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LEGAL LIMITATIONS ON NATO'S PRESENCE IN KOSOVO AND METOHIJA AND CHANGING THE SECURITY ENVIRONMENT

Igor JANEV*

Abstract: In this paper, the author examines the international legal effects of the Military Technical Agreement, concluded with the aim of ending the armed conflict in Kumanovo (in 1999), between the International Security Forces (KFOR) and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia (the Kumanovo Agreement). Based on the assumption that the Kumanovo Agreement was concluded under coercion, the author expresses the opinion that the "Agreement" limited any participation of Serbian military forces in the area of Kosovo and Metohija, which otherwise represents an integral part of the territory of the Republic of Serbia. Although this was done for security reasons at the time, the question arises whether, with the change in security circumstances, the Kumanovo Agreement represented the main obstacle to the immediate protection of the Serbian and non-Albanian population in Kosovo and Metohija who might be exposed to uncontrolled terror and persecution by the Kosovo temporary authorities. Since the Kumanovo Agreement was concluded under the coercion of NATO and its allies, can this "legal act" produce legal effects according to positive international law, that is, can it produce consequences that directly affect the sovereign equality and territorial integrity of Serbia as an internationally recognized country and a member of the UN? In discussing this issue, the author also refers to the provisions of the Vienna Convention on the Law of Treaties from 1969 (VCLT), which clearly stipulates in Article 52 that "every treaty concluded as a result of the threat of force or the use of force is void contrary to the principles of international law embodied in the Charter of the United Nations". Consequently, the author is of the opinion that the Kumanovo Agreement can be interpreted at least as a "dubious legal act" according to the VCLT, which was added as an annex to Security Council Resolution

* Professor, Institute for Political Studies, Belgrade. E-mail: igorjanev@mts.rs

1244 (1999), which was adopted on the basis of Chapter VII of the Charter. Considering the change in the security paradigm in the world, including in Kosovo and Metohija, according to the author's understanding, one could raise questions about its further effectuation. All the more so, if it is taken into account that in the event of an Albanian invasion of the North of Kosovo, there could be an ethnic cleansing of the Serbian and non-Albanian population, in which case the Government of Serbia would have a legitimate right to intervene by raising the question of the further validity of the Kumanovo Agreement due to its inefficiency and contravention of the VLCT provisions but also the imperative norms of international law (*ius cogens*). Of course, this question could be asked independently of the changed security circumstances due to serious violations of international human rights law by the interim authorities in Kosovo.

Keywords: Yugoslavia, Serbia, Kumanovo Agreement, NATO, UN, International Law, coercion, invalidity.

INTRODUCTION

After the dissolution of the former SFRY, the provisional authorities in Kosovo and Metohija unilaterally declared the "independence of Kosovo" in an unconstitutional manner on February 17, 2008, in order to secede from Serbia (Glenny, 1996; Janev, 2019). That unilateral self-declaration by Kosovo Albanians actually revealed the true intention of the military engagement of NATO forces in 1999 as their ally in the process of illegal secession and, apparently, the main goal of the creation of the new state (Chomsky, 2018). For our study in the present article related to UN Security Council Resolution 1244 (1999) and particularly its Annex II, we should emphasize that the 1999 NATO invasion of the Federal Republic of Yugoslavia would not end until the "Kosovo agreement" between the FRY and NATO [Military Technical Agreement between the International Security Force (KFOR) and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia] was signed on June 9, 1999 (a day later, on June 10 to become an Annex to SC Resolution 1244). The FRY and Serbia have never accepted the justifiability and legitimacy of the brutal NATO intervention and the outcome of the war in 1999, including its contractual consequences. Many countries, as well as prominent scholars and intellectuals, condemned NATO's incursions and intervention, particularly a bombing campaign in the FRY and Serbia. For instance, Noam Chomsky argued that the main objective of NATO's intervention was to integrate the FR Yugoslavia into the Western neo-liberal social and economic system since it was the only country in the region that still defied Western hegemony prior to 1999. The

war with NATO (or rather an aggressive invasion) actually started after the refusal of Serbia/FRY to sign the Rambouillet Agreement under apparent extortion or blackmail, i.e., the FRY and Serbia were threatened by NATO with armed attack if they should refuse to conclude the treaty. Yugoslavia's rejection concludes that an unacceptable and undignified accord was used by NATO and its member countries to justify the 1999 bombing, aggression, and essentially destruction of Yugoslavia. Despite the explicit rejection of the Rambouillet Agreement from the FRY, this document was incorporated into Security Council Resolution 1244 that limits the FRY army and police forces from returning to Kosovo, providing for the authority of the KFOR to prevent and control the withdrawal or presence of the FRY armed forces. That part of the SC resolution apparently defies basic norms of *jus cogens* related to the *juridical equality* of states and discrimination under International Law, particularly the prohibition of discrimination of UN members provided by the UN Charter and the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character (1975). The FRY was invaded with no backing of a UN decision, in violation of the norms of the UN Charter, in a similar way as Russia invaded Ukraine (2022), with the visible distinction that aggression against the FRY was never condemned by the UN and the Western allies.

ILLEGALITY OF ANNEX II OF UN SECURITY COUNCIL RESOLUTION 1244

The alleged right of "humanitarian military intervention" as a reason for the assault on Yugoslavia in 1999 apparently does not provide a convincing justification for the aggressive NATO action, particularly taking into consideration that the action did not have any backing UN Security Council (SC) resolution for endorsement of external military involvement, incursion, or intervention against a sovereign state. Even if we put aside that aspect (that the measure was not approved by the UN Security Council with a resolution), and accept the "significance of the Kosovo Agreement" with respect to "security provisions" for the region, the legality of the deployment of the UN civil administration in Kosovo and Metohija and the KFOR's powers and its entitlements or jurisdiction in the Serbian province based on Resolution 1244 (1999) remains questionable (UNSC/RES/1244, 1999).[1] As we noted, the previously adopted UNSC Resolutions 1160, 1198, and 1203 did not provide any explicit authorization for such violations of national sovereignty. In Resolutions 1160, for instance, the SC recalled only the possibility of taking further action in case the FRY did not meet the SC's

requests (UNSC/RES/1160, 1998). That formulation is also legally dubious, since territorial sovereignty is a basic principle embedded in the UN Charter. As for SC Resolution 1244, the Western authors (US, UK, etc.) have argued that the act did provide for an *ex post facto* endorsement of the NATO action. However, SC Resolution 1244 did not provide any endorsement for a coercive military invasion or UN civilian action or the deployment and replacement of Constitutional organs of Serbia in its province.[2] The NATO incursion action was not authorized by a Security Council resolution, nor the military intervention, or the process of signing a treaty as a precondition for ending the brutal intervention.[3] Therefore, the act of reaching the "Military-Technical Agreement between the International Security Assistance Force (KFOR) and the Government of the FRY" (Kosovo Agreement) appears to be in violation of principles of international law.[4] It is apparently not correct to argue that the "Kosovo Agreement" (a day after

