

CONSEQUENCES OF THE INTERNATIONAL COURT OF JUSTICE RULINGS FOR KOSOVO AND MACEDONIA

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1. Introduction

Recently, the International Court of Justice (ICJ) has delivered advisory opinions regarding the accordance with international law of Kosovo's declaration of independence and on violation of Greece's obligations under Article 11 of the 'Interim Accord' signed between Macedonia and Greece. These rulings of the ICJ have undoubtedly caught the attention of different scholars, diplomatic services and media around the world. On both cases, almost everyone was expecting some kind of a consensual outcome, vague enough to prevent both sides of declaring themselves winners or even worse in this case, declaring themselves losers. However, the ruling of the ICJ in both cases was surprisingly clear and straightforward. In the case of Kosovo's independence, declared in February 2008, ICJ ruled that the declaration of independence did not violate any provision of international law. Similarly, in the case of Macedonia against Greece, ICJ has clearly stated that Greece has breached its obligations toward Macedonia.

The main aim of this paper is to analyze the consequences of the specific two rulings of the International Court of Justice, i.e, that of Kosovo and of Macedonia. Obviously, the ICJ decisions were in favour of Kosovo and Macedonia respectively, and although rulings were from legal perspectives, it nevertheless represented a significant diplomatic and political victory for

these two countries. As such, these rulings have increased expectations of both these countries: Kosovo officials were hoping that the favourable ICJ decision will translate in an increased number of recognitions, while Skopje authorities were hoping that the ICJ ruling will enable their country to join NATO at the forthcoming Chicago Summit. Nevertheless, as it will be shown, these favourable rulings have failed to yield the expected positive effects for both countries.

2. The case regarding legality of Kosovo's declaration of independence

Since June 1999 Kosovo was administered by United Nations Mission in Kosovo (UNMIK) that was established by the Secretary-General of the UN under the authority of Security Council Resolution 1244/99. UNMIK was headed by a Special Representative of the Secretary General (SRSG) and it had all legislative and executive powers, including the administration of the judiciary. However, while UNSCR 1244 assigned ultimate responsibility for Kosovo to the UN administration, it also required that the UN develops "provisional institutions for democratic and autonomous self-government"² and "facilitate a political process designed to

² Narten, J. "Building local institutions and parliamentarianism in post-war Kosovo: A review of joint efforts by the UN and OSCE from 1999-2006", *Helsinki Monitor*, Volume 17, Number 2, 2006, p. 147.

determine Kosovo's future status, taking into account the Rambouillet accords."³ On the other hand, according to the Rambouillet accords, after three years "an international meeting shall be convened to determine the mechanism for a final settlement for Kosovo, on the basis of the will of the people, opinions of relevant authorities ... and the Helsinki Final Act."⁴

Clearly, the Rambouillet Agreement had foreseen discussions on a mechanism to address Kosovo's final status by early 2002. However, the international community was apparently not willing to deal with this issue prior to events of March 2004. On 17 March 2004, violent riots erupted in Kosovo, triggered by an incident along the dividing line between Northern and Southern Mitrovica. This was the worst violence since the end of the war in Kosovo that left 20 people dead – mostly Kosovo Albanians – and nearly 900 injured, and roughly 4,500 people displaced.⁵ These riots showed that the international community urgently needed new policies on final status resolution and socio-economic development or Kosovo's instability may infect the entire region.⁶ It also showed that Kosovo's population was not willing to forevermore remain subject to the policy of *status quo* and could easily opt for more direct action.⁷

³ United Nations Security Council, Resolution 1244, S/1999/672, 12 June 1999.

⁴ For more details regarding Rambouille Accords see "Rambouille Accords," in *Koha Ditore*, Prishtina, 2 March 1999, p. 3.

⁵ It is interesting to mention that according to the Prishtina based Council for the Defense of Human Rights and Freedoms, of 20 victims, 11 were ethnic Albanians and 9 were ethnic Serbs. See *Këshilli për Mbrotjtjen e të Drejtave dhe Lirive të Njeriut*, "Raport për viktimat e ngjarjeve të marsit 2004, Prishtinë, mars, 2004.

⁶ "Collapse in Kosovo," *ICG Europe Report* No 155, Executive Summary and Recommendations, 22 April 2004.

⁷ Weller, Marc, *Negotiating the Final Status of Kosovo*, Chaillot Paper No. 114, December 2008, Institute For Security Studies, p. 19.

