follows.

<sup>67</sup> UN Doc, S/2008/458 (15 July 2008), at 1, para. 2.

<sup>68</sup> See UN docs. S/2009/497 (30 September 2009), at 10, para. 45; S/2010/562 (29 October 2010), at 11, para. 54; S/2010/5 (5 January 2010), at 9, para 46 and S/2010/401 (29 July 2010), at 9, para. 49.

<sup>69</sup> See above n.29.

<sup>70</sup> With Turkey, Slovenia, Denmark, US, UK, Macedonia, Albania, Sweden, Luxembourg, France, Austria, Belgium, Swiss Confederation, Finland, Germany, Italy, Montenegro, Norway, Croatia, Czech Republic, Japan, the Netherlands and Bulgaria. The list of agreements is available at the website of the Ministry of Foreign Affairs of Kosovo ([www.mfa-ks.net/?page=2,72](http://www.mfa-ks.net/?page=2,72), visited 31 July 2013).

<sup>71</sup> Until the end of July 2013, Kosovo opened 20 embassies (in US, Albania, UK, Belgium, Germany, Switzerland, Austria, Turkey, France, Italy, the Netherlands, Slovenia, Sweden, Bulgaria, Croatia, Hungary, Japan, Macedonia, Czech Republic and Saudi Arabia) ([www.mfa-ks.net/?page=2,49](http://www.mfa-ks.net/?page=2,49), visited 31 July 2013). Nineteen countries that recognized Kosovo as an independent state open their diplomatic missions (Albania, Austria, Bulgaria, Croatia, Czech Republic, Finland, France, Germany, Hungary, Italy, Macedonia, the Netherlands, Norway, Sweden, Slovenia, Swiss Confederation, Turkey, UK and US), while three countries opened their offices in Prishtina (Japan, Luxembourg and Belgium, last being a diplomatic office) ([www.mfa-ks.net/?page=2,50](http://www.mfa-ks.net/?page=2,50), visited 31 July 2013).

<sup>72</sup> See 'Kosovo Becomes the International Monetary Fund's 186<sup>th</sup> Member,' Press Release No. 09/240 (29 June 2009) ([www.imf.org/external/np/sec/pr/2009/pr09240.htm](http://www.imf.org/external/np/sec/pr/2009/pr09240.htm), visited 23 March 2013).



and the World Bank (WB).<sup>73</sup> On the other hand, Kosovo's contested statehood necessitated UNMIK's presence in other international and regional encounters.

#### *IV.B. Change of the role of UNMIK in external representation of Kosovo after the declaration of independence*

17. Due to contested status of Kosovo, UNMIK remained an important component of Kosovo's external representation. This was opposed by Kosovo representatives as they perceived it "as a limitation of the 'sovereignty [of Kosovo]'"<sup>74</sup> and actively resisted it in the wake of the ICJ's Kosovo Advisory Opinion.<sup>75</sup> Consequently, Kosovo representatives refused to participate in a number of meetings alongside with UNMIK, which were requiring its facilitation (especially those hosted by Regional Cooperation Council (RCC)<sup>76</sup> and CEFTA<sup>77</sup>). At some occasions (like in CEFTA), they were even trying to bypass UNMIK completely, but without success,<sup>78</sup> primarily due to opposition of the states which refused to recognise its independence.

18. On the other hand, Kosovo authorities also took a pragmatic approach and did not oppose the presence of UNMIK in many of the international and regional fora. So, together with the relevant Kosovo ministries, UNMIK was facilitating Kosovo's participation in international co-operation and regional economic initiatives even after the declaration of independence. These included meetings of the CEFTA,<sup>79</sup> the Energy Community,<sup>80</sup> the European Aviation Safety Agency,<sup>81</sup> the European Charter for Small Enterprises,<sup>82</sup> the European Council Technical Support Task Force for the European Union-led dialogue process,<sup>83</sup> the EU-Western Balkans Ministerial Forum on Justice and Home Affairs,<sup>84</sup> the Foreign Ministers of the European Union and the Western Balkans,<sup>85</sup> the Governing Board of the Implementation of the Single European Sky in South-East Europe Project,<sup>86</sup> INTERPOL,<sup>87</sup> OECD,<sup>88</sup> RCC,<sup>89</sup> the Regional School of Public Administration,<sup>90</sup> the South-Eastern Europe Transport Observatory (SEETO),<sup>91</sup> the UN Office on Drugs

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<sup>73</sup> See 'Kosovo Joins World Bank Group Institutions,' Press Release No. 2009/448/ECA (29 June 2009) ([web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:22230081~pagePK:34370~piPK:34424~theSitePK:4607,00.html](http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:22230081~pagePK:34370~piPK:34424~theSitePK:4607,00.html), visited 23 March 2013).

<sup>74</sup> See UN Doc. S/2010/562, above n.68.

<sup>75</sup> *Ibid.*

<sup>76</sup> UN Docs. S/2011/43 (28 January 2011), at 10, para. 47 and S/2011/281 (3 May 2011), at 11, para. 56.

<sup>77</sup> UN Docs. S/2009/149 (17 March 2009), at 8, para. 28 and S/2010/5, above n.68.

<sup>78</sup> UN Doc. S/2009/149, *ibid.*

<sup>79</sup> UN Docs. S/2010/562, above n.68; S/2011/43, above n.76, para. 46; S/2011/281, above n.76; S/2011/514 (12 August 2011), at 11, para. 55; S/2011/675 (31 October 2011), at 11, para. 51; S/2012/72 (31 January 2012), at 10, para. 50 and S/2012/275, above n.59, para. 56.

<sup>80</sup> See UN docs. S/2009/497; S/2010/401, above n.68; S/2010/562, above n.68, at 11; S/2011/514; S/2011/675; S/2012/72, above n.59 and S/2012/275, above n.59, para. 56.