[1] Among other things, the Resolution demands that the Federal Republic of Yugoslavia immediately and verifiably end the violence and repression in Kosovo and begin and complete the verifiable gradual withdrawal from Kosovo of all military, police, and paramilitary forces according to a rapid schedule with which the deployment of the international security presence in Kosovo will be synchronized. Also, the Security Council decides on the deployment in Kosovo, under the auspices of the United Nations, of an international civilian and security presence, with appropriate equipment and personnel as needed, and welcomes the agreement of the Federal Republic of Yugoslavia and especially the KFOR, entitled "Deterring the renewal of hostilities, maintaining and where it is necessary to implement a cease-fire, and ensure the withdrawal and prevention of the return to Kosovo of federal and republican military, police, and paramilitary forces".

[2] Article 2(4) of the UN Charter prohibits the use of force by UN member states to resolve disputes or intervene, and Article 2(1) provides that each member state of the UN is sovereign and equal in rights with any other member state. This prohibits any unequal treatment or discrimination, including privileges or disrespect.

[3] According to Chapter VII of the UN Chapter, only the Security Council has the power to authorize the use of force in order to fulfill its responsibility to maintain international peace and security. In the case of the FRY, NATO did not even claim that an armed attack occurred against another state.

[4] Article 2(7) of the UN Charter prohibits the external interference of essential character in domestic jurisdiction of member states, i.e., this norm provide a legal support for the principle of sovereign equality enshrined in the previously mentioned paragraph 1 of the Article 2 of the UN Charter. In addition, the principle of territorial integrity was blatantly violated.

its signing, it became Annex II of SC Res. 1244) can be seen as an implied endorsement for aggressive action, particularly taking into consideration the general provisions of SC Res. 1244 should guarantee the territorial integrity and sovereignty of the existing state (FRY) and especially bearing in mind Article 2(1) of the UN Charter, as a pillar of international law.[5] Obviously, the reference to the agreement (placed in Annex II of the resolution) does not provide any clear evidence of such an intention, particularly without consent from the other party (Serbia/FRY) in the Kosovo Agreement, since there is no state that aims at self-derogation of (own) sovereignty or could provide in good faith any endorsement of such self-inflicting damages with external or UN involvement actions in that (damaging) direction. In our view, the previous military intervention by NATO in Kosovo and Metohija could not be treated as a legitimate/legal or legally endorsed action, bearing in mind that the brutal bombing of the FRY was provoked by the refusal of the FRY government to conclude another treaty (a similar attempt at extortion was the Rambouillet Agreement). The Act for ending the war, or rather, the illegal aggression on the FRY, certainly did not represent an international occupation (*occupatio bellica*) act, because the intervention and agreement between Belgrade and NATO were subject to subsequent (i.e., conditional/potential) approval by the UN Security Council as an occupational treaty, where the FRY was apparently extorted to sign it. Additionally, with respect to Kosovo as a region of Serbia, Serbia (and the FRY) conducted the actions as self-defense against a foreign invasion provoked by the rejection of the Rambouillet Agreement ultimatum. It should also be noted that since that moment, the territory of Kosovo and Metohija (Serbian province) has been placed under a kind of illegal UN protection, despite the fact that it was not and could not be under "protectorate status" since there was no such treaty between the UN and any state (or UN member) regarding the protective arrangement. The status of the "protectorate" is by definition regulated by an agreement (according to the jurisdiction of the UN Trusteeship Council). However, at the time of the adoption of SC Resolution 1244, Kosovo and Metohija could not have obtained the status considering that Kosovo was not a *state* (or entity that meets the conditions to be a "protectorate"). Hence, a "protector" (state or organization) could not exist in this case. It should be noted that the full name of the "Kosovo Agreement" [Military Technical Agreement

[5] The "Kosovo Agreement" entered into force on June 9, 1999, and became Annex II of SC Res. 1244 that was adopted on June 10, 1999.

between the International Security Force (KFOR) and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia] suggests its technical nature (or assistance purpose), not occupational intention (*occupatio bellica*) or occupational act (or treaty of surrender). It should also be noted that this agreement was delivered under the threat of armed attack and bombing (i.e., aggression) on the FRY. It was concluded between Yugoslav Army Major General (i.e., divisional general) Svetozar Marjanović (a regional FRY commander in Kosovo), FRY Police Major General Obrad Stevanović on the Yugoslav side, and British Brigadier General Michael Jackson, on behalf of NATO, on the other side (commander on the ground, representing the NATO party to the agreement). Hence, it represents an act concluded under conditions of coercion by the threat of force and the *abuse of force*. This extorted circumstances cast doubts on the legal validity of the treaty (i.e., conclusion under coercion). Moreover, the relatively low military rank of these state representatives (officers below the level of lieutenant general or full general negotiated, prepared, and signed the agreement), in comparison to normal diplomatic officials with proper capacity for state contracting, indicates that the treaty was in fact an imposed "ceasefire agreement" or, as many described it, a "peace-keeping treaty". It was not an act of surrender or occupation (agreement), as was interpreted for instance by Brig. General Michael Jackson, nor an act for the change of the political status of the state (FRY/Serbia) or loss of its territory. Furthermore, with respect to domestic constitutional aspects, it should also be noted that military officials representing the FRY and signing the Kosovo Agreement (representing the Yugoslav Army and the police) apparently did not have any constitutional power or jurisdiction necessary to place a signature or conclude any valid document that would limit the Serbian sovereignty over its province of Kosovo and Metohija on behalf of the Serbian government.[6] That fact was also known to NATO and UN officials at the moment of the conclusion of the Kosovo Agreement. Remarkably, a day after the conclusion of the coercive Kosovo Agreement, SC Resolution 124 was adopted and the Kosovo Agreement was annexed to it and endorsed in an attempt to legitimize that act. Nevertheless, this Annex II could be interpreted as a separable part of Resolution 1244 since the wording of the resolution suggests the conditional creation of such an agreement (in the future/conditional tense). Remarkably, the KFOR (leaded by NATO force) was not defined anywhere as occupying force (in accordance with UN

[6] The Constitution of the (S)FRY and the Constitution of the Republic of Serbia.

