Journal of Political Science and International Relations
2022; 5(2): 58-68
http://www.sciencepublishinggroup.com/j/jpsir
doi: 10.11648/j.jpsir.20220502.14
ISSN: 2640-2769 (Print); ISSN: 2640-2785 (Online)

The Possibilities for Termination of the Kumanovo Agreement (1999)

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To cite this article:
Igor Janev. The Possibilities for Termination of the Kumanovo Agreement (1999). *Journal of Political Science and International Relations*. Vol. 5, No. 2, 2022, pp. 58-68. doi: 10.11648/j.jpsir.20220502.14

Received: April 22, 2022; **Accepted**: May 12, 2022; **Published**: May 24, 2022

Abstract: This article examines the Kumanovo Agreement (1999) as a limitation to Serbian military presence in Kosovo and Metohija (hereinafter shortly: Kosovo) in accordance with United Nations Security Council Resolution 1244 (1999). Namely, the Military Technical Agreement between the International Security Force ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, known as the "Kumanovo Agreement", represents a legal limitation to any involvement of the Serbian military force(s) Kosovo. Nowadays, this act prevent any such involvement even in the case of uncontrolled Albanian invasion against the Serb population in Kosovo. With respect to the Kumanovo Agreement signed in 1999 the consent element (by Serbian party to a treaty) required for such peacekeeping agreements appears to be missing. The absence of consent element of the agreement undermines the legal basis and validity of the Kumanovo treaty reached under apparent coercion in 1999. It appears that Kumanovo Agreement in the absence of proper consent requirement may be interpreted as a dubious act under the Vienna Convention on the Law of Treaties (hereinafter VCLT), particularly Article 52 (related to the Coercion of a State by the threat or use of force). Therefore, the Kumanovo Agreement, as an Annex to the Security resolution 1244 (1999), can be considered as an invalid act according to the VLCT. As a consequence of its invalidity, the Serbian government in warlike situations, in case of massive human rights violations by Kosovo authorities against Serbian population, may resort to termination of the Kumanovo Agreement.

Keywords: Serbia, Kumanovo Agreement, Yugoslavia, NATO, UN, Security Council, International Law, Coercion, Jus Cogens, Invalidity

1. Introduction

After a dissolution of the ex-SFRY [1], provisional authorities in Kosovo and Metohija in an unconstitutional manner self-proclaimed an 'independence of Kosovo' on 17. Feb. 2008 to break away from the Serbia [2]. That unilateral (self-)declaration by Kosovo Albanians actually revealed the true intention of military engagement of NATO forces in 1999 as their ally in the process of illegal secession and apparently main goal of creation of the new state [3]. For our study in present article related to UN Security Council Resolution 1244 (1999) [4] and particularly its Annex II we should emphasize that the 1999 NATO invasion of the Federal Republic of Yugoslavia wouldn't end until agreement between FRY and NATO (the *Military Technical Agreement between the International Security Force ('KFOR') and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia*) [5] was signed on 9-th of June 1999 (a day later on 10-th of June to become an Annex to SC Resolution 1244). FRY and Serbia have never accepted justifiability and legitimacy of brutal NATO intervention and the outcome of war in 1999, including its contractual consequences. Many countries and prominent scholars and intellectuals rise their voice and condemned NATO incursion and intervention, particularly a bombing campaign of FRY and Serbia. For instance, Noam Chomsky argued that the main objective of the NATO intervention was to integrate FR Yugoslavia into the Western neo-liberal social and economic system, since it was the only country in the region which still defied the Western hegemony prior to 1999. War with NATO (or rather an aggressive invasion) actually started after refusal of Serbia/FRY to sign the *Rambouillet Agreement* [6] under apparent extortion or blackmail, i.e. FRY and Serbia was threatened by NATO with armed attack if FRY/Serbia

refused to conclude that treaty. Yugoslavia's rejection conclude that unacceptable and undignified accord was used by NATO and its member countries to justify the 1999 bombing, aggression and essentially destruction of Yugoslavia. Despite the explicit rejection of *Rambouillet Agreement* by FRY, this document was incorporated into Security Council Resolution 1244 that limits FRY army and police forces to return to the Kosovo, providing for an authority of KFOR to prevent and control withdrawal or presence of FRY armed forces. That part of SC resolution apparently defies basic norms of *jus cogens* related to the *juridical equality* of states and discrimination under International Law, particularly prohibition of discrimination of UN members provided by the UN Charter [7] and the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character (1975) [8]. FRY was invaded, with no backing of UN decision, in violation of the norms of UN Charter in a similar way as Russia invaded Ukraine (2022), with visible distinction that aggression against the FRY was never condemned by UN and the Western allies.

2. Illegality of the Annex II of the UN Resolution 1244

The alleged right of 'humanitarian military intervention' as a reason for the assault on Yugoslavia in 1999 apparently does not provide a convincing justification for the aggressive NATO action, particularly taking into consideration that the action did not have any backing UN Security Council (SC) resolution for endorsement of external military involvement, incursion or intervention against a sovereign state. Even if we put aside that aspect (that the measure was not approved by the UN Security Council with a resolution), and accept the 'significance of the Kosovo Agreement' with respect to 'security provisions' for the region [1], the legality of deployment of the UN civil administration in Kosovo and KFOR's powers and its entitlements or jurisdiction in the Serbian province based on the Resolution 1244 (1999) remains questionable. As we noted, the previously adopted UNSC Resolutions 1160 [9] and 1203 [10] had not given any explicit authorization for such violations of national sovereignty. In the Resolutions 1160 [9], for instance, the SC recalled only a possibility of taking further action, in case the FRY did not meet the SC's requests. That formulation is also legally dubious, since territorial sovereignty is a basic principle embedded in the UN Charter. As for the SC Resolution 1244, the Western authors (USA, UK, etc.) have argued that the act did provide for an *ex post facto* endorsement of the NATO action. However, the SC resolution 1244 did not provide any endorsement for coercive military invasion or UN civilian action or deployment and replacement of Constitutional organs of Serbia in its province.[2] The NATO incursion action was not authorized by a Security Council resolution, neither the military intervention, nor the process of signing a treaty as precondition for ending of the brutal intervention.[3] Therefore, the act of reaching the 'Military-Technical Agreement between the International Security Assistance Force ('KFOR') and the Government of the FRY' (or 'Kosovo Agreement' [4]) appears to be in violation of principles of international law.[5] It is apparently not correct to argue that the 'Kosovo Agreement' (hereinafter 'KA', that a day after the signing became Annex II[6] of the SC Res. 1244) can be seen as an implied endorsement for aggressive action, particularly taking into considerations the general provisions of SC Res. 1244 should guaranty territorial integrity and sovereignty of existing state (FRY) and especially bearing in mind the Article 2 (1) of the UN Charter, as a pillar of international law. Obviously, the reference to the agreement (placed in the Annex II of the resolution) does not provide any clear evidence of such intention, particularly without consent by other party (Serbia/FRY) in KA, since no states do not aim at self-derogation of (own) sovereignty or could provide in good faith any endorsement of such self-inflicting damages with external or UN involvement actions in that (damaging) direction. In our view, the previous military intervention by NATO in Kosovo couldn't be treated as a legitimate/legal or legally endorsed action bearing in mind that the brutal bombing of FRY was provoked by the refusal of the FRY government to conclude another treaty (a similar attempt of extortion was the *Rambouillet Agreement*). The Act for ending the war, or rather, the illegal aggression on the FRY, certainly did not represent an international occupation (*occupatio bellica*) act, because intervention and agreement

