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On my honour as a student of the Diplomatic Academy of Vienna, I submit this work in good faith and pledge that I have neither given nor received unauthorized assistance on it. - Yves Vervecken



Successful and Failed International Mediation

THE AHTISAARI AND ASHTON MISSIONS IN KOSOVO

Title:	Successful and failed international mediation – The Ahtisaari and Ashton missions in Kosovo
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Abstract

Through policy analysis and legal synthesis this thesis pursues insight into what makes the difference between success and failure in international mediation. In addition to applying the 'UN Guidance for Effective Mediation' to two Kosovo missions, a first one led by Martti Ahtisaari and a second one by Catherine Ashton, comparing and contrasting the findings thereof reveals that 'consent' and 'local ownership' are decisive for success given opportunities present themselves and are seized.

Bringing together prominent insights into Kosovo's legalistic road to independence, it appears that many, mainly mediatory, innovations to finding a third way out of the legal dilemma between on the one hand 'Sovereignty and Territorial Integrity of States', and on the other hand 'Self-Determination of Peoples', led to "a paradigm shift in the jurisprudential underpinning in the Security Council's power to authorize force" (Haines 2009, 486).

While veto power has left that shift largely inconsequential and a change to the UN Charter is highly unlikely, this thesis recommends the United Nations to take the lead in fully developing international mediation as a profession in its own right, because "it may well be that mediation is the closest thing we have to an effective technique for dealing with conflicts in the twenty-first century" (Bercovitch 2011, Intro).

Keywords: International Mediation, Kosovo, Ahtisaari, Ashton, 'UN Guidance for Effective Mediation'

Diese Arbeit möchte durch politische Analysen und eine Synthese rechtswissenschaftlicher Bestimmungen eine Einsicht in Gelingensfaktoren internationaler Mediation geben.

Die Evaluation der Richtlinie 'UN Guidance for Effective Mediation' bezogen auf zwei verschiedene Kosovo-Missionen unter der Leitung von Martti Ahtisaari einerseits und Catherine Ashton andererseits ergibt, dass die Zustimmung und

der lokale Besitz entscheidend sind für den Erfolg , sofern sich Gelegenheiten bieten und genutzt werden.

Unter Berücksichtigung der dargestellten Einsichten in den kosovarischen Einheitsprozess verdeutlicht diese Arbeit, dass viele – vornehmlich mediatorische – Neuentwicklungen einen dritten Weg aus dem Dilemma zwischen einerseits der ‘staatlichen Souveränität und territorialen Integrität’ und andererseits dem ‘Selbstbestimmungsrecht der Völker’ zeigen, einer “paradigmatischen Verschiebung der rechtswissenschaftlichen Grundlagen des Sicherheitsrates zur Autorisierung von Macht” (Haines 2009, 486, übersetzt). Da aber das Vetorecht diese Verschiebung inkonsequent erscheinen lässt und eine Änderung der UN-Charta sehr unwahrscheinlich ist, empfiehlt diese Arbeit, dass die UN die Leitung übernimmt, die internationale Mediation als eigenständige Profession zu entwickeln, weil “es sein kann, dass die Mediation den einzigen zur Verfügung stehenden Ansatz bietet, mit Konflikten des 21. Jahrhunderts umzugehen.” (Bercovitch 2011, Intro, übersetzt).

Schlagwörter: International Mediation, Kosovo, Ahtisaari, Ashton, ‘UN Guidance for Effective Mediation’

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Introduction

“If anything, we have seen more conflict since 1991, but it has been conflict of a different kind. Internal, intense and deep-seated conflicts characterized the post-Cold War era. These conflicts are usually very difficult to resolve, and it may well be that mediation is the closest thing we have to an effective technique for dealing with conflicts in the twenty-first century.” This is what Jacob Bercovitch, one of the leading scholars on international mediation, wrote in 2011 (Bercovitch 2011, Introduction). So, if one is concerned with the peaceful resolution of conflict in an international context, then it merits to have a closer look at what renders such mediation successful or failed. It would seem that most international actors share that concern. Indeed, 193 or almost all nation states, have adopted the UN Charter which carries mediation in its DNA, as may be apparent from its preamble, but even more from the purposes and principles articulated in articles 1 and 2. In addition to “All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered”, “self-determination of peoples” and “sovereign equality of all its members” are pillars of the UN (UN Charter, art. 2(3), 1(2) and 2(1) respectively). It would seem that the latter two carry the seeds of many a deep seated conflict. Accordingly, it shouldn’t be surprising that the UN has invested in improving the mediation technique, in particular following traumatic failures in Rwanda and the former Yugoslavia during the 1990s. Moreover, after its “Unipolar Moment” (Krauthammer 1990) in the first decade after the collapse of the Soviet Union, the US found out that it could no longer impose its will and non-state actors, not limited to terrorist organizations, further complicated conflicts. All this has resulted in a substantial body of knowledge that the UN maintains on mediation and that captures lessons learned and best practices (D. United Nations, United Nations Peacemaker 2012). Lessons have certainly been learned with the case of Kosovo and the two major mediation missions on it, in particular the missions led by Martti Ahtisaari from 2005 till 2007 and by Catherine Ashton from 2011 till 2013.

Kosovo is characterized by “deeply engrained enmity between Serbs and Albanians [that] can be traced back to claims by each side to have settled first in the territory” (Neuhold 2012, 326). One could draw parallels to historic claims by Russia over Ukraine, or to religious divide and mutual heritage claims between Palestinians and Israelis or to religious and ethnic conflict in Bosnia-Herzegovina. In the Western Balkans and Kosovo the rivalries were suppressed under the leadership of Tito and the Yugoslavian creed of Brotherhood and Unity, which started to crumble not too long after Tito’s death in 1980, resulting in the Yugoslavian secession wars in the 1990-ies. During the Yugoslav years Kosovo, as part of the republic of Serbia, gained far reaching autonomy as part of a constitutional reform in 1974. When Serbian president Milosevic rescinded that autonomy in 1989, Kosovo Albanians first reacted with civil disobedience and parallel institutions. When that did not produce result, it escalated to armed resistance that provoked brutal retaliation by the Milosevic regime which eventually led NATO to intervene with 78 days of bombing. That NATO campaign, known as Operation Allied Force, is generally considered illegal under international law. The debate about its legality and legitimacy would feed into the doctrine of Responsibility to Protect. Of particular interest for Kosovo was that Operation Allied Force forced Milosevic to an agreement that was transcribed in UN Security Council Resolution (UNSCR) 1244 in June 1999 and which established the international administration of Kosovo, known as UNMIK (the United Nations Mission to Kosovo). In 2004 anti-Serb riots broke out again, followed by the Ahtisaari mediation mission from 2005-07, a unilateral declaration of independence by Kosovo in 2008, an unsuccessful attempt by Serbia to overturn that declaration at the level of the UN with the ICJ advisory opinion on it in 2010 and the Ashton mediation from 2011-13. In addition to handling the same conflict, dealing with the kind of conflict that tests mediation the most, makes these two missions in Kosovo ideal case studies to evaluate success and failure of international mediation. While the Ahtisaari mission at first sight appears a failure in the absence of a signed agreement between the

conflicting parties, and the Ashton mission a success, I will contend that there is more to success than the existence of an agreement.

In the first chapter, I will not only assert that the second mission could not have been successful without the results of the first, but also qualify to what extent the latter was a success. To that end, I will first consider 8 fundamentals that the UN advances to take into account when designing and running a mediation mission (United Nations Guidance for Effective Mediation 2012). Second, I will propose three different lenses or criteria for evaluating success. The UN Guidance fundamentals aim at a high quality process in the hope that that will further the probability for success. One by one I will assess to what extent each mission measures up against each fundamental. Subsequently, I will do the same for each of the three success criteria to evaluate the outcomes of the process. To qualify the assessment results I have adopted a heuristic scoring table that judges a mission to either fail, pass or partially pass, assuming that a higher number of passes and partial passes on the process fundamentals will correspond to a similar result for the outcome criteria. In comparing and contrasting those results I will conclude that out of the eight fundamentals consent and 'local'¹ ownership are the decisive factors for successful mediation. A minimum level of consent is required, which can be improved upon or lost entirely in the course of a mission. Local ownership is the other side of the coin. Indeed when there is sufficient consent and local ownership, a seasoned mediator and team can work wonders, credibly wielding carrots and sticks impartially. In evaluating the Ahtisaari mission I will largely draw on "The road to independence for Kosovo : a chronicle of the Ahtisaari plan" by Henry H. Perritt (2009) a book which "comes as close as an outsider can to opening doors into the chambers where the political forces of Belgrade and Pristina tangled and diplomats from Russia, the EU, and the United States struggled to craft the

¹ Contrary to the UN Guidance I believe it more appropriate to talk about 'local' ownership, rather than 'national' ownership, since conflict parties, as in the case of Kosovo, cannot always be referred to as nations.

least destabilizing disposition of Kosovo” (Legvold 2010). I use a number of publications by the International Crisis Group to corroborate the chronicle, in particular the 44p report “Kosovo: No Good Alternatives to the Ahtisaari Plan”. With respect to the Ashton mission my analysis relies mostly on “The Serbia-Kosovo Agreements: An EU Success Story?” by Florian Bieber, published in *Review of Central and East European Law* (2015) the article traces the negotiations and identifies the particular features of the process. Furthermore I complement Bieber’s insights with those from Robert Cooper, one of Ashton’s lead mediators and from Steven Blockmans, the head of EU Foreign Policy at the Centre for European Policy studies. The basis for my arguments about mediation are rooted in the UN Body of Knowledge, in particular the “United Nations Guidance for Effective Mediation” first published in July 2012, as well as “The law of International Conflict. Force, Intervention and Peaceful Dispute Settlement” by Hanspeter Neuhold (2015) and “Theory and Practice of International Mediation, Selected essays” by Jacob Bercovitch (2011), which brings together some of the most significant papers on international conflict mediation by one of the leading scholars in the field. Additional insights come from Ambassador Francesc Vendrell, who has been involved in mediating a variety of conflicts, including as EU special representative for Afghanistan and as UN Special Envoy for Afghanistan, Bangladesh, East Timor, Cambodia, Papua New Guinea, Myanmar, Armenia, Azerbaijan and Central America. In addition he has served as director of the Asia and Pacific Division at the UN Department of Political Affairs and as director for Europe and Americas in the Office of the UN Secretary-General. In particular I will draw on an article he wrote for the United Nations Institute for Training and Research (UNITAR)², succinctly summarizing his expert ‘suggestions’: (Challenges for the United Nations in Peacemaking 2014)³.

² In 2014 the institute published a collection of articles at the occasion of the 20th anniversary of the UN’s first training program in peacemaking and preventive diplomacy, in which Vendrell’s article features as well. (Peck and Wertheim 2014)

³ I should declare that I received the elaborated version through a full semester class in 2016, titled “The United Nations, Conflict Mediation and Peaceful Resolution”. Ambassador Francesc

In the second chapter I aim to shed light on how the events in Kosovo not only were affected by, but also influenced the international legal framework, in particular via the Badinter Commission, the Rambouillet Conference, Operation Allied Force, UN Security Council Resolution 1244 and the ICJ advisory opinion of 22 July 2010 and indeed the Ahtisaari Plan. And while the Standards before Status Policy officially only started in 2002, its spirit was present throughout those events. After the initial fiasco in resolving the deeply ingrained enmity between Serbs and Albanians amidst the break-up of the Socialist Federal Republic of Yugoslavia (SFRY), that policy was to settle the dilemma of self-determination of the people of Kosovo versus the sovereignty & territorial integrity of the Federal Republic of Yugoslavia and Serbia. The evolution of 'standards before status' not only helps to better understand the results of the two mediation missions discussed in the previous chapter, but also the effects of the overall Kosovo events on the international legal framework.

In addition to cross-referencing the literature I have used for mediation in international relations, my legal synthesis will rely on literature that provides a balanced account not only of the cross fertilization and interconnectedness of the disciplines of international relations and international law, but also on the case of Kosovo. Neuhold asserts that "[b]oth disciplines [International Law and International Relations] would benefit from a more intensive dialogue" (Neuhold 2015, 4). Milanovic and Wood⁴ use the interplay between law and politics regarding Kosovo's independence generally and the advisory opinion specifically as the main theme in their 2015 edited collection of essays by prominent scholars. Of particular interest for this thesis are the contributions by Marko Milanovic – adviser to the Serbian legal team and co-editor of the book – titled "Arguing the Kosovo case" and by Harold Hongju Koh – head of delegation and advocate for the US legal team – titled "Reflections on the law and politics of

Vendrell delivered this class in his capacity of Adjunct Professor of International Relations at Johns Hopkins School of Advanced International Studies, Europe.

⁴ (Milanovic and Wood, *The Law and Politics of the Kosovo Advisory Opinion* 2015)

the Kosovo case“, as well as a third chapter called “Reflections on the ICJ Advisory Opinion on Kosovo; Interpreting Security Council Resolution 1244 (1999).” In terms of the mutual effects of the events concerning the two mediation missions in Kosovo on international relations and law, a series in International Affairs of 2009 was inspirational, in particular the article by Haines “The influence of Operation Allied Force on the development of the *jus ad bellum*”⁵. Further inspiration on how the dilemma, between on the one hand Sovereignty and Territorial Integrity of States and on the other hand Self-Determination of Peoples, is handled within the international legal framework, stems from three publications by Marc Weller. He is a renowned scholar and practitioner of international law and international relations, esteemed in dispute settlement and mediation, as well as “legal advisor for Kosovo during the 1999 Rambouillet Conference on Kosovo and senior legal advisor in the UN-led Vienna process of Final Status Negotiations between Kosovo and Serbia of 2006/7”⁶. Subsequently he contributed to the drafting of the Kosovo Constitution and drafted the Law on the Protection of Minorities in Kosovo and the Statute of the Community Consultative Council”⁷. In a 2009 article in the European Journal of International Law he “reviews over 40 settlements and draft settlements in order to identify an emerging post-modern pattern of practice of settling self-determination disputes...[and] assesses the impact of this practice on the classical, restrictive understanding of the doctrine of self-determination“ (Weller 2009, 111). His December 2008 Chaillot paper⁸ “Negotiating the Final Status of Kosovo” explores how “Serbia managed to lose Kosovo, a territory apparently clearly encompassed by its territorial sovereignty... [and how this] loss was administered by the very agencies and governments that had committed themselves so strongly to the principle of territorial unity.” (Weller 2008, 9). His

⁵ (Haines 2009)

⁶ Another way of referring to the Ahtisaari mission

⁷ Quote taken from his biography as published by the University of Cambridge at https://www.polis.cam.ac.uk/Staff_and_Students/professor-marc-weller (accessed 24 December 2017)

⁸ Chaillot papers are the flagship publications of the European Union Institute for Security Studies. See <https://www.iss.europa.eu/publications/chaillot-papers>

third publication of April 1999 in *International Affairs*, provides a legal analysis of events leading up to Rambouillet and Operation Allied Force (OAF). In addition to synthesizing the referenced analyses, I integrate the view of Alain Pellet – member of the Commission of International Law of the United Nations – regarding “The Opinions of the Badinter Arbitration Committee. A Second Breath for the Self-Determination of Peoples” as published in the *European Journal of International Law* volume of January 1992. Moreover Patrick Macklem, the William C. Graham Professor of Law at the University of Toronto, provides valuable insight into the role of International Human Rights Law as “mitigat[ing] injustices produced by the ways in which international law brings legal order to global politics” (Macklem 2014, 1, 2, 20 et seq.). And while International Human Rights Law came of age with the concept of Responsibility to Protect (R2P), no third exception on the threat or use of force for humanitarian intervention was written into the UN Charter, nor was it supported by sufficient state practice and *opinio juris* to be recognized as international customary law.