In light of the March 2004 riots and increasing political pressure due to evident political stagnation, the international community established a 'roadmap' toward Kosovo's future status. The new approach was contained in the "Comprehensive Review of the Situation in Kosovo" presented by Kai Eide to the UN Security Council on 24 October 2005. In his report, Ambassador Eide argued that "the future status process must be moved forward with caution. All the parties must be brought together – and kept together – throughout the status process. Artificial deadlines should not be set. Once the process has started, it cannot be blocked and must be brought to a conclusion."⁸ Based on the report, on 24 October 2005, the U.N. Security Council endorsed the recommendation of U.N. Secretary-General Kofi Annan to launch a political process to determine Kosovo's disputed status.⁹ At the same time, it strongly urged the Kosovo leadership to increase their efforts to ensure the implementation of standards. On 1 November 2005, Annan announced his intention to name former Finnish President Martti Ahtisaari to be his UN Special Envoy to lead the international process.¹⁰ In addition, the UN Secretary-General also appointed Albert Rohan from Austria as the deputy Special Envoy in charge of directing the talks. The mediators were supported by a secretariat, the UN Office of the Special Envoy of the Future Status Process for Kosovo (UNOSEK).¹¹ On the other hand, the Security Council also

⁸ Kai Eide, "A Comprehensive Review of the Situation in Kosovo," UN Security Council Report S/2005/635, 7 October 2005, p. 2.

⁹ Statement by the President of the Security Council, UN Doc S/PRST/2005/51, 24 October 2005.

¹⁰ The Norwegian Nobel Committee has decided to award the Nobel Peace Prize for 2008 to Martti Ahtisaari for his important efforts, on several continents and over more than three decades, to resolve international conflicts. For more please consult:

http://www.nobelprize.org/nobel_prizes/peace/laureates/2008/press.html

¹¹ Weller, Chaillot Paper No. 114, p. 26.

encouraged the members of the Contact Group¹² to remain closely engaged in the political process in order to create the necessary momentum for the final settlement.

The status talks began in Vienna in February 2006 and the initial rounds of the negotiations dealt with so-called 'technical issues' that were meant to prepare the way for tackling the determination of the final status. These included protecting cultural and religious sites, financial issues such as deciding Kosovo's share of Serbia's debts, and the decentralization of Kosovo's government, including redrawing borders of Kosovo's municipalities. Clearly, the agenda of the talks was divided into two basic sets of issues to be tackled separately: the status neutral issues and the status talks. According to Professor Frckoski this technique is called 'fragmentation of the negotiations,' and "it implies such conduct of the negotiations where the whole of the dispute is fragmented into smaller parts or issues, which are approached and negotiated separately."¹³ The rationale behind this technique is that it can be expected that the process will be stimulated by 'small' successes and agreements on minor issues at the beginning thus enabling the process as a whole to gain momentum and movement.¹⁴

In total, there were 15 rounds of direct negotiations in Vienna throughout 2006. Belgrade was for the most part willing to discuss issues related to ethnic Serb control over territory. Consequently, the topic of decentralization claimed a great deal of negotiating time – over half of the sessions – and both sides engaged substantively with this issue. This engagement related in particular to the number and delimitation of municipalities that would enjoy powers of self-governance, and the extent of these powers. Belgrade was demanding the establishment of some fifteen new, mainly

Serb-inhabited, municipalities. In some instances, these municipalities might be small, including some with just several hundred inhabitants. In other instances, the population balance was to be adjusted, mostly in favour of an ethnic Serb majority. There was also the proposal that displaced persons in Serbia be directed towards these new areas, rather than return to their homes. Kosovo, on the other hand, contemplated the establishment of three new ethnic Serb municipalities, later upping the offer to five under intense international pressure.¹⁵

At the end, it proved to be little room for compromise between the mutually exclusive options to which each side firmly held: full independence for Kosovo or substantial autonomy within Serbia. While the parties were not able to agree on many aspects, the mediators filled in the gaps between the positions of the parties with their own compromise proposals. This related mainly to decentralization and religious and cultural heritage. They also adopted a solid system for minority rights, although one that was somewhat less ambitious than that proposed by Kosovo. Nevertheless, the various elements of a comprehensive settlement proposal had been put together on the basis of the negotiations up to this point. The overall proposal was therefore ready, for the most part, by the end of September 2006. Conclusion of the final status process had been promised by the Special Envoy before the end of the year. However, publication of the proposal was delayed several times pending a series of elections to be held in Serbia.¹⁶ When the Ahtisaari proposal was finally published, it did reflect in many parts the substantive

¹² The Contact Group consisted of France, Germany, Italy, the Russian Federation, the UK and the US.

¹³ Frckoski, Ljubomir, *Negotiation in Identity Conflicts*, Skopje: Templum, 2007, pp. 126-127.

¹⁴ *Ibid.*, p. 127.

¹⁵ Weller, Marc, "The Vienna negotiations on the final status for Kosovo," *International Affairs Vol. 84*, No. 4, 2008, p. 671.