1 UNSC/RES/1244 (1999), see provision that „Demands in particular that the Federal Republic of Yugoslavia put an immediate and verifiable end to violence and repression in Kosovo, and begin and complete verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable, with which the deployment of the international security presence in Kosovo will be synchronized" and "Decides on the deployment in Kosovo, under United Nations auspices, of international civil and security presences, with appropriate equipment and personnel as required, and welcomes the agreement of the Federal Republic of Yugoslavia to such presences", and particularly KFOR entitled for "Deterring renewed hostilities, maintaining and where necessary enforcing a ceasefire, and ensuring the withdrawal and preventing the return into Kosovo of Federal and Republic military, police and paramilitary forces".

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

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

4 Full name of the KA treaty is "Military-Technical Agreement between the International Security Assistance Force ("KFOR") and the Government of the Federal Republic of Yugoslavia and the Republic of Serbia".

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

6 "Kosovo Agreement" (KA) entered into force on June of 9. 1999, and became Annex II of the SC Res. 1244 that was adopted on the June of 10. 1999.

between Belgrade and NATO was subject of the *subsequent* (i.e. conditional/potential) approval by the UN Security Council as occupational treaty, where FRY was apparently extorted to sign it. Additionally, with respect to Kosovo as a region of Serbia, Serbia (and FRY) conducted the actions as self-defence against a foreign invasion provoked by the rejection of the *Rambouillet accords* ultimatum. It should also be noted that since that moment, the territory of Kosovo and Metohija (Serbian province) has been placed under a kind of illegal UN protection despite the fact that it was not and could not be under 'protectorate status', since there was no such treaty between UN and any state (or UN member) on such protective arrangement. The status of the 'protectorate' is by definition regulated by an agreement (according to the jurisdiction of the UN Trusteeship Council). However, at the time of the adoption of the SC Resolution 1244, Kosovo could not have obtained the status considering that Kosovo was not a *state* (or entity that meets the conditions to be a 'protectorate'). Hence 'protector' (state or Organization) couldn't exist in this case.

It should be noted that the full name of the 'Kosovo agreement' ('*Military-Technical Agreement between the International Security Assistance Force ('KFOR') and the Government of the Federal Republic of Yugoslavia and the Republic of Serbia*') suggests its technical nature (or 'assistance purpose'), not occupational intention (*occupatio bellica*) or occupational act (or treaty of surrender). It should be also noted, that this agreement was delivered under the threat of armed attack and bombing (i.e. aggression) of FRY. It was concluded between Yugoslav Army Major General (i.e. divisional general) Svetozar Marjanović (a regional FRY commander in Kosovo), FRY Police Major General Obrad Stevanović on the Yugoslav side, and British Brigadier General Michael Jackson, on behalf of NATO, on the other side (commander on the ground, representing NATO party to the agreement). Hence, it represents an act concluded under conditions of coercion by the threat of force and the *abuse of force*. This extorted circumstances cast doubts on the legal validity of the treaty (i.e. conclusion under coercion). Moreover, the relatively low military rank of these state representatives (officers, below the level of lieutenant general or full general negotiated, prepared and signed the agreement), in comparison to normal diplomatic officials with proper capacity for state contracting, indicates that the treaty was in fact an imposed 'ceasefire agreement' or as many described it as a 'peace-keeping treaty'. It was not an act of surrender or occupation (agreement), as was interpreted for instance by Brig. General Michael Jackson, nor an act for the change of the political status of the state (FRY/Serbia) or loss of its territory. Furthermore, with respect to domestic Constitutional aspects, it should also be noted that military officials representing FRY and signing the KA (representing the Yugoslav Army and the police) apparently did not have any Constitutional power or jurisdiction necessary to place signature or conclude any valid document that would limit the Serbian sovereignty over its province Kosovo on behalf of the Serbian government.[7] That fact was also known by the NATO and UN officials at the moment of conclusion of KA. Remarkably, a day after the conclusion of the coercive KA, SC Resolution 124 was adopted and KA was annexed to it and endorsed in an attempt to legitimize that act. Nevertheless, this Annex II could be interpreted as a separable part of the Resolution 1244, since wording of the resolution suggests conditionally creation of such agreement (in future/conditional tense). Remarkably, KFOR (leaded by NATO force) was not defined anywhere as occupying force (in accordance of UN mandate and UN nature or Charter), but rather as a 'peacekeeping force', and therefore agreement annexed (KA) could not also be interpreted as occupational (surrendering) agreement placing the state under foreign/external or military rule and occupation. Otherwise, the KA (as Annex to the UN resolution) would be entirely inconsistent with the purposes and principles of the UN Charter. Bearing in mind that KFOR (under the international mandate of the United Nations as non-supranational and deliberative organization) may not be an occupying (or classical coercive occupational) force under any circumstances, due to the peaceful goals of the UN that entail purposes and role of UN peacekeeping forces in accordance to the nature of the Charter, treaty concluded by the NATO on June of 9-th, could not meet any occupational criteria (i.e. standards for military take over the territory or surrender), but rather usual norms for treaty conclusion should be applicable. It is clear from the preceding that the adoption of the Resolution 1244 in 1999 aimed at 'restoring the authority of the UNSC' starting from 'the *de facto* situation' created by the NATO (assault) intervention, and not 'legalization and legitimization of that military action (Milano, 2003, 999–1022). However, the Members of the UNSC took as granted the 'legality' of the 'Kosovo Agreement' and even tried to legitimize its dubious effects despite the controversies related to sovereignty for FRY and territorial integrity guaranteed to FRY in the SC Resolution 1244 in accordance with the UN Charter. The bias arguments employed by NATO countries to justify their action, and other possible arguments such as 'the *ex post facto* endorsement' and the 'enforcement of a right of self-determination', can reveal to us that NATO intervention was indeed a violation of the basic principles of international law and purposes of UN embedded in its Charter. The conducted NATO military action in FRY prior to Resolution 1244 could, for instances, be burdened by possible NATO atrocities (as was actually case to some degree with air campaign), that could not subsequently be legitimized or endorsed by the UN resolution(s) under any pretext or circumstances. In some of advisory opinions of the ICJ and for example in the very first case dealt with by the ICTY, we have observed that the competence of the UNSC have been very broadly defined to act within the powers provided by Chapter VII [11]. In some other situations, ICJ has taken different positions arguing that the power of the Security Council should be limited and in