Finally, I will conclude with a plea to develop International Mediation as a profession in its own right with an eye to preventive diplomacy, not only ‘to maintain international peace and security’ but also ‘to develop friendly relations among nations’ (United Nations, UN Charter 1945, Purposes 1 and 2).

The UN perspective of International Mediation & Kosovo

Before evaluating the two apposite cases of mediation, I would define mediation as “active participation of a third party in the negotiation process between the parties to a dispute” (Neuhold 2015, 180). Neuhold goes on to differentiate the technique from others where third parties actively intervene to resolve a conflict pacifically, in particular adjudication and arbitration. He points out that the proposals formulated by a mediator are non-binding and need not be grounded in existing international law (Neuhold 2015, 181). That may allow for more creativity in finding a way out. Bercovitch posits that “Typically, international actors deal with conflict by taking one or more of three possible actions: unilateral, bilateral or third-party interventions... The unilateral mode may involve an attempt to win over the opponent through violent struggle, or it may involve withdrawal or avoidance. The bilateral mode implies some form of bargaining and compromise (i.e. negotiation). The third-party mode means the intervention of a party not directly involved in the conflict (i.e. adjudication or mediation)”. He goes on to conclude from large N empirical studies that “mediation will be chosen and employed by states when the conflict is long-drawn-out, intense and complex, and the parties are willing to break their stalemate by cooperating with each other and engaging in some contact and communication... When, on the other hand, the conflict structure is simpler and less intense, parties will most likely resolve it themselves through bilateral negotiations. In such circumstances, the parties may perceive third-party intervention as an unwanted intrusion and even resist it.” (Bercovitch 2011, Chapter 9: Negotiation or Mediation).

Preparedness (process fundamental)

The first fundamental to consider is labelled “Preparedness”. This is about having a clear mandate, in other words a clear objective and corresponding support from the international community, in particular the UN and its member states, not only in terms of budget, resources and logistics, but also active support of those that can influence parties towards reaching the stated

objectives. In addition it concerns the quality of the mediator and team, whether they are fit for purpose. Not every mediator's style, experience, language skills or other characteristics suit every circumstance or type of conflict, however successful his or her track record. Vital as well is a good stakeholder mapping and corresponding strategy on how to deal with the core interests of the parties and not just with their stated positions. A mediator may get to the core interests by asking pertinent questions about why it is that parties act or react in the way they do. All this preparation should enable the mediator to manage the process and continuously adjust the strategy to any progressive insights or changing circumstances. This includes helping the weaker party to a level playing field. Martti Ahtisaari is arguably one of the most achieved mediators of recent history, successful in different capacities and circumstances, including as special representative of the Secretary-General running the UN peacekeeping operation leading to an independent Namibia in 1990, as central contributor to resolving conflicts in Northern Ireland, the Horn of Africa and Central Asia, and as second track mediator with his private company "Crisis Management Initiative" for an agreement in the deep seated conflict of Aceh in Indonesia and ,particularly relevant, as the mediator who got Serbian president Milosevic and Russia to agree to the terms of UNSCR 1244 in 1999 (Perritt 2009, 62). In addition he assembled a stellar team that was experienced in and respected by the different viewpoints of both conflict parties and of the UN member states that formed the so called Contact Group. This group consisted of 4 permanent members of the UNSC – the US, Russia, the UK and France – complemented with Germany and Italy as the other big powers in Europe. The Contact Group was well placed to coax both Serbs and Kosovo Albanians towards an agreement along the lines of ten guiding principles they had established for the mission's mandate. Those principles are summarized in the UN Year in Review report of 2006 stating that "there should be no return of Kosovo to the pre-1999 situation, no partition of Kosovo, and no union of Kosovo with any or part of another country, while affirming that the settlement needs to be acceptable to the people of Kosovo and that a multi-ethnic settlement is the only workable option" (United Nations,

Year in Review 2006). Sometimes the 10 principles are referenced as “the 3 No’s” (Perritt, *The Road to Independence for Kosovo: A Chronicle of the Ahtisaari Plan* 2009, 130). In the minds and words of Ahtisaari, his team and the Quint⁹ those principles became to mean “an independent Kosovo”, and throughout they believed that they could convince Serbia or at least Russia of the same, as long as “Russia thought everything possible had been done to address legitimate Serbian interests in Kosovo – other than maintenance of its sovereignty” (Perritt 2009, 143). In fact, for a long time it seemed that Russia would go along. In September 2004 Russian foreign minister Lavrov had told the head of UNMIK that “We know that Kosovo is lost, but we need to talk about Abkhazia, Ossetia, Transnistria, Karabakh, and a few other places” and in November 2005¹⁰ that “[he had warned the Serbs in Belgrade], Do not isolate yourselves [and] Do not expect Russia to join you in isolation.” (Perritt 2009, 142). Furthermore, Russia had, be it reluctantly, always agreed with the other members of the Contact Group, including to the statement “Kosovo cannot go back to its pre-1999 status” (ibidem). Moreover, Ahtisaari had correctly recognized that Putin’s Russia of 2006, that wanted to reassert itself as a regional power, was quite different from Yeltsin’s Russia in 1999, that had acquiesced more easily with the US unipolar moment. However, it would turn out that he had underestimated the tenacity of Serbia to peel Russia from the Contact Group (Perritt 2009, 138-9). At the same time the big enlargements of both the EU and NATO eastward in 2004, as well as the color revolutions taking place in Russia’s neighborhood between 2003 and 2005, may well have compounded the issue. So it seems unlikely that any mediator could have managed the situation better than Ahtisaari did. With respect to the Ashton mission, some say that it did not have a clear goal when it started talks in March 2011 (Bieber 2015, 297), I disagree. The fact that it started the negotiations only with a broad purpose of a dialogue to establish common ground and with a process to gradually address issues for normalizing relations between the two ‘sides’, is perhaps clearer a goal than a detailed

⁹ The ‘Quint’ is the ‘Contact Group’ minus Russia

¹⁰ At the same time that Ahtisaari started his mission

agenda. In addition, the EU had identified a shared interest for EU membership and the mediation was driven by a small, highly motivated team from its newly created foreign policy structure, the European External Action Service. The team could not present the track record of the Ahtisaari team, but it did learn from it that it had to de-scope the final status issue to stand a chance for success.¹¹ Now was the time for the EU to shine and to seize the opportunity provided by the ICJ Advisory Opinion of July 2010, that had halted Serbia's attempt to overturn Kosovo's unilateral declaration of independence of 2008. By then the independence had already been recognized by nearly 70 UN members, it would be 116 (out of a total of 193) by 2018.

In conclusion, both missions "pass" the Preparedness fundamental.

Consent (process fundamental)

The second fundamental that the UN lists in its "Guidance for Effective Mediation", consent, is essentially about commitment to joining the process of mediation by all parties. Seldom one will see that all parties participate wholeheartedly, but there should be at least sufficient consent. As elusive that it may be to define what is sufficient, it is clear that the first step is accepting the mediation offer. In addition to joining 'talks', the level of positive energy the parties invest is indicative and can be build up incrementally. Starting small with less controversial issues, the mediator may bring sides closer together step by step and build confidence seizing any window of opportunity or running interference with any spoilers that present themselves at the beginning or during the course of the mediation process. Accordingly consent is dynamic and needs to be monitored and cultivated.

It is safe to say that consent was insufficient from the side of the Serbian delegation during the Ahtisaari mission. Their approach was not constructive and can be summed up as "delay, destabilize, divide and discredit". (Perritt 2009, 138). Such attitude does not demonstrate commitment nor is it conducive

¹¹ Reference (Bieber 2015) for a further balanced account of the preparedness of the EU mediation team

to building confidence. Moreover there was little the mediator could do about it, considering that Serbia was perfectly content with the status quo and intransigent even to Russian influence to the extent that Ahtisaari replied to Russian Foreign Minister Lavrov that “Russia is a great power, entitled to help shape the Security Council's decision about Kosovo. I agree. So why is your foreign policy on this subject being made in Belgrade?” (Perritt 2009, 125-6). The Serbian delegation was in the stronger negotiating position, credibly claiming to be “demandeur de rien”, while the Kosovo Albanian delegation was inexperienced and eager to move away from the status quo towards independence. This double disadvantage would show for instance in the talks on decentralization when the Kosovo Albanian delegation would give away their bargaining position from the beginning leaving no room for further concessions in a confidence building attempt. (Perritt 2009, 158). Perhaps Ahtisaari’s team could have coached them better on this, ensuring a level playing field, however chances were slim for it to make a difference.

Four years later circumstances had changed. In 2008 Elections in Serbia had been won on a pro-European platform and after the ICJ advisory opinion Catherine Ashton could convince Serbian president Tadic to jointly propose a resolution before the UN General Assembly for EU mediation. Subsequently, midway through the Ashton mediation, when the incremental buildup of technical agreements had reached its limit and needed more political agreement to enable implementation, elections would again offer a window of opportunity. A convincing win by the Nationalists in Serbia ensured that they could not be accused of betraying the country when making much needed concessions. Still, not all winds blew favorably for Ashton, as in 2010 elections in Kosovo saw the Kosovo nationalists, who were opposed to the negotiations and would only accept outright independence, rise to become the third party in parliament. This meant that, in comparison with the Ahtisaari mission, consent had improved on the Serbian side, but deteriorated on the Kosovo Albanian side. A good example though of how the Ashton team managed to cultivate the consent was seen on 2 April 2013. After six months and eight rounds of political negotiations Ashton

sent both teams home stating that unless they could find a way to overcome their differences in the next two weeks, the talks were over and any chance for a positive recommendation to advance to the next stage of EU membership - that was to be decided on at the EU summit in June - foregone. On 19 April both sides signed what is now known as “the 2013 Brussels Agreement” (Blockmans 2013).

Consequently I would rate consent for the Ahtisaari mission as failed and as “partial pass” for the Ashton mission.

Impartiality (process fundamental)

One thing to emphasize when it comes to impartiality is that it is different from neutrality¹². A mediator must act in accordance with the purposes and principles of the entity he represents. In international mediation this means to uphold the UN purposes and principles¹³ as the UN Charter may be considered the constitutional instrument of the international community (Neuhold 2015, 1).

Consequently, impartiality requires to clearly communicate those values and to demonstrate fair and balanced treatment of the conflicting parties.

As discussed above, under preparedness, in the case of Ahtisaari this meant advocating independence for Kosovo, yet not acting partially. In fact, he was

¹² The difference goes back to the Brahimi report on Peace Operations presented to the General Assembly and the Security Council on 21 August 2000 (A/55/305; S/2000/809) and adopted by the General Assembly on 8 December 2000 (A/RES/55/135). Subsequently, it has since been repeated in many UN publications like the Capstone Doctrine on Peacekeeping Operations of 2008, the HIPPO report of 2015 (A/70/95-S/2015/446), as well as the UN Guidance for Effective Mediation of 2012, the Manual for UN Mediators of 2010 and the 2014 UNITAR publication on Strengthening the Practice of Peacemaking and Preventive Diplomacy in the United Nations. Essentially it holds that parties need to be treated evenhandedly rather than equally in all situations all of the time. Impartiality is about behaving in accordance with the UN Purposes and Principles, always on the merits of the actions by parties instead of on the identity of parties. I would argue that neutrality is virtually impossible to achieve or as Bercovitch posits “Engagement and not neutrality is the key to successful third-party intervention. To overlook this point is to mistake the nature of mediation in international relations.” (Bercovitch 2011, Chapter 3: The Study of International Mediation) Similarly, impartiality is elusive and often in the eye of the beholder.

¹³ Ambassador Vendrell asserts that clear objectives and strategy need to be in conformity not only with the purposes and principles of the UN Charter, but with the Universal Declaration of Human Rights (1948) as well; adding that it is a matter of impartiality and objectivity, not of neutrality (Vendrell 2014, 101). I would advise the same applies to any, including second track, mediator. One might suggest that EU mediators ought to conform to the European Convention on Human Rights (1950).

meticulous in taking the interests of the Serbians into account, in particular the Kosovo Serbians. That was also one of the reasons why Kosovo Albanians were not wholeheartedly satisfied with the roadmap to independence he would deliver, another reason was that the process would take too long and was to be supervised by the UN. In this regard it should be noted that 3 types of mediator exist: the direct type whose style is somewhat aggressive and who could be seen to take pleasure in being confrontational with parties, the soft type who smooth-talks parties and the diplomatic type who is able to deliver a harsh message when it is due. I see Ahtisaari rather as the direct type, balanced by the more diplomatic style of this deputy Albert Rohan, an Austrian Ambassador. A good example of Ahtisaari's direct style that also goes to his clear and unambiguous communication about his mission's goal, comes from his first meeting with Serbian leaders, including then Prime Minister Kostunica, in November 2005: "You have lost Kosovo, the challenge now is how to clean up Milosevic's mess. The best way to do it is with your leadership." (Perritt 2009, 130-1).

With Ashton, the whole approach of open dialogue is exemplary for fair and balanced treatment. The mediation team made it clear that advancing EU membership required normalization of relations between the two sides, but allowed both to save face in the process by keeping the agreements ambiguous. (Bieber 2015, 316) Thus the team tended not only to impartiality, but even to neutrality. At the same time, EU member states - that took on the role of influencers like the Contact Group before - were more outspoken about the end goal. While 5 of 27 EU member states at the time refused to recognize Kosovo's independence, some, in particular Germany and the UK, were adamant that accession would necessitate recognition of Kosovo by Serbia. (Bieber 2015, 299) In terms of impartiality both missions pass.