<sup>81</sup> UN Doc. S/2010/401, above n.68.

<sup>82</sup> UN Doc. S/2009/497, above n.68.

<sup>83</sup> UN Doc. S/2011/675, above n.79.

<sup>84</sup> *Ibid.*, para. 52.

<sup>85</sup> UN Doc. S/2011/514, above n.79.

<sup>86</sup> UN Doc. S/2010/562, above n.68, at 11.

<sup>87</sup> UN Doc. S/2012/275, above n.59, para. 57.

<sup>88</sup> UN Docs. S/2010/401, above n.68; S/2010/562, above n.68, at 11 and S/2012/72, above n.79.

<sup>89</sup> See UN Docs. S/2009/149, above n.77; S/2010/169 (6 April 2010), at 9, para. 37; S/2011/281, above n.76; S/2011/675; S/2012/72 and S/2012/275, above n.59, para. 56.

<sup>90</sup> UN Docs. S/2010/401 and S/2010/562, above n.68, at 11.

<sup>91</sup> See UN docs. S/2009/497, above n.68; S/2010/169, above n.89; S/2010/401, above n.68; S/2010/562, above n.68, at 11; S/2011/675; S/2012/72 and S/2012/275, above n.59, para. 56.

and Crime,<sup>92</sup> UNESCO<sup>93</sup> and the United Nations Economic Commission for Europe.<sup>94</sup> In addition, UNMIK also facilitated Kosovo's participation at meetings held under the auspices of the EU and other international organizations dealing with topic such as energy, trade, transport, aviation, justice and home affairs, agriculture, migration, cultural heritage, social economy, civil documentation and the information society, sustainable development and economic matters,<sup>95</sup> and those in the context of the European Common Aviation Area, ICTY and OECD.<sup>96</sup>

19. If we try to distinguish between the attendance at those meetings to which the Kosovo authorities applied a pragmatic approach and participated alongside with UNMIK and those in which they were rigid and rejected UNMIK's participation, one can conclude the following: the more politically important a forum was (such as RCC meeting and CEFTA) the rigidity was stronger; the more technical it got (e.g. regional co-operation initiatives of a purely technical nature, such as SEETO, the Energy Community, etc), the more pragmatism prevailed. This is only natural. Political co-operation initiatives and those pertaining to important economic policy issues were stronger showcases of statehood than those in which participants cooperate to achieve a mutual technical goal.

20. As for the UNSC meetings, obviously Kosovo could not even hope to get there without UNMIK, so it participated along its side. However, there was an improvement in the position of Kosovo before UNSC after the declaration of independence. After July 2008,<sup>97</sup> the speeches of its representatives, which were under Rule 39 of the UNSC Provisional Rules of Procedure,<sup>98</sup> fell outside scope of the Resolution 1244 structure. Namely, these were not the addresses of the representatives of the PISG<sup>99</sup> but of Kosovo's Ministry of Foreign Affairs,<sup>100</sup> an institution not envisaged by the Constitutional Framework due to the provision on exclusive competence of the UNMIK in external relations.<sup>101</sup> The UNSC in effect tacitly allowed Kosovo to step outside the scope of its very own Resolution. It is of relevance to note that neither Serbia nor any non-recognising member states of the UNSC objected to this. At least in the context of gaining legitimacy, this was a significant step for Kosovo, which strongly wished to escape the constraints of Resolution 1244 and the Constitutional Framework.

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<sup>92</sup> UN Doc. S/2012/275, *ibid.*

<sup>93</sup> UN Docs. S/2012/818 (8 November 2012), at 8, para. 40 and S/2013/72 (4 February 2013), at 9, para. 47.

<sup>94</sup> UN Docs. S/2010/169, above n.89 and S/2010/401, above n.68.

<sup>95</sup> UN Docs. S/2010/5, above n.77, para 45; S/2011/43, above n.79; S/2011/281, above n.76 and S/2012/72, above n.79.

<sup>96</sup> *Ibid.*

<sup>97</sup> See UN Docs. S/PV.5944 (25 July 2008); S/PV.6025 (26 November 2008); S/PV.6097 (23 March 2009); S/PV.6144 (17 June 2009); S/PV.6202 (15 October 2009); S/PV.6264 (22 January 2010); S/PV.6314 (17 May 2010); S/PV.6353 (6 July 2010); S/PV.6367 (3 August 2010); S/PV.6422 (12 November 2010); S/PV.6483 (16 February 2011); S/PV.6534 (12 May 2011); S/PV.6604 (30 August 2011); S/PV.6616 (15 September 2011); S/PV.6617 (15 September 2011); S/PV.6670 (29 November 2011); S/PV.6713 (8 February 2012); S/PV.6769 (14 May 2012) and S/PV.6872 (27 November 2012).

<sup>98</sup> See above n.62 and the text that follows.

<sup>99</sup> See above n.42.

<sup>100</sup> See above n.97. Except at the meeting in August 2012 and March 2013, when Prime Minister of Kosovo spoke, see UN Docs. S/PV.6822 (21 August 2012) and S/PV.6939 (22 March 2013).

<sup>101</sup> See Section II.A.