7 See the Constitution of (S)FRY and the Constitution of the Republic of Serbia.

accordance with the UN Charter [12]. Due to the lack of an institutionalized system of judicial review of the acts of the UN political organs, the SC often presume an unlimited authority to decide (relying on its own competence) practically on any matter by declaring that such 'conflicting' or controversial 'matter' allegedly represent a threat to international security (*de facto* 'being judge in its own case'). Remarkably, UNSC also assume an unlimited power to decide which kind of coercive or non-coercive measures to adopt, with no limitation embodied in UN Charter. As a consequence, a state addressed by such arbitrary SC measures could not seek a judicial review of the decision(s) *per se*. As the author has proved [13][8], in the case of illegal derogation of the legal membership status of a state (in this case FRY) in the UN, in spirit of international law and normative nature of the UN Charter (as contract), UNSC shouldn't possess unlimited power. When presumed arbitrarily and therefore wrongfully, such actions constitute an *ultra vires* act(s), by its nature, because the power of any UN organ should legally always be limited. Another question is how to deal with such illegal acts or how to cure their illegal consequences or effects [14].[9] Some possibilities were suggested in the jurisprudence of ICJ related to the advisory jurisdiction of the Court.

The arbitrary behaviour of the UN Security Council (SC) with respect to Kosovo and Metohija (KiM) was demonstrated before the adoption of the SC Resolution 1244. In the UNSC Resolution 1203[10], for instance, the SC endorsed the agreements of October 15 and 16 (1998) between the FRY and OSCE, and the FRY and NATO respectively, which were concluded after the issuance of an activation order by the NATO Secretary General [15].[11] Such 'threat of the use of force' without proper UNSC authorization was clearly in defiance of international law and UN Charter. In lack of reference to international law and legal grounds, the *ad hoc* solution provided (described as 'uniqueness of the precedent') by SC hardly speak in favour of the development of 'new' normative standards 'relaxing the obligation' of the Security Council to abide by the UN Charter. It is apparently not permissible Security Council decision to supersede the underlying agreement as a normative source.[12] The UNSC Resolution 1203 effected a 'novation' of the (in)valid or dubious agreement between OSCE and FRY by creating a new so-called 'legal basis' for the OSCE verification mission. In addition, such novation apparently did not occur with respect to the NATO 'air verification' mission (in view of SC), whose normative content was still dependent on the Belgrade consent.[13] The Kosovo Agreement (KA), which is supposed to 'provide the legal basis' for NATO's authority over security matters in FRY, did not appear to have been superseded by Resolution 1244, neither appears Resolution 1244 could legalize the KA and the NATO aggression subsequently. Likewise, without the Kosovo Agreement, the Security Council Resolution 1244 has essentially different character and limits; hence standalone (striped from annexes) it provides territorial integrity of FRY and Serbia. It should be reiterated that the Kosovo Agreement was subsequently added as an Annex to the Resolution 1244, as a subject of consent of FRY (under *abuse of force*). In the case of potential termination of the treaty (KA), the Resolution 1244 would still be in force with original legal effects (in absence of Annex provisions). Even with the demand enshrined in the Resolution 1244 for the 'complete verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable, with which the deployment of the international security presence in Kosovo', the Resolution couldn't prevent possible action of Serbia for self-defence or defence of its population in KiM at present day, as the peremptory right stemming from the norm of *jus cogens*.

Because of compliance with UN (SC, UNGA and other organs), decisions or resolutions with mandatory *jus cogens* norms, by peremptory nature, limits the powers of UN and/or UNSC decisions. Given that the prohibition of the use of force outside the UN Charter framework has been considered as *jus cogens* norm by the ICJ and the International Law Commission (ILC), it may be concluded that general customary principles, such as the norm in Article 52 of the Vienna Convention on the Law of Treaties of 1969 (VCLT) related to invalidity of treaties concluded under coercion, also represents a supreme *jus cogens* norm (and should be respected as such). The Article 52 of the Vienna Convention on the Law of Treaties (VLCT) [16] provides *jus cogens* limitation related to the Law of contracting treaties that reads:

> *'A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations'.*[14]

In the case with the Kosovo Agreement, this dubious contractual act apparently represents an example of an invalid agreement under Article 52 of the VCLT (in violation of a basic norm of *jus cogens*). That act is beyond the limits of UN legality and *jus cogens* prerequisites for contracting, since treaty was concluded in the absence of the essential element of the *consent* and a *free will*, with respect to Serbian

8 In our view, an example of ultra vires act was SC Res. 817 (1993) basically recommending that a sovereign state be admitted to the UN without a state (Constitutional) name (i.e. as nameless member), and use provisional reference until finish negotiation on its name with neighboring country (see AJIL, vol. 93. No. 1 1999).

9 One way to deal with an ultra vires act of UN organs is usage of Advisory jurisdiction of ICJ (see for instance Janev, 2021).

10 UNSC/RES/1203 (1998). (The Security Council in this Res. stated that the conflict in Kosovo should be resolved peacefully and that the territory be given greater autonomy and meaningful self-administration).

11 See supra note (Milano, 2003). pp. 1002. (Such agreements with FRY were endorsed by the SC through Resolution 1203, which was adopted under Chapter VII). On 16 October 1998 an agreement was signed in Belgrade between the Federal Republic of Yugoslavia and the OSCE providing for the establishment of a verification mission in Kosovo, with aerial verifications over Kosovo agreed the previous day.