Inclusivity (process fundamental)

In theory, a mediator should include all involved parties in the negotiations. In practice however, based on a comprehensive stakeholder mapping, he or she will decide to what extent all interests can be represented aiming for a durable

agreement in an efficient manner. Consequently the mediator will have to strike several balances. First of all a balance between inclusivity and efficiency. Having too many parties represented will render the process overly complex, too few may create unwelcome spoilers to implementing any agreement. Moreover, one party may object to another being present. If, for whatever reason, an involved party is not represented directly in the negotiation, the mediator may still consult with it separately or keep it apprised indirectly through influencers that have the success of the mediation at heart. Such influencers may take the form of Ahtisaari's Contact Group, EU member states in the case of Ashton, or more generally what is known as a group of friends at the UN, meaning friends of the Secretary-General, whom the mediator represents, as opposed to friends of a party or of a particular interest different to that of the Secretary-General (Vendrell 2014, 101). The mediator may also include other important stakeholders, like civil society, through press conferences or more broadly through traditional and social media. Which brings us to the balance between transparency and confidentiality. Too much transparency may inhibit parties to make concessions and stay entrenched in the positions that got them into the conflict, too much confidentiality may alienate civil society and jeopardize implementation of an eventual compromise. In addition, gender balance, particularly including women in the process, is strongly encouraged in the UN Guidance. Also, contact with indicted people should be limited¹⁴. Furthermore, for reasons of security of participants as well as mediators, but also of equal opportunity and objectivity, it is preferred to meet on neutral ground. The Ahtisaari mission is characterized by large and experienced delegations, in particular the mediation team, the Serbian delegation, as well as the US, Russian and to a lesser extent the EU teams influencing the parties (Perritt 2009, Chapters 9 and 10). The inexperience of a forming state showed when the initial Kosovo Albanian team had no authority to negotiate, which the mediation team

¹⁴ On this matter, it is interesting that the head of UNMIK, Soeren Jessen-Petersen, persuaded the ICTY to release former Kosovo prime minister Haradinaj, albeit under strict conditions, to ensure balanced representation within the Kosovo Albanian delegation (Perritt, *The Road to Independence for Kosovo: A Chronicle of the Ahtisaari Plan* 2009, 139).

helped correct, enabling meaningful discussion. (Perritt 2009, 155). Kosovo Serbs on the other hand were part of the Serbian delegation where they remained underrepresented (Perritt 2009, 156). Interestingly, reaching a negotiated agreement on the final status issue for Ahtisaari applied to agreement within the UN Security Council, rather than between Belgrade and Pristina. While the latter was considered impossible, the former was fraught with danger as well. It meant trying to either negotiate “a course of action such as putting a plan for Kosovo's final status to a vote in the Security Council and thereby risking a Russian veto, or encouraging Kosovo to declare independence followed by some states’ recognizing independence” (Perritt 2009, 135-6). After each round of direct talks in Vienna, neutral Austria’s capital, Ahtisaari would first hold a press conference himself followed by one of each party before they returned home. That way at least the initial declarations were minimally tainted by criticism on possible concessions. Therefore these semi-controlled press conferences seem like a good way to balance transparency and confidentiality.

The delegations during the Ashton mediation were more limited but of high authority, in particular during the more political rounds with both sides represented by its Prime Minister. The mediation team deliberately decided not to publicize the incremental agreements reached, choosing confidentiality over transparency and leaving the latter up to each side as part of ensuring national ownership. This time the Kosovo Serbs were only indirectly represented through the Serbian delegation that wanted to maintain its power base in Kosovo. The rounds of direct talks were conducted at EU headquarters in Brussels.

In conclusion and considering the circumstances that provoked different approaches, I qualify both missions’ efforts as passing the inclusivity process fundamental.

National Ownership (process fundamental)

“You can lead a horse to water, but you can’t make her/him drink” is what Martti Ahtisaari may well have pondered. While consent is about commitment to the process, national ownership is about commitment to the outcome and

implementation of mediation. Consequently, the role of the mediator is to help the parties and civil society, discover avenues to agreement, including accepting support from the international community to implement an agreement and insulating parties and implementation from potential spoilers. Yet it is vital that any solution fit local circumstances and that parties can claim credit themselves. As with consent, national ownership can be construed incrementally via intermediate agreements on increasingly crucial issues. Accordingly it is good practice for the mediator to agree all items that need to be addressed with the conflict parties beforehand and then order them for confidence building to culminate in comprehensive agreement and durable implementation.

Ahtisaari was rigorous in setting the agenda, more so than Ashton, but he lacked sufficient commitment. In addition, Ashton cleverly played public opinion visiting the Balkans together with US Secretary of State Clinton at the beginning of the more political negotiations in October 2012 and in the wake of the favorable elections in Serbia. Moreover, Ashton's ability to gain more consent and 'local'¹⁵ ownership was due to her holding the keys to EU membership which both parties hoped to win. Still, this leverage did not translate into unconditional commitment as would be witnessed by troublesome and slow implementation of technical and political agreements alike. One could say that the horse may have found the water too turbid at times or that parties longed for rakija rather than plain water.

In summary, the evaluation on national ownership bears the same result as the one on consent, scoring Ahtisaari as fail and Ashton as partial pass.

International Law and Normative Frameworks (process fundamental)

According to the UN Guidance a factor for success is to be crystal on the mandate, and on where the limits lie of the international legal and normative framework. While this runs counter to the non-binding aspect of the theoretical definition I offered above, compliance with that framework will reinforce

¹⁵ Contrary to the UN Guidance I believe it more appropriate to talk about 'local' ownership since conflict parties, as in the case of Kosovo, cannot always be referred to as nations

legitimacy of the process and durability of the outcome. Moreover the Guidance bears out that the urgency of a conflict, in particular ongoing (large numbers of) casualties, may make legitimacy take precedence over legality. In addition, when the international community itself does not agree on the interpretation of legal norms, the mediator may have to choose in accordance with his mandate or find another alternative, for which lawyers should find ways to embed it in the legal and normative framework. Therefore mediators should always be briefed on applicable international law so that diplomacy and law can be synchronized as naturally as possible.

Both missions had to cope with international disagreement on the implications of UNSCR 1244. For Ashton this was alleviated by the ICJ Advisory Opinion, although it did not lift the disagreement. While both missions aimed for political agreement in the first place, each had its strategy for embedding the outcome within the international legal framework. For Ahtisaari the road went via a vote in the UN Security Council on a comprehensive plan for Kosovo's final status, as argued under inclusivity. For Ashton the agreements did not directly become law either, implementation required parliamentary decision making. That way a legislative process would lead to legality as well as national ownership. This would prove a lengthy process largely due to the ambiguity of the agreements reached.

Both missions get a partial pass in terms of International Law and Normative Frameworks.

Cooperation, Coordination & Complementarity of the Mediation Effort (process fundamental)

Since multiple organizations may be involved, they may either enable or interfere with reaching and implementing an agreement. Consequently, the coordination and complementarity of efforts is advised. In fact, there should be one lead mediator who is in charge to ensure coherence and consistency of the messages from the mediation space. These messages may be reinforced by mechanisms such as a group of friends or an international contact group. Such

groups consist of international actors that support the mediation mandate and are seen to have leverage over the conflict parties. Ideally the mediator composes and directs these support mechanisms himself so that the risk that they replicate the conflict is managed. A group that mustn't be forgotten is the international financial institutions as an important source of carrots and sticks (Vendrell 2014, 102).

It would be fair to say that the challenge for Ahtisaari was bigger considering the wider scope of the UN stage as opposed to the EU stage for Ashton. In addition, the insurmountable issue of final status was taken out of the equation by Ashton by leveraging the EU's strongest foreign policy instrument, i.e. EU membership. Although the choice for Ahtisaari as lead mediator was more deliberate than the default choice for Ashton as the EU High Representative for Foreign Affairs and Security Policy, he did not have the kind of direct relationship with his contact group than Ashton in her role as president of the EU foreign affairs council. And while Ahtisaari's team was able to bypass much of the UN bureaucracy through their historic relationship to Secretary General Kofi Anan, they couldn't get the Security Council nor the Contact Group to reach a decisive consensus on the final status issue. In contrast, the Ashton team took advantage of a time where the EU community approach was provided with the tools to weigh heavier than the intergovernmental one, even though 5 EU member states had not recognized Kosovo. Indeed, foreign policy powers had been combined into one position, Ashton's, as never before, and were reinforced by the newly created institutional instrument of the European External Action Service, the EU equivalent of a national foreign services department.

My score on this process fundamental is partial pass for the Ahtisaari team and pass for the Ashton team.

Quality Peace Agreements (process fundamental)

In addition to ending any violence and preventing re-emergence, (high) quality peace agreements are all about gradually creating a platform for sustainable peace, justice and reconciliation, as well as concrete measures for

implementation of that platform. Typically a mediator will aim for reaching limited agreements incrementally on issues of increasing controversy and work his way up to a comprehensive agreement. From the beginning of the process, the mediator should have a model agreement in mind, both in terms of content and form, including measures for verification of implementation and for resolution of conflict re-emerging during implementation. This model agreement is like a road map towards a (high) quality peace agreement that is reflected in the sequencing of the agenda.

The Ahtisaari Comprehensive Plan and Recommendations, in short the Ahtisaari Plan, were two documents that the Secretary General submitted to the Security Council. Right up to the vote, Russia had consistently signaled in the Contact Group that it would not block the Plan. Then the vote was delayed and agreement could no longer be reached (Perritt 2009, 185-6, 201). Moreover, during the mediation process some agreement had been reached between the conflict parties on decentralization and on protection zones for churches, but Serbia retracted all agreement in the closing stage for fear that it might favor Kosovo independence (Perritt 2009, 155).

In contrast to the non-agreed concrete measures of the Ahtisaari Plan, the Ashton mission produced rather ambiguous agreements. Consequently, they would often prove fragile at the time of implementation. In fact, some of the agreements have not yet been implemented till today. Possibly the best known example of the EU's creative ambiguity concerns 6 of the 15 points in the 2013 Brussels Agreement that address the status of Northern Kosovo, where most Kosovo Serbs live and where they constitute the majority. The agreement talks about the "Association/Community of Serb Municipalities". For Serbians this meant that they were part of the formal governance structure of Kosovo, whereas Kosovo officials dismissed it as just an NGO (Bieber 2015, 306).

On the one hand Ahtisaari had a concrete plan ready to be executed, yet he achieved no agreement nor reconciliation. Nevertheless, his plan would become the standard for Kosovo's unilateral declaration of independence and arguably lay the groundwork for the Ashton mediation. On the other hand, Ashton did

achieve agreement but implementation would be slow and reconciliation would be even lengthier.

Consequently, I consider both missions as partially passing the process fundamental of Quality Peace Agreements.

Objective Peace (success criterion)

With objective peace I go a step further than the concept of negative peace that Galtung describes as the absence of violence (Neuhold 2015, 173), but add the notion of finding a *modus vivendi* as suggested by Bercovitch when he distinguishes between settlement and resolution (Bercovitch 2011, Chapter 6: Mediation Success or Failure). Settlement is the coexistence of cessation of violence and a *modus vivendi* between the sides so that armed conflict is not about to re-emerge. Settlement can be measured objectively: peaceful coexistence under an agreement exists or not. Resolution goes yet another step further as I will discuss under Subjective Peace.

Both missions wanted to establish a *modus vivendi* that would no longer require international administration or rule of law assistance. Ahtisaari did not reach such an agreement to end UNMIK and to decide on a final status for Kosovo.

Ashton did reach an agreement that would gradually dissolve EULEX¹⁶.

Consequently the former fails this criterion and the latter passes it.

Subjective Peace (success criterion)

The question whether a mission addresses the root causes of a conflict is the question whether it achieves not only an effective or durable situation, as does a

¹⁶ EULEX is the EU Rule of Law mission that became fully operational in April 2009 and that has gradually been transferring its executive powers to the government in Pristina. As of 14 June 2018 EULEX will concentrate on its monitoring, reporting, advisory and support role, with Kosovo assuming responsibility for all transferred investigations, prosecutions and trials. EULEX will The mission will retain certain limited executive responsibilities in the areas of witness protection and support for the specialist chambers and the specialist prosecutor's office, as well as responsibility for ensuring the maintenance and promotion of security as second security responder. The revised mandate has been extended by the EU Council until 14 June 2020. EULEX operates within the framework of UNSCR 1244, which means that UNMIK is still operational, with a modified mandate and reduced personnel though since the entry into force of Kosovo's new constitution on 15 June 2008. (European External Action Service n.d.) (D. United Nations n.d.) (General Secretariat of the Council of the EU 2018). The legal basis of EULEX is recorded in UNSC document S/PRST/2008/44).

modus vivendi, but also a fair or just resolution (Bercovitch 2011, Chapter 6: Mediation Success or Failure). Consequently Subjective Peace subscribes to what Galtung calls Positive Peace or the “gradual elimination of the main causes of international as well as interstate conflicts on a worldwide scale” (Neuhold 2015, 173). Fairness or justice is a subjective measure and different parties may have different interpretations as is borne out by the diverging appreciations of UNSCR 1244 and the ICJ Advisory Opinion on Kosovo’s declaration of independence, that both missions had to confront.

For the purpose of the case studies in this paper I define fairness as compliance with the UN purposes and principles as specified by the 10 Guiding Principles of Ahtisaari’s Contact Group and by the Stabilization and Association Process for the Western Balkans, including the Copenhagen criteria for EU membership, which bound the Ashton mission¹⁷. Kosovo’s reward for agreement would be a Stabilization and Association Agreement as a first step to EU membership, i.e. become a potential candidate, and Serbia’s advancement to the next stage, i.e. move to official candidate status and the opening of negotiations. To avoid the risk of fake compliance, in December 2012 the EU Council formulated 4 conditions for Serbia’s advancement: “(A) the implementation of the agreements reached to date; (B) the dismantling of the Serbian police and judiciary institutions in Kosovo; (C) the introduction of transparency into the spending for Kosovo; and (D) greater cooperation with EULEX”. (Bieber 2015, 294, quote at 305).

As argued above Ahtisaari’s Plan was in accordance with the principles agreed in the Contact Group and thus provided for a just approach to final status, but was not agreed upon by the sides nor in the end by the UN Security Council that was to function as the fallback position to provide a legal basis for the execution of the Plan. And while Ashton achieved more stability and launched a process towards EU membership, the ambiguity of agreements made implementation

¹⁷ For more information on the steps toward EU membership, see e.g. the website of the European Commission as accessed on 18 March 2017 at https://ec.europa.eu/neighbourhood-enlargement/policy/steps-towards-joining_en

dependent on continued mediation by the EU HR/VP and the EEAS until today. Negotiations with Serbia are still ongoing and Kosovo remains to advance to the status of official candidate.

In conclusion I qualify both missions as partially passing the Subjective Peace success criterion.

Meeting expectations (success criterion)

As a third success criterion I propose an angle based on negotiation theory as it is defined in “Getting to Yes, Negotiating an Agreement without Giving in”, a worldwide bestselling guide on the topic (Fisher, Ury and Patton 1991).

Furthermore this angle combines two ways of looking at success as proposed by Bercovitch, i.e. “participant satisfaction” and “mediator conceptions of goals and success” (Bercovitch 2011, Chapter 6: Mediation Success or Failure). In addition it corresponds to Perritt’s suggestion that “any agreement must fulfill the overlapping interests of all parties” (Perritt 2009, 135). The hypothesis here is that to the extent that outcomes meet expectations of all actively engaged in the negotiation, the mediation is considered successful. To verify that, I will sum up for each mission what I believe each party saw as the Maximum it hoped to get out of the negotiation, the Minimum it was prepared to settle for and what it considered to be its Best Alternative to a Negotiated Agreement (BATNA).