#### IV.C. Kosovo's Regional Representation

21. Regional co-operation is one of the indispensable components of the EU integration processes in the Western Balkans, serving to help the region address joint challenges through regional numerous initiatives in the fields of energy, pollution, transport, cross-border criminal activities, etc.<sup>102</sup> It suffered a major setback when Kosovo declared independence.<sup>103</sup> In this context, modalities of the representation of Kosovo were particularly controversial,<sup>104</sup> due to conflicting attitudes of Serbia and Kosovo on the issue. As shown earlier, Kosovo authorities' argue that it is their prerogative to represent Kosovo, not UNMIK's.<sup>105</sup> On the other hand, Serbia insisted that Kosovo could be only represented by UNMIK and refused to participate in the meetings to which representatives of Kosovo were also invited.<sup>106</sup>

22. Naturally, Serbia's policy regarding joint participation in the meetings with Kosovo representative was the most rigid immediately after Kosovo declared independence: at first it included leaving meetings where Kosovo representatives were present as a part of UNMIK delegation and were given the floor by UNMIK.<sup>107</sup> 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.<sup>108</sup> However, even this policy was not applied consistently and without contradictions.<sup>109</sup> Moreover, it seemed that the level of government officials was crucial in deciding whether to attend certain meeting or not. Serbia never attended along with Kosovo representatives meetings at the level of heads of states or Prime Ministers,<sup>110</sup> while it sometimes attended those of foreign ministers.<sup>111</sup>

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<sup>102</sup> See more at [http://ec.europa.eu/enlargement/policy/regional-cooperation/index\\_en.htm](http://ec.europa.eu/enlargement/policy/regional-cooperation/index_en.htm) (visited 18 March 2013). The progress in the field of regional co-operation is monitored in annual progress reports of the European Commission that are an assessment of each potential candidate and candidate country achievements over a year ([http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index\\_en.htm](http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index_en.htm), visited 18 March 2013).

<sup>103</sup> S/2010/401, above n.68, para. 47.

<sup>104</sup> Especially case after the ICJ's Kosovo Advisory Opinion, above n.5. See UN Doc. S/2010/562, above n.68, at 11..

<sup>105</sup> See more above Section IV.B.

<sup>106</sup> For Warsaw Summit, see: J. Dempsey, 'Serbia Insists on Summit Boycott', *New York Times*, 26 May 2011 ([www.nytimes.com/2011/05/27/world/europe/27iht-east27.html?\\_r=1](http://www.nytimes.com/2011/05/27/world/europe/27iht-east27.html?_r=1), visited 14 February 2013). For Croatia Summit, see: 'Croatia Summit 2010 Opens in Dubrovnik', *SE Times*, 9 July 2010 ([www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/newsbriefs/2010/07/09/nb-02](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/newsbriefs/2010/07/09/nb-02), visited 14 February 2013). For meeting at Brdo kod Kranja, see 'Slovenian FM: Serbia too sensitive', *B92*, 23 March 2010 ([www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=03&dd=23&nav\\_id=65996](http://www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=03&dd=23&nav_id=65996), visited 18 February 2013).

<sup>107</sup> See 'Tadić demonstrativno napustio samit' (in English: 'Tadić left the summit'), *Politika*, 22 May 2008 ([www.politika.rs/rubrike/Svet/Tadic-demonstrativno-napustio-samit.lt.html](http://www.politika.rs/rubrike/Svet/Tadic-demonstrativno-napustio-samit.lt.html), visited 18 February 2013).

<sup>108</sup> See *below* n.113.

<sup>109</sup> 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 above n.106).

<sup>110</sup> This was the case at Warsaw Summit, Croatia Summit, meeting at Brdo near Kranj, see above n.106. Cf. text accompanying below n.156-158.

<sup>111</sup> Sarajevo conference organized by EU in June 2010, see 'EU-Western Balkans conference in Sarajevo,' *B92*, 2 June 2010 ([www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=06&dd=02&nav\\_id=67528](http://www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=06&dd=02&nav_id=67528), visited 13 March 2013).

23. Serbia's policy was motivated by its refusal to recognize Kosovo as an independent state and the misconception<sup>112</sup> that recognition could be done implicitly solely through the joint participation of Serbia and Kosovo at international meetings.<sup>113</sup> It suffered from the ill-founded fear that implied recognition can be given accidentally without the intention to recognize.<sup>114</sup> This dubious position was also shared at some occasions by Slovakia<sup>115</sup> and Romania,<sup>116</sup> states which also did not recognise Kosovo as an independent state.

24. 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.<sup>117</sup> 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.<sup>118</sup> However, this also led to disputes and absence from events of some of the invited parties.<sup>119</sup>

25. Since September 2010, the issue of regional representation of Kosovo was discussed and negotiated within the framework of the EU integration process of Serbia and Kosovo, after the UN General Assembly adopted Resolution 64/298<sup>120</sup> which vested the responsibility for a dialogue between Serbia and Kosovo with the EU.<sup>121</sup> One of the negotiation topics was the issue of regional representation and co-operation.<sup>122</sup>

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<sup>112</sup> This position does not have support in international law. See H. Lauterpacht, *Recognition in International Law*, Cambridge University Press (1948), at 308; J. M. Ruda, "Recognition of States and Governments" in M. Bedjaoui, (ed.), *International Law: Achievements and Prospects*, Part I, UNESCO – Martinus Nijhoff (1991), at 452; L. Oppenheim, *Oppenheim's International Law*, Longman, (9<sup>th</sup> ed., 1992), at 170-174; P. Malanczuk, *Akehurst's Modern Introduction to International Law*, Routledge (7<sup>th</sup> rev. ed., 1997), at 88; I. Brownlie, *Principles of Public International Law*, Oxford University Press (6<sup>th</sup> ed., 2003), at 93; M. Shaw, *International Law*, Cambridge University Press (2003), at 387; M. Dixon, M., *Textbook on International Law*, Oxford University Press, (6<sup>th</sup> ed., 2007), at 126; A. Aust, *Handbook of International Law*, Cambridge University Press (2010), at 28.

<sup>113</sup> 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 ([www.mfa.gov.rs/Srpski/Bilteni/Srpski/b150310\\_s.html](http://www.mfa.gov.rs/Srpski/Bilteni/Srpski/b150310_s.html); summary in English: [www.mfa.gov.rs/Bilteni/Engleski/b150310\\_e.html](http://www.mfa.gov.rs/Bilteni/Engleski/b150310_e.html), both visited 18 February 2013).