¹⁶ For details, see Perritt, Jr Henry, *The Road to Independence for Kosovo: A Chronicle of the Ahtisaari Plan*, Cambridge: Cambridge University Press, 2010, pp. 157-161.

compromises offered by the mediators after exhaustive discussion with the parties.¹⁷

The report acknowledged that agreement between Belgrade and Pristina was not possible on Kosovo's future status, and observed that no further negotiations would close the gap. However, the report emphasized that the international community must confront two realities. The first was that any attempt to reintegrate Kosovo into Serbia was doomed to fail since "for the past eight years, Kosovo and Serbia have been governed in complete separation."¹⁸ Second, continued international administration was not sustainable simply because Kosovar Albanian patience with endless talks and negotiations could not last any longer. While reiterating that independence was the only viable option, the report acknowledged Kosovo's limited capacity to ensure minority protection, to develop viable democratic institutions, to grow its economy, and to achieve interethnic reconciliation. Accordingly, President Ahtisaari proposed that Kosovo's exercise of independence and its implementation of the concrete features of the Comprehensive Proposal be "supervised and supported" by international civilian and military authorities. He urged a 'strong' but 'focused' international authority over community rights, decentralization, and protection of the Serbian Orthodox Church and the rule of law. These provisional international authorities would have the power to 'correct actions', that is, to veto local governmental decisions that would "contravene the provisions of the Settlement proposal and the spirit in which they were crafted."¹⁹

The Proposal increased the powers devolved to the Kosovo institutions but did not provide for the removal of ultimate international oversight and authority. This tripartite 'international

presence' consisted of NATO through its force KFOR, which was to remain as the basic guarantor of security; a new European Security and Defence Policy Mission was to be established with the responsibility to "assist Kosovo in the development of efficient, fair and representative police, judicial, customs and penal institutions, and have the authority to assume other responsibilities to ensure the maintenance and promotion of the rule of law, public order and security. The third element of the international presence was the International Civilian Representative (ICR) which would also serve in its dual capacity as the European Union Special Representative. The ICR was to be chosen by the International Steering Group (ISG) itself comprised of 'key international stakeholders'. The ICR would be supported in his or her duties by the International Civilian Office (ICO).²⁰

Serbia and Russia vehemently opposed Ahtisaari's ideas, and Moscow used its most powerful tool – a veto threat in the UN Security Council – to ensure that no resolution adopting the Ahtisaari proposal would gain approval. The Security Council began private consultations on the Ahtisaari proposal on 3 April 2007 and it agreed to send a fact-finding mission to the region to obtain first-hand information on the situation in Kosovo from Serbia, the Kosovo government, Kosovo's ethnic minority communities, and representatives of the international community.²¹ Among other things, mission representatives acknowledged that the *status quo* was not sustainable in Kosovo. Preliminary drafts on a new UN resolution to replace Resolution 1244 were circulated in early May. According to U.S. officials, the new resolution was to lay the groundwork for Kosovo's independence and provide mandates for new international missions in Kosovo under a Chapter VII authorization. Russia, in a competing

¹⁷ Weller, 2008, p. 680.

¹⁸ United Nations, "Report of the Special Envoy of the Secretary-General on Kosovo's Future Status," S/2007/168, 26 March 2007.

¹⁹ Ibid.

²⁰ Hehir, Aidan, "Kosovo's Final Status and the Viability of Ongoing International Administration" *Civil Wars*, Vol. 9, No. 3, September 2007, p. 250.

²¹ Letter from the President of the Security Council to the Secretary-General, S/2007/220, April 20, 2007.

draft, lobbied and called for further negotiations between the parties. A revised U.S.-backed draft resolution circulated in late May to incorporate aspects addressing Russian and Serbian concerns, but was again rejected by Russia. Russia's rejections of further draft revisions brought the Security Council process to an impasse. Russian leaders made repeated statements opposing an imposed settlement for Kosovo without Serbian agreement, favouring further negotiations, and holding out the possibility of exercising a Russian veto in the Security Council.²²

Without further action in the U.N. Security Council, Kosovo's authorities prepared to make a declaration of independence in early 2008 as part of a process closely coordinated with the international community. At last, on 17 February 2008, the democratically elected representatives of the people of Kosovo adopted a declaration of independence "in full accordance with the recommendations of U.N. Special Envoy President Martti Ahtisaari²³." It declared Kosovo to be a democratic, secular, and multi-ethnic republic and fully accepted the obligations for Kosovo under the Ahtisaari plan.²⁴ Accordingly, among newly independent Kosovo's first acts was acceptance of an EU rule-of-law mission (known as EULEX) to provide support and oversight in the security and judicial sectors, and an International Civilian Representative who would oversee implementation of the Ahtisaari plan and act as the EU's Special Representative in Kosovo with executive powers to veto any legislation that touches upon the Ahtisaari proposal. Both EULEX

and the Special Representative possess a range of executive powers, though in neither case do these reach the level of authority that UNMIK and its chief have enjoyed earlier.²⁵