The maximum agreement at the time of the Ahtisaari mission was for

- The mediator: independence
- The Serbs: the return of Kosovo
- The Kosovo Albanians: independence

The ‘Ahtisaari’ minimum agreement was in the eye of

- The mediator: compliance with the ten guiding principles
- The Serbs: autonomy for the Kosovo Albanians
- The Kosovo Albanians: autonomy for the Kosovo Serbs

The 'Ahtisaari' BATNA was from the point of view of

- The mediator: a plan to (unilateral) independence
- The Serbs: the status quo
- The Kosovo Albanians: unilateral independence

The maximum agreement at the time of the Ashton mission was for

- The mediator: political agreement
- The Serbs: to undo the unilateral independence
- The Kosovo Albanians: to have Serbia recognize independence

The 'Ashton' minimum agreement was in the eye of

- The mediator: technical agreement
- The Serbs: to advance influence and EU membership
- The Kosovo Albanians: to advance independence and EU membership

The 'Ashton' BATNA was from the point of view of

- The mediator: to start a new initiative
- The Serbs: to start a new initiative
- The Kosovo Albanians: to start a new initiative

Each time I have underlined which negotiating position, i.e. which expectation, corresponded with the outcome for each party. The reader may notice that with the Ahtisaari mission all parties had to fall back on their BATNA, thus not reaching any agreement. In contrast not one party ended up with its BATNA at the time of Ashton's 2013 Brussels Agreement. Indeed, Ashton got both technical and political agreement; Serbia increased its influence over the Kosovo Serbs who got official autonomy and it advanced to EU accession negotiations; Kosovo could represent itself in regional fora and signed a Stabilization and Accession Agreement becoming a potential EU candidate. One may also notice that with Ashton no party had "Status Quo" as an expectation, not even as their BATNA. Consequently each party was ready for change which is the first condition for reaching a compromise or agreement. How difficult achieving compromise may be was phrased very eloquently by Robert Cooper when the technical negotiations were concluded in March 2012, stating „that is when tomatoes will

be thrown“. He went on to clarify that reaching agreement implies that something has changed with respect to the original position of the parties and that almost certainly somebody wouldn't like it, whereas without agreement everyone would be happy that the negotiator stood his ground, defending the party position to the letter. (Cooper, Tahiri and Stefanovic, *The Agreement* 2013, fragment beginning at 35:45). Finally, the expectations were more moderate the second time around, highlighting that less can be more.

With respect to the criterion of meeting expectations, the Ahtisaari mission failed and the Ashton mission passed.

Successful mediation as a matter of consent

So, if a mediator has consent, mediation will be successful? Far from it! First of all, he or she will need to earn consent continuously. Secondly, let's have another look at the above analysis to confirm the vitality of consent and how to earn it. Comparing and contrasting both missions it appears that both partially passed the criterion of subjective peace, whereas Ahtisaari failed the other two – objective peace and meeting expectations – that Ashton passed. Evaluating the quality of the process that they conducted reveals that they score similarly on five out of eight process fundamentals, but differently on Consent, National Ownership and on Cooperation, Coordination and Complementarity of the Mediation Effort. Consent and National Ownership are two sides of the same coin, where commitment to the process will be conducive to commitment to the outcome. Conversely it is hard to conceive that national ownership is possible without consent. In addition, the reason why Ahtisaari only scored partial pass on the Cooperation, Coordination and Complementarity criterion is because he was blocked by a key player in the mediation space, Russia, who had a change of heart and showed a lack of consent towards the end.

This begs the question how a mediator can continue earning consent. I have demonstrated that it depends on the circumstances and the ability of the mediator to take advantage of those. The ICJ Advisory Opinion and election results in Serbia provided Ashton with the necessary window of opportunity. In

addition upcoming elections in 2014 in both Kosovo and Serbia, as well as the deadline of the EU council in June 2013, created a sense of urgency to conclude the 2013 Brussels Agreement on 19 April 2013. Furthermore, not only the sides were ready for an agreement, but the EU needed a success for its newly created foreign policy instruments as well. Finally, the EU High Representative for Foreign Affairs and Security Policy, who is also the vice-president of the EU Commission (HR/VP), could credibly wield the carrots and sticks of EU membership in times when the sides signaled sliding back into conflictual behavior.

While Ahtisaari's credentials and track record were superior to Ashton's he had the circumstances, and particularly consent, against him. Consequently, when sufficient consent, and local ownership, are maintained, a seasoned mediator and team can work wonders, credibly wielding carrots and sticks impartially. In conclusion, it shouldn't be surprising that there is more to the technique, politics and legal context of international mediation in Kosovo. Therefore I put on a historical-legal lens in the next chapter to look at the same dilemma of the 'Self-Determination of Peoples' versus the 'Sovereignty and Territorial Integrity of States'. Legally indeed it is an impossible choice because no legal rule of primacy exists between these two basic principles of international law. (Neuhold 2015, 5) Consequently, the choice is one of values and interests, with an inevitable role for great power politics.

The legalistic road to independence of Kosovo via the path of mediation

“What one needs in difficult cases, are people that can say anything because they have no say... I have no authority whatsoever and that is crucial. I have nothing to gain and nothing to lose... [I am] not bound by any constraints. I do not care whether pressure groups are in favor or against...” (Van Humbeeck and Piryns 2017, translated). Arguably, one could characterize not only Ahtisaari’s perspective on mediation in this way, but also the circumstances in which Ashton picked up the gauntlet. It is however a statement by the Flemish Government Architect, who advises the Flemish government on all matters of buildings with an eye to an improved spatial development. He made this statement in the midst of a number of controversial events concerning integrity in awarding government contracts to building corporations, particularly at the local level to which he was no direct party and could be considered an expert conciliatory voice. But really, what does it have to do with international mediation and the legal framework in which it takes place? Apart from a particular likening to Martti Ahtisaari opining on the qualities of a good mediator “I am not paid by anybody, any outside force... If I didn’t like what was going on, I would say I’ll go home...” (CMIFinland 2008, fragments at 1:51 and at 2:04), more than meets the eye!

First of all, it illustrates the non-binding legal character of mediation. Legally, that is probably its most determining trait. The case of Kosovo also demonstrates that language, to motivate one’s actions, changes when a conflict actually gets approached from the legal perspective, be it through the strict lens of hard law or the more versatile one of soft law. Hard international law, in particular treaty law, can be described as of higher legal rank, whereas soft law concerns at best politically binding rules (Neuhold, *Variations on the Theme of 'Soft International Law'* 2008)¹⁸.

¹⁸ I have been inspired on this matter by an essay about the merits of soft vs. hard international law: (Neuhold, *Variations on the Theme of 'Soft International Law'* 2008). In it Neuhold expands

Secondly, it reflects the notion that mediation will only occur in difficult conflicts when parties no longer see a way out by themselves and hence accept the help of a third party. But what incentive do parties have to stick to an eventual agreement? The case of Kosovo proves that parties don't always appreciate their forward looking core interests and resort back to their positions, in particular in the final hour fearing that 'tomatoes will be thrown'¹⁹. In that hour the mediator should never forget the power of carrots and sticks that (s)he should reap collaborating with 'friends'²⁰ and other stakeholders or influencers like the international financial institutions²¹.

And third but not least, it refers to a higher objective. Similar to the architect who acclaims sustainable development through high quality construction projects, mediation aims not only for the pacific settlement of conflict but for a safer world, conducive to survival and prosperity, akin to subjective peace. That way it may also impact international law which is grounded on those same aspirations as per the preamble, purposes and principles of the UN Charter, the closest thing to a constitution for 'the international community'.

With these three angles in mind, what follows is a historical-legal synthesis of how the international community dealt with Kosovo's ambition to become an independent state. Particularly noteworthy is the difference between being able to explain how developments came about within the evolving international legal framework and the emergence of "specific legal entitlements which apply equally in all similar circumstances" (Weller, *Settling Self-determination Conflicts: Recent Developments* 2009, 165). Bringing together prominent insights into Kosovo's legalistic road to independence, it appears that many,

the scope of the traditional debate about hard and soft sources of international law, i.e. treaty law vs. "at best politically binding rules", to also include soft vs. hard methods of dispute settlement, i.e. mediation vs. adjudication and arbitration, and of and judicial pronouncements, i.e. advisory opinions vs. judgements, in particular by the International Court of Justice (ICJ) as "the most prominent judicial organ". (Neuhold 2008, 343-4)

¹⁹ See the section on 'Meeting expectations (success criterion)', starting on page 24.

²⁰ See also the sections on 'Inclusivity (process fundamental)' from p16 and on 'Cooperation, Coordination & Complementarity of the Mediation Effort (process fundamental)' from p19.

²¹ See section on 'Cooperation, Coordination & Complementarity of the Mediation Effort (process fundamental)' starting on page 19.

mainly mediatory, innovations to finding a third way out of the legal dilemma between on the one hand 'Sovereignty and Territorial Integrity of States', and on the other 'Self-Determination of Peoples', led to "a paradigm shift in the jurisprudential underpinning in the Security Council's power to authorize force" (Haines 2009, 486). While veto power has left that shift largely inconsequential and a change to the UN Charter is highly unlikely, the circle completes with international mediation because "it may well be that mediation is the closest thing we have to an effective technique for dealing with conflicts in the twenty-first century" (Bercovitch 2011, Intro)

The start: Yugoslavia dissolving and Badinter commission opening

It will not be surprising that the Ahtisaari and Ashton missions were not the first mediation attempts dealing with the dissolution of Yugoslavia. When, in 1989, the Serbian republic of Yugoslavia under Milosevic virtually abolished the autonomy that its province of Kosovo had gained under the 1974 SFRY constitution, the republics of Croatia and Slovenia no longer trusted renegotiating Yugoslavia's federal constitution and declared independence on 25/26 June 1991 (Weller, Negotiating the Final Status of Kosovo 2008, 11). The EU responded to the ensuing fighting with an international peace conference led by Lord Carrington. At the insistence of Milosevic the conference ignored Kosovo but nevertheless included a statement in its proposed solution that "the republics would also apply 'fully and in good faith established provisions for the benefit of ethnic and national groups, and for autonomous provinces which were given a special constitutional status'" (Weller 2008, 12). For Kosovo, this could be interpreted in two ways: restore the pre-1989 provisions and full autonomy or merely the provisions at the time of the Carrington proposal. Kosovo took the first view and Serbia the latter. Further complicating the matter is that under the 1974 Constitution Kosovo had a dual status: "On the one hand, it had full federal representation, along with the six constituent republics of the SFRY and Vojvodina. Hence, it was represented equally in the rotating collective federal presidency, it sent directly elected representatives to the federal

parliament, etc. Moreover, its substantive competences were similar to those of constituent republics proper, including even the right to maintain its own central bank. On the other hand, Kosovo was also a unit which was legally subordinated to Serbia – the latter being a constituent republic in its own right. Hence, in relation to the federation, Kosovo was a federal unit; however, in relation to Serbia, it was an autonomous province” (Weller 2009, 157-8). The Encyclopedia Britannica paraphrases this status as “that of a republic in all but name” (Young, Lampe and Allcock 2017).

Generally though it is regarded that the Badinter arbitration commission - which the EU had established to assist the Carrington Conference²² and to settle all legitimate claims legally - sealed Kosovo’s faith applying the ‘uti possidetis’ principle to the question of secession and to the claims of self-determination by the different peoples of Yugoslavia in particular²³. Taking the Badinter arbitration to heart, the EU recognized the following republics as independent states: Slovenia and Croatia on 15 January 1992, Bosnia-Herzegovina on 6 April of the same year and Macedonia (as the “Former Yugoslav Republic of Macedonia”, FYROM) in December of the following year (Gerbet 2016, 3). Kosovo, that had applied for the same already in 1991, was rejected (Weller 2008, 12).

During this time Ibrahim Rugova was elected president by the people of Kosovo seeking independence. Rugova headed the moderate Democratic League of Kosovo party (LDK) (Weller 2008, 14) and became known as the “Gandhi of the Balkans” (Neuhold 2012, 326). Following the Badinter advice, again Lord

²² Both were established by an extraordinary meeting of the EU’s foreign ministers on 27 August 1991. (Pellet 1992, 178)

²³ The following phrase I believe captures an interesting take on uti possidetis, without explicitly referring to it: “By geographically dividing the globe into a finite set of sovereign states, and legally recognising sovereignty as including exclusive rights to a state’s territory and resources, international law also determines what belongs to whom, and thus validates a global distribution of wealth and resources. And by empowering sovereign states to establish international instruments and institutions that legalise certain economic and social relations at the expense of others, it provides international legal validity to myriad processes of economic and social globalisation that dramatically affect the nature and levels of poverty and inequality throughout the world. It is to these consequences that human rights in international law—regardless of any chronological or analytical differences they might otherwise possess—seek to attend.” (Macklem 2014, 44). That is not to say that the Badinter opinion was not “somewhat daring” (Weller 2009, 157) and “inspire... to allay the tensions” (Pellet 1992, 181).

Carrington led the London Conference on Yugoslavia in August 1992, a conference which would move to Geneva in September to take on a more permanent character with German Ambassador Ahrens leading a special, little productive, group on Kosovo (Weller 2008, 14). As of January 1993 the EU initiative became a joint initiative with the UN under Special Envoy Vance and Lord Owen and from May onwards it continued as a solely UN mediation mandate with Lord Owen and Norwegian Foreign Minister Stoltenberg until August 1993, all to no avail and largely ignoring Kosovo while focusing on Bosnia. Kosovo did not receive any more attention in the November 1993 EU Juppé-Kinkel plan, nor from the aforementioned Contact Group that was first formed in February 1994 and would lead to the November-December 1995 Dayton-Paris peace agreement, that again did not include a settlement over Kosovo at the behest of Serbian President Slobodan Milosevic. (Gerbet 2016)²⁴ (Weller 2008, 13-4).

The Turning Point: About violence, Rambouillet and Operation Allied Force

With Rugova's approach of peaceful resistance resorting little result, the Kosovo Liberation Army (KLA) came to the fore launching a violent campaign. The violence provoked more violence in turn by Serbian military and paramilitary forces. By 1998 this had caused major displacement of civilians and in March the first UN Security Council Resolution, 1160, under enforcement chapter VII, called "... upon the authorities in Belgrade and the leadership of the Kosovar Albanian community urgently to enter without preconditions into a meaningful dialogue on political status issues, and notes the readiness of the Contact Group to facilitate such a dialogue..." (S/RES/1160 (1998), par.4). Despite ensuing mediation efforts by US Ambassador (to Macedonia) Hill and US special

²⁴ Additional information on "The Yugoslav conflict and European Community diplomacy" can be found at <https://www.cvce.eu/en/collections/unit-content/-/unit/02bb76df-do66-4c08-a58a-d4686a3e68ff/60cec468-a4c6-4cda-917e-3860fe5dbfbf/Resources#cf4477b6-87a5-4efb-982d-fb694beac969> which is part of CVCE.eu: "The University of Luxembourg's CVCE.eu research infrastructure gives you access to thousands of documents and publications on the European integration process".

presidential envoy to the Balkans Holbrooke – who previously was (lead) mediator for the Dayton-Paris peace agreement and would be US Ambassador to the UN between 1999 and 2001 – matters went from bad to worse. Even though the mediation process resulted in two further chapter VII resolutions (1199 and 1203 followed in six and seven months of 1160), it continued to be a case of one step forward and two steps back. It seems to me that more often than not any proposal saw the Kosovo Albanian delegation halfheartedly accepting it and the Serbian delegation backing out from it. Ironically, all proposals were more favorable to Serbia, each time emphasizing its Sovereignty and Territorial Integrity, but falling short of restoring full authority over Kosovo as an element about the will of the people also kept being incorporated. The only winner was more violence and civilians the main loser.