12 See supra note (Milano, 2003).

13 Supra note (Milano, 2003).

14 Vienna Convention on the Law of Treaties (1969), Art. 52.

and Yugoslavian party-contractor that was evidently coerced and extorted under *threat of the use of force*. The KA was not concluded under presumption of Good Faith (*Bona Fides*).

One may argue whether the Article 52 of the Vienna Convention on the Law of Treaties (1969) provides for a ground of 'absolute' or alternatively 'relative' invalidity in case of Kosovo Agreement (namely, posing a dilemma whether that treaty that ought to be considered as *null and void ab initio*, or whether it can still produce some legal effects and be 'cured' by the (coerced) party's subsequent acceptance or acquiescence of that act).[15] The wording and character of the Article 52 within the Vienna Convention on the Law of Treaties clearly support the view that the Article 52 describes a ground of absolute *nullity* of act(s) created under coercion (or *threat or use of force*). Also the ILC Commentary on Vienna Convention on the Law of Treaties leans on towards this original interpretation of Article 52 (as *null and void ab initio*). The prevailing ratio of this ILC findings is that the protection against the threat of use of force is of 'fundamental importance for the international community that any juridical act concluded against such principle ought to be fully invalidated'. When discussing the loss of a right to invoke a ground of treaty invalidity by way of acquiescence (Article 45 of the VLCT), the ILC is unambiguous in stating that: 'the effects and implications of coercion in international relations are of such gravity... that a consent so obtained must be treated as absolutely void in order to ensure that the victim of the coercion should afterwards be in a position freely to determine its future relations with the State which coerced it' [17].[16] For instance, to change the original interpretation, at the 1969 Vienna Diplomatic Conference, the Swiss delegation proposed an amendment to the draft article related to the effect that the coerced state would be entitled to 'waive the invalidity of the treaty'. The proposal was defeated 63-12, thereby supporting the idea that only a subsequent agreement would be able to confirm the validity.

We may now briefly remind us about the basic provisions of this imposed 'peace agreement', which was concluded outside the valid domestic constitutional requirements of Serbia/FRY (for contracting) and in absence of *free will* of contracting parties (i.e. Serbian free consent and *Bona Fides*).[17] From the Article I of the KA we have found harsh compulsory and illegal limitations that are contrary to the general provisions of the SC Resolution 1244 related to the sovereign status of the FRY, and contrary to the Serbian Constitution and the Constitution of the FRY:

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

As we may conclude from these apparently coercive provisions, the party that concluded the Kumanovo agreement with Serbia and the FRY is 'KFOR' (i.e. not occupational NATO) which basic task was 'maintaining a safe environment for all citizens of Kosovo and to carry out their mission in other ways.' The tone and the wording of the provisions of this part of the Agreement are reminiscent to those of a treaty dictated by the party winning the war to the one that had lost the war. Nevertheless, this role of KFOR is by definition an UN peacekeeping mission that must take care and respect human rights of all peoples leaving in that area, and is supposed to abide to the purposes of UN Charter. Thus, in the absence or negligence of treaty obligation and/or non-compliance with those obligations by any party, a consequence could be termination of the agreement, even as an unilateral action under *jus cogens* violations. Since this agreed intervention was defined as a peacekeeping mission, not an occupational one, a peace agreement under the UN authority excludes interpretation of the capitulation that dictates conditions for surrender or change of the state's legal and political status. On the other hand, the paragraph 4 of Article I clearly suggests that the purpose of these obligations (for two parties) is unilateral compulsory imposition of mandatory non-reciprocal obligations that dictates behaviour of the armed forces of FRY and Serbia and even limitation to civil personnel of FRY/Serbia contrary to the UN norms of sovereign territorial integrity:

a. To establish a durable cessation of hostilities, under no circumstances shall any Forces of the FRY and the Republic of Serbia enter into, re-enter, or remain within the territory of Kosovo or the Ground Safety Zone (GSZ) and the Air Safety Zone (ASZ) described in paragraph 3. Article I without the prior express consent of the international security force ('KFOR') commander. Local police will be allowed to remain in the GSZ. The above paragraph is without prejudice to the agreed return of FRY and Serbian personnel which will be the subject of a subsequent separate agreement as provided for in paragraph 6 of the document mentioned in paragraph 1 of this Article.
b. To provide for the support and authorization of the

15 Supra note (Milano, 2003).

16See *ILC Yearbook* (1966 II) 239. See also Arts 48–50 and cf. Arts 51–53 of the VCLT.

17 Extortion in the process of treaty-making induces absence of the *consent* by the party to treaty, and therefore implies *nullity* of act.

international security force ('KFOR') and in particular to authorize the international security force ('KFOR') to take such actions as are required, including the use of necessary force, to ensure compliance with this Agreement and protection of the international security force ('KFOR'), and to contribute to a secure environment for the international civil implementation presence, and other international organizations, agencies, and non-governmental organizations (details in Appendix B).[18]

These cited provisions of KA clearly demonstrate extorted impositions of politically self-inflicting damaging obligations otherwise normally unacceptable in the absence of the imminent threat of war (i.e. *abuse of power*). The KA imposed obligations, as a sort of sanctions, apparently substantially undermine the state sovereignty in part of the FR Yugoslavia territory i.e. unacceptably derogate the territorial sovereignty of Serbia. It is obvious that the KFOR - FRY/Serbia agreement (KA) was created under war-like threats and a fundamental coercive pressure in order to surrender a part of the Serbian territory to the invasion forces (NATO), while the formal FRY consent was extorted under threat of continuation of bombing aggression against Serbia and FRY. Therefore, an only possible conclusion is that this unwanted agreement was not concluded in accordance with the general rules of contracting law, i.e. *free will* and *bona fides*.[19] Namely, under no circumstances, other than military coercion and extortion would Serbia or FRY agree to surrender part of its territory to the foreign occupational forces that took side of Kosovo's Albanians. With respect to its legal validity or entering into force, subparagraph *f* provides that: 'Entry into Force Day (EIF Day) is defined as the day this Agreement is signed.'(i.e. 'Entry into Force Day' hereinafter EIF Day), i.e. KA entered into force on 9 June 1999 where NATO designation was replaced with KFOR. It should be noted that in moment of signing of KA, UN still didn't instituted KFOR as its peacekeeping force. Next day, UN Security Council incorporated dubious agreement as its Annex II to the Resolution 1244 and endorsed KFOR as UN force (*ex post facto*).