Soon after its independence, the newly established state was immediately recognized by the United States, most EU countries as well as countries with regional influence such as Japan, Canada, Australia, and Turkey²⁶. Serbia immediately denounced the Kosovo's declaration of independence as a violation of international law by undertaking aggressive diplomatic efforts to prevent its recognition by other UN member states. Consequently, on 15 August 2008 Serbian Foreign Minister Vuk Jeremic officially filed a request at the United Nations seeking opinion of the International Court of Justice whether the Kosovo's declaration of independence was in breach of international law. On 8 October 2008, with 77 votes in favour, 6 votes against and 74 abstentions, the United Nations General Assembly adopted this proposal as Resolution 63/3 that requested an advisory opinion from ICJ regarding the 2008 unilateral declaration of independence of Kosovo.²⁷ The judges were therefore asked to clarify one of the most disputed and politically charged concepts of international law today: dissolution and the right for self-determination. After a lengthy process, the court delivered its advisory opinion on 22 July 2010 by declaring that "the Kosovo declaration of independence of the 17 February 2008 did not violate general international law because

²² Kim, Julie and Woehrel, Steven, "Kosovo and U.S. Policy: Background to Independence," *Congressional Research Service*, Report for Congress, 20 June 2008, p. 17.

²³ Preamble of the Declaration of Independence of the Republic of Kosovo.

²⁴ Transcript: "nga seanca plenare e jashtëzakonshme solemne e Kuvendit të Kosovës me rastin e shpalljes së pavarësisë, të mbajtur më 17 shkurt 2008," *Legjislatura III*. Pristina, 17 February 2008, For more details please see http://www.assembly-kosova.org/common/docs/proc/trans_s_2008_02_17_al.pdf. (17.03.2011).

²⁵ Tansey, Oisín, "Kosovo: Independence and Tutelage," *Journal of Democracy*, Vol. 20, No. 2, April 2009, p. 159.

²⁶ In all, 91 of 193 UN member-states have to-date recognized Kosovo. Other countries are considering recognition whereas a small number of states have either adopted a neutral position or refused to acknowledge Kosovo's independence. For a complete list of recognitions, see: <http://www.mfa-ks.net/?page=1,33>.

²⁷ "UN seeks World Court Kosovo view," *BBC News*, 08 October 2008, <http://news.bbc.co.uk/2/hi/europe/7658103.stm> (18.02.2012)

international law contains no 'prohibition on declarations of independence'.²⁸

3. The case of Macedonia against Greece

Since its declaration of independence on 17 September 1991, the relations of the Republic of Macedonia with all its neighbours and especially, Greece were awkward. As Misha Glenny points out, Albania did recognize both the Macedonian state and nation, but made it clear that its goodwill would depend on the status of the Albanian community in Macedonia. Serbia *de facto* recognized the state by setting up a newly established state of Yugoslavia (without Macedonia), but it still withheld from formal recognition. Bulgaria recognized the state, but had absolutely refused to acknowledge that there is a legitimate Macedonian nation for fear of encouraging secessionist tendencies among the inhabitants of the Bulgarian Macedonia, many of whom have rejected a Bulgarian identity in favour of a Macedonian one. Moreover, until early October 1994, Greece flatly refused to accept that Macedonia was a state or that its citizens could legitimately be called Macedonians.²⁹

Greece essentially believes that the name Macedonia is an exclusive part of its history and cultural heritage. It feels that by using the name, Macedonia "steals" part of its history and might even have territorial aspirations towards the northern part of Greece, which is also called Macedonia.³⁰ Immediately after the Republic of

Macedonia declared its independence, Greece urged the world not to recognize Macedonia under its constitutional name because Macedonia's Constitution "threatens the security and integrity of Greece". What Greece was referring to was the Article 49 of the Constitution of the Republic of Macedonia which stated that "The Republic of Macedonia cares for the statue and rights of those persons belonging to the Macedonian people in neighboring countries, as well as Macedonian ex-parties, assists their cultural development and promotes links with them."³¹ As a result, Macedonia entered a collision course with Greece over its name, constitution, flag and other symbols and was subsequently subjected to an embargo by Greece.³²

Due to opposition by Greece to accept the constitutional name of the Republic of Macedonia, it was only in April 1993 that the Security Council of the UN has with the Resolution 817 approved Macedonia's accession to the UN under the reference "The Former Yugoslav Republic of Macedonia."³³ Although Greece has refused to recognize the Republic of Macedonia even after its official recognition by the UN, in a way that moment could be considered as a kind of collective recognition. Nevertheless, despite this, in February 1994 Greece installed an embargo on Macedonia that had devastating impact on Macedonia's economy and development, knowing the impact the Thessaloniki port has had on Macedonia's trade and goods. Main reason for such a decision was that Macedonia took as a national flag the

²⁸ ICJ Opinion on Accordance with International Law of Kosovo's Declaration of Independence, para 122, available at: <http://www.icj-cij.org/docket/files/141/15987.pdf>. See also: Tanner, Adam and Stevenson, Reed. "Kosovo independence declaration deemed legal." *Reuters*, 22 July 2010. <http://www.reuters.com/article/idUSTRE66L01720100722> (16.02.2012)

²⁹ Glenny, Misha, *The Fall of Yugoslavia*, 3rd edition, London: Penguin Books., 1996, p. 255.