The same is true for the Rambouillet conference that would become a turning point nevertheless. When the conference failed, NATO acted on the threat of the use of force it had first exerted in October 1998 and again to convene the conference in February 1999. From 24 March till 10 June 1999, Operation Allied Force (OAF) was an aerial campaign against Serbian military infrastructure “to prevent more human suffering and more repression and violence against the civilian population of Kosovo” and to enforce compliance with the previous chapter VII resolutions and with the Rambouillet proposal that had been signed by Kosovo on 18 March, followed by a final failed attempt to persuade Belgrade²⁵ (Weller, *The Rambouillet Conference on Kosovo* 1999, 237). This use of force by NATO was not authorized explicitly in a UNSC Resolution under chapter VII (as per article 42, following an article 39 determination and inadequacy of article 41 economic or diplomatic measures), nor was it a case of self-defense as per article

²⁵ The “Serbian” delegation consisted chiefly of the Federal Republic of Yugoslavia (FRY) and the Republic of Serbia, both with Belgrade as its capital. The FRY was the federation of the two remaining republics of the former Socialist Federal Republic of Yugoslavia: Serbia and Montenegro. It existed under that name from 27 April 1992 until 4 February 2003 when it became the “State Union of Serbia and Montenegro” which ended with Montenegro’s independence on 3 June 2006. Slobodan Milosevic was president of Serbia from 1989 till 1997 and of the FRY from 1997 till 2000. The (Serbian) military forces were commanded at the level of the FRY. For ease of writing I will continue to use Serbia to mean FRY/Serbia, as essentially the interests of that republic were at stake.

51 of the UN Charter. As these are the only two strictly (hard) legal exceptions to the use of force in international affairs, OAF remains an illegal operation. NATO had however justified it with reference to soft sources of international law. These were built around three pillars (Weller 1999, 223-4). First an impending humanitarian catastrophe that required forcible humanitarian action. Second the argument of an implied enforcement mandate to avert a threat to the peace and security that was established in several chapter VII resolutions. Even though those supported the aim of the NATO campaign, they only went as far as “to consider further action and additional measure” (S/RES/1199 (1998), par.16) and to the contrary “[reaffirmed] that primary responsibility for the maintenance of international peace and security is conferred on the Security Council” (S/RES/1203 (1998), preamble). Thirdly, the justification relied on the assertion that the Council indirectly authorized the threat or use of force by endorsing specific actions of the Contact Group in two ways. On the one hand it pointed out that Resolution 1199, endorsed the so-called Holbrooke ceasefire agreement of October 1998. While that agreement had been reached under the threat of the use of force by NATO, the agreement itself did not confer the use of force by NATO. On the other hand the Security Council presidential statement of 29 January 1999 “welcomed and supported” the decision of the Contact Group earlier that day to summon the conflict parties to reach a political settlement at the Rambouillet Conference and implement it (S/PRST/1999/5). That way the Council would have effectively endorsed force to the extent that the Contact Group decision included such wording. Except, the wording was more ambiguous in stating that “the Contact Group will hold both groups accountable” (Weller 1999, 224) (S/1999/96). Of all soft arguments the only unambiguous one was the reliance on the doctrine of humanitarian action. That doctrine was controversial though (Weller 1999, 217). Indeed, at the time (and till today) “no treaty permitted the resort to force in order to stop the grave human rights violations in another state” (Neuhold 2015, 102). Moreover, the

limited state practice²⁶ and even less *opinio juris*, i.e. testimony that those states believed to be exercising a legal right or complying with a legal obligation, of forcible humanitarian action, makes that NATO could not rely on customary international law either (Haines 2009, 486-7), not at the time and not today. What NATO did do correctly legally was be mindful “[that its aim fulfil] the legal requirement of necessity, imminence of the threat to a civilian population, and proportionality of the forcible counter-measure” (Weller 1999, 237). In all fairness it seems that NATO, after careful legal advice, determined that it was politically “better to proceed with military action on the basis of an ambiguous legal position (but backed by a humanitarian imperative) than openly to defy both the Security Council and the General Assembly” (Haines 2009, 480). The likely veto of Russia and China against a resolution authorizing ‘taking all necessary measures’ or ‘using all necessary means’ and the unlikely success of a Uniting for Peace procedure led NATO resort to the above approach to actually achieving agreement, which would be transcribed in UNSCR1244.

I believe achieving that result was instrumental to OAF being widely considered if unlawful, then legitimate. Proponents either say NATO acted “in a manner consistent with the way the law ought to develop” or that its action should remain to be considered a breach, but one that could be “exceptionally condoned”. (Haines 2009, 479). This conclusion is supported not only by the report that the International Independent Commission on Kosovo, chaired by justice Goldstone, submitted to UN Secretary General Anan in 2000 (Haines 2009, 479), but also by apposite academic analysis by Neuhold in “The Law of International Conflict” (Neuhold 2015, 104). The British parliamentary inquiry by the House of Commons Foreign Affairs Committee kept its conclusion more ambiguous neither outright declaring OAF unlawful, nor legitimate, but

²⁶ One could point to action by regional security organizations that went beyond the scope of UN charter chapter VIII in Sierra Leone and Liberia (ECOWAS), in Lesotho (SADC) and in Bosnia-Herzegovina (NATO) (Weller 1999, 213) or by (an ad hoc coalition of) individual states in East Pakistan (India), Cambodia (Vietnam), Uganda (Tanzania), Iraq (US, UK, France) (Neuhold 2015, 103, fn392). In addition it is “very much a minority view” that the UN Charter did not negate a pre-existing customary right of humanitarian intervention (Haines 2009, 478)

expressing “some sympathy with Foreign Secretary Robin Cook’s call for the establishment of new principles within the UN framework governing humanitarian intervention” (Haines 2009, 480). Neuhold also suggests political necessity on the part of NATO “in order to prevent severe loss of face and credibility”. Others take this a step further, as e.g. voiced by Noam Chomsky as speaker on a seminar series at Boston College Institute for the Liberal Arts in April 2009, where he was introduced as “a very brave and uncompromising spokesperson for human justice and freedom” (videorecording at 2:58). He quoted high US State Department officials saying that “the bombing of Serbia was not undertaken out of concern for the plight of the Kosovo Albanian people... but because Serbia was not undertaking the required social and economic reforms” (1:25:50). He then continues to characterize OAF and modern international relations in general as great power politics, exemplary of the mafia principle where the godfather does not tolerate disobedience. In fact his description is very reminiscent of the Melian dialogue written by Thucydides in the 5th century BCE, in which the delegation of the great power of Athens tells the people of the small island of Melos that “the standard of justice depends on the equality of power to compel and that in fact the strong do what they have the power to do and the weak accept what they have to accept.” (Thucydides n.d., 402). Along the same lines, Chomsky dismisses the doctrine of Humanitarian Intervention and that the most than can be expected is a humanitarian consequence to an ulterior intention, as in the case of the Indian invasion in East Pakistan (now Bangladesh) ending huge massacres in 1971 or Vietnam putting an end to Pol Pot’s atrocities in Cambodia in 1979. This logic aligns nicely with the Realistic school of thought on international relations. Arguably its most prominent scholar, Kenneth Waltz, asserts that “most international law is obeyed most of the time, but strong states bend or break laws when they choose to.” (Waltz 2000, 27). Furthermore, perhaps the most prominent scholar of liberal institutionalism, claims that a “symbiotic relationship” exists between law and order so that “law can indeed reinforce and extend order... [yet too strict an adherence to law] creates the danger of blocking

the sort of adaptation to change that is essential for the successful pursuit of diplomacy in dangerous times” (Keohane 2012, 133). Consequently, the forward looking question to answer is not about the legality of OAF but whether the great powers did anything to advance the rule of international law in the wake of Operation Allied Force? Although there remains “a residue of antagonism”²⁷, I would certainly answer in the affirmative taking into account the subsequent events with chronologically UN Security Council Resolution 1244, the Status and Standards policy including the Ahtisaari plan, Kosovo’s unilateral declaration of independence and the ICJ advisory opinion on it that would enable the Ashton mediated 2013 Brussels agreement. I will go over these one by one in the following 2 sections and hope it will clarify why I say yes, if only a little.

The Unfolding: International Administration & Standards before Status

With respect to UNSCR1244, we have seen that matters went from bad to worse with violence from both sides getting the upper hand in the second half of the 90ies, a vicious cycle climaxing under the cover of NATO’s aerial campaign (Weller 2008, 16). Until, on 10 June 1999, 14 of 15 UNSC members voted ‘Yes’ on Resolution 1244 (UN Security Council, Voting record for S/RES/1244 (1999)). None of the five permanent members used its veto power, with China abstaining²⁸ and Russia voting in favor. All non-permanent members, including former Yugoslavian republic Slovenia, voted affirmative as well. Three further considerations about the resolution would indicate that the ‘International

²⁷ Chomsky opined in April 2009 that “... as Serbia moves towards accepting the correct social and economic reforms, they will be admitted into polite society... [even though] there is a residue of antagonism of emotion stirred up by the educated classes...” (1:29:01). Indeed, that to me seems precisely what EU integration is all about, that has become the aim set forth not only by Serbia, Kosovo and the EU, but also by Harold Koh in his pleadings before the ICJ (Koh 2015, 444).

²⁸ Interestingly, with respect to the UN Charter, “The most significant change of relevance to the use of force has actually not been achieved by any formal amendment. In the earliest days of the UN, the provision in article 27(3) that required the concurrent vote of all five permanent members on all non-procedural votes (including, of course, those approving resolutions under Chapter VII of the Charter) was dispensed with and a practice established that allowed for a positive decision to be made within the Council despite the abstention of a permanent member in the voting. The Charter provisions relating to voting remain today as they were originally drafted, but the law of the Charter as amended by practice ignores the need for the affirmative vote.” (Haines 2009, 484)

Community' had come to terms with OAF and that it had condoned NATO's transgression. First, "Taking full account of the Rambouillet accords" – repeated three times and once more as "taking into account the Rambouillet accords" – is pivotal to the decisions in the resolution, the very accords NATO had envisaged to enforce with OAF. Second, the Council decided on "substantial North Atlantic Treaty Organization participation [in the international security presence that is authorized with all necessary means]" (UN Security Council, S/RES/1244 (1999)). Third, article 25 of the UN Charter makes decisions of the Security Council binding on all UN members²⁹.

Furthermore, in addition to being an example of 'robust' multidimensional peacekeeping operations³⁰ (Kühne 2016), some say "enforcement by consent" (Neuhold 2015, 81), UNSCR₁₂₄₄ comprises two pillars: International Administration and a process for final status of Kosovo. Firstly, "The UN administration of Kosovo was rapidly established" (Weller 2008, 16). Apart from the trusteeship system (Chapter XII of the Charter), the UN had a few other experiences it could draw on, yet it was no easy feat. Even though "the standards set out in Chapter XII are set out to find a balance between the interests of the population and the objective of effectively maintaining international peace" (Benzing 2005, 331), a trusteeship agreement would not have been possible given the inapplicability of any of the categories for a trusteeship agreement (article 77 of the Charter) (Benzing 2005, 330, by analogy to Timor-Leste). Moreover, in practice, the UN did not conduct the interim administration itself yet supervised (groups of) states via the Trusteeship Council. Moreover that Council had been suspended after the last Trustee Territory had become independent in 1994

²⁹ Insofar its decision is within the remit of article 24 of the Charter that clarifies the Council's duties and powers: "...primary responsibility for the maintenance of international peace and security...specific powers... laid down in chapters VI, VII, VIII and XII..."

³⁰ different from 'regular' multidimensional by the provision of superior military force. The Balkans instances are further characterized by complementarity between the UN and three large 'Chapter VIII' regional organizations: The OSCE for capacity building, NATO for ensuring a safe environment and the EU for economic reforms, while the UN took care of coordination in the case of Kosovo or rather a back seat in the case of Bosnia-Herzegovina. For further discussion see (Neuhold, Kosovo: a Testing Ground for International Crisis Management and Dispute Settlement 2012).

(United Nations (Decolonization)). Also, the few other practical precedents had been of much lesser scope and size³¹. The most applicable learning example was that of Bosnia-Herzegovina where the UN High Representative ‘represented’ the government since 1996, whereas the UN Special Representative³² in Kosovo ‘personified’ the government. Granted, with the additional ‘Bonn powers’ the High Representative had similar dictatorial powers and circumstances with economic, ethnic, religious, cultural and historic issues were alike as well. The same level of intrusive powers and democracy-and-rule-of-law-by-undemocratic-means would only be repeated in Timor-Leste. (Kühne 2016) (Benzing 2005, 296-9). This next generation peacekeeping demonstrated that the international community had come to realize that a mere ceasefire and democratic elections did not guarantee sustainable peace and security, nor protection of human rights and minorities or the rule of law (ROL). However a mission such as UNMIK, and the overall operation in Kosovo, requires huge resources for a very long time without a clear exit strategy while saddling the mission with an EU like complex. Whenever something goes wrong nationalists blame the international mission. Thus durable peace does not only require a ceasefire and democratic state institutions, but also reconciliation and a thriving civil society. Moreover in a region like the Balkans with no civil society tradition on the heels of Communism and 500 years of Ottoman rule, this adds to the required resources as well as time. In an attempt to accommodate, later peacekeeping operations envisaged a “light footprint”, essentially wielding less intrusive powers and requiring relatively fewer resources. This alternative method of post-conflict state-building followed the conclusions of the Brahimi

³¹ The cases usually referenced are: UN Operation in Congo (UNOC, 1960-64), Administration of West Irian (West New Guinea; UNTEA, 1962-63), Transitional Authority in Cambodia (UNTAC, 1992-93) and Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (Mostly Serbian areas in Eastern Croatia, UNTAES, 1996-98). See: (Neuhold 2015, 85-6) (Benzing 2005, 296-7) (Caplan n.d.).