<sup>114</sup> See above n.112.

<sup>115</sup> This was the case at Warsaw Summit in 2011, see the statement of the spokesperson of the President of Slovakia, Marek Trubac, in V. Pop, 'Serbia Boycotts Obama Meeting over Kosovo', *EU Observer*, 25 May 2001 (<http://euobserver.com/887/32390>, visited 15 March 2013).

<sup>116</sup> See C. Bryant, J. Cienski and N. Buckley, 'Warsaw summit faces boycott', *Financial Times*, 25 May 2011 ([www.ft.com/intl/cms/s/0/434af2ca-8705-11e0-92df-00144feabdc0.html#axzz2O5doauOA](http://www.ft.com/intl/cms/s/0/434af2ca-8705-11e0-92df-00144feabdc0.html#axzz2O5doauOA), visited 13 March 2013).

<sup>117</sup> UN Doc. S/2010/169, above n.89.

<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*

<sup>120</sup> UN Doc. A/RES/64/298 (9 September 2010). This Resolution was adopted after the ICJ rendered its advisory opinion (see above n.4).

<sup>121</sup> The Resolution states that the GA '[w]elcomes 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 co-operation, *achieve progress on the path to the European Union* and improve the lives of the people' (second emphasis added), *ibid.*, at 2.

<sup>122</sup> In the eve of the first round of negotiations, a high ranking EU official stated that there would be three main topics: regional co-operation, freedom of movement and rule of law. See "'Three main topics" in Belgrade-Priština talks', *B92*, 7 March 2011 ([www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=03&dd=07&nav\\_id=73106](http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=03&dd=07&nav_id=73106), visited 6 March 2013). Under these three main topics, the negotiations included issues of: cadastral registries, civil registry, regional trade and freedom of movement of goods, telecommunications, electricity, customs stamp (UN Doc. S/2011/281, above note 76), diploma recognition, and management of crossing points (UN Doc. S/2012/275, above n.59, para. 56 and 57).

26. Serbia's attitude towards joint participation at international meetings with Kosovo representatives created a major challenge for its EU integration process,<sup>123</sup> which required inclusive and functional regional co-operation. The European Commission (EC) in its Opinion on Serbia's application for membership of the EU of 12 October 2011 stated that it is a priority for Serbia to achieve progress in this respect.<sup>124</sup> 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 Prishtina to develop functional regional co-operation was sought and in that context it looked more attainable.

*IV.C.i. The footnote saga: Arrangements Regarding Regional Representation and Cooperation of 24 February 2012*

27. After long and excruciating talks, the Arrangements Regarding Regional Representation and Cooperation (ARRC)<sup>125</sup> were adopted on 24 February 2012,<sup>126</sup> thus enabling the European Council to grant Serbia candidate status for membership in the EU.<sup>127</sup>

28. The EU managed to bring together diametrically opposite positions – Serbia insisted that Kosovo could participate in regional co-operation only within the framework of the Resolution 1244<sup>128</sup> and Kosovo was adamant that this was not an option, since it was an independent state, as was, in its view, supported by the ICJ Advisory Opinion.<sup>129</sup> 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".<sup>130</sup>

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<sup>123</sup> See EC, *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](http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/sr_rapport_2011_en.pdf), visited 18 March 2013). See also EC, *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](http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/sr_analytical_rapport_2011_en.pdf), visited 18 March 2013).

<sup>124</sup> 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](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/sr_rapport_2010_en.pdf), visited 18 March 2013).

<sup>125</sup> Available at [www.b92.net/eng/insight/pressroom.php?yyyy=2012&mm=02&nav\\_id=78973](http://www.b92.net/eng/insight/pressroom.php?yyyy=2012&mm=02&nav_id=78973) (visited 8 March 2013).

<sup>126</sup> See EU, *EU facilitated dialogue: Agreement on Regional Cooperation and IBM technical protocol*, Press Statement, 24 February 2012, 5455/12, PRESSE 9 ([www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/128138.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/128138.pdf), visited 20 March 2013).

<sup>127</sup> Decision of 1 March 2012, EUCO 4/3/12 REV 3 (8 May 2012) ([www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/128520.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/128520.pdf), visited 4 March 2013).

<sup>128</sup> 'Kosovo must be represented under 1244', B92, 28 January 2012 ([www.b92.net/eng/news/politics-article.php?yyyy=2012&mm=01&dd=25&nav\\_id=78453](http://www.b92.net/eng/news/politics-article.php?yyyy=2012&mm=01&dd=25&nav_id=78453), visited 20 March 2013).

<sup>129</sup> 'K. Albanians "reject representation under 1244"', B92, 19 January 2012 ([www.b92.net/eng/news/politics-article.php?yyyy=2012&mm=01&dd=19&nav\\_id=78368](http://www.b92.net/eng/news/politics-article.php?yyyy=2012&mm=01&dd=19&nav_id=78368), visited 20 March 2013). See also above n.5.

<sup>130</sup> Point 2 and 3, above n.125.

29. This is an interim solution<sup>131</sup> for denomination and representation of Kosovo in the *regional* context, covering regional meetings and institutional forms of regional co-operation,<sup>132</sup> and existing and future agreements.<sup>133</sup> The ARRC provided that Kosovo can speak on its own account.<sup>134</sup>

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 it is for the UNMIK to decide whether to attend the meetings within their framework.<sup>135</sup>

The ARRC provides that these arrangements 'should be reflected in the practical organization of regional meetings'.<sup>136</sup> However, the ARRC does 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.

