

LEBANESE AMERICAN UNIVERSITY

**THE BRIDGES AND DIVIDES BETWEEN POLITICS
AND INTERNATIONAL LAW**

The Case of Kosovo

by

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A thesis

Submitted in partial fulfillment of the requirements
for the Degree of Master of Arts in International Affairs

School of Arts and Sciences
February 2011

Thesis Approval Form

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INTERNATIONAL LAW
The Case of Kosovo

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ACKNOWLEDGMENTS

This research would not have been possible without the help and assistance of many persons. First I would like to express my gratitude to my supervisor, Professor Walid Moubarak.

I am also deeply grateful to President Joseph Jabbra. Thanks go also to Doctor Marwan Rowayheb.

Finally, special thanks go also to the Lebanese American University.

To my wife Albine Jeanbart

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Abstract

The present thesis analyzes the circumstances and fate of Kosovo's February 2008 unilateral declaration of independence, as an experimental case for the assertion of the relationship between politics and international law.

The event which brought up the question is the fact that most of the countries that had recognized the independence of Kosovo did not oppose an October 2008 Russo/Serbian referral of the case to the International Court of Justice (ICJ) through the General Assembly of the United Nations (first legal variable). The second legal variable considered is of course the ICJ's July 2010 opinion.

The working procedure exposes first the generalities of the relationship between politics and international law, determining this latter's origins and prospects, and thereafter checks whether the case of Kosovo can help either confirming the prevalence of such relationship or invalidating it.

After exposing such generalities, the follow-up on the analysis takes essentially into consideration two political grand variables:

- (i) the current Euro-Balkan geopolitical map after the collapse of the Soviet Union, and
- (ii) the foreign policy change of the Obama administration vis-à-vis Russia as compared to that of the Bush Administration.

A close comparison of the legal variables (in particular, the formulation of the ICJ's award) to the circumstances of the moment evidenced by the abovementioned political variables leads to the conclusion that there is indeed an extent of interplay between politics and international law. And this is proved by specific developments that took place after the ICJ rendered its opinion.

Keywords: Kosovo, Serbia, Balkans, Yugoslav, international law, international relations, oil, International Court of Justice, ICJ, Europe, Caucasus, Asia.

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LIST OF ABBREVIATIONS

BoP	Balance of Power
BTC Pipeline	Baku-Tbilissi-Ceyhan pipeline
CFE Treaty	Treaty on the Conventional Forces in Europe
C.S.T.O	Collective Security Treaty Organization
ECLA	Economic Commission on Latin America
EEZ	Exclusive Economic Zone
EU	European Union
FRY	Federal Republic of Yugoslavia
ICC	International Criminal Court
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IMF	International Monetary Fund
LDCs	Less Developed Countries
LOST	The Law of the Sea Treaty
OSCE	Organization for Security and Cooperation in Europe
PRC	Peoples' Republic of China
SC	Security Council
STL	Special Tribunal for Lebanon
SU	Soviet Union
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law.

UNCTAD	United Nations Conference on Trade and Development
UNGA	United Nations' General Assembly
UNGAR	United Nations' General Assembly Resolution
UNSC	United Nations' Security Council
UNSCR	United Nations' Security Council Resolution
US	United States
VCCR	Vienna Convention on Consular Relations
VCDR	Vienna Convention on Diplomatic Relations
VCLT	Vienna Convention on the Law of Treaties
WWI	World War 1
WWII	World War 2

Chapter 1

Introduction

On the 17th of February 2008, backed by the United States and the majority of the members of the European Union, Kosovo unilaterally declared its independence against the will of Serbia and Russia.¹ Just 8 months later, on the 8th of October 2008, at the request of Serbia backed by Russia, the General Assembly of the United Nations (UNGA) adopted a resolution to seek the advice of the International Court of Justice (ICJ) on the legality of Kosovo's unilaterally declared independence.²

Such a request would look quite normal had Serbia and Russia been the only entities to be in its favor with not so little opposition and no meaningful neutral positions recorded. But the fact is that, out of the 48 countries which had recognized the independence of Kosovo from the outset, only 6 countries (including the United States) voted against the UNGA Resolution A/RES/63/3; conversely there were as many as 77 approvals and 74 abstentions. It also merits to be noted that the 74 abstentions were inclusive of 22 members of the European Union (out of the 27) which were among the 48 countries that

¹ Note:

It merits here to point out that the Kosovar aspiration for independence is neither a novelty nor an issue that emerged from vacuum. First of all, the Serbs lost the province of Kosovo as they were defeated by the Turks on the 28th of June 1389, at the famous Kosovo Polje battle. Thereafter, all the Balkans fell to the Ottomans whose age-long occupation of the peninsula left its latent footprints in the region and has thus a lot to do with today's developments. Here is a very simple example: in 1648, when the Europeans concluded the peace of Westphalia which was the historical foundation of the nation-state, the Balkans were under Turkish tutelage and were thus unable to participate to Westphalia. Therefore, unlike other Europeans, they were not allowed to emancipate and let their own historical constituents be formalized as nation-states. We will revert to the accumulation of circumstances that led to Kosovo's unilateral declaration of independence in our discussion of Euro-Balkan issues, in Chapter 3 of the present work.

² See UNGA Resolution A/RES/63/3. (2008, October 8). For our subsequent analysis, it is important to note how the question was **literally** formulated:
"Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?"

recognized the independence at once when it was declared.³ It should be noted that by July 2010, when the ICJ rendered its opinion, the number of countries which had recognized Kosovo's unilaterally declared independence had increased to 69, as compared to 48 in October 2008 when the ICJ's advice was solicited.⁴ But first, it is unclear whether those 21 subsequent recognitions would have generated just as many oppositions to soliciting the ICJ's advice, had they taken place earlier than such request, since only 6 countries out of the whole international community had expressed their opposition to such solicitation, second, it doesn't alter the singularity of the fact that only a small proportion of the international community was opposed to requesting the ICJ's advice. This is a telling indicator which definitely calls for the following questions : First, had everything turned around politically smooth for Kosovo and its supporters, why would not those 42 countries (out of the initial 48) have stick coherently to their initial positions and thus voted against seeking the advice of the ICJ, along with the 6 other countries? Second, what advantage could the parties expect, or bet on, from such advice inasmuch as it is nonbinding? Indeed, the nonbinding nature of the advice implies that, rather than being totally relieved by an enforceable decision, the concerned parties will

³ Serrier, T. (2008, October 10). *Libération*:

"Si 48 pays ont jusqu'ici reconnu cette indépendance, très contestée par Moscou, la résolution de l'ONU, demandée par Belgrade, a été adoptée par 77 voix contre 6 (dont les Etats-Unis). ...

... Sur 74 abstentions, on compte 22 des 27 membres de l'UE, qui avait pourtant reconnu l'indépendance du Kosovo. "

Translation :

"If 48 countries have so far recognized this independence, very much contested by Moscow, the UN resolution, requested by Belgrade, has been adopted by 77 votes against 6 (the United States among them). ...

... Out of 74 abstentions, there are 22 of the 27 members of the EU, which had yet recognized the independence of Kosovo".

⁴ Reuters. (2010, July 22). World court Kosovo ruling could have global impact. *The New York Times*: *"Kosovo hopes the court will accept that it is well along the path towards statehood, **recognized by 69 nations** and already functioning as an independent republic with a constitution and elections".*

still have to decide either by maintaining their anterior position or by backing up and, depending on what they are targeting, this may be more an advantage than an inconvenience. In answering the above question, any rational mind may be tempted to put into question the absoluteness of independence between politics and international law because the present stalemate on the issue leaves only one step to hint that such non-opposed recourse would aim at seeking a “honorable exist”, one way or the other, rather than a genuine abandonment to the legal wisdom of the ICJ. It amounts indeed to obtain a politically acceptable moral relief for retracting a past engagement, or else its confirmation, however legal is the mean selected to reach such objective. To avoid any confusion, it should importantly be pointed out that we are not measuring here the risks of hampering international justice by political interference; it is not the independence of the ICJ itself which is explored as the purpose of this thesis is not to put into question the unbiased nature of the ICJ’s decisions and advices. Our concern is rather relating to the reverse situations whereby recourses, which appear to be absolutely legal in their procedural mechanism, should be qualified in what they aim to as, in reality, they would only be driven by purely political motives and would not have been issued for justice alone in the absence of a determinate un-avowed political mobile; in other words, making advantage of international law for political dividends.⁵ Indeed, if the ICJ was structured

⁵ Note: It is not intended here to blame Serbia for having tried to win the case by having recourse to international justice; this was expectable; although, as much as it was, it does not preclude a Serbian hope for an ensuing political settlement, as we will see later. Nevertheless, our concentration goes rather on questioning the objectives of the States (which had hastily recognized the independence of Kosovo) as they did not oppose the consultation of the ICJ on the legality of such independence. Was their direct or indirect acceptance to consult the ICJ purely driven by concerns about justice or by concerns about a political stalemate?

In technical terms, political motives are evidently the independent variables which led to Kosovo’s unilateral declaration of independence in February 2008; while Serbia’s judicial recourse and, most of all, the express or tacit acceptance of such recourse by those States which recognized Kosovo’s independence, is obviously a dependent variable.

to only issue binding decisions and if none of the parties which had recognized the independence of Kosovo dared thereafter to leave the door open for consulting the ICJ on the legality of their own decision, or if those same parties had studied such legality and asserted it before taking position, the case studied herein would virtually avail no watermarks for any such interference of politics with international law as described above. But the facts speak for themselves in that (i) the huge majority of the countries which rushed to recognize Kosovo's independence ($42/48 = 87\%$) were very shortly afterwards, it should be emphasized, either directly or indirectly one may argue, questioning the ICJ on the issue, and (ii) this questioning was being processed with full knowledge that, notwithstanding the moral weight of the ICJ, its said advice will remain nonbinding.⁶ Consequently to the concurrence of those two facts, the possibility of intercourse in the sense referred to above can no longer be categorically excluded without going deeper into the analysis.

Conversely, one may also ask what effect or weight would such consultation have had if Russia was favorable, along with most Western nations, to Kosovo's independence? Would Serbia's request by itself have been able to mobilize the international community or would it have fallen on deaf ears?

⁶ The ratio of the parties favoring the consultation of the ICJ remains high even if the figures of July 2010 are taken into consideration instead of those of October 2008, and assuming that all the 21 additional countries would have voted against the consultation of the ICJ, which is far from being certain as explained above. Indeed, let us suppose that the 21 extra recognitions had taken place from the outset, and let us also suppose that those 21 countries would have sided with the 6 which were opposed to the consultation of the ICJ. This assumption would increase the number of recognitions of Kosovo's independence from the outset up to $48+21=69$; and it would have yielded a number of oppositions to the consultation of the ICJ equal to $69-21-6=42$. Hence, if such assumption was factual, the abovementioned ratio would be $42/69=61\%$ instead of 87%. This obviously is still high in terms of inconsistency between two fundamental positions separated by only a short period of time (February 2008 – October 2008), as under normal circumstances, this ratio would have logically been very low, if not close to zero.

In due consideration to past circumstances in connection with the matter and to the resulting situation at present, the above questions lead us to hypothesize that there are some instances where politics and international law may be not totally unrelated to each other. We will thus observe the facts in the next chapters and analyze them in order to enable ourselves to conclude on such assumption either by confirming it or invalidating it. The above having been introduced, it would be a truism to insist on the indefectible support to Kosovo's independence from some reference parties like the former Finnish President Martti Ahtisaari and Secretary Geir Lundestad of the Nobel Committee, or some countries like France and the United States.⁷ Nevertheless, the position of Serbia,

⁷ References :

- Lasserre I. (2008, October 10). Reconnaissance du Kosovo : le pouvoir serbe ne décolère pas [Recognition of Kosovo : the Serbian government is still in a temper]. *Le Figaro* : *“Une décision jugée inutile par l’ambassadeur de France à l’ONU, Jean-Maurice Ripert, «car la situation du Kosovo indépendant nous paraît dépourvue d’incertitude juridique», et inopportune «parce qu’elle ne contribue pas au nécessaire apaisement des tensions et risque de compliquer la perspective européenne des Balkans occidentaux». La saisine n’a guère de chance d’aboutir à un résultat concret, puisque l’opinion de la CIJ est consultative. Le gouvernement serbe le sait bien. Voyant dans ses dernières initiatives un moyen «de défendre sa souveraineté et son intégrité territoriale en recourant à la diplomatie et au droit international», il n’a pas l’intention de remettre en cause, pour le Kosovo, son rapprochement avec l’Europe”.*

Translation :

“A decision judged useless by Ambassador of France to the UNO, Jean-Maurice Ripert, « because the situation of the independent Kosovo seems to us devoid of legal uncertainty », and inopportune « because it does not contribute to the necessary appeasement of tensions and it risks to complicate the European perspective of the Western Balkans». The legal recourse has no chance to yield a concrete result, insofar as the opinion of the ICJ is consultative. The Serbian government is well aware of it. Perceiving in its recent initiatives a mean «to defend its sovereignty and its territorial integrity in resorting to diplomacy and to international law», it has no intention to put into question, for Kosovo, its rapprochement towards Europe”.

- Despici-Popovic, H. (2008, October 11). Le finlandais Martti Ahtisaari couronné pour sa médiation au Kosovo [The Finnish Martti Ahtisaari awarded for his mediation in Kosovo]. *Libération*:

“Rejeté, le plan Ahtisaari est à la base de la Constitution adoptée cet été par le nouveau Kosovo. Et l’attribution du prix Nobel à son auteur, l’année même de cette proclamation d’indépendant, n’est pas le fait du hasard. «Il n’y a pas d’alternative à un Kosovo indépendant», a déclaré à l’AFP le secrétaire du comité Nobel, Geir Lundestad... ”

Translation :

early and clearly expressed (October 2008) by its Foreign Minister, Vuk Jeremic, cannot but suggest that the result originally hoped by Serbia's recourse to the ICJ is far more political than strictly legal.⁸ Indeed, if Mr. Jeremic's expectation that – by referring the case to the ICJ's nonbinding advice – some of the countries which had approved Kosovo's independence would reconsider their position and most other countries would be discouraged from recognizing it, how can anyone underestimate the contingency of a fine interplay between politics and international law in the sense of our above assumption?⁹ The question is all the more comforted by the fact that other Serbian officials have subsequently made statements whose reasoning appears to be of similar inspiration, as a legal advice of unenforceable nature is hoped to bring back the antagonists to sit down around the negotiating table; notwithstanding Kosovo's rejection

“Rejected, the Ahtisaari plan is at the basis of the Constitution adopted this summer by the new Kosovo. And the attribution of the Nobel prize to its author, the very same year of this proclamation of independence, is not a fact of hazard. Geir Lundestad, the Secretary of the Nobel Committee, told AFP that «There is no alternative for an independent Kosovo»”.

⁸ References:

- Bilefsky, D. (2008, October 8). Gates, in Kosovo, highlights U.S. balancing act on Russia. *The New York Times*:
“Vuk Jeremic, the Serbian foreign minister, expressed his hope in a recent interview that if the case were sent to the International Court of Justice, other countries would be discouraged from recognizing Kosovo, and nations that had recognized Kosovo would reconsider”.
- MacFarquhar, N. (2008, October 9). Serbia wins bid to review Independence of Kosovo. *The New York Times*:
“Serbia's foreign minister, Vuk Jeremic, said the nonbinding decision from the court «will serve to reduce tensions in the region and facilitate our efforts at reconciliation» by transferring the dispute to a judicial arena. Serbia, calling Kosovo a breakaway province, believes that it acted illegally by announcing what Serbia considers a unilateral declaration of independence, and that the court case will make the states hesitate before extending diplomatic recognition”.

⁹ Note : Mr. Jeremic may be right in his reasoning since several parties who had recognized the independence of Kosovo agreed to submit the legality of such unilaterally declared independence to the ICJ. This is a fundamental step toward reconsidering ultimately their position.

of such suggestion.¹⁰ Likewise, the July 22nd 2010 advice of the ICJ – which amounted to the fact that Kosovo was free to claim independence, however without taking position on whether its statehood was a reality or not – may push forward to more and more recognitions by states that were still hesitant, but would still need to be buckled with a minimal number of recognitions and a global reputation as such.¹¹ This would probably necessitate a political settlement between the West and the leading opponent that Russia is Eastward.¹² Conversely, if Kosovo's independence is just a fair cause, and if at the

¹⁰ Portes, T. (2009, December 2). A La Haye, la Serbie plaide pour le retour du Kosovo [In The Hague, Serbia pleads for the return of Kosovo]. *Le Figaro*:

“Le président serbe, Boris Tadic, dont le gouvernement est à l’origine de cette plainte devant la CIJ, se voulait «très optimiste», estimant, dans un entretien au quotidien Vecemje Novosti, qu’une décision de la cour en faveur de la Serbie «ouvrirait la voie à la poursuite des négociations».
A La Haye, devant la CIJ, le ministre Kosovar des Affaires étrangères, Skender Hyseni, s’est chargé de répondre que « l’indépendance du Kosovo est irréversible. Nous ne pouvons pas participer à des négociations qui remettraient en question notre statut en tant qu’Etat indépendant et souverain : il ne peut pas y avoir de retour en arrière », a affirmé M. Hyseni.”

Translation :

“In an interview with the daily Vecemje Novosti, The Serbian President, Boris Tadic, whose government is at the origin of this complaint before the ICJ, was «very optimistic», considering that a Court decision in favor of Serbia «would clear-up the way for resuming negotiations».

In The Hague, before the ICJ, the Kosovar Minister of Foreign Affairs, Skender Hyseni, has taken care to answer that « the independence of Kosovo is irreversible. We cannot participate to negotiations which would put again into question our status as independent and sovereign state : there can be no return backward », has asserted Mr. Hyseni.”

¹¹ We will revert later to the wording of the Advisory Opinion of the ICJ, showing its limitation, as well as to the fundamental principle qualifying for statehood and to the UN Charter's conditions for admittance of membership to the UN.

¹² Note: although the heavy weight opponents are Easterners, it may be worth to precise here that the opposition to Kosovo's independence is not an Eastern monopoly in the absolute. As relevantly pointed out by Thierry Portes (2009, Op-cit) of the French daily Le Figaro, among the recalcitrant countries there are some Westerners having ethnic difficulties themselves, and they are consequently concerned about any transshipment of similar claims within their own environment. In Portes' own words:

“Jusqu’au 11 décembre, vingt-neuf Etats membres des Nations unies vont présenter leurs arguments. Quinze de ces pays, dont les Etats-Unis et la France, ont reconnu l’indépendance du Kosovo ; quatorze, comme la Russie, l’Espagne ou la Chine, s’y opposent toujours. ... L’Espagne, soucieuse de ne pas donner d’arguments aux Basques ou aux Catalans, n’a pas reconnu l’indépendance du Kosovo, à l’instar, au sein de l’UE, de la Slovaquie, la Roumanie, la Grèce et Chypre.”

Translation :

“Until the 11th of December, twenty nine member States of the United Nations will present their arguments. Fifteen of those States, among them the United States and France, have recognized the independence of Kosovo; fourteen like Russia, Spain or China, are still opposed to it. ... Spain, which is concerned about giving arguments to the Basques or the Catalans, has not recognized the independence of Kosovo, just like Slovakia, Romania, Greece and Cyprus, within the EU.”

same time Russia stumbles on rejecting it until it makes enough advantage of the situation in the hope of gaining the time needed to turn out the balance in its favor in the Caucasus, or even elsewhere in its areas of interest around the world, before engaging in any type of negotiation, how can anyone thus overlook such particular instances where politics may have an impact on international law?¹³ And here comes justly the challenge as the main actors still have to take position now that such nonbinding advice has been issued. The subtlety hence would be to assess the different possible outcomes, given due consideration to the leading actors' positions and interests, and thus – through the case of Kosovo – either comfort the assumption of the existence of an interplay between politics and international law or invalidate such assumption. This is precisely the exercise proposed in this work.

But at this stage, before moving further in our analysis, let us observe or try to figure out the extent of interaction, if any, between international relations and international law.

¹³ Semo, M. (2008, August 16). Belgrade tente une offensive juridique contre le Kosovo [Belgrade tries a legal offensive against Kosovo]. *Libération*:

«Une décision des juges de la CIJ n'aurait pas un caractère juridiquement contraignant mais cela compliquerait singulièrement la donne. Le nouvel Etat n'a été jusqu'ici reconnu que par 45 pays, dont 20 des 27 membres de l'UE. «Au moins ceux qui n'ont pas reconnu cette indépendance unilatérale ne le feront pas tant que la CIJ n'aura pas examiné la question», a expliqué le ministre serbe des Affaires étrangères, Vuk Jeremic, reconnaissant qu'il sera difficile d'avoir une majorité à l'ONU. Mais sur fond de crise caucasienne cela n'est pas impossible. «Avec la séparation du Kosovo, la Russie a obtenu une forte justification pour son action en Géorgie» clame ainsi le président tchèque, Vaclav Klaus. Rien d'étonnant si déjà certains s'inquiètent à Washington et Bruxelles, et que les pressions commencent pour faire renoncer Belgrade à cette idée».

Translation:

“A decision from the judges of the ICJ would not have a legally constraining status but would singularly complicate the deal. The new State has so far been recognized only by 45 countries, of which 20 of the 27 members of the EU. «At least those who have not recognized this unilateral independence will not do so as long as the ICJ will not have examined the question», has explained the Serbian Foreign Minister Vuk Jeremic, while admitting that it will be difficult to have a majority at the UNO. But with a background of Georgian crisis this is not impossible. «With the separation of Kosovo, Russia has obtained a strong justification for its action in Georgia», thus stated the Czech president, Vaclav Klaus. There is nothing to be surprised about if some people in Washington and Brussels get already concerned, and that pressures start to be exerted on Belgrade to renounce on this idea”.

Chapter 2

Compatibility of International Law with Politics

In assessing the compatibility of international law with politics, it is imperative to have an overview of the theories of international relations and compare them to one another in order to find which one of them fits best, or even more or less satisfactorily, for promoting international law. One may also wonder whether there is a theory which is rather distant from the principles of international law. And thus, to which extent such theory prevails over the others, if ever? And consequently, how strong is its influence in hampering the independent course of international law?

An adequate survey would therefore necessitate for us to draw up likewise an “inventory” of international law showing how far it has now progressed, in an effort to determine all of its areas of consistency and interactivity with international politics and to reduce the risk of overlooking some of the most relevant aspects in this regard.

But before going into this exercise, it would help recalling, as pertinently pointed out by the realist writers Hans J. Morgenthau and Kenneth W. Thompson, that states are either sovereign or not. Sovereignty cannot be partial, and there are some sorts of gaps between international law and international politics as there are discrepancies between the pretended status of their interconnection on one side and reality on the other side; an interesting statement indeed which calls for more exploration on our part before taking position.¹⁴ But in turn, this raises the question: what is sovereignty? Given consideration to the world’s move toward development, the question is not so obvious to answer; but let

¹⁴ See Morgenthau, H. J. & Thompson, K.W. (1985). Part VI, Limitation of national power : international law, Chapter 19, Sovereignty, p. 341.

The authors maintain that sovereignty is indivisible, and that any consideration for its divisibility rather reveals a “*discrepancy between actual and pretended relations*” between politics and international law.

us try a beginning by focusing on two other assertions of Morgenthau and Thompson. The first assertion is that sovereignty is a political issue expressed in legal terms, and that it may be subject or vulnerable to shifts in political power from one government to another.¹⁵ The said shifts may occur either after a forceful action – like a Coup d'état or the invasion of a country by another one or the signature of a treaty under duress – or peacefully through a democratic process of power transfer. Secondly, in order to avoid any confusion however, an important qualification should be made about the effect of treaties on sovereignty; and in this regard, Morgenthau and Thompson make the valuable precision that sovereignty – as far as its conventional realist concept is meant – is not lost by just signing agreements and treaties.¹⁶ It depends on what is provided for in the texts of those treaties; and sovereignty would thus only be lost inasmuch as such texts make the relevant government lose its political control over the management of the affairs of the country for which it was empowered to do so.¹⁷

The reference to sovereignty brings about imperatively the subject of decentralization of international legislation, but not only so; sovereignty has also to do with the decentralization of the judicial function as well; and in turn it has to do with the issue of how to enforce awards.¹⁸ Let us proceed therefore in this respect with an overview of the current progress of international law.

¹⁵ Ibid, p. 337.

¹⁶ Ibid, p. 338.

¹⁷ Note :

The traditional realist concept of sovereignty should be qualified today with the advance of globalization. We will revert to it later in this work.

¹⁸ Morgenthau & Thompson. Op-cit, p. 330.

2.1 Current progress of International Law – Guidelines of International Law focusing on the role of the International Court of Justice

Perhaps should we first recall that international law started developing from a variety of sources such as customs, morality, treaties, general principles like equity, national and international judicial decisions, experts' writings in various fields, pronouncements made by statesmen, etc... . But before getting onto the heart of the subject, it would definitely help outlining today's fundamental principle that, consistently with the UN Charter, international law prevails over customs and municipal laws on all issues amenable to international jurisdiction either by specific decisions of States formally taken, or as a result of their membership to the UN, or also – with regard to some of those issues – by general acceptance from the concert of nations as pertaining to basic and common sense principles.¹⁹ Here below are some examples:

- The signing and ratification of new instruments of supranational or international concern; this involves States that sign and ratify a treaty before its entry into force; for example, the number of ratifications of the Rome Statute of the ICC has enabled its entry into force.²⁰ Likewise, the 1982 Law of the Sea entered into force in 1994 as a result of the number of parties having ratified it.²¹
- Official engagement with respect to multilateral treaties or treaties of international concern already under way; this involves States which had neither signed nor ratified

¹⁹ It would be relevant to note here that resolutions of the UNSC, acting under Chapter VII of the UN Charter, are binding on all States, regardless of whether they are members of the UN or not.

²⁰ See Annex 1 to the present work about this Statute.

²¹ The Law of the Sea Treaty (LOST) of the 10th of December 1982 entered into force on the 16th of November 1994 in accordance with its Article 308 which stipulates that:
“1. *This Convention shall enter into force 12 months after the date of deposit of the sixtieth instrument of ratification or accession.*
2.”

a treaty but which acceded to such treaty after its entry into force; the Rome Statute of the ICC again is an example of treaty having been accepted by some States after its entry into force.²² Likewise, after the 1994 entry into force of the Law of the Sea, about one hundred States not yet involved have accepted such treaty.²³

- UNGA resolutions which ultimately end up as binding treaties; it being understood that the UNGA promotes the development of international law and its codification without becoming a world legislature for so much of a function, and therefore it cannot enact legislation in the way a parliament would do.²⁴
- UNSC decisions by which all members of the United Nations are bound in accordance with the UN Charter.²⁵ Here is an example: when South Africa was at the threshold of producing nuclear weapons, the UNSC adopted resolution number 418 (the 4th of November 1977), acting under Chapter VII of the UN Charter, whereby it

²² It may be relevant to precise here that the said States are bound by the Rome Statute of the ICC because of their express engagement and not because of their membership to the UN. This being said, in extreme situations, the UNSC can refer to the ICC a criminal matter involving a State which is unbound by the Rome Statute or even non-member of the UN. This possibility is discussed in Annex 1 to the present work.

²³ As we saw above, the LOST entered into force one year after the 60th ratification occurred; but there has been about 100 additional ratifications and/or acceptances afterwards. By the 27th of October 2010, the number of States bound by the LOST had increased to 161. See the table recapitulating the status of signatures and ratifications of the LOST, available on: http://www.un.org/Depts/los/reference_files/status2010.pdf.

²⁴ See Slomanson, W.R. (1995). (2nd ed.). Chapter 3: International Organizations, p.117. In referring to the UNGA's functions and power (promotion of international law but not as a legislative body), Slomanson stresses on the non-definite property of the terms used in Articles 10 through 17 of the UN Charter, like «*the General Assembly may discuss*», «*may consider*», «*shall ...*».

²⁵ This is explicit in Article 25 of the UN Charter which reads as follows: «*The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.*»

It should further be noted in this regard that:

- When the UNSC is acting under Chapter VI of the UN Charter (peaceful settlement of disputes), its decisions are binding provided there is a prior agreement of the parties involved;
- As mentioned earlier, when the UNSC is acting under Chapter VII of the UN Charter (threats and aggressions having to do with international peace and security), its decisions are binding on all States without any prior agreement and – as specifically stated in Article 42 of the Charter – the UNSC may opt for the use of force if it deems necessary.

decided that States should refrain from dealing with South Africa in a way that would directly or indirectly support its nuclear program.²⁶ More specifically, UNSC resolution number 473 of the 13th of June 1980 has requested States to enact national legislations for the purpose of implementing resolution number 418 (1977).²⁷ These resolutions bear obviously force of international law; and they supersede any contradictory local law.

- Common sense basic principles having obtained a worldwide global acceptance as such, and which thus bind all nations regardless of the individual consent of their governments. Examples of such principles are the rules delimiting jurisdictions of individual States, short of which there would be neither a state system nor a related international law.²⁸ Some other examples of such fundamentals of international law are

²⁶ Below are excerpts from UNSC Resolution number 418 (1977):

“The Security Council,

... ..

Gravely concerned that South Africa is at the threshold of producing nuclear weapons,

... ..

Acting therefore under Chapter VII of the Charter of the United Nations,

... ..

- 1. Calls upon all States to review, having regard to the objectives of the present resolution, all existing contractual arrangements with and licences granted to South Africa relating to the manufacture and maintenance of arms, ammunition of all types and military equipment and vehicles, with a view to terminating them;*
- 2. Further decides that all States shall refrain from any cooperation with South Africa in the manufacture and development of nuclear weapons;*
- 3. Calls upon all States, including States non-members of the United Nations, to act strictly in accordance with the provisions of the present resolution;*

... ..”

²⁷ Below is an excerpt from United Nations Security Council Resolution number 473 (1980):

“The Security Council,

... ..

- 10. Calls upon all States strictly and scrupulously to implement resolution 418 (1977) and enact, as appropriate, effective national legislation for that purpose;*

... ..”

²⁸ Morgenthau & Thompson. Op-cit. Part VI, Limitation of national power : international law, Chapter 19, Sovereignty, pp. 329-330.

the Grotius pioneered sanctity of treaties (*Pacta sunt servanda*) referred to above and the customary rules of diplomatic intercourse.²⁹

As it so happens, States can no longer oppose the competence of their domestic jurisdictions, with the exception of subjects where reservations were made possible.³⁰

In furtherance to the above, the United Nations not only advocates that all principles of international law should really be incorporated in municipal laws (notwithstanding the limited reticence of some States), but with the same spirit it also advocates that international treaties should have precedence over international customs.³¹

Thus, in line with the above advocacy, international agreements concluded by States supersede both international customs and States' respective municipal laws. This being said, the UN Charter comes on top of all because it also supersedes those international agreements inasmuch as they contain provisions that are inconsistent with its own provisions.³²

²⁹ Slomanson. (1995). (2nd ed.). Op-cit. Chapter 3: International Organizations, p.115.

³⁰ As an example, reservations are possible under the so-called "Optional Clause" of the ICJ Statute, to which we will revert a little later in this same chapter.

³¹ This advocacy is made evident in Article 38.1 of the ICJ Statute. And according to Chapter XIV of the UN Charter (Article 92), the ICJ is the principal judicial organ of the UN and its Statute is annexed to the Charter. So, Article 38.1 of the ICJ Statute says that:

"The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;*
- b. international customs, as evidence of a general practice accepted as law;*
- c. the general principles of law recognized by civilized nations;*
- d. ..., judicial decisions and the teachings of the most highly qualified publicists of various nations, as subsidiary means for the determination of rules of law."*

³² This is explicit in Article 103 of the UN Charter which reads as follows:

"In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

Now, there is certainly room for debate on the philosophy of the term “civilized nations” (please see the footnote above about Article 38.1 of the ICJ Statute); but this is beyond the scope of our work. The interesting point however is to note that those “*general principles of law recognized by civilized nations*” are not necessarily exclusively “international” (emphasis added) since that latter word has been avoided in the sentence; it being the case, those general principles of law would be national as well; in other words, municipal laws.

Hence, the reference order for regulating international relations becomes in short: (1) UN Charter, (2) international agreements, (3) internationally recognized customs, (4) municipal laws, and (5) judicial decisions and scholars’ teachings.

The above having been introduced, let us now move to the discussion of issues related to our subject with a more direct concern. In a recent television program about the globalization of justice on the French channel ARTE, broadcasted in two sessions, Jean-Christophe Victor has performed an interesting overview of the subject.³³ That same subject is also very well covered by William R. Slomanson in his book titled “*Fundamental perspectives on international law.*”³⁴ Victor globally sums up today’s international jurisdictions into essentially three types; two of them are permanent and are based in The Hague in the Netherlands, whereas the third type is non-permanent and has no predetermined seat.³⁵ The first two are : (i) the International Court of Justice (ICJ),

³³ Victor J-C. (2010, July 10 & 17.

³⁴ Slomanson W.R. (2007). (5th ed.). Chapter 9: Arbitration and adjudication, pp.389-426.

³⁵ Notwithstanding the relevancy of Victor’s summary, it should be noted that there is also a number of legal structures and resources having an international concern, whether regarding individuals or States. However, our focus in the present thesis is not on individuals under international law but on international law governing political relations among States. Besides, not all of those structures and resources are

created by the United Nations in the aftermath of WWII (1946), which succeeded to the 1920 Permanent Court of International Justice for adjudicating conflicts among states, and (ii) the International Criminal Court (ICC), established in accordance with the Treaty of Rome concluded in Rome on the 17th of July 1998 and entered into force on the 1st of July 2002, as the minimum number of ratifications required for the purpose was then

interesting for our work, particularly if their span does not evidently permit the establishment or the negation of an interplay between politics and international law; below are some examples:

1. Individuals and companies under international law

If individuals are victim of a prejudice of international concern having a political or governmental aspect, their home State (but not themselves) can be plaintiff for the wrong done to them. The adjudication of certain specific crimes perpetrated by individuals (becoming thus defendants) – like piracy, harming diplomats, hijacking aircrafts, slave trading, engaging in certain wartime activities, committing genocide (Sloanson, 1995, 2nd ed., p.204) – is of the competence of any nation's legal structure for they are considered as crimes against all mankind; this is the so-called Universal Jurisdiction.

Without prejudice to the principle that individuals cannot personally be plaintiffs under international law, they can nevertheless appeal to the UN Committee on Human Rights (which is however not a Court) in accordance with Article 1 of the March 23rd, 1976 Optional Protocol to the Covenant on Civil and Political Rights which entered into force the same date. This is in fact a resultant of the December 16th, 1966 adoption by the UNGA of treaties relevant to the “international bill of rights” in the form of Human Rights Covenants, originally contemplated by the December 10th 1948 Universal Declaration of Human Rights. These instruments – along with a number of others relating to Human Rights, like children rights and all sorts of discrimination (our purpose here is not enumerate them all) – are qualified by Gerhard Von Glahn (1996) as somehow affording the individual the faculty of becoming a subject of international law.

Thus, Article 6 of the Optional Protocol provides that “*The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.*” And Article 45 of the Covenant provides that “*The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.*”

Accordingly, an individual's complaint can theoretically make its way to reach the UNGA which – depending on the nature of the facts complained about – can refer the matter to the UNSC. If the crime is of the nature of one of those listed in Article 5 of the Statute of the ICC, this latter may in turn refer the case to the ICC; please refer to Annex 1 to the present work.

If companies are involved in a commercial issue against a State different than their own, they can either be plaintiff or defendant. As it so happens, there are cases where bilateral treaties among States provide for the resolution of such kind of disputes by international arbitration. In this respect, the United Nations Commission on International Trade Law (UNCITRAL) is a reference UN body involved in international law and having set rules and procedures for such adjudications.

2. States and international organizations under international law

States and international organizations can either be defendants or plaintiffs whether the conflict is of political nature or of commercial nature, and cases can be decided by the ICJ. International arbitration is also possible for the resolution of commercial disputes among States (like in accordance with the UNCITRAL rules again). But as stated above, we will concentrate on interstate conflicts of political nature.

reached.³⁶ The third type is the ad hoc tribunals with globally the same object than the ICC, but which have duration and territorial limits.

All these jurisdictions are rightly qualified by Victor as actors of international relations. But the said qualification obviously leaves a question mark on a potential interconnection between international justice and worldwide politics. As it may so happen for certain cases, the challenge would be to assess how much and under what conditions such actors are independent from influential states and from pressures from within the state. We will concentrate nevertheless on the ICJ as it is the type of international jurisdiction which is relevant with the case of our subject.³⁷

However, it may be useful at this point and for other subsequent references to summarize the veto working mechanism. Article 27 of the Charter of the United Nations reads as follows:

“Voting

- 1. Each member of the Security Council shall have one vote.*
- 2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.*
- 3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members **including the concurrent votes of the permanent members;**”*

³⁶ The Rome Statute of the International Criminal Court established the ICC in accordance with its Article 1, which reads as follows:

“An International Criminal Court (“the Court”) is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions.”

It entered into force on the 1st of July 2002 in accordance with its Article 126, which reads as follows:

*“This Statute shall enter into force on the first day of the month after the 60th day following the date of the deposit of the 60th instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.
... ..”*

³⁷ Still, the ICC and the ad hoc tribunals in international law are outlined in Annex 1 to the present work.

Article 23 of the Charter has determined that the Security Council is composed of 15 members, of which 10 are non-permanent (elected by the General Assembly on a two-year rotational basis) and 5 are permanent members; those latter are the United States, Russia, China, France and Great Britain. Thus a negative vote of anyone of those five countries is enough by itself to block a UNSC decision even if the 14 other votes are favorable.

The above having been introduced, let us proceed now with our discussion of the ICJ. Its role is best described in its own website : *“The Court has a twofold role: to settle, in accordance with international law, legal disputes submitted to it by States (Contentious cases) and to give advisory opinions (Advisory proceedings) on legal questions referred to it by duly authorized United Nations organs and specialized agencies.”*³⁸

As an example of an issue for which the ICJ’s advice was solicited (2003), both Slomanson and Victor have made reference to the construction of a wall by the Israelis to separate themselves from the Palestinians of the West Bank. Slomanson refers to the *«Charter based authority»* of the UNGA to solicit the ICJ’s advisory opinion on the legality of the Israeli wall.³⁹ In July 2004, the Court’s conclusion was that the wall was illegal, but that was to no avail says Victor since the Israelis proceeded with the construction of the wall.⁴⁰ This exemplifies the significance of a consultative advice of the ICJ in terms of practical capacity, and it comforts us in our determination to assess

³⁸ This description can be read by clicking on “Cases” in the ICJ’s website : <http://www.icj-cij.org>.

³⁹ Slomanson. (2007). (5th ed.). Op-cit. Chapter 6: Range of sovereignty, p.273.
Note: In his reference to the “Charter-based authority” here, Slomanson means Article 96.1 of the Charter of the United Nations which reads as follows:
“The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.”

⁴⁰ Victor. (2010, July 10). Op-cit. Part 1 of 2.

how much and under what conditions justice among peoples and societies is independent of politics and of the power ratios among nations. So far thus, may we say, part of the role of the ICJ appears to be restricted to that of a moral authority which, in no practical way, can bind the party to which the responsibility of a prejudice is attributed to modify its conduct and remedy such prejudice.

Another major aspect of the ICJ's incapacity (this time theoretical) is the so-called "Optional Clause" which is a different issue than its advisory role but whose bottom line is comparable in that it enables either of the parties to short-circuit the ICJ. Such an appellation for that clause is a direct consequence of the wording of Article 36 of the Statute of the ICJ.⁴¹ As understandable – with such binding provisions on one side and the faculty to either accept (totally or partially) or reject the ipso facto compulsory jurisdiction of the ICJ on the other side – when they deposited their declarations with the Secretary-General of the United Nations, most of the states have only signed the ICJ's Statute after having made substantial reservations affording them the possibility to

⁴¹ Statute of the ICJ. Op-cit. Article 36 of the Statute reads as follows:

1. *The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.*
2. ***The states parties to the present statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:***
 - a. *the interpretation of a treaty;*
 - b. *any question of international law;*
 - c. *the existence of any fact which, if established, would constitute a breach of an international obligations;*
 - d. *the nature or extent of the reparation to be made for the breach of an international obligation.*
3. ***The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.***
4. ***Such declarations will be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.***
5. *Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present statute, to be acceptances of the compulsory jurisdiction of the International Court of justice for the period which they still have to run and in accordance with their terms.*
6. ***In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.***

oppose the prevalence of their domestic jurisdictions over that of the ICJ in a wide range of circumstances either deemed to be of concern with their sovereignty or hampering their maneuvering margin in international relations.⁴² It is the above-mentioned faculty that owed Article 36 the label of “Optional Clause”.⁴³

One very significant option of this famous clause is the principle of reciprocity, provided for in Article 36.3 of the Statute. It may also be opposed by one of the parties to a dispute provided it had inserted it within its own reservations upon filing its declaration to the UN Secretary-General. The trick is that, when the effects of such principle (called upon by that first party) are combined with those of some different specific reservations made by the other party, that other party may be trumped by its own reservations on areas of competence of the ICJ, despite the fact that such other party would have brought up itself the matter before the ICJ. Indeed, according to this principle, both plaintiff and defendant should be amenable to the ICJ’s jurisdiction under the same conditions of advantages and constraints. So if one of the parties had put more restrictions than the other one, the latter would not be liable for abiding by that portion of the rules on which it had consented and which is tougher than those rules by which the former is engaged; furthermore such latter party would similarly be permitted to argue with those very same limitations put forward by the former party.⁴⁴

A good example illustrating the effect of the principle of reciprocity is the Case of Certain Norwegian Loans (France v. Norway); the related dispute was about the mode of

⁴² Please refer to our discussion of “sovereignty” at the beginning of this chapter.