³² Of the Secretary-General whom the Security Council had authorized to establish an interim administration for Kosovo (S/RES/1244 (1999), par. 10); in accordance with articles 29 and 98 of the Charter, that allow the Council respectively to establish subsidiary organs and to entrust functions to the Secretary-General

report in 2000³³, that put in question the ‘robust’ peacekeeping operations introduced in the nineties following the Agenda for Peace report in 1992³⁴ (Benzing 2005, 297-8). Both those reports are good examples of the Secretary-General making the most of his powers as per article 98 of the UN Charter, carrying out assigned duties and making an annual report to the General Assembly, to produce soft sources of international law. Further such apposite examples are the series of reports³⁵ between 2000 and 2005 that led to the adoption of Responsibility to Protect (R2P) in the General Assembly’s resolution of World Summit Outcome 2005 (A/RES/60/1, par 138-140). General Assembly resolutions are not binding, but the R2P paragraphs were adopted unanimously at the level of heads of state and government, thus constituting an important political commitment by the member states³⁶. So, while these reports and resolution did not lead to any new treaty nor a change of the UN Charter (Haines 2009, 484, 486), they have often been referenced for protecting peace and security, particularly in the case of (robust) peacekeeping operations and its close relative of modern international mediation. Some³⁷ even claim that the UN Security Council endorsed R2P in its resolution 1674 of 28 April 2006. As a matter of fact, the Council did “reaffirm” the R2P paragraphs, but the resolution was dealing with “protection of civilians” during armed conflict, a related but

³³ UN Documents: A/55/305-S/2000/809, 21 August 2000

³⁴ UN Documents: A/47/277 - S/24111, 17 June 1992

³⁵ “**Responsibility to Protect**” delivered by the “International Commission on Intervention and State Sovereignty (ICISS)” in 2001. The commission was set up by Canada in response to the Secretary-General’s reflection on humanitarian intervention in his 1999 annual report, repeated as a millennial challenge in his 2000 report, asking: “if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violation of human rights that offend every precept of our common humanity?”. Despite the attention shifting to anti-terrorism after 9/11/2001, the R2P concept was further developed in a report of the High Level Panel on Threats, Challenges and Change, entitled “**A more secure world: our shared responsibility**” (A/59/565) and in the Secretary-General’s 2005 report “**In Larger Freedom: towards development, security and human rights for all**” (A/59/2005). (O. United Nations n.d.) (Haines 2009, 482-3)

³⁶ While the resolution was adopted unanimously one could cast some skepticism considering not only that there was criticism about the non-inclusiveness of the drafting process, but also that R2P were a mere 3 paragraphs in a 178p document (Haines 2009, 485)

³⁷ And not the least, e.g. Søren Jessen-Petersen, who combines, among others, a distinguished career within UNHCR with heading UNMIK from August 2004 till June 2006, in a case study on Kosovo from an international human rights law perspective (Jessen-Petersen 2014, 404).

different matter. Moreover, neither the General Assembly, nor the council stipulated any criteria that would justify humanitarian intervention under R2P. The preceding report “A more secure world” had done so, as well as suggesting that veto power could only be exercised in case of a vital interest to a permanent member when a draft resolution for humanitarian intervention would be submitted to a vote³⁸. Consequently hard international law had not come to incorporate a “clear and unambiguous acknowledgement of the notion of R2P” (Haines 2009, 486) as a third exception on the prohibition of the use of force in art. 2(4) of the UN Charter. “Nevertheless... It must be right that intervention for humanitarian effect should be predicated on the rights of the individuals who are vulnerable rather than on the sovereign rights of states to act as they wish within the international system. The sovereign right to intervene (albeit a collective and not a unilateral right) should give way to a collective acceptance of a responsibility to take appropriate action to protect the vulnerable from mass atrocity crimes. It is that for which OAF acted as a catalyst, and that which should come to be seen as its normative legacy.” (Haines 2009, 490). In other words a shift of emphasis, for some a “paradigm shift” in the “jurisprudential underpinning in the Security Council’s power to authorize force”, had occurred from a collective right to use force to a collective obligation to protect the rights of victims or potential victims of mass atrocities. (Haines 2009, 486).

The second pillar of Resolution 1244 saw a lot of procrastination, that had started long before it came to be. The matter was about settling Kosovo’s final status, on which UNMIK’s exit strategy hinged. The eventual approach became known as the ‘Standards before Status policy’, yet it would evolve. With the 1999 conflict and OAF still fresh in mind and with NATO finding itself protecting Serbs this time from terror and displacement after the Serbian forces had retreated as ordained and the tables had turned, international actors let the status matter rest. One wonders whether they hoped time might heal all wounds or rather were paralyzed by internal disunity considering possible repercussions

³⁸ To make this concrete: the Russian Federation would have been able to invoke vital interest over Chechnya but not over Kosovo. (Haines 2009, 485)

on other disputes, in particular Republika Sprska, Abkhazia, South-Ossetia and Transnistria (Weller 2008, 17). I will come back to what extent one could argue precedent legally when talking about the ICJ advisory opinion on Kosovo, but clearly it influences the debate politically. In the end the Secretary-General (SG) would follow up on the terms of 1244 that foresaw, 'fully taking into account the Rambouillet Accords', discussions on a mechanism to address Kosovo's final status starting in 2002. He put his Special Representative, Mr. Michael Steiner, to the task of drawing up benchmarks for measuring progress on Standards implementation. His proposal was endorsed by the Council via a Statement of its President S/PRST/2002/11, yet the actual standards were only agreed on in February 2003 and documented in another Presidential Statement S/PRST/2003/1 that formally adopted the "Standards before Status Policy" (Weller 2008, 18). Then, by March 2004 UNMIK developed the 8 standards into a 117 pages long implementation plan including a highly complex table listing all criteria to meet. A comprehensive review on progress would take place around mid-2005. Growing discontent in Kosovo over the handing over of responsibilities from UNMIK to local authorities under the "Provisional Institutions of self-government in Kosovo" (PISG) and over the delay in the process, erupted in riots against Kosovo Serbs and Serb religious and cultural monuments. Apparently, it again took a renewal of violence to accelerate the process and for the SG to launch a general review process of the Kosovo operation in July 2004, led by Ambassador Eide, permanent representative of Norway to NATO (Weller 2008, 20). Over the course of some fifteen months and two reports Eide would set the scene for the Ahtisaari mission. In his first report of August 2004 Eide recommended to make the complex policy more credible by prioritizing standards, effectively turning it into "Some Standards before Status" (Weller 2008, 82). While he suggested to prepare for mentioned comprehensive review which might open a way to starting status talks and while the SG further qualified this suggestion by emphasizing to strengthen UNMIK and the PISG responsibilities, word had spread among Kosovo Albanians that by mid-2005 the way would be cleared for starting the status discussions. Consequently the tone

of his initial report was no longer tenable, and in his second report of 7 October 2005 Eide recommended the talks to begin, making it “Standards with Status”, since discussions on status would commence while the standards implementation was still ongoing (Weller 2008, 20, 21, 82). Subsequently, in a Presidential Statement of 24 October 2005, the Council reaffirmed UNSCR1244 as the framework for determining Kosovo’s future status, welcomed the appointment of a Special Envoy and encouraged the Contact Group “to remain closely engaged in the political process ‘that will be led by the United Nations’, and to support the Secretary-General’s Future Status Envoy” (Weller 2008, 21). Letters between the SG and the President of the Council followed to appoint Martti Ahtisaari on 10 November 2005.³⁹ He would eventually father “Standards after Status” (Weller 2008, 82). On 2 February 2007 Special Envoy Ahtisaari unveiled the draft of his comprehensive proposal, which was status neutral and process oriented. Next, on 26 March he attached his recommendation for independence. The Secretary-General submitted the proposal and the recommendation, some call the latter ‘report’, as two distinct documents to the Security Council (Perritt 2009, 173-6). With or without agreement, the idea was to enact the Ahtisaari plan, both parts or only the comprehensive proposal, by a Chapter VII Security Council resolution. Opposition by permanent member Russia however blocked that avenue. Ironically, such a resolution would have ensured a stronger legal position for Serbia, than it ended up with after the Unilateral Declaration of Independence (UDI) by Kosovo on 17 February 2008 and the ICJ advisory opinion of 22 July 2010. The UDI stated that it was “...in full accordance with [the Ahtisaari recommendation and comprehensive proposal]...” and that Kosovo would “act consistent with principles of international law... including resolution 1244.”⁴⁰ In his Chaillot paper Marc Weller goes on to clarify that “employing the international legal notion of a ‘unilateral declaration’, it created legal obligations ‘erga omnes’... obligations upon which all other states are entitled to rely, and of which all other states can

³⁹ See S/2005/708 and S/2005/709 (Weller, Negotiating the Final Status of Kosovo 2008, 22)

⁴⁰ Quote as reproduced in (Weller 2008, 70)

demand performance” (Weller 2008, 70). And while additionally Kosovo would enshrine the Ahtisaari plan in its constitution, it remained a self-limiting commitment, whereas a (chapter VII) resolution would have been of higher legal rank. (Weller 2008, 70, 71, 86). Moreover Weller claims that the “Standards before Status” policy, while rightfully criticized by Serbia and Russia for inconsistent implementation, “was in fact a commitment to full status, as early as 2002” as eventual status “could hardly have been a return from UN-supervised self-governance to autonomy within Serbia” (Weller 2008, 82).

A Third Way Out: from unilateral declaration, over ICJ advisory to the Brussels Agreement

Taking a closer look at the UDI and the ICJ advisory opinion on it, the concise conclusion could be, in the words of an advisor to the Serbian legal team, that “In the final analysis, no judge was willing to give Serbia the kind of judgement it wanted” (Milanovic 2015, 53). While there were many opportunities during the proceedings⁴¹, the court chose not to follow up on those and instead opined that “THE COURT... By ten votes to four, Is of the opinion that the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law” (International Court of Justice 2010). This was indicative of what Weller considered as Serbia acting out of sequence (Weller 2008, 91). I wonder to what extent Serbia failed to anticipate the changing of the mores⁴² in international politics and law making, not seizing any opportunity windows, or rather was encroached on by an unfortunate turn of events precipitated by more powerful players. Throughout the course of events Serbia had known itself emboldened by traditional international law practice⁴³. That favors the status

⁴¹ In testimony thereof the opinion was appended by 2 ‘declarations’ (adding observations without fully elaborating an opinion: 1 concurring, 1 dissenting), 3 ‘dissenting opinions’ (providing an alternative opinion that disagrees with the majority), 4 ‘separate opinions’ (providing an alternative opinion that concurs with the majority but for different reasons). For full details, see: (International Court of Justice 2010). For a treatise on the means judges of the ICJ have to express their judicial opinions, see (Jhabvala 1978)

⁴² I use ‘mores’ because what occurred is stronger than a changing of the minds, but not so strong that new international customary law was established

⁴³ See e.g. (Weller 2008, 29)

quo of sovereignty, i.e. non-intervention in internal affairs of the state, and territorial integrity over the change dynamic of self-determination of peoples, in particular external self-determination that would require an existing state to give up territory for a new state (Neuhold 2015, 5, 89, 90). The traditional, very restrictive doctrine of self-determination only made exception for decolonization, let alone that it supported a generally accepted concept of remedial self-determination/secession. (Weller 2009, 111, 112 et seq, 159, 160 et seq)⁴⁴. Since the end of the Cold War however many settlement innovations to resolving this dilemma had been tried, virtually all via mediation and its characteristic of third party propositions that are non-binding on their own. (Weller 2009, 165). Reviewing 40 (draft) settlements Weller identified 9 categories of self-determination settlement. I suggest four of them apply to Kosovo: “Deferring a substantive settlement while agreeing to a settlement mechanism”, “Establishing a de facto State”, “Supervised independence”⁴⁵ and “Conditional self-determination”, while it fell short of “Constitutional self-determination” by a hair. (Weller 2009, 115 et seq). Despite all the innovations it is not the case that a new right came to be, at best “a failure to engage in bona fide settlement attempts is now likely to be regarded as unusual” (Weller 2009, 165). When Weller asserts that Kosovo was the first case of ‘remedial self-determination’ (Weller 2008, 86), he could only do so because the ICJ advisory opinion had opened the door to more and more states recognizing Kosovo as a state⁴⁶. Four factors out of these advisory proceedings strike me as particularly pertinent to Kosovo and the art of mediation.

First, the remarkable reversal of language during the advisory proceedings. No longer was the case argued primarily in terms of the sovereignty and self-determination dilemma, but instead arguments were attuned to the very careful

⁴⁴ In addition to Weller, see e.g. (Macklem 2014) and footnote 23 at p31 about *uti possidetis*.

⁴⁵ The Ahtisaari plan makes a case in point, see e.g. (Weller 2009, 150)

⁴⁶ By 27 March 2018, 116 states had recognized Kosovo. Still, it is not yet a member of the UN because that requires “a decision of the General Assembly upon the recommendation of the Security Council” (Article 4(2) of the Charter). And in addition to 5 EU members, Cyprus, Greece, Romania, Slovakia and Spain, unwilling to recognize Kosovo, Russia and China would veto such a recommendation. (Bytyci and Sekularac 2018) (Neuhold 2015, 91)

reading and interpretation the Court took on not only of the scope of the question put forward by a Serbian-sponsored General Assembly resolution (A/RES/63/3 of 8 October 2008), but also of the applicable general international law, and in particular of the *lex specialis* of UNSCR₁₂₄₄ (Milanovic 2015, 59-60). Such careful reading of Security Council resolutions is in accordance with articles 31 and 32 of the Vienna Convention of the Law of Treaties (VCLT) of 1969 and generally considered the proper approach along with reviewing any statements made at the time of adopting the resolution and along with considering all relevant circumstances. (Murphy 2015, 225-6). I will come back to the scope of the question under my fourth observation below. With respect to general international law the Court held that the UDI did not violate it since there was no right to, nor a prohibition on such declarations. Unilateral declarations of independence had previously been condemned by the Security Council not because of their unilateral character, but for the unlawful use of force or the violation of other peremptory norms (*jus cogens*) (Koh 2015, 444-6). Concerning the *lex specialis* the Court found that the UDI did not violate UNSCR₁₂₄₄, nor the Constitutional Framework of Kosovo created under its auspices. For both general and specific law, the decision hinged on the identity of the actors of the declaration. On this I will comment in my third observation below. Surprisingly, the Court almost rejected to provide an opinion not because of lack of jurisdiction but on grounds of propriety since the request should not have come from the General Assembly but from the Security Council who was seized on the matter. Acceptance was decided by a vote of 9 to 5 judges, which is only a majority of 2 to avoid the embarrassment of a casting vote of the Court's president's (Milanovic 2015, 50-53).

Second observation I want to make about the ICJ's advisory concerns the notion of legal precedence. Politically, Kosovo was and is often argued to be '*sui generis*', a situation so unique that it does not create any precedent. Legally, this position is less persuasive, as "[o]ne cannot have legal rules if one then has to disapply them in supposedly unique situations without any clear criteria as to how and why an exception is warranted and can be made" (Milanovic 2015, 56-

7). Accordingly, Harold Koh argued for the US legal team that Kosovo did set a legal precedent, but a narrow one, the legitimating historical circumstances of which would be hard matched. Those circumstances are discussed above in this section and summarized by Koh as “[1] the disintegration of Yugoslavia; [2] the human rights crisis within Kosovo; [and 3] the United Nations response” (Koh 2015, 449). That response he clarified had entailed the UN to “invest deeply in making Kosovo’s nationhood possible” (Koh 2015, 442-3). An argument that resonates with Weller’s above in this chapter that the “Standards before Status Policy” implied independence as early as 2002 (Weller 2008, 82). Milanovic, in his own name and not in his capacity of advisor to Serbia’s legal team, asserts that pleading Kosovo’s uniqueness, be it *sui generis* or narrow precedent, “becomes a signal to other potential secessionists that even though they in the end may prove to be successful, they are not very likely to” (Milanovic 2015, 60). Interestingly, both Koh and Milanovic agree that Kosovo does not justify Crimea, quite the contrary. (Koh 2015, 453-4) (Milanovic, *Crimea, Kosovo, Hobgoblins and Hypocrisy* 2014).