#### IV.C.i.1. Different interpretation of the ARRC – What's in a name?

30. 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<sup>137</sup> while Prishtina claimed that the footnote should only be included in the agreements and official documents of the relevant regional meeting or organizations,<sup>138</sup> hoping it to melt 'like a snowflake'.<sup>139</sup>

31. These mutually exclusive positions led to the boycotting of meetings from both sides.<sup>140</sup> UNMIK's decision to decrease its presence and not to attend certain regional meetings<sup>141</sup> soon after the ARRC was

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<sup>131</sup> *Ibid.*, point 11.

<sup>132</sup> *Ibid.*, point 4 and 10. Furthermore, parties to the agreement encourage hosts of regional meetings, taking into account the statutes of relevant organizations, to avoid the display of national symbols, except of their own and EU's. *Ibid.*, point 7.

<sup>133</sup> *Ibid.*, point 5.

<sup>134</sup> *Ibid.*, point 4.

<sup>135</sup> *Ibid.*, point 6.

<sup>136</sup> *Ibid.*, point 8.

<sup>137</sup> See *Zaključak o Instrukciji za postupanje predstavnika Republike Srbije na određenim skupovima posvećenim regionalnoj saradnji na kojima učestvuju predstavnici Privremenih institucija samouprave u Prištini* (in English: 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 Prishtina) (Government of Serbia Instruction of March 2012), No. 06-1954/2012-004 of 20 March 2012 (on file with author).

<sup>138</sup> Furthermore, Prishtina 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 ([www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/features/2012/03/16/feature-02](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2012/03/16/feature-02)), visited 16 March 2013), see also UN Doc. S/2012/275, above n.59, at 4, para. 14).

<sup>139</sup> Statement of Edita Tahiri, the chief of Prishtina team in the EU-facilitated negotiations with Belgrade, see 'Edita Tahiri: Fusnota je pahuljica' (in English: 'Footnote is a Snowflake'), B92, 24 February 2012 ([www.b92.net/info/vesti/index.php?yyyy=2012&mm=02&dd=24&nav\\_category=640&nav\\_id=585368](http://www.b92.net/info/vesti/index.php?yyyy=2012&mm=02&dd=24&nav_category=640&nav_id=585368)), visited 22 March 2013).

<sup>140</sup> Serbian delegation walked out of the Board Meeting of RCC in Sarajevo since the nameplate of Kosovo did not also contain the text of the agreed footnote. At the same time Kosovo delegation left the regional meeting organized by Serbian Government in Belgrade, because their nameplate not only contained an asterisk beside the 'Kosovo' but also with the text of the footnote. *Ibid.* See N. Latković, 'Delegacija Srbije zbog nedostatka fusnote napustila Sarajevo, a prištinska zbog fusnote otišla iz Beograda' (in English: 'Serbia delegation left Sarajevo because there was no footnote, while Prishtina delegation left Belgrade because there was'), Blic, 15 March 2012 ([www.blic.rs/Vesti/Politika/312244/Delegacija-Srbije-zbog-nedostatka-fusnote-napustila-Sarajevo-a-prištinska-zbog-](http://www.blic.rs/Vesti/Politika/312244/Delegacija-Srbije-zbog-nedostatka-fusnote-napustila-Sarajevo-a-prištinska-zbog-)

negotiated hence seemed premature. It was clear that there were 'inherent shortcomings in the mechanisms to ensure implementation of [ARRC].'<sup>142</sup>

32. After the first dispute on the content 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.'<sup>143</sup> However, few months later (June 2012), the EU facilitator in the Belgrade-Prishtina negotiations, Robert Cooper, took the side of Prishtina, claiming that the Belgrade authorities were misinterpreting the ARRC.<sup>144</sup>

33. Indeed, the Government of the Republic of Serbia on 20 March 2012 adopted the Instruction<sup>145</sup> that restricted full application of the ARRC to the informal meeting of the Balkan region organised by EU.<sup>146</sup> As to the other meetings, it specified that the nameplate needed to be 'Kosovo\*' followed by the text agreed in ARCC, which had to be 'enough visible and legible, and written in English'.<sup>147</sup> There should be no display of symbols of 'Republic of Kosovo'.<sup>148</sup> If representatives of Serbia failed to secure these conditions with a host of a meeting, they were to leave it.<sup>149</sup> This instruction not only offered an interpretation of the ARCC that was at odds with the provisions of that agreement but also raised doubts as to its good faith in the application of the ARRC.

34. However, it seemed that Belgrade<sup>150</sup> was not the only one to blame for this deadlock. It became evident that the EU facilitator did not secure a clear agreement on the location of the footnote, which was crucial considering the lack of trust between parties and contentiousness of the issue. Namely, Cooper admitted that during negotiations the Belgrade team raised the issue of the text of the footnote on the nameplates and that Prishtina neither agreed nor completely disagreed with it, so 'it is hard to say that there was an agreement on that issue.'<sup>151</sup> This indicated that the EU facilitator was aware or must have been aware that the place where

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fusnote-otisla-iz-Beograda, visited 25 March 2013). See also F. Aliu, G. Andric, 'Kosovars Storm Out of Regional Forum in Serbia', *Balkan Insight*, 15 March 2012 ([www.balkaninsight.com/en/article/kosovo-delegation-left-regional-forum-in-belgrade](http://www.balkaninsight.com/en/article/kosovo-delegation-left-regional-forum-in-belgrade), visited 25 March 2013).

<sup>141</sup> See UN Doc. S/2012/275, above n.59, para. 56. 'UNMIK to attend regional meetings "if necessary"', B92, 29 February 2012 ([www.b92.net/eng/news/politics-article.php?yyyy=2012&mm=02&dd=29&nav\\_id=79036](http://www.b92.net/eng/news/politics-article.php?yyyy=2012&mm=02&dd=29&nav_id=79036), visited 4 March 2013). This was in line with the statement of Prishtina's chief negotiator at the time, see above n.139.