⁴³ Slomanson. (2007). (5th ed.). Op-cit. Chapter 9: Arbitration and adjudication. On page 403, Slomanson gives some examples of the functioning of the Optional Clause and the resulting range (from narrow to wide) of possible exclusions from the ICJ’s jurisdiction.

⁴⁴ Ibid. Chapter 9: Arbitration and adjudication, pp.402-404.

repayment of a series of French loans granted to Norway between 1885 and 1909.⁴⁵ It was France which brought up the case before the ICJ but the distinctive element is that, in its acceptance of the compulsory jurisdiction of the ICJ on the 1st of March 1949, France excluded matters which it saw within its domestic jurisdiction; while Norway did not make any such exclusion in its November 16th, 1946 acceptance of the compulsory jurisdiction of the ICJ. But both France and Norway had expressly laid down the condition of reciprocity in their respective reservations. And therefore, Norway argued that the condition of reciprocity imposed such an equality of treatment that both parties should be subject to exactly the same restrictions and entitlements; thus if France had excluded matters falling within its domestic jurisdictions from the ICJ's competence, so Finland should be able to exclude such kind of issues regardless of its failure to express this particular reservation from the outset.⁴⁶

⁴⁵ Ibid. Chapter 9: Arbitration and adjudication, p.405.

See Case of Certain Norwegian Loans (France v. Norway), International Court of Justice, 1957 *ICJ Reports* 9 (1957).

⁴⁶ See the ICJ's judgment of the 6th of July 1957 available on <http://www.icj-cij.org/docket/files/29/4773.pdf>; excerpts, pp. 22, 23 & 27:

“After presenting the first ground of its first Preliminary Objection on the basis that the loan contracts are governed by municipal law, the Norwegian Government continues in its Preliminary Objections:

« There can be no possible doubt on this point. If, however, there should still be some doubt, the Norwegian Government would rely upon the reservations made by the French Government in its Declaration of March 1st, 1949. By virtue of the principle of reciprocity, which is embodied in Article 36, paragraph 2, of the Statute of the Court and which has been clearly expressed in the Norwegian Declaration of November 16th, 1946, the Norwegian Government cannot be bound, vis-à-vis the French Government, by undertakings which are either broader or stricter than those given by the latter government. »

... ..

In the Preliminary Objections filed by the Norwegian Government it is stated:

*« The Norwegian Government did not insert any such reservation in its own Declaration. **But it has the right to rely upon the restrictions placed by France upon her own undertakings.***

Convinced that the dispute, which has been brought before the Court by the Application of July 6th, 1955, is within the domestic jurisdiction, the Norwegian Government considers itself fully entitled to rely on this right. Accordingly, it requests the Court to decline, on grounds that it lacks jurisdiction, the function which the French Government would have it assume. »

... ..

The Court considers that the Norwegian Government is entitled, by virtue of the condition of reciprocity, to invoke the reservation contained in the French Declaration of March 1st, 1949; that this reservation

And Slomanson concludes therefore that the principle of reciprocity enabled Norway to make advantage of a reservation put forward solely by its opponent in order to plead successfully against the competence of the ICJ in the above case.⁴⁷

So far we have seen two examples; the first one images the inability of the ICJ to process a decision or a recommendation toward execution, and the second one illustrates the inertia of the ICJ. It should however be made clear that such “paralysis” of the ICJ is not always absolute; there are indeed cases where decisions or advises are complied with, but only after long periods of procrastination; in most of those instances however, it is not the care for justice which compels the wrongdoer to abide by an ICJ decision but either an international determination to command respect for international law or a change of political circumstances and balances that exerts a crescendo of pressures on such party and deprives it from the power necessary to proceed with the prejudice it was causing to the victim, or even both at a time. This fact is very well illustrated by the Namibia Case, on which the ICJ rendered an advisory opinion that was ignored by South Africa for about 20 years. A brief history of the case is exposed in Annex 2 of the present work and it shows how much effort and time it took the United Nations and the international community to bring South Africa to leave Namibia alone.⁴⁸ But not only so : South

excludes from the jurisdiction of the Court the dispute which has been referred to it by the Application of the French Government; that consequently the Court is without jurisdiction to entertain the Application.

... ..

THE COURT,

by twelve votes to three,

finds that it is without jurisdiction to adjudicate upon the dispute which has been brought before it by the Application of the Government of the French Republic of July 6th, 1955.”

⁴⁷ Slomanson. (2007). (5th ed.). Op-cit. Chapter 9: Arbitration and adjudication, p. 405.

⁴⁸ There has been a plethora of UNSC resolutions (more than 35) after the ICJ rendered its June 1971 opinion. All resolutions aimed ultimately at the independence of Namibia and the abolition of apartheid; such two issues were explicitly recalled in most of those resolutions. Examples of other issues interconnected with the abovementioned two are the following: arm embargoes, banning deals with South

Africa was blamed by the international community for its apartheid policy, and in the 1970s all the way through to the 1988 ceasefire, riots were frequently taking place here and there in the South African territory and they contributed to increase the volume of political prisoners and political trials ending up with death sentences of very questionable fairness. As a consequence, South Africa was getting little by little isolated and the then Administration (an ethnic minority) was losing control of the affairs of the country, of which the ethnic majority had been excluded for centuries. It was getting clearer and clearer that the Administration had no choice but to change its policy not only in Namibia but in South Africa itself as well.⁴⁹ Indeed, when Frederik De Klerk took over office from Pieter W. Botha in 1989, he initiated the changes; and so, in 1990, Nelson Mandela was liberated, the racial segregation was abolished and Namibia acceded at last to independence.⁵⁰ Therefore, one may legitimately ask what would have happened if South Africa was not back then so weakened by the circumstances and by the international community's determination.

In our above discussion we have tried to explain both the absolute and relative "paralyses" of the ICJ. In opposition to the above examples, there are circumstances where ICJ

Africa in many fields, banning foreign investments in South Africa, condemning racial discrimination and repressive laws, condemning political trials, requesting the release of political prisoners, demanding to stay execution of death sentences and to commute them, condemning South Africa's defiance of UN resolutions, etc..., etc... . Our purpose here is not to list them all but to make evident the overwhelming pressure exerted on South Africa's regime back then.

⁴⁹ In an effort to realize the intensity of the international pressure on South Africa, perhaps would it make sense to precise here that the United Nations had also a reproving eye on South Africa for its racist and expansionist policies in dealing with other Southern African countries, like Botswana, Angola, Lesotho and Zambia. Between 1976 and 1988, the UNSC adopted as many as 26 resolutions reproving South Africa's conduct with the aforementioned States.

⁵⁰ It may be relevant to point out here that before Mandela was liberated, there had been several UNSC resolutions calling specifically for his release; here are two examples: UNSC resolution number 473 (the 13th of June 1980) and UNSC resolution 569 (the 26th of July 1985).

advises and awards go all the way through to execution in a smooth manner; but it should be made clear that most of those cases fall outside areas of exclusions and reservations made by States on issues either deemed to be of concern with their sovereignty or colliding with their national aspirations. As a matter of fact, if the Optional Clause did not exist, the Statute of the ICJ and most probably the Charter of the UN would have remained unsigned or at least signed with a modified text. The said Optional Clause has thus considerably reduced the significance of the Court's competence and this is one more argument legitimating our putting into question the independence of international law from worldwide politics.⁵¹

Logically therefore, our above hypothesis raises a fundamental question on *how international law came about altogether?* And the answer is pertinently found in the discipline of international relations. Indeed, our discussion of the issue in the next section will not only answer the question but it will also relevantly demonstrate how such interplay between politics and international law may be positively seen from one perspective and negatively from another one.

⁵¹ The probability for the Charter of the United Nations to have remained unsigned stems from the wording of Article 92 of the said Charter which reads as follows:

“The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of international Justice and forms an integral part of the present Charter.”

Therefore, if the provisions of the famous Article 36 of the Statute of the ICJ were not “optional”, States would have been reluctant to sign the statute; and by implication, they would have probably convened – or at least tried to convene – on another wording for Article 92 of the UN Charter, or renounced to sign it absent a global agreement of most powerful States on the subject.

2.2 Theories of International Relations – Analyzing the Schools of International Relations that are relevant with International Law

There are essentially three schools of thought in international relations, of which derive a number of variances; those three major schools are: realism, pluralism and globalism. As this latter has a declared inclination to changes neither by democratic processes nor by freely taken positions but rather by opting for radical measures and resorting to revolutions, it does not offer much room for international law in its professions. We will therefore not give such school of thought any further consideration in our study, except the fact of outlining its philosophy in Annex 4 to the present work.

2.2.1 Realism

In world politics, the mainstream of contemporary realist thought appears to best approximate the concept of international system, which is viewed as consisting of independent political units called states and living in anarchy. Their power is a potential danger to each other as anyone of them can never be sure about the intentions of the others. The basic motives for states are survival and the maintenance of sovereignty; and there is an interactivity between them since, in order to survive, states are supposed to be externally independent from each other and internally sovereign within their boundaries.⁵² The reverse of the medal is interdependence; a term which “horripilates” realists and on which we will further expand. Realism thus theorizes that the state represents the key unit of analysis and is a unitary actor. Such latter characteristic further qualifies the state to be a rational actor; and the combination of both is a particularly

⁵² References:

- Viotti P.R. & Kauppi M.V. (1999). pp. 6-7, 67
- Beavis. Op-cit. See the paragraph “Realism”.

important factor in connection with security.⁵³ Realism also postulates that national security tops the hierarchical list of international issues. Power is therefore a key concept, and realists make clear the distinction between high politics factors and low politics factors, whereby the former relate to strategy, to military and security issues and the latter relate to socioeconomic matters.⁵⁴

Measuring the power or capabilities of states is therefore a critical step in explaining the functioning of the international system. Power is the sum of a state's capabilities; it is better perceived when compared to that of other states. Such capabilities of power for anyone state are its military strength, its economy, its technological advance, its diplomacy, its political influence or control over issues, etc..., and they are usually not independent of one another. Military alliances and conflicts among states certainly impact their economic relations; likewise, military capabilities of states are tributary of their economies.⁵⁵

In the realist philosophy, the repartition of states' capabilities leads to the setting up of an equilibrium among them in terms of power; and such equilibrium is the relevant reference in the international system, precisely because of the fact that those states are living together in a world which lacks a central authority safeguarding the rights of each and guarantying the execution of its obligations toward the rest of them. In other words, distrust and anarchy are the defining characteristics of the environment within which sovereign states interact.⁵⁶

⁵³ Note : We will elaborate on this aspect a little further ahead.

⁵⁴ Viotti. & Kauppi. Op-cit, pp. 6-7

⁵⁵ Ibid, pp. 64-66

⁵⁶ Ibid, pp. 68 & 72

Given such international anarchy and lack of trust, each state has to secure its protection either by its own means or by strategic alliances, or else by a combination of both. As a result, interstate relations are burdened with a so-called security dilemma which compels states to engage in an endless spiral of arms race, often against their will, no matter if they sincerely desire peace and even if their purposes were only defensive from the outset. They engage in such a race just because they don't necessarily know their rivals' intentions and they cannot be sure of their built up arsenal.⁵⁷

Anarchy renders cooperation among states difficult to realize not only over security matters, but also on any type of interest. The resulting conduct for actors is a rational decision-making approach in situations of competition, and whereby such actors are supposed to handle situations in the most advantageous way for them under conditions of uncertainty and incomplete information about the others' intention. This is known as the game theory and it has the same basic principle than the security dilemma; and perhaps is it best illustrated by Jean-Jacques Rousseau's allegory of the stag hunt which pictures 5 individuals hunting altogether for a stag with the temptation for each individual to abandon the group and go for a hare, since this latter is an easier target. The stag hunt requires the imperative and faithful collaboration of all 5, but the easiest for each one separately is to go for the hare as it serves the immediate short-term self-interests; but it only does so at the detriment of long-term common interests. Furthermore, the lack of knowledge about each one's intention induces anyone hunter to opt for the most certain gain for him, i.e. the hare. Likewise in international relations, according to the realist

⁵⁷ Ibid, p. 69

philosophy, in any kind of doubtful circumstances the rational decision for a state would be to defect instead of cooperating on whatever subject.⁵⁸

As a result of the distrust, the ultimate risk associated with the anarchical nature of the international system is of course the outburst of international conflicts. It becomes therefore imperative for states to secure themselves in such an environment, in particular when one state or group of states gathers a disproportionate amount of power, thus threatening to dominate the former ones. Those former states are consequently compelled to balance against the dominant power, sometimes by banding together or pooling their capabilities. After major wars or crises, balances of power generally stabilize until some other element disrupts the existing equilibrium and necessitates the setting up of a new order. Indeed, (i) after the peace of Westphalia in 1648 there was a period of relative rest, (ii) in the aftermath of WWI a multipolar equilibrium took place, (iii) in the aftermath of WWII a bipolar balance took place, and (iv) after the Cold War era a unipolar order was set; although such unipolar order has now lost ground with the reemergence of Russia and the growing strength of China.⁵⁹

Now, back to interdependence, it is a status which is viewed by realists as deriving from power in the international system. It is however interesting to note that pluralists attach also an importance to the concept of interdependence but with a positive aspect as it refers to exchanges (commercial, social, cultural, communication, transportation, etc...)

⁵⁸ References:

- Viotti. & Kauppi. Ibid, pp. 68-71
- Beavis. Op-cit. See the paragraphs “Game Theory” and “Security Dilemma”

⁵⁹ Viotti. & Kauppi. Ibid, pp. 71-74

benefiting all parties involved. Globalists for their part approach power and exchanges through the concept of dependence of the Southern countries to the North.⁶⁰

For realists, interdependence has a negative connotation. It is a relationship between 2 parties whereby the weakest one of them is vulnerable and tributary of the choices of the strongest one. In this context, interdependence is thus a source of power of one state over another. Realists believe that there should be no interdependency on high politics factors in order not to jeopardize the security of the state. Since the oil embargo however, realists have qualified their view as they no longer see economy as an exclusively low politics element. Indeed, oil supply became a strategic issue and, as such, its classification shifted from a low politics element to a high politics element.⁶¹

The realist tradition has started way back in history with Thucydides (471-400 B.C.) and has evolved through the ages up to contemporary views like those of Kenneth Waltz and Edward Hallett Carr. In short, we may summarize such evolution as follows:

(i) According to Thucydides, fear associated with the shift in the balance of power is the underlying cause of war. Thucydides is unquestionably the ancestor of the realist scholars.⁶² But he perceived power as a double-edged sword because the misuse of power would ruin the party holding it.⁶³

(ii) Niccolo Machiavelli (1469-1527) concentrated his work on Realpolitik, focusing on what the world is rather than on what it ought to be and concluding thus that rulers should behave with morality toward the external environment as long as the national security of

⁶⁰ Please refer to the discussion of globalism in Annex 4 to the present work.

⁶¹ Viotti. & Kauppi. Op-cit, pp. 76-78.

⁶² Ibid, pp. 57-59

⁶³ See Annex 3 to the present thesis for a summary of Thucydides' perception of power.

their own state is not jeopardized or threatened, in which case any decision or measure taken, no matter how immoral it is toward foreign communities, is justified for the fulfillment of their responsibilities in terms of national security or interest.⁶⁴

(iii) Thomas Hobbes (1588-1679) emphasized on both anarchy and human nature; as explained by Jack Donnelly, he focused on Great Powers (also referred to as “Hobbesian equals”) without giving much consideration for weaker states; this is known as classical realism.⁶⁵ His famous book “*Leviathan*” calls for the establishment of an authority with a higher level than that of the state to end up the anarchy in the state of nature. Hobbes’ philosophy was also called human realism because of his stressing on statesmen diffidence and their search for glory.⁶⁶ In Hobbes’ own words:

“There must be some coercive power to compel men equally to the performance of their covenants, by the terror of some punishment, greater than the benefit they expect by the breach of their covenants.

... ..

*In all times, kings, and persons of sovereign authority, because of their independency, are in continual jealousies, and in the state and posture of gladiators; having their weapons pointing, and their eyes fixed on one another; that is, their forts, garrisons, and guns upon the frontiers of their kingdoms; and continual spies upon their neighbours; which is a posture of war”.*⁶⁷

(iv) Hugo Grotius (a Dutch scholar, 1583-1645) is very interesting for our case study as in addition to his predecessors, he called for the establishment of international laws, elaborated inter-alia, through treaties among states. Hence the sanctity of treaties,

⁶⁴ Viotti. & Kauppi. Op-cit, pp. 59-60

⁶⁵ Donnelly, J. Chapter 2 : Realism. In Burchill et al. (2005), p. 34

⁶⁶ Viotti. & Kauppi. Op-cit. pp. 60-61

⁶⁷ Ibid, pp. 60-61: extracts from Thomas Hobbes’ *Leviathan*, Book 1, Chapter 15, p. 113 and Chapter 13, p. 101, edited by Michael Oakeshott (New York and London: Collier Macmillan, 1974).

expressed in the Latin words : *Pacta sunt servanda*. Such call owed Grotius the claim by pluralists to be one of their own.⁶⁸

(v) Edward Hallett Carr has suggested that politics is made of 2 elements, “*inextricably intertwined*” as put forward by Viotti and Kauppi: utopia (idealism, values) and reality (realism, power). For Carr there is a kind of balance between idealism and realism; his work transcends narrow classification in that he has also been influential, as has Grotius, on the thinking of pluralists. His book “*The Twenty Years’ Crisis, 1919-1939*” was a synthesis of the thinking of his most important predecessors, focusing on the underlying roots of war rather than on its immediate causes. Consistently with Thucydides, he asserted that fear has a major role in triggering conflicts. He also quoted Machiavelli and Hobbes on the fact that the exercise of power begets more appetite for more power.⁶⁹ Carr owes also a lot to Grotius as – in Viotti and Kauppi’s own words – he expanded on “*morality in international relations, the foundation of law, the sanctity of treaties, the judicial settlement of international disputes, peaceful change, and the prospect for a new international order*”.⁷⁰ This is indeed interesting as well for our study.

(vi) Kenneth Waltz’s distinctive contribution was his expansion on what is known as the balance of power whereby, instead of concentrating like Hobbes on human nature and strong states, a larger account is reserved for weaker states as units in a globally balancing system. The most powerful units set the scene of action for others and for themselves as well. These major powers are referred to as poles or cores; and depending on the circumstances of the moment, the international system may either be characterized

⁶⁸ Ibid, pp. 61-62

⁶⁹ Ibid, pp.62-64. See particularly page 63.

⁷⁰ Ibid, p. 63.

as unipolar, bipolar or even multipolar, as we saw above. In opposition to Hobbes' classical realism Waltz's concept won the label of neorealism or structural realism, whereby poles are concerned with power building and their followers (bandwagons) are concerned with survival. Another way of illustrating the concept is to picture neorealism as a two-dimensional structure. If Hobbes' classical realism is schematized as the anarchical horizontal relationship among equal powers (Hobbesian equals), structural realism could be schematized as encompassing both (a) the anarchical relationship among powers of more or less equal capabilities and (b) the hierarchical vertical relationship among unequal powers, which is a relationship of functional nature between a core and its bandwagons.⁷¹ In comparison to the works of other realist scholars like Hobbes, Grotius and Carr, Waltz's neorealist image of the inevitability of a power balance structure among states is the reverse of the medal not only for the lack of a regulatory authority superseding states but also, as he infers it, for the necessity of giving further such authority, once established, the power and means to execute its decisions; in other words, to avail the international system with (i) a frame of international rules and regulations, (ii) a super ordinate authority, and (iii) **an enforcement body**.⁷² And this is one more interesting element for our present work.

(vii) Morgenthau's (and Thompson's) perception of the basic nature of human beings – whereby they endeavor to maximize their power – and the resulting power pursuit propensity of states has complemented Hobbes' classical perspective.⁷³

⁷¹ References:

- Donnelly. Op-cit. Chapter 2 : Realism. In Burchill et al (Eds.), pp. 34-40.
- Beavis. Op-cit. See the paragraphs "Classical Realism", "Neorealism", and "Realism".

⁷² Waltz, K..N. (1959), pp. 119, 209 & 210.

⁷³ Beavis. Op-cit. See the paragraph "Classical Realism".

But specifically as theorists of repute in the field of international relations, Morgenthau's and Thompson's extensive coverage of international law is by far the most interesting part of their work for our case study. They say that "*where there is neither community of interest nor balance of power, there is no international law*".⁷⁴ Quoting L. Oppenheim, a reference teacher of international law, they proceed : "*L. Oppenheim calls the balance of power «an indispensable condition of the very existence of International Law». He states:*

«Six morals ... can be said to be deduced from the history of the development of the Law of Nations:

*1) The first and principal moral is that a Law of Nations can exist only if there be an equilibrium, a balance of power, between the members of the Family of Nations. If the Powers cannot keep one another in check, no rules of law will have any force, since an overpowerful State will naturally try to act according to discretion and disobey the law.»*⁷⁵

Thus, according to Morgenthau (and Thompson) and Oppenheim, there should be a balance of power in the state system for the prevalence of international law. For a moment, the reader may be confused with the impression of depicting a contradiction with Waltz's position, as this latter only made inference about the need for a balance of power to establish international law (without being much explicit on it) but was conversely stressing on the reverse reasoning; i.e., that the balance of power was a necessary equilibrium in the absence of worldwide regulation. But the confusion is dissipated by a closer look at Waltz's assertion that in the absence of a regulatory authority and an enforcement body, the system should be close to perfection in order to

⁷⁴ Morgenthau & Thompson. (1985). Op-cit. Part VI, Limitation of national power : international law, Chapter 18, The main problems of international law, p. 296.

⁷⁵ Ibid, p. 296.

maintain justice; and that force is therefore definitely needed for the establishment of provisions and means to enforce decisions.⁷⁶

Thus by stating that force is needed to complete the process of establishment of international rules through the adding up of enforcement provisions, Waltz recognizes – directly or indirectly, one may argue – a role for the balance of power in this regard.

Morgenthau and Thompson proceed in their quotation of Oppenheim:

«As there is not and never can be a central political authority above the Sovereign States that could enforce the rules of the Law of Nations, a balance of power must prevent any member of the Family of Nations from becoming omnipotent.»⁷⁷

Such statement compares to Waltz's assertion that in the absence of international regulation, of super ordinate authority and of an enforcement body, the balance of power remains unavoidable in any matter or form of competition.⁷⁸

Thus for Waltz, if there were those instruments and structures like international regulation, central authority and enforcement apparatus, the balance of power would not be exclusively the outcome of the power ratios among states in terms of military capabilities, but would also result from the rights and obligations of those states stemming from both the theory and the applicability of the said rules. And by the same logic, Morgenthau and Thompson say that since those instruments and structures are inexistent, a balance of power based on the military concept of force – as opposed to law and rights – is unavoidable.

⁷⁶ Waltz, K.N. (1959). Op-cit, pp. 119, 209 & 210.

⁷⁷ Morgenthau & Thompson. (1985). Op-cit. Part VI, Limitation of national power : international law, Chapter 18, The main problems of international law, p. 296.

⁷⁸ Waltz, K.N. (1959). Op-cit, pp. 119, 209 & 210.

In other words, the balance of power in the state system is indispensable for enabling nations to convene on a set of rules called “international law”, otherwise, an omnipotent party will impose its own rules without care for any understanding with its peers in this respect. But conversely, once established, this set of rules cannot produce autonomously its intended effects and nullify the need for a balance of power. Whether or not there exists an international law, the state system cannot rest in equilibrium without a balance of power, as there is no super-ordinate law enforcing authority capable of processing the execution of decisions with absolutely no risk of contest or even challenge by any significant power of the world.

Regarded as such, it becomes clear that for contemporary realists, one of the most important keys to the mystery is the inexistence of a central authority, willfully vested by the actors of international relations with the power to enforce the rule of law indiscriminately on individual states in the international realm.

2.2.2 Pluralism

Pluralism is opposed to the realist vision of the centrality of the state and its qualification as unitary actor in world politics. The pluralistic view of international relations apportions much more consideration to the role of non-state actors like individuals, bureaucracies, institutions, groups of common interest, multinational corporations and transnational organizations, etc..., given consideration to how much the choices of such parties affect the course of world politics. Consequently, competition, coalition building, and compromise between those non-state actors will take place and lead to the forging of a decision accordingly but ultimately engaging the state itself.⁷⁹ Consistently with the

⁷⁹ Viotti & Kauppi., (1999). Op-cit, p. 209

above assumptions, pluralists disagree with realists on the rationality of the state; precisely because of those competing interests, alongside with misperceptions and pressure resulting from periods of crises. Furthermore, another outcome of the above concept is that – without neglecting security imperatives – the pluralists heavily theorize on the fact that interdependence among states and among societies is increasing; and as such, they spare more weight to the positive aspects of exchanges related to trade, finance, transportation, communication and technology, as well as social, ecological and environmental issues having to do with such growth of interdependence. The importance of socioeconomic matters in the pluralist approach, as compared to military concerns, does not favor such classification like high politics factors and low politics factors which is so “cherished” by realists. Pluralism thus contends with realism on an exclusively military conception of power.⁸⁰

In due consideration for the pluralists’ disaggregation of the state whereby they attribute a substantial role to non-state actors, it is commonly observed that their ideology derives essentially from liberalism, which in turn is a major development of idealism.⁸¹

Idealists believe in the possibility of controlling human factors like selfishness, diffidence and the search for glory, to promote instead morality in politics and build national and international norms of behavior which open the way for peace, prosperity, cooperation and justice.⁸² The idealist suggestion that a more peaceful world order could be created

⁸⁰ References:

- Viotti & Kauppi . Ibid, pp. 199-200,
- Beavis. Op-cit. See the paragraph “Pluralism”.

⁸¹ References:

- Viotti & Kauppi. Ibid, pp. 200-204
- Beavis. Ibid. See the paragraph “Liberalism”.

⁸² Beavis. Ibid. See the paragraph “Idealism”.

by making foreign policy elites accountable to public opinion and by democratizing international relations is a parent concept to neo-liberals' democratic peace.⁸³ Indeed, in international relations, liberalism covers a fairly broad perspective ranging from Wilsonian idealism to the contemporary neo-liberal theories and the democratic peace thesis.⁸⁴ Liberalism is thus indebted to idealism for the assumption that a political system could be based on morality and norms of behavior; but it complemented such assumption by determining that humans had the potential for it through their natural goodness and through their individual autonomy enabling them to opt for a moral conduct.⁸⁵ The pluralist promotion of states' interdependence and their assertion that institutions and transnational corporations – like the International Monetary Fund and the United Nations – are important actors alongside with the state is thus a fundamental resultant of the liberal thought.⁸⁶ As a matter of fact, such thought has influenced the pluralist image of international politics in even more aspects, in that (i) leaders learn from past historical mistakes and disasters, a learning which largely derives from the guidance provided to state officials by public opinion, and (ii) concurrently with such decision makers' accountability to their electoral popular base within the state itself, international law is

⁸³ Burchill, S. & Linklater, A. (2005). Chapter 1 : Introduction. In Burchill et al. (Eds.), p. 8.

⁸⁴ Beavis. Op-cit. See the paragraph "Liberalism".

⁸⁵ References:

- Burchill & Linklater. (2005). Op-cit. Chapter 1 : Introduction. In Burchill et al. (Eds.), p. 9
- Beavis. Ibid. See the paragraph "Liberalism".

⁸⁶ Beavis. Ibid. See the paragraphs "Liberalism" and "Pluralism".

important to manage interstate relations.⁸⁷ This latter observation is obviously of utmost importance for our study.

Liberalism as an ideology was preponderant in the eighteenth and nineteenth centuries, particularly in Western countries. However, the industrial revolution eventually altered the liberal doctrine which, by then, still remained attached to the input of individuals and organizations but apportioned a larger role for the state in order to reduce the detrimental effects of uncontrolled economic competition.⁸⁸ Regarded as such, the state would become simply one actor among others, and just as there could be a harmony of interests among individuals and organizations within a given state, harmony of interests among states was possible as well.⁸⁹ This introduction of other actors alongside with the state foreruns much of the pluralist thought on the decision-making and on transnationalism, which is a technical word assigned by theorists to designate inter-societal ties involving much more than a strictly state-to-state approach of international relations.

It should however be noted that the realist thought regained preponderance by the end of WWII, as the Cold War era jeopardized almost all the work of contemporary idealist scholars to determine ways of avoiding conflicts after WWI, which most of them faithfully wanted to be the “*war to end all wars*”.⁹⁰ But such regain of preponderance did not sweep out the legacy of liberalism which appears today in terms of (i) economic interdependence, (ii) the reliance on democracy, public opinion, international

⁸⁷ Viotti & Kauppi. (1999). Op-cit. p. 203

⁸⁸ Ibid, p. 201

⁸⁹ Ibid, p. 202

⁹⁰ Burchill & Linklater. (2005). Op-cit. Chapter 1 : Introduction. In Burchill et al. (Eds.), pp. 8 & 9

organizations and international law (however non-absolute and imperfect) to alleviate international confrontations and peacefully settle disputes among states.⁹¹

Consistently with our above discussion, the pluralists contend that understanding the nature of relations among states requires an analysis of both the decision making process at different levels within the state itself on one side, and transnationalism on the other side.

In short, an analysis of the decision making process has shown that an individual's beliefs and perceptions differ from others' beliefs and perceptions inasmuch as his responses to particular events are divergent from those other individuals' reactions, given due consideration to the environment where such former individual lives in terms of bureaucracy and organizational routines, as well as to his different life experiences, his expectations, his predispositions, his biases, his emotional states, his interpretation of historical events, the uncertainty associated with circumstances of the moment, the risk for misperception under stressful situations, etc... . Graham Allison, Max Weber, Robert Keohane, Joseph Nye, Richard Snyder, Alexander George, Ole Holsti, Robert Jervis and Irving Janis are all pluralists of repute, and the consolidated balance of their works undermines the rationality of the decision making process.⁹²

Transnationalism has been defined by James Rosenau as *“the processes whereby international relations conducted by governments have been supplemented by relations among private individuals, groups, and societies that can and do have important*

⁹¹ Viotti & Kauppi. (1999). Op-cit, pp. 202 & 203

⁹² Ibid, pp. 205-210

consequences for the course of events.”⁹³ Consistently with our above discussion therefore, the pluralist image of transnationalism is an extension of politics beyond state borders characterized not only by interdependence – which has a positive pluralist connotation and which raises a negative realist concern in terms of vulnerability – but also modernization, integration and the reduction of nationalism.⁹⁴

Modernization has been defined by Paul R. Viotti and Mark V. Kauppi as “*the social, political, and economic prerequisites for, and consequences of, industrialization and technological development*”; it has changed the nature of international relations in such a way that national autonomy became tributary of economic activities spilling over borders, whose porosity increases as ideas, capital, people, technology, goods and services move from one area to another.⁹⁵

There is hence an obvious degree of interrelation between all these aspects of the pluralist image, as anyone can easily observe. For example, one of the best known theorists of regional integration, Ernst Haas defined integration as a process “*whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new center, whose institutions possess or demand jurisdiction over the preexisting national states.*”⁹⁶ This definition undoubtedly offers one more pluralist insight into international law. It further suggests that a reduction of extreme nationalism goes along with integration and leaves a wider open door for the establishment of international peace. In fact, Haas’ theory of regional integration was a

⁹³ Ibid, p. 211

⁹⁴ Ibid, pp. 211 & 212

⁹⁵ Ibid, p. 211

⁹⁶ Ibid, p. 213

precursor element of the general theory of interdependence, which is fundamental in the pluralist philosophy.⁹⁷

⁹⁷ Ibid, p. 214. As reported by the authors, “*Haas concluded that his earlier « theory of regional integration ought to be subordinated to a general theory of interdependence ».*”

2.3 The real world and International Law – The relationship between International Relations and International Law

Our discussion above has enabled us to find positive pluralist predispositions for international law and we even established that some of its fundamentals have in reality originated in realism, however with differing philosophies.

In the pluralist advocacy indeed, interdependence and transnationalism are of essence in the promotion of international law by the very fact that they result from an increasing commonality of interests closely related to socioeconomic developments, like globalization and transnational corporations; also of essence are values like morality and norms of behavior that are associated with the idealist heritage of pluralism as we saw earlier. This evidently creates a need for more and more regulations in the handling and managing of the consequent inter-societal activities.

Whereas the concern about sovereignty in the pluralist school is moderated by a positive understanding of interdependence which is growing commensurately with worldwide development, the realist perspective of interdependence is limited to a kind of red line which self-justifies the recourse to any available mean (of course beyond international justice) to squarely prevent foreign international actors from trespassing the private hunting grounds of the state.

Thus, far from being looked upon positively by realists, interdependence constitutes in their tradition a dangerous threat to the sovereignty of the state as a unitary and rational actor, which consequently induces a permanent power race among major actors of the international system to reduce the risk of being increasingly tributary of each others' foreign policies, and thus impose their own options rather than sustain those of rivals. This evidence is comparable to an endless power pursuit spiral and has a sizable share of

responsibility for the perenniality of the centuries old anarchical nature of the international system which is still largely mortgaged by the realist orthodoxy, as we saw earlier.

Paradoxically however, with heavy weights like Thomas Hobbes and Hugo Grotius in the seventeenth century and contemporary others like Edward Carr, Kenneth Waltz and Hans Morgenthau, one may not overlook those important fundamentals of international law rooted in realism despite its diametrical opposition to pluralism on this latter's view of interdependence as a promotive factor of international law.

Today's concert of nations is therefore indebted on one hand to realism for some old principles and ideas like :

- (i) *the need for some coercive power to compel men equally to the performance of their covenants*, in Hobbes' own words as we saw above (Viotti. & Kauppi. Op-cit. pp. 60-61),
- (ii) the sanctity of treaties (Grotius),
- (iii) the foundation of law and the judicial settlement of international disputes (Carr),
and
- (iv) the need for a frame of international rules and regulations, as well as for a super ordinate authority and for an enforcement body (Waltz and Morgenthau).

On the other hand, in connection with later developments related to industry, technology, communications, trade, banking, finance, etc..., contemporary generations are becoming indebted to the pluralist approach of the need for updating appropriately the standards of conduct and of international exchanges involving state and non-state actors (emphasis added), either among themselves or among each others, in an effort to safeguard the

viability of the modernizing world system; and the effect of globalization is increasing the trend in this direction.

So there are past and present factors favoring the establishment of international law, as well as prospects.

But if realists have an appreciable share in the foundation of international law, they nevertheless are constrained by their understanding of sovereignty, by their focus on the balance of power and by their conception of power in terms of high politics factors (military strength) as opposed to low politics factors (socioeconomic issues). Accordingly, one may reasonably suggest that, if the pluralist approach of international relations is futuristic in its pushing forward the establishment of international law, this latter's progress is unfortunately retarded by the realists' gambling on giving priority to power build up and one-sided interests' criteria over international justice.

The above discussion raises almost inevitably the following questions:

- (i) How much the realists' preference for power build-up and one-sided interests criteria in international relations, to the detriment of basic principles and ideas pioneered by some of their own scholars, will retard the progress of international law?
- (ii) How fast will the establishment of international law move forward as a result of the pluralists profession regarding international relations?
- (iii) Where do we stand now?

The answers are not likely to be straightforward because, due to the complexity of the states' system, it would rather be experimental than purely theoretical. Thus every single event having an international dimension is an example enriching our knowledge by

enabling us to conclude either way, among others of course, the circumstances and the fate of Kosovo's unilateral declaration of independence.

In the next chapters, our analysis of the case in conjunction with regional and international balances enables us to assert that a lot of progress has been made in the implementation of international law, but there is still a long way to go in order to reach acceptable results, as the current status of international relations is still heavily marked by realism.

We will proceed first by observing the Euro-Balkan geopolitical map after the collapse of the Soviet Union; we will next analyze the foreign policy change of the Obama Administration as compared to that of the Bush Administration; and thereafter, we will evaluate the impact of the circumstances so observed over the issue of Kosovo to draw our conclusion on how much the answers to the abovementioned questions are contingent on the tug-of-war between realism and pluralism.

Our discussion in the very next chapter will depict Serbia's isolation in being an area totally surrounded now by members of the European Union; and it will clarify the following:

- (i) The dilemma for Serbia to content itself of integrating the Union being amputated from Kosovo.
- (ii) In connection with item (i) above, Serbia's artifice of calling upon the ICJ as an attempt to cut a political Gordian knot in which the giant actors of the world are involved.⁹⁸

⁹⁸ With the paradoxical tacit backing of the huge majority of supporters of Kosovo's independence.

- (iii) The evident limitations of Kosovo's prospective membership to the Union if it fails to gather a global Eastern recognition consolidating its claim for independence.⁹⁹

The subsequent chapter will highlight events of international dimension signaling that:

- (i) It would be too late for Kosovo, in its fight for independence, to still bet on the Eastern paralysis that followed the 1991 fall of the Soviet Union.
- (ii) The Western expansion policy Eastward had to be revised.

Finally, our discussion in the said two chapters will enable us to conclude on the circumstances and fate of Kosovo's unilateral declaration of independence as an experimental case confirming or invalidating the suggested interplay between politics and international law and, by implication, identifying the bridges linking them and the divides separating them.

Let us therefore proceed now with our study by first discussing Euro-Balkan issues.

⁹⁹ Such limitations would be confirmed by the wording of the ICJ's advisory opinion.

Chapter 3

The Present Regional Context **Euro-Balkan issues**

Before engaging in the heart of the analysis, it does help taking an overview of the current geopolitical layout identifying the main actors presently dealing with Kosovo's issue, their objectives and the stake involved in connection with any bargain relevant to the debated question. If we take a panoramic view of the forces in motion around the world for about two or three years behind, we would identify that the units of analysis relevant with the issue of Kosovo's independence are : (i) Kosovo, (ii) Serbia, (iii) the United States, (iv) Russia, (v) the European Union, (vi) Albania, (vii) Montenegro and (viii) The Former Yugoslav Republic of Macedonia (Macedonia). If we further contemplate the overview from a structural realist perspective, like that of Kenneth Waltz, we would rapidly observe that the core units are the United States, Russia and the European Union balancing horizontally among each other; while the vertical bandwagons are Kosovo and Serbia at a first level, followed by Montenegro and Albania at a second level, and by Macedonia at a third level. Among the bandwagons Serbia has traditionally exercised a regional hegemony over its Yugoslav neighbors and throughout the last two decades it has helplessly endeavored to patch up under its tutelage every piece of the remains of the former Balkan puzzle, left by the death of Tito, one more decade behind, and which he had laboriously safeguarded and maintained globally under Serbian primogeniture by centralizing the decision making apparatus and mechanism of the 2nd Yugoslavia in Belgrade, as it was before WWII under the monarchical Orthodox regime

of the 1st Yugoslavia.¹⁰⁰ Serbia lost the pieces not only due to its poor handling of the challenges that had emerged with Tito's departure, but also due to the foreign policies of the Western core actors and the limitation of Russia's capacities after the fall of the Soviet Union. Among the lower level bandwagons, the most visible actors seem to be Montenegro and Albania as we will see further in this section. In terms of importance however, we may consider the cores and the first level bandwagons as "major" actors due to the immediate concern of Serbia and Kosovo with the issue as compared with that of Albania, Montenegro and Macedonia.

Now back to the foreign policies of the core actors, in February 2008 under the Bush Administration, there was indeed a US dynamics to expand the Western concept of democracy as much as possible around the world and among others, in particular, in old areas of influence of the former Soviet Union and in the Middle East. This policy was globally supported by the European Union with regard to the Balkans and to the Baltic States – a number of which have even integrated into the European Union after the collapse of the Soviet Empire – and also to a certain extent with regard to the Caucasus, but not with regard to Iraq upon which there were some notorious divergences from the side of Europe.

¹⁰⁰ Notes :

- (i). Scholars and historians refer to the monarchical interwar period (WWI-WWII) as the 1st Yugoslavia and to the communist federation's epoch from the end of WWII to the 1992's secessions (Slovenia, Croatia, Bosnia and Herzegovina) as the 2nd Yugoslavia.
- (ii). See Annex 5 to this thesis about Tito's ruling policy, his succession and the impact of his legacy on Kosovo.

But most importantly, what was imaged as an effort to expand democracy by one side was perceived from the other side as nothing else than a unipolar guidance of the world; and thus it was fiercely resisted by Putin's Russia.¹⁰¹

And in the heart of the resulting arm-wrestle among giants, there is a tiny Kosovo (i) having an ancestral contention over sovereignty with its "parent" land Serbia, (ii) remaining as a leftover after the recent settlement which divided Yugoslavia into its historical constituents, and (iii) which struggles to validate its independence by the whole international community and to safeguard the support of the most influent Western actors which it had won – without much difficulty, one has to admit – right upon its unilateral declaration of independence; a present that, most evidently, Russia is not ready to freely

¹⁰¹ *Abi Ramia, J. (2008, August 29). L'Hebdo Magazine, p.40:*

- *“C'est le 10 février 2007, devant une quarantaine de ministres de la Défense et des Affaires étrangères participant à la 43^{ème} conférence de Munich sur la sécurité, que l'ancien président et désormais Premier ministre russe, Vladimir Poutine a proclamé le retour de la Russie sur le devant de la scène internationale...”*

Translation

“It was on the 10th of February 2007, at the 43rd Conference of Munich on Security, which was attended by about forty ministers of Defense and Foreign Affairs, that former president and now Prime Minister Vladimir Putin announced the return of Russia on the front of the international scene. ...”