mandate and UN nature or Charter), but rather as a "peacekeeping force", and therefore the annexed agreement (Kosovo Agreement) could not also be interpreted as occupational (surrendering) agreement placing the state under foreign/external or military rule and occupation. Otherwise, the Kosovo Agreement (as an Annex to the UN resolution) would be entirely inconsistent with the purposes and principles of the UN Charter. Bearing in mind that the KFOR (under the international mandate of the United Nations as a non-supranational and deliberative organization) may not be an occupying (or classical coercive occupational) force under any circumstances, due to the peaceful goals of the UN that entail the purposes and role of UN peacekeeping forces in accordance with the nature of the Charter, the treaty concluded by NATO on June 9 could not meet any occupational criteria (i.e., standards for military takeover of the territory or surrender), but rather usual norms for treaty conclusion should be applicable. It is clear from the preceding that the adoption of Resolution 1244 in 1999 aimed at "restoring the authority of the UNSC" starting from the "*de facto* situation" created by the NATO (assault) intervention, and not the "legalization and legitimization of that military action" (Milano, 2003, 999–1022). However, the members of the UNSC took as granted the "legality" of the Kosovo Agreement and even tried to legitimize its dubious effects despite the controversies related to sovereignty for the FRY and territorial integrity guaranteed to the FRY in SC Resolution 1244 in accordance with the UN Charter. The bias arguments employed by NATO countries to justify their action, and other possible arguments such as "the *ex post facto* endorsement" and the "enforcement of a right of self-determination", can reveal to us that the NATO intervention was indeed a violation of the basic principles of international law and purposes of the UN embedded in its Charter. The conducted NATO military action in the FRY prior to Resolution 1244 could, for instances, be burdened by possible NATO atrocities (as was actually case to some degree with air campaign), that could not subsequently be legitimized or endorsed by the UN resolution(s) under any pretext or circumstances. In some of the advisory opinions of the ICJ and, for example, in the very first case dealt with by the ICTY, we have observed that the competence of the UNSC has been very broadly defined to act within the powers provided by Chapter VII (ICJ Reports, 1971). In some other situations, the ICJ has taken different positions, arguing that the power of the Security Council should be limited and in accordance with the UN Charter (ICJ Reports, 1948).

Due to the lack of an institutionalized system of judicial review of the acts of the UN political organs, the SC often presumes an unlimited

authority to decide (relying on its own competence) practically on any matter by declaring that such "conflicting" or controversial "matter" allegedly represents a threat to international security (*de facto* "being judge in its own case"). Remarkably, the UNSC also assumes unlimited authority to decide whether to use coercive or non-coercive measures, with no limitations embodied in the UN Charter. As a consequence, a state addressed by such arbitrary SC measures could not seek a judicial review of the decision(s) *per se*. As the author has proved, in the case of illegal derogation of the legal membership status of a state (in this case, the FRY) in the UN, in the spirit of international law and the normative nature of the UN Charter (as a contract), the UNSC should not possess unlimited power.[7] When presumed arbitrarily and therefore wrongfully, such actions constitute an *ultra vires* act(s), by its nature, because the power of any UN organ should legally always be limited. Another question is how to deal with such illegal acts or how to cure their illegal consequences or effects (Janev, 2021).[8] Some possibilities were suggested in the jurisprudence of the ICJ related to the advisory jurisdiction of the Court. The arbitrary behavior of the UN Security Council (SC) with respect to Kosovo and Metohija was demonstrated before the adoption of SC Resolution 1244. In UNSC Resolution 1203, for instance, the SC endorsed the agreements of October 15 and 16 (1998) between the FRY and the OSCE, and the FRY and NATO, respectively, which were concluded after the issuance of an activation order by the NATO Secretary-General (UNSC/RES/1203, 1998; Milano, 2003, p. 1002).[9] Such a "threat of the use of force" without proper UNSC authorization was clearly in defiance of international law and the UN Charter. In lack of reference to international law and legal grounds, the *ad hoc* solution provided (described as "uniqueness of the precedent") by the

[7] In our view, an example of an *ultra vires* act was SC Res. 817 (1993), basically recommending that a sovereign state be admitted to the UN without a state (Constitutional) name (i.e., as a nameless member), and using provisional reference until finishing negotiation on its name with a neighboring country.

[8] One way to deal with an *ultra vires* act of UN organs is the usage of Advisory Jurisdiction of the ICJ.

[9] Such agreements with the FRY were endorsed by the SC through Resolution 1203, which was adopted under Chapter VII. On October 16, 1998, an agreement was signed in Belgrade between the Federal Republic of Yugoslavia and the OSCE providing for the establishment of a verification mission in Kosovo, with aerial verification over Kosovo agreed the previous day.

SC hardly speaks in favor of the development of "new" normative standards "relaxing the obligation" of the Security Council to abide by the UN Charter. It is apparently not permissible for a Security Council decision to supersede the underlying agreement as a normative source (Milano, 2003). UNSC Resolution 1203 affected a "novation" of the (in) valid or dubious agreement between the OSCE and the FRY by creating a new so-called "legal basis" for the OSCE verification mission. In addition, such novation apparently did not occur with respect to the NATO "air verification" mission (in view of the SC), whose normative content was still dependent on Belgrade's consent (*Ibidem*). The Kosovo Agreement, which should "provide the legal basis" for NATO's authority over security matters in the FRY, did not appear to have been superseded by Resolution 1244. It does not appear that Resolution 1244 could legalize the Kosovo Agreement and NATO aggression subsequently. Likewise, without the Kosovo Agreement, Security Council Resolution 1244 has essentially different character and limits; hence, standalone (striped from annexes), it provides for the territorial integrity of the FRY and Serbia. It should be reiterated that the Kosovo Agreement was subsequently added as an Annex to Resolution 1244 as a subject of the consent of the FRY (under *abuse of force*). In the case of potential termination of the treaty (Kosovo Agreement), Resolution 1244 would still be in force with its original legal effects (in the absence of Annex provisions). Even with the demand enshrined in Resolution 1244 for the "complete verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable, with which the deployment of the international security presence in Kosovo", the Resolution could not prevent possible action of Serbia for self-defense or defense of its population in Kosovo and Metohija at present day, as the peremptory right stemming from the norm of *jus cogens*. Because of compliance with the UN (SC, UNGA, and other organs), decisions or resolutions with mandatory *jus cogens* norms, by their peremptory nature, limit the powers of the UN and/or UNSC decisions. Given that the prohibition of the use of force outside the UN Charter framework has been considered as a *jus cogens* norm by the ICJ and the International Law Commission (ILC), it may be concluded that general customary principles, such as the norm in Article 52 of the Vienna Convention on the Law of Treaties of 1969 (VCLT) related to the invalidity of treaties concluded under coercion, also represent a supreme *jus cogens* norm (and should be respected as such). Article 52 of the Vienna Convention on the Law of Treaties (VLCT) provides a *jus cogens* limitation related to the Law of contracting treaties that reads: "A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of