<sup>142</sup> UN Doc. S/2012/275, above n.59, at 4, para. 14.

<sup>143</sup> See the statement of Maja Kocijančič, spokesperson for the EU Foreign Policy Chief, Baroness Catherine Ashton, in B. Barlovac, 'EU Urged to Save Crumbling Kosovo-Serbia Deal', *Balkan Insight*, 22 March 2012, available at <http://www.balkaninsight.com/en/article/kosovo-serbia-interpret-brussels-deal-differently> (visited 6 February 2013).

<sup>144</sup> 'Belgrade misinterpreting footnote deal, EU facilitator says', B92, 14 June 2012 ([www.b92.net/eng/news/politics-article.php?yyyy=2012&mm=06&dd=14&nav\\_id=80751](http://www.b92.net/eng/news/politics-article.php?yyyy=2012&mm=06&dd=14&nav_id=80751), visited 6 February 2013).

<sup>145</sup> Government of Serbia Instruction of March 2012, above n.137.

<sup>146</sup> *Ibid.*, point 2(g).

<sup>147</sup> *Ibid.*, point 1.

<sup>148</sup> *Ibid.*, point 2. Cf. above n.132.

<sup>149</sup> *Ibid.*, point 2(b).

<sup>150</sup> The chief of the Belgrade negotiation team, Borko Stefanović, claimed that it was agreed 'the footnote will be on the plate but unfortunately everybody is now pretending that this did not happen and they obviously have Robert Cooper's support in it.' Above n.144.

<sup>151</sup> Cooper continued: "The question was raised and the answer was a silence. When we opened this issue in the bilateral contacts in Prishtina, 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, D. Đorđević, 'Kuper: Nema fusnote na pločici' (in English: Cooper: No footnote on nameplate), *Večernje novosti*, 21 June 2012 ([www.novosti.rs/vesti/naslovna/aktuelno.289.html:385261-Kuper-Nema-fusnote-na-plocici](http://www.novosti.rs/vesti/naslovna/aktuelno.289.html:385261-Kuper-Nema-fusnote-na-plocici), visited 6 February 2013). Published as: 'Teško je reći da je oko toga bilo sporazuma. Pitanje je bilo

the text of the footnote would stand was a matter of great concern. Leaving the issue unresolved made the ARRC's stillbirth at least partly the EU's own fault.

#### IV.C.i.2. Epilogue: the footnote and beyond

35. Finally, in September 2012 life was breathed back into the ARRC. The newly elected Government of Serbia – paradoxically at least nominally more nationalist than the previous one – changed position on the interpretation of the ARRC when it adopted a new Instruction,<sup>152</sup> which provided that the footnote need only stand in the official documents of a meeting and not on the Kosovo nameplate.<sup>153</sup> 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.<sup>154</sup>

36. The position of the new Serbian Government allowed both Belgrade and Prishtina to jointly participate at regional meetings, breaking the tension in regional co-operation. Soon after, a new phase of the EU sponsored dialogue was launched. It was on “technical” issues<sup>155</sup> but this time it was at the highest level: on 19 October 2012, the Prime Ministers of Serbia, Ivica Dačić,<sup>156</sup> and of Kosovo, Hashim Thaçi, met in Brussels under the auspices of the High Representative of the EU for Foreign Affairs and Security Policy (FASP), Baroness Catherine Ashton.<sup>157</sup> Moreover, the Presidents, Tomislav Nikolić of Serbia and Atifete Jahjaga of Kosovo met on 7 February 2013.<sup>158</sup>

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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.’

<sup>152</sup> See *Instrukcija za postupanje predstavnika Republike Srbije na skupovima posvećenim regionalnoj saradnji na kojima učestvuju predstavnici Privremenih institucija samouprave u Prištini* (in English: 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 Prishtina) (Government of Serbia Instruction of Sept. 2012), No. 06-5592/2012-004 of 2 September 2012 (on file with author).

<sup>153</sup> Government of Serbia Instruction of Sept. 2012, *ibid.*, points 1 and 2. However, September 2012 Instruction still contains provisions which are at odds with the ARRC. It only regulates meetings with Kosovo's PISG not Kosovo representatives as such. Furthermore, the ARRC only stipulates that the hosts of the meetings will be encouraged to avoid displaying national symbols except their own and those of the EU, while the Instruction of the Serbian Government requires that if Kosovo's symbols are displayed and not removed after an objection by Serbian representatives they are to leave the meeting after reading out a statement. *Ibid.*, points 3 and 7. Cf. above n.132.

<sup>154</sup> *Ibid.*, point 7(a), at 2 and 3.

<sup>155</sup> See above n.122.

<sup>156</sup> It comes as a paradox that the first Serbian high official to meet 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, he was critical of a handshake between former Serbian President Tadić and Thaçi at the Croatian Summit. See B. Barlovac, 'Thaci-Tadic Handshake Stirs Controversy,' *Balkan Insight*, 9 July 2012 ([www.balkaninsight.com/en/article/thaci-tadic-handshake-stirs-controversy](http://www.balkaninsight.com/en/article/thaci-tadic-handshake-stirs-controversy), visited 13 March 2013).

<sup>157</sup> 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](http://eeas.europa.eu/top_stories/2012/191012_ca_dacic_thaci_en.htm), visited 19 February 2013). See also B. Barlovac, 'Dacic and Thaci Meet in Brussels, Make History,' *Balkan Insight*, 19 October 2012 ([www.balkaninsight.com/en/article/dacic-and-thaci-make-history-attending-meeting](http://www.balkaninsight.com/en/article/dacic-and-thaci-make-history-attending-meeting), visited 20 February 2013).