- Now quoting directly President Putin:

“Le monde unipolaire n'a rien à voir avec la démocratie, qui veut que la majorité prenne aussi en compte l'opinion de la minorité. Il y a des gens qui n'arrêtent pas de nous donner des leçons de démocratie qu'ils ne suivent pas eux-mêmes. Plus personne ne se sent en sécurité car plus personne ne peut se prévaloir des règles du droit international. Les Etats-Unis sortent de leurs frontières nationales dans tous les domaines et cela est très dangereux”.

Translation:

“The unipolar world has nothing to do with democracy, which advocates that the majority takes into consideration the opinion of the minority. There are people who do not stop giving us lessons of democracy by which they do not abide themselves. Nobody feels any longer in security because nobody can boast any longer about the rules of international law. The United States move beyond their national borders in all fields, and this is very dangerous.”

- *“En quelques secondes, Poutine a rompu l'ordre des relations internationales qui prévalait depuis la chute de l'Union Soviétique, en 1991, et plus particulièrement depuis le 11 septembre 2001... .. dans le pays où le rideau de fer est tombé, la superpuissance russe nargue et avertit l'hyper puissance américaine.”*

Translation :

“In a few seconds, Putin broke the order of international relations which was prevailing since the fall of the Soviet Union, in 1991, and more particularly since the 11th of September 2001... .. in the country where the iron curtain has fallen, the Russian superpower scorns and warns the American hyper-power.”

concede to the West.¹⁰² In this context, Russia is making full use of its “parental” relationship with Serbia to resist what it sees as a Western policy of expansion to its detriment. As a matter of fact, one should pertinently note here that there is no more dry land linking Russia with its “adoptive daughter” Serbia as all the surrounding states (Poland, the Czech Republic, Slovakia, Hungary, Romania, and Bulgaria), which were former “clients” of the Soviet Union have fled to take refuge under the umbrella of the European Union as soon as they were turned loose when their Soviet “patron’s” structure fell apart. As a consequence, there is a land belt separating Russia from Serbia, for which, until June 2006, Montenegro was an important outlet to the Mediterranean Sea through the Ionian Sea.¹⁰³ Thus, by June 2006, on top of the geographical North/East land barrier, as Montenegro split with Serbia, there remained for Russia not even a sea access to Serbia. As a result, Russia had lost by then not only its global patronage over the Balkans but also all direct accesses to the homeland of its only trump card left in the region.¹⁰⁴

¹⁰² It should importantly be made clear here that in the 8 to 9 year time span under UN administration (June 1999 until February 2008), the province of Kosovo rapidly developed the necessary infrastructure for any independent entity (institutions, Government, Parliament, Justice, Police, etc..., etc...) and Serbia had no longer exercised any governing authority over Kosovo. Martti Ahtisaari, the special envoy of the Secretary-General of the UN, has referred to this matter in his report of the 26th of March 2007 on Kosovo’s future status :

*“For the past eight years, Kosovo and Serbia have been governed in complete separation. The establishment of the United Nations Mission in Kosovo (UNMIK) pursuant to resolution 1244 (1999), and its assumption of all legislative, executive and judicial authority throughout Kosovo, has created a situation in which **Serbia has not exercised any governing authority over Kosovo. This is a reality one cannot deny; it is irreversible.***

..... Under UNMIK authority, Kosovo institutions have been created and developed and have increasingly taken on the responsibility of managing Kosovo’s affairs. This has set into motion a dynamic political process, which has reinforced the legitimate expectations of the Kosovo people for more ownership in, and responsibility for, their own affairs.”

¹⁰³ See United Nations Member States in <http://www.un.org/en/members/index.shtml> :

On the 3rd of June 2006, as a result of a referendum held on the 21st of May 2006, Montenegro declared itself independent from Serbia. Thereafter, on the 28th of June 2006, Montenegro was admitted as a member of the United Nations.

¹⁰⁴ Note:

Russia's support to Serbia could therefore just be nothing less than indefectible and unconditional in opposing Kosovo's independence.

As Montenegro broke away from Serbia, on top of the fact that Serbia was getting encircled, the resolve for the march toward Kosovo's independence increased and moved closer to reality, however pacific was the separation process between Serbia and Montenegro.¹⁰⁵ Indeed, around two years later, to the great displeasure of Serbia, Montenegro and Macedonia had recognized the unilaterally declared independence of

It should importantly for our analysis be remembered that, until 2006, Montenegro was a member State of the Yugoslav Federation and has never been a province of any federal State, unlike Kosovo which was and still is a province of the State of Serbia.

¹⁰⁵ References:

- See Annex 5 to this thesis: cycles of violence had accompanied the chain of independencies of the early 1990s. With the involvement of the international community (among other examples, NATO's 1999 air strikes against Serbian forces), the cycles of violence all around the place had reduced, but evidently not the momentum created by the newly independent States (Slovenia, Croatia, Bosnia and Macedonia) which kept the dynamics for the remaining separatists (Montenegro) and ultranationalists (Kosovo) to claim for independence as well; and the result materialized some years later, in 2006 for Montenegro and in 2008 for Kosovo.
- AFP. (2006, May 22). Un nouveau test pour les Européens [A new test for the Europeans]. *Le Figaro*: ***“Les spécialistes soulignent toutefois que la mort de l’union serbo-monténégro relance la question beaucoup plus conflictuelle du Kosovo, province de Serbie dont la majorité albanaise lorgne vers l’indépendance.”***
Translation :
“Specialists however underline that the death of the Serbo-Montenegrin union raises again the question much more antagonistic of Kosovo, a province of Serbia whose Albanian majority is eyeing up toward independence.”
- Lasserre, I. (2007, October 15). L'indépendance du Monténégro pourrait avoir un effet stabilisateur sur les Balkans [The independence of Montenegro could have a stabilizing effect over the Balkans]. *Le Figaro*:
“Cette nouvelle rupture dans l’espace ex-yougoslave possède cependant par rapport aux autres un caractère vertueux. Alors que la Croatie et la Bosnie ont arraché leur liberté par les armes, au prix de nombreux morts, celle du Monténégro a été obtenue pacifiquement. Sans un coup de feu. Et avec un encadrement international. C’est une première dans les Balkans. Selon le think-tank «International Crisis Group», l’indépendance du Monténégro pourrait même avoir un «effet stabilisateur» sur la région.”
Translation :
“This new splitting in the ex-Yugoslav space, in comparison with other splits, has got however a virtuous character. While Croatia and Bosnia dragged out their freedom by the force of weapons, at the cost of numerous deaths, that of Montenegro was peacefully obtained, without a single shot, and was covered by an international frame. It’s a Balkan première. According to the think-tank «International Crisis Group», the independence of Montenegro could even have a «stabilizing effect» over the region.”

Kosovo.¹⁰⁶ Notwithstanding the relatively low profile imposed on Serbia in this regard by the current balance and circumstances, this latter was especially upset from Montenegro's position which it saw as a second betrayal after its June 2006 defection; a betrayal which was further consolidated by the establishment of diplomatic relations with Kosovo.¹⁰⁷ But was it relevant for the Orthodox little Montenegro, after having split with its Orthodox "big sister" Serbia, to reject the right for another entity ethnically different, like the Muslim Kosovo, to do the same?¹⁰⁸ One should also look here at the European

¹⁰⁶ Lasserre, I. (the 10th of October 2008). Op-cit. Reconnaissance du Kosovo : le pouvoir serbe ne décolère pas [Recognition of Kosovo : the Serbian government is still in a temper]. *Le Figaro*:
“La réaction de Belgrade à la reconnaissance de l’indépendance du Kosovo par le Monténégro et la Macédoine jeudi [09 octobre 2008] a été presque instantanée. L’ambassadeur serbe à Podgorica a été rappelé et son homologue macédonien en Serbie, expulsé. Le pouvoir a déploré les «très mauvaises» décisions de ces deux anciennes républiques yougoslaves, qui s’apparentent à «un coup de poignard dans le dos».

... ..
Davantage qu’envers la Macédoine, qui a quitté la fédération yougoslave au début des années 1990, la colère de Belgrade est dirigée contre le Monténégro, qui fût intimement lié à la Serbie jusqu’au référendum d’indépendance en 2006. A l’époque, le départ du Monténégro, minutieusement préparé par Podgorica, s’était pourtant passé sans violence. Mais de nombreux réseaux, notamment dans l’entourage de l’ancien premier ministre nationaliste serbe Vojislav Kostunica, n’ont jamais digéré cette indépendance, considérée comme une «trahison».”

Translation :

“Belgrade’s reaction to the recognition of Kosovo’s independence by Montenegro and Macedonia Thursday [09th of October 2008] has been almost instantaneous. The Serbian Ambassador in Podgorica has been recalled and his Macedonian counterpart in Serbia, expelled. The central government has deplored the «very bad» decisions of those two former republics of Yugoslavia, which are like «stabs in the back».

... ..
The rage of Belgrade is more directed toward Montenegro than Macedonia, as the former had intimate ties with Serbia until the 2006 independence referendum, while the latter had left the federation in the early 1990s. Back then, Montenegro’s split, meticulously prepared by Podgorica, had however occurred without violence. But numerous networks, particularly in the entourage of the Serbian nationalist former Prime Minister Vojislav Kostunica, have never digested this independence, considered as a «betrayal».”

¹⁰⁷ AFP. (2010, January 15). Kosovo/Monténégro: la Serbie proteste [Kosovo/Montenegro: Serbia protests]. *Le Figaro*:

“La Serbie a décidé de rappeler son ambassadeur à Podgorica, pour protester contre l’établissement de relations diplomatiques entre le Monténégro et le Kosovo”.

Translation :

“Serbia has decided to recall its ambassador at podgorica., to protest against the establishment of diplomatic relations between Montenegro and Kosovo”.

¹⁰⁸ Lasserre I. (2007, October 15). Op-cit. L’indépendance du Monténégro pourrait avoir un effet stabilisateur sur les Balkans [The independence of Montenegro could have a stabilizing effect over the Balkans]. *Le Figaro* :

perspective for Montenegro which wanted (and still wants) to adhere to the Union as its growth and dynamics offer more advantages than a paralyzed fragmented East; and this is one of the main reasons for rushing ahead its Westward defection from Serbia which was precisely not in favor with the European Union.¹⁰⁹ Back then however, there were apprehensions in Europe about a domino effect which would hit inevitably Kosovo (and even the Caucasus) like that which swept out the federation in the early 1990s, as very

“... .. les questions qui se posent aujourd’hui. Celles qui concernent la viabilité du Monténégro, Et celles relatives aux conséquences régionales que ne manquera pas de provoquer l’indépendance du Monténégro.

D’abord sur le Kosovo, Mais avant l’indépendance du Monténégro, il était déjà difficile de concevoir un rétablissement de la souveraineté de Belgrade sur le Kosovo après les exactions commises par les forces serbes sur les Albanais. Comment imaginer aujourd’hui qu’on puisse refuser aux uns ce que l’on vient d’accorder aux autres ?”

Translation :

“... .. the questions which are being asked today. Those about the viability of Montenegro, And those relative to the regional consequences which will unavoidably result from the independence of Montenegro.

First regarding Kosovo, But before Montenegro’s independence, it was already difficult to conceive a reestablishment of Belgrade’s sovereignty over Kosovo after the acts of violence committed by the Serbian forces on the Albanians. How could it be imagined today that what was just granted to some people is denied to others?”

¹⁰⁹ References

- Lasserre, I. (2008, October 10). Op-cit. Reconnaissance du Kosovo : le pouvoir serbe ne décolère pas [Recognition of Kosovo : the Serbian government is still in a temper]. *Le Figaro*:
“... .. Voisins directs de la Serbie, le Monténégro et la Macédoine avaient volontairement tardé à le faire, afin de ne pas irriter le gouvernement serbe. Mais entre pressions exercées par Belgrade et celles de leurs minorités albanaises, Podgorica et Skopje ont choisi le pragmatisme politique. «A Monténégro et en Macédoine, on sait qu’il n’y a pas d’alternative à l’indépendance du Kosovo, que la province a été perdue par Slobodan Milošević en 1999, et qu’il serait stupide d’aller contre la politique de l’Union européenne sur le sujet», explique un spécialiste. D’autant que Podgorica ambitionne de se rapprocher rapidement de l’UE.”

Translation :

“... .. As direct neighbors to Serbia, Montenegro and Macedonia had willfully been late to do it [recognize Kosovo’s independence] in order to avoid irritating the Serbian Government. But between the pressures exerted by Belgrade and those exerted by their Albanian minorities, Podgorica and Skopje have chosen political pragmatism. «In Montenegro and in Macedonia, it is known that there is no alternative to Kosovo’s independence, that the province has been lost by Slobodan Milošević in 1999, and that it would be stupid to oppose the policy of the European Union on this subject», a specialist explains. All the more that Podgorica’s ambition is to get rapidly closer to the EU.”

- See also footnote below « Jaulmes, A. (2006, May 20). Le Monténégro vote sur son indépendance [Montenegro votes on its independence], *Le Figaro* » about the European sanctions on Serbia.

well explained by Pierre Rousselin, of the French daily Le Figaro.¹¹⁰ So the Europeans requested a casting majority of over 55% to recognize Montenegro's independence; a way to either adjourn the issue or to make sure that it has to be.¹¹¹ When this was

¹¹⁰ Rousselin, P. (2006, May 23). Monténégro : attention à l'effet domino [Montenegro : one should be careful about the domino effect]. *Le Figaro*:

“Dernière incarnation de la défunte Yougoslavie, La Fédération de Serbie-et-Monténégro n'est, en fait, qu'une construction fictive dont la raison d'être a maintenant disparu. Cette entité, qui ne dispose même plus d'un Parlement légitime, n'a été maintenue artificiellement en vie que parce que l'Union européenne voulait retarder l'émergence d'un nouvel Etat balkanique, craignant que cela ne déstabilise la région au moment où il faut régler la question du statut du Kosovo.

... ..

Plus encore que les Monténégrins, les Kosovars sont les grands bénéficiaires du référendum. Maintenant que leurs voisins voient leur rêve d'indépendance se réaliser, qui osera les priver d'un même destin ? L'argument a du poids. Il ne faudrait pas qu'il se développe sans limites et devienne le moteur d'un effet domino ayant pour effet de balkaniser encore davantage la région. Avec les Serbes de Bosnie et les Albanais de Macédoine, la cohabitation reste fragile et l'unité nationale en péril. Jusqu'à dans le Caucase, les tenants de l'indépendance de l'Abkhazie, de l'Ossétie du Sud ou du Nagorno-Karabakh sont tentés de se prévaloir des exemples monténégrin ou kosovar.”

Translation :

“Last incarnation of the late Yugoslavia, the Federation of Serbia-and-Montenegro is, in fact, just a fictitious construction whose raison d'être has now disappeared. This entity which has even no longer a legitimate Parliament, has been kept alive only artificially because the European Union wanted to defer the emergence of a new Balkan State, fearing that such measure destabilizes the region at a time where the question of the status of Kosovo had to be settled.

... ..

More than Montenegrins, Kosovars are the great beneficiaries of the referendum. Now that their neighbors see their dream of independence getting to be realized, who will dare depriving them of the same fate ? The argument has weight. It should not develop without limitation and become the engine of a domino effect whose result would be to balkanize even more the region. With the Serbs of Bosnia and the Albanians of Macedonia, the cohabitation is still fragile and the national unity still in peril. Up to the Caucasus, the supporters of Abkhazia's independence, or also of Southern Ossetia's or of Nagorno-Karabakh's independence are tempted to take advantage of the Montenegrin or Kosovar examples. ”

¹¹¹ Jaulmes, A. (2006, May 20). Le Monténégro vote sur son indépendance [Montenegro votes on its independence]. *Le Figaro*:

“... .. la campagne du référendum monténégrin s'est déroulée dans un calme exemplaire. Le processus lui-même est conforme à l'accord de Belgrade, qui a créé en 2002 l'étrange Etat de Serbie-et-Monténégro et prévoit la possibilité d'un référendum au bout de trois ans. L'Union européenne, qui s'était investie dans le maintien de cette association entre Belgrade et son petit voisin, notamment pour éviter de fragiliser le statut ambigu du Kosovo, s'est contentée d'exiger un seuil de 55% des suffrages en faveur du oui pour reconnaître le nouvel Etat.

«Les derniers sondages donnent aux indépendantistes un score de 56,3%», dit le professeur Srdjan Darmanovic, qui préside le Centre pour la démocratie et les droits de l'homme à l'université de Podgorica. «Le seuil de 55% devrait accroître la légitimité du processus et faciliter notre adhésion à l'Europe, actuellement bloquée par les sanctions prises contre la Serbie.»

Translation :

“... .. the Montenegrin referendum campaign took place in an exemplary calm. The process itself is consistent with Belgrade's agreement which created in 2002 the strange State of Serbia-and-Montenegro and provides for the possibility of a referendum after 3 years. The European Union, which threw itself heart and soul in maintaining this association between Belgrade and its little neighbor, specially to avoid

achieved in the polls of the 21st of May 2006, Europe had an even lesser excuse left to deny Kosovo what it granted Montenegro; and this places Montenegro's position as a bandwagon at a higher level (2nd) than that of Macedonia (3rd), as introduced earlier and further explained below. Thus from this point onward, it was politically normal for Montenegro not to contradict the European Union and stay aligned with this latter's options if it was to become one of its members. And as there was an increasing European support for Kosovo's independence after Montenegro's defection from Serbia and its acceptance as member of the United Nations in June 2006, it was expectable that, as from such date, Montenegro's pragmatic choice would be not to adopt a different position than the Europeans' with regard to Kosovo's independence; hence its support for Kosovo's February 2008 declaration.

Montenegro's desertion from Serbia's ranks is not a new phenomenon in politics and international relations. At the era of the Peloponnesian War for example, as the power of Athens was waning, it needed to reassert itself not only in facing its enemies but also in keeping its allies on its side.¹¹² Serbia's case today is roughly comparable to that of Athens, some 2500 years ago. As evidenced from its weakening, Serbia was in a position to safeguard its patronage neither over opposing dependents like Kosovo, nor even over friendly dependents like Montenegro. And thus, Montenegro's play was close to that of the Game Theory as it rationally swapped between Serbian patronage and the perspective

weakening the ambiguous status of Kosovo, has contented itself with the fact of requesting a 55% threshold of the votes in favor of the YES to recognize the new State.

«According to the last surveys the separatists would score 56.3%», says Professor Srdjan Darmanovic who presides the Center for Democracy and Human Rights at the University of Podgorica. «The threshold of 55% should increase the legitimacy of the process and facilitate our adhesion to Europe, which is presently blocked by the sanctions against Serbia.»

¹¹² Lebow Richard Ned, (winter, 1984), *The Paranoia of the Powerful : Thucydides on World War III, PS [published by American Political Science Association]*, Vol. 17, No.1, p.11.

for European membership, without much regard for any loyalty owed to Serbia with which it has had however a long time alliance.¹¹³

¹¹³ References :

- Library of Congress. (Data as of December 1990). Yugoslavia – **Montenegrins**:
“... *The Montenegrins and the Serbs shared strong political and cultural ties, including the Eastern Orthodox faith, the Cyrillic alphabet, the Serbo-Croatian language..., and a history of bloody struggle against the Ottoman Turks. Many historians maintain that the Montenegrins are Serbs.*
...
...the Montenegrins stubbornly defended their independence against incursions by the Ottoman Turks....
... and in censuses taken during the interwar period Montenegrins were classified as Serbs. Montenegrins played a significant role in the defense forces of the interwar Kingdom of Yugoslavia. ...Montenegrins remained overrepresented in the Yugoslav bureaucratic and military services. In the early 1970s, Montenegrins made up roughly 5 percent of the population. But about 15 percent of the leaders of the federal administrative bodies were Montenegrins, nearly 20 percent of the generals in the Yugoslav People’s Army (YPA) were Montenegrin, and their presence in the overall officer corps was also disproportionately high... The Montenegrins’ postwar loyalty to the CPY [Communist Party of Yugoslavia] yielded plentiful development funds for their republic.”
- History of Montenegro - Montenegro in Yugoslavia, 1918-1992. (Last updated August 1997).
Montenet:
“...*the area’s [Montenegro’s] remoteness and difficult terrain made it an important refuge for Tito’s Partisan forces during the most difficult stage of their struggle [WWII],*
The Montenegrins’ traditional Pan-Slavism and inherited bravery made them natural allies with the communist project of the reunification of Yugoslavia. Consequently, after the war many Montenegrins found themselves in high positions within the military, political, and economic administration -
The communist strategy of attempting to unify Yugoslavia through a federal structure elevated Montenegro to the status of a republic, thus securing Montenegrin loyalty to the federation. Montenegro became a regular recipient of large quantities of federal aid, which enabled it to embark for the first time upon a process of industrialization.
The breakup of the Yugoslav federation after 1989 left Montenegro in an acutely precarious position. The first multiparty elections in 1990 returned the reformed League of Communists to power, confirming Montenegrin support for the disintegrating federation. The Republic therefore joined Serbia efforts to preserve the federation and in 1992 it acceded to the «Third Yugoslavia», a federal republic comprising only it and Serbia. United Nations economic sanctions against Yugoslavia (1992) damaged Montenegro seriously, especially by undermining its lucrative tourist trade. ”
- AFP. (2006, May 22). Op-cit. Un nouveau test pour les Européens [A new test for the Europeans]. *Le Figaro*:
“*Pour Sabina Wölkner, spécialiste de l’Europe de l’Est à la Société allemande de politique étrangère (DGAP), les Monténégrins, dont la volonté d’indépendance est largement alimentée par le désir d’intégrer l’UE, «risquent de devoir être patients». «C’est l’intérêt des jeunes générations pour une perspective européenne, jugée plombée par l’union avec la Serbie, qui s’est exprimé dans ce vote»,.... ”*
Translation :
“*For Sabina Wölkner , specialist of Eastern Europe at the German Society of foreign Politics (DGAP), Montenegrins, whose will for independence is largely nourished by the desire to integrate the EU, «may have to be patient». «It is the interest of young generations for a European perspective, judged*

Conversely, one may pose the problem from the side of Kosovo; how would this latter accept a perpetual Serbian tutelage when two groups of similar ethnicity, like Serbians and Montenegrins, were allowed to become independent from each other?

Now what about Albania and Macedonia, and why would Albania be a second level bandwagon and Macedonia be a third level bandwagon? Geographically, Albania, Montenegro and Macedonia are of course units of analysis having one common property in that they share borders with Kosovo. But they are units of analysis of lesser importance for a simple reason: they would not be able to play their role in tilting the balance either side if Kosovo and Serbia were at rest and if the three cores had remained idle. If all the international community was opposed to Kosovo's independence, Kosovo could not claim for it nor could its neighbors' respective positions be decisive, regardless of any will. In turn, among the second and third level units there are orders of interest as well, irrespective of Macedonia's and Montenegro's alignment with the European Union. For the Orthodox Macedonia (assuming it had no European aspirations), Kosovo's independence would only be interesting inasmuch as it helps justifying Macedonia's emancipation not only from historical Serbian hegemony, but also from Greek parental claims.¹¹⁴ Likewise for the Orthodox Montenegro (assuming it also had no European aspirations), a Muslim Kosovo with which it has had ancestral ethnic conflicts should not necessarily be amputated from its historical Serbian ally with which it has evident ethnic ties.¹¹⁵ But the case with Albania has more variables to account for, namely a sea outlet

as being of difficult access due to the sealed union with Serbia, which was expressed in this vote»,..."

¹¹⁴ It is because of Greek's opposition that Macedonia could not just be named Macedonia but "The Former Yugoslav Republic of Macedonia".

¹¹⁵ Library of Congress. (Data as of December 1990). Yugoslavia – **Montenegro**:

on top of ethnicity. Indeed, adding up ethnic considerations to the analysis would suggest that a Muslim Albania would be far more inclined than an Orthodox Macedonia and an Orthodox Montenegro to be actively implicated in effectively consolidating the independence of a Muslim Kosovo rather than remaining neutral or even just expressing an infertile support. The second variable which enhances Albania's role is the sea outlet. Indeed, an aerial picture of the region shows that neither Kosovo nor Macedonia has an outlet on the Adriatic Sea, while Albania does; and this adds up to the first variable (ethnicity) for Albania. Montenegro does have a common border with Kosovo and an outlet to the Adriatic Sea, but Montenegro is ethnically different; while Macedonia neither has ethnic ties with Kosovo nor does it have a sea access; hence its position as a third level bandwagon. As a result, this analysis of levels of interest shows that Albania is not only the ethnic ancestor of Kosovo but is geographically located in such a way to become the preferred "lung" for Kosovo. Thus we will assume for the time being, under the present balance and circumstances that, in terms of reliability, Albania would be a first choice route for Kosovo in securing a channel of supplies linking it to the Adriatic Sea, while Montenegro would be next choice as a route for supplies. As any analyst can therefore observe, if Montenegro is a 2nd level bandwagon for having played a role in accelerating Kosovo's independence, Albania is a 2nd level bandwagon as well but for the potential it has in order to maintain and consolidate such independence from Serbia, however with more than that, since it has enough common background and affinities with

"In the divisive late 1980s, the political position of Montenegro remained closer to that of Serbia than did that of any other republic. This was because of a close ethnic connection between the Serbs and the Montenegrin majority of the population, and because Montenegrins were the second Slavic minority «persecuted» in Kosovo—giving them an anti-Albanian nationalist cause similar to that of the Serbs..... Montenegro was a strong supporter of Serbian constitutional amendments limiting provincial autonomy in 1989, and party speakers consistently criticized Slovenia's independent stance and its position on Kosovo."

Kosovo for closer cooperation subsequently. Would that mean that ultimately there may be merging projects between Albania and Kosovo? Perhaps! But apparently it is not a priority as compared to the integration of Kosovo in the European Union.¹¹⁶ And in such a case anyway, Serbia might very well cease to hold the monopoly of the opposition to Kosovo's independence. Besides, would such merging give Russia more pretexts to oppose Kosovo's independence? Most logically yes since Russia doesn't even recognize its split with Serbia! What is sure nevertheless is that it will not help easing Russia's stiff position; and in any case, it will expectedly not be endorsed by Russia before this latter approves Kosovo's unilaterally declared independence from Serbia.

In furtherance to the above analysis, the European integration of Kosovo seems to be fundamental not only as an assertion of its independence but also for facilitating its viability as such. The Serbs for their part are conversely divided into 2 currents : (i) one European oriented, favoring Serbia's integration in the Union, and (ii) another one East oriented, rather reluctant to such integration at the price of being amputated from Kosovo.¹¹⁷ The Serbian Administration is rather aware of the benefits to integrate the

¹¹⁶ Lasserre, I. (2008, February 21). Les Kosovars se reprennent à rêver de la grande Albanie [Kosovars are dreaming again of Great Albania]. *Le Figaro*:

“«*La grande Albanie fait partie des rêves de tous les Albanais. Mais on sait aussi, au Kosovo, qu'il est trop tôt pour l'évoquer*», résume une enseignante de la faculté de Pristina. Le sujet reste pour l'instant tabou. Et comme le dit Bajram Kosumi : «*Ce nouveau pays se forme avec beaucoup d'idées et de concepts différents. Les choses ne sont pas simples. Elles ne peuvent pas se résoudre en une nuit. **Le Kosovo doit d'abord avancer dans l'intégration européenne.** Dans dix ans, une fois que les conflits nationaux se seront apaisés dans les Balkans, on pourra remettre tout à plat pour clarifier les choses s'il le faut. Mais pas avant.*»”

Translation :

“«*The Great Albania is part of all Albanians' dreams. But it is also known, in Kosovo, that it is too early to be evoked*», summarizes a teacher of the faculty of Pristina. For the time being, the subject is still taboo. And as Bajram Kosumi says: «*This new country is forming up with a lot of differing ideas and concepts. Things are not simple. They cannot be resolved overnight. **Kosovo must first advance in the process of European integration.** Ten years from now, once the national conflicts in the Balkans will be appeased, it will be possible to put everything back down in order to examine them from all angles and clarify the matters if necessary; but not before.*»”

¹¹⁷ Note: The trend opposed to President Boris Tadic is unfavorable to integrating the E.U. at the price of loosing Kosovo. Indeed, on the 27th of December 2007, the Serbian Parliament took a resolution which

Union, but its maneuvering margin is limited not only by the Serbian opposition but also – one has to admit – by the global Serbian nationalism with regard to the question of Kosovo, given proper consideration for how much this area is loaded with affective memory and history for Serbia, in particular, that part of history related to its secular struggle against the Ottomans.¹¹⁸ It will thus be difficult for Serbia to “swallow” the independence of Kosovo and stay at the same time “very excited and happy” to integrate the European Union being amputated of this sample region as a fundament of its history,

complicates Tadic’s life in his effort to let Serbia join the Union. One of the main articles of the resolution underlines the fact that:

“Les accords internationaux que la Serbie signe, y compris l’accord de stabilisation et association avec l’UE, doivent tenir compte du maintien de souveraineté et de l’intégrité territoriale du pays”,

Translation :

“The international agreements that Serbia signs, including the Association and Stabilization Agreement with the European Union, must take into account the prevalence of the sovereignty and of the territorial integrity of the country”,

For his part, President Tadic is convinced of the necessity for Serbia to join the E.U., and is thus trying to conciliate the diverging positions, as he stated:

“Notre Etat fera tout pour que le Kosovo reste au sein de la Serbie et pour que la Serbie reste sur sa voie européenne”,

Translation :

“Our State will do everything for Kosovo to stay within Serbia and for Serbia to keep progressing on its European way”,

See the following article:

AFP & Reuters. (2007, December 27). La Serbie prête à renoncer à adhérer à l’Union européenne en cas d’indépendance du Kosovo [Serbia ready to renounce to adhere to the European Union in case of independence of Kosovo]. *Le Monde*.

¹¹⁸ Reuters. (2010, July 22). Serbia defiant on Kosovo ruling, opposition critical. *The New York Times*: “Serbs consider Kosovo, home to dozens of Orthodox Church monasteries, as the cradle of medieval Serbian religion and culture, and control of the territory is an important issue.”

Note: For a better understanding of Reuter’s remark here above, one has to take into consideration how fiercely the Serbs defended Kosovo against the Ottomans before they lost it in the fourteenth Century. Indeed, Serbia (the “elder girl” of the Balkans) was the regional spearhead of the resistance to the Ottomans’ conquest before their empire further expands North-West at the detriment of the Austro-Hungarian Empire. In the battle for Kosovo in 1389, the Turks defeated the Serbs; this is known as the famous Kosovo Polje battle. The anniversary of this battle is Saint Vitus’ Day, on the 28th of June, and it is still celebrated with much importance by the Serbs. By 1459, all of Serbia fell to the Ottomans; then Bosnia fell in 1463, followed by Herzegovina in 1482, and by Croatia in 1526. While after the Ottoman invasion Croatia remained predominantly Catholic and Serbia predominantly Orthodox, under the Turkish influence the populations of Kosovo, Bosnia and Herzegovina embraced Islam in majority. There remained Serbian Orthodox minorities in all of Kosovo, Bosnia and Herzegovina, and a Croatian Catholic minority in Bosnia and Herzegovina as well.

no matter how necessary such integration is for its future. But the fact is that the Europeans were fast to approve Kosovo's independence, creating thus a dilemma for Serbia which is torn out between its nationalistic sentiment and its ancestral alliance with Russia on one side and, on the other side, the awareness that its relations with its close European environment are essential for its survival.¹¹⁹ This explains in large part Serbia's original hope that the ICJ expresses a favorable opinion to its cause insofar as such fact would open the way for negotiations with the Kosovars, favoring Serbia with a strong bargaining position. Such Serbian wish undoubtedly nurtures the hypothesis of the existence of interplay between politics and international law.¹²⁰ This being said, there would be no inconsistency from the part of the European Union if it agrees on Kosovo's integration as it is now, even though it prefers to drag out from Serbia a settlement with Kosovo on its present status and integrate both at a time with no troubles.¹²¹ As a matter

¹¹⁹ The particularity of the relationship between Russia and Serbia dates back to ancient history. Being both populated by Orthodox and Slavs (the Russians are Eastern Slavs and the Serbs are Southern Slavs), they were always aligned together whether under the Orthodox tsarist Russia or under the communist rule, when religion was considered as "peoples' opium" by Marxist philosophy, or now again under the present Russia which, amazingly, is neither monarchical nor communist.

¹²⁰ AFP. (2010, May 6). La Serbie pour une partition du Kosovo [Serbia in favor of partitioning Kosovo].

Le Figaro:

"La Serbie espère que l'opinion de la Cour contraindra les autorités Kosovares à revenir à la table des négociations pour évoquer leur statut, une option catégoriquement rejetée par Pristina".

Translation :

"Serbia hopes that the Court's opinion will compel the Kosovars authorities to come back to the negotiation table on their status, an option categorically rejected by Pristina".

¹²¹ References:

- AFP. (2010, March 2). Kosovo: un compromis "possible" [Kosovo : A "possible" compromise].

Le Figaro:

"La Serbie ne reconnaîtra pas «indirectement ou directement» le Kosovo mais «un compromis historique est toujours possible», a déclaré Božidar Djelic, vice-premier ministre serbe chargé du dossier européen, après son entretien avec le chef de la diplomatie française, Bernard Kouchner.

... .. mais nous avons réitéré notre volonté de trouver des solutions.

La réalité sur le terrain et la volonté de l'Union européenne à ce que l'ensemble des Balkans occidentaux fassent partie de l'UE nous mènent tous vers le chemin d'un compromis entre Belgrade et Pristina,"

Translation :

of fact, there seems to be a Euro-Balkan dynamics in this sense as the newly independent Balkan states (Bosnia, Slovenia, Croatia) are playing this card on every occasion, regardless of Serbia's hearty protests.¹²²

“After his meeting with Bernard Kouchner, French Chief of Diplomacy, Bozidar Djelic, Serbian Vice-Prime Minister in charge of the European membership case, has declared that Serbia will not recognise «either directly or indirectly» Kosovo, but «a historic compromise is always possible».

... .. but we have repeated our intention to find solution

The reality on the ground and the European Union's will to let all the Western Balkans become members of the EU leads us all to the way for a compromise between Belgrade and Pristina.”

- AFP. (2010, May 3). Le Kosovo lance un appel à l'UE [Kosovo calls on the EU]. *Le Figaro*: “Le ministre Kosovar des Affaires étrangères, Skender Hyseni, a confirmé qu'il comptait participer à la réunion UE-Balkans début juin à **Sarajevo (Bosnie)**, demandant aux Européens de ne pas commettre « l'erreur fondamentale » de retarder le processus en vue de l'adhésion du Kosovo.

M. Kouchner s'est déclaré «optimiste» sur une réconciliation permettant un avenir européen à terme pour les deux Etats, car «les esprits ont changé des deux côtés» au Kosovo comme en Serbie, a-t-il dit. «S'ils y a d'autres paroles échangées» entre Serbes et Kosovars à Sarajevo, «j'en serais heureux», a-t-il dit.”

Translation :

*“The Kosovar Minister of Foreign Affairs, Skender Hyseni, has confirmed that he intended to participate to the EU-Balkans meeting at the beginning of June in **Sarajevo (Bosnia)**, asking the Europeans not to commit « the fundamental mistake » of slowing down the process for Kosovo's adhesion.*

Mr. Kouchner [Bernard Kouchner, the Foreign Minister of France] has declared himself as being «optimistic» about a reconciliation enabling a European future in the end for both States, because, as he said, «minds have changed on both sides», in Kosovo as in Serbia. He also said : «If there are other words exchanged» between Serbs and Kosovars in Sarajevo, «I would be glad of such fact»”.

¹²² AFP. (2010, March 9). Sommet UE/Balkans: le Kosovo invité [EU/Balkan summit : Kosovo invited]. *Le Figaro*:

*“Le Kosovo a été invité à participer en tant qu'Etat indépendant à un sommet prévu le 20 mars en **Slovénie** sur l'intégration européenne des Balkans et qui vise à réunir tous les pays de la région, a annoncé aujourd'hui à Pristina le premier ministre kosovar Hashim Thaçi.*

... ..

L'initiative d'organiser cette conférence, qui doit se tenir à Brdo pri Kranju, près de Ljubljana, se heurte au refus de Belgrade d'admettre la présence du Kosovo autrement que sous la bannière de la Mission des Nations unies au Kosovo (Minuk). Le président serbe Boris Tadic avait répété vendredi qu'il était hors de question pour Belgrade que le Kosovo se présente à cette conférence en tant qu'Etat indépendant.

... ..

Hashim Thaçi avait fait savoir qu'il entendait assister au sommet du 20 mars uniquement en tant que représentant du Kosovo indépendant.

*Le président Tadic avait boycotté le mois dernier l'inauguration du président **croate**, Ivo Josipovic, en raison de la présence à la cérémonie du président Kosovar, Fatmir Sejdiu”.*

Translation :

*“The Kosovar Prime Minister, Hashim Thaçi, has announced today in Pristina that Kosovo has been invited to participate as an independent State to a summit scheduled on the 20th of March in **Slovenia** about*

Now, Kosovo's race for validating its independence is far from being over if it only integrates the European Union. While it is perfectly understandable that life may be easier for Kosovo when this happens, it should however be qualified with emphasis that such independence, being indeed de jure for some, remains de facto for others. Consequently, in order to cease to be imperatively and chronically tributary of Western unconditional support and thus acquire a comfortable legitimacy, Kosovo will still have to win Russia's recognition which has a preponderant word deriving from its veto right in its capacity as permanent member of the United Nations' Security Council (UNSC).¹²³ The advice of the ICJ, rendered on the 22nd of July 2010, has comforted the above analysis as it strictly recognized the legality of the declaration itself (i.e. that Kosovo did not infringe international law by the only fact of declaring itself independent), but the

the European integration of the Balkans and which aims at grouping together all the countries of the region.

... ..

The initiative of organizing this conference, which should be held at Brdo pri Kranju, near Ljubljana, is facing Belgrade's refusal to accept the presence of Kosovo other than under the banner of the United Nations' Mission in Kosovo (UNMIK). The Serbian President, Boris Tadic, had repeatedly stated on Friday that it was out of question for Belgrade that Kosovo comes in to this conference as an independent State.

... ..

Hashim Thaçi had made clear that he was looking forward to attend the 20th of March summit only as a representative of the independent Kosovo.

President Tadic had boycotted last month the inauguration of the Croatian President, Ivo Josipovic, because of the presence at the ceremony of the Kosovar President, Fatmir Sejdiu".

¹²³ In fact the mechanism for admitting a State to UN membership comprises two important steps which are both still far from Kosovo's reach today; the Security Council of the UN has first to recommend the membership of any new comer to the General Assembly which, in turn, decides of such membership by a two-thirds majority of the members present and voting. One can imagine thus that under the present circumstances, Russia would veto any such UNSC recommendation, which consequently would not even reach the General Assembly to process the matter in a second phase.

Article 4.2 of the UN Charter reads as follows:

*"The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly **upon recommendation of the Security Council.**"*

And Article 18.2 of the UN Charter reads as follows:

"Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include the admission of new Members to the United Nations, ..."

Court did not take position on the substance of such declaration (i.e. whether by so doing Kosovo effectively became independent in accordance with international law), arguing that such substance was not part of the question and that it saw “*no reason to reformulate the scope of the question*”.¹²⁴ In other words, the purpose of the question may have been much deeper than its narrow wording, but regardless of such original purpose if that was the case, the Court’s position was not to extend its answer to whether or not international law conferred a positive entitlement on Kosovo unilaterally to break away from Serbia and truly become independent. Expressed differently, with a permissible extent of fun and with all due respect to the ICJ and to the parties in conflict, Kosovo has the absolute right of trumpeting its independence every other day, however without necessarily becoming so qualified in reality. Now back to serious talking, the ICJ’s opinion is consistent with the fundamental principle whereby an entity declaring itself independent

¹²⁴ See the ICJ’s summary of its July 22nd 2010 ICJ Advisory Opinion about the question, available on the following website : <http://www.icj-cij.org/docket/files/141/1601.pdf> . Here are some excerpts:

- On page 5 of the summary:
*“The Court observes that the question posed by the General Assembly is clearly formulated. The question is narrow and specific; it asks for the Court’s opinion on whether or not the declaration of independence is in accordance of international law. **It notes that the question does not ask about the legal consequences of such declaration. In particular, it does not ask whether or not Kosovo has achieved statehood. Nor does it ask about the validity or legal effects of the recognition of Kosovo by those States which have recognized it as an independent State. The Court accordingly has no reason to reformulate the scope of the question.”***
- On page 6 of the summary:
*“... the task which the Court is called upon to perform is to determine whether or not the declaration of independence was adopted in violation of international law. **The Court observes that it is not required by the question it has been asked to take a position on whether international law conferred a positive entitlement on Kosovo unilaterally to declare its independence or, a fortiori, on whether international law generally confers an entitlement on entities situated within a State unilaterally to break away from it. Indeed, it is entirely possible for a particular act – such as a unilateral declaration of independence – not to be in violation of international law without necessarily constituting the exercise of a right conferred by it. The Court notes that it has been «asked for an opinion on the first point, not the second».**”*
- And on page 15 of the Summary:
*“THE COURT,

 Is of the opinion that the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law.”*

does not ipso facto qualify for statehood unless it becomes “*a person of international law [possessing] the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other States.*”¹²⁵

This latter condition amounts obviously to the recognition of Kosovo, by an appropriate majority of States (including all of the 5 permanent members of the Security Council), as an independent State. Indeed, experts have finely decoded the Court ruling as meaning legally that Kosovo’s legitimacy is conferred by the recognition of States rather than by the Court itself.¹²⁶ Here seems indeed to be located the real challenge for Kosovo and it is an issue by itself; it thus needs to be discussed separately because of the stake involved thereupon and the resulting scope of analysis. We will revert to this issue in concluding the present work.