My third observation is about the identity of the actors of the unilateral declaration and to what extent these non-state actors were bound by general international law or by the *lex specialis* of the case. Regarding general international law, Milanovic refers to what he calls the ‘translation’ of the *sui generis* argument into ‘a general legal proposition’ (Milanovic 2015, 56-7). According to him this proposition turned out to be that “non-state actors are not prohibited by international law from declaring independence, because the principle of territorial integrity extends only between states, but not within them” (Milanovic 2015, 57) (International Court of Justice 2010, *Summaries*, 7-8). On the matter of the *lex specialis*, the Court decided that the unilateral declaration was not an act of the ‘Assembly of Kosovo’. This Assembly was subject to the Constitutional Framework that had been created to gradually handover powers to the Provisional Institutions of Self-Government (PISG) as provided for in UNSCR1244. Rather it was considered an act of the members of that Assembly clearly signaling that they wanted to operate outside the given

framework which in their eyes had failed. Consequently the Court concluded the actors could not have violated the Constitutional Framework. (International Court of Justice, Summary of the Advisory Opinion of 22 July 2010, 11-14). This reasoning has not only been criticized by the Court's Vice-President, Judge Tomkin, in his dissenting declaration as a 'post-hoc intellectual construct' (Milanovic 2015, 71-73), but also deemed unnecessary by Milanovic. Indeed, the Court needed it because it had ruled the Constitutional Framework part of international law, which was debatable. Moreover, Milanovic points out that a violation of the framework, which was the case in his opinion, needn't necessarily be sanctioned with an annulment of the declaration. (Ibidem). In addition the Court considered UNSCR₁₂₄₄ itself not violated because of 3 reasons. First, the fact the resolution and the declaration operated on a different level (Murphy 2015, 226): the former addressing an interim régime, the latter final status on which the resolution remained silent, whereas whenever the Security Council wanted to be restrictive about a provision it's practice was to be explicit about it. (International Court of Justice, Summaries, 13). Secondly and similarly the Council had not specified that this particular resolution was binding for non-state actors. And thirdly, the Special Representative of the Secretary General had not overruled the declaration, which was his practice with violations of UNSCR₁₂₄₄. (International Court of Justice, Summaries, 12). As a fourth and final observation there is the matter of the Court's narrow interpretation of the question put before it by the Serbia-sponsored General Assembly resolution (A/RES/63/3 of 8 October 2008). Judge Simma argued in his concurring declaration that a broader interpretation would have significantly increased the quality of the Court's opinion. Judge Simma wanted the Court to address not only the existence of prohibitive and permissive rules on declarations of independence, "relating the right to self-determination of peoples and the issue of 'remedial secession'" (International Court of Justice, Summaries, 14), but also that a lack of prohibition does not imply permissibility and he posited that "international law can be neutral or deliberately silent on the international lawfulness of certain acts" in contrast to an "anachronistic,

highly consensualist vision” applied by the Court based on the ‘Lotus’ principle developed by the Permanent Court 80 years ago. (International Court of Justice, Summaries, 4). Harold Koh acknowledges this broader view would be valuable, but opines that it is better to be “narrowly right, than overbroadly wrong”.

Moreover he asserts that the court did satisfy “the first test of legitimacy for any difficult decision: namely, ‘first, do no harm’” (Koh 2015, 453-4). In his view the result of the Court’s decision was “superior to any alternative” (Koh 2015, 442-3), that had presented itself in the 19 years since Kosovo had first applied for independence at the beginning of the dissolution of the Socialist Republic of Yugoslavia (Weller 2008, 12).

Instead, both Kosovo and Serbia would now become part of Europe’s future (Koh 2015, 444). A future that would require further mediation to mature, this time from the EU⁴⁷ in an effort not only to resolving the security risk, but also to proving the added value of the newly created function of HR/VP and of the European External Action Service (EEAS). The HR/VP and the EEAS are the closest thing the Lisbon treaty created to a Foreign minister from 2009 onwards, and to a foreign ministry from 2011. HR/VP Ashton’s mission would culminate in the “First Agreement of Principles Governing the Normalisation of Relations”, better known as the ‘2013 Brussels Agreement’. Although 12 out of the 15 points to the agreement discussed the Kosovo Serbs in Northern Kosovo, improving the bilateral relations was the main objective. It was to lead to a normalized future in which Belgrade would actually come to recognize an independent Kosovo. In fact, the 2013 agreement constituted a de facto recognition, balanced by autonomy for Kosovo Serbs (Prelec 2013). The de facto recognition is borne out by the agreement being the first between the two parties, by the agreement that Kosovo could represent itself in regional fora⁴⁸ and that “neither party will block

⁴⁷ In an effort of making the most of a negative situation, being denied the anticipated result by the highest international legal opinion, Serbia’s president agreed to join the EU in proposing a resolution before the UN General Assembly mandating the EU to mediate (Bieber 2015, 296)

⁴⁸ The delegations name would be accompanied by an asterisk that references a 26-word footnote that took nearly two-and-a-half days of uninterrupted negotiating to finalize: “This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence” (Blockmans 2013, 2)

the other's progress toward the EU" (Ibidem). Still, the agreement remains fragile, which follows the Brussels House Style, i.e. "get the parties to commit publicly to an agreement whose content is to be filled in later, often by EU officials, out of the spotlight"(Ibidem). The typical example here, comprising 6 of the 15 points, is that of the administrative form the Kosovo Serb autonomy would take on. While I noted this ambiguity already in the section on "Quality Peace Agreements", this quote may further clarify the matter:" The agreement specifies creation of an 'Association/Community of Serb majority municipalities'. ... for Serbia, it is a 'Zajednica' (union or community) of municipalities, a governing entity newly established by the agreement, while for Kosovo, it is merely an inter-municipal association like one that already exists to help local governments coordinate and share expertise."(Ibidem).

Maximizing Mediatory Effectiveness

Considering not only the Brussels Style and the ambiguity to overcome, but also, on a broader scale, that the veto power (art. 27(3) of the UN Charter⁴⁹) has largely left the paradigm shift on R2P inconsequential, international mediation remains our most effective tool to advancing peace and security. Therefore it seems only fitting to bring this thesis full circle by closing with some final advice on how to maximize mediation effectiveness. I have already demonstrated that the vital ability of a mediator to continually earn consent and local ownership depends on her/his ability to seize windows of opportunity as and if they present themselves. But can a mediator perhaps influence circumstances? Ambassador Francesc Vendrell, one of the UN's seasoned mediators, asserts that mediation can and has been deployed in a pro-active way, based on a creative use of the Secretary-General's responsibilities within the UN Charter. "The Secretary-General has an inherent mandate of good offices that has developed through practice over the past 60 years based on Article 33 and a broad interpretation of Article 99 of the UN Charter, irrespective of any specific mandate from the Security Council or the General Assembly. Their involvement

⁴⁹ See also footnote 28 (p37) on abstention

will only be required if and when a verification mission is established. While the term 'mediation' is now frequent, it is best to use less intrusive-sounding terminology such as 'good offices', 'facilitation' or 'assistance'.“ (Vendrell 2014, Mandate and Terminology). This way special envoys to the Secretary-General can solicit mediation by pro-actively being in the area and developing a relationship of trust that may more easily result in consent when the time is ripe (Vendrell 2014, Elicit Consent; Ripeness, Advice for Successful Peacemaking). Ambassador Alvaro de Soto and Ira William Zartman⁵⁰ take this a step further by claiming that ripeness is a necessary but insufficient condition for mediation to start. They define ripeness as the existence of a double perception. On the one hand it requires the perception of a “mutually hurting stalemate” and at the same time the perception of a way out. Because ripeness is not “self-executing” and needs to be seized, it offers an opportunity to mediators. Hence, de Soto and Zartman propose a five step approach, which steps are more cyclical and mutually reinforcing than sequential: [1] Assess the existence and perception of a stalemate; [2] Assess the existence and perception of a way out; [3] Induce recognition of the stalemate and a way out; [4] Ripen the stalemate and a way out; [5] Position oneself as a future mediator. Ripeness may comprise objective elements, like the absence of real alternatives or insurmountable costs in continuing a conflict, and subjective elements. When objective elements are non-demonstrable, third parties may more actively engage to create such objective elements by increasing the stakes or limiting the alternatives. (Zartman and de Soto 2010, 5-7). Finally, out of Vendrell's further 'suggestions', I want to advance in particular the one to progress via indirect or pendular talks rather than via direct talks, until the conflict parties have agreed to a non-paper. That paper would start emerging only after much brainstorming between the mediator and the parties individually. Once (s)he has built rapport, the mediator can freely float ideas in one-on-one sessions and present a suggestion by one

⁵⁰ Another seasoned UN mediator (de Soto) and an esteemed academic on mediation teaming up under the auspices of not only the United States Institute for Peace and its “The Peacemaker's Toolkit” series, but also of the Conflict Management Program at the Johns Hopkins University, Paul H. Nitze School of Advanced International Studies (SAIS)

party to the other in his own name and report back the comments as his own for further reflection, and so forth. In direct talks such initial suggestions would get readily dismissed by the other side standing firm on their positions instead of exploring their core interests. (Vendrell 2014, Methodology). When it does get to direct talks and sides seem to be sliding back into their positions, the mediator had better amassed some carrots and sticks. Like Ashton had in April 2013, when Serbia and Kosovo hesitated and reverted back to their respective positions of an autonomous province versus independence. Ashton pulled them back to their core interests of furthering economic growth and employment in collaboration with the EU⁵¹. As the first HR/VP, combining both intergovernmental and community powers within the EU, Catherine Ashton credibly wielded her ability to offer or withdraw advancement to the next stage of EU accession.

⁵¹ Stefan Lehne, who represented the EU during the Ahtisaari mission, asserts that real progress in the whole accession process is only made during the negotiations phase. Therefore this phase should not only be started asap for all the Western-Balkans candidates, but also together so that convergence is furthered (Lehne 2013). That 2013 article is topical again now that the EU has revitalized its strategy for the Western Balkans. The current HR/VP Federica Mogherini presented the strategy on 6 February 2018 in preparation of the EU's Western Balkans summit in Sofia on 17 May 2018.

Conclusion

The overall impetus for my thesis has been that mediation may be the only technique we have for dealing with the type of conflict we have come to face since the end of the cold war. This type of conflict is often internal to states, intense and with a lot of history be it ethnic, religious or other, as was the deeply ingrained enmity between Serbs and Albanians over Kosovo.

Do conflict parties or their leaders just come together, consider the mediator's proposals and decide rationally to compromise? No! 'Politicians, like all people, only take big decisions with their backs against the wall and a gun to their head'⁵². In other words, apart from consent, mediation needs carrots and sticks to be successful. A mediator presents legally non-binding proposals to explore a third way out of a mutually hurting, stalemated conflict, but would be wise to heed sound legal advice. As such, international mediation has contributed to a shift of emphasis in the jurisprudential underpinning in the Security Council's power to authorize force. This can be observed through Kosovo's road to independence. The deeply ingrained enmity between Serbs and Albanians in Kosovo also provided for an ideal setting to evaluate the effectiveness of international mediation, applying the UN body of knowledge to the Ahtisaari and Ashton led missions and comparing and contrasting their results.

The Facts

Let's resume the facts, with regard to recent history and in particular the two mediation missions discussed in this thesis. In 1991/2 the Carrington Conference and the Badinter commission declared the Socialist Federal Republic of Yugoslavia dissolving, at the same time denying Kosovo's first application for independence. The Kosovo conflict presents itself as a dilemma between on the one hand the Sovereignty and Territorial Integrity of States – the principle underpinning Serbia's position – and on the other hand the Self-Determination of Peoples – the principle underpinning Kosovo Albanian's position. Legally this

⁵² A wise dictum by Herman Van Rompuy; first president of the European Council from November 2009 till November 2014.

is a dilemma because no rule of primacy exists between these two basic principles of International Law. In 1995 the Kosovo issue was ignored in the Dayton/Paris peace agreement. It would lead to the Kosovo Liberation Army and violence coming to the fore to advance Kosovo's aspiration. When the violence and the brutal response by Serbia climaxed in January 1999, the international community, using the threat of NATO force, summoned the parties to Rambouillet. Subsequently, Serbia pulled out of the Rambouillet Accords, violence erupted further, NATO forced Serbia to agreement and Russia agreed to UNSCR1244 on 10 June 1999, which largely repeated the Rambouillet Accords. This way, the Security Council set in motion not only an interim international administration of Kosovo, but also a process to determine Kosovo's final status. UNSCR1244 stayed silent on the provisions of that final status. In 2002 the UN devised the "Standards before Status Policy" to determine benchmarks on Standards along which self-government in Kosovo could progress gradually. Growing discontent with Kosovo Albanians about the tardiness of this process saw riots erupting in March 2004, which led to an acceleration of the Standards before Status process. From 10 November 2005 to 26 March 2007 Martti Ahtisaari mediated, but could not guide the parties to an agreement on how to proceed to final status, let alone to an accord on final status itself. Instead he delivered 2 documents to the Secretary-General who would forward them as such to the Security Council. Ahtisaari's Comprehensive Proposal laid down a route to final status, his Recommendation made it clear that in his mind final status could only be independence, including far-reaching protection of minority rights and substantial autonomy for Kosovo Serbs. The essence of both documents together can be paraphrased as 'supervised independence'. What followed was gridlock in the Security Council and members of Kosovo's provisional Assembly concluding that the process set forth under UNSCR1244 had failed. Consequently, they declared independence unilaterally on 17 February 2008. On 22 July 2010, the highest international legal opinion denied Serbia the result it hoped for when it brought Kosovo's unilateral declaration of independence before the International Court of Justice for an advisory opinion,

via a General Assembly resolution. Recognizing this defeat, Serbia's then president tried to maximize his loss by joining the EU in asking the UN General Assembly to mandate EU mediation. So, perhaps for the first time, there was actual consent by Serbia to mediation. From 8 March 2011 to 19 April 2013 the Ashton mission initiated a normalization of relations between Kosovo and Serbia. To the present day 116 of 193 UN members, including 23 of 28 EU member states, have recognized Kosovo.

The UN theory applied to two missions on Kosovo

The UN proposes eight fundamentals in designing a high quality process that should further the probability for success: Preparedness, Consent, Impartiality, Inclusivity, National (Local) Ownership, International Law and Normative Frameworks, Cooperation, Coordination and Complementarity of the Mediation Effort and Quality Peace Agreements. I added 3 success criteria in assessing the success and failure of both Kosovo missions: Objective Peace, Subjective Peace and Meeting Expectations. Using a heuristic scoring table, Ahtisaari scored 3 'passes', 2 'fails' and 3 'partial passes' on the fundamentals, whereas Ashton received 4 'passes', 0 'fails' and 4 'partial passes'. In terms of success criteria, Ahtisaari had 0, 2 and 1 'passes', 'fails' and 'partial passes' respectively, for Ashton's 4, 0 and 4. This confirms that results for success criteria mirror those for fundamentals. Moreover the fundamentals in which both missions differed most, Consent and National (Local) Ownership, make the difference between success and failure. Additionally, the extent to which a mediator can seize 'windows of opportunity' is crucial. Ashton could credibly offer or withdraw EU membership when the sides signaled sliding back into their conflictual positions rather than focusing on their core economic interests via the EU. While Ahtisaari's credentials and track record were superior to Ashton's he had the circumstances, and particularly consent, against him. Even so, without Ahtisaari, Ashton would not have been possible. In the final analysis, it appears that when sufficient consent and local ownership are maintained, a seasoned mediator and team can work wonders, credibly wielding carrots and sticks impartially.