international law embodied in the Charter of the United Nations" (Vienna Convention on the Law of Treaties, 1969, Art. 52). In the case of the Kosovo Agreement, this dubious contractual act apparently represents an example of an invalid agreement under Article 52 of the VCLT (in violation of a basic norm of *jus cogens*). That act is beyond the limits of UN legality and *jus cogens* prerequisites for contracting since the treaty was concluded in the absence of the essential element of consent and *free will*, with respect to Serbian and Yugoslavian party-contractors that were evidently coerced and extorted under *threat of the use of force*. The Kosovo Agreement was not concluded under the presumption of *bona fides*. One may argue whether Article 52 of the Vienna Convention on the Law of Treaties (1969) provides for a ground of "absolute" or alternatively "relative" invalidity in the case of the Kosovo Agreement (namely, posing a dilemma whether that treaty ought to be considered as *null and void ab initio*, or whether it can still produce some legal effects and be "cured" by the (coerced) party's subsequent acceptance or acquiescence of that act) (Milano, 2003). The wording and character of Article 52 within the Vienna Convention on the Law of Treaties clearly support the view that Article 52 describes a ground of absolute *nullity* of act(s) created under coercion (or *threat or use of force*). Also, the ILC Commentary on the Vienna Convention on the Law of Treaties leans towards this original interpretation of Article 52 (as *null* and *void ab initio*). The prevailing ratio of these ILC findings is that the protection against the threat of use of force is of "fundamental importance for the international community that any juridical act concluded against such a principle ought to be fully invalidated". When discussing the loss of a right to invoke a ground of treaty invalidity by way of acquiescence (Article 45 of the VLCT), the ILC is unambiguous in stating that: "the effects and implications of coercion in international relations are of such gravity (…), that a consent so obtained must be treated as absolutely void in order to ensure that the victim of the coercion should afterwards be in a position freely to determine its future relations with the State which coerced it" (ILC Yearbook, 1966; Vienna Convention on the Law of Treaties, 1969, Arts 48-53). For instance, to change the original interpretation, at the 1969 Vienna Diplomatic Conference, the Swiss delegation proposed an amendment to the draft article to the effect that the coerced state would be entitled to "waive the invalidity of the treaty". The proposal was defeated 63-12, thereby supporting the idea that only a subsequent agreement would be able to confirm the validity. We may now briefly remind ourselves about the basic provisions of this imposed "peace agreement", which was concluded outside the valid domestic constitutional requirements of Serbia/FRY (for contracting) and in the

absence of *free will* of the contracting parties (i.e., Serbian free consent and *bona fides*).[10] In Article I of the Kosovo Agreement we have found harsh compulsory and illegal limitations that are contrary to the general provisions of SC Resolution 1244 related to the sovereign status of the FRY and contrary to the Serbian Constitution and the Constitution of the FRY:

1. The Parties to this Agreement reaffirm the document presented by President Ahtisaari to President Milosević and approved by the Serbian Parliament and the Federal Government on June 3, 1999, to include the deployment in Kosovo under the UN auspices of the effective international civil and security presences. The Parties further note that the UN Security Council is prepared to adopt a resolution, which has been introduced, regarding these presences.
2. The State Governmental authorities of the Federal Republic of Yugoslavia and the Republic of Serbia understand and agree that the KFOR will deploy following the adoption of the UNSCR referred to in paragraph 1 and operate without hindrance within Kosovo and with the authority to take all necessary action to establish and maintain a secure environment for all citizens of Kosovo and otherwise carry out its mission. They further agree to comply with all of the obligations of this Agreement and to facilitate the deployment and operation of this force.

As we may conclude from these apparently coercive provisions, the party that concluded the Kumanovo Agreement with Serbia and the FRY was the KFOR (i.e., not occupational NATO), whose basic task was "maintaining a safe environment for all citizens of Kosovo and to carry out their mission in other ways". The tone and the wording of the provisions of this part of the Agreement are reminiscent of those of a treaty dictated by the party winning the war to the one that had lost the war. Nevertheless, this role of the KFOR is by definition a UN peacekeeping mission that must take care of and respect the human rights of all peoples leaving in that area, and is supposed to abide by the purposes of the UN Charter. Thus, in the absence of negligence of treaty obligations and/or non-compliance with those obligations by any party, a consequence could be termination of the agreement, even as a unilateral action under *jus cogens* violations. Since this agreed intervention was defined as a peacekeeping mission, not an

[10] Extortion in the process of treaty-making induces the absence of consent by the party to the treaty and therefore implies nullity of the act.

occupational one, a peace agreement under UN authority excludes interpretation of the capitulation that dictates conditions for surrender or change of the state's legal and political status. On the other hand, paragraph 4 of Article I clearly suggests that the purpose of these obligations (for two parties) is the unilateral compulsory imposition of mandatory non-reciprocal obligations that dictate the behavior of the armed forces of the FRY and Serbia and even limit the civil personnel of FRY/Serbia contrary to the UN norms of sovereign territorial integrity:

- To establish a durable cessation of hostilities, under no circumstances shall any Forces of the FRY and the Republic of Serbia enter into, re-enter, or remain within the territory of Kosovo or the Ground Safety Zone (GSZ) and the Air Safety Zone (ASZ) described in paragraph 3. Article I without the prior express consent of the international security force (KFOR) commander. Local police will be allowed to remain in the GSZ. The above paragraph is without prejudice to the agreed return of FRY and Serbian personnel, which will be the subject of a subsequent separate agreement as provided for in paragraph 6 of the document mentioned in paragraph 1 of this Article;
- To provide for the support and authorization of the KFOR and in particular to authorize the international security force to take such actions as are required, including the use of necessary force, to ensure compliance with this Agreement and protection of the KFOR and to contribute to a secure environment for the international civil implementation presence, and other international organizations, agencies, and non-governmental organizations (details in Appendix B)' (Kumanovo Agreement 1999, Art. 1) These cited provisions of the Kosovo Agreement clearly demonstrate extorted impositions of politically self-inflicting damaging obligations otherwise normally unacceptable in the absence of the imminent threat of war (i.e., *abuse of power*). The Kosovo Agreement imposed obligations that, as a sort of sanctions, apparently substantially undermine the state sovereignty in part of the FR Yugoslavia territory, i.e., unacceptably derogate the territorial sovereignty of Serbia. It is obvious that the KFOR-FRY/Serbia agreement (Kosovo Agreement) was created under war-like threats and fundamental coercive pressure in order to surrender a part of the Serbian territory to the invasion forces (NATO), while the formal FRY consent was extorted under the threat of continued bombing aggression against Serbia and the FRY. Therefore, the only possible conclusion is that this unwanted agreement was not concluded in accordance with the general

rules of contracting law, i.e., *free will* and *bona fides*.[11] Namely, under no circumstances, other than military coercion and extortion, would Serbia or the FRY agree to surrender part of its territory to the foreign occupational forces that took the side of Kosovo's Albanians. With respect to its legal validity or entering into force, subparagraph *f* provides that: "Entry into Force Day (EIF Day) is defined as the day this Agreement is signed" (i.e., 'Entry into Force Day' hereinafter EIF Day), i.e., the Kosovo Agreement entered into force on June 9, 1999, where the NATO designation was replaced with the KFOR. It should be noted that at the moment of the signing of the Kosovo Agreement, the UN still did not institute the KFOR as its peacekeeping force. The next day, the UN Security Council incorporated the dubious agreement as its Annex II to Resolution 1244 and endorsed the KFOR as the UN force (*ex post facto*).