¹²⁵ Slomanson W.R. (1995). (2nd ed.). Op-cit. Chapter 2: States in International Law, p.54.

¹²⁶ Bilefsky, D. (2010, July 22). World Court rules Kosovo declaration was legal. *The New York Times*: “**James Ker-Lindsay, a Balkan expert at the London School of Economics, said the court had trod carefully in weighing the right of a people to self-determination over the right of a sovereign state to territorial integrity** [two basic principles of the UN Charter to which we will revert later in this thesis], **and had decided to sidestep the issue altogether.** **«It has essentially said that Kosovo’s legitimacy will be conferred by the countries that recognize it rather than by the court,» he said.**

... ..

... legal experts stressed that the court’s studious avoidance of ruling on the legal status of Kosovo as a state had been calculated to avoid encouraging nationalist movements and left the issue of a territory’s independence at the discretion of the countries that chose to recognize it.”

Chapter 4

The Present International Context Other matters cross-functioning with Kosovo's issue

4.1 Obama's philosophy: Russo-US cooperation, conciliation v/s coerciveness

President Obama's philosophy has alleviated the momentum of coerciveness in foreign policy that prevailed under President Bush. Obama's diplomacy is markedly more conciliatory toward Russia. Journalists like Judy Dempsey of the International Herald Tribune go as far as saying that "... *President Barack Obama making improved relations with Russia [is] one of his foreign policy priorities ...*".¹²⁷ There are indeed facts comforting such assertion; under the Obama Administration for example, as early as in September 2009, just before the opening of the UNGA session, the United States announced that it was abandoning its antimissile shield project in Poland and in the Czech Republic, which aimed – it was said – to protect Europe from Iranian missile attacks, and which was not seen as such by Moscow, but rather as a threat to itself. Unless Russians are ultimately compelled to cooperate with Americans on common security concerns in Europe as envisaged during the November 19-20, 2010 NATO summit in Lisbon, the materialization of this measure may be interpreted as a US ballast dumping and a relative gain for Russia in the Balkans since it hasn't yet given up anything in exchange with regard to Kosovo; such interpretation tend to be comforted by a statement from President Obama himself during the said summit.¹²⁸ Moscow's gain is

¹²⁷ Dempsey, J. (2010, April 30). West to seek revival of arms treaty in Europe. *International Herald Tribune*, pp.1&3.

¹²⁸ Reuters. (2010, November 20). Obama, Medvedev urged Senate to ratify START. *The New York Times*: "Obama has warned that failure to ratify the treaty [START] would damage improving ties with **Russia, which has helped impose tougher sanctions on Iran and allowed equipment destined for NATO forces in Afghanistan through its territory.**"

indeed partial because, as we will discuss it later, it nevertheless finally backed up on its position regarding Iran's sanctions and it did not exclude cooperating with Washington on European security at the November 2010 NATO summit in Lisbon.¹²⁹ This being said, journalists and reporters like Laure Mandeville of the French daily *Le Figaro* and François Beurdeley of *L'Hebdo Magazine*, a Lebanese weekly of French expression, early anticipated thereby an evident US concession made to Russia in the hope to win its support against the nuclear policy of Iran.¹³⁰ Likewise, commenting on President

¹²⁹ We will revert to the Lisbon November 2010 summit later.

¹³⁰ References :

- Beurdeley, F. (2009, September 25). Obama abandonne le projet de bouclier antimissile [Obama abandons the antimissile project]. *L'Hebdo Magazine*, p. 35 :
 "... Si la menace iranienne a été relativisée par l'Administration Obama, il n'en demeure pas moins que les Etats-Unis continuent à voir une menace importante dans le projet de nucléaire iranien...
 ...
L'abandon du projet de bouclier antimissile en Europe est perçu comme une concession faite à la Russie, irritée par l'éventuelle présence de missiles américains non loin de sa zone d'influence...
 ...
Ce geste d'Obama envers la Russie a été récupéré par les Occidentaux, et l'Otan demande, désormais, à Moscou «d'exercer une pression politique et diplomatique maximale sur l'Iran, afin qu'il renonce à ses ambitions nucléaires»".
Translation :
 "... If the Iranian threat has been reconsidered in its context by the Obama Administration, nevertheless the United States still see in the Iranian nuclear project an important threat...
 ...
The abandonment of the antimissile shield project in Europe is perceived as a concession made to Russia, upset by the possible presence of American missiles not far from its zone of influence...
 ...
This gesture of Obama toward Russia has been retrieved by the Westerners, and the NATO requests, from now on, Moscow «to exert a maximal political and diplomatic pressure on Iran, to make it renounce to its nuclear ambitions»".
- Mandeville, L. (2009, September 24). Obama veut tester Medvedev sur le nucléaire iranien [Obama wants to test Medvedev on the Iranian nuclear subject]. *Le Figaro*:
 "Et l'abandon par Washington du déploiement d'un bouclier antimissile en Europe de l'Est, annoncé une semaine avant l'Assemblée générale de l'ONU, contribuera-t-il à convaincre les Russes de se rallier à l'idée d'éventuelles sanctions américano-européennes contre l'Iran,"
Translation :
 "And what about the abandonment by Washington of an antimissile shield in Eastern Europe, announced one week before the General Assembly of the UNO? Would that contribute to convince the Russians to rally the idea of possible Americano-European sanctions against Iran?"

Obama's effort to revive the civilian nuclear cooperation agreement with Moscow (abandoned by President Bush because of Russia's invasion of Georgia in August 2008), Peter Baker of the International Herald Tribune stated that *"the bid to renew the pact is the latest effort in Mr. Obama's drive to repair relations with Russia and comes as he seeks Moscow's support for tough new sanctions against Iran"*; Baker further highlighted important concerns on the subject.¹³¹ A third example is the effort of the US and NATO to revive the Treaty on Conventional Forces in Europe (CFE Treaty) from which Russia withdrew in December 2007.¹³² A fourth example is the April 2010 new START Treaty signed in Prague by Russians and Americans.¹³³ Extrapolating our analysis enables us however to suppose that as long as Russia will not have obtained the maximum possible

¹³¹ Baker, P. (2010, May 8). Obama seeking to revive nuclear deal with Moscow. *International Herald Tribune*, p.3:

*"But word of the possible move has generated consternation in Congress, where some lawmakers were already skeptical of the deal and now worry that **Mr. Obama is giving Russia too much.**"*

¹³² Ibid, pp.1&3:

- On page 3:
"The Treaty on Conventional Forces in Europe set limits on each side's deployment of weaponry between the Atlantic Ocean and the Ural Mountains, verifiable by mutual inspections. It was negotiated at Organization of Security and Cooperation in Europe and was considered one of the cornerstones of European security after the Cold War."
- On page 1:
"Since 2007, the Russian government has provided no information to any of the other signatory states about its troop movements or reductions of conventional weapons. Nor has it accepted or participated in any inspections, which is one of the key verification features of the treaty, signed in 1990 by the NATO countries and the Warsaw Pact countries."
- On page 1 again:
"But Mr. Rasmussen [Anders Fogh Rasmussen is NATO's secretary general], a former Danish prime minister, said he had no illusions about the difficulties in reviving the Treaty on Conventional Forces in Europe, or C.F.E., from which Russia withdrew in December 2007".
- On page 1 again:
*"Nikolay Korchunov, Russia's deputy ambassador to NATO, said Thursday that Russia was «interested in reinvigorating » the treaty. **He added, however, that « it should be part of a bigger package that would include missile defense as well as nuclear disarmament ».**"*

¹³³ We will revert to the START treaty a little later.

of its current expectations in the Caucasus it will most probably reject Kosovo's independence, irrespective of how many types of ballast were dumped by the US to win Russia's support for sanctioning Iran. And even though, Russia's revival of influence over the Caucasus would be a necessary condition but not a sufficient one due to its ties with Serbia.¹³⁴ Despite its finally "purchasing" from the West the idea of sanctioning Iran, Russia made so far points in the Caucasus since Obama's current gestures of good will in its direction came on top of the fact that the West wasn't able to prevent its August 2008 intervention in Georgia and its partial recuperation of influence in some of the old Soviet satellites as we will see a little further ahead, notwithstanding the recent withdrawal of the Russian army from the Georgian town of Perevia.¹³⁵ As a result, with a necessary extent of qualification, one may assume that Russia still has a definite leverage in the arm wrestle over Kosovo and some comfortable leverage in the Caucasus. The prudence in making such statement is indeed necessary because not much later than September 2009, press correspondents like Karla Karkafi Ziadé of L'Hebdo Magazine, Donaig Le Du and Altin Lazaj of Radio France Internationale reported that the US had in reality swapped its long range missile project in Poland and the Czech Republic with a project for shorter range weapons in Romania and Bulgaria.¹³⁶ And it was later confirmed as it appeared

¹³⁴ We will thoroughly elaborate on the impact of the Russo-Serbian ties over Kosovo in Chapter 4.3 regarding the oil issue in Europe.

¹³⁵ Benhold, K. (2010, October 19). Russia accepts invitation, K. to attend NATO summit meeting. *The New York Times*:
"Officials said Mr. Medvedev's presence at the NATO summit meeting became a possibility only after Moscow decided on Tuesday to withdraw its troops from Perevia, a Georgian town that it occupied since the brief war between both countries in 2008. For months, the troops had been a sticking point with NATO. «At least they have now gone, which means it makes it easier for NATO summit with Mr. Medvedev,» said a German diplomat who spoke on the condition of anonymity."

¹³⁶ References:

indeed that the US substituted the original missile shield project with batteries of Patriot missiles, which are said to be of reduced range; the first battery arrived on Sunday the 23rd of May 2010 at the Polish town of Morąg at only 60 kilometers from Russia's strategic Kaliningrad enclave on the Baltic Sea.¹³⁷ Now scholars like Isabelle Facon, a

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- Karkafi Ziadé, K. (2010, January 1). Le visage de la semaine – Vladimir Poutine – Le Premier ministre russe [The face of the week – Vladimir Putin – the Russian Prime Minister]. *L'Hebdo Magazine*, p.3:
“Les Etats-Unis avaient troqué les missiles de longue portée contre des armes de courte et moyenne portée, un système que le diplomate russe [Vladimir Poutine] revendique le droit de connaître tous les détails.”
Translation
“The United States had swapped the long range missiles with short and medium range weaponry, a system of which the Russian diplomat requests the right to know all the details.”
 - Lazaj, A. (2010, April 8). START II, un nouveau départ pour le désarmement nucléaire [START II, a new start up for nuclear disarmament]. *Radio France Internationale*:
“L'administration Obama a présenté un nouveau projet, après une réévaluation de la menace balistique iranienne. A la différence du plan de l'administration précédente de George W. Bush, il est destiné à contrer des missiles non plus de longue, mais de courte et moyenne portées. Mais Moscou affirme avoir encore des questions sérieuses sur la nouvelle version”.
Translation :
“After reevaluating the Iranian ballistic threat, the Obama Administration presented a new project. Contrary to the precedent Administration's plan of George W. Bush, it no longer aims at countering long range missiles, but medium and short range missiles. Nevertheless, Moscow asserts having still serious questions on the new version.”
 - Le Du, D. (2010, April 8). Obama et Medvedev ont signé à Prague le nouveau traité START [Obama and Medvedev have signed in Prague the new START Treaty]. *Radio France Internationale*:
“Les négociations ont pourtant été longues et difficiles, essentiellement parce que les Russes bloquaient sur le projet de bouclier de défense prôné par les Américains en Europe de l'Est. Alors, en septembre, Barack Obama a renoncé au projet de son prédécesseur George Bush, qui voulait en installer en Pologne et en République tchèque, ce que les Russes dénonçaient, pour se tourner plutôt vers la Roumanie et la Bulgarie, en expliquant que ces missiles-là seront tournés essentiellement contre la menace iranienne.”
Translation :
“Negotiations had however been long and difficult, essentially because the Russians were blocking on the defense shield project advocated by the Americans in Eastern Europe. Therefore, in September, Barack Obama gave up the project of his predecessor George Bush, who wanted to install shields in Poland and in the Czech Republic – a project denounced by the Russians – opting instead for Romania and Bulgaria, and explaining that those missiles will essentially be oriented against the Iranian threat.”

¹³⁷ References:

- Fourt, O. (2010, May 26). Des missiles Patriot américains en Pologne [American made Patriot missiles in Poland]. *Radio France Internationale*:
“Ce mercredi 26 mai, Polonais et Américains ont dévoilé la première batterie de missiles sol-air américains Patriot stationnés en Pologne, près de l'enclave russe de Kaliningrad. Ce déploiement fait suite à la décision du président américain Barack Obama qui, en 2009, renonçait au lourd programme anti-missile que voulait mettre en place son prédécesseur George Bush”.
Translation :

specialist of security policies at the Foundation for Strategic Research in Paris, foresaw a consistent tempered reaction from Moscow due to the improved Russo-US relations and the Obama Administration's change in foreign Policy, including the signature of the new START Treaty in Prague early April 2010 and – importantly for our analysis – the reduction of the US focus on Russia's nostalgic places like Ukraine and Georgia.¹³⁸ It should however be nuanced that, in order to enter into force, the START Treaty has to be ratified by the US Senate and the Russian «Duma»; in the Senate the needed majority is over 2/3rd of the votes (at least 67 out of 100); and according to Altin Lazaj of Radio

“This Wednesday 26 May, Poles and Americans have uncovered the first battery of ground-air American made Patriot missiles stationed in Poland, near the enclave of Kaliningrad. This deployment follows the decision of American President Barack Obama who, in 2009, renounced to the heavy anti-missile program that his predecessor, George Bush, wanted to implement”.

- Nouioua, V. & AFP. (2010, May 28). Nucléaire: Washington déploie ses missiles en Pologne [Nuclear issue: Washington deploys its missiles in Poland]. *EditoWeb Magazine*:
“... sur la base militaire de Morag, à seulement 60 kilomètres de la frontière avec la région de Kaliningrad La première batterie de missiles américains de défense anti-aérienne Patriot ainsi que quelques 150 soldats américains sont arrivés dimanche à Morag, dans le nord-est de la Pologne. ...”

Translation :

“... on the military base of Morag, at only 60 kilometers from the frontier with the region of Kaliningrad The first battery of American anti-aerial defense missiles Patriot with some 150 American soldiers arrived on Sunday at Morag, in the North-East of Poland ...”

¹³⁸ Fourt, O. (2010, May 26). *Radio France Internationale*. Op-cit:

“... .. les Russes s'étaient vivement opposés à l'installation du bouclier anti-missile en Pologne, un dispositif qu'ils considéraient comme directement dirigé contre eux. Mais avec les Patriot en Pologne, rien de comparable : « les Russes ne disent pas grand chose ! », car pour Isabelle Facon, spécialiste des politiques de sécurité à la Fondation pour la recherche Stratégique (FRS) à Paris, « le climat a changé, les relations entre Moscou et Washington se sont réchauffées avec l'accord de limitation des armements, le traité Start, signé à Prague début avril 2010. Les Etats Unis sont beaucoup moins concentrés sur les questions de l'Ukraine et de la Géorgie qu'ils ne l'étaient ces dernières années, donc Moscou a raison de prendre avec un peu plus de sérénité cette décision de déployer des batteries de missiles anti-missiles américains en Polognes ».”

Translation :

“... .. the Russians had strongly opposed the installation of the anti-missile shield in Poland, an apparatus that they considered as being directly oriented against them. But with the Patriot in Poland, there is nothing to be compared: «the Russians don't say much!», because for Isabelle Facon, a specialist of security policies at the Foundation for Strategic Research (FSR) in Paris, «the climate has changed, relations between Moscow and Washington have warmed up with the arms limitation agreement, the Start Treaty signed in Prague early April 2010. The United States are a lot less concentrated over the issues of Ukraine and Georgia than they were these last years; as a consequence, Moscow is right to take easier this decision to deploy American made batteries of missiles anti-missiles in Poland».”

France Internationale, such ratification was already not guaranteed with the Senate's 57 voters siding with Obama before the November 2nd, 2010 midterm elections.¹³⁹ Therefore, there were concerns that the ratification of the Treaty be even harder under the prevailing composition of the Senate.¹⁴⁰ Indeed, the November 2010 midterm elections for the 112th Congress have yielded a Senate with 51 seats to the Democrats plus 2 independents who

¹³⁹ Lazaj, A. (2010, April 8). *Radio France Internationale*. Op-cit:

“Le président américain Barack Obama et son homologue russe Dmitri Medvedev ont signé jeudi 8 avril à Prague un nouveau traité visant à réduire d'environ un tiers les arsenaux nucléaires des deux pays. Ce traité succède au traité Start I signé en 1991.

... ..

Il reste toutefois l'étape de la ratification. ... Elle s'annonce difficile au Sénat, où le pacte devra être approuvé par 67 sénateurs sur 100. Cinquante-neuf sont des alliés du président démocrate. Il faudra donc que des républicains y joignent leurs voix.

Quant au Kremlin, il n'aura pas ce problème face à un Parlement acquis d'avance. Mais Moscou a demandé une ratification «synchronisée», laissant entendre qu'il attendrait la décision des Américains.”

Translation :

“The American President Barack Obama and his Russian counterpart Dmitri Medvedev have signed Thursday April the 8th in Prague a new treaty aiming at reducing by about one third the nuclear arsenals of the two countries. This treaty succeeds to the START I Treaty signed in 1991.

... ..

There remains however the ratification stage. ... It is expected to be hard at Senate, where the pact should be approved by 67 senators over 100. Fifty nine are allies of the Democrat President. It will thus be necessary that republicans join their votes.

With regard to the Kremlin, it will not have this problem since the Parliament's favorable majority is already established. But Moscow has asked for a synchronized ratification, inferring thereby that it would wait the Americans' decision.”

¹⁴⁰ References:

- Obama blâme l'économie après le revers des élections de mi-mandat [Obama blames economy after the setback of the midterm elections]. (2010, November 4). *L'Orient – Le Jour*, p.10:
“Au Sénat, les démocrates maintiennent leur majorité après avoir perdu six sièges, alors que les décomptes se poursuivaient dans l'Alaska et l'Etat de Washington.”
Translation :
“At Senate, Democrats have kept their majority after having lost six seats, while the counting was still going on in Alaska and Washington State.”
- The Associated Press. (2010, November 7). Analysis: Election Campaign Ignored Foreign Policy. *The New York Times*:
“The Republican gains in Tuesday's midterm elections say a lot about how the American public wants the government to rule here at home, but very little about what it should do abroad.
... ..
There was little discussion during the campaign of a landmark arms control deal with Russia, which the Senate must ratify to take effect. ...
... ..
The Senate is considering a treaty with Russia to reduce stockpiles of U.S. and Russian long-range nuclear weapons, ...
The treaty still needs to be ratified by the Senate, where Republicans have balked at supporting it. Now with the Democrat's Senate majority eroded, the treaty's fate is in question. But it never became a major issue in the campaign.”

would normally vote with the Democrats (i.e. a total of only 53 already granted for the Obama Administration) against 47 to the Republicans, and a House of Representatives composed of 193 seats to the Democrats against 242 to the Republicans; whereas the 111th composition of Congress was as follows : 57 Democrats plus 2 independents (thus 59 which were already granted for the Obama Administration) against 41 Republicans in the Senate; and 256 Democrats against 178 Republicans (and 1 vacancy) in the House of Representatives.¹⁴¹ There was therefore a sharp swing to the detriment of the current U.S. Administration, increasing thus anterior apprehensions to fail gathering the minimum of 67 favorable votes in the Senate needed for the ratification of the START Treaty.¹⁴² And as reported by Reuters after the November 19-20, 2010 NATO Summit in Lisbon, both Presidents Obama and Medvedev urged the Senate to ratify the amended version of the START treaty, as if they seemed to apprehend a stalling of the ratification by the Senate.¹⁴³ Finally however, the START Treaty was ratified by the US Senate on the 21st

¹⁴¹ Sources consulted on the 3rd of January 2011:

- Information Please <http://www.infoplease.com/ipa/A0774721.HTML>.
- About.com, Inc. (part of the New York Times Company) http://uspolitics.about.com/od/elections/tp/2010_congressional_election.htm?p=1.
- Wikipedia, http://en.wikipedia.org/wiki/United_States_Senate_elections_2010 and http://en.wikipedia.org/wiki/112th_United_States_Congress.

¹⁴² As evident from the results, the Democrats lost 6 seats out of 57 in the Senate and 63 out of 256 in the House. Thus, with the present composition of the Senate, there is a need for at least 14 Republican votes (67-53) favorable to the ratification of the April 2010 START Treaty for its entry into force, whereas under the preceding composition of the Senate, the need was only for 8 (67-59) favorable Republican votes.

¹⁴³ Reuters. (2010, November 20). Obama, Medvedev urged Senate to ratify START. *The New York Times*. Op-cit.:

“Russian President Dmitry Medvedev also urged U.S. lawmakers to approve the START treaty swiftly and six European foreign ministers echoed the appeal in a joint appearance at a NATO summit in Lisbon.

... ..

Republicans, led by Senator Jon Kyl, have stalled ratification of the treaty in the Senate, saying it needs more work. They say their concerns are unlikely to be resolved before the end of the year.

... ..

It could be «unpleasant» if there was no START deal, Medvedev told a news conference after talks with NATO leaders.

He said he hoped U.S. lawmakers would take a responsible approach and that Russia would act in a «symmetrical» way to the United States.

of December 2010 and it is now expected to be ratified by the Russian «Duma», which is a positive development in terms of East/West cooperation on security following the November 2010 NATO Summit attended by President Medvedev as a guest.¹⁴⁴

Notwithstanding the progress on the START Treaty, with regard to the missile shield in Europe, the paradox is that, if Iran was the United States' major concern, the Patriot missiles being of shorter range as protection device against an Iranian missile attack may not serve efficiently the declared purpose as such and, conversely, they are more than enough to reach closer territories like Russia's minuscule Kaliningrad next door.¹⁴⁵ This

... ..

Obama has warned that failure to ratify the treaty would damage improving ties with Russia, which has helped impose tougher sanctions on Iran and allowed equipment destined for NATO forces in Afghanistan through its territory.

... ..

The treaty must be approved by the U.S. Senate and the Duma, the lower house of the Russian Parliament, before it goes into force. Medvedev has urged the Duma not to ratify it until Senate approval is certain.”

¹⁴⁴ References:

- Baker, P. (2010, December 21). Arms Treaty with Russia headed for ratification. *The New York Times*:
*“An arms control treaty paring back American and Russian nuclear arsenals won a decisive vote in the Senate on Tuesday, clearing it for final approval and handing President Obama an important foreign policy victory.
The senate voted 67 to 28 to end debate on the treaty, known as New Start, mustering the two-thirds majority needed for ratification despite a concerted effort by Republican leaders to sink the agreement.*
... ..
... ..The Russian Parliament must approve the treaty as well, but given the Kremlin's dominance, that is considered a formality.”
- Editorial : The next Treaties. (2010, December 31). *The New York Times*:
“The treaty, which mandates modest cuts in long-range nuclear weapons, is on its way to approval by the Duma, the lower house of Parliament in Russia.”

¹⁴⁵ Fourt, O. (2010, May 26). Des missiles Patriot américains en Pologne [American made Patriot missiles in Poland]. *Radio France Internationale*. Op-cit:
*“Joseph Henrotin, chercheur au centre d'analyse et de prévisions des risques internationaux (Capri) rappelle d'ailleurs « que l'installation de batteries de missiles Patriot en Pologne était prévue dans le cadre de compensations accordées à Varsovie qui avait accepté d'accueillir le bouclier anti-missile », mais il souligne que ces missiles « ne seraient pas du tout en mesure d'intercepter un missile de provenance d'Iran et visant l'Europe »,
L'enclave russe de Kaliningrad est toute proche, et à chaque fois que les Russes ne sont pas d'accord avec une décision de l'Otan, ils menacent d'installer des missiles sol-sol Iskander à quelques dizaines de kilomètres seulement de la frontière polonaise”.*

Translation :

deduction is asserted by Poland's perception of Russia as a menace and by the conclusion of Olivier Fourt (Radio France Internationale) that the Patriots may be seen as a «consolation prize» for the Poles to compensate them for the US abandonment of the heavier missile shield.¹⁴⁶ Therefore, as soon as the intention of abandoning such original project was made public by the Obama Administration, Putin had left the question on the agenda as he claimed the right for Russia to know all the details of such reduced system.¹⁴⁷ And consistently with this position, Russia does not spare occasions to show

“Joseph Henrotin, researcher at the Center of Analysis and Prevention of International Risks (Capri) recalls as a matter of facts « that the installation of batteries of Patriot missiles in Poland was provided for in the frame of compensations consented to Warsaw which had accepted to host the anti-missile shield», but he underlines that those missiles «would not at all be able to intercept a missile coming from Iran and heading toward Europe»,

The Russian enclave of Kaliningrad is very close, and every time the Russians disagree with a NATO decision, they threaten to install ground-ground Iskander missiles, just a few tens of kilometers far from the Polish border”.

¹⁴⁶ Ibid:

“Les missiles Patriot qui sont stationnés aujourd’hui en Pologne, peuvent donc apparaître comme un « lot de consolation », mais c’est aussi le signe que Washington tient ses promesses et ne laisse pas tomber la Pologne, l’un de ses alliés de l’Alliance atlantique. Car en Pologne, la Russie est toujours « perçue » comme une menace.”

Translation:

“The Patriot missiles which are stationed today in Poland could have the look of « a consolation prize », but it is also the sign that Washington stick to its promises and does not drop down Poland, one of its allies of the Atlantic Alliance. Because in Poland, Russia is always « perceived » as a menace.”

¹⁴⁷ Karkafi Ziadé, K. (2010, January 1). *L’Hebdo Magazine*. Op-cit., p.3:

“Pourquoi lui?

Parce qu’il veut contrer la suprématie américaine à travers des armes offensives. Vladimir Poutine a annoncé que la Russie devrait développer des armements « offensifs », afin de garantir une parité stratégique avec les Etats-Unis, sans pour autant préciser de quel type d’armes il est question.....L’homme fort de la Russie remet alors la question du système antimissile américain sur le tapis, alors que Barack Obama avait annoncé, en septembre, qu’il renonçait au bouclier en Europe de l’Est, élaboré par George Bush et considéré par Moscou comme une menace pour sa sécurité. Les Etats-Unis avaient troqué les missiles de longue portée contre des armes de courte et moyenne portée, un système que le diplomate russe revendique le droit de connaître tous les détails.”

Translation

“Why him ?

Because he wants to counter the American supremacy with offensive weaponry. Vladimir Putin has announced that Russia should develop «offensive» weapons in order to guarantee a strategic equality with the United States, however without specifying what type of arms he was referring to.....The strong man of Russia is reopening therefore the subject of the American antimissile system, although Barack Obama had announced, in September, that he renounced to the shield in Eastern Europe, elaborated by George Bush and considered by Moscow as a threat for its security. The United States had swapped the

its muscles.¹⁴⁸ Nevertheless, the American decision of abandoning the original missile project was itself welcomed by the Kremlin and President Medvedev even suggested cooperating with the West on security.¹⁴⁹ But as pertinently pointed out by the correspondent of l'Hebdo Magazine in Moscow, Nathalie Ouvaroff, while it is true that Medvedev has opened the door for cooperation with the West on worldwide security matters, when it comes however to Russia's own and specific security concerns his foreign policy follows faithfully that of his predecessor, notwithstanding signs of rivalry with this latter on the presidential elections of 2012.¹⁵⁰ As a matter of fact Medvedev's

long range missiles with short and medium range weaponry, a system of which the Russian diplomat requests the right to know all the details. ”

¹⁴⁸ Fourt, O. (2010, May 26). *Radio France Internationale*. Op-cit:

“Mais la Russie ne perd jamais une occasion d'exposer sa puissance. Lors du grand défilé de la victoire le 9 mai 2010 à Moscou, on a vu passer des missiles sol-sol Iskander et des anti-missiles S400, considérés comme plus évolués que les Patriots.”

Translation :

“But Russia never loses any occasion to expose its power. At the great victory parade in Moscow, on the 9th of May 2010, we have seen passing ground-ground missiles Iskander and S400 anti-missiles, which are considered as more advanced than the Patriots.”

¹⁴⁹ Dempsey, J. (2010, April 30). *International Herald Tribune*. Op-cit, p. 3:

“When Mr. Obama decided last year to drop plans to deploy parts of the shield system in Poland and the Czech Republic, the Kremlin scaled down its oratory on the matter. And to the surprise of NATO diplomats, Mr. Medvedev even suggested last week that Russia might be able to cooperate with the United States and NATO on security.”

¹⁵⁰ Ouvaroff, N. (2010, August 6). *Présidentielle 2012, Medvedev contre Poutine? [Presidential elections of 2012, Medvedev against Putin?]*. *L'Hebdo Magazine*, pp.48-49:

*“Dès son arrivée à la tête de l'Etat en 2008, **Dmitri Medvedev tente timidement de se démarquer de son mentor tout en affichant pour la galerie une parfaite complicité avec ce dernier. En politique étrangère, il suit fidèlement la politique ultra-sécuritaire mise en place par Poutine. C'est lui qui décide l'envoi des troupes russes en Abkhazie et en Ossétie du Sud et la reconnaissance des deux Républiques séparatistes.***

... ..

... la nouvelle diplomatie s'est déjà concrétisée: signature des nouveaux accords Start en mars et reprise du partenariat stratégique avec les Etats-Unis, concrétisée en juillet par une visite d'Etat, particulièrement réussie, et par le traitement de douceur de l'affaire des espions ; vote des sanctions contre l'Iran et annulation d'un gros contrat de vente d'armes à la République islamique ; enfin, refus d'intervenir en Kirghizie malgré la demande expresse de la présidente Kirghize.

Reste à savoir si ces changements laissent entrevoir un affrontement fratricide entre les deux têtes de l'exécutif. Les politologues sont divisés sur ce sujet. Evgueni Mitchenko, chercheur indépendant, souligne que « Medvedev s'agite et pendant ce temps Poutine entretient sa forme pour assumer de nouveaux les plus hautes charges .»

recent acceptance to attend the November 19-20, 2010 NATO summit in Lisbon goes along the same line with his prior statements about cooperation; but he was indeed prudent enough not to contradict Putin's stance as he posed the condition to check the veracity of Washington's policy change on the missile project in Europe before any related Russian engagement is made.¹⁵¹ In other words, in the East/West political and security bargain, the trade encompasses Iran and perhaps some places in Europe, to the exception of remote Russian territories like Kaliningrad, in addition to the Caucasus and Kosovo which are still "non negotiable" for Russia; bearing in mind that:

Nicolas Petrov, expert au centre Carnegie, pense que Medvedev ne présente pas une sérieuse menace pour Poutine.

Alexei Moukhine, un autre chercheur indépendant, pense que Poutine ne veut plus de la présidence mais tient par contre à garder coûte que coûte son poste de Premier ministre."

Translation :

"As soon as he became head of the State in 2008, Dmitri Medvedev timidly to distinguish himself from his mentor while flaunting to the gallery a perfect complicity with this latter.

In foreign policy, he faithfully follows the ultra-security concerned policy implemented by Putin. He was the one who decided to send Russian troops in Abkhazia and Southern Ossetia, and to recognize the two separatist Republics.

... ..

... the new diplomacy has already materialized: signature of the new Start agreements in March and resumption of the strategic partnership with the United States, concretized in July by a State visit, particularly successful, and by the easy handling the spies affair; voting sanctions against Iran and cancellation of an important contract for the sale of weapons to the Islamic Republic; and, lastly, refusal to intervene in Kirghizstan in spite of the express request of the Kirgiz President.

But it is still unclear whether or not those changes permit to foresee a fratricidal confrontation between the two heads of the executive power. Political scientists are divided over that subject. Evgueni Mitchenko, an independent researcher, underlines that «Medvedev is in a state of unrest and meanwhile Putin keeps himself fit to take again the highest responsibilities.»

Nicolas Petrov, expert at the Carnegie Center, thinks that Medvedev does not represent a serious menace for Putin.

Alexei Moukhine, another independent researcher, thinks that Putin does no longer want the presidency but is eager to keep at any price his position of Prime Minister."

¹⁵¹ Benhold, K. (2010, October 19). *The New York Times*. Op-cit:

"«I will go to the Russia-NATO summit,» Mr. Medvedev said at a news conference, formally accepting an invitation to the Nov. 19-20 meeting that was extended to Russia weeks ago. «This will further the search for necessary compromises and the development of dialogue between the Russian Federation and the North Atlantic Alliance as a whole.»

... ..

«We are now evaluating the idea of this proposal, but I think that NATO itself needs to understand in what form it sees Russia joining this system, what it will bring, in what manner an agreement can be reached, and how to proceed further,» he said. «Only based on the evaluation of this proposal can we give an answer on how we will proceed with regard to the idea of European missile defense.»"

- (i) The Caucasus is in the direct vicinity of Russia and, as such, is geographically vital for it in comparison with Kosovo.
- (ii) The U.S. stuck to its position over the Balkans.
- (iii) The U.S. conversely has moderated its policy over the Caucasus in spite of having roughly kept the same rhetoric on the subject. It would be relevant to point out here that, notwithstanding the tempering of its policy in the region, the U.S. needs certain Caucasian and Central Asian republics for its military as logistic bases and as transit passageways to Afghanistan.¹⁵² President

¹⁵² References:

- Héry, J-J. (2010, July 5). Washington rassure ses alliés européens [Washington reassures its European allies]. *Radio France Internationale*:
«Si la critique américaine de l'influence russe dans la région s'est faite plus feutrée en Ukraine, ce n'est pas seulement parce que l'élection du pro-russe Ianoukovitch a changé la donne en ramenant le pays dans le giron russe. C'est également en raison des intérêts stratégiques et économiques à ne pas se couper de l'Ukraine. Washington s'est d'ailleurs dit prêt à investir dans le secteur énergétique et gazier ukrainien.
*En Azerbaïdjan, c'est un autre facteur qui a poussé Hilary Clinton à réaffirmer l'ambition américaine d'être «un partenaire, un soutien, un défenseur». **Les Etats-Unis utilisent la petite république du Caucase comme une base logistique où transitent tout le matériel et les véhicules militaires américains en partance pour l'Afghanistan. Alors même que 30 000 hommes doivent partir renforcer les troupes de la coalition, pas question pour les Américains de prendre le risque de détériorer davantage des relations déjà tendues avec le régime du président Ilham Aliev. C'est l'appui de Washington au rapprochement entre la Turquie et l'Arménie qui a fâché Bakou. L'Azerbaïdjan n'a pas apprécié de voir les Etats-Unis privilégier ses voisins arméniens, des voisins avec qui ils sont en conflit territorial depuis la fin des années 1980 et la sécession de la région frontalière du Nagorny-Karabach. Le pouvoir azéri a même menacé de «revoir» ses liens avec Washington.»***

Translation :

“If America's critique of Russia's influence in the region became felt with regard to Ukraine, this is not only because of the election of the pro-Russian Yanukovitch has changed the deal by bringing back the country in Russia's fold. It is also because of strategic and economic interests not to break with Ukraine. As a matter of fact, Washington has said it was ready to invest in the energy and gas field.
*In Azerbaijan it is another factor which pushed Hilary Clinton to reaffirm America's ambition to be «a partner, a support, a protector». **The United States uses the small Caucasian republic as a logistic base where all the American military equipment and vehicles transit on their way to Afghanistan. While 30 000 men are on the point to go there to reinforce the troops of the coalition, it is out of question for the Americans to take the risk of deteriorating even more the relations with the regime of President Ilham Aliev, which are already tense. It is Washington's support to the rapprochement between Turkey and Armenia which upset Baku. Azerbaijan did not appreciate seeing the United States privileging its Armenian neighbors, with whom they are in territorial conflict since the end of the 1980s and the secession of the Nagorno-Karabakh border region. The Azeri administration has even threatened it would «reconsider» its relations with Washington.»***

Obama himself admitted during the November 2010 Lisbon summit that NATO equipment transits to Afghanistan even through the Russian territory.¹⁵³ And an agreement was signed during the summit to expand NATO's passageways through Russia toward Afghanistan.¹⁵⁴

From this perspective, and given consideration to the prevailing conditions and to economic and even strategic interests, we may cautiously suggest that – far from having obtained any Western concession on Kosovo in counterpart – Russia cooperated with the West over the Iranian nuclear issue inasmuch as it felt a direct threat on itself, or to the extent it has been subject to an unsustainable Western pressure. And the West has been heralding the November 2010 summit as a chance for closer ties with Russia, warning otherwise about the reverse of the medal if such opportunity was missed; indeed, at a meeting with Presidents Medvedev and Sarkozy on Tuesday October 19, 2010, Chancellor Angela Merkel made a statement resembling a reminder for some anterior triggering of alarm bells which apparently did not fall on Russian deaf ears as they had

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- Benhold, K. (2010, October 19). *The New York Times*. Op-cit:
“Russia, ..., [had] accused NATO of encircling its borders by dangling potential membership before countries like Ukraine and Georgia.
... ..
Thomas Gomart, Russia expert at the French Institute of International Relations in Paris, said interests were converging on several fronts. «**There is a lot of convergence on major security issues like Iran and Afghanistan,**» he said. «**The fact that NATO membership for countries like Ukraine has been put on the backburner also helps to ease tension.**»”

¹⁵³ Reuters. (2010, November 20). Obama, Medvedev urged Senate to ratify START. *The New York Times*. Op-cit.:
“Obama has warned that failure to ratify the treaty [START] would damage improving ties with Russia, which has helped impose tougher sanctions on Iran and **allowed equipment destined for NATO forces in Afghanistan through its territory.**”

¹⁵⁴ The Associated Press. (2010, November 20). NATO invites Russia to join Europe missile shield. *The New York Times*:
“NATO and Moscow signed an agreement to expand the alliance's supply routes to Afghanistan through Russia and were expected to set up a new training program in Russia for counter-narcotics agents from Afghanistan and other Central Asian countries; and agree on a program to provide training to Afghan helicopter crews.”

incited Russia to envisage cooperation with the West on security issues.¹⁵⁵ We will thus try later in this chapter to highlight the stakes relevant to this part of the game; but before we do, let us point out that the November 10-20, 2010 Summit in Lisbon has yielded a promising climate with positive statements from every side, nevertheless with a degree of Russian prudence.¹⁵⁶

¹⁵⁵ Benhold, K. (2010, October 19). *The New York Times*. Op-cit:
“On Tuesday **Mr. Medvedev told Mr. Sarkozy and Mrs. Merkel that he needed more information but also indicated that his country was potentially open to the idea of cooperation.**

... ..
The new strategic concept, which the 28 NATO members plan to unveil at their November summit meeting, is part of that rethinking, analysts say, and it could provide an opportunity for closer ties with Moscow. «We are all in the same boat when it comes to the real threats of the 21st century,» Mrs. Merkel said, while Mr. Sarkozy called Russia «a friend, a friendly country.»

¹⁵⁶ References:

- Reuters. (2010, November 20). NATO, Russia to cooperate on missile defence. *The New York Times*:
“NATO and Russia agreed on Saturday to cooperate on missile defence and other security issues, and hailed a new start in relations strained since Russia’s military intervention in Georgia in 2008.
... ..
Medvedev said a period of strained relations had been overcome and added : «We have large-scale plans, we will be working in all areas, including European missile defence».
... ..
They [NATO and Russia] also agreed to conduct a joint study on how Russia could join a new system designed to protect Europe and North America from long-range missiles fired from the Middle East.
... ..
*In the past Russian officials have expressed reservations about the plan, fearing it could negate the strategic value of Russia’s own ballistic missiles.
It was also reluctant to join a program that had defined Iran as a potential missile threat, as had NATO member Turkey. NATO sources said alliance leaders had agreed to drop Iran’s name from the summit statement to secure Turkey’s support.
Despite the warm words, the challenge will now be to see how NATO and Russia can build on Saturday’s talks and turn the success into fruitful cooperation in practice.*
... ..
General Nikolai Makarov, chief of staff of the Russian armed forces, said there were good reasons to link the Russian and NATO missile defence systems. «Now there is the technical side – how to join the two systems. It will all depend on the configurations,» he told reporters.”
- The Associated Press. (2010, November 20). NATO invites Russia to join Europe missile shield. *The New York Times*. Op-cit:
“Russia was receptive but stopped short of accepting a historic NATO invitation Saturday to join a missile shield protecting Europe against Iranian attack.
Russian President Dmitri Medvedev agreed to involve technicians in development plans, but did not make a commitment if it becomes operational and warned that Russia might decide against joining the U.S.-led effort if it doesn’t feel it is being treated equally as a partner.