The result everyone had fought to avoid

Kosovo stands testimony to the many innovations that mediators explored to finding a third way out of the dilemma between dilemma between mentioned two basic principles of international law. Most of the settlement proposals on Kosovo were favorable to Serbia by prominently confirming its territorial integrity. Nevertheless, 'the will of the people' would always be incorporated as well. And although it was the result everyone had fought to avoid – first the Badinter commission denied Kosovo status, next the Standards before Status Policy postponed it as long as possible– it would be the UN itself that administered the loss of territory by Serbia. In addition to the many mediation efforts, the UN Security Council condoned the illegal use of force by NATO in 1999, and the highest international legal opinion supported Kosovo's unilateral declaration of independence in 2010. This way international justice saw the traditional predominance of sovereign equality of states, of non-intervention in internal state affairs and of territorial integrity more and more mitigated by measures furthering internal and external self-determination and humanitarian intervention. Yet the UN Charter was not altered to incorporate a third exception to the prohibition of the threat or use of force, nor was a right to remedial secession established. Therefore international mediation remains key as a peaceful means to settling disputes. Accordingly, the Secretary-General can and has dispatched Special Envoys to build credibility in politically volatile areas so that they can further the perception of stalemate and offer mediation as a way out to prevent conflicts from escalating.

Final word

In addition to the rational conclusion described above, I suggest to fully develop mediation as a profession in its own right. The objective would be to promote peace and security, and justice, by strengthening the UN's 'Preventive Diplomacy and Mediation' capability in collaboration with regional organizations and with private organizations that subscribe to the UN values, such as CMI. Taking into account so called flashpoints with a particular interest to hybrid warfare and the nexus of global finance, business activity and international security, should provide ample facts and transparency. Moreover,

to maintain the rule of international law, it is vital to transcribe its evolving practice so that it stays attuned to what peoples and states need in an ever faster changing world. With respect to Kosovo, once ultra-nationalist and current Serbian president Aleksandar Vučić recently confirmed, in an interview with the Financial Times, that since 2008 he has never wavered from his commitment to joining the EU (Barber and Hall 2018). It seems only a matter of finding an acceptable discourse. Instead of 1389, when Serbia lost Kosovo to the Ottomans, another important element of Serbia's national consciousness could be leveraged: "the great migration of Serbs from Kosovo to Vojvodina in 1690 under the leadership of the Orthodox Patriarch Arenije Carnovjevic III" (International Crisis Group, Kosovo: No Good Alternatives to the Ahtisaari Plan 2007, 13).

Bibliography

Barber, Lionel, and Ben Hall. "Interview: Serbia's Vucic insists 'I'm obsessed with Kosovo'." *Financial Times*. May 15, 2018.

<https://www.ft.com/content/286fadc4-5444-11e8-b3ee-41e0209208ec>
(accessed May 31, 2018).

Benzing, Markus. "Midwifing a New State: The United Nations in East Timor." In *Max Planck Yearbook of United Nations Law, Volume 9*, by A. von Bogdandy and R. Wolfrum, 295-372. The Netherlands: Koninklijke Brill N.V., 2005.

Bercovitch, Jacob. *Theory and Practice of International Mediation*. VitalBook file: Routledge, 2011.

Bieber, Florian. "The Serbia-Kosovo Agreements: an EU Success Story?" *Review of Central and East European Law*, 2015: 285-319.

Blockmans, Steven. "Facilitated dialogue in the Balkans vindicates the EEAS." *CEPS, Thinking ahead for Europe*. April 29, 2013.
<https://www.ceps.eu/publications/facilitated-dialogue-balkans-vindicates-eeas> (accessed January 27, 2017).

Bytyci, Fatos, and Ivana Sekularac. "Kosovo Serbs quit ruling coalition over detention of Serbia official." *Reuters, World News*. March 27, 2018.
<https://www.reuters.com/article/us-kosovo-government-serbs/kosovo-serbs-quit-ruling-coalition-over-detention-of-serbia-official-idUSKBN1H326T> (accessed May 31, 2018).

Caplan, Richard. "International Transitional Administration (ITA)." *Encyclopedia Princetoniensis*. n.d. <https://pesd.princeton.edu/?q=node/234> (accessed June 10, 2018).

Week 13, Hosting the Stranger: Hospitality and Hostility in World Politics, featuring Noam Chomsky, Stephen Pfohl, and a response by Ali Banuazizi. Directed by Institute for the Liberal Arts Boston College. Performed by Noam Chomsky, Stephen Pfohl and Ali Banuazizi. 2009.

CMIFinland. "Martti Ahtisaari on: What is a good mediator?" *Youtube*.

December 10, 2008. <https://youtu.be/Zsb9SFHEvus> (accessed December 22, 2017).

The Agreement. Directed by Karen Stokkendam Poulse. Performed by Robert Cooper, Edita Tahiri and Borko Stefanovic. 2013.

European External Action Service. *EULEX*. n.d. <http://www.eulex-kosovo.eu/?page=2,1> (accessed March 18, 2017).

Fisher, Roger, William Ury, and Bruce Patton. *Getting to Yes: Negotiating Agreement Without Giving in*. Harcourt: Houghton Mifflin, 1991.

General Secretariat of the Council of the EU, Press office. "EULEX Kosovo: new role for the EU rule of law mission." *European Council, Council of the European Union, Press releases*. June 8, 2018. <http://www.consilium.europa.eu/en/press/press-releases/2018/06/08/eulex-kosovo-new-role-for-the-eu-rule-of-law-mission/> (accessed June 10, 2018).

Gerbet, Pierre. "The vain attempts of the European Community to mediate in Yugoslavia." *CVCE*. July 8, 2016. https://www.cvce.eu/en/obj/the_vain_attempts_of_the_european_community_to_mediate_in_yugoslavia-en-cf4477b6-87a5-4efb-982d-fb694beac969.html (accessed December 12, 2017).

Haines, Steven. "The influence of Operation Allied Force on the development of the jus ad bellum." *International Affairs*, 2009: 477-490.

International Court of Justice. "Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for Advisory Opinion)." *International Court of Justice*. July 22, 2010. <http://www.icj-cij.org/en/case/141> (accessed January 27, 2017).

—. "Summary of the Advisory Opinion of 22 July 2010." *Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for Advisory Opinion)*. July 22, 2010. <http://www.icj-cij.org/en/case/141/summaries> (accessed December 4, 2017).

- International Crisis Group. "Kosovo: No Good Alternatives to the Ahtisaari Plan." *International Crisis Group*. May 14, 2007.
<https://www.crisisgroup.org/europe-central-asia/balkans/kosovo/kosovo-no-good-alternatives-ahtisaari-plan> (accessed January 25, 2017).
- Jessen-Petersen, Søren. "Kosovo." In *The United Nations Security Council in the Age of Human Rights*, by Jared Genser and Bruno Stagno Ugarte, 403-418. Cambridge University Press, 2014.
- Jhabvala, Farrokh. "Declarations by Judges of the International Court of Justice." *The American Journal of International Law*, 1978: Vol. 72, No. 4, pp 830-855.
- Keohane, Robert. "Twenty years of Institutional Liberalism." *International Relations*, 2012: 125-138.
- Koh, Harold Hongju. "Reflections on the Law and Politics of the Kosovo Case." In *The Law and Politics of the Kosovo*, by Marko Milanovic and Michael Wood, 440-457. Oxford: Oxford University Press, 2015.
- Krauthammer, Charles. "The Unipolar Moment." *Foreign Affairs*, 1990.
- Kühne, Winrich Dr. "Theory and Practice of International Peace Operations and Peacebuilding." *Peacekeeping course*. The Johns Hopkins University, Paul H. Nitze School of International Studies, Europe, 2016.
- Legvold, Robert. "The Road to Independence for Kosovo: A Chronicle of the Ahtisaari Plan." *Foreign Affairs, Capsule Review*, May-June 2010.
- Lehne, Stefan. "Serbia-Kosovo Deal Should Boost the EU's Western Balkans Policy." *Carnegie Europe*. April 23, 2013.
<http://carnegieeurope.eu/2013/04/23/serbia-kosovo-agreement-should-reenergize-eu-s-western-balkans-policy/goq8#> (accessed January 27, 2017).
- Macklem, Patrick. "Human Rights in International Law: Three Generations or One?" *SSRN*. October 28, 2014. <https://ssrn.com/abstract=2573153> (accessed May 29, 2018).
- Milanovic, Marko, and Michael Wood. *The Law and Politics of the Kosovo Advisory Opinion*. OUP Oxford, 2015.

- Milanovic, Marko. "Arguing the Kosovo Case." In *The Law and Politics of the Kosovo*, by Marko Milanovic and Michael Wood, 43-86. Oxford: Oxford University Press, 2015.
- . "Crimea, Kosovo, Hobgoblins and Hypocrisy." *EJIL: Talk! (Blog of the European Journal of International Law)*. March 20, 2014. <https://www.ejiltalk.org/crimea-kosovo-hobgoblins-and-hypocrisy/> (accessed January 5, 2018).
- Murphy, Sean. "Reflections on the ICJ Advisory Opinion on Kosovo; Interpreting Security Council Resolution 1244 (1999)." In *The Law and Politics of the Kosovo*, by Marko Milanovic and Michael Wood, 197-245. Oxford: Oxford University Press, 2015.
- Neuhold, Hanspeter. "Kosovo: a Testing Ground for International Crisis Management and Dispute Settlement." In *Völkerrecht und die Dynamik der Menschenrechte*, by Gerhard Hafner, Franz Matscher, Kirsten Schmalenbach and Lando Kirchmair, 324-341. Wien: facultas.wuv, 2012.
- . *The Law of International Conflict. Force, Intervention and Peaceful Dispute Settlement*. Leiden, Boston: Brill Nijhoff, 2015.
- Neuhold, Hanspeter. "Variations on the Theme of 'Soft International Law'." In *International Law between Universalism and Fragmentation. Festschrift in Honour of Gerhard Hafner.*, by I. Buffard, J. Crawford, A. Pellet and S. Wittich, 343-360. The Netherlands: Koninklijke Brill NV., 2008.
- Peck, Conny, and Eleanor Wertheim. *Strengthening the Practice of Peacemaking and Preventive Diplomacy in the United Nations: The UNITAR approach*. Geneva: United Nations Institute for Training and Research, 2014.
- Pellet, Alain. "The Opinions of the Badinter Arbitration Committee A Second Breath for the Self-Determination of Peoples." *European Journal of International Law (Volume 3, Issue 1, p178-185)*. January 1, 1992. <https://doi.org/10.1093/oxfordjournals.ejil.a035802> (accessed December 11, 2017).
- Perritt, Henry H Jr. *The Road to Independence for Kosovo: A Chronicle of the Ahtisaari Plan*. Cambridge, UK: Cambridge University Press, 2009.

Prelec, Marko. "The Kosovo-Serbia Agreement: Why Less Is More." *International Crisis Group*. May 7, 2013. <https://www.crisisgroup.org/europe-central-asia/balkans/kosovo/kosovo-serbia-agreement-why-less-more> (accessed January 27, 2017).

Thucydides. *History of the Peloponnesian War*. 400-408. Vol. Book V. Penguin Edition, n.d.

UN Security Council. "S/1999/96." *UN Security Council Documents*. January 29, 1999. http://www.un.org/en/ga/search/view_doc.asp?symbol=S/1999/96 (accessed June 6, 2018).

—. "S/PRST/1999/5." *UN Security Council Documents*. January 29, 1999. http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PRST/1999/5 (accessed June 6, 2018).

—. "S/RES/1160 (1998)." *UN Security Council Documents*. March 31, 1998. [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1160\(1998\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1160(1998)) (accessed May 31, 2018).

—. "S/RES/1199 (1998)." *UN Security Council Documents*. September 23, 1998. [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1199\(1998\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1199(1998)) (accessed May 31, 2018).

—. "S/RES/1203 (1998)." *UN Security Council Documents*. October 24, 1998. [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1203\(1998\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1203(1998)) (accessed June 6, 2018).

—. "S/RES/1244 (1999)." *UN Security Council Documents*. June 10, 1999. [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1244\(1999\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1244(1999)) (accessed January 27, 2017).

—. "Voting record for S/RES/1244 (1999)." *UNBISNET (UN Bibliographic Information System; Dag Hammarskjöld Library)*. June 10, 1999. [http://unbisnet.un.org:8080/ipac20/ipac.jsp?profile=voting&index=.VM&term=sres1244%20\(1999\)](http://unbisnet.un.org:8080/ipac20/ipac.jsp?profile=voting&index=.VM&term=sres1244%20(1999)) (accessed June 6, 2018).

United Nations (Decolonization). *International Trusteeship System & Council*. n.d. <http://www.un.org/en/decolonization/its.shtml> (accessed June 10, 2018).

- United Nations. "UN Charter." *United Nations*. June 26, 1945.
<http://www.un.org/en/charter-united-nations/index.html> (accessed February 17, 2017).
- . "Year in Review." *United Nations*. 2006.
<http://www.un.org/ar/peacekeeping/publications/yir/2006/kosovo.htm>
(accessed March 14, 2017).
- United Nations, Department of Peacekeeping Operations. *UNMIK*. n.d.
<http://www.un.org/en/peacekeeping/missions/unmik/> (accessed March 18, 2017).
- United Nations, Department of Political Affairs. "United Nations Guidance for Effective Mediation." *UN Peacemaker*. July 2012.
<http://peacemaker.un.org/guidance-effective-mediation> (accessed February 17, 2017).
- . *United Nations Peacemaker*. 2012. <http://peacemaker.un.org/> (accessed March 18, 2017).
- United Nations, Office on Genocide Prevention and the R2P. *Responsability to Protect*. n.d. <http://www.un.org/en/genocideprevention/about-responsibility-to-protect.html> (accessed June 10, 2018).
- Van Humbeeck, Hubert, and Piet Piryns. "Vlaams bouwmeester Leo Van Broeck: 'Nu nog vrijstaand bouwen is crimineel'." *Knack*, December 6, 2017.
- Vendrell, Francesc. "Challenges for the United Nations in Peacemaking." In *Strengthening the Practice of Peacemaking and Preventive Diplomacy in the United Nations: The UNITAR approach.*, by Conny Peck and Eleanor Wertheim, 99-104. Geneva: United Nations Institute for Training and Research, 2014.
- Waltz, Kenneth. "Structural Realism after the Cold War." *International Security*, 2000: 5-41.
- Weller, Marc. *Negotiating the Final Status of Kosovo*. Chaillot Paper No. 114 (December 2008), www.iss.europa.eu: European Unity Institute for Security Studies, 2008.

Weller, Marc. "Settling Self-determination Conflicts: Recent Developments." *The European Journal of International Law*, 2009: Vol. 20 no. 1, 111-165.

Weller, Marc. "The Rambouillet Conference on Kosovo." *International Affairs*, 1999: 211-251.

Young, Antonia, John R. Lampe, and John B. Allcock. "Kosovo." *Encyclopaedia Britannica*. January 12, 2017. <https://www.britannica.com/place/Kosovo> (accessed January 11, 2018).

Zartman, I. William, and Alvaro de Soto. *Timing Mediation Initiatives*. Washington: United States Peace Institute, 2010.