³⁰ Karajkov, Risto, "Facts on the Macedonian - Greek Name Dispute," *Osservatorio Balcani e Caucaso*, 03 April 2008, <http://www.balcanicaucaso.org/eng/Materiali/Facts->

[on-the-Macedonian-Greek-Name-Dispute](http://www.historyofmacedonia.org/Macedonian-Greek-Conflict/) (19.05.2012).

³¹ "The Macedonian-Greek Conflict," <http://www.historyofmacedonia.org/Macedonian-GreekConflict/conflict.html> (21.05.2012).

³² Sofos, Spyros, "The Greek-Macedonian dispute – time to return to the drawing board?," 24 March 2010, <http://www.transconflict.com/2010/03/the-greek-macedonian-dispute-%E2%80%93-time-to-return-to-the-drawing-board/> (21.05.2012).

³³ United Nations Security Council, Resolution 817, 07 April 1993.

symbol of the Vergina Sun with 16 rays; symbol related to Alexander the Great. In addition, as already mentioned, Greece opposed an article in the Macedonian constitution which stipulated that Macedonia provides support and protection to its kin in neighbouring countries.³⁴

After 18 months of embargo, Macedonia and Greece finally formalized their relations on 13 September 1995 through signing of the 'Interim Accord' under the auspices of the UN. According to the provisions of this agreement, Macedonia agreed to remove the Vergina Sun from its flag and allegedly irredentist clauses from its Constitution. For its part, Greece agreed that it would not object to any application by or membership of Macedonia in international, multilateral and regional organizations and institutions of which Greece was already a member under the reference "The Former Yugoslav Republic of Macedonia." This opened the door for Macedonia to join a variety of international organisations and initiatives, including the Council of Europe, the Organization for Security and Co-operation in Europe (OSCE) and to establish contractual relations with NATO (Partnership for Peace, and later Membership Action Plan) and the EU (Stabilization and Association Agreement) and later a Candidate Status country for the EU. In addition, both countries committed to continue negotiations for solving the name dispute under UN auspices.³⁵

However, in the NATO Summit held in Bucharest on April 2008, NATO members have decided to invite only Albania and Croatia to begin accession talks to join the Alliance and have congratulated "these countries on this historic achievement, earned through years of hard work and a demonstrated commitment to our common security and NATO's shared values."³⁶ On the other hand, although NATO members recognized the hard work and the commitment demonstrated by the Republic of Macedonia to NATO values and Alliance operations, due to

opposition by Greece, Macedonia was not invited to begin accession talks. It was agreed that an invitation to the Republic of Macedonia will be extended as soon as a mutually acceptable solution to the name issue with Greece has been reached.³⁷

Having in mind that full membership to NATO and EU represents one of the main priorities of the country, failure to join NATO together with Albania and Croatia was a serious blow for authorities in Skopje. Consequently, after Bucharest NATO Summit, in November 2008 Skopje instituted proceedings against Athens in front of the UN's International Court of Justice for what it described as "a flagrant violation of [Greece's] obligations under Article 11 of the Interim Accord signed by the Parties on 13 September 1995."³⁸ According to Macedonian authorities "the sole purpose of the application lodged with the ICJ is to protect the Interim Accord from further violations, in light of the fact that this is a key agreement which is of essential importance for the normal relations between Macedonia and Greece. In this context, the purpose of the application is to protect the right of Macedonia to further unimpeded establishment of Macedonia as an independent an sovereign state in all spheres of international relations as stipulated in Article 11, paragraph 1 of the Accord. Macedonia is strongly convinced that the respect for and application of the Accord is beneficial for both parties and that what has been agreed upon must be honoured by the letter and in spirit."³⁹

On the other hand, in addition to NATO membership, Macedonia's accession to the EU

³⁴ Karajkov, 2008.

³⁵ "Interim Accord between Macedonia and Greece," New York: United Nations, 13 September 1995.

³⁶ Bucharest Summit Declaration, 3 April 2008, point 2.

³⁷ Bucharest Summit Declaration, 3 April 2008, point 20.