Also in this chapter, we will focus on matters of concern for the parties other than the Caucasus and Iran, like the oil markets and routes, which may impact the outcome over Kosovo as well.

«Our participation has to be a full-fledged exchange of information, or we won't take part at all,» he told reporters after the announcement by NATO chief Anders Fogh Rasmussen.»

4.2 Russia's old sphere of influence: Central Europe and the Baltic States, the Caucasus, Central Asia.

A strict observation of the facts shows that, (i) by the 18th of February 2008, as the parties' negotiations never made any success, Kosovo unilaterally declared independence with the approval of most Western nations, and (ii) today no final status has yet been agreed upon by the international community as a whole, in spite of the ICJ's opinion that the declaration of independence did not violate international law. Indeed, as we saw in the introduction of the present work, there were 69 States having recognized Kosovo's independence when the ICJ rendered its opinion on the 22nd of July 2010. But subsequently, by the 25th of October 2010 (thus, 3 months later), it happened that only two more States recognized Kosovo's independence, increasing thereby the number of recognitions to 71, which is not a significant change.¹⁵⁷ In reality, as pointed out much earlier by Isabelle Lasserre of *Le Figaro*, the Kosovar issue should not be regarded as an isolated step by itself but as part of an East/West arm-wrestle over the post Soviet sphere of influence.¹⁵⁸ Indeed, after having lost number of former clients, in particular those of

¹⁵⁷ AFP. (2010, October 25). Kiribati reconnaît le Kosovo indépendant [Kiribati recognize the independent Kosovo]. *Le Figaro*:

“La République de Kiribati a reconnu le Kosovo indépendant, portant le nombre de pays à l’avoir fait à soixante et onze,”

Translation :

“The Republic of Kiribati has recognized the independent Kosovo, increasing thereby the number of countries having done so to seventy one,”

¹⁵⁸ Lasserre, I. (2007, November 29). Le Kosovo vers la sécession après l'échec des négociations [Kosovo toward secession after the failure of the negotiations]. *Le Figaro*:

“L’indépendance de la province serbe est au centre d’un bras de fer international entre les États-Unis, la Russie et l’Union Européenne. ...

... .. États-Unis, Russie et Union européenne règlent leurs différends au Kosovo, objets de marchandages internationaux qui dépassent, et de loin, les problématiques balkaniques. ”

Translation :

“The independence of the Serbian province is at the center of an international arm-wrestle between the United States, Russia and the European Union. ...

... .. the United States, Russia and the European Union settle their dispute in Kosovo, object of international bargains, which go far beyond the Balkans issues. ”

Central Europe and the Baltic States which were hastily “rescued” by the European Union shortly after their relief from the Soviet grip as we saw earlier in our discussion of Euro-Balkans issues, Russia was planning upstream for an energetic come back on the international chessboard as a pole trying to recover whatever possible from its past glory and its share of worldwide influence. And this was precisely the content of the message conveyed by the then president, Vladimir Putin, on the 10th of February 2007 (about a year earlier than the unilateral declaration of independence, therefore) when he explicitly announced, drumming and trumpeting, that Russia was coming back on the front of the scene; and it was thus not an undeclared objective.¹⁵⁹

¹⁵⁹ Abi-Ramia, J. (2008, August 29). *L’Hebdo Magazine*. Op-cit, pp.38-45.

On page 40:

“C’est le 10 février 2007, devant une quarantaine de ministres de la Défense et des Affaires étrangères participant à la 43^{ème} conférence de Munich sur la sécurité, que l’ancien président et désormais Premier ministre russe, Vladimir Poutine a proclamé le retour de la Russie sur le devant de la scène internationale... ..”

Translation :

“It was on the 10th of February 2007, at the 43rd Conference of Munich on Security, which was attended by about forty ministers of Defense and Foreign Affairs, that former president and now Prime minister Vladimir Putin announced the return of Russia on the front of the international scene... ..”

Also on pages 40 and 41:

“Dans le contexte diplomatique actuel, la Russie poursuit deux objectifs différents. Les anciennes républiques de la défunte URSS, surtout celles membres de la CEI (Communauté des Etats indépendants), occupant une place centrale dans la reconstruction de la politique internationale russe. Le but primordial de la nouvelle doctrine géostratégique russe relève d’une tentative de reconquête de l’influence prédominante dans cet espace géopolitique, depuis toujours considéré comme une zone d’«intérêt vital».

L’autre objectif vise à limiter l’influence de l’OTAN... ..”

Translation :

“In the present diplomatic context, Russia follows two different objectives. The old republics of the late USSR, particularly those that are members of the CIS (Community of Independent States), and which occupy a central place in the reconstruction of Russia’s international politics. The primordial aim of the new Russian geo-strategic doctrine stems from a temptation to re-conquer the influence predominant in this geopolitical space, ever considered as a zone of «vital interest».

The other objective is to limit the influence of NATO”

Also on pages 41 and 42:

“La Russie a d’ores et déjà étendu sa mainmise sur l’Asie centrale, grâce notamment aux accords énergétiques ..., militaires et politiques dans le cadre de la CEE (Communauté économique eurasiennne) qui la lie avec les pays de la région ; ce qui constitue une épine dans le pied des Américains. Ceux-ci sont très dépendants de leurs ressources énergétiques car cette zone est l’une des plus pétrolifères du

This Russian warning signal was coupled with a counterattack denouncing unilateral Western decisions. On this occasion, President Putin criticized the Western dynamics towards the expansion of democracy (most probably insinuating Kosovo among others, of course), in what he rather saw a Western conduct as a unique pole over the world affairs and thus, in Julien Abi Ramia's own words, *he broke the prevailing order of international relations in just a few seconds*.¹⁶⁰ The dynamics for such new international balance kept moving forward with intermittent messages like that other one of President Putin in April 2008 (fourteen months later) denouncing NATO's expansion as a threat to Russia; it came right about to assert previous statements, positions, measures and negotiations.¹⁶¹ Such prior statements, positions, measures and negotiations had already

monde. En soutenant les régimes de la région en échange de l'installation de bases militaires, la Russie assure une couverture sécuritaire de ses frontières du sud. Mais les Etats-Unis restent présents."

Translation :

"Russia has already extended its grasp over Central Asia through, in particular, energy ..., military and political agreements in the frame of the EEC (Eurasian Economic Community) which link it with the countries of the region; this puts the Americans into a spot. These latter are very dependent on their energy resources because this zone is one of the most oil rich in the world. By trading its support to the regimes of the region in exchange of the installation of military bases, Russia insures its southern borders with a security cover. But the United States are still present."

¹⁶⁰ Ibid, p.40:

"«Le monde unipolaire n'a rien à voir avec la démocratie, qui veut que la majorité prenne aussi en compte l'opinion de la minorité. Il y a des gens qui n'arrêtent pas de nous donner des leçons de démocratie qu'ils ne suivent pas eux-mêmes. Plus personne ne se sent en sécurité car plus personne ne peut se prévaloir des règles du droit international. Les Etats-Unis sortent de leurs frontières nationales dans tous les domaines et cela est très dangereux». En quelques secondes, Poutine a rompu l'ordre des relations internationales qui prévalait depuis la chute de l'Union Soviétique, en 1991, et plus particulièrement depuis le 11 septembre 2001 dans le pays où le rideau de fer est tombé, la superpuissance russe nargue et avertit l'hyperpuissance américaine."

Translation :

"«The unipolar world has nothing to do with democracy, which advocates that the majority takes into consideration the opinion of the minority. There are people who do not stop giving us lessons of democracy by which they do not abide themselves. Nobody feels any longer in security because nobody can boast any longer about the rules of international laws. The United States move out of their national borders in all fields, and this is very dangerous». In a few seconds, Putin broke the order of the international relations which was prevailing since the fall of the Soviet Union, in 1991, and more particularly since the 11th of September 2001 in the country where the iron curtain has fallen, the Russian superpower scorns and warns the American hyper-power."

¹⁶¹ Annex 6 to this thesis briefly summarizes the failure of the negotiations over Kosovo's status at the end of the process.

demonstrated that Russia's stand over Kosovo's independence was just one part of a much larger framework for a new Russian worldwide policy long time engineered by President Putin and thereafter implemented by the Putin/Medvedev tandem.¹⁶² Indeed, President Medvedev's declaration, on Monday the 25th of August 2008, that his country was ready to break its relations with NATO reasserted the then toughness of Russia's position and the continuity of Putin's policy.¹⁶³

Ground developments in the region were consistent with Moscow's messages and thus confirmed its determination as the Western influence was threatening to get closer and closer to its vital space. It merits here to open a parenthesis highlighting the fact that all these regions of the Caucasus are considered by Russia as its « near abroad » in opposition to other places like Kosovo located in its « remote abroad »; and, in a September 2008 article, Germany's former Foreign Minister, Joschka Fischer, expressed

¹⁶² Abi-Ramia, J. (2008, August 29). *L'Hebdo Magazine*. Op-ci, p. 44:

“Lors de la réunion de l’Otan d’avril 2008 à Bucarest, en Roumanie, alors qu’invité pour discuter de l’autorisation du transport logistique de matériel non militaire sur le sol russe, Vladimir Poutine a déclaré que l’élargissement de l’Otan vers les ex-Républiques de l’URSS constituait une menace pour la Russie.”

Translation :

“During the NATO meeting of April 2008 in Bucharest, in Romania, while invited to discuss the authorization of the logistic transport of non-military equipment on the Russian soil, Vladimir Putin declared that the extension of NATO to the ex-Republics of USSR constitutes a threat for Russia.”

¹⁶³ Ibid, p.44:

“Les Européens, avec le président de l’Union en exercice, Nicolas Sarkozy, très présent sur le dossier géorgien, pensaient mettre les Russes sous pression, en décidant ce lundi [soit, le 25 août 2008] de convoquer, pour le 1^{er} septembre, un sommet exceptionnel sur la situation en Géorgie. Une réunion qui sera consacrée « notamment à l’avenir des relations de l’Union européenne avec la Russie », selon le communiqué de la présidence française des Vingt-Sept. Moscou n’a, semble-t-il, pas l’intention de se laisser intimider. Le président russe, Dmitri Medvedev, est même allé jusqu’à déclarer, lundi, que son pays était prêt à « une rupture des relations » avec l’OTAN.”

Translation :

“The Europeans, with the current president of the Union, Nicolas Sarkozy, closely following the Georgian issue, thought they would put the Russians under pressure in deciding this Monday [i.e., the 25th of August 2008] to call for an exceptional summit on the situation in Georgia, to be held on the 1st of September. A meeting with an agenda particularly devoted «to the future of the relations of the European Union with Russia », according to a statement of the French presidency of the Twenty-Seven. Apparently Moscow has no intention to be intimidated. The Russian president, Dmitri Medvedev, went as far as declaring, on Monday, that his country was ready to «cut its relations » with NATO.”

the opinion that Russia was then ready to use force to protect its patronage over its near abroad.¹⁶⁴ This luxury, Russia could no longer afford it in dealing with its remote abroad after having lost its might in the early 1990s.¹⁶⁵ But one has to admit that it moved in its near abroad shortly after the spark went off in its remote abroad. Accordingly, Russia made advantage of its inability to block Kosovo's unilateral declaration of independence to accelerate the process of reasserting itself next door to its borders.

Examples of such developments are the following:

- i. The Georgian crisis in August 2008,
- ii. The April 2010 agreement (with a great deal of crashing and banging) on extending the lease by Ukraine to Russia for its Black Sea fleet of the Crimean harbor of Sevastopol for another quarter of century, thus until 2042,
- iii. The revolution in Kyrgyzstan which started in April 2010.

With regard to the Georgian crisis, Scholars and journalists like Pavel Felgengauer, David Ignatius, Joseph S. Nye, Arielle Thedrel, Fabrice Nodé-Langlois, Isabelle Lasserre and H el ene Carr ere d'Encausse have all stressed on the long time premeditation for such Russian catching up.

Pavel Felgengauer, a Muscovite analyst of defense issues, states that one of the main Russian objectives was to prevent such old satellite from integrating NATO; and the

¹⁶⁴ Fischer, J. (2008, September 6). Cold realism is needed to face Russian revivalism. *The Daily Star*, p.9.

¹⁶⁵ For example, as we saw earlier in discussing Euro-Balkans issues, Serbia and Kosovo are totally encircled by a majority of members of the European Union and a balance of prospective members; in fact Serbia and Kosovo are themselves prospective members. It is therefore difficult, if not impossible, for the Russian army to move there as it did in Georgia in August 2008; all the more that the totality of the terrain of the former Yugoslavia has been under Western management since the fall of the Soviet Union. A Russian military action would therefore just be equivalent to challenging the West.

preparation of the military operation in Georgia was already under way in July 2008.¹⁶⁶ But David Ignatius goes way back and makes reference to the fact that there were more and more Russian signals on the forthcoming invasion of Georgia because of American attempts to bring its new ally into NATO, and the West wasn't sufficiently alert to stave off the flood through a diplomatic containment policy, although there was only one step to hint that Moscow was going to initiate a move after having used South Ossetia as a bait for Georgia. Ignatius says that Georgia's president, Mikhail Saakashvili, got lured into a trap set by the "Russian bear".¹⁶⁷ The trap hypothesis is confirmed by other scholars like Joseph S. Nye who, importantly for our analysis, added that the issue over Kosovo's independence was not totally unrelated to such Russian plan in its direct neighborhood.¹⁶⁸

¹⁶⁶ Mandeville, L. (2008, August 18). Cette opération a été planifiée de longue date [This operation was planned long time ago]. *Le Figaro*.

¹⁶⁷ Ignatius, D. (2008, September 4). The US presidential candidates blow hot and cool on Georgia, p.9: ***"The Georgia crisis, in truth, shouldn't have surprised anyone. It has been coming at us in slow motion for several years. The Russians, far from hiding their intention, have warned repeatedly that American attempts to bring Georgia into NATO were unacceptable to the Kremlin and would have consequences; the Bush administration didn't respond to Russia's statement of its interests in a way that might have deterred Moscow. It didn't make clear in advance the consequences Russia would pay if it attacked. Instead, the US tried to play both sides of the street – encouraging Georgia's NATO hopes, but not just yet. Georgia's president, Mikhail Saakashvili, kept poking the Russian bear – and finally launched the attack on South Ossetia that gave Russia a pretext for its devastating response. The administration knew Saakashvili was walking into a trap, officials even told him so privately – but not with a decisive, high-level intervention that might have checked the disaster."***

¹⁶⁸ Nye, J.S. (2008, September 5). Contrasts the guns and golds of August. *The Daily Star*, p.9: ***"... Russia is now going through a period of nationalistic reaction to what it regards as the humiliation it suffered after the Soviet empire collapsed. With the rise in energy prices boosting its economy, Russia has seen an opportunity to reassert its power over its neighbors. In addition, it felt aggrieved by plans for further expansion of NATO, a proposed ballistic missile defense system in Eastern Europe, and Western recognition of Kosovo's secession from Russia's ally, Serbia. Russia has sought to weaken Georgia's government for some time. In early August, Russia set a trap in South Ossetia, and Georgia foolishly walked into it. ..."***

Note:

In this article, Joseph S. Nye was in reality criticizing Russia for its use of what he calls "hard power" where, he feels, it could have obtained a better result with the use of "soft power" (non-military measures, persuasion, diplomacy, etc...). Our purpose here is not to compare hard power v/s soft power; but the above citations are important for our present analysis.

The above analyses were based on the rather near past; but some other analysts have focused on recent and ancient history to establish the traditional characteristic of Russia's position vis-à-vis its close satellites. For example, Arielle Thedrel and Fabrice Nodé-Langlois pertinently point out that Southern Ossetia's and Abkhazia's claims for independence were issued in 1992, shortly after the fall of the Soviet Union.¹⁶⁹ Moreover, both Thedrel and Nodé-Langlois relevantly remark that Ossetians and Abkhazians are Russian nationals since 2002. As a result, Russia's potential control of those regions was more a reality than a threat.¹⁷⁰ For her part, Hélène Carrère d'Encausse, the prominent

¹⁶⁹ References :

- Nodé-Langlois, F. (2007, October 15). L'Ossétie du Sud s'éloigne encore de la Géorgie [Southern Ossetia moves farther away from Georgia]. *Le Figaro*:
 "... *La République auto-proclamée d'Ossétie du Sud. Ce territoire de 3 900 km² a fait sécession avec la Géorgie à l'issue du conflit sanglant de 1992.*"
Translation :
 "... *the auto-proclaimed republic of Southern Ossetia. This 3 900 km² territory has seceded from Georgia at the outcome of the bloody conflict of 1992.*"
- Nodé-Langlois, F. (2008, January 4). L'Abkhazie, principal enjeu du scrutin Géorgien [Abkhazia, principal stake of the Georgian poll]. *Le Figaro*:
 "*La Géorgie, république soviétique du versant sud du Caucase devenue indépendante en 1991, a été vite amputée de 2 provinces prorusses, la minuscule Ossétie du Sud et l'Abkhazie ...*
... La guerre de 1992-1993 aurait fait 13 000 morts. Les Abkhazes ont repoussé les Géorgiens. Et la république indépendante ... s'est vidée de la moitié des ses 530 000 habitants."
Translation :
 "*Georgia, a Soviet Republic of the southern slope of the Caucasus, which became independent in 1991, has been rapidly amputated of two pro-Russian provinces, the tiny Southern Ossetia and Abkhazia ...*
... The 1992-1993 war would have made 13000 dead. The Abkhazians have pushed back the Georgians. And the independent republic ... was emptied by half of its 530 000 inhabitants."

¹⁷⁰ References :

- Nodé-Langlois, F. (2008, January 4). *Le Figaro*. Ibid:
 "*L'Abkhazie ressemble déjà à un protectorat russe. ... jeunes et vieux parlent le russe. La devise est le rouble. Moscou a distribué en masse des passeports. Selon Sergueï Bagapch, le nouveau président abkhaze, 85% de la population qu'il administre en détiendrait. Ainsi, la plupart des Abkhazes ont voté aux législatives russes du 2 décembre pour élire des députés à la Douma de Moscou.*"
Translation :
 "*Abkhazia looks already like a Russian protectorate. ... young and elderly speak Russian. The currency is the rouble. Moscow has massively distributed passports. According to Sergueï Bagapch, the new Abkhazian president, 85% of the population he administers would hold Russian*

perpetual secretary to the prestigious French Academy (l'Académie française), goes even farther backward in history to highlight the fact that those minorities were consented by Lenin and Stalin a status of autonomy since **1922**.¹⁷¹ And this latent issue had always been a handy tool ready for use by Russia if needed. As a matter of fact, a lot of analysts like Lasserre and Nodé-Langlois reported about the threat of swapping Kosovo's unilaterally declared independence with South Ossetia and Abkhazia's recognition by Russia.¹⁷² And the August 2008 vote of the Russian « Duma » in favor of the

passports. Thus, most Abkhazians have voted at the legislative elections of the 2nd of December to elect deputies at Moscow's Duma.”

- Thedrel, A. (2008, August 14). L'accord Géorgie-Russie ne règle pas tous les contentieux [The Russo-Georgian agreement does not settle all disputes. *Le Figaro*:
“La Russie fait valoir que l'Abkhazie (12% du territoire géorgien) a proclamé son indépendance en août 1992 et que la même année, l'Ossétie du Sud (5% du territoire géorgien) s'est prononcée par référendum pour son rattachement à l'Ossétie du Nord (qui fait partie de la Fédération de Russie). Ossètes et Abkhazes possèdent des passeports russes depuis 2002.”

Translation :

“Russia emphasizes that Abkhazia (12% of the Georgian territory) proclaimed independence in August 1992 and that the same year, Southern Ossetia (5% of the Georgian territory) has opted by referendum for its jurisdictional linkage to Northern Ossetia (which is part of the Russian Federation). Ossetians and Abkhazians have Russian passports since 2002.”

¹⁷¹ Carrère d'Encausse, H. (2008, August 13). Le président géorgien a rendu, malgré lui, un grand service à la Russie [The Georgian President has made a larger favor to Russia, against his will]. *Le Figaro*:
“Les peuples minoritaires – ossètes, abkhazes, adjars, etc. – avaient reçu en 1922 de Lénine et Staline, soucieux de briser le sentiment national géorgien, un statut d'autonomie culturel et administratif au sein de la République.”

Translation :

“Minority peoples – Ossetians, Abkhazians, Adjars, etc. – had been granted in 1922 a status of cultural and administrative autonomy within the Georgian Republic by Lenin and Stalin, who were eager to break the Georgian national feeling.”

¹⁷² References :

- Lasserre, I. (2007, November 16). Belgrade ne jure plus que par le grand frère russe [Belgrade does no longer swear by anyone else but the Russian big brother]. *Le Figaro*:
“ ... la Russie de Poutine a des cartes puissantes, qui servent ses intérêts. ... l'effet domino que pourrait avoir, pour le meilleur ou pour le pire, l'indépendance du Kosovo sur les nombreux conflits gelés de l'ancien espace soviétique.”

Translation :

“ ... Putin's Russia has powerful cards which serve its interest. ... the domino effect that could have, for the best or for the worst, the independence of Kosovo on the numerous frozen conflicts of the old Soviet Space.”

Also quoting a European observer:

independence of Abkhazia and Southern Ossetia gives such analysis substantial credence.¹⁷³ Indeed, one may ask otherwise why the Russians waited so long to recognize those peoples' independence.

As for Ukraine, if any element transpires from the Russo-Ukrainian April 2010 *landmark agreement* (as qualified by Nicolai N. Petro) signed in Kharkov in a *cloak-and-dagger operation* (in the words of Friedbert Pflüger) for extending Russia's lease from Ukraine of the Crimean harbor of Sevastopol for its Black Sea Fleet in exchange of a 30% discount on the price of Russian gas coupled with a commitment for 10 years of

“Les Russes ont remarquablement joué. Si le Kosovo est indépendant, ils utiliseront le précédent pour certaines républiques sécessionnistes de l'ancien espace soviétique, comme l'Abkhazie. Et s'il y a un compromis, ils diront qu'ils avaient eu raison de s'opposer à l'indépendance et qu'un accord était possible. Ils sont gagnants dans tous les cas.”

Translation :

“The Russians have remarkably played. If Kosovo is independent, they will use the precedent for certain secessionist republics of the old Soviet Space, like Abkhazia. And if there is a compromise, they will say that they were right to oppose independence and that an agreement was possible. They are winners in any case.”

- Lasserre, I. (2007, November 29). *Le Figaro*. Op-cit:
“La Russie a en effet affirmé qu'elle considérerait l'indépendance du Kosovo comme un précédent qu'elle pourrait reproduire dans sa sphère d'influence, notamment en Abkhazie et en Transnistrie, deux républiques indépendantistes très proches de Moscou.”

Translation :

“Russia has indeed asserted that it considers the independence of Kosovo like a precedent that it could reproduce in its sphere of influence, particularly in Abkhazia and in Transnistria, two separatist republics very close to Moscow.”

- Nodé-Langlois, F. (2008, January 4). *Le Figaro*. Op-cit:
“Moscou a averti qu'en cas d'indépendance du Kosovo, les territoires séparatistes de Géorgie (l'Abkhazie, Ossétie du Sud), de Moldavie (Transnistrie) et d'Azerbaïdjan (Haut-Karabakh) pourraient suivre le même chemin.”

Translation :

“Moscow has warned that in case of independence of Kosovo, the separatist territories of Georgia (Abkhazia, Southern Ossetia), of Moldavia (Transnistria) and Azerbaijan (Upper-Karabakh) could follow the same path.”

¹⁷³ References :

- The Associated Press. (2008, August 26). Russia recognizes breakaway Georgian regions. *The New York Times*.
- Medvedev's statement on South Ossetia and Abkhazia. (2008, August 27). *The New York Times*.

uninterrupted supply, such element is but a modification of the balance in favor of Russia's resurgence as a regional patron and its determination to freeze any European or North Atlantic aspiration for Ukraine in the foreseeable future, as pertinently explained by Friedbert Pflüger.¹⁷⁴ Indeed, a Reuters' news item in the New York Times has consistently reported on the 27th of May 2010 that Ukraine formally ended its pursuit of NATO membership.¹⁷⁵ In passing, it may be worth mentioning that, the Russians consolidated the deal by offering the Ukrainians a carrot in waiving a \$2 billion fine owed to Russia by Ukraine for having purchased less gas than provided for in a January 2010 contract.¹⁷⁶ And from the way the factual situation is developing, those protests during the stormy parliamentary voting session of the 27th of April 2010 – expressed by an exchange of punches and the throwing of smoke bombs and eggs, from which the speaker of the Ukrainian Parliament had to be protected by umbrellas – and the subsequent street demonstrations reflect nothing else than the powerlessness of the Ukrainians in resisting Russia's reinvigorating hegemony and its *fait accompli*.¹⁷⁷ With

¹⁷⁴ Pflüger, F. (2010, April 30). Fighting over Moscow's embrace. *International Herald Tribune*, p. 6: ***"The Ukrainian-Russian agreement suggests a de facto end to any prospects of NATO membership for Ukraine in the foreseeable future. While NATO and the European Union have hesitated about making any concrete moves toward Ukrainian accession, the Kremlin has known exactly what it wants.***

... ..

But it is the Kremlin, at least for now, that decides whether and to what extent Ukraine will be allowed to integrate into the European structures."

¹⁷⁵ Reuters. (2010, May 27). Ukraine: NATO application suspended. *The New York Times*.

¹⁷⁶ Barry, E. (2010, May 3). Putin surprises Ukraine with energy-merger plan. *International Herald Tribune*, p.4:

"Russia, in return, agreed to cut the price of its natural gas by 30 percent – at a cost to Russia of at least \$30 billion, Mr. Weafer said [Chris Weafer : chief strategist at UralSib Capital, an investment bank] – and went on to waive a \$2 billion fine it could have levied on Ukraine for purchasing less gas than was included in a contract signed in January."

¹⁷⁷ References:

all due respect to Petro's logic and a reasonable extent of realism, such circumstances, together with the Putin/Medvedev geopolitical nostalgia, leave so far little room for suggesting a Russian willingness to share anything with the European Union or with any other power over places like Ukraine; for Russia, the negotiation should encompass other terrains, if not exclusively be over such other terrains.¹⁷⁸ And this perception tends to make sense if we consider Putin's concurrent proposal to merge Russia's giant Gazprom (the largest gas provider of the world of which Europe is heavily tributary) with the ailing Ukrainian Naftogaz, along with a series of other projects (including the merging of Russian nuclear assets with those of Ukraine, it should importantly be emphasized) whose resultant would inevitably be to increase Ukraine's economic (and political as a consequence) dependency on Russia; we will elaborate more thoroughly on this subject in discussing the oil issue next section.¹⁷⁹ It does not mean that the Ukrainians are not

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- Williams, S. & AFP. (2010, April 29). La Russie fait feu de tout bois pour rétablir son influence en Ukraine [Russia is using all available means to reestablish its influence over Ukraine]. *L'Orient – Le Jour*, p.10.
 - AFP. (2010, May 11). Moscou-Kiev: protestations en Ukraine [Moscow-Kiev : [street] protests in Ukraine] . *Le Figaro*.

¹⁷⁸ Petro, N.N. (2010, May 5). Ukraine can have them and us. *International Herald Tribune*, p. 8: “Few, however, seem to see that there is a third option – embrace Ukraine and turn it to the West's advantage. Replace the misguided « divide and conquer » strategy that the West has been pursuing in the region with a new one that aims at the simultaneous integration of the Slavic cultural component of Europe into pan-European institutions. Make Ukraine Europe's indispensable partner for bringing Russia into the European Union. Rather than placing the two countries on different tracks, reward them both for moving along the same path.”

¹⁷⁹ References:

- Pflüger, F. (2010, April, 30). *International Herald Tribune*. Op-cit, p. 6: “Now there are signs that the visit to Brussels was just cosmetic, and that Mr. Yanukovitch's real focus has been development of relations with Moscow [Viktor Yanukovitch is the newly elected pro-Russian Ukrainian president and he made a state visit to the EU in Brussels on the 5th of March 2010]. Since March 5, there have been at least seven Russia-Ukraine meetings on the level of president or prime minister – in effect, one a week. Four more meetings are scheduled before May 17. On the night before the memorable Parliament session, the Russian prime minister, Vladimir Putin, made an unscheduled visit to Kiev, **bringing a long list of proposed joint projects.**”

trying to resist Russia's attempts to resume control over their destiny. Indeed, even the new president himself Viktor Yanukovich, a veteran apparatchik of the Soviet Era, is keeping on the agenda Ukraine's EU integration as a long-term goal and had objected that he would have to consult with the EU before deciding on the merging of Gazprom and Naftogaz, but the fate of such condition is still unclear at this stage.¹⁸⁰ It is unclear

They include cooperation on new nuclear reactors (on the 24th anniversary of Chernobyl!), a bridge between Russia and the Crimea, cooperation of the aircraft industries and Russian access to gas transportation and storage systems in Ukraine."

- Poutine propose de marier Gazprom à l'ukrainien Naftogaz [Putin proposes to marry Gazprom to the Ukrainian Naftogaz]. (2010, May 1). *L'orient – Le Jour*, p.9:
“La demande de mariage gazier suit ainsi de peu une autre idée lancée il y a quelques jours par M. Poutine : en déplacement à Kiev, il avait suggéré de créer une holding rassemblant les actifs nucléaires des deux pays,”
Translation :
“The gas marriage proposal follows thus by a short period of time another idea tried a few days ago by Mr. Putin : while travelling in Kiev, he had suggested to create a holding company that would assemble and carry the nuclear assets of both countries,”
- Reuters. (2010, May 12). Energie : pas d'accords Ukraine/Russie [Energy: no agreement Ukraine/Russia]. *Le Figaro*:
“La Russie a également proposé une plus forte coopération avec l'Ukraine en matière d'énergie nucléaire”.
Translation :
“Russia has also proposed a larger cooperation with Ukraine on the matter of nuclear energy.”
- AFP. (2010, May 17). Accords signés entre Moscou et Kiev [Agreements signed between Moscow and Kiev]. *Le Figaro*:
“Cinq accords de coopération ont été signés, dont le plus important concerne la délimitation de la frontière russo-ukrainienne. Les autres portent sur l'utilisation conjointe du système russe de navigation par satellite Glonass, et la collaboration dans les secteurs bancaire, culturel et éducatif.”
Translation :
“Five cooperation agreements have been signed, whose most important is on the delimitation of the Russo-Ukrainian border. The others are on the joint usage of the Russian navigation system by satellite Glonass, and the collaboration in the fields of banking, culture and education. ”
- Kiev se rapproche de Moscou, mais pas trop! [Kiev is getting closer to Moscow, but not too much!]. (2010, May 19). *Le Figaro*:
“Par ailleurs, toute une série d'accords parallèles a été signée. Il s'agit notamment de l'ouverture du marché russe à l'exportation des tuyaux ukrainiens, et l'ouverture du marché ukrainien aux produits chimiques russes.”
Translation :
“In addition, a whole series of accords has been signed. They involve particularly opening the Russian market for the export of Ukrainian pipes, and opening the Ukrainian market for Russian chemical products.”

¹⁸⁰ References :

precisely because of the concerns of the European Union (EU), according to some reports, to be short of gas as a result of Russo-Ukrainian disagreements over energy; and hence the EU may paradoxically not support Ukraine in its attempts to throw off Russia's domination in connection with gas if the supply is rather uninterrupted under Russia's patronage.¹⁸¹ As a matter of fact a similar seism which had triggered European alarm

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- Kiev se rapproche de Moscou, mais pas trop! [Kiev is getting closer to Moscow, but not too much]. Ibid:
*“Le président ukrainien a presque immédiatement douché l’enthousiasme du Premier ministre russe Vladimir Poutine, qui voulait aller plus loin avec la proposition de fusion du monopoliste russe Gazprom et de la plus grande compagnie gazière ukrainienne, Naftogaz. **Le nouvel élu a tenu à renforcer sa position pro-européenne en politique étrangère** en affirmant que toute fusion se fera uniquement après des discussions concertées avec l’Union européenne.
 **Or c’est exactement ce que veut éviter Moscou, qui tient à tout prix à écarter Bruxelles des infrastructures gazières ukrainiennes.**
 ... Yanoukovich est encore en rodage pour trouver un nouvel équilibre entre Moscou et Bruxelles.”*
Translation :
*“The Ukrainian President has almost immediately let down the enthusiasm of the Russian Prime Minister Vladimir Putin, who wanted to go further ahead with the merging proposition between the Russian monopolist Gazprom and the largest gas Ukrainian gas company, Naftogaz. **The newly elected [president] was keen on strengthening his pro-European position in foreign policy** in asserting that any merging will only be done after thorough discussions with the European Union.
 **Yet, this is exactly what Moscow wants to avoid, as it is eager to keep Brussels away from Ukrainian gas infrastructures.**
 Yanukovich is still running in to find a new equilibrium between Moscow and Brussels.”*
 - Reuters. (2010, June 1). Ukraine Ditches NATO goal. *The New York Times*:
*“Ukraine’s new president , , outlined a foreign policy bill on Tuesday that ditches his predecessor’s aim to join NATO but keeps EU-membership as a long-term goal. President Viktor Yanukovich’s draft foreign policy law would commit Ukraine to «a non-bloc policy which means not participating in military-political alliances,» a clear effort to show **he is trying to steer between East and West.**”*

¹⁸¹ Européens et Russes cherchent à relancer leur coopération économique et politique [Europeans and Russians are trying to resume their economic and political cooperation]. (2010, May 20). *Le Figaro*:
*“Le deuxième de ces trois dossiers concerne indirectement les intérêts de l’Union européenne. Il s’agit de la proposition de fusion entre les deux géants gaziers, russe et ukrainien, Gazprom et Naftogaz. Officiellement, l’Union européenne considère que la question relève de la compétence des pays concernés. Mais elle va en étudier les conséquences possibles pour ses consommateurs. **Car plusieurs coupures d’approvisionnement en gaz de ces dernières années, causées par des conflits entre la Russie et l’Ukraine, ont beaucoup agacé les Européens. L’amélioration des relations entre l’Ukraine et Russie consécutive à l’élection du président prorusse Viktor Yanoukovich, rassure déjà à Bruxelles.**”*

Translation :

*“The second of those three matters involves indirectly the interests of the European Union. It is about the merging proposal between the two gas giants, Russian and Ukrainian, Gazprom and Naftogaz. Officially, the European Union considers the question as being of the competence of the concerned countries. But she will study the resulting possible consequences for her own consumers. **Because several interruptions of***

bells has recently been avoided next door, as Byelorussia was in conflict with Russia about financial dues for gas related matters.¹⁸² Consequently, what we can say now is that Russia is in fact making advantage of Ukraine's economic difficulties to offer it not more than lifebuoys that would afford back a Russian foothold in this old satellite which was on the verge of turning Westward and hence being lost for Russia; and Ukrainian pro-Western leaders, like former Prime Minister Ms. Yulia Tymoshenko, are aware of such policy and had a hard time resisting it.¹⁸³

gas supply these last years, caused by conflicts between Russia and Ukraine, have a lot irritated the Europeans. The improvement of relations between Ukraine and Russia consequently to the election of the pro-Russian president Viktor Yanukovich, already reassures Brussels. ”

¹⁸² References :

- Gazprom réduit ses livraisons de gaz à Minsk, réunion de crise à Bruxelles [Gazprom reduces its gas deliveries to Minsk, crisis meeting in Brussels]. (2010, June 22). *L'Orient – Le Jour*, p. 9.
- Le Belarus suspend le transit du gaz vers l'Europe, Moscou veut rassurer [The Belarus suspends gas transit toward Europe, Moscow wants to reassure]. (2010, June 23). *L'Orient – le Jour*, p.9.
- La crise du gaz entre la Russie et le Belarus s'envenime [The gas crisis between Russia and the Belarus is worsening]. (2010, June 24). *L'Orient – Le Jour*, p.9.
- Détente dans le conflit gazier entre la Russie et le Belarus [Detente in the gas conflict between Russia and the Belarus]. (2010, June 25). *L'Orient – Le Jour*, p.9.
- La Russie et le Belarus mettent fin à leur conflit gazier [Russia and the Belarus put an end to their gas conflict]. (2010, July 3). *L'Orient – Le Jour*, p.9.

¹⁸³ References:

- Tessier-Stall, S. & Zarembo, K. (2010, May 21). Ukraine is not yet 'lost' – Yanukovich has no choice but to deal with Moscow, but he is not Moscow's man. *International Herald Tribune*, p.6: “... it's a bad deal. In exchange for rebates on natural gas until 2019, President Yanukovich has allowed Moscow to station its Black Sea Fleet in the port of Sevastopol until 2042. In doing so, he has allowed Russia to maintain a foothold in a particularly unstable part of Ukraine – Crimea – and to continue to project its military power in the volatile Black Sea region – not a minor development, especially after Russia and neighbor Georgia came to blows in August 2008.
... ..
The agreement is less evidence of Mr. Yanukovich's geopolitical inclinations than proof of his country's weakness. Ukraine's economy shrank by one seventh in 2009, and with it the government's ability to pay its energy bills.
Even Yulia Tymoshenko, a leader of the Orange Revolution who as recently as 2008 had called for Ukraine to join NATO, as prime minister found herself compelled in 2009 to make important concessions to Moscow – including a gas accord so one-sided [that] it had to be revised only a few months after its signing.
... ..
It is too early to say that President Yanukovich is intentionally helping Russia « steal » Ukraine from the West. He is more positively inclined toward Moscow than his predecessor, but the truth is that he has been pushed into a corner by a combination of geopolitical ineptness, special interests and pre-existing problems.”

The third example of ground developments which followed Russia's signals is the outburst of riots, beginning April 2010, in the small Republic of Kyrgyzstan. Nathalie Ouvaroff fairly covered the issue. She pointed out the fact that there are two bases in this country, one Russian base and one American base (established in Manas since 2001) which is said to be momentarily closed, but which the Russians would most logically want to see permanently closed.¹⁸⁴ Ouvaroff further expands her analysis highlighting the

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- Wilson, A. (2010, May 21). Tilting toward Russia? Keeping close ties with the Kremlin may strengthen Yanukovich's hand, at home and abroad. *International Herald Tribune*, p.6: *"Viktor Yanukovich replaced the Kremlin's bête noire, Viktor Yushchenko, as Ukrainian president in February. Since then, high-level meetings have taken place almost weekly, culminating in Mr. Medvedev's state visit to Kiev this week."*
Mr. Yanukovich has now signed a huge number of agreements with Russia, most notably the deal to swap an extra 25 years for the Russian Black Sea Fleet in Crimea for a 30 percent reduction in the price of gas. Ukraine has also agreed to big deals on cooperation in the nuclear industry and in the aviation, a 10-year economic cooperation plan, and common positions on Transnistria and security in the Black Sea region that have disturbed neighbors like Moldova and Georgia. And Mr. Yanukovich has backed Mr. Medvedev's pet European Security Initiative and its goal to « eliminate the dangerous dividing lines that have appeared in the European region over the past decade ».
A recently leaked strategy paper written by Russia's foreign minister, Sergei Lavrov, defines Russia's overall aim as nothing less than « to actively draw Ukraine into an orbit of economic cooperation with Russia »."

¹⁸⁴ Ouvaroff, N. (2010, June 18). Le retour de la Russie impériale [The return of the imperial Russia]. *L'Hebdo Magazine*, p.45:

"Début avril, à l'autre bout de l'espace postsoviétique, des «troubles spontanés», provoqués par la corruption et le népotisme du président, éclatent dans la petite République Kirghize, seul pays du monde à abriter une base russe et une base américaine. Le président Kourmanbek Bakiev, considéré comme favorable à l'Occident, est chassé et remplacé par un gouvernement de salut public dirigé par Rosa Otoumbaeva, dont la première initiative est d'envoyer une délégation à Moscou. Quant à la base américaine de Manas, elle est momentanément fermée. Les Russes démentent toute implication dans les événements, les experts sont sceptiques. Certains voient également la main de l'Iran. Peu de temps avant «la révolution», Bakiev avait accepté la création d'un centre antiterroriste à côté de la base [américaine], et le président Iranien, Mahmoud Ahmadinejad, avait accusé la Kirghizie de fermer les yeux sur la formation par les experts américains de «terroristes» payés pour déstabiliser le régime iranien.

... ..

La révolution Kirghize n'a été qu'un coup d'Etat fomenté par les barons de la drogue qui sont en train de transformer le pays en un second Afghanistan, avec en prime des risques de sécession entre le Nord et le Sud."

Translation :

"Beginning of April, at the other end of the post-Soviet space, «spontaneous troubles», caused by the corruption and the nepotism of the president, outburst in the small Kirghiz Republic, the only country of the world which hosts a Russian base and an American base. President Kourmanbek Bakiev, considered as favoring the West, is expelled and replaced by a government of public salvation led by Rosa Otoumbaeva, whose first initiative is to send a delegation to Moscow. As to the American base of Manas, it is

rivalries on the control of the post-Soviet space : the United States' and China's rivalry over Central Asia on one hand, and Iran's and Turkey's rivalry over the Caucasus on the other hand. There are Russian advances on the ground like the reconstituted hard node of Russia-Ukraine-Byelorussia-Kazakhstan; but the competition is far from being over as, for example, it is still open (i) in Byelorussia where the talks over customs unification did not yield any result for the time being, and (ii) in Kazakhstan which offered to host a new US military base in exchange for the one lost in Manas, Kyrgyzstan.¹⁸⁵ The Russians

momentarily closed. The Russians deny any implication in the events, but experts are skeptical. Some of them see even the hand of Iran. A little before «the revolution», Bakiev had accepted the creation of an antiterrorist center close to the base, and the Iranian President, Mahmoud Ahmadinejad, had accused Kirghizia of closing its eyes on the training, by American experts, of «terrorists» paid to destabilize the Iranian Regime.