It should be emphasized that, with respect to general customary law, contracts concluded under pressure (*abuse of power*), threat, fraud, deception, delusion/misperception, blackmail or violation of basic *jus cogens* norms, as well as the principles of *bona fides* (as emerging *jus cogens*), have no legal effect by definition (they are *null and void*). All enumerated reasons for termination of agreement or contract (under *threat*, *pressure*, *fraud*, *delusion/* misperception, *blackmail, extortion*) constitute also *jus cogens* norms of peremptory customary law that may invalidate any agreement or a treaty. Obviously, an act or statement that inflict damage or other hostile action, as in case of Serbia (party to the KA), constitute a threat that could invalidate a contract. Furthermore, in addition to mentioned customary norms, in modern international law, some basic rules of Article 2 of the UN Charter that regulate interstate relations, including genocide (or other blatant human rights violations), are also considered to be *jus conges* norms for state's behavior. These basic peremptory norms include: 1. sovereign equality (paragraph 1 of Article 2) that enshrines a basic *juridical equality*[20], than as an extension to that norm principle of political independence and territorial integrity (paragraph 4 of Article 2) and particularly a basic principle-pillar of *non-interference* in the internal affairs (and hence internal jurisdiction) of other states (paragraph 7 of Article 2).[21] These principles are basic paramount customary pillars of the International public law. At this point, we must derive a conclusion, that all these enumerated basic principles of law have been violated by the imposition of the Kumanovo Agreement under threat of armed attack. Clearly, as a consequence, KA derogates national sovereignty and provides for the transfer of authority to UN, nullifying Serbian presence in Kosovo. In paragraph 3 of Article I, subparagraphs *d* and *e*, impose apparent occupational restrictions that blatantly derogate Serbian statehood, punishing FRY and awarding Albanian insurgency, supported by NATO invasion forces (or as renamed by UN 'KFOR'):

c. The Air Safety Zone (ASZ) is defined as a 25-kilometre zone that extends beyond the Kosovo province border into the rest of FRY territory. It includes the airspace above that 25-kilometre zone.
d. The Ground Safety Zone (GSZ) is defined as a 5-kilometre zone that extends beyond the Kosovo province border into the rest of FRY territory. It includes the terrain within that 5-kilometre zone.[22]

Undeniably, these stark 'commanding style' restrictions that could be typical only for an act of capitulation, clearly represent a dictation of legally dubious obligations and coercive measures under the lack of any basic consent and *free will* in the process of treaty conclusion. The Article II provides orders and commands aimed at completing and imposing unconditional limitation of the Serbian or FRY presence in Kosovo and actually assuming transfer of power under compulsory UN mandate, thus demonstrating enforced humiliating submission of FRY authority:

1. 'The FRY Forces shall immediately, upon entry into force (EIF) of this Agreement, refrain from committing any hostile or provocative acts of any type against any person in Kosovo and will order armed forces to cease all such activities. They shall not encourage, organize or support hostile or provocative demonstrations.
2. Phased Withdrawal of FRY Forces (ground): The FRY agrees to a phased withdrawal of all FRY Forces from Kosovo to locations in Serbia outside Kosovo. FRY

18 See Kumanovo Agreement (KA) Art. I (and in addition KA Appendix B).

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

20 Article 2 (1) of the UN enshrines legal *equality* as a basic pre-requisite for sovereign equality under the Law.

21 *Ibid*, KA (paragraph 3 of Article I).

22 *Ibid*.

Forces will mark and clear minefields, booby traps and obstacles. As they withdraw, FRY Forces will clear all lines of communication by removing all mines, demolitions, booby traps, obstacles and charges. They will also mark all sides of all minefields. International security forces' ('KFOR') entry and deployment into Kosovo will be synchronized. The phased withdrawal of FRY Forces from Kosovo will be in accordance with the sequence outlined below:

a. By EIF + 1 day, FRY Forces located in Zone 3 will have vacated, via designated routes, that Zone to demonstrate compliance (depicted on the map at Appendix A to the Agreement). Once it is verified that FRY forces have complied with this subparagraph and with paragraph 1 of this Article, NATO air strikes will be suspended. The suspension will continue provided that the obligations of this agreement are fully complied with, and provided that the UNSC adopts a resolution concerning the deployment of the international security force ('KFOR') so rapidly that a security gap can be avoided.
b. By EIF + 6 days, all FRY Forces in Kosovo will have vacated Zone 1 (depicted on the map at Appendix A to the Agreement). Establish liaison teams with the KFOR commander in Pristina.
c. By EIF + 9 days, all FRY Forces in Kosovo will have vacated Zone 2 (depicted on the map at Appendix A to the Agreement).
d. By EIF + 11 days, all FRY Forces in Kosovo will have vacated Zone 3 (depicted on the map at Appendix A to the Agreement).
e. By EIF +11 days, all FRY Forces in Kosovo will have completed their withdrawal from Kosovo (depicted on map at Appendix A to the Agreement) to locations in Serbia outside Kosovo, and not within the 5 km GSZ. At the end of the sequence (EIF + 11), the senior FRY Forces commanders responsible for the withdrawing forces shall confirm in writing to the international security force ('KFOR') commander that the FRY Forces have complied and completed the phased withdrawal. The international security force ('KFOR') commander may approve specific requests for exceptions to the phased withdrawal. The bombing campaign will terminate on complete withdrawal of FRY Forces as provided under Article II. The international security force ('KFOR') shall retain, as necessary, authority to enforce compliance with this Agreement.
f. The authorities of the FRY and the Republic of Serbia will co-operate fully with international security force ('KFOR') in its verification of the withdrawal of forces from Kosovo and beyond the ASZ/GSZ.
g. FRY armed forces withdrawing in accordance with Appendix A, i.e. in designated assembly areas or withdrawing on designated routes, will not be subject to air attack.
h. The international security force ('KFOR') will provide appropriate control of the borders of FRY in Kosovo with Albania and FYROM (1) until the arrival of the civilian mission of the UN.[23]