<sup>158</sup> See B. Barlovac, 'Kosovo, Serbia Presidents Hail Outcome of Talks,' *Balkan Insight*, 7 February 2013 ([www.balkaninsight.com/en/article/kosovo-and-serbia-presidents-pledge-to-normalise-relations](http://www.balkaninsight.com/en/article/kosovo-and-serbia-presidents-pledge-to-normalise-relations), visited 11 February 2013).



37. Belgrade and Prishtina agreed to appoint liaison officers to monitor implementation of the agreements reached within EU led negotiations.<sup>159</sup> The liaison officers, who sit at the EU premises in Belgrade and Prishtina,<sup>160</sup> were exchanged in mid-June 2013.<sup>161</sup>

38. The new approach of the Serbian Government signifies that Belgrade, for the sake of its integrations to the EU, has finally managed to escape its self-imposed restraint, manifestly ill-founded, as it was, on the fear of accidental recognition of Kosovo merely by encountering its officials, especially those of the highest rank.<sup>162</sup>

39. Moreover, Serbian Government took a further step, when in Brussels on 19 April 2013 Prime Ministers of Serbia, Dačić, and of Kosovo, Thaçi, initialled the First Agreement of Principles Governing the Normalisation of Relations (also referred to as the Brussels Agreement).<sup>163</sup> Many hail this 15 point agreement as historic.<sup>164</sup> From the political perspective it indeed signifies normalization and thawing between Belgrade and Prishtina. However, despite its name, the Agreement mainly deals with the integration in Kosovo legal system of four northern Serb majority municipalities,<sup>165</sup> which were not recognising Kosovo authorities. It only contains 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”.<sup>166</sup> This phrase represented a compromise with respect to the earlier draft that referred to “accession to international organisations,”<sup>167</sup> which Belgrade thought would lead it to its formal recognition of Kosovo.<sup>168</sup>

40. While Belgrade claimed that it did not recognise Kosovo by concluding this agreement, Prishtina believed it did.<sup>169</sup> In terms of international law,<sup>170</sup> Serbia did not recognise Kosovo by the virtue of concluding the

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<sup>159</sup> On the implementation of the agreements, see UN doc. S/2012/818, above n.93, at 4, para. 19.

<sup>160</sup> Prishtina officer sits at the EU Delegation in Belgrade and Belgrade officer at the EU Office in Kosovo. See “Priština Appoints New Liaison Officer in Belgrade,” B92, 21 June 2013 ([www.b92.net/eng/news/politics.php?yyyy=2013&mm=06&dd=21&nav\\_id=86708](http://www.b92.net/eng/news/politics.php?yyyy=2013&mm=06&dd=21&nav_id=86708), 30 July 2013).

<sup>161</sup> On 17 June 2013, *ibid.*

<sup>162</sup> Cf. with text accompanying above n.110.

<sup>163</sup> 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](http://www.b92.net/eng/news/politics.php?yyyy=2013&mm=04&dd=19&nav_id=85799) (visited 31 July 2013).

<sup>164</sup> 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](http://europa.eu/rapid/press-release_MEMO-13-353_en.htm), visited 31 July 2013).

<sup>165</sup> See point 1-11 of the Brussels Agreement, above n.163. 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 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.

<sup>166</sup> Point 14, *ibid.*

<sup>167</sup> See “Agreement initialed, Serbia's demands accepted”, B92, 19 April 2013 ([www.b92.net/eng/news/politics.php?yyyy=2013&mm=04&dd=19&nav\\_id=85797](http://www.b92.net/eng/news/politics.php?yyyy=2013&mm=04&dd=19&nav_id=85797), visited 31 July 2013).

<sup>168</sup> See “Dačić: Tači minirao pregovore” (in English: Dačić: Thaçi Sabotaged Negotiations), B92, 18 April 2013 ([www.b92.net/info/vesti/index.php?yyyy=2013&mm=04&dd=18&nav\\_category=640&nav\\_id=706110](http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=04&dd=18&nav_category=640&nav_id=706110), visited 31 July 2013).

<sup>169</sup> 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, 19 April 2013 ([www.b92.net/eng/news/politics.php?yyyy=2013&mm=04&dd=19&nav\\_id=85798](http://www.b92.net/eng/news/politics.php?yyyy=2013&mm=04&dd=19&nav_id=85798), visited 31 July 2013).

<sup>170</sup> See above n.112.

Brussels Agreement. To the contrary, Serbia still claims it will never recognize Kosovo.<sup>171</sup> Moreover, the international community surely does not view the conclusion of the Brussels Agreement as recognition.<sup>172</sup>

## V. Conclusion

41. The lack of international consensus on the status of Kosovo will certainly influence Kosovo's international representation in the future. However, in the decade since the establishment of the international administration (June 1999), Kosovo went a long way. Its representatives gradually asserted their position, even before (within the auspices of UNMIK) and, especially, after the declaration of independence. From that moment on, they started to lead external relations of Kosovo independently of UNMIK with those states which recognised it, and slowly gained independent representation in the regional context at the price of the footnote attached to Kosovo's nameplate.

42. We can observe that there were three distinct phases of the international representation of Kosovo.

The *first phase* covers a period from the creation of UNMIK until the adoption of the Constitutional Framework (1999–2001). In this period, the external representation of Kosovo was exclusively handled by UNMIK: it led both bilateral and multilateral relations of Kosovo.

The *second phase* covers the period from the adoption of the Constitutional Framework and the establishment of the PISG until the declaration of independence (2001-Feb. 2008). During this time, UNMIK was in charge of Kosovo's external representation, while the relevant PISG were also gradually included into the process of building Kosovo's international relations. As the support for the independence of Kosovo grew in certain circles, the presence of its representatives in the international arena became more visible. This could be seen from the overview of the attendance of Kosovo representatives at UNSC meetings: two months before the declaration of independence (December 2007) a representative of Kosovo could directly address the Council, while hitherto they were only included in the SRSG delegation.