It should be emphasized that, with respect to general customary law, contracts concluded under pressure (*abuse of power*), threat, fraud, deception, delusion/misperception, blackmail, or violation of basic *jus cogens* norms, as well as the principles of *bona fides* (as emerging *jus cogens*), have no legal effect by definition (they are *null* and *void*). All the enumerated reasons for termination of an agreement or contract (under threat, pressure, fraud, delusion/misperception, *blackmail, extortion*) constitute also *jus cogens* norms of peremptory customary law that may invalidate any agreement or treaty. Obviously, an act or statement that inflicts damage or other hostile action, as in the case of Serbia (party to the Kosovo Agreement), constitutes a threat that could invalidate a contract. Furthermore, in addition to the mentioned customary norms, in modern international law, some basic rules of Article 2 of the UN Charter that regulate interstate relations, including genocide (or other blatant human rights violations), are also considered *jus conges* norms for a state's behavior. These basic peremptory norms include: 1. sovereign equality (paragraph 1 of Article 2) that enshrines a basic *juridical equality*, than as an extension to that norm principle of political independence and territorial integrity (paragraph 4 of Article 2) and particularly a basic principle-pillar of *non-interference* in the internal affairs (and hence internal jurisdiction) of other states (paragraph 7 of Article 2).[12] These principles are

[11] Principle *bona fides* appears to be a constituent element in any contracting process since *fraud*, *blackmail*, *extortion*, any abuse of power, or similar behavior in the absence of *good faith* should nullify a treaty.

[12] Article 2 (1) of the UN Charter enshrines legal equality as a basic pre-requisite for sovereign equality under the law.

basic, paramount customary pillars of International public law. At this point, we must derive a conclusion that all these enumerated basic principles of law have been violated by the imposition of the Kumanovo Agreement under threat of armed attack. Clearly, as a consequence, the Kosovo Agreement derogates national sovereignty and provides for the transfer of authority to the UN, nullifying the Serbian presence in Kosovo and Metohija. In paragraph 3 of Article I, subparagraphs d and e impose apparent occupational restrictions that blatantly derogate Serbian statehood, punishing the FRY and awarding Albanian insurgency, supported by NATO invasion forces (or as renamed by UN KFOR): "The Air Safety Zone (ASZ) is defined as a 25-kilometer zone that extends beyond the Kosovo province border into the rest of FRY territory. It includes the airspace above that 25-kilometer zone".

The Ground Safety Zone (GSZ) is defined as a 5-kilometer zone that extends beyond the Kosovo province border into the rest of FRY territory. It includes the terrain within that 5-kilometer zone (*Ibidem*). Undeniably, these stark "commanding style" restrictions that could be typical only for an act of capitulation, clearly represent a dictation of legally dubious obligations and coercive measures under the lack of any basic consent and *free will* in the process of treaty conclusion. Article II provides orders and commands aimed at completing and imposing unconditional limitation of the Serbian or FRY presence in Kosovo and actually assuming transfer of power under a compulsory UN mandate, thus demonstrating enforced humiliating submission of FRY authority:

1. "The FRY Forces shall immediately, upon entry into force (EIF) of this Agreement, refrain from committing any hostile or provocative acts of any type against any person in Kosovo and will order armed forces to cease all such activities. They shall not encourage, organize, or support hostile or provocative demonstrations.
2. Phased Withdrawal of FRY Forces (ground): The FRY agrees to a phased withdrawal of all FRY Forces from Kosovo to locations in Serbia outside Kosovo. FRY Forces will mark and clear minefields, booby traps, and obstacles. As they withdraw, FRY Forces will clear all lines of communication by removing all mines, demolitions, booby traps, obstacles, and charges. They will also mark all sides of all minefields. International security forces' (KFOR) entry and deployment into Kosovo will be synchronized. The phased withdrawal of FRY Forces from Kosovo will be in accordance with the sequence outlined below:

– By EIF + 1 day, FRY Forces located in Zone 3 will have vacated, via designated routes, that Zone to demonstrate compliance (depicted on the map in Appendix A to the Agreement). Once it is verified that FRY forces have complied with this subparagraph and with paragraph 1 of this Article, NATO air strikes will be suspended. The suspension will continue provided that the obligations of this agreement are fully complied with, and provided that the UNSC adopts a resolution concerning the deployment of the KFOR so rapidly that a security gap can be avoided;
– By EIF + 6 days, all FRY Forces in Kosovo will have vacated Zone 1 (depicted on the map in Appendix A to the Agreement). Establish liaison teams with the KFOR commander in Priština.
– By EIF + 9 days, all FRY Forces in Kosovo will have vacated Zone 2 (depicted on the map in Appendix A to the Agreement);
– By EIF + 11 days, all FRY Forces in Kosovo will have vacated Zone 3 (depicted on the map in Appendix A to the Agreement);
– By EIF +11 days, all FRY Forces in Kosovo will have completed their withdrawal from Kosovo (depicted on the map in Appendix A to the Agreement) to locations in Serbia outside Kosovo, and not within the 5 km GSZ. At the end of the sequence (EIF + 11), the senior FRY Forces commanders responsible for the withdrawing forces shall confirm in writing to the KFOR commander that the FRY Forces have complied and completed the phased withdrawal. The KFOR commander may approve specific requests for exceptions to the phased withdrawal. The bombing campaign will terminate on the complete withdrawal of FRY Forces as provided under Article II. The KFOR shall retain, as necessary, authority to enforce compliance with this Agreement.
– The authorities of the FRY and the Republic of Serbia will cooperate fully with the KFOR in its verification of the withdrawal of forces from Kosovo and beyond the ASZ/GSZ;
– FRY armed forces withdrawing in accordance with Appendix A, i.e., in designated assembly areas or withdrawing on designated routes, will not be subject to air attack;
– The KFOR will provide appropriate control of the borders of the FRY in Kosovo with Albania and FYROM (1) until the arrival of the civilian mission of the UN”.