In the light of these compulsory obligations, imposed under threat and having a character of blackmailing, that blatantly affect the dignity of the State (FRY and Serbia) and fundamentally lead to the revision of the statehood of Serbia and FRY with respect to province of Kosovo, KA needs to be qualified as an illegal act. Bearing in mind that NATO incursion on FRY clearly constitute a crime of aggression, as many time repeated by FRY officials, including the fact that NATO was pursuing the Kosovo's Albanian agenda, it's undeniably evident lack of willingness (free will) to conclude the Kosovo Agreement from the Serbian side (FRY). It is blatantly clear that KA represent an example of contract unwillingly and forcefully imposed under severe pressure, threat by armed force and coercion (or against the free will and consent) of the signatory party-state to the agreement. This kind of act, obviously, does not abide to the imperative of *Bona fides* criteria, nor to the *jus cogens* norm of *juridical equality*. Undignified circumstances, from the *Rambouillet Accords* blackmail, followed by the crime of aggression and finally the war, the analysis of KA bring us to the self-evident conclusion that the aggressive attacks, including aerial bombardment on FR Yugoslavia would not have been ended or stopped unless such an act of extortion has been signed. A condition for peace was the signing of the KA. Therefore, the signing (and thereby concluding) of the KA could not satisfied '*good fate*' (*Bona Fides*) requirement, imperative norm of sovereign (juridical) equality and territorial integrity, that was undeniably violated. As mentioned above, the *bona fides* principle is a key component of modern legal orders and it appears to be a general principle of international law for contracting or at least emerging *jus cogens* norm. That fundamental legal principle requires parties *to* deal honestly and fairly with each other and to refrain from taking unfair advantage. By misrepresenting of NATO forces that actually committed crimes of aggression as 'peacekeepers' i.e. KFOR (replacing name of the invasion force) appears to be a deception and misconception. With respect to KA we may argue that this act contain *Mala Fides*, since one party apparently *abuse the power* without any good intention to achieve common aims.[24] Therefore, starting from the indisputable and undeniable fact that the contract was coerce-fully imposed under the threat of advancing brutal aggression with disrespect of *bona fides*, it should be considered that this type of contract in absence of genuine element of consent was created under illegal pressure and by involving *abuse of power* and *Mala Fides* ('*Bad Faith*'), and hence without necessary element of validity.

23 *Ibid*.

24 This behavior should be qualified as the *Mala Fides* (an *evil intention* or duplicity), act disrespecting a legal order (consciously or unconsciously) that with respect to treaties nullify them (as *null and void*).

3. Illegality of the Annex I of the UN Resolution 1244 and Applicability of Termination Under the VCLT (1969)

Taking into consideration that the military intervention (as a crime of aggression) was not previously endorsed or approved by the UN Security Council and that the war ended with an imposed 'peace treaty' with KFOR as essentially disguised NATO occupational forces, under harsh pressure on state to surrender and transfer the power, we may derive a self-evident conclusion that such an agreement is *null and void ab initio*. In the judgment of validity of the KA, we should also bear in mind that, with respect to sovereignty and contracting of treaties, FRY Constitutional provisions prohibits creation and conclusion of agreements or treaties that revise statehood and do not confer entitlement to any official person such contracting power. Furthermore*, an absence of such constitutional authority was* clearly known to other contracting party (UN and NATO/KFOR). In Article 46 of the VCLT it is provided as following:

1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.[25]

Therefore, having in mind that territorial sovereignty was blatantly and visibly violated, against FRY Constitution (including obvious lack of competence for conclusion) and principle of *bona fide* acts as a guiding tool/requirement to the interpretation of the standard for conclusion of treaties, the Kumanovo Agreement (KA) violated Article 52 of the 1969 Convention on the Law of Treaties, with illegal coercion and abuse of power against territorial sovereignty and dignity of the other party, disrespecting its genuine consent i.e. under *Mala Fides*.

Furthermore, with respect to described violations of pillars of statehood and principles on non-intervention in domestic affairs (matters that are *stricto sensu* in internal jurisdiction embedded in the UN Charter Article 2 (7)), we may recall the UN Charter Article 2 (1) bearing in mind that it protects not only the right to 'sovereign equality' of all states, but also based on the paramount fundamental norm enshrined in it the *juridical equality* for all states (persons under legal order and applicable even out of scope of the UN system). The norm of *juridical equality* is therefore another general *jus cogens* rule that as a basic principle originate even from the Roman law (a customary principle '*subjects are equal under the law*'). Having said that, we may consider the Kumanovo Agreement (KA) as subject to an unilateral termination under Article 53 of the 1969 Vienna Convention on the Law of Treaties (1969). Article 53 of the VCLT provides:

> *'A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.'*[26]

Issues Regarding the Annex I of the UN Resolution 1244.

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

1) Immediate and verifiable end of violence and repression in Kosovo;
2) Withdrawal from Kosovo of military, police and paramilitary forces;
3) Deployment in Kosovo of effective international civil and security presences, endorsed and adopted by the United Nations, capable of guaranteeing the achievement of the common objectives;
4) Establishment of an interim administration for Kosovo to be decided by the Security Council of the United Nations to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo;
5) The safe and free return of all refugees and displaced persons and unimpeded access to Kosovo by humanitarian aid organizations;
6) A political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of the KLA; /... S/RES/1244 (1999);
7) Comprehensive approach to the economic development and stabilization of the crisis region.[27]

As we may derive from the presented Annex I and the subsequent SC endorsement of the '*Rambouillet Accords*', in exact wording of the Annex I (copy-paste ultimatum), it fundamentally contradicts the basic provisions in the main part of the Resolution 1244 that guarantee sovereignty and territorial integrity of Serbia and FRY. In addition, it appears that KFOR failed in its authorized task related to the impartial 'safe and free return of all refugees and displaced persons and unimpeded access to Kosovo by humanitarian