... ..

The revolution in Kirghizia has just been a Coup d'état, fomented by drug tycoons who are transforming the country in a second Afghanistan with, on top of it, risks of secessions between North and South”.

¹⁸⁵ Ibid, p.45:

“ la politique russe dans le CEI [Communauté des Etats Indépendants], devenue un nouveau terrain de guerre froide, se heurte à d'autres intérêts et ambitions, ceux des Etats-Unis et la Chine en Asie centrale, ceux de l'Iran et surtout de la Turquie dans le Caucase. Cette rivalité des trois grandes puissances et des puissances émergentes pour le contrôle de l'espace postsoviétique augmente les risques de déstabilisation dans les régions volatiles et hautement stratégiques.

Certes, le noyau dur Russie-Ukraine-Biélorussie-Kazakhstan est reconstitué. Cependant, de nombreux problèmes demeurent. Les pourparlers avec le Belarus pour l'union douanière ont été laborieux et n'ont pas pour le moment apporté de résultat. Quant au Kazakhstan, s'il a signé le traité instituant un espace économique unique entre les deux pays, il a dans le même temps offert à la Maison-Blanche une base militaire pour remplacer celle de Manas.

... ..

Le conflit gelé du Haut-Karabagh risque de se réchauffer avec la montée en puissance de la Turquie, décidée de s'inviter dans le processus de Minsk pour être en mesure de soutenir plus efficacement l'Azerbaïdjan”.

Translation :

“ The policy of Russia in the CIS [Community of Independent States], which became a new terrain for a Cold War, faces other interests and ambitions, those of the United States and China in Central Asia, those of Iran and particularly Turkey in the Caucasus. This rivalry of the three great powers and of the emerging powers for the control of the post-Soviet space increases the destabilization risks in highly strategic and volatile regions.

It is true that the hard node Russia-Ukraine-Byelorussia-Kazakhstan has been reconstituted. A lot of problems however persist. Talks with the Belarus for customs unification have been laborious without yielding any result for the moment. As to Kazakhstan, it has indeed signed the Treaty implementing a unique economic space between the two counties, but it has concurrently offered The White House a military base to replace that of Manas.

... ..

denied of course any implication, but the circumstantial outcome does not seem to be detrimental for them; as a matter of fact (i) Moscow recognized the temporary government led by Mrs. Rosa Outounbaïeva, and (ii) this latter revealed in a press conference that she wrote to President Dmitri Medvedev asking for assistance in reinstating order in the country, notwithstanding his abstention to comply with the request, not only because, unlike Georgia, Kyrgyzstan has no common borders with today's Russia (Kazakhstan is in between) but also for apprehending the challenge of having to resolve unwanted ethnic problems as unsuccessfully experienced by the Russians in Afghanistan.¹⁸⁶ Ouvaroff further states that the Kremlin has played with the

The frozen conflict in the Upper Karabakh runs the risk of being revived with the rise of Turkey's power, given consideration to its determination to invite itself to in the process of Minsk in order to be able to support more efficiently Azerbaijan”.

¹⁸⁶ References:

- Collins, J.F. & Rojansky, M. (2010, June 15). Kyrgyzstan: a test for mutual security. *The New York Times*:
 “Although the Kyrgyz provisional government has called for Russian troops to help maintain order, Moscow referred the problem to the C.S.T.O. [Collective Security Treaty Organization, an alliance of seven former Soviet states], which resolved on Monday to provide «comprehensive assistance».”
- Ouvaroff, N. (2010, June 25). Le Kremlin joue avec le feu [The Kremlin plays with the fire]. *L'Hebdo Magazine*, pp.44-45:
 “Rosa Outoumbaïeva a annoncé au cours d'une conférence de presse qu'elle avait écrit au président Dmitri Medvedev pour lui demander son assistance afin de ramener l'ordre dans le pays. « La situation à Och est hors de contrôle. Tous nos efforts pour rétablir un dialogue entre les communautés ont échoué, nous avons demandé à la Russie son aide et nous espérons que des mesures seront prises dans les plus brefs délais », La décision de la présidente intérimaire, , ne fait pas l'unanimité. Certains observateurs remarquent que la présence de forces étrangères, loin de ramener le calme, ne fera qu'envenimer la situation et de rappeler «le bourbier afghan» dont les Russes ont eu tant de mal à sortir et que les Américains ne parviennent toujours pas à pacifier.

... ..

Moscou reconnaît immédiatement le nouveau régime. Dans ce contexte, il n'est pas étonnant que de nombreux experts aient vu la main de la Russie dans événements de Bichkek”.

Translation :

“Rosa Outoumbaïeva has announced during a press conference that she wrote to President Dmitri Medvedev requesting his assistance in order to reinstate order in the country. « The situation in Och is out of control. All our efforts to reestablish a dialogue between the communities have failed, we have asked Russia to help us and we hope that measures will be taken within the shortest deadlines »,The decision of the interim President has not obtained a unanimous support. Recalling the «Afghan quagmire» of which the Russians had a hard time getting out and that the

fire in this episode of its competition with the United States over the post-Soviet space, because it underestimated ethno-religious related factors.¹⁸⁷ The credibility of Ouvaroff's analysis cannot be categorically ruled out if a recent statement of President Medvedev is profoundly meditated on. Indeed, he wasn't satisfied with the voting of the new constitution which aimed at reducing the prerogatives of the Kyrgyz President to the benefit of a democratic (multiethnic) Parliament, favoring instead that a « strong administration » be vested with power.¹⁸⁸ Summing up therefore, Ouvaroff's analysis enables us to cautiously suggest in the bottom line that, regardless of whether or not

Americans are still unable to pacify, some observers note that the presence of foreign forces, far from calming down the situation back again, will only worsen it.

... ..

Moscow immediately recognized the new regime. In this context, it is not surprising that a lot of experts saw Russia's hands in the events of Bichkek ”.

¹⁸⁷ Ouvaroff, N. (2010, June 25). *L'Hebdo Magazine*. Ibid, p.45:

“... le Kremlin, centré exclusivement sur son bras de fer avec les Etats-Unis pour la réappropriation de l'espace postsoviétique, a joué avec le feu en sous-estimant un certain nombre de facteurs à l'œuvre dans la République : les frustrations de la minorité ouzbek, la perte de popularité du gouvernement provisoire qui accumule les erreurs et, enfin, la montée de l'islam radical”.

Translation :

“... focusing on its arm-wrestle with the United States for the recuperation of the post-Soviet space, the Kremlin has played with the fire in underestimating a certain number of active factors in the Republic : the frustrations of the Uzbek minority, the drop of popularity of the temporary government which accumulates errors, and finally the rise of radical Islam”.

¹⁸⁸ La nouvelle Constitution approuvée au Kirghizistan [Approval of the new Constitution in Kyrgyzstan]. (2010, June 29). *L'Orient – Le Jour*, p.10:

“La nouvelle Constitution devrait affaiblir considérablement le président au bénéfice du Parlement afin d'éviter la concentration du pouvoir dans les mains d'une seule personne.

... ..

La Russie a exprimé des inquiétudes, le président Dmitri Medvedev estimant que la Constitution risquait d'attiser l'extrémisme. «Une république parlementaire au Kirghizistan pourrait encourager l'arrivée au pouvoir de forces extrémistes», a-t-il déclaré à l'issue du sommet du G20 au Canada, estimant nécessaire «un pouvoir fort» pour éviter l'«éclatement» de cette ex-république soviétique”.

Translation :

“The new Constitution should considerably weaken the president to the advantage of Parliament in order to avoid power concentration in the hands of one person.

... ..

Russia has expressed concerns, as President Dmitri Medvedev estimated that the Constitution would risk awakening extremism. At the end of the G20 summit in Canada, he said that «a parliamentary republic in Kyrgyzstan may encourage the taking over by extremist forces» estimating that «a strong regime» was necessary to avoid the «breakup» of the ex-Soviet Republic”.

Moscow would have played a role in orchestrating the events to oust the United States, the outcome of such events did not seem to negatively affect Russia which, moreover, stays very prudent about opening up a Pandora box of irreconcilable belligerents called « parliamentary democracy »; this would explain Moscow's prompt recognition of the new government and, conversely, its restraint about walking into the trap of a risky intervention in an ethnically mined terrain, even upon President Outounbaïeva's official "invitation". The West is therefore very welcome to go far away if that was the will of "providential" circumstances, but in accordance with Russian standards there should be one Kyrgyz interlocutor to deal with ... if not to squarely receive instructions from Moscow.

The return on Russia's "investment" in the Caucasus and in Central Asia has to date been relatively efficient insofar as (i) Western expansion has slowed down there, and (ii) the "subcontracting" of Kosovo's issue to the "fertile imagination" of the ICJ (with all due respect) has yielded nothing more than a hopeful prelude to a workable settlement, in the absence of any forceful condition.

Regarded as such, it becomes clearly evident that the independence of Kosovo is neither an isolated issue which emerged by itself in a vacuum nor a fundamental cause for Russia's policy in the Caucasus. Our analysis enables us instead to suggest that Kosovo's independence has been a catalytic event of sufficient magnitude to give Russia's latent momentum a substantial impulse after years of incubation; such building up of energy had to do with Russia's long term goals and its release was only a matter of timing; the "Go Ahead" was of course Kosovo. Such interplay between immediate objectives and

long term goals was finely decoded by H el ene Carr ere d'Encausse.¹⁸⁹ In other words, there seems to be a kind of inverse relationship between Russia's immediate objectives and long term goals on one side, and its geographical priorities on the other side; in that the reassertion of its imperial power (particularly in its direct vicinity) was in reality its long term goal; and Russia's apparent strategy was to make use of the serving of its immediate objectives in remote areas where it had an influence (Serbia/Kosovo) to help ultimately achieving the said long term goal.

Thus, may we deduce from the above overview and analysis, after years of weakness because of the disintegration of the Soviet Union, instead of conceding any negotiation on Kosovo, Russia ignored the calls of the West and rather triggered the maneuver for its long time planned reentry of the international chessboard – of which, it would later appear that Kosovo was only one pawn out of many others, the most critical of them for Russia being concentrated in the Caucasus and in Central Asia – with substantially more

¹⁸⁹ Carr ere d'Encausse, H. (2008, August 13). *Le Figaro*. Op-cit:

“Le sort des Oss etes et des Abkhazes importe peu, en d efinitive,   la Russie, m eme si elle y a attis  le feu du s eparatisme pour affaiblir Saakashvili et son z ele atlantiste. Mais il s'agit ici des leviers de l'action russe et non de la logique de son action. Ce qui est au c oeur du conflit pour Moscou, c'est la puissance perdue il y a pr es de 20 ans, l'humiliation d'un pays priv  d'Empire et qui a essay  vainement de construire avec ses anciennes possessions une communaut  d'un type nouveau, tandis que ses partenaires potentiels se dressaient contre lui et se tournaient vers l'Occident, les Etats-Unis, avant tout. ...

...

... et la reconnaissance par les Etats-Unis et quelques pays europ ens de l'ind ependance du Kosovo, au m pris des protestations russes, ce que la Russie n'avait pas manqu  d'invoquer comme pr ec dent possible   une future reconnaissance de l'Oss tie et de l'Abkhazie.”

Translation :

“The fate of Ossetians and Abkhazians, finally, does not import Russia much, even if she has poked there the flames of separatism to weaken Saakashvili and his Atlantic zeal. But these are only the levers of Russia's action and not its logic. The issue being at the heart of the conflict for Moscow is the lost power some 20 years ago, the humiliation of a country deprived of Empire and which has vainly tried to construct with its old possessions a new type community, whereas its potential partners were all standing against it and turning towards the West, beginning with the United States. ...

...

... and the recognition by the United States and some European countries of the independence of Kosovo, with no regard for Russian protests, a fact that Russia did not fail to invoke as a possible precedent to a future recognition of Ossetia and Abkhazia.”

leverage than what was left for it just when its empire collapsed in the early 1990s. Hence, from a Russian perspective, the Serbian nationalism and affectivity in connection with the history of Kosovo should obviously be regarded here as an appropriate ingredient nourishing Russia's hearty appetite to recover – at least partially – the prior losses it incurred to the detriment of its status as Superpower.¹⁹⁰ And it would thus be difficult to convince oneself that this ultimate goal has nothing to do with Russia's handling of the ICJ's award; but let us leave this point for a later part of our discussion and let us concentrate for the moment on other relevant issues of the whole balance, like oil routes and the Iranian nuclear issue.

¹⁹⁰ Lasserre, I. (2007, November 16). *Le Figaro*. Op-cit:

“... *la Russie de Poutine a Une volonté affirmée de faire renaître la puissance russe. ...* ”

Quoting the Serbian economist Misa Brkic : “*Pour prouver qu'ils sont à nouveau une puissance économique et politique, les Russes nous utilisent comme une base pour avancer leurs pions en Europe et sur la scène internationale.*”

Translation :

“ ... *Putin's Russia has ... an asserted will to let the Russian power be reborn again. ...* ”

Quoting the Serbian economist Misa Brkic “*In order to prove that they are again an economic and political power, the Russians are using us like a basis to push forward their pawns in Europe and on the international scene.*”

4.3 – The oil issue in Europe : sources, needs and routes

In order to figure out the weight of oil in the present moving balance, of which Kosovo is a part with another weight, one has to observe the East/West European interdependency over the energy issue. First, Western Europe is dependent on Russia for about 40 to 45 percent of its gas and a third of its oil. The Russians for their part obviously do not ignore this fact and it happened that they showed readiness to make use of it against the West if ever they are compelled to by extreme situations, even reluctantly one has to admit.¹⁹¹ Second, the energy issue is like a double edged sword, for Russia needs Europe not only as a market but conversely as a route to export elsewhere its energy products and derivatives.¹⁹²

¹⁹¹ Muller, M-A. (2008, September 5). Pas de mesures punitives contre la Russie [No punitive measures against Russia]. *L'Hebdo Magazine*:

“Le sommet Européen est un avertissement pour Moscou à respecter ses engagements en Géorgie. La déclaration finale souligne que l’UE «restera vigilante » et mettra sous surveillance ses relations avec la Russie avant leur prochain sommet conjoint. Pas de sanctions pour autant. L’Europe risquerait trop gros, car la Russie a clairement fait savoir qu’en cas de mesures punitives, elle pourrait bien revoir sa politique d’exportation de l’énergie vers l’Europe. Or, elle fournit à l’Europe de l’Ouest 40% de son gaz et un tiers de son pétrole.”

Translation :

“The European summit is a warning to Moscow to bring it to fulfill its engagements in Georgia. The final declaration underlines that the European Union «will remain vigilant» and monitor its relations with Russia before their next common summit. No sanctions for the time being. Europe would risk too much, because Russia has made clear that in case of punitive measures, it could very well revise its policy of exportation of energy toward Europe. And it should be noted that Russia provides Western Europe with 40% of its gas and a third of its oil”.

¹⁹² Abi Ramia, J. (2008, August 29). *L'Hebdo Magazine*. Op-cit:

“Le pétrole et le gaz, enjeux de tous les cauchemars européens, illustrent l’interdépendance. Certes, L’Europe dépend du gaz russe à hauteur de 45% de ses approvisionnements, et du pétrole pour 30%. Mais en retour, 90% des exportations russes de gaz prennent le chemin de l’Europe. Gazprom, l’inquiétant géant de l’énergie, tire 65% de ses revenus du marché européen. « Les Russes tiennent autant à leur recettes d’exportation que les Européens à la régularité de leurs livraisons », dit Arianna Checchi, du Center for European Studies (Bruxelles). « L’Europe dispose d’un solide levier, le tableau n’est pas si sombre.» Au sommet européen, le plus difficile sera peut-être de calmer l’ardeur vindicative de l’Europe orientale et des pays baltes. Sortis du joug soviétique, ils ont vu avec horreur le Kremlin lancer ses chars à l’assaut du voisin. Ils craignent d’être les prochaines victimes d’une nouvelle politique russe d’intimidation. A leurs yeux, « la Géorgie ne serait que le premier domino », comme le souligne Tomas Valasek du Center for European reform (Londres)”.

Translation :

“Oil and gas, the stakes of all European nightmares, illustrate the interdependence. Of course, Europe depends on Russia for 45% of its gas supplies and for 30% of its oil supplies. But, conversely, 90% of

Given the facts above, it becomes clearly understandable for the parties – which are in competition over positions in the forthcoming stabilization of power balance – to try, each on its side, either to reverse the dependency ratio in its favor or else to maintain and even improve its current advantage. Accordingly, the correlation with other centers of interest for the parties prevails inasmuch as the winner of this part of the game would either be more comfortable in putting forward its position over such other centers of interest, like Kosovo, or conversely, would become more inclined to negotiate if it considers that it has at least secured the essential part of what it was heading for; the loser for its part would either try to stiffen its position in those other centers of interest to compensate for its loss or, conversely, would resort to negotiation in case of persistent weakness.

Russia's reaction to Georgia's move in August 2008 has concretized and increased an old European growing concern about Europe's energy supply routes because Georgia is a junction point between Europe and Turkey as consumers on one side, and Central Asia as provider on the other side.¹⁹³ Ukraine and Byelorussia are other connection points between Europe and Russia, with different extents of importance however, and are thus

Russian gas exports are routed through Europe. Gazprom, the worrying energy giant, extracts 65% of its revenues from the European market. «Russians care for their export revenues as much as Europeans do for the steadiness of their supplies », says Arianna Checchi, of the center for European Studies (Brussels). «Europe has got a strong lever, the board is not so much dark.» At the European summit, the most difficult will perhaps be to calm down the vindictive ardor of Eastern Europe and the Baltic states. Having exited from the Soviet yoke, they saw with horror the Kremlin sending its tanks to the assault of a neighbor. They fear to be the next victim of a new Russian policy of intimidation. In their view, «Georgia would only be the first of the domino», as underlined by Tomas Valasek of the Center for European Reform (London)''.

¹⁹³ Tbilissi rompt ses relations avec Moscou [Tbilissi interrupts its relations with Moscow]. (2008, August 30). *L'Orient – Le Jour*, p.10:

“Les pays occidentaux accusent Moscou d’avoir fait un «usage excessif de la force » et de chercher à établir une présence permanente en Géorgie, un pays stratégique pour l’approvisionnement de l’Europe en pétrole et en gaz”.

Translation :

“Western countries accuse Moscow of having made « an excessive use of force » and to try to establish a permanent presence in Georgia, a strategic country for Europe’s supply of oil and gas”.

definitely part of the game as we will see a little further in this same section.¹⁹⁴ Hence, the Europeans' plans to diversify their sources of supply by opening up more channels of supply from Central Asia, however without closing the door on Russia as we will see. In turn, this latter being well aware of the Europeans' apprehensions, and eager not to push them to totally resort to substitute ways of supply, has issued reassuring statements when it moved in Georgia in August 2008; the Russian army thus consistently cared for sparing the Baku-Tbilissi-Ceyhan (BTC) oil and gas pipelines which go all the way from Azerbaijan to Turkey through Georgia, and in which Russia has no interest.¹⁹⁵ Russia's

¹⁹⁴ Signature d'un accord turco-européen sur le gazoduc Nabucco [Signature of a Turkish-European agreement on the gas pipeline Nabucco. (2009, July 14). *L'Orient – Le Jour*, p.9:

“Un quart du gaz naturel utilisé en Europe provient actuellement de Russie. Un différend entre la Russie et l'Ukraine, point de transit essentiel, a déjà gravement porté atteinte aux approvisionnements vers l'Europe.”

Translation :

“A quarter of the natural gas used in Europe is presently provided by Russia. A conflict between Russia and Ukraine, an essential transit point, has already severely prejudiced the supplies toward Europe.”

¹⁹⁵ Entre la Russie et l'UE, des liens énergétiques incontournables [Between Russia and the EU, energy links that cannot be bypassed]. (2008, August 30). *L'Orient – Le Jour*, p.10:

“Dmitri Peskov, porte-parole du Premier ministre russe Vladimir Poutine, a d'ailleurs assuré hier que «la Russie a été, est et sera à l'avenir le fournisseur sûr et fiable des ressources énergétiques » des Occidentaux.

... ..

De son côté, le n° 2 de l'Agence internationale de l'Energie (AIE), William Ramsey, a estimé hier que la Russie n'a pas l'intention de perturber l'approvisionnement en énergie vers l'Europe à des fins politiques. «Pendant toute la période d'hostilités » militaires entre la Russie et la Géorgie début août, «les Russes ont fait très attention à ne rien endommager » sur le passage de l'oléoduc et du gazoduc Bakou-Tbilissi-Ceyhan, «je pense que c'est un message à l'attention des Azéris et des Turcs indiquant qu'ils ne veulent pas s'en prendre à ces infrastructures »... ..”.

Translation :

“As a matter of fact, Dmitri Peskov, spokesman for the Russian Prime Minister Vladimir Putin, has assured yesterday that «Russia has been, is and will be in the future the trustworthy and reliable provider of energy resources» for the Westerners.

... ..

From his side, the Nr. 2 of the International Energy Agency (IEA), William Ramsey, has considered yesterday that Russia has no intention to disrupt Europe's energy supply for political motives. «All the way through the period of » military «hostilities » between Russia and Georgia at the beginning of August, «the Russians were very careful not to damage anything » on the passageway of the oil and gas pipeline Baku-Tbilissi-Ceyhan, «I believe it is a message addressed to the attention of the Azeris and Turks indicating that they don't want to attack those infrastructures »”.

caution here clearly stems from its concerns about losing leverage as the West is trying to accelerate its plans for securing alternative sources and routes of supply.¹⁹⁶

The most important of such plans is the Nabucco project, which dates back to 2002 and which aims at linking Central Asia to the European Union through Turkey and South-East Europe – thus avoiding Russia – for supplying Europe with up to 31 billion m³ of Central Asian gas per year.¹⁹⁷ The projected gas pipeline will be routed through Turkey, Bulgaria, Romania, Hungary and Austria.¹⁹⁸ Also in this project Georgia, Syria and Iraq may be possible transit points on the way to Europe, while Azerbaijan would be the supplier of an important quantity of the Central Asian gas so channeled.¹⁹⁹ Its budget is

¹⁹⁶ Energie : Berlusconi reçoit Poutine [Energy, Berlusconi receives Putin]. (2010, April 26). *Le Figaro*: “*Largement dépendante du gaz russe, l’Europe tente de diversifier ses sources d’approvisionnement en soutenant notamment le projet de gazoduc alternatif «Nabucco».*”

Translation :

“*Being largely dependent on Russian gas, Europe tries to diversify its sources of supply, in particular by supporting the alternative gas pipeline «Nabucco».*”

¹⁹⁷ Nabucco : un accord sera signé lundi, mais des questions restent en suspens [Nabucco : an agreement will be signed on Monday, but there are pending questions]. (2009, July 11). *L’Orient – Le Jour*, p.8: “*Le projet Nabucco prévoit la construction d’un gazoduc pour transporter graduellement jusqu’à 31 milliards de m³ de gaz par an en provenance d’Asie centrale notamment vers l’Union européenne, en passant par la Turquie et le Sud-est de l’Europe.*”

Translation :

“*The Nabucco project provides for the construction of a gas pipeline to transport gradually up to 31 billion m³ of gas per year from Central Asia particularly toward the European Union, going through Turkey and South-East Europe.*”

¹⁹⁸ Information retrieved on the 30th of December 2010, from <http://www.nabucco-pipeline.com>.

¹⁹⁹ Signature d’un accord turco-européen sur le gazoduc Nabucco [Signature of a Turkish-European agreement on the gas pipeline Nabucco]. (2009, July 14). *L’Orient – Le Jour*. Op-cit: “*Le Premier ministre irakien Nouri al-Maliki, le président géorgien Mikheil Saakashvili, un représentant de l’Azerbaïdjan et l’émissaire spécial américain pour l’énergie en Eurasie, Richard Morningstar, avaient fait le déplacement [pour assister à la cérémonie de signature].*

La Géorgie est un des points de connexion possibles du gazoduc, avec l’Irak et la Syrie. L’Azerbaïdjan doit fournir une part importante du gaz.”

Translation :

“*The Iraqi Prime Minister Nouri al-Maliki, the Georgian President Mikhail Saakashvili, a representative of Azerbaijan and the American special envoy for energy in Eurasia, Richard Morningstar, had made the trip [to attend the signature ceremony].*

Georgia is one of the possible connection points of the gas pipeline, with Iraq and Syria. Azerbaijan is supposed to supply an important part of the gas.”

around 8 billion Euros and its expected completion date is by 2014.²⁰⁰ The related agreement was signed on the 13th of July 2009 by Turkey, Austria, Bulgaria, Hungary and Romania, with the support of the European Union and – importantly for our analysis – of the United States.²⁰¹ Also, an agreement was signed on Monday the 06th of September 2010 whereby a syndicate of major banks would lend 4 billion Euros for the project.²⁰² It should as well be pertinently noted for our analysis that about 2/3rd of the

²⁰⁰ Ibid:

“*Nabucco, lancé en 2002, devrait démarrer en 2014. Son coût est estimé à 7,9 milliards d’euros.*”

Translation :

“*Launched in 2002, Nabucco should start up in 2014. Its cost is estimated at 7.9 billion Euros.*”

²⁰¹ Ibid:

“*Le Premier ministre turc Recep Tayyip Erdogan a signé l’accord, ainsi que les Premiers ministres d’Autriche, Bulgarie, Hongrie et Roumanie. **Le président de la Commission européenne, José Manuel Barroso, était présent, pour signifier l’importance de ce projet.***

Nabucco, qui est soutenu par les Etats-Unis, prévoit la construction d’un gazoduc pour transporter jusqu’à 31 milliards de m³ de gaz par an en provenance d’Asie centrale vers l’UE, en passant par la Turquie et le Sud-Est de l’Europe.

Le Premier ministre irakien Nouri al-Maliki, le président géorgien Mikheil Saakaschvili, un représentant de l’Azerbaïdjan et l’émissaire spécial américain pour l’énergie en Eurasie, Richard Morningstar, avaient fait le déplacement [pour assister à la cérémonie de signature].

... ..

Les compagnies actionnaires du projet sont OMV (Autriche), Botas (Turquie), Bulgargaz (Bulgarie), MOL (Hongrie), Transgaz (Roumanie) et RWE (Allemagne).”

Translation :

“*The Turkish Prime Minister Recep Tayyip Erdogan has signed the agreement, together with the Prime Ministers of Austria, Bulgaria, Hungary and Romania. **The President of the European Commission, José Manuel Barroso, was present in order to emphasize the importance of the project.***

Nabucco, which is backed by the United States, provides for the construction of a gas pipeline to transport up to 31 billion m³ of gas per year from Central Asia toward the EU, going through Turkey and South-East Europe.

The Iraqi Prime Minister Nouri al-Maliki, the Georgian President Mikhail Saakashvili, a representative of Azerbaijan and the American special envoy for energy in Eurasia, Richard Morningstar, had made the trip [to attend the signature ceremony]

... ..

The shareholders companies of the project are OMV (Austria), Botas (Turkey), Bulgargaz (Bulgaria), MOL (Hungary), Transgaz (Romania) and RWE (Germany).”

²⁰² Nodé-Langlois, F. (2010, September 6). Quatre milliards d’euros de prêts pour le gazoduc Nabucco [Four billion Euros in loans for the gas pipeline Nabucco]. *Le Figaro*:

“*Le consortium européen Nabucco bénéficiera de près de 4 milliards d’euros de crédits de la part de la Berd (Banque européenne de reconstruction et de développement), de la BEI (Banque européenne d’investissement) et de la Banque mondiale (via sa filiale IFC) selon un accord signé lundi.*”

Translation :

length of the pipeline (2,000 km out of 3,300) lies down in Turkey; this latter is thus advantaged by having a primordial and lucrative role in the project.²⁰³ There are also other projects, however of lesser magnitude, like the ITGI gas pipeline (Azerbaijan-Turkey-Greece-Italy) which is partially completed, as well as White Stream (Georgia-EU) and the Trans-Adriatic gas pipeline between Greece and Italy.²⁰⁴ The materialization of

“The European consortium Nabucco will be granted about 4 billion Euros of credits from EBRD (the European Bank for Reconstruction and Development), from EIB (the European Investment Bank) and from the World Bank (via its affiliate IFC), in accordance with an agreement signed on Monday.”

²⁰³ Nabucco : un accord sera signé lundi, mais des questions restent en suspens [Nabucco : an agreement will be signed on Monday, but there are pending questions]. (2009, July 11). *L’Orient – Le Jour*. Op-cit: “ « L’accord prévoit le principe que les taxes seront redistribuées en fonction de la longueur de gazoduc traversant chaque pays », a indiqué un diplomate turc parlant sous le couvert de l’anonymat. « Comme la Turquie va avoir près de 2000 des 3300 km du gazoduc sur son territoire, elle va recevoir 60% des revenus des taxes, soit environ 400 des 450 millions d’euros par an » (558 à 628 millions de dollars), a ajouté cette source .”

Translation :

“A Turkish diplomat has anonymously stated that « the agreement provides for the principle that taxes will be redistributed in function of the length of the gas pipeline crossing each country ». The same source has added that « as Turkey will have in its territory about 2000 of the 3300 km of the gas pipeline, it will receive 60% of the tax revenues, i.e. about 400 to 450 million Euros per year » (558 to 628 million dollars).”

²⁰⁴ AFP. (2010, October 22). Turquie: le gazoduc ITGI prêt en 2015 [Turkey: the gas pipeline ITGI ready in 2015]. *Le Figaro*:

“Le Premier ministre turc Recep Tayyip Erdogan a fixé à 2015 l’achèvement du gazoduc ITGI devant acheminer du gaz azéri jusqu’en Italie via la Turquie et la Grèce,

Le tronçon reliant la Turquie à la Grèce, d’une capacité maximale de 11,5 milliards de mètres cubes par an, avait lui été achevé en 2007. L’interconnexion avec l’Italie prévoit une capacité de 10 milliards de mètres cubes.... ..

Les ministres de l’Energie des deux pays [Turquie et Grèce] avaient signé en mai à Athènes,, un mémorandum pour l’avancement de ce projet «ayant comme objectif stratégique le transfert de gaz du Moyen-Orient et de la mer Caspienne vers l’Europe». Codirigé par le groupe italien Edison et les sociétés publiques gazières grecque, Depa et turque, Botas, ce projet vise à «garantir la sécurité de l’approvisionnement énergétique de l’Europe en diversifiant les sources du gaz et son acheminement», selon ce mémorandum.

La Commission européenne a affirmé inclure l’ITGI parmi les projets des gazoducs que l’UE était prête à soutenir. Les deux autres sont le White Stream devant relier la Géorgie à l’UE et le gazoduc Transadriatique entre la Grèce et l’Italie.”

Translation :

“The Turkish Prime Minister Recep Tayyip Erdogan has scheduled 2015 for the completion of the gas pipeline ITGI which should convey Azeri gas to Italy via Turkey and Greece,

The segment linking Turkey to Greece, of a maximal capacity of 11.5 billion cubic meters per year, was completed in 2007. The interconnection with Italy is planned to have a capacity of 10 billion cubic meters.

The Energy Ministers of the two countries [Turkey and Greece] had signed in May in Athens,, a memorandum to move forward this project «which strategically aims at transferring gas from the Middle East and from the Caspian Sea to Europe». Co-managed by the Italian group Edison and the public gas

all those plans will evidently reduce both Central and Western Europe's dependency on Russian gas and, by implication, will reduce Russia's leverage in this respect. But this latter has other designs in counterpart.

Firstly, as reported by *L'Orient – Le Jour* of the 11th of July 2009, Baku and Moscow had signed an agreement for the purchase of Azeri gas starting 2010. This measure was not expected by Ankara to affect the Nabucco project whereby Azerbaijan would be an important gas provider and in which Turkey has an important stake, as we saw above.²⁰⁵

But even though, and regardless of the limited capacity of Azerbaijan, it is likely to drag out of Europe's way part of the availability of Asian energy supplied through Nabucco.²⁰⁶

And whether or not the Turkish assumption is correct, this Russo-Azeri agreement does certainly not suffice for an integral torpedoing of the Nabucco project but it does

companies Depa (Greek) and Botas (Turkish), this project – according to the memorandum – aims at «guaranteeing the security of energy supply to Europe by the diversification of the sources of gas and its routing».

The European Commission has asserted that it includes the ITGI among the gas pipeline projects that the EU was ready to support. The two others are White Stream, which should link Georgia to the EU, and the Trans-Adriatic gas pipeline between Greece and Italy.”

²⁰⁵ Nabucco : un accord sera signé lundi, mais des questions restent en suspens [Nabucco : an agreement will be signed on Monday, but there are pending questions]. (2009, July 11). *L'Orient – Le Jour*. Op-cit: “*Bakou et Moscou viennent de signer récemment un accord pour l'achat de gaz azéri à partir de 2010 mais, affirme Ankara, celui-ci ne devrait pas affecter le projet Nabucco.*”

Translation :

“*Baku and Moscow have just signed recently an agreement for the purchase of Azeri gas starting 2010, but Ankara asserts that this latter agreement should not affect the Nabucco project.*”

²⁰⁶ Signature d'un accord turco-européen sur le gazoduc Nabucco [Signature of a Turkish-European agreement on the gas pipeline Nabucco]. (2009, July 14). *L'Orient – Le Jour*. Op-cit: “*Le Turkménistan, qui dispose d'importants gisements, a apporté un précieux soutien à Nabucco vendredi en annonçant être prêt à s'y associer.*

Les Européens attendent encore l'accord de pays-clés comme le Kazakhstan ou l'Ouzbékistan.

L'Azerbaïdjan sera un des principaux fournisseurs, mais n'a pas assez de gaz pour remplir le tube. Et Bakou et Moscou viennent de signer un accord pour l'achat de gaz azerbaïdjanais.”

Translation :

“*Turkmenistan, which has got important gas fields, brought a precious support to Nabucco on Friday as it announced it was ready to take a share in it.*

The Europeans are still waiting for the approval of key-countries like Kazakhstan or Uzbekistan.

Azerbaijan will be one of the main providers, but it does not have enough gas to fill in the tube. And Baku and Moscow have just signed an agreement for the purchase of Azeri gas.”

represents at least a Russian spot in its way. In fact, not much back in history, there were signs for this Azeri inclination to deal with the Russians as, during the August 2008 Russo-Georgian crisis, the Azeri public petroleum company Socar had stated that it was abandoning a project to convey up to 400,000 tons of raw starting 2009 through the BTC oil pipeline which crosses Georgia because of the instability there, and that it would rather choose a Russian oil pipeline. In other words, the Russians move in Georgia was paying in that they took over Georgian business by attracting Azeri interest without even the need to shell the BTC pipeline (which they spared as we saw earlier), and they consequently reduced the competitiveness of Georgia as a Euro-Asian crossing point.²⁰⁷

Secondly, Russia has other plans designed to satisfy European groups separately and to isolate Central Europe in the hope of maintaining this latter's economic and political dependency and to avoid being itself endemically tributary of passageways like Ukraine and the Belarus. In fact Russia's strategy is to make advantage of Western Europeans' concerns about their supply and their resulting rush for securing their needs by offering them not only alternative projects to Nabucco but also some participation in such alternative projects. A successful outcome for Russia here would undoubtedly facilitate its task while adding up to the complexity of the situation for Ukraine and Byelorussia as transit channels, and for Central Asia as provider, in addition to keeping Europe (as

²⁰⁷ Tbilissi rompt ses relations avec Moscou [Tbilissi interrupts its relations with Moscow]. (2008, August 30). *L'Orient – Le Jour*, Op-cit:

“La compagnie publique pétrolière d’Azerbaïdjan, Socar, a de son côté annoncé qu’elle renonçait à son projet de transporter jusqu’à 400 000 tonnes de brut à compter de l’an prochain par l’oléoduc BTC (Bakou-Tbilissi-Ceyhan) qui traverse la Géorgie, en raison de l’instabilité dans le pays, et choisirait à la place un oléoduc russe.”

Translation :

“The Azeri petroleum public company, Socar, has on its side announced that it was renouncing to its project for transporting up to 400,000 tons of raw starting next year through the oil pipeline BTC (Baku-Tbilissi-Ceyhan) which crosses Georgia, due to the instability in the country, and that it would choose instead a Russian oil pipeline.”

consumer) supplied through two delivery routes, a Northern route and a Southern route; the division resulting from the distance separating those two routes (plus the participations offered by Moscow) would obviously help avoiding the building up of a European trust against Russia.

Two projects are thus envisaged in this regard:

The first project is known as the « South Stream » project, whereby the giant Russian company Gazprom and the Italian ENI have signed on the 23rd of June 2007 a memorandum of understanding for the construction of a gas pipeline under the Black Sea, linking Russia to Southern Europe (Bulgaria, **Serbia**, Hungary, Croatia, Slovenia), with Italy, Greece and Austria as outlets and avoiding Ukraine; its budget estimate is 15.5 billion Euros, as at the 30th of November 2010.²⁰⁸ It is supposed to provide Europe with 63 billion m³ of gas per year through a pipeline of 3,600 km of length and it was first expected to be completed by 2015.²⁰⁹ But subsequent projections postponed to 2018 the date when the gas pipeline would be fully operational.²¹⁰ The second project is known as

²⁰⁸ Information retrieved on the 30th of December 2010 from <http://south-stream.info/index.php?id=2&L=1>. By clicking on “Gas Pipeline Route” the map shows that the projected gas pipeline goes from Dzhubga in Russia under the Black Sea to Varna, and from there to Pleven, in Bulgaria. From Pleven there are 2 branches:

- One branch goes North through Serbia, crossing the cities of Zajecar, Beograd and Subotica. From Subotica, one sub-branch crosses Hungary to end up directly in Baumgarten Austria, and another sub-branch crosses Hungary first then Slovenia next (Ljubljana) to end up in Arnoldstein in Austria again.
- The other branch departing from Pleven goes South and crosses Petrich (Bulgaria), then Greece (Thessaloniki, Larissa and Igoumenitsa). It goes then under the Ionian Sea to reach Otranto then Brindisi in Italy.

²⁰⁹ References:

- Energie : Berlusconi reçoit Poutine [Energy, Berlusconi receives Putin]. (2010, April 26). *Le Figaro*. Op-cit:
- AFP. (2010, July 12). South Stream : Gazprom veut rallier RWE [South Stream : Gazprom wants to win over RWE]. *Le Figaro*.

²¹⁰ Moscou à marche forcée dans son projet de gazoduc South Stream [Moscow’s fast and lengthy walk in its gas pipeline project South stream]. (2010, November 16). *L’Orient – Le Jour*, p.9: “South Stream devrait livrer ses premières quantités dès décembre 2015, via le tronçon bulgare. Le gazoduc devrait être entièrement opérationnel en 2018.”

the Russo-German gas pipeline « Nord Stream » project and is designed to link Russia to Germany under the Baltic Sea, thus turning around Ukraine as well as the Baltic states and Poland; its budgeted cost is 7.4 billion Euros and it is supposed to transport yearly 55 billion m³ of gas to Europe through a pipeline of 1,220 km of length underneath the Baltic Sea, linking the Russian city of Vyborg (close to the border with Finland) with Greifswald in Germany.²¹¹ Nord Stream is expected to be operational by the end of 2011.²¹²

In comparison, South Stream is in direct competition with Nabucco as it is routed through the Southern part of Europe.²¹³ It needs however Turkey's approval for crossing its exclusive economic zone (EEZ) under the Black Sea; bearing in mind, as we saw above, Turkey's important stake in the competitor project, Nabucco, of which it had signed the related agreement in July 2009. But according to Mr. Igor Setchine, Russia's Vice Prime

Translation :

“South Stream should make its first deliveries starting in December 2015, via the Bulgarian segment. The gas pipeline should be entirely operational by 2018.”

²¹¹ References:

- AFP. (2010, February 12). Nord Stream : accord de la Finlande [Nord Stream : Finland's agreement]. *Le Figaro*.
- AFP. (2010, June 19). Russie : GDF Suez rejoint Nord Stream [Russia : GDF Suez joins Nord Stream]. *Le Figaro*.

²¹² Nodé-Langlois, F. (2010, June 14). La crise du gaz entre Minsk et Moscou irrite Bruxelles [The gas crisis between Minsk and Moscow irritates Brussels]. *Le Figaro*:

“Les routes d'exportations du gaz russe vont se diversifier dès la fin 2011 avec l'entrée en service du gazoduc Nord Stream qui reliera directement la Russie à l'Allemagne, sans pays de transit.”

Translation :

“Export routes of Russian gas will diversify as early as the end of 2011 with the entrance into service of the gas pipeline Nord Stream which will link directly Russia to Germany, without transit country.”

²¹³ AFP. (2010, May 6). Medvedev en Turquie les 11 et 12 mai [Medvedev in Turkey on May 11 and 12]. *Le Figaro*:

“Le projet South Stream est en concurrence directe avec le projet de gazoduc Nabucco, qui doit relier les champs gaziers d'Asie centrale à l'Europe, via la Turquie et le sud-est de l'Europe, en évitant la Russie.”