In light of these coercive obligations imposed under threat, which have the character of blackmail and which blatantly affect the dignity of the state

(FRY and Serbia), but also its statehood in relation to the province of Kosovo and Metohija, the Kumanovo Agreement could be qualified as an illegal act. Given that NATO's incursion on the FRY clearly constitutes an act of aggression, as repeatedly stated by FRY officials, as well as the fact that NATO was pursuing Kosovo's Albanian agenda, there is an undeniable lack of willingness (free will) on the Serbian side (FRY) to conclude the Kosovo Agreement. It is blatantly clear that the Kosovo Agreement represents an example of a contract unwillingly and forcefully imposed under severe pressure, threat by armed force and coercion (or against the free will and consent) of the signatory party-state to the agreement. This kind of act, obviously, does not abide by the imperative of *bona fides* criteria or the *jus cogens* norm of juridical equality. Undignified circumstances, from the Rambouillet Accords blackmail, followed by the crime of aggression and finally the war, the analysis of the Kosovo Agreement brings us to the self-evident conclusion that the aggressive attacks, including aerial bombardment on the FR Yugoslavia, would not have been ended or stopped unless such an act of extortion had been signed. A condition for peace was the signing of the Kosovo Agreement. Therefore, the signing (and thereby concluding) of the Kosovo Agreement could not satisfy the "good fate" (*bona fides*) requirement, an imperative norm of sovereign (juridical) equality and territorial integrity, that was undeniably violated. As mentioned above, the *bona fides* principle is a key component of modern legal orders and it appears to be a general principle of international law for contracting or at least an emerging *jus cogens* norm. That fundamental legal principle requires parties *to* deal honestly and fairly with each other and to refrain from taking unfair advantage. The misrepresentation of NATO forces that actually committed crimes of aggression as "peacekeepers", i.e., the KFOR (replacing the name of the invasion force), appears to be a deception and misconception. With respect to the Kosovo Agreement, we may argue that this act contains *mala fides* since one party apparently *abused the power* without any good intention to achieve common aims.[13] Therefore, starting from the indisputable and undeniable fact that the contract was coerce-fully imposed under the threat of advancing brutal aggression with disrespect to *bona fides*, it should be considered that this type of contract, in the absence of a genuine element of consent, was created under illegal pressure and by

[13] This behavior should be qualified as *mala fides* (an evil intention or duplicity), an act disrespecting a legal order (consciously or unconsciously) that with respect to treaties nullifies them (as *null* and *void*).

involving abuse of power and bad faith (*mala fides*), and hence without the necessary element of validity. Taking into consideration that the military intervention (as a crime of aggression) was not previously endorsed or approved by the UN Security Council and that the war ended with an imposed "peace treaty" with the KFOR as essentially disguised NATO occupational forces, under harsh pressure on the state to surrender and transfer power, we may derive a self-evident conclusion that such an agreement is *null* and *void ab initio*. In the judgment of the validity of the Kosovo Agreement, we should also bear in mind that, with respect to sovereignty and contracting of treaties, FRY Constitutional provisions prohibit the creation and conclusion of agreements or treaties that revise statehood and do not confer entitlement to any official person such contracting power. Furthermore, the absence of such constitutional authority *was* clearly known to other contracting parties (UN and NATO/KFOR). In Article 46 of the VCLT, it is provided as follows:

> "A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith" (Vienna Convention on the Law of Treaties, 1969, Art. 46). Therefore, having in mind that territorial sovereignty was blatantly and visibly violated against the FRY Constitution (including obvious lack of competence for conclusion) and the principle of *bona fide* acts as a guiding tool/requirement to the interpretation of the standard for the conclusion of treaties, the Kumanovo Agreement (Kosovo Agreement) violated Article 52 of the 1969 Convention on the Law of Treaties, with illegal coercion and abuse of power against the territorial sovereignty and dignity of the other party, disrespecting its genuine consent, i.e., under *mala fides*. Furthermore, with respect to described violations of pillars of statehood and principles on non-intervention in domestic affairs (matters that are *stricto sensu* in internal jurisdiction embedded in the UN Charter Article 2(7)), we may recall the UN Charter Article 2 (1) bearing in mind that it protects not only the right to "sovereign equality" of all states, but also based on the paramount fundamental norm enshrined in it the *juridical equality* for all states (persons under legal order and applicable even out of scope of the UN system). The norm of *juridical equality* is therefore another general *jus cogens* rule that as a basic principle originates from

Roman law (a customary principle "*subjects are equal under the law*"). Consequently, it could be considered that the Kumanovo Agreement is subject to nullity under Article 53 of the VCLT. Article 53 of the VCLT provides: "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character" (Vienna Convention on the Law of Treaties, 1969, Art. 53).

ISSUES REGARDING ANNEX I OF UN SECURITY COUNCIL RESOLUTION 1244

From that angle, with respect to peremptory norms that condemn and prohibit crimes of aggression and thereby protect territorial integrity (as a sovereign territorial right), the limitations on Serbian self-defense (as just another *jus covens*) are questionable in Annex I of SC Resolution 1244. UN SC Res. 1244 encompasses the Rambouillet Accords, rejected by Serbia (and FRY). Annex I contains "general principles" copied from the Rambouillet Accords on Kosovo agreed at the G-8 Foreign Ministers meeting held on May 6, 1999:

- Immediate and verifiable end of violence and repression in Kosovo;
- Withdrawal from Kosovo of military, police, and paramilitary forces;
- Deployment of effective international civil and security presences in Kosovo, endorsed and adopted by the United Nations, capable of guaranteeing the achievement of the common objectives;
- Establishment of an interim administration for Kosovo to be decided by the Security Council of the United Nations to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo;
- The safe and free return of all refugees and displaced persons and unimpeded access to Kosovo by humanitarian aid organizations;
- A political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet Accords and the principles of sovereignty and territorial integrity of the Federal Republic

of Yugoslavia and the other countries of the region, and the demilitarization of the KLA; S/RES/1244 (1999);

- Comprehensive approach to the economic development and stabilization of the crisis region (Annex I of SC Resolution 1244, 1999).