25 VCLT, Article 46.

26 VCLT, Article 53.

27 See Annex I of the SC Resolution 1244 (1999).

aid organizations'. Particularly, KFOR have failed in 'demilitarizing the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups' as required by Resolution 1244. The Kosovo authorities were obliged with KFOR related to 'demands that the KLA and other armed Kosovo Albanian groups end immediately all offensive actions and comply with the requirements for demilitarization as laid down by the head of the international security presence…' [28] Contrary to that explicit obligation, based on the KLA, the authorities in Kosovo actually created armed forces with a view to become a regular army, and that happened under the protective mandate of KFOR. Apparently, the KFOR's action have not been impartial, as was supposed to be. Furthermore, UN Security Council completely failed in its commitment to 'ensure conditions for a peaceful and normal life for all inhabitants in Kosovo' and fundamentally ignored their obligations failing in 'establishment of an interim administration for Kosovo' on independent and impartial way that could provide peaceful and normal life for all inhabitants, irrespective of ethnicity. As for mentioned *jus cogens* limitation (i.e. norm of *sovereign equality of states*) applicable to UN decisions, we me argue that FRY obligation for 'withdrawal from Kosovo of military, police and paramilitary forces' could be ignored by Serbia under blatant humanitarian conditions of Serb population in Kosovo and Metohija or any attempt by Kosovo Albanians to generate genocide-like conditions for exodus of Serbians. The *jus cogens* norms are therefore applicable to the legality of KFOR and UN presence or entitlement for 'maintenance of peace' that appears presently to defy the basic norms of International Law (i.e. norm of *sovereign equality of states* and prohibition of exodus of people and crimes of aggression). Same conclusion goes for an Advisory opinion of the ICJ delivered in 2010 regarding Kosovo Declaration on Independence (2008) that was proclaimed not to be in contradiction with sources of International Law.[29] Even if a document of Declaration on Independence didn't challenge any existing rule of International Law or FRY 'Constitutional Framework', it appears that Kosovo Albanians didn't have legal power for *secession* from the existing sovereign state (having in mind the *territorial sovereignty* and *sovereign equality of states*), at least not in absence of proper international authorization (i.e. UNSC resolution or at least an UNGA resolution). Without any doubt 'Constitutional Framework' of both FRY and Serbia was harshly violated and International Court didn't understood that simple fact in their deliberation and conclusion that were delivered in its Advisory Opinion. In addition, International Court seems to fail to realize that secession *per se* constitute an illegal act in flagrant violation of *jus cogens* norm of *sovereign equality of states* that enshrines in itself sovereign (territorial) *integrity*.[30]

If we summarize the general situation with respect to the Kosovo Agreement and the Resolution 1244, it appears that legal grounds of the NATO security presence in Kosovo in the form of KFOR and UNMIK are at least shaky, making the territorial undefined status of 'Kosovo' clearly unlawful and therefore subject to endless negotiation between Belgrade and Pristina, that seems to be futile. The legal limitation of NATO/KFOR presence and its role in Kosovo is also entirely dubious and undefined despite the clear obligation of KFOR to protect human rights and dignity for all inhabitants of that region regardless of ethnicity and not to allow other armed forces on this territory to exist or emerge. It should be noted that KA and UN Security Council Resolution 1244 (1999) do not endorse or allow any (other) military forces on the territory of Kosovo and Metohija, while Kosovo (in general provisions formally) continues to be part of the territory of Yugoslavia and Serbia. Nevertheless, Pristina created paramilitary forces and *de facto* declared existence of its national army and *sovereignty*, preventing any negotiation about it, with no reaction from the international community or KFOR. Western powers and leading UN members that are also members of the NATO strongly and visibly supported international recognition of Kosovo as a 'state' in all international organization. These actions were in direct defiance of Resolution 1244 and KA. In addition, crucial contracting obligation of the NATO forces (or KFOR) for demilitarization as laid down in the Resolution 1244 and both Annexes were not honoured and were ignored. An attempt by international community to resolve the issue of the status and normalization by proposing the *Brussels agreement* [18] concluded by Belgrade and Pristina (2013) [31] have failed due to noncompliance by Pristina (Kosovo). That peacekeeping effort (initiated by international community and EU) and compromise accepted by Serbia failed when Pristina, with an unofficial Western support, unilaterally decided not to abide its contractual obligation regarding creation of the Community of Serb (majority) Municipalities in Kosovo (CSM or 'ZSO'). By stark noncompliance, the Kosovo's government *de facto* terminated the *Brussels agreement* and even started with violent behavior against the Serb population and Serbian property in ZSO, with basically no reaction of international community, UN or KFOR. Recent attacks on Serb population

28 Paragraph 15 of the SC Resolution 1244. See also paragraph 9 of the resolution.

29 ICJ in its Advisory opinion made a general conclusion on the question of legality of Declaration, that merely states: "The Court has concluded above that the adoption of the declaration of independence of 17 February 2008 did not violate general international law, Security Council resolution 1244 (1999) or the Constitutional Framework. Consequently the adoption of that declaration did not violate any applicable rule of international law." This conclusion was apparently different from the opinion of Serbian Constitutional lawyers who took unanimous standing that „Constitutional Framework" of FRY and Serbia was violated by the Declaration.

30 *Jus cogens* of *sovereign equality of states* is a form of a *juridical equality* under legal order. *Sovereignty*, as a legal term also covers territorial integrity, and in that sense sometimes is in use term *Sovereign territory*.

31 First Agreement of Principles Governing the Normalization of Relations or unofficially *Brussels agreement*. (The agreement, negotiated and concluded in Brussels under the auspices of the European Union. It was signed by Belgrade and Pristina on 19 April 2013). In six points of *Brussels agreement*, as crucial obligation for government in Pristina we find establishment of Community of Serbian Municipalities in Kosovo.

in September 2021 (with respect to usage of registration license plates) by special police of Pristina ('ROSU police'), as paramilitary heavily armed formation, clearly demonstrated that the presence of KFOR in Kosovo is not impartial peacemaker, but rather facilitator in line with creation of the statehood for so-called 'Republic of Kosovo'. As was firmly confirmed in the General Assembly Resolution 12407 delivered on 2 March 2022, any violation of the territorial integrity or territorial sovereignty constitute the flagrant and fundamental breach of International law and UN Charter (case of aggression against Ukraine) equal to the violation of peremptory norms of International Public Law.[32] In that light, particularly, if the provisional government of Kosovo firmly insist on becoming a NATO member in future, as was recently requested by the Kosovo (KiM) President, or to intimidate Serbs or generate an ethnic cleansing campaign against the Serb population, in our opinion, Serbia needs to consider adequate response to any possible scenario, including own noncompliance with Annex II of the SC Resolution 1244 or even termination of the KA as an illegal act. KA was generated after the aggression on the FRY, similar in nature as the Russians invasion on Ukraine in 2022. On 2 March 2022, in its resolution, UNGA strongly denounced the Russian invasion over Ukraine.