Translation :

“The South Stream project is in direct competition with the Nabucco project, which is intended to link the gas fields of Central Asia to Europe, through Turkey and South-East Europe, avoiding Ukraine.”

Minister, Turkey is going to authorize the construction of the South Stream pipeline in its EEZ under the Black Sea.²¹⁴ As a matter of fact, Russia offered Turkey incentives for securing this latter's green light to proceed with the execution of South Stream, knowing that Turkey is dependent on Russia for about 60% of its gas.²¹⁵ Aside from the fact that South Stream is in direct competition with Nabucco, it should pertinently be observed that neither one of those two Russian-driven projects (Nord Stream and South Stream) goes across the old "Soviet" channels of supply for Russian energy located in Ukraine

²¹⁴ La Turquie va donner son feu vert à South Stream, selon Moscou [According to Moscow, Turkey is going to give South Stream its green light]. (2010, May 15). *L'Orient – Le Jour*, p.9: *«La Turquie va autoriser la construction du gazoduc russo-italien South Stream dans sa zone économique, sous la mer Noire, en novembre, a indiqué hier le vice-premier ministre russe Igor Setchine. «Le Premier ministre (turc Recep Tayyip) Erdogan a dit soutenir le projet, déclarant qu'en novembre les documents nécessaires autorisant le début de la construction dans la zone économique turque seront donnés», a déclaré M. Setchine cité par les agences russes.»*

Translation:

«Russia's Vice Prime Minister, Igor Setchine, has stated that Turkey will authorize the construction of the Russo-Italian gas pipeline South Stream in its economic zone, under the Black Sea, in November. Cited by Russian agencies, Mr. Setchine has declared that « Prime Minister Erdogan (Turkey's Prime Minister, Recep Tayyip Erdogan) has said he supported the project, declaring that in November, the documents necessary authorizing the start up of the construction in the Turkish economic zone will be given.»

²¹⁵ References:

- AFP. (2010, May 6). Medvedev en Turquie les 11 et 12 mai [Medvedev in Turkey on May 11 and 12]. *Le Figaro*. Op-cit :

«La Russie figure parmi les principaux partenaires commerciaux de la Turquie et est son principal fournisseur de gaz. Environ 60% du gaz turc est importé de Russie. La Turquie avait autorisé l'été dernier la Russie à entreprendre des travaux d'exploration pour réaliser le gazoduc South Stream, qui doit relier la Russie à l'Europe par les eaux territoriales turques de la mer Noire, en évitant l'Ukraine qui s'est durement affrontée à Moscou sur la question des prix.»

Translation :

«Russia is among the main commercial partners of Turkey and is its main gas supplier. About 60% of Turkey's gas is imported from Russia. Turkey had authorized Russia last summer to execute exploration works in view of the realization of the gas pipeline South Stream, which should link Russia to Europe through the Turkish territorial waters of the Black Sea, avoiding Ukraine which had hard confrontations with Moscow over the question of prices.»

- La Turquie va donner son feu vert à South Stream, selon Moscou [According to Moscow, Turkey is going to give South Stream its green light]. (2010, May 15). Op-cit. *L'Orient – Le Jour*, p.9: *«La semaine dernière, le quotidien Kommersant a rapporté que le géant russe Gazprom avait accepté d'assouplir nettement les clauses du contrat de livraisons de gaz à la Turquie pour obtenir en échange un feu vert à la construction du Gazoduc.»*

Translation :

«The daily Kommersant has reported last week that the Russian Giant Gazprom had agreed to soften markedly the clauses of the contract for gas deliveries to Turkey, in order to obtain in exchange a green light for the construction of the gas pipeline.»

and Byelorussia; and since neither does sustain or even establish a common interest between the Northern part of Europe and its Southern part, as a result of the successful implementation of those two projects, the Europeans will be supplied with energy products in different ways, of which most will however originate from Russia. Even old “comrades” to Ukraine and Byelorussia that are now west sided and are already involved in Nabucco, like Romania and Bulgaria, show interest for the competitor project South Stream in order to secure a safe supply of energy.²¹⁶ And in some instances Russia managed to put them into competition over the routing of South Stream, ameliorating thereby its own position.²¹⁷ Moreover, there are reports about Russia’s trying hard to

²¹⁶ AFP. (2010, October 13). Gazoduc: accord Gazprom/Roumanie [Gas pipeline : Agreement Gazprom/Romania]. *Le Figaro*:

“Le géant gazier russe Gazprom a signé mercredi à Bucarest un mémorandum d’intention sur la participation de la Roumanie au projet de gazoduc russo-italien South Stream, a annoncé son président Alexei Miller. «En cas de décision favorable, un accord sera signé entre les gouvernements russe et roumain», a-t-il précisé.

... ..

Bucarest avait déjà exprimé son intérêt pour participer à ce projet, bien qu’il ait signé en juillet l’accord de participation au projet concurrent de gazoduc Nabucco, qui vise à réduire la dépendance européenne au gaz russe.”

Translation :

“The Russian gas giant Gazprom has signed on Wednesday in Bucharest a memorandum of intent on Romania’s participation to the Russo-Italian gas pipeline project South Stream, has announced its President Alexei Miller. He pointed out that «in case of favorable decision, an agreement will be signed between the Russian and the Romanian governments».

... ..

Bucharest had already expressed its interest in participating to this project, in spite of the fact that he had signed in July the participation agreement to the gas pipeline competitor project Nabucco, which aims at reducing the European dependency on Russian gas.”

²¹⁷ Moscou à marche forcée dans son projet de gazoduc South Stream [Moscow’s fast and lengthy walk in its gas pipeline project South stream]. (2010, November 16). Op-cit. *L’Orient – Le Jour*, p.9:

“La Bulgarie et la Russie ont signé samedi un accord pour la création d’une société mixte, détenue par le géant russe Gazprom (50%) et le groupe public Bulgarian Energy Holding (50%), pour la construction et l’exploitation du tronçon bulgare du gazoduc South Stream qui doit acheminer le gaz russe vers l’Europe occidentale sur 3600 km.

Rallier Sofia, déjà engagé sur Nabucco, n’a pas été chose facile.

En 2008, les deux pays avaient déjà signé un accord sur South Stream, mais des différends étaient apparus, notamment sur la propriété du tronçon bulgare et en raison de la volonté de la Bulgarie d’obtenir des réductions sur le prix du gaz russe.

... ..

Les différends avec Sofia ont en partie été à l’origine de l’apparition dans le projet de la Roumanie, également engagée sur Nabucco. En octobre, la Russie et la Roumanie ont signé un mémorandum

undermine Nabucco at costly adventures.²¹⁸ Consequently, the Europeans will still be dependent on Russia for their oil and gas. Furthermore, the networks supplying them will not necessarily induce their unification in a trust facing Russia's powerful position in being the largest reservoir of energy products. A flagrant example is that of Italy which has interest neither in Nabucco (the Western driven project) nor in Nord Stream (the

d'intention pour étudier son éventuelle participation, qui ouvrirait une autre voie de passage que la Bulgarie pour le gazoduc."

Translation :

"Bulgaria and Russia have signed on Saturday an agreement for the creation of a mixed company, held by the Russian giant Gazprom (50%) and the public group Bulgarian Energy Holding (50%), for the construction and the exploitation of the Bulgarian segment of the gas pipeline South Stream which should convey the Russian gas to Western Europe over a length of 3600 km.

The winning over of Sofia, already engaged in Nabucco, has not been an easy task.

In 2008, the two countries had already signed an accord on South Stream, but disagreements have appeared, particularly on the ownership of the Bulgarian segment and because of the intention of Bulgaria to obtain reductions over the price of Russian gas.

... ..

The disagreements with Sofia has been in part at the origin of the apparition of Romania in the project, this latter being also engaged in Nabucco. In October, Russia and Romania have signed a memorandum of intent to study the latter's possible participation, which would open up another passageway than Bulgaria for the gas pipeline."

²¹⁸ AFP. (2010, October 23). Gazprom: un gazoduc en zone taliban [Gazprom: a gas pipeline in Taliban zone]. *Le Figaro*:

"Le géant russe Gazprom est prêt à s'associer à un projet de gazoduc passant par des zones sous contrôle taliban pour desservir le Pakistan et l'Inde, a rapporté samedi le quotidien économique russe Kommersant, citant un haut fonctionnaire russe du secteur de l'énergie, Igor Sechin.

... ..«Aucun investisseur n'avait fait preuve d'une telle ambition», ajoute l'article, qualifiant de «plutôt risqué» ce projet Turkménistan-Afghanistan-Pakistan-Inde

... .. Les observateurs estiment que Gazprom est un outil politique et que l'unique objet de ses accords internationaux est de saper le projet européen rival Nabucco contournant la Russie, au détriment de toute logique économique.

... .. Les Européens cherchent à alimenter leur futur gazoduc Nabucco avec du gaz d'Asie centrale afin de réduire leur dépendance vis-à-vis de Moscou, dont le projet concurrent, South Stream, est pour l'heure plus avancé."

Translation :

"Citing a high ranking official of the energy sector, Igor Sechin, the economic Russian daily Kommersant has reported on Saturday that the Russian giant Gazprom is ready for share taking in a gas pipeline project going through Taliban controlled zones for supplying Pakistan and India.

... .. The article added that «no investor had yet showed such an ambition» and it qualified this Turkmenistan-Afghanistan-Pakistan-India project of «rather risky».

... .. Observers estimate that Gazprom is a political tool and that the unique objective for its international agreements is to undermine the rival European project Nabucco which turns around Russia, to the detriment of any economical logic.

... .. Europeans are trying to fill in their future gas pipeline Nabucco with Central Asian gas in order to reduce their dependency vis-à-vis Moscow, whose competitor project, South Stream, is so far more advanced."

other Eastern driven project), and which hence does not seem to care much for implicating itself in the efforts to reduce Europe's dependence on Russian oil and gas.²¹⁹ Now the success perspectives are perhaps difficult to closely estimate at this stage. But the general Euro-Turkish cooperation does not permit to foresee any insurmountable obstacle. Besides, the stake of South Stream alone (63 billion m³ per year) is already higher than that of its main rival Nabucco (31 billion m³ per year) in addition to other smaller infrastructures; and the global stake of both Nord Stream and South Stream (55+63 = 138 billion m³ per year) is even much higher; while Nord Stream for its part – with Finland's recent authorization for passing the pipes in its EEZ in the Baltic Sea – has already got all the legal approvals needed from the countries involved to proceed with the work.²²⁰

The above having been exposed, it should be stressed that, until now, the huge majority of Russian gas supply to Europe goes through Ukraine (80%) and a small minority through Byelorussia (20%).²²¹ And neither are the Ukrainians blind, nor are the Russians

²¹⁹ Donadio, R. & Bohlen, C. (2010, December 2). Caustic U.S. views of Berlusconi churn Italy's politics. *The New York Times*:

“It was noted that Mr. Berlusconi had criticized the American missile defense project, eastward expansion of NATO and support for Kosovo's independence as «provocations of Russia.» Virtually alone among European leaders, he defended Russia's military push into Georgia during the August 2008 war and has backed joint energy projects between Gazprom in Russia and the Italian energy company ENI, at a time when the European Union is pushing for less dependence on Russian gas.”

²²⁰ AFP. (2010, February 12). Gazoduc: Accord de la Finlande [Gas pipeline : Finland's approval]. *Le Figaro*.

²²¹ Nodé-Langlois, F. (2010, June 24). La crise du gaz entre Minsk et Moscou irrite Bruxelles [The gas crisis between Minsk and Moscow irritates Brussels]. *Le Figaro*:
“ 20% des exportations gazières russes à destination de l'UE transitent par la petite Biélorussie, le solde de 80% passant par les gazoducs ukrainiens.”

Translation :

“ 20% of Russian gas exports to the EU transit through the small Byelorussia, and the balance of 80% goes through the Ukrainian gas pipelines.”

concealing their long term goals.²²² But in fact Russia has two valid reasons for such planning. The first reason is mainly economical in that, by putting offside Ukraine and The Belarus, Russia is endeavoring to cease to be tributary of those latter for securing a steady flow of revenues from an uninterrupted supply of gas to its European clients; indeed, Ukraine has been to date strategic for furnishing Europe with Russian gas whereas there have been lately several Russo-Ukrainian and Russo-Byelorussian contentions about gas prices and transit fees.²²³ Russia's plan is anterior to the February 2010 election of the new Ukrainian President Viktor Yanukovich whose close ties with Moscow – as an old apparatchik figure – date back to the Soviet era. The modern nomenclature's (Medvedev/Putin) support to Yanukovich comes on top of its designs already under way and would paradoxically comfort – rather than induce a change in –

²²² AFP. (2010, February 12). Gazoduc: Accord de la Finlande [Gas pipeline : Finland's approval]. *Le Figaro*. Op-cit:

“La construction de Nord Stream devrait lever les incertitudes liées au passage actuel de 80% de ce gaz par l'Ukraine, selon Moscou.”

Translation :

“According to Moscow, the construction of Nord Stream should lift the uncertainties in connection with the present transit of 80% of this gas through Ukraine.”

²²³ References:

- AFP. (2010, February 9). Gazoducs: consortium avec Gazprom? [Gas pipelines: consortium with Gazprom?]. *Le Figaro*:
“Le réseau de gazoducs traversant l'Ukraine est stratégique pour l'approvisionnement de l'Europe en gaz russe. Après une série de crises gazières russo-ukrainiennes, Moscou a décidé de construire deux gazoducs (Nord Stream et South Stream) contournant l'Ukraine pour desservir l'UE.”

Translation :

“The gas pipelines network crossing Ukraine is strategic for the supply of Europe in Russian gas. After a series of Russo-Ukrainian gas crises, Moscow has decided to construct two gas pipelines (Nord Stream and South Stream) to serve the EU by turning around Ukraine.”

- AFP. (2010, July 12). South Stream : Gazprom veut rallier RWE [South Stream : Gazprom wants to win over RWE]. *Le Figaro*. Op-cit:
“Gazprom cherche ainsi à contourner l'Ukraine et la Biélorussie. Des contentieux sur le prix du gaz russe avec ces deux pays avaient conduit à des ruptures d'approvisionnement en Europe ces dernières années.”

Translation :

“Gazprom wants this way to turn around Ukraine and Byelorussia. Contentions over Russian gas prices with these two countries had led to interruptions of supply to Europe these last years.”

Russia's current global strategy, in spite of the Ukrainians' endeavor to dissuade their reborn "patron" to proceed with the South Stream and Nord Stream projects and their attempt to create a Russo-Ukrainian-European consortium that would keep Ukraine within the buckle.²²⁴ We will highlight such Russian strategy a little later in this section.

The second reason is still related to economy but it has in addition a geostrategic dimension. As we saw earlier indeed, Russia's strategy is to work by all means on recouping its hegemony over the old Soviet republics and to use such fact for the forceful establishment of economical partnerships that would drag out those places from the reach of Western covetousness, and would thus increase Russia's leverage. Such means consist of a variety of processes, among others, (i) invading Georgia and supporting the independencies of its breakaway regions (ii) in addition to supporting the access to power of former apparatchiks of the old Soviets satellites like just recently in Ukraine, in addition to (iii) supporting (even passively) the change of regime in Kyrgyzstan. By so doing, Russia increases the chances to safeguard its status as main supplier of energy products to the European continent in competition with Central Asia, regardless of the lower capacities of this latter as we saw earlier. A flagrant evidence of this aspect of

²²⁴ AFP. (2010, February 9). Gazoducs: consortium avec Gazprom? [Gas pipelines: consortium with Gazprom?]. *Le Figaro*. Op-cit:

"Le futur président ukrainien Viktor Ianoukovitch envisage de créer un consortium associant le russe Gazprom, l'ukrainien Naftogaz et des compagnies européennes pour gérer le réseau de gazoducs du pays, écrit mardi le quotidien russe Kommersant.

... ..

... M. Ianoukovitch espère obtenir de meilleurs prix pour l'achat de gaz russe et dissuader le Kremlin de construire des routes alternatives, relève Kommersant."

Translation :

"The Russian daily Kommersant has reported on Tuesday that the forthcoming Ukrainian President Viktor Yanukovich is considering the creation of a consortium grouping the Russian Gazprom, the Ukrainian Naftogaz and European companies to manage the gas pipelines network of the country.

... ..

... Kommersant has pointed out that Mr. Yanukovich hopes to obtain better prices for the purchase of Russian gas and dissuade the Kremlin from constructing alternative supply routes."

Russia's strategy is Putin's recent proposal (which even surprised his Ukrainian counterpart) to merge the Russian gas giant Gazprom with the Ukrainian ailing Naftogaz which, in the words of Chris Weafer (chief strategist at UralSib Capital, an investment bank), would result in Gazprom effectively swallowing Naftogaz.²²⁵ In May 2010, Russia's Gazprom boss, Alexei Miller, has expressed his confidence that the Gazprom/Naftogaz merging project does not prejudice the South Stream project but would, on the contrary, contribute to diversify the itineraries of supply.²²⁶ As much as this fact may be true, it is also an understandably un-avowed reality that the praised diversification will afford Moscow the control of most delivery terminals around Western Europe. And any arguing about the flagrant aspect of such maneuver would simply be an insult to European understanding.²²⁷ Hence, in view of the projected Russian network of

²²⁵ Barry, E. (2010, May 3). Putin surprises Ukraine with energy-merger plan. *International Herald Tribune*, p.4. Op-cit:

“ *The Ukrainian prime minister, Mykola Azarov, said through a spokesman that the idea of a merger had not come up in their meetings, and that Mr. Putin had «expressed it in an impromptu way. »*

... .. *Ukraine elected a new president, Viktor F. Yanukovich, who vowed to increase cooperation with Russia.*

Russia is heavily dependent on Ukrainian pipelines, which carry about 80% of its natural gas exports to Europe, and it has long coveted a greater degree of control over them. If the deal were to go through, Gazprom would effectively swallow the Ukrainian company Naftogaz, said Chris Weafer,

... ..

Yulia V. Tymoshenko, who lost to Mr. Yanukovich in a bitterly fought presidential race, said the merger proposal «could be seen as a joke » but warned of «a large-scale plan to liquidate independent Ukraine».

... ..

Mr. Yanukovich, a former Communist apparatchik who ran on a platform of closer ties with Moscow, has closed a series of agreements with the Kremlin since taking office,”

²²⁶ La fusion Gazprom-Naftogaz ne menace pas le projet de gazoduc South Stream [The Gazprom-Naftogaz merging does not threaten the gas pipeline project South Stream]. (2010, May 14). *L'Orient – Le Jour*, p.9:

“*«Je suis persuadé que la fusion des deux groupes sera un facteur important pour accroître la sécurité énergétique de l'Europe, de même que la diversification des itinéraires de livraison du gaz russe en Europe», a déclaré Alexei Miller [le patron de Gazprom] à l'issue d'une rencontre avec le ministre ukrainien de l'Energie, Iouri Boïko.*”

Translation :

“*After having met with the Ukrainian Minister of Energy, Iouri Boïko, Alexei Miller [Gazprom's boss] declared : «I am convinced that the merging of the two groups will be an important factor to increase the energy security of Europe, and to diversify the itineraries of supply of Russian gas to Europe».*”

²²⁷ Dempsey, J. (2009, March 18). Two natural gas deals tie Hungary closer to Russia. *The New York Times*:

routes for the supply of energy products, instead of initiating any adverse reaction whose success is far from being guaranteed, the Europeans have opted for a policy of collaboration with the Russians by acquiring interests in both projects Nord Stream and South Stream; a tactic which would spare them the risk of enduring shortages to the detriment of transit states like Ukraine and the Belarus – and perhaps even Georgia which conveys Central Asian gas to Europe and Turkey – without however (nobody knows) boycotting the US backed Nabucco project.²²⁸ In fact Russia welcomes such European participation to secure a successful implementation of both projects and, as a consequence, safeguard its geo-economic interest in the energy sector; and West European companies are invited even if they have a stake in the competitor project, Nabucco.²²⁹ Consequently, there are at least either French or German or Bulgarian or

“For Russia, South Stream would reduce dependence on Ukraine, with which Moscow has continuing political conflicts. It would also lock countries in Central and Southern Europe into long-term Russian energy contracts that would prevent them from diversifying their sources.”

²²⁸ Sarkozy scelle le rapprochement avec Moscou dans la pierre [Sarkozy seals the rapprochement with Moscow in real estate]. (2010, June 22). *Le Figaro*:

“Les accords les plus massifs concernent, pour ne pas changer, le secteur de l’énergie. Comme prévu, GDF-Suez a finalisé sa prise de participation dans le gazoduc Nord Stream, aux côtés du géant russe Gazprom, des entreprises allemandes EON et BASF et du Néerlandais Gasunie. En mars, le groupe français avait déjà signé un protocole pour l’achat de parts aux partenaires allemands de Gazprom (4,5% à E.ON et 4,5% à Wintershall) afin de devenir actionnaire à 9%. EDF a confirmé sa prise de participation à 10%, aux côtés de l’italien ENI et de Gazprom, dans la Société South Stream AG pour participer au projet de construction de l’autre gazoduc destiné à approvisionner l’Europe, via la mer Noire. Les deux gouvernements ont en outre signé une déclaration politique sur la création d’un « centre franco-russe pour l’efficacité énergétique », dont Paris attend d’importantes retombées à l’avenir.”

Translation :

“The most massive agreements involve, as usual, the energy sector. As planned, GDF-Suez has finalized its share acquisition in the gas pipeline Nord Stream, partnering with the Russian giant Gazprom, with the German enterprises EON and BASF and the Dutch Gasunie. In March, the French group had already signed a protocol for the purchase of parts from the German partners of Gazprom (4.5% from E.ON and 4.5% from Wintershall) in order to become a 9% shareholder. EDF has confirmed its 10% share acquisition in the company South Stream AG, partnering with the Italian ENI and Gazprom, to participate in the construction project of the other gas pipeline which aims at supplying Europe, via the Black Sea. The two governments have also signed a political declaration on the creation of a « Franco-Russian Center for Energetic Efficiency », of which Paris expects important repercussions in the future.”

²²⁹ AFP. (2010, July 12). South Stream : Gazprom veut rallier RWE [South Stream : Gazprom wants to win over RWE]. *Le Figaro*. Op-cit:

Romanian or Hungarian or Austrian interests in Nabucco on one side and in either Nord Stream or South Stream on the other side. Moreover, as we saw above, non-partner countries that have however rights stemming from the Law of the Sea – like Turkey and Finland – are so far cooperating. And to fasten the whole structure, Russia even offers Western companies participations in the exploitation of its own energy field; and the Europeans understandably prefer to play that particular card of the game, and even offer the Russians reciprocal participations in European exploited fields, for the safety of their supply.²³⁰ This merging of interests in the energy sector between Russia and Europe is of course detrimental to Ukraine and to the Belarus since – in a not too distant future – they

“Le groupe russe d’énergie Gazprom a fait une offre à l’allemand RWE pour que celui-ci prenne une participation dans le projet de gazoduc paneuropéen South Stream, concurrent direct du projet Nabucco, selon le Handelsblatt paru lundi.

... ..

RWE est déjà impliqué dans le projet concurrent Nabucco,

Mais une participation dans deux projets rivaux n’est pas impossible: c’est le cas du groupe autrichien OMV, impliqué aussi bien dans Nabucco que dans South Stream.

Outre OMV, Gazprom a réuni l’italien ENI et le français EDF pour construire ce gazoduc long de 3.600 km, qui doit alimenter l’Europe occidentale en gaz russe via la Mer Noire et les Balkans à partir de 2015”

Translation :

“According to the Monday issue of Handelsblatt, the Russian group Gazprom involved in energy products has offered the German RWE to participate in the pan-European gas pipeline project South Stream, which is in direct competition with the Nabucco project.

... ..

RWE is already involved in the competitor project Nabucco,

But a participation in two rival projects is not impossible: this is the case of the Austrian group OMV, which is involved in Nabucco as well as in South Stream.

Aside from OMV, Gazprom has grouped together the Italian ENI and the French EDF to construct this gas pipeline, which should supply Western Europe with Russian gas via the Black Sea and the Balkans starting in 2015.”

²³⁰ Nodé-Langlois F. (2009, November 27). Les groupes français misent sur le gaz russe [French groups bet on Russian gas]. *Le Figaro*:

“Total a récemment signé un accord avec le gazier Novatek pour l’exploitation d’un champ dans le Grand Nord russe, qui pourrait produire pour « des dizaines d’années ». Et ce vendredi, la compagnie française a cédé une participation de 10% à une société russe publique, Zaroubejneft, dans le champ de Khariaga, « un rééquilibrage » que réclamait la Russie de longue date.”

Translation :

“Total has recently signed an agreement with the gas company Novatek for the exploitation of a field in the Russian Grand North, which could produce for « several decades ». And this Friday, the French company has sold to a Russian public company, Zaroubejneft, a 10% share in the field of Khariaga, « a rebalance » that Russia had been requesting for long time.”

will lose their quasi-monopolistic position as central nodes between Russia and Europe for oil and gas transportation.

Now, can anyone imagine what would the balance look like as far as oil and geopolitical issues are concerned, if both South Stream and Nord Stream projects are successfully implemented, on top of (i) a fragmented and paralyzed Georgia, and (ii) an impoverished Ukraine deprived of its status as privileged junction point for energy products and becoming a “prodigal daughter” to Russia, and (iii) an impoverished Byelorussia suffering also from the loss of its geographical interest for the transit of oil and gas, and (iv) a Kyrgyzstan turning Eastward for a badly needed help to solve its ethnic problems? In strategic terms this is comparable to hitting two targets with one single shot, in that it would just amount to both a neutralization and an encirclement of the former Soviet republics of Central Europe, catching them in a pincer movement and thus, by implication, affording Russia the recovery of a substantial part of its former worldwide power, due to its control of energy sources and routes around Europe and due to its blocking the way for NATO to access those remains of the former Soviet Empire, symbols of the Kremlin’s glory and might during the Cold War era. Furthermore, in partnering on its energy projects with West European companies and in merging Gazprom with East European counterparts, Russia undoubtedly hampers the EU’s momentum in winning over the remaining Central European former Soviet republics that were until recently “still free to join” like Ukraine and Byelorussia.

But the immediate question is then: how does this Russian dynamics in encircling its close neighborhood affect the fate of remote areas of its former “hunting ground” like Kosovo? The answer is straightforward. Firstly, in January 2008 (so, just before Kosovo

declares itself independent), the Russian giant Gazprom bought a majority stake in Serbia's oil monopoly, comforting thus its abovementioned encirclement of Europe; a deal which was described by analysts as a blow to Nabucco.²³¹ Secondly, such control of oil infrastructure in Europe, including the routing of South Stream through Serbia as gateway for the delivery of Russian gas to Western Europe, has afforded Russia the power to keep Belgrade in its sphere of influence.²³² Thirdly, the resultant of the above

²³¹ Dempsey, J. (2008, January 23). Russia's Gazprom takes control of Serbian oil monopoly. *The New York Times*:

“Serbia announced Tuesday that Russia has bought Serbia's oil monopoly, the latest in Russia's recent string of energy acquisitions. **The deal will also allow Moscow to send more natural gas to Europe through its South Stream pipeline.**

Four days after signing a major pipeline deal with Bulgaria, the Russian state-owned energy giant Gazprom agreed to buy a 51% stake in NIS, the Serbian state-owned oil company. **The deal was yet another blow to the European Union's ambitions to build its own 2,000-mile pipeline to bring gas to Europe from Iran and Azerbaijan via Turkey, analysts said.**

... ..

«As regards the deal between Russia and Serbia, we can blame the E.U. for some of this,» said Borut Grgic, an energy expert and director of the Institute for Strategic Studies in Ljubljana, Slovenia. «**In all its negotiations with Serbia when dealing with the future status of Kosovo, the E.U. never brought up with Serbia the issue of energy security and how Serbia could play an important role for Europe**», he added.”

²³² References:

- Dempsey, J. (2008, January 23). Ibid:
“Gazprom will also invest about \$725 million toward modernizing Serbia's energy infrastructure. **In addition, a spur from the South Stream pipeline under the Black Sea will be directed into Serbia, enhancing its role as a transit point for Russian gas. The Russian deal coincides with a fiercely contested presidential election that has focused on plans by the United States and the European Union to recognize the independence of the province of Kosovo despite opposition from most Serbian political parties and Russia, Serbia's closest ally on the issue.**

... ..

Given the political context, analysts said, there was a link between the energy deal and the presidential elections.”

- Bilefsky, D. (2008, November 1). Despite crisis, wealthy Russians are buying up coastal Montenegro. *The New York Times*:
“In ... Serbia, Gazprom, the Russian state energy monopoly, recently bought a majority stake in the national energy company, Petroleum Industry of Serbia, for \$520 million and agreed to invest another \$650 million in 2012. **The deal will give Gazprom a dominant position in Serbia's energy market while transforming Serbia into a gateway for the transportation of Russian gas into Western Europe.**

... ..

... in ... Serbia, where the pro-Western government of President Boris Tadic has been pressing for European Union membership, some critics argue that **Russia is using pipeline politics to keep Belgrade in Russia's sphere of influence.**

In a recently announced energy deal, Gazprom agreed to make Serbia a transit country for its south stream pipeline, a \$14 billion project that will stretch 560 miles undersea from Russia to

two conditions having to do with Kosovo is just that Russia would by no means find an interest in betraying its “adoptive daughter”, Serbia; and would thus obviously reject Kosovo’s independence as long as such independence would be rejected by Serbia itself, or perhaps even longer if power balance is to be considered. This was pertinently demonstrated by Danica Popovic, chief economist at the Center for Liberal-Democratic Studies in Belgrade, a Serbian economic research institute, as she “*argued that economic relations shifted fundamentally in Russia’s favor after Moscow repeatedly invoked its veto in the United Nations Security Council to prevent it from recognizing Kosovo, which declared independence from Serbia last February.*”²³³ Expressed differently, an increase of Russia’s leverage over its former remote areas of influence helps it locking up again its old European backyard, located just next door.

The next logical question is: does the July 2010 opinion of the ICJ have any relation with the above described situation? And here again the answer is very simple; in that its wording may look flowery enough for the Kosovars’ “local consumption” in order to calm down and take it easy while, at the same time, such formulation scrupulously avoided any excessive rhetoric on the substance of the issue that the Serbs did not want to hear at any price; but, most importantly, it conceals in reality an un-avowed Court’s record of Russia’s reshaping mesh in Europe. We will revert to this aspect of the subject in concluding our present work; but let us see just next whether or not the Iranian nuclear issue could have had a direct or an indirect impact on the great powers’ policies in the Balkans, or vice versa.

Europe. The project – which Gazprom insists will forge ahead despite the global financial crisis – is a direct challenge to Nabucco, a pipeline championed by the United States and the European union to bring natural gas to Europe via Central Asia, offsetting energy dependence on Russia.”

²³³ Bilefsky, D. (2008, November 1). Ibid.

4.4 – Iran

It is common knowledge, with regard to Iran, that the West was the first international actor to apprehend Iran's becoming a nuclear power; but at the same time, all the parties were very well aware of the limited efficiency of a Western unilateral sanctioning of Iran.²³⁴ As pointed out in clear terms by U.S. Vice-President Joseph R. Biden Jr., the West saw a risk of transshipment of nuclear capacity from structures like the Iranian regime to *terrorist and criminal networks* of which no place in the world would be immune; thus including Russia and China.²³⁵ The matter subject to trade was hence to gain the support of reluctant member states of the United Nations Security Council (UNSC) to vote for one more resolution sanctioning Iran.²³⁶ This meant Russia and

²³⁴ References:

- Levy, C.J. (2009, September 28). Warmer U.S.-Russia relations may yield little in action toward Iran. *The New York Times*:
“China trades heavily with Iran, and its skeptical comments on Friday after the announcement about the new enrichment plant indicated how reluctant it may be on sanctions”.
- Mandeville, L. (2009, September 28). Obama entame une incertaine marche face à l'Iran [Obama starts an uncertain march in facing Iran]. *Le Figaro*:
“Les Chinois semblent encore moins emballés à l'idée de «punir» l'Iran. Le Financial Times a rapporté que les compagnies chinoises avaient commencé de fournir du carburant à l'Iran, remplissant le vide laissé par BP qui a stoppé ses livraisons l'an passé”.
Translation :
“The Chinese seem even less enthusiastic to the idea of «punishing» Iran. The Financial Times has reported that Chinese companies had started delivering fuel to Iran, offsetting the shortage left by BP which had stopped its deliveries last year”.

²³⁵ Biden, J.R. Jr. (2010, May 6). Advancing Europe's security. *International Herald Tribune*, p.6:
“The threat of war among major powers that haunted Europe for centuries has receded, even if regional flashpoints remain. This is a great achievement, but today the Continent faces new and pernicious threat: the spread of weapons of mass destruction to rogues regimes with access to ballistic missiles technology, the ongoing threat of terrorist attack enabled by heavens in the border regions of Afghanistan and Pakistan, the prospect of cyber-attack by criminal networks and other actors, and significant energy security challenges. No nation in Europe is immune from such threats; they affect all countries on the Continent equally”.

²³⁶ Note : A series of measures were already taken against Iran by the UN Security Council in 2006, 2007 and 2008. See resolutions (i) number 1696 adopted on the 31st of July 2006 [S/RES/1696 (2006)], (ii) number 1737 adopted on the 23rd of December 2006 [S/RES/1737 (2006)], (iii) number 1747 adopted on the 24th of March 2007 [S/RES/1747 (2007)]. (iv) number 1803 adopted on the 3rd of March 2008 [S/RES/1803 (2008)], and (v) number 1835 adopted on the 27th of September 2008 [S/RES/1835 (2008)].

China's support imperatively on one hand and, on the other hand, the support of other member states of the UNSC to obtain a casting majority.²³⁷ In this respect, the US-Chinese negotiation is indeed important and we cannot disregard it, all the more that China is a member of the group of Six.²³⁸ But the Russo-US bargain is more interesting for us and more relevant with our work due to the Russo-Serbian ties, notwithstanding the fact that China was as much unfavorable to Kosovo's independence as Russia was, if not more than this latter.²³⁹ As a result of the lack of specificity of the Sino-Serbian relationship in comparison with the Russo-Serbian ethnic ties (racial and religious: they are both Slavs and Orthodox) and as long as the Chinese had no concerns about a direct Iranian threat, if a counterpart was ever requested by China for siding with the West to sanction Iran, such counterpart has probably not involved Kosovo but rather some other concessions than in the Balkans bearing more direct relevancy for China. But what about a Russo-Western deal involving Kosovo as a bargaining counter for Russia's alignment

²³⁷ The permanent members of the Security Council are of course the United States, Russia, China, France and Great Britain and they have a veto right in the vote of resolutions. The number of revolving nonpermanent members is 10. The current nonpermanent members are the following: Lebanon (who assumed the presidency in May 2010), Brazil, Turkey, Japan, Bosnia, Gabon, Mexico, Austria, Nigeria and Uganda. Furthermore, a majority of 9 over 15 votes is needed to pass UNSC resolutions, provided there is not a single veto.

²³⁸ The Six designates the concerned parties involved in the negotiations with Iran about its nuclear program; these are the following countries: The United States, Russia, China, France, Great Britain and Germany.

²³⁹ Mandeville, L. (2009, September 28). Obama entame une incertaine marche face à l'Iran [Obama starts an uncertain march in facing Iran]. *Le Figaro*. Op-cit:
"Les Chinois semblent encore moins emballés [que les Russes] à l'idée de «punir» l'Iran. *Le Financial Times* a rapporté que les compagnies chinoises avaient commencé de fournir du carburant à l'Iran, remplissant le vide laissé par BP qui a stoppé ses livraisons l'an passé."

Translation :

"The Chinese seem to be even less enthusiastic [than the Russians] about the idea of «punishing» Iran. The *Financial Times* has reported that the Chinese companies had started to supply Iran with fuel, offsetting thereby the vacuum left by BP which stopped its deliveries last year."

with the West over sanctioning Iran? In our analysis of the concurrent factual situation here below, we will examine any foreseeable relevancy enabling us to postulate on such a hypothetical deal, or otherwise to refrain.

In connection with the observations here above, it should pertinently be noted that the Iranians were very well aware of the East/West relational flaw on sanctioning them and they were tactically exploiting it, to gain time, through spectacular tricks and reversals that first confirmed early Western concerns about the paralysis due to the latent inability of the Six to convene on a common stance from the outset; and despite the Iranians' assurances that they were not working on the development of nuclear weaponry, there was a confusion at the international level.²⁴⁰ But it is evident that the Western anxiety about the Iranians' ultimate intentions was precocious as compared to that of the East. Indeed, it took Westerners five and a half months (January 2010 to mid-June 2010) to convince Easterners to accept the principle of a new set of sanctions; and the West was fast to unilaterally increase the dosage, as we will see a little later in this section. At any rate, the worldwide concerns were subsequently confirmed by declarations from both sides, West and East. On the 27th of June 2010, thus less than three weeks after the last set of sanctions was voted (09th of June), Leon Panetta, the Director of the Central Intelligence Agency has declared on ABC Television that Iran had already enough uranium to produce two bombs.²⁴¹ This declaration was followed on the 12th of July 2010

²⁴⁰ See the summary of the 2009 / 2010 negotiations with Iran on its nuclear programme in Annex 7 to this thesis.

²⁴¹ CIA : L'Iran a assez d'uranium pour fabriquer deux bombes [CIA : Iran has enough uranium to fabricate two bombs]. (2010, June 28). *L'Orient – Le Jour*, p.11:
“L'Iran dispose de suffisamment d'uranium faiblement enrichi «pour fabriquer deux armes» nucléaires, a déclaré hier le patron de la CIA Léon Panetta sur la chaîne ABC. «Cela leur prendrait sans doute un an (pour fabriquer la bombe) et ensuite une autre année pour développer un système opérationnel d'utilisation de cette arme», a ajouté M. Panetta”.

by a statement from Russia's President, Dmitri Medvedev, saying that Iran was close to having the bomb.²⁴² A couple of days later, Medvedev repeated the essence of his message, however with an extent of weighting in a visible attempt to salvage the business relationship.²⁴³

Now therefore, going into the details of our study and analyzing the motives for the relevant actors' positions, we may say that Russia's implication in siding with the West would need to be qualified in terms of the extent to which Russia ultimately saw the growing nuclear capacity of Iran as dangerous for it as the West did for itself, and in terms of economic and strategic considerations. This approach stems from an overlook on Russia's rational priorities, its partnership with Iran on multiple issues, and its geopolitical particularities. Thus, may we cautiously assume that, as long as Russia did not feel threatened, or else, was not driven by diverse Western means of pressure or incentives, it logically acted in a way to safeguard the volume of the ongoing business it has with Iran; this amounted to a Russian preference for conciliatory diplomacy over

Translation :

“Leon Panetta, CIA's boss, has declared yesterday on ABC Television chain that Iran has got enough low enriched uranium «to fabricate two arms» in terms of nuclear weaponry. He added that «it will probably take them a year (to produce the bomb) and thereafter another year to develop an operational system for the use of such arm»”.

²⁴² L'Iran est proche d'avoir le potentiel pour créer une arme atomique, assure Medvedev [Medvedev assures that Iran is on the verge of having the potential to create an atomic bomb]. (2010, July 13). *L'Orient – Le Jour*, p.11:

“«L'Iran est proche d'avoir le potentiel qui, en principe, peut être utilisé pour créer une arme nucléaire», a affirmé le président Russe, Dmitri Medvedev,”

Translation :

“ the Russian President, Dmitri Medvedev, has asserted that «Iran is close to have the potential which, in principle, could be used to create a nuclear arm».”