As we may derive from the presented Annex I and the subsequent SC endorsement of the Rambouillet Accords, in the exact wording of Annex I (copy-paste ultimatum), it fundamentally contradicts the basic provisions in the main part of Resolution 1244 that guarantees the sovereignty and territorial integrity of Serbia and the FRY. In addition, it appears that the KFOR failed in its authorized task related to the impartial "safe and free return of all refugees and displaced persons and unimpeded access to Kosovo by humanitarian aid organizations". Particularly, the KFOR has failed in "demilitarizing the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups" as required by Resolution 1244. The Kosovo authorities were obliged by the KFOR related to "demands that the KLA and other armed Kosovo Albanian groups end immediately all offensive actions and comply with the requirements for demilitarization as laid down by the head of the international security presence (…)" (Paragraph 15 of the SC Resolution 1244).[14] Contrary to that explicit obligation, based on the KLA, the authorities in Kosovo actually created armed forces with the view to becoming a regular army, and that happened under the protective mandate of the KFOR. Apparently, the KFOR's actions have not been impartial, as they were supposed to be. Furthermore, the UN Security Council completely failed in its commitment to "ensure conditions for a peaceful and normal life for all inhabitants in Kosovo" and fundamentally ignored their obligations in "establishment of an interim administration for Kosovo" in an independent and impartial way that could provide a peaceful and normal life for all inhabitants, irrespective of ethnicity. As for the mentioned *jus cogens* limitation (i.e., the norm of sovereign equality of states) applicable to UN decisions, we argue that the FRY's obligation for "withdrawal from Kosovo of military, police, and paramilitary forces" could be ignored by Serbia under blatant humanitarian conditions of the Serb population in Kosovo and Metohija or any attempt by Kosovo Albanians to generate genocide-like conditions for the exodus of Serbians. The *jus cogens* norms are therefore applicable to the legality of the KFOR and UN presence or entitlement for "maintenance of peace" that

[14] Compare Paragraph 9 of the Resolution.

appears presently to defy the basic norms of International Law (i.e., the norm of sovereign equality of states and the prohibition of exodus of people and crimes of aggression). The same conclusion goes for an Advisory opinion of the ICJ delivered in 2010 regarding the Kosovo Declaration on Independence (2008) that was proclaimed not to be in contradiction with sources of International Law.[15] Even if a document of Declaration on Independence did not challenge any existing rule of International Law or the FRY "Constitutional Framework", it appears that Kosovo Albanians did not have legal power for secession from the existing sovereign state (having in mind the territorial sovereignty and sovereign equality of states), at least not in absence of proper international authorization (i.e., UNSC resolution or at least an UNGA resolution). Without any doubt, the "Constitutional Framework" of both FRY and Serbia was harshly violated and the International Court did not understand this simple fact in their deliberation and conclusion that were delivered in its Advisory Opinion. In addition, the International Court seems to fail to realize that secession *per se* constitutes an illegal act in flagrant violation of the *jus cogens* norm of sovereign equality of states that enshrines in itself sovereign (territorial) integrity.[16] If we summarize the general situation with respect to the Kosovo Agreement and Resolution 1244, it appears that the legal grounds of the NATO security presence in Kosovo in the form of the KFOR and UNMIK are at least shaky, making the territorial undefined status of "Kosovo" clearly unlawful and therefore subject to endless negotiation between Belgrade and Priština that seems to be futile. The legal limitation of the NATO/KFOR presence and its role in Kosovo and Metohija is also entirely dubious and undefined, despite the clear obligation of the KFOR to protect human rights and dignity for all inhabitants of that region, regardless of ethnicity, and not to allow

[15] The ICJ in its Advisory opinion made a general conclusion on the question of the legality of the Declaration, that merely states: "The Court has concluded above that the adoption of the declaration of independence of 17 February 2008 did not violate general international law, Security Council Resolution 1244 (1999) or the Constitutional Framework. Consequently, the adoption of that declaration did not violate any applicable rule of international law." This conclusion was apparently different from the opinion of the Serbian Constitutional lawyers who took unanimous standing that the "Constitutional Framework" of the FRY and Serbia was violated by the Declaration. Sovereignty, as a legal term, also covers territorial integrity, and in that sense, it is sometimes used as a term "sovereign territory".

[16] Under the legal order, a *jus cogens* of sovereign equality of states is a type of juridical equality.

other armed forces on this territory to exist or emerge. It should be noted that the Kosovo Agreement and UN Security Council Resolution 1244 (1999) do not endorse or allow any (other) military forces on the territory of Kosovo and Metohija, while Kosovo and Metohija (in general provisions formally) continue to be part of the territory of Yugoslavia and Serbia. Nevertheless, Priština created paramilitary forces and *de facto* declared the existence of its national army and sovereignty, preventing any negotiation about it, with no reaction from the international community or the KFOR. Western powers and leading UN members that are also members of the NATO strongly and visibly supported international recognition of Kosovo as a "state" in all international organization. These actions were in direct defiance of Resolution 1244 and the Kosovo Agreement. In addition, the crucial contracting obligation of the NATO forces (or KFOR) for demilitarization as laid down in Resolution 1244 and both Annexes was not honored and was ignored. An attempt by the international community to resolve the issue of the status and normalization by proposing the Brussels Agreement concluded by Belgrade and Priština (2013) has failed due to non-compliance by Priština (Kosovo).[17] That peacekeeping effort (initiated by the international community and the EU) and compromise accepted by Serbia failed when Priština, with unofficial Western support, unilaterally decided not to abide by its contractual obligation regarding the creation of the Community of Serb (majority) Municipalities in Kosovo (CSM or ZSO). By stark noncompliance, the Kosovo government *de facto* terminated the Brussels Agreement and even started with violent behavior against the Serb population and Serbian property in the ZSO, with basically no reaction from the international community, the UN, or the KFOR. Recent attacks on the Serb population in September 2021 (with respect to usage of registration license plates) by special police of Priština (ROSU police), as paramilitary heavily armed formation, clearly demonstrated that the KFOR in Kosovo and Metohija is not an impartial peacemaker, but rather a facilitator in line with the creation of the statehood for the so-called "Republic of Kosovo". As was firmly confirmed in the General Assembly Resolution 12407 delivered on March 2, 2022, any violation of the territorial integrity or

[17] The first Agreement on the Principles Governing the Normalization of Relations was concluded in Brussels under the auspices of the European Union. The so-called *Brussels Agreement* was signed on April 19, 2013, and it contains six points that, *inter alia*, oblige the Government of the Provisional Authorities in Kosovo to establish the Union of Serbian Municipalities.

territorial sovereignty constitutes a flagrant and fundamental breach of International law and the UN Charter (aggression against Ukraine) equal to the violation of peremptory norms of International Public Law (United Nations, 2022, March 2). In that light, particularly, if the provisional government of Kosovo and Metohija firmly insists on becoming a NATO member in the future, as was recently requested by the Kosovo President, or to intimidate Serbs or generate an ethnic cleansing campaign against the Serb population, in our opinion, Serbia needs to consider an adequate response to any possible scenario, including its own non-compliance with Annex II of SC Resolution 1244 or even termination of the Kosovo Agreement as an illegal act. The Kosovo Agreement was generated after the aggression on the FRY, similar in nature to the Russian invasion of Ukraine in 2022. On March 2, 2022, in its resolution, the UNGA strongly denounced the Russian invasion of Ukraine.