³⁸ "Macedonia Savours World Court Victory Over Greece," *Balkan Insight*, 05 December 2011, <http://www.balkaninsight.com/en/article/icj-judgment> (17.02.2012)

³⁹ International Court of Justice, "Application of the Interim Accord of 13 September 1995: (The Former Yugoslav Republic of Macedonia vs Greece)," 17 November 2009.

has also been seriously blocked in recent years. Although a candidate country since December 2005, Macedonia has still not received a date to begin accession negotiations with the EU. Despite the fact that the European Commission has since 2009 three times in a row recommended beginning of negotiations, the Council of Ministers of the EU has continuously refused to set a date. While there are still a number of objective criteria that Macedonia might need to improve for beginning negotiations, it was becoming more and more obvious that negotiations will not start without a solution to the name issue. Finally, on 5th December 2011, after more than two years since Macedonia's application, the International Court of Justice has ruled that Greece was wrong to block Macedonia's bid to join NATO in 2008 because of a row over its name. It said Athens should have abided by a 1995 deal not to block Macedonian applications if made under the name Former Yugoslav Republic of Macedonia.⁴⁰ It should be noted that meanwhile, since the Bucharest NATO Summit, Macedonia's progress towards Euro-Atlantic institutions has started to slow down. What is more important, this deadlock in the integration process, mainly due to the name dispute, has had an adverse effect on public attitudes towards the EU. While earlier membership to NATO and EU was supported by majority of all ethnic groups, for the first time in years, polls have showed increasingly anti-European feelings among ethnic Macedonians: 72 percent of ethnic Macedonians did not trust EU policy towards Macedonia, while 74 percent of ethnic Albanians do. At the same time, a majority of respondents (51 percent) are not satisfied with the government's policy on EU integration, as opposed to 47 percent of those who are satisfied.⁴¹

⁴⁰ "ICJ rules Greece 'wrong' to block Macedonia's NATO bid," *BBC News Europe*, 05 December 2011, <http://www.bbc.co.uk/news/world-europe-16032198> (19.02.2012).

⁴¹ It should be mentioned though, that while 62 percent of ethnic Macedonians believe that the Government is doing its best regarding this issue, 88

4. Consequences of the International Court of Justice Rulings for Kosovo and Macedonia

As already mentioned, on 22 July 2010, the International Court of Justice delivered its advisory opinion by declaring that "the Kosovo declaration of independence of the 17 February 2008 did not violate general international law because international law contains no prohibition on declarations of independence."⁴² According to the ICJ, 35 member states of the United Nations (including Serbia) had filed written statements within the time-limit fixed by the court (17 April 2009) on the question of the legality of Kosovo's declaration of independence, while Kosovo has also filed a written contribution.⁴³ Some of the strong supporters of Kosovo in the ICJ were USA, United Kingdom, Germany, France, Albania, Croatia, Finland, Denmark, Netherlands, Slovenia, Bulgaria., etc On the other hand, among the states that vehemently backed Serbia's position were Russia, China, Spain, Slovakia, Cyprus, Argentina, Azerbaijan and Venezuela. It should be mentioned that such explicit ruling came as a great surprise for most of the experts in the field who were expecting an ambiguous and balanced opinion. As Pierre Bonifassi puts it, "they were expecting a judgement oscillating between problematic legality and legitimate illegality, which would have avoided definitively solving a thorny issue."⁴⁴ Though experts agree that the court was very careful to not state any

percent of the ethnic Albanians in the country do not agree with such opinion; see "Песимизам за влез во Европска Унија," *Dnevnik*, 04 December 2010.

⁴² Tanner, Adam and Stevenson, Reed, "Kosovo independence declaration deemed legal." *Reuters*, 22 July 2010. <http://www.reuters.com/article/idUSTRE66L01720100722> (16.02.2012)

⁴³ "Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo," International Court of Justice, 22 July 2010, p. 6.

⁴⁴ Bonifassi, Pierre, "International Court of Justice – Kosovo: a legal independence for a total dependence," *The New Federalist*, 08 September 2010, <http://www.thenewfederalist.eu/International-Court-of-Justice-Kosovo-a-legal-independence-for-a> (11.05.2012).

general doctrine about self-determination or the access to independence, they admit that the opinion of the court was clear and it had no precedent. Moreover, they agree that ICJ's opinion clearly stated that the declaration of independence violated no applicable rule of international law, and additionally it provided clarifications that such declaration did not violate any of the UN Security Council resolutions about the international administration of the territory.⁴⁵ All in all, obviously the ICJ decision was in favour of Kosovo, and undoubtedly represented a significant legal and diplomatic victory.

Not surprisingly, the ICJ's favourable opinion which legitimised the proclamation of independence increased hopes of the government in Kosovo to persuade more states to recognise Kosovo's independence. After the ICJ Opinion, President Fatmir Sejdiu called on the countries that had not recognised Kosovo, as well as Serbia, to "join the common vision of the countries in the region in their position regarding the bright future and speedy Euro-Atlantic integrations."⁴⁶ Along the same lines, Foreign Minister Skender Hyseni released a statement saying that "we now look forward to further recognitions of Kosovo. We call upon States that have delayed recognising the Republic of Kosovo pending the Opinion to move forward towards recognition. The future of both Kosovo and Serbia lies within the European Union and NATO.