The declaration of independence marked the start of the *third phase* in respect to external representation of Kosovo that lasts until today (February 2008 – March 2013). In this period, Kosovo representatives who based their authority on the Kosovo Constitution tried to take over UNMIK's role in external representation. They have succeeded in doing that with respect to the bilateral relations with the states which recognised Kosovo and in the context of regional co-operation, while UNMIK's role remains important in respect to bilateral relations with states which do not recognise Kosovo, as well as in multilateral relations. At some occasions this was against the wishes of Kosovo representatives. However, it has been shown that their approach towards joint participation at international meetings with UNMIK was not consistent: sometimes they participated alongside with UNMIK, sometimes they did not. The rigidity of their approach was stronger

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<sup>171</sup> See the statement of Serbian Deputy Prime Minister in above n.169.

<sup>172</sup> See the statement of the US Ambassador to Belgrade, Mr. Michael Kirby, „Kirbi: Srbija nije priznala Kosovo, a nismo to ni tražili“ (in English: Serbia did not recognize Kosovo nor we ask for it), Večernje novosti, 25 April 2013 ([www.novosti.rs/vesti/naslovna/politika/aktuelno.289.html:431198-Kirbi-Srbija-nije-priznala-Kosovo-a-nismo-to-ni-tražili](http://www.novosti.rs/vesti/naslovna/politika/aktuelno.289.html:431198-Kirbi-Srbija-nije-priznala-Kosovo-a-nismo-to-ni-tražili), 31 July 2013). See also „Breakthrough at Last“, The Economist, 20 April 2013 ([www.economist.com/blogs/easternapproaches/2013/04/serbia-and-kosovo-0](http://www.economist.com/blogs/easternapproaches/2013/04/serbia-and-kosovo-0), 31 July 2013).

in the case of politically important initiatives than with the more technical, in which the stakes of statehood were not as high.

43. Undoubtedly, the major challenge to Kosovo's international representation comes from the fact that almost a half of the world states do not recognise it,<sup>173</sup> including two permanent members of the UNSC (China and Russia). And while Kosovo has three other permanent members of the UNSC (France, UK and US) and most of the EU countries on its side, China's and Russia's opposition to its independence from Serbia will certainly remain an obstacle once Kosovo decides to apply for full membership in certain international organisation, such as the UN. However, observers' status in these is attainable.<sup>174</sup> Moreover, one should note that Kosovo is already a member state of the international financial institutions, such as the WB and IMF. Nevertheless, due to its contested status, Kosovo will have to continue to fight heavily for its own seat in international fora.

44. The conflicting attitudes towards the international representation of Kosovo are not just the issue of external relations of Kosovo pure and simple, but relate to a more fundamental matter: the legitimacy of its independence, its statehood and its representatives. Without such legitimacy, there is little space for developing external relations.

45. Although it was never stated so explicitly, Serbia's efforts were obviously aimed at delegitimizing Kosovo's representatives at the international level. Kosovo representatives were, on the other hand, fighting hard to gain legitimacy, which is rarely gained easily and never overnight. It seems that the representatives of Kosovo ultimately won, or will win, the legitimacy battle through many small steps in one direction – being accepted in as many occasions and places as possible. By way of example, just a few months after the declaration of independence, it was not the PISG (as prescribed by the Constitutional Framework for Kosovo) addressing the UNSC, but Kosovo's Minister of Foreign Affairs, which represented one small step from Resolution 1244 towards independence.

46. Add to this that the on-going EU sponsored dialogue between Belgrade and Prishtina is led by their respective Prime Ministers. Moreover, they have concluded the so-called Brussels Agreement (on normalization of Relations). Thus, despite statehood continuing to be disputed there is undoubtedly a 'creeping legitimacy' of Kosovo representatives accepted even by those who are vigorously opposed to Kosovo's independence.

47. One should also note just how the legitimacy battle of Kosovo has been dependent on its location. Without the EU's involvement and the incentive of potential EU membership dangling in front of the parties its course could have been entirely different.

48. This has had and will continue to have effects on both sides in the future. Assuming Belgrade continues to be seriously committed to its EU integrations, it will reach agreements with Prishtina that would otherwise have been unattainable. As has been the case with Brussels Agreement, these could have all the attributes needed for stability and functional regional co-operation, except for the formal recognition of Kosovo. On the other hand, the EU led negotiations will make Prishtina fine tune its policy toward Belgrade and more

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<sup>173</sup> See the text accompanying above fn. 5.

<sup>174</sup> The announcement from the Parliamentary Assembly of the Council of Europe confirms this. See 'Speaker "moderately optimistic" about June date', *B92*, 12 March 2013, [http://www.b92.net/eng/news/politics-article.php?yyyy=2013&mm=03&dd=12&nav\\_id=85125](http://www.b92.net/eng/news/politics-article.php?yyyy=2013&mm=03&dd=12&nav_id=85125) (15 March 2013).

importantly, for all people in Kosovo, concentrate on the substantial issues of building a functional society, ceasing to just ride on the wave of self-indulgent talk of independence.

49. As ICJ Advisory Opinion shows, declaring independence was easy, and not in itself violative of international law. The hard part came after: an entity cannot successfully claim statehood if the other members of the club are unwilling to talk to it on equal terms. This is precisely why Kosovo has been fighting for a seat at the table, and why Serbia has continued to oppose it. Understanding the dynamics of this contest within the greater ebb and flow of international law and politics can provide valuable lessons for other cases of secession, normally less successful than Kosovo's.