CONCLUSIONS

On June 10, 1999, by adopting Resolution 1244 (1999), the UN Security Council placed Kosovo and Metohija, a province within the Federal Republic of Yugoslavia (FRY) and Serbia, under the joint administration of NATO and the UN KFOR (identical to NATO), as an UN "peacekeeping force". The resolution was approved one day after the end of NATO military intervention against the FRY, i.e., one day after the extorted conclusion of the Kumanovo Agreement (June 9, 1999). The military intervention started when the FRY rejected the Rambouillet Agreement (an attempt at extortion and blackmail that was delivered in the form of an ultimatum to avoid military aggression). These aspects, including the annexes to Resolution 1244, raised considerable controversy over the legality of subsequent NATO aggression as the military intervention was a crime of aggression, i.e., not compliant with the basic norms of *jus ad bellum* and *jus cogens,* particularly with respect to the sovereign equality of states (or juridical equality under legal order). Namely, NATO intervention was not endorsed by the UN organs, and the signing of the Rambouillet Agreement was a precondition for the avoidance of NATO intervention against the FRY/Serbia. After the FRY/Serbia's resolute refusal to accept and sign (conclude) the Rambouillet Agreement, NATO started its incursion operation. At this point, without authorization from the UN SC, NATO aggression can be characterized only as an abuse of power and a crime of aggression. Likewise, the conclusion of the Kumanovo Agreement was an ultimatum (or condition) delivered to the FRY for ending the NATO intervention in 1999. Unless the FRY and Serbia

concluded the Kosovo Agreement, bombing and intervention would not cease. In the process of the conclusion of the Kosovo Agreement and Resolution 1244 (a day later), the NATO forces were merely renamed by the UN as the KFOR, i.e., peacekeeping force. Therefore, the conclusion of the Kemerovo Agreement was just another example of a treaty conditioned and extorted by the threat of armed attack, thus without legally valid consent by parties (e.g., from the FRY/Serbia). Namely, NATO blatantly abuses the power to coerce Serbia and the FRY to sign the treaty (Kemerovo Agreement) under imminent assault threat. The UN Security Council, acting under Chapter VII of the UN Charter, endorsed the Kosovo Agreement as a legitimate treaty, disregarding the imposed character of this act. The Council did not take into consideration that external NATO military intervention (aerial bombardment) was not authorized by the UN Security Council, nor the conditioning of the Kumanovo Agreement (Kosovo Agreement), nor blackmail circumstances with respect to the Rambouillet Accords/Agreement, i.e., pre-conditioning. It should be noted that the Kumanovo Agreement, signed on June 9, 1999, was understood by NATO officials (including M. Jackson, the NATO general who placed its signature) as an agreement for military capitulation of the FRY and the Serbian armed forces. On the other hand, the UN implicitly defined the Kosovo Agreement as a peacekeeping treaty in the spirit of UN Resolution 1244 and in accordance with the purposes of the UN Charter. At that time, many states openly doubted the legitimacy of such a SC Resolution that endorsed the rejected Rambouillet Agreement, thus disrespecting the illegal conditioning of the FRY and its provisions in harsh inconsistency with Article 2(7) of the UN Charter (i.e., non-interference in domestic jurisdiction). For instance, the abstention of China in the UNSC, organ by which the resolution was approved, was clearly provoked under strong presumption that legality of Resolution 1244 was questionable and dubious. The Kumanovo Agreement was subsequently attached to the Resolution 1244 on June 10, 1999, for endorsement *ex post facto* as its Annex II, with the intention to legalize the intervention and provide a legitimate control over the Kosovo territory by NATO (essentially disguised as the KFOR), despite the contradicting general provisions in the Resolution claiming guaranties for sovereignty and territorial integrity of the FRY and Serbia. The wording of Resolution 1244 provides a possibility for conclusion of the Kosovo Agreement as its Annex, and it appears that in the moment of its conclusion, the KFOR as a party to the agreement did not formally exist. Only the UN Security Council has the authority to create or rename peacekeeping forces under the UN mandate. Therefore, Annex II is basically a separable attachment to the SC resolution.

Thus, in the case of an amendment or termination of the Kosovo Agreement provisions, SC Resolution 1244 would still remain in force. The conditionality of the creation of the treaty (Kosovo Agreement) in the wording (of Resolution 1244) suggests that Annex II (Kosovo Agreement) was legally not an inseparable part of the UNSC resolution. Likewise, in the absence of a SC resolution, the Kumanovo Agreement would independently produce legal effects (rights and obligations) with respect to the parties. As for the legal quality of the treaty, Serbia's valid consent is still missing, and the signatures placed on the Kosovo Agreement were legally unconstitutional (according to the Serbian Constitution). In conclusion, the Kosovo Agreement, *per se*, has demonstrated its unlawfulness as far as the KFOR security presence is concerned, and it is in violation of the *jus cogens* norms of International law to the extent of the abuse of power by NATO. Resolution 1244 itself goes beyond the bounds of UN legality, upholding and revoking the mandate given by the dubious Kumanovo Agreement. From a practical point of view, if the Kumanovo Agreement is annulled, then Serbia will be obliged to intervene with its forces in Kosovo and Metohija. In our research, we pointed out that the absence of true consent and non-compliance with bona fides (by abuse of authority) when concluding a contract is a violation of the imperative rule of general international law. Hence, neither the "legitimacy" offered by "humanitarian problems" nor the "effectiveness of international action" could justify the nullity of this Agreement. This conclusion became self-evident, especially after the adoption of UNGA Res. 12407/2022 that condemns the Russian invasion of Ukraine. Therefore, in the case of the Kumanovo Agreement, the application of Article 52 of the Vienna Convention on the Law of Treaties of 1969 (VLCT) is not only possible, but also recommendable in cases of humanitarian disaster. This Article of the VLCT provides that: "A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations". Furthermore, in our research, we have found yet another source for nullification of this dubious treaty, i.e., the possibility to apply Article 53 of the VLCT. The VLCT Article provides for the *jus cogens* termination as follows: "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole, as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character". It goes without saying that

such a measure (termination of an international treaty) should not be applied easily or with no good reason. On the other hand, in the case of complete non-compliance with duties (i.e., the ones presumed by the Kosovo government with respect to the Brussels Agreement and their *de facto* termination of this agreement or in cases of humanitarian crisis sparked by Kosovo's forces), it seems a legitimate step for Serbia to terminate the Kosovo Agreement (Annex II of SC Resolution 1244) on the grounds provided by Articles 52 and 53 of the Vienna Convention on the Law of Treaties (1969). The different treatment of the invasion of the FRY (1999) and the invasion of Ukraine in 2022 clearly demonstrates double standards for international situations of similar nature.

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