⁴⁵ ICJ Opinion on Accordance with International Law of Kosovo's Declaration of Independence, paras.121-122, available at: <http://www.icj-cij.org/docket/files/141/15987.pdf>. See also Rocabert, Jofre M., "International Court of Justice: Kosovo ruling - Doctrinal consequences and case comparisons," *The New Federalist*, 12 September 2010, <http://www.thenewfederalist.eu/International-Court-of-Justice-Kosovo-ruling> (10.05.2012)

⁴⁶ "Kosovo Albanians hail ICJ decision as big victory," B92, News-Politics, http://www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=07&dd=22&nav_id=6862 1 (21.02.2012).

For that there must be good neighbourly relations."⁴⁷

However, the ICJ's opinion is not binding for UN member states, thus allowing Serbia and the opponents of Kosovo's independence to not immediately revise their political position. Moreover, Serbia was quick to instantly declare that it will 'never' recognize the independence of its former province. Such position was then followed by its powerful allies like Russia and China. Though Kosovo's independence looked more credible after the ICJ's judgement, it soon became clear that it was not going to convince Kosovo's tireless opponents. According to Bonifassi, these states claimed that Kosovo's declaration of independence would be a precedent for numerous European regions (e.g. Catalonia, Transnistria, Russian republics) as well as for some Balkan minorities (Serbian in Bosnia-Herzegovina, Albanian in Macedonia, Hungarian in Slovakia). Moreover, opponents of Kosovo's independence maintain that these minorities in the Balkans could use Kosovo for their independence requests, casting doubt upon the international frontiers agreement and permanently destabilising the region.⁴⁸

Undoubtedly, the immediate number of recognitions following ICJ's favourable opinion was much lower than it was expected by Kosovo authorities. Since ICJ's opinion on 22 July 2010 until the end of the year, only three more countries recognized the independence of Kosovo.⁴⁹ In addition, the five EU countries (and four NATO member states) which have not

⁴⁷ "Statement by the Foreign Minister of the Republic of Kosovo, H.E. Mr Skender Hyseni, on the ICJ Opinion of 22 July 2010," Ministry of Foreign Affairs, 22 July 2010.

⁴⁸ Bonifassi, 2010.

⁴⁹ Though until 25 April 2012, additional 18 countries have recognized the independence of Kosovo, this still represents a lower number of recognitions than initially expected after the ICJ ruling; see Ministry of Foreign Affairs of the Republic of Kosovo, "Shtetet që e kanë njohur Republikën e Kosovës," <http://www.mfaks.net/?page=1,33> (21.05.2012).

recognised Kosovo's independence have already announced that they will not revise their respective policies with regard to Kosovo, thus further diminishing Kosovo's Euro-Atlantic perspective.⁵⁰ Consequently, we might conclude that the ICJ ruling have failed to yield the expected positive effects for Kosovo in terms of increased number of independence recognition.

On the other hand, as already mentioned, on 05 of December 2011 the International Court of Justice has ruled that Greece was wrong to block Macedonia's bid to join NATO in 2008 because of a row over its name. It said Athens should have abided by a 1995 deal not to block Macedonian applications if made under the name Former Yugoslav Republic of Macedonia.⁵¹ The court, however, did not uphold an application by Macedonia for Greece to be ordered not to object in any way to Macedonia's application to join NATO. The court said that given the existence of the interim accord, such an order was not necessary. Although the ICJ ruling also did not address the neighbours' dispute over the name, the decision was undoubtedly a significant diplomatic victory for Macedonia.⁵²

Obviously, Macedonia's hopes of joining NATO and the EU have received a diplomatic boost following a judgment in the ICJ. The near unanimous decision at the ICJ was welcomed by Macedonia's foreign minister, Nikola Poposki who pointed out that "we have been participating in good faith in negotiations [with

Greece] and there's no single argument against [our membership] of NATO and the EU."⁵³ Along the same lines, at a North Atlantic Council session in Brussels Prime Minister Nikola Gruevski appealed to all NATO member countries to re-examine the issue for the membership of Macedonia in the first following occasion and before the Alliance's Summit in Chicago. He emphasized that it is rational and correct that an invitation for NATO membership is extended to the Republic of Macedonia at the Chicago Summit.⁵⁴ By the same token, the European Parliament Foreign Affairs Committee adopted in January the final version of a draft resolution that incorporates a call to the European Council to promptly set a date for commencing of Macedonia's EU accession talks. The draft also emphasized the importance of supporting the country's efforts on the road to the EU membership.⁵⁵

However, Greece immediately announced that it would continue opposing Macedonia from entering international organizations under constitutional name despite the ICJ ruling that Athens was wrong in objecting to Skopje's NATO bid in 2008. In addition, according to the Greek Foreign Ministry "Greece will continue to pursue negotiations in good faith to reach a mutually acceptable solution on the name of the former Yugoslav Republic of Macedonia, within the spirit and letter of the relevant resolutions of the Security Council and the General Assembly of the

⁵⁰ Szpala, Marta. "Regional impact of the ICJ's advisory opinion on Kosovo." Warsaw: Center for Eastern Studies, 04 August 2010. <http://www.osw.waw.pl/en/publikacje/ceweekly/2010-08-04/regional-impact-icj-s-advisory-opinion-kosovo> (18.02.2012).