4. Conclusion

On 10 June 1999, by adopting the Resolution 1244 (1999), the UN Security Council placed Kosovo (and Metohija), a province within the Federal Republic of Yugoslavia (FRY) and Serbia, under joint administration of the NATO and UN KFOR (identical to NATO) as an UN 'peacekeeping force'. The resolution was approved one day after the end of NATO military intervention against the FRY i.e. one day after the extorted conclusion of the 'Kumanovo Agreement' (on 9. June 1999). The military intervention started when FRY rejected the *Rambouillet accords* (an attempt for extortion and blackmail that was delivered in the form of ultimatum to avoid the military aggression). These aspects, including the annexes to the Resolution 1244, raised considerable controversies over the legality of subsequent NATO aggression as the military intervention was a crime of aggression, i.e. not compliant with basic norms of *jus ad bellum* and *jus cogens* particularly with respect to *sovereign equality of states* (or *juridical equality* under legal order). Namely, NATO intervention was not endorsed by UN organs and the signing of the *Rambouillet agreement* (accords) was a precondition for avoidance of NATO intervention against FRY/Serbia. After the FRY/Serbia resolute refusal to accept and sign (conclude) the *Rambouillet* accords, NATO started its incursion operation. At this point, without authorization from UN SC, NATO aggression can be characterized only as an *abuse of power* and crime of aggression. Likewise, the conclusion of the Kumanovo Agreement was an ultimatum (or condition) delivered to FRY for ending the NATO intervention in 1999. Unless FRY and Serbia concluded the KA, bombing and intervention wouldn't ceased. In the process of conclusion of KA and the Resolution 1244 (day later), the NATO forces were merely renamed by the UN as KFOR i.e. peacekeeping force. Therefore, the conclusion of the Kumanovo Agreement was just another example of a treaty conditioned and extorted by the threat of armed attack, thus without legally valid consent by parties (e.g. from FRY/Serbia). Namely, NATO blatantly abuse the power to coerce Serbia and FRY to sign the treaty (Kumanovo Agreement) under imminent assault threat. UN Security Council acting under Chapter VII of the UN Charter endorsed KA as a legitimate treaty, disregarding the imposed character of this act. The Council didn't take into consideration that external NATO military intervention (aerial bombardment) was not authorized by UN Security Council, neither the conditioning of the Kumanovo Agreement (KA) and blackmail circumstances with respect to Rambouillet accords/agreement i.e. pre-conditioning. It should be noted that Kumanovo Agreement signed on 9 June 1999 was understood by NATO officials (including M. Jackson, NATO general who placed its signature) as agreement for military capitulation of the FRY and Serbian armed forces. On the other side, UN implicitly defined KA as a peacekeeping treaty in the spirit of the UN Resolution 1244 and in accordance with the purposes of UN Charter. At that time, many states openly doubted the legitimacy of such SC Resolution that endorsed the rejected *Rambouillet accords,* disrespecting the illegal conditioning of FRY and its provisions in harsh inconsistency with Art. 2 (7) of the UN Charter (i.e. non-interference in domestic jurisdiction). For instance, the abstention of China in the UNSC, organ by which the resolution was approved, was clearly provoked under strong presumption that legality of Resolution 1244 was questionable and dubious. The Kumanovo Agreement was subsequently attached to the Resolution 1244 on 10 of June 1999, for endorsement *ex post facto* as its Annex II, with the intention to legalize the intervention and provide a legitimate control over the Kosovo territory by NATO (essentially disguised as KFOR), despite the contradicting general provisions in the Resolution claiming guaranties for sovereignty and territorial integrity of FRY and Serbia. The wording of the Resolution 1244 provides a possibility for conclusion of the KA as its Annex, and it appears that in the moment of its conclusion, KFOR as a party to the agreement even didn't formally exist. Only the UN Security Council has authority to create or rename peacekeeping forces under UN mandate. Therefore, Annex II is basically separable attachment to the SC resolution. Thus, in the case of an amendment or termination of the KA provisions, the SC Resolution 1244 would still remain in force. Conditionality of the creation of the treaty (KA) in the wording (of the Resolution 1244) suggests that Annex II (KA) was legally not inseparable part of the UNSC resolution. Likewise, in the absence of SC resolution, the Kumanovo Agreement would independently produce legal effects (rights and obligations)

32 See UNGA/12407 (2022), and SG/SM/21163 (2 march 2022) and UN doc. A/ES-11/L.1.

with respect to the parties. As for the legal quality of the treaty, Serbian's valid consent is still missing, and the signatures placed on KA were legally unconstitutional (according to the Serbian Constitution). In conclusion, the Kosovo Agreement, *per se*, has demonstrated its unlawfulness as far as the KFOR security presence is concerned, and it is in violation of *jus cogens* norms of International law to the extent of the abuse of power by NATO. The Resolution 1244 itself goes beyond the limits of UN legality, by endorsing and recalling the mandate provided by the dubious Kumanovo Agreement. From practical viewpoint, if the KA is potentially terminated, then Serbia willn't be obliged not to intervene by its forces in Kosovo. As for the *jus cogens* norms, we pointed out in our research that absence of genuine consent and disrespect for *bona fides* (by the *abuse of power*) in treaty conclusion represent clear violation of peremptory customary principle. Neither 'effectiveness of international action' nor general 'legitimacy' under 'humanitarian concerns' could justify and cure by themselves or the legality of Kosovo Agreement. This conclusion became self-evident, especially after the adoption of UNGA Res. 12407/2022 that condemns Russian invasion over Ukraine. Therefore, in the case of Kumanovo Agreement, the application of Article 52 of the Vienna Convention on the Law of Treaties of 1969 (VLCT) is not only possible, but also recommendable in cases of humanitarian disaster. This Article of the VLCT provides that: 'A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations'. Furthermore, in our research, we have found yet another source for nullification of this dubious treaty i.e. the possibility to apply the Article 53 of the VLCT. The VLCT Article VLCT provides *jus cogens* termination as following: 'A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.' It goes without saying that such measure (termination of international treaty) shouldn't be applied easily or with no good reason. On the other hand, in case of complete noncompliance with duties (i.e. the ones presumed by Kosovo's government with respect to Brussel's agreement and their *de facto* termination of this agreement or in cases of humanitarian crisis sparked by Kosovo's forces), it seems a legitimate step for Serbia to terminate the Kosovo Agreement (Annex II of the SC Resolution 1244) on the grounds provided by Articles 52 and 53 of the Vienna Convention on the Law of Treaties (1969). The different treatment of the invasion on FRY (1999) and the invasion on Ukraine in 2022 clearly demonstrates double standards for international situations with similar nature.

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