⁵¹ "ICJ rules Greece 'wrong' to block Macedonia's NATO bid," BBC News Europe, 05 December 2011, <http://www.bbc.co.uk/news/world-europe-16032198> (19.02.2012)

⁵² "ICJ rules Greece 'wrong' to block Macedonia's NATO bid," BBC News Europe, 05 December 2011, <http://www.bbc.co.uk/news/world-europe-16032198> (19.02.2012).

⁵³ "Macedonia's NATO and EU hopes given boost by International Court of Justice," *The Guardian*, 05 December 2011, <http://www.guardian.co.uk/world/2011/dec/05/macedonia-nato-eu-greece-icj> (01.02.2012).

⁵⁴ "Premier hopes for Macedonia's NATO entry at Chicago summit," *Investors Business Daily*, 25 January 2012, <http://news.investors.com/newsfeed/article/140580172/201201260937/premier-hopes-for-macedonias-nato-entry-at-chicago-summit.aspx> (21.02.2012).

⁵⁵ "Macedonia: Putting the World Court to Use," *Macedonian Information Agency*, 24 January 2012. <http://www.topix.com/forum/world/macedonia/T2H6Q6DB55EQAL9EI/p5> (21.02.2012).

United Nations.," The Greek Prime Minister Lucas Papademos was even more concrete by pointing out that "Greece has supported the European perspective of Skopje in many cases, "The condition, however, for full normalization of relations is a mutually acceptable solution to name issue."⁵⁶ Reactions coming from NATO officials were also not in line with the expectations of Skopje authorities. NATO Secretary General Anders Rasmussen said that although he took note of the ICJ ruling, such "ruling does not affect the decision taken by NATO Allies at the Bucharest summit in 2008." He also clarified that "we agreed that an invitation will be extended to the former Yugoslav Republic of Macedonia as soon as a mutually acceptable solution to the name issue has been reached. This decision was reiterated at subsequent summit and ministerial meetings."⁵⁷ Final confirmation of such position came with Chicago Summit Declaration issued by the NATO Heads of State and Government: "we reiterate the agreement at our 2008 Bucharest Summit, as we did at subsequent Summits, to extend an invitation to the former Yugoslav Republic of Macedonia² to join the Alliance as soon as a mutually acceptable solution to the name issue has been reached within the framework of the UN, and strongly urge intensified efforts towards that end."⁵⁸ Consequently, similarly to the Kosovo case, we might conclude that the ruling have failed to yield the expected positive effects for Macedonia in terms of receiving NATO membership.

⁵⁶ "Greece Unimpressed by ICJ Ruling on Macedonia Dispute," *Novinite*, 05 December 2011, http://www.novinite.com/view_news.php?id=134562 (17.05.2011).

⁵⁷ "Greece, Macedonia urged to end name dispute after ICJ ruling," *The Sofia Echo*, 06 December 2011, http://sofiaecho.com/2011/12/06/1278342_greece-macedonia-urged-to-end-name-dispute-after-icj-ruling (19.05.2012).

⁵⁸ NATO, "Chicago Summit Declaration," issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Chicago, Press Release (2012) 062, 20 May 2012, point 26.

5. Conclusion

To conclude, the ICJ Opinions on Kosovo and on Macedonia have provided a better understanding from a legal perspective on two different, yet interrelated issues, by adding additional substance to international law and practices. Despite of very clear outcomes from a legal perspective, these Opinions did not have their desired and expected influence from a political and diplomatic perspective. In the case of Kosovo, despite high expectations by Kosovo authorities, the number of independence recognitions has not increased as much as it was expected. Moreover, the reality to follow even showed the lack of respect that certain countries have towards the rulings of the world court. This was, among others, proved by Serbia's actions which was the country to request the ICJ Opinion on Kosovo's Declaration of Independence but then resorted not to respect the court's final ruling. With regards to Macedonia case, we might conclude that again the ICJ ruling has failed to yield the expected positive effects for Macedonia in terms of receiving NATO membership. Not only did this favourable ICJ ruling produced any positive results during the NATO Summit in Chicago, but Greece has continued to also block Macedonia's path towards the EU by opposing the Commission's recommendation to begin accession negotiations with Macedonia.

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