²⁴³ The Associated Press. (2010, July 23). Ahmadinejad says Russia part of anti-Iran campaign. *The New York Times*:

*“Medvedev said last week that although **Iran is «an active and trusted trading partner ... this does not mean we don't care how it develops its nuclear program and what its military component look like. In this respect we expect explanation from Iran».**”*

coercive sanctions. Russia therefore tried to resist – as much as it could – the offering of such an important card to the West, fearing that the deal would prejudice its matters of international trade with Iran; a trade – it has to be emphasized – which is inclusive of weaponry.²⁴⁴ In this respect, it does merit to point out here that the Obama

²⁴⁴ References:

- Levy, C.J. (2009, September 28). Warmer U.S.-Russia relations may yield little in action toward Iran. *The New York Times*:
“While Russia is not one of Iran’s largest trading partners, it does sell military hardware to Iran and is building a civilian nuclear power plant there”.
- Mandeville, L. (2009, September 28). Obama entame une incertaine marche face à l’Iran [Obama starts an uncertain march in facing Iran], *Le Figaro*. Op-cit:
“Allié crucial de Téhéran, Moscou possède une série de leviers – notamment économiques – qui font défaut aux Occidentaux”.
Translation :
“As a crucial ally of Teheran, Moscow has a series of levers – especially economic – that Westerners lack”.
- Avril, P. (2009, October 1). La Russie, maillon faible du front anti-iranien (translation of the title : Russia, a weak link in the anti-Iranian front). *Le Figaro*:
“Même si elles restent empreintes de méfiance, les relations entre Moscou et Téhéran obéissent à une myriade d’intérêts auxquels le pouvoir russe n’est pas prêt à renoncer. Ces intérêts sont d’abord stratégiques et commerciaux : après l’éclatement de l’URSS, c’est grâce à la fourniture de matériel militaire au régime iranien – aussi bien avions que sous-marins – que la Russie a pu reprendre pied sur la scène moyen-orientale. les liens commerciaux n’ont jamais été interrompus, faisant de Moscou le principal fournisseur d’armes de Téhéran.
L’opposition iranienne en exil accuse Moscou de recourir aux mêmes stratagèmes dans sa gestion de la construction de la centrale nucléaire de Bouchehr, qui fut confiée à la Russie en 1995 pour quelque 700 millions d’euros. Moscou, qui livre du combustible à la centrale, a annoncé sa mise en service pour la fin 2009, Les intérêts énergétiques russes en Iran sont complexes. Dans le domaine du gaz – ressource alternative à l’atome –, les deux pays, qui abritent plus de la moitié des réserves mondiales – sont à la fois alliés – à travers notamment le géant Gazprom – et concurrents.”
Translation :
“Even if they remain marked with mistrust, the relations between Moscow and Teheran obey a myriad of interests to which the Russian administration is not ready to renounce. Those interests are first strategic and commercial : after the breakup of the USSR, it is thanks to the military material furnished to the Iranian regime – airplanes and submarines as well – that Russia was able to recover on the Middle-Eastern scene. commercial links have never been interrupted, and this made Moscow the main weapon supplier of Teheran.
The Iranian opposition in exile accuses Moscow of having recourse to the same stratagems in its management of the construction of the nuclear station of Bouchehr, which was entrusted to Russia in 1995 for some 700 million Euros. Moscow, who delivers combustible to the station, has announced its operational startup by end 2009, The Russian energetic interests in Iran are complex. Regarding the field of gas – an alternative resource to atom –, the two

Administration had to compensate Russia with a lot of concessions for offsetting its loss of benefits resulting from the interruption of its assistance to Iran in the development of this latter's nuclear program and the building up of its missile system.²⁴⁵ To evaluate the importance of those concessions, one should only read the critiques of former officials of the Bush Administration, like John Bolton, who was US Ambassador to the United Nations and who made a statement in May 2010 wondering what other concession Russia would manage to drag out from a *despaired* Obama Administration.²⁴⁶ In furtherance to

countries, which contain more than half of the worldwide reserves – are both allies – especially through the giant Gazprom – and competitors.

- Baker, P. (2010, May 8). Obama seeking to revive nuclear deal with Moscow. *International Herald Tribune*, p.3, Op-cit:

*“Critics said Mr. Obama was too quick to give Russia something it wants without ... **the cancellation of Russia’s still-unfulfilled deal to sell S-300 antiaircraft missiles to Iran.**”*

Note:

This was about the Obama proposed revival of the civilian nuclear cooperation agreement scrapped by Bush in August 2008 during the Georgian crisis.

²⁴⁵ Smith, A. (2010, May 24). Compromis russo-américains sur l’Iran [Russo-American compromises over Iran]. *Le Figaro*:

*“Cette même Russie, dont plusieurs entreprises ont pourtant été accusées ces dernières années de **soutenir le programme nucléaire et le système de missiles iraniens**, peut se targuer d’une autre victoire. Les Etats-Unis ont annoncé vendredi [21 mai 2010] – trois jours seulement après le lancement officiel des consultations sur l’Iran – **la levée des sanctions américaines contre quatre de ces entreprises**. En janvier déjà, deux autres avaient bénéficié de la même mesure. Il s’agit du bras armé du Kremlin, Rosoboronexport, de deux instituts et d’un bureau de design. **Le ministre des Affaires étrangères russe, Sergueï Lavrov, avait mis cette exigence sur la table à la dernière minute, alors qu’il avait déjà donné son feu vert au texte proposé par les Américains**”.*

Translation :

*“This same Russia, whose several enterprises have however been accused these last years of **supporting the Iranian nuclear program and missile system**, can be proud of another victory. The United States has announced Friday [21 May 2010] – just three days after the official launching of consultations on Iran – **the lifting of American sanctions against four of these enterprises**. In January, two others had already benefited of that same measure. These represent the Kremlin’s armed body, Rosoboronexport, two institutes and a design office. **The Russian Foreign Affairs Minister, Sergeï Lavrov, has put that request on the table at the last minute, while he had already given his green light to the text proposed by the Americans.**”*

²⁴⁶ References:

- Baker, P. & Sanger D.E. (2010, May 21). U.S. makes concessions to Russia for Iran Sanctions. *The New York Times*:
*“John R. Bolton, who was acting ambassador to the United Nations under Mr. Bush, said Russia’s foreign minister, Sergey V. Lavrov, got the upper hand on the Obama team. **«He sensed desperation in the Obama administration on this Iran resolution, and probably extracted all***

Bolton's statement quoted above, one may relevantly suggest giving fair consideration to the fact that, not much later, on the 9th of June 2010, the UNSC adopted resolution 1929 by 12 favorable votes over 15, sanctioning once more Iran however with a lesser scope than targeted by the West.²⁴⁷ Thus, now that the issue of sanctions has been "sold" to Russia, the next rational step in our analysis would be for us to assess the extent to which such critical card was exchanged with the U.S. and Europe either against compensations offsetting the former's exposure to geopolitical and economical losses or against concessions on its other issues of concern in the Caucasus, in Central Europe and in Kosovo, or else for security considerations.²⁴⁸ It should pertinently be observed in this

that the traffic would bear,» he said. «The only remaining question is what else he got that we don't yet know about.»

- Smith, A. (2010, May 24). Ibid:
«L'ambassadeur à l'ONU sous George Bush, John Bolton, se demande « quels autres compromis » la Russie a-t-elle réussi à imposer à une Administration Obama manifestement «désespérée». »
Translation :
«The Ambassador to the UNO under George Bush, John Bolton, wonders « what other compromise » Russia has managed to impose on an evidently « despaired » Obama Administration.»

²⁴⁷ See United Nations Security Council Resolution number 1929 (2010), adopted on the 09th of June 2010.

²⁴⁸ References :

- Levy, C.J. (2009, September 28). Warmer U.S.-Russia relations may yield little in action toward Iran. *The New York Times*. Op-cit:
«Vladimir Sazhin, a commentator of the state-run Voice of Russia radio and one of the nation's leading Iran analysts, said it was important to understand that Russia considered Iran to be a vital ally on regional issues. After the disputed Iranian presidential election in June, in fact, Mr. Medvedev congratulated President Mahmoud Ahmadinejad.
Both countries are on the Caspian Sea and have territory in the Caucasus Mountains.** (The Soviet Union had a border with Iran, but Russia is now about 100 miles away, separated from Iran by another former Soviet republic, Azerbaijan.) **Both Russia and Iran want to prevent NATO from setting up bases in the region.
*Mr. Sazhin said **Russia had been pleased that Iran had not questioned Russia's actions in Chechnya, a Muslim region in the Caucasus where the federal authorities have fought two brutal civil wars to put down a separatist Muslim insurgency.***
«The Kremlin's politics come down to the fact that they do not want to inflame relations with Iran, because of Russia's regional interests,» Mr. Sazhin said».
- Avril, P. (2009, October 1). La Russie, maillon faible du front anti-iranien (translation of the title : Russia, a weak link in the anti-Iranian front]. *Le Figaro*. Op-cit:

respect that, until now, the power balances over the Caucasus and Kosovo are not yet at rest as either one of the cores is still trying hard to gain (or safeguard) there the maximum influence for itself, in which case, there would be no direct relation between Kosovo and Iran. In fact, concurrent press reports (June 2010) about an embryo of Russo-US cooperation on security matters tend to give credit to the hypothesis that Russians and Chinese had indeed an extent of security concerns which made them decide to vote for the sanctions.²⁴⁹ This adds up of course to the Russo-US cooperation on START; and the trend seems to be progressing positively with Medvedev's attendance of the November 2010 NATO Summit.

The above discussion is supported by the fact that, notwithstanding any forceful condition having compelled the Russians to accept the idea of sanctions itself, their interests are in reality so much imbricated with those of the Iranians that they endeavored – as it was clearly expected by Neil MacFarquhar of the International Herald Tribune – to dilute the effects of such sanctions while insisting on maintaining the process of negotiations.²⁵⁰ And the imposition by the European Union and the United States

“Parallèlement à ces liens économiques inextricables, Téhéran joue depuis des décennies un rôle plutôt pacificateur dans les anciennes républiques soviétiques, que ce soit en Asie centrale, et notamment au Tadjikistan, en Arménie ou dans le Caucase du Nord. L’Iran, en particulier, s’est toujours gardé d’attiser la rébellion islamique tchéchène. ...

«La Russie sait parfaitement que l’Iran a les moyens de lui causer de gros problèmes dans la région », résume Fedor Loukianov, rédacteur en chef de La Russie dans le monde”.

Translation :

“In parallel with its inextricable economic links, Teheran has been playing for decades now a rather pacificator role in the old Soviet republics, would it be in Central Asia, and especially in Tajikistan, in Armenia or in the Northern Caucasus. Iran, in particular, has always refrained from stirring up the Islamic Chechen rebellion.

As summarized by Fedor Loukianov, chief editor of Russia in the World « Russia is perfectly aware that Iran can cause for her big problems in the region »”.

²⁴⁹ Coopération – USA et Russie promettent de coopérer davantage contre le terrorisme [Cooperation – USA and Russia promise to cooperate more against terrorism]. (2010, June 26). *L’Orient – Le Jour*, p. 10.

²⁵⁰ MacFarquhar, N. (2010, March 4). U.S. leads push on draft containing new sanctions for Iran. *International Herald Tribune*, p.4:

separately of even more sanctions than provided for in the resolution itself is a clear cut reflection of the division of the UNSC members States on the extent of sanctions to be imposed. As a matter of fact, this has raised vehement protests from Russia's Vice-Minister of Foreign Affairs, Sergueï Riabkov.²⁵¹ By deduction therefore, one may suggest that this very fact, coupled with their finally conceding on sanctions (even though with a lesser level), may hint that Russians were torn out between interests and security but were

*“The proposed measures, already negotiated between the United States, Britain, France and Germany, will most likely be diluted in further talks. The initial reaction from Russia was negative, saying the measures are too strong, diplomats in the talks said, with one noting, «There is quite a bit that they didn't like.» Yet Moscow continues to endorse the idea of new sanctions **in tandem with negotiations**”.*

²⁵¹ References :

- Sanctions - L'UE plus sévère que l'ONU avec l'Iran [Sanctions - the EU more severe than the UNO with Iran]. (2010, June 25). *L'Hebdo Magazine*, p.47:
“Près d'une semaine après le vote de la résolution 1929 du Conseil de sécurité contre l'Iran, l'Union européenne a décidé de prendre de nouvelles sanctions.
... ..
Ce nouveau volet de sanctions a été assez mal accueilli, notamment par la Russie, qui s'est déclarée « déçue » des initiatives américaines et européennes. Le vice-ministre russe des Affaires étrangères, Sergueï Riabkov, a ainsi déploré que Washington et les Européens cherchent à se placer « au dessus du Conseil de sécurité », prévenant que Moscou pourrait en tirer certaines conclusions, concernant sa collaboration avec eux sur ce dossier”.
Translation :
“About a week after the voting of Resolution 1929 of the Security Council against Iran, the European Union (UE) has decided to take new sanctioning measures.
... ..
This new set of sanctions was badly enough received, particularly by Russia, as it declared itself «disappointed» by American and European initiatives. The Russian Vice-Minister of Foreign Affairs, Sergueï Riabkov, has thus deplored that Washington and the Europeans seek to place themselves «above the Security Council», warning that Moscow could draw certain conclusions on its collaboration with them over this matter”.
- Nucléaire – Le Congrès US vote des sanctions contre l'Iran, Obama doit les promulguer [Nuclear issue – US Congress votes sanctions against Iran, Obama has to promulgate them]. (2010, June 26). *L'Orient – Le Jour*, p.10:
“Cette nouvelle batterie de contraintes, visant notamment le secteur de l'énergie en Iran, devrait venir compléter le texte adopté aux Nations unies il ya deux semaines et celui prévu par l'Union européenne”.
Translation :
“This new battery of constraints, targeting particularly the energy sector in Iran, should complete the text adopted at the United Nations two weeks ago and the one provided for by the European Union”.
- Obama promulgue de dures sanctions contre l'Iran [Obama promulgates tough sanctions against Iran]. (2010, July 3). *L'Orient – Le Jour*, p.11.

compelled at last to give priority to the latter; otherwise, why would they have offered the West such a trump card?

Security is a complex issue; all parties seem to share concerns about it but with probably differing extents, and thus more likely with different priorities. As we saw earlier Americans were more concerned than Russians about the Iranian nuclear issues from the outset; but apparently, it was the other way round with regard to START; as a matter of fact, one of the Russian requests was to have the Treaty ratified by the Senate before the «Duma». A recent statement from President Obama tends to assert the above suggestion and thus give fair credence to the assumption of the occurrence of an Iran/START un-avowed deal.²⁵²

Thus, at this phase of the competition, it becomes normal course for the great actors to try each on its side either to secure the maximum advantages or to salvage whatever it can from its regional trumps around the world. And this is perfectly understandable if we consider the issue within the following equation:

- a. on the Western side, (i) early apprehensions about Iran becoming a nuclear power plus (ii) Euro-American dynamics in the post-Soviet space, and
- b. on the Eastern side, (i) Russia's concerns about its vital interests in the Gulf region, increased by its siding with the West on the issue of sanctioning Iran plus (ii) its resistance to Western penetration in the post-Soviet space.²⁵³

²⁵² Baker, P. (2010, December 21). Arms Treaty with Russia headed for ratification, *The New York Times*. Op-cit:

“Mr. Obama and his supporters argued that ratification [of the START Treaty] was essential to rebuilding a relationship with Russia **and maintaining the international coalition against Iran's nuclear program.**”

²⁵³ Mandeville, L. (2009, September 28). Obama entame une incertaine marche face à l'Iran [Obama starts an uncertain march in facing Iran]. *Le Figaro*. Op-cit:

Perhaps the above equation may better be illustrated by comparing it to a balance sheet where the assets for actors of one side are liabilities for those of the other side and vice-versa. The present phase of the game over Iran having been suspended (at least momentarily and for reasons having reportedly no direct relation with Kosovo), the Iranian nuclear issue may be set aside for the moment; but any other unresolved matter should remain on the sheet. Some of those other matters – not necessarily all of them, it should be emphasized – may be directly related to some others; anyone of them however accounts at least for a share of the sum and would logically not be given up by a party for free, particularly if the other party is eager about getting it. Thus if there is a direct relationship between Kosovo and the oil routes in Europe, the relationship of the former with Iran (especially before the last set of sanctions) was only that of two entries contributing to the same total that constitutes the respective global positions of the parties, it being understood that Kosovo was the spark that has triggered the long time prepared Russian comeback after the collapse of the Soviet Union.²⁵⁴ Regarded as such, in the

“Les sceptiques remarquent que les Russes n’ont pas intérêt à un rapprochement irano-occidental. «La peur d’un Iran nucléaire est-elle plus grande à Moscou que le désir de nuire aux positions américaines ?», s’interrogeait au printemps un diplomate américain”.

Translation :

“Skeptical people note that Russians have no interest in an Iranian-Western rapprochement. An American diplomat was wondering in the spring whether «Moscow’s fear of a nuclear Iran is larger than its desire to harm American positions.»”.

²⁵⁴ References:

- Vinocur, J. (2007, May 14). Politicus: Europe must find way to handle a harsher Russia. *The New York Time*:
“If you take as a starting point Putin’s February speech in Munich raging against a so-called new, American-led arms race, Russia’s European game in 2007 has been threats ever since. The list is long: threats by Russian generals against Poland and the Czech Republic if they deploy elements of the U.S. missile shield meant to block an Iranian nuclear attack; a threat by Putin to abandon the treaty on conventional forces in Europe; threats against EU member Estonia, turned by Russia into a fascist menace on its Baltic flank; threats to veto a United Nations effort to give Kosovo independence; threats at home for anyone who would demonstrate against Putin regime; and, in Russia in general, threats to democracy that have made the word a nearly extinguished hope there.”

dispute of the parties over the card of Kosovo, justice would more look like a mean than an end in connection with the whole game. It becomes justified therefore, as long as the global balance has not stabilized like at the era of the Cold War, to expect either supportive or adverse reactions from the parties on each separate issue, with a varying degree of influence from the settled outcome on other issues. In other words, any settlement in one place may either limit or widen up the maneuvering margin of the parties elsewhere, or push them respectively to either stiffen or soften their positions.

So we are up to this point now, with a geopolitical current deadlock over the conflict between Serbia and Kosovo, as Russia was compelled to retract in Iran and has thus now increasing reasons to ever oppose Western management of a so sensitive terrain located in its old “Balkan private hunting ground”; a remote ground of course, but nevertheless a client ground, where – as we saw earlier – the convergence of interest with Serbia has an increasing stake.²⁵⁵

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- Schmemmann, S. (2007, July 19). When the bear cries wolf: trying to understand Vladimir Putin. *The New York Times*:
“So for the Russians, it’s payback time – in Kosovo, in Europe, in Iran, **wherever Mr. Putin can tweak America’s tail.**”
 - Steel, R. (2008, August 24). A superpower is reborn. *The New York Times*:
“The limits of Russia’s post-cold-war retreat have apparently been reached, and the reversal of the power equation has gone too far to be sustained. Today’s leaders in Moscow are determined to protect what they perceive as their vital interests.”
 - Levy, C.J. (2009, February 21). Poker-faced, Russia flaunts its Afghan card. *The New York Times*:
“«A lot of these things,» he said [Igor V. Barinov, a Parliament member from Mr. Putin’s party who is a prominent voice on defense matters], «are the consequences of the attitude that NATO takes and has taken in recent years toward mutually important issues that touch upon the interests of Russia – beginning with the Balkans and Yugoslavia, Kosovo, NATO moving Eastward, to Ukraine and Georgia, the Baltic states. And if more attention had been paid toward Russia’s opinion, then the situation would now be much better.» ”

²⁵⁵ The current Russo-Serbian commonality of interests in the energy sector, in addition to ancestral ethnic ties (race and religion).

Chapter 5

Conclusion

While there is no doubt that the parties were not expecting a binding opinion from the ICJ, we can reasonably assume that they nevertheless hoped from the Court an opinion with some more commitment than what it actually offered, at least morally. Indeed, as we saw earlier, the Court's answer did not engage it on whether or not Kosovo qualified for statehood and independency; it was rather a kind of returning the ball (i) to the belligerents themselves, and (ii) to the rest of the States of the international community, leaving to those latter's discretion – and at their own risks pertaining to the ensuing political consequences for them – the uncomfortable choice of either siding with Serbia and the East by the rejection of Kosovo's independence or siding with Kosovo and the West by the recognition of such independence. It did not offer to anybody a clear cut or even a moral way out, because with such a wording the answer of the Court did not cross the threshold of commitment that would enable the parties either to assert their anterior positions or to retract. To prove the “limitations” of the Court's prudent opinion, one only needs to observe the effect it has had on the number of additional recognitions of Kosovo's independence after such opinion was rendered, i.e. the 22nd of July 2010. As we saw earlier indeed, by the 25th of October 2010, thus three months later, they were only two and this is certainly not a significant figure enabling any party to assert its position. Therefore, neither was there a rush of recognitions favoring Kosovo's claim, nor was there enough legal ground for a radical invalidation of Serbia's theory. The sort of “pharisaic” formulation of the Court's opinion (with all due respect) by itself hints that

the substance of Kosovo's claim and Serbia's reaction would more likely need to be resolved through a political settlement rather than a legal "Ottoman styled firman"; and thus it circumvented Serbia's direct attempt and the tacit "complicity" of so many other states, being evidently short of political solutions as they searched for a legal bypass in the referral of the matter to the ICJ.

But the following question is logically raised here: why then did the Court consider itself competent on the matter and thus accepted the case? Dr. Jean-Marie Crouzatier answers for us this question by asserting that the Court does normally not reject a request addressed to it by an organ of the United Nations.²⁵⁶

So we are back to square one because, in the absence of any helpful judicial contribution, the parties still have to decide on how to justify their original stance, unless they end up with an arrangement through a successful negotiation. Therefore, one may reasonably conclude that the request for opinion itself bore the watermarks of a political mobile, but the Court's answer was clever and professional enough to avoid any excessive commitment that would unduly serve such mobile. Indeed, right after the ICJ rendered its opinion, Bert Barnhoorn, an expert at the Asser Institute for International Law, a policy organization in The Hague, pertinently commented that «*The court invariably is very*

²⁵⁶ Jean-Marie Crouzatier is a law professor at the University of Toulouse 1 Capitole (France). He participated to an international colloquium on the subject « International Justice and/or the Maintenance of International Peace and Security ». The colloquium was held on the 8th and 9th of December 2010 at the Antonine University (Baabda, Lebanon). In his speech on Kosovo, Crouzatier pointed out that: "Dans cette affaire, elle ne retient aucun de ces éléments [défavorable à son intervention] ; **mais c'est une attitude constante : la Cour s'est toujours montrée réticente à refuser de participer à l'action des Nations unies lorsqu'elle lui est demandée par l'un de ses organes.**"

Translation :

"In this matter, it does not uphold any of those elements [unfavorable to its intervention] ; **but it is a constant attitude : the Court has always showed reticence to reject its participation to the action of the United Nations when such action was requested by one of the latter's organs.**"

*prudent and avoids making political decisions».*²⁵⁷ Let therefore the international community take its part of responsibility in determining whether or not Kosovo is qualified to be an independent State.

Here is precisely where the challenge is lying in wait for the parties; because the significance of the Court's position is that Kosovo's independence needs imperatively a global consensus of the concert of nations, expressed in practice by formal recognitions of all of the 5 permanent members of the UNSC, concurrently with an appropriate number of States to pass chronologically the relevant resolutions by the Security Council and by the General Assembly of the United Nations in accordance with the terms and conditions of the Charter. In the absence of such affirmative consensus, inasmuch as the Western interest for Kosovo's independence is driven by strategic and security considerations, that independence will remain all the more hypothetical; and the West will be endemically burdened with taking charge of the newborn and nurse it, as currently the case is with the presence of NATO forces in Kosovo.²⁵⁸ But in our modest opinion, the Kosovars should not content themselves with that much of realization; they definitely have to win the support of the Eastern poles of the international system (Russia and China). For given past experiences around the world, we have enough grounds to suggest that the perpetuation of this kind of situation is risky for them. One of the best examples is the abandonment by the West of Chiang Kai-shek's Republic of China (the island of Taiwan) to the benefit of the Peoples' Republic of China (or PRC: the continental China).

²⁵⁷ Bilefsky, D. (2010, July 22). World Court rules Kosovo declaration was legal. *The New York Times*. Op-cit.

²⁵⁸ Taylor, P. (2010, April 19). Bosnia's economic shackles, *The New York Times*: "In the Balkans, only Kosovo – which more than half of the international community does not recognize as an independent state – is in a worse economic limbo, **and it is even more dependent on a drip-free of foreign aid to keep its head above water.**"

Indeed, when it was time for the West's own interests to come to terms with the PRC, an end was put to Taiwan's 21-year occupation of China's permanent seat at the UNSC; that was in 1971; and in 1979, the United States recognized the PRC and broke off its diplomatic relations with Taiwan. Ultimately Taiwan was of course compelled to ameliorate its relations with the PRC.²⁵⁹ This example has a double advantage. The first is that it evidences once more the predominance of interests over rights in Realpolitik; the second is that it makes clear the essence of recognition in legitimating an entity as one of the State members of the family of nations and the effects of what Gerhard von Glahn reports as being called "derecognition" in international law, supporting his definition by the said example of Taiwan.²⁶⁰ This being said, extrapolating the strict formulation of the ICJ's opinion on Kosovo, our interpretation of its moral enables us to draw a parallel with the second evidence shown by the above example.

Now the relation between Kosovo and Serbia is certainly of different stake than that between Taiwan and the PRC, but this doesn't change the merciless rules of reality in the still current practice of international relations. Therefore, the risk for the Kosovars does exist and it remains like a sword of Damocles if ever their geopolitical location ceases to represent any strategic and security imperative or economic interest for the West. And consequently, in the absence of Eastern acceptance, Kosovo has no alternative but gambling on an everlasting prevalence of Western motivations going along with its claim for independence; which is to date a concurrence made evident by the presence of NATO forces on its soil, as we saw above. But why would the Russians surrender to this

²⁵⁹ See about Taiwan in *Le Petit Larousse 2010*.

²⁶⁰ Von Glahn, G. (1996). Chapter 5: Recognition of States and governments. *Law among nations – an introduction to public international law*. (7th ed.). (pp.81-82).

Western fait accompli forasmuch as they can resist it, or as long as they do not feel equally threatened or trade it off against anything of interest for them elsewhere in the world? And if there is such a transaction, can anyone make a modicum of inference about justice? Also why would the Chinese surrender to such Western fait accompli given their concerns about creating a precedent against their policy in Tibet, Xinjiang and Taiwan?

Ideally of course, the ICJ would have been in a position to solve the dilemma by an award which would have safeguarded the rights of the parties and compelled them to fulfill their obligations, cutting off the road for the interests of the various actors. But our earlier discussion in Chapter 2 goes to show that, as at today, international relations are not yet so well legally framed; it does not enable us to hereby conclude that the ICC and the ICJ are totally independent of worldwide politics. Indeed, one should imperatively consider, on one hand, the fact that the Statute of the ICC has only been partially ratified, with notorious abstentions of certain Great Powers, coupled with the fact that the infrastructure of the United Nations has enabled powerful States however unbound by the Statute of the ICC to use it against other States which are unbound either by such Statute.²⁶¹ On the other hand one should consider as well the limitations of the ICJ discussed above (Optional Clause and advisory opinions remaining without any positive prospect), also coupled with the fact that the permanent members of the UNSC have a preponderant vote upon deciding and adopting resolutions via their veto power. All these facts are indices of a contingency on political balances and objectives and on circumstantial dynamics and motivations of powerful actors in the game of nations in getting any international adjudication to move forward.

²⁶¹ Please refer to Annex 1 to the present work.

Now, despite this flaw, the system is improving because states are very well aware that the alternative is an all out anarchy; but it is difficult at this stage to predict how long such flaw will ever last. Indeed, there surely is a trend toward standardizing international justice among peoples; and the unstoppable dynamics of worldwide globalization certainly plays a major role in this sense by the very fact that modernization is accelerating the march of the world's nations toward global integration and interdependence.²⁶² This property definitely increases the need for more and more international regulations but we still haven't got enough retrospect to figure out a calendar of advances in this direction. Among other reasons for such lack of retrospect is the fact that the present outcome of globalization appears to be more in line with the traditional pluralist advocacy and rather distant from the conventional realist understanding of sovereignty; while, as we discussed earlier in Chapter 2 herein and demonstrated here above in the present conclusion, today's international affairs are still heavily marked by realism, notwithstanding the extent to which globalization has induced a more attentive listening to the pluralist theory.²⁶³ For example, the 1961 and 1963 Vienna Conventions on Diplomatic and Consular Relations respectively did make an appreciable advance in establishing a framework of rules and procedures for the practice of interstate diplomacy, but they did not considerably narrow the gap between the

²⁶² Note: Modernization encompasses the development of technology and of all sectors of communication, transportation, industry, banking, finance, trade, inter-societal ties, transnational corporations, interstate exchanges and partnerships, etc..., etc... . Also issues of common concern, indirectly related to modernization by the fact that they result from industrial development, should add up to interdependence factors (like ecological and environmental issues).

²⁶³ See page 279 (Chapter 7: Diplomatic relations) in Slomanson's (1995) *Fundamental perspectives on international law*. (2nd ed.). Op-cit.

Note: this is evidenced by the contemporary reliance of Great Powers on force, notwithstanding the more recent worldwide increase of interest for International Law. Slomanson provides in this respect a diversity of specific examples (US, China, Canada, etc...) showing that foreign policy still remains to a considerable extent mortgaged by realism to the detriment of international law.

conceptual views of realists and idealists (thus pluralists as well) regarding the importance of international law in the conduct of diplomacy; this was again reflected in the 1983 Annual Meeting of the American Society of International Law in Washington D.C..²⁶⁴ However, with the process of globalization running ahead so fast, if states stick to the classical concept of sovereignty, they may very well run the risk of ending up isolated from the rest of world or deprived from modernity. In an “n” number of years, the old concept of sovereignty – for anyone state stumbling on it – would amount to isolation. We may now be at the eve of major changes and achievements in this regard; but it is a matter of epoch and we are thus not necessarily at year “n-1”. By such year “n” nevertheless, the understanding of sovereignty would hopefully best be approximated by the pluralist philosophy and would thus have moved away from the permanent realist traits to the same extent that it approached pluralism; and by then at last, pluralists would concretely deserve integrating in their family that seventeenth century classical realist named Hugo Grotius, for his pioneering the sanctity of treaties; all the more that his principle has been finally endorsed by the United Nations (1945) through the express wording of Article 2.2 of the Charter and has subsequently been generalized to all treaties by the 1969 Vienna Convention on the Law of Treaties (VCLT) whose Article 26 provides that every treaty “*is binding upon the parties to it and must be performed by them in good faith*”.²⁶⁵

²⁶⁴ Slomanson, W.R. (1995). Chapter 7: Diplomatic relations. Ibid, (pp.286-287).

Note: Slomanson provides an example by comparing the cautious optimism of Canada’s then ambassador (Gottlieb) to the United States in expecting a closer relationship between diplomacy and international law against the rather conservative position of Venezuela’s ambassador (Chiriboga) to the United States who did not see much room for international law in the conduct of diplomacy.

²⁶⁵ Note:

It is very important here to recall the evolution of the realist philosophy on international law discussed earlier:

Winding up on all of our discussions in the present work, the current status of international law has no absolute leverage on the fact that Kosovo and the Caucasus may shortly tend to become the forthcoming East/West geopolitical demarcation line where every side tries to advance its own pawns in order to ameliorate its position there, notwithstanding the rights, the legitimate aspirations and the obligations of the regional populations. Meanwhile, the arm wrestle over the Iranian issue would probably be tempered unless the security concerns of any single one of the grand actors are appeased; in which case there may either be a trade off or Iran would add up in the balance as part of the said demarcation line.

Given the helplessness of international justice to solve the dilemma of Kosovo's unilaterally declared independence, and in the absence of an East/West transaction over the issue, one possible way out of the stalemate is to convince the parties of the benefits of integrating Serbia in the European Union, with Kosovo still as a Serbian province but enjoying an as much large autonomy as possible; setting aside the formal recognition of Kosovo's independence, or adjourning the debate to after integration in the EU if Kosovo's motivations persist. Kosovo's June 2009 adhesion to the International

Firstly, it is imperative to stress on the fact that a stable trait of realism – classical or contemporary – is that high politics factors (military security and other economic issues considered as security factors, like safety of oil supply) remain a priority over other considerations.

Secondly, as we saw in discussing Grotius and Carr, realists are not totally insensitive to international law, inasmuch as high politics considerations still prevail over the rest.

Thirdly however, as stated in our conclusion about neorealist philosophers like Waltz, Morgenthau and Thompson, those latter assume that international law is only possible if there is a balance of power, but they also suggest that the establishment of such regulation does not spare the family of nations the burden of maintaining that same equilibrium of forces (BoP) among them. Why? Precisely because of the inexistence yet of a central authority, willfully vested by those nations with the power to enforce on anyone of them indiscriminately the rules agreed upon. Consequently high politics factors would always be the reference.

The fine distinction with the pluralists on this particular issue is that – without neglecting security imperatives – those latter neither subject the establishment of international law to a BoP among States nor do they see any necessity for such balance afterwards. By and large as discussed earlier, modernization and socioeconomic exchanges take precedence over security concerns in the pluralist thought.

Monetary Fund (IMF) is an excellent illustration of how such enlarged autonomy could be encouraged and expanded to other international organs.²⁶⁶ Perhaps this compromise would be the best bet for both the Serbs and the Kosovars in order to avoid being caught indefinitely in the East/West “fishing lake”, provided there is no ensuing prejudice to the Western security measures already established. To be convinced of the relevancy of such compromise, one only needs to have a quick glance at a declaration from the EU’s Foreign Policy High Representative, Catherine Ashton; an understatement overloaded with significance and further commented on by Misha Glenny of the New York Times.²⁶⁷ And after all, this would be half a success for either one of the parties because interdependence is increasing worldwide due to the advance of globalization; and as we saw above, the concept of absolute independence and sovereignty is evolving

²⁶⁶ Crouzatier J-M., Op-cit :

“... faute de réunir une majorité d’Etats, la candidature de Pristina auprès des organisations et institutions internationale est bloquée (si le Kosovo a pu rejoindre le Fonds monétaire international et la Banque mondiale en juin 2009, c’est parce que le droit de vote des Etats membres de ces institutions est fonction de leur importance économique, ce qui donne un avantage décisif aux pays occidentaux, favorables à l’adhésion du Kosovo).”

Translation :

“... failing to obtain a favorable majority of States, Pristina’s candidateship to adhere to international organizations and institutions is blocked (if Kosovo was able to join the International Monetary Fund and the World Bank in June 2009, it is because the voting right of State members of these institutions is a function of their economical importance; and this provides Western countries with a decisive advantage while, at the same time, those latter are favorable to Kosovo’s adhesion).”

²⁶⁷ Glenny, M. (2010, July 27). Leave Serbia and Kosovo alone. *The New York Times*:

“... the court’s ruling is far from a legal carte blanche. Kosovo and Serbia are in a special situation, and both have a particular incentive for resolving their differences – the prospect of E.U. membership. If they can resolve their problems the door to Brussels will swing open. Catherine Ashton, the E.U. foreign minister, was quick to recognize this. «The E.U. is ready,» she said in a statement on the ruling, «to facilitate a process of dialogue between Pristina and Belgrade. This dialogue would be to promote cooperation, achieve progress on the path to Europe and improve the lives of people.» **Ms. Ashton is too skilled a diplomat to say it, but the implication of her statement should be clear to both Belgrade and Pristina. Kosovo must cease looking to secure its future by getting close to Washington, as Prime Minister Hashim Thaci appeared to be trying to do last week. And Belgrade must stop clinging to Russian objections to Kosovo’s independence. Serbia’s foreign minister, Vuk Jeremic, sometimes gives the impression that this is indeed Belgrade’s central policy.**

... ..

Serbia and Kosovo find themselves confronted by the prisoner’s dilemma. Either they cooperate in their quest for E.U. membership or they remain outsiders, with disastrous consequences for themselves, the region and E.U. diplomacy.”

commensurately with such advance. Furthermore, Serbia's membership to the EU with an un-amputated Kosovo would likely alleviate this latter's being prisoner of an all out Serbian hegemony, by the only fact that the State's central government would have to tune its ruling procedures to European standards. It should however be noted that, unlike other analyses and regardless of its interest for a peaceful outcome, our proposal here is by no means of legal nature; it is a purely political denouement for the Kosovo-Serbian ancestral drama. Indeed, the UNGA's September 2010 (thus subsequently to the ICJ's opinion) welcoming of «*the readiness of the European Union to facilitate a process of dialogue between the parties*» is but a proof that under the present circumstances the solution is political and not legal, and it confirmed thereby our hypothesis in starting the present work that the mobile behind the request for opinion was in reality political. Caricaturing the General Assembly's terms, one may fairly distort them as follows : «*Ladies and Gentlemen, now that we are well aware of the Court's opinion, please come back and sit down around the table to talk; it is not a legal question.*» Otherwise, the UN would most probably have used another rhetoric and would have left to the Security Council (not the General Assembly) the task of forging a muscled resolution in accordance with the provisions of Chapter VII of the UN Charter.²⁶⁸ The need for dialogue and the EU's potential role in this regard were recalled once more by Lamberto

²⁶⁸ United Nations General Assembly Resolution A/RES/64/298, adopted on the 9th of September 2010: "The General Assembly,

... ..

Having received with respect the advisory opinion of the International Court of Justice of the 22 July 2010 on the Accordance with the International Law of the Unilateral declaration of independence in respect of Kosovo, and having studied with great care the advisory opinion, including the issues on which it was rendered,

... ..

2. ***Welcomes the readiness of the European Union to facilitate a process of dialogue between the parties; the process of dialogue in itself would be a factor for peace, security and stability in the region, and that dialogue would be to promote cooperation, achieve progress on the path to the European Union and improve the lives of people.***"

Zannier, Secretary-General Ban Ki-moon's Special Representative in Kosovo, in a press release from the UN News Service on the 12th of November 2010. Zannier also disclosed that the UN and the EU were working together on the matter.²⁶⁹ In reality, far from insinuating that it did it on purpose, one has to admit that the specific formulation of the ICJ's opinion left by itself the door wide open for the negotiation of a political settlement. Yes it did. First of all, as already demonstrated, the question itself had a political mobile; and to be convinced that the answer had a prudent dosage of diplomacy in its formulation, one would only need to perform a *reductio ad absurdum* by imagining what would have happened if the Court had found that Kosovo's declaration violated international law: goodbye dialogue and goodbye peaceful settlement, hello perpetual presence of NATO forces, hello chronic and incurable ethnic disease, etc..., etc... .

This being said, scholars like Robert Bistolfi have been legally arguing in favor of Serbia's position given consideration to the principle of borders' inviolability; but finally coming up also with a political solution.²⁷⁰ Other analysts like Pyotr Romanov of RIA

²⁶⁹ United Nations News Center. (2010, November 12). Growing tensions in northern Kosovo highlight need for dialogue, says UN envoy. *UN News Service*:

“Growing tensions in northern Kosovo and lack of progress on outstanding issues has made dialogue between Pristina and Belgrade all the more necessary, a senior United Nations official told the Security Council today.

... ..

Both the Secretary-General and the General Assembly have welcomed the readiness of the European Union (EU) to facilitate a process of dialogue between Serbia and Kosovo over the latter's unilateral declaration of independence in 2008.

In a resolution adopted in September, the Assembly said «the process of dialogue in itself would be a factor for peace, security and stability in the region, and that dialogue would be to promote cooperation, achieve progress on the path to the European Union and improve the lives of the people.»

Mr. Zannier, who also heads the UN Interim Administration Mission in Kosovo (UNMIK), noted that preparations for the dialogue are under way in Brussels, and the UN is working with the EU to provide support and contribute to this important process.

«Our overall assessment is that the tensions in northern Kosovo and the attempt to scapegoat UNMIK for the lack of progress there are reminders of the pressing need for the dialogue called for by the General Assembly,» he told the Council.”

²⁷⁰ Bistolfi, R. (2007-2008, winter). Kosovo – logique du pire ? [Kosovo – the logic of the worst ?]. In *Confluences Méditerranée* (Eds.), *Justice pénale et politique internationale*, (64, pp. 114-115).

Novosti, find that there is an extent of contradiction between the UN Charter principles of self-determination (for Kosovo) and of inviolability of borders (for Serbia); and they accuse Westerners of having double-standard policies as they favor Kosovo's independence but reject the same treatment for Abkhazia and Southern Ossetia.²⁷¹ We do not intend for our part to debate on the alleged contradiction in the UN Charter between the principles of self-determination (Article 1.2) and inviolability of borders (Article 2.4); all the more that, as pertinently pointed out by Bistolfi, unlike other entities of the former Yugoslav Federation, Kosovo was not a Federal State; it was (and still is) a province of the State of Serbia which is member of the United Nations since the 1st of November 2000. Notwithstanding Kosovo's status or Serbia's rights, our attention is rather focused on Bistolfi's precocious wondering whether the European Union was not a suitable structure to host Serbia and Kosovo together as one entity; that was in the winter season 2007-2008, thus as Kosovo's February 2008 unilateral declaration of independence was still "cooking up" but "close to be ready for serving".²⁷² Now that the ICJ has rendered its

²⁷¹ Romanov, P. (2006, June 20). Border inviolability versus right to self-determination, *RIA Novosti*: "Even the UN Charter calmly declares two mutually excluding principles – the inviolability of borders and the right to self-determination, though this contradiction has sparked many international conflicts and claimed hundreds of thousands – if not millions – of lives.

... ..

A host of international mediators – mostly lawyers and politicians – buzz around such pockets of tension, usually only complicating them. This is logical, because their professions are based on double standards, and the decision about which principle to apply to a given case – the inviolability of borders, or the right to self-determination – is usually made to suit the self-serving interests of states or international organizations. The will of the people in the conflict zone, their passions and legitimate interests, are taken into account only when all other interests have been served.

... ..

Nobody can honestly tell you why Europe opted to support the self-determination of Kosovo Albanians to the detriment of the inviolability of Serbia's borders. At the same time, European officials think that similar conflicts in the former Soviet states – between Moldova and Transdnestr, or Georgia and Abkhazia and Ossetia – should be settled in favor of Moldova and Georgia.

Like Kosovo Albanians, the people of Transdnestr, Abkhazia and South Ossetia took up arms to defend their independence, unwilling to live under the rule of the hated central authorities."

²⁷² Bistolfi, R, Op-cit, pp.116-117.

award, our own conclusion asserts the validity of Bistolfi's 2-year earlier question and the current position of Catherine Ashton in Misha Glenny's deciphering. And if nevertheless there would remain grounds confirming the legitimacy of such independence despite the EU membership, our further proposal would be to reconsider then the matter, evidently without transgressing the elementary conditions for the said membership.

In conclusion, with Kosovo as experimental subject, we were able to determine that it was perfectly possible for a party to call upon the ICJ not for the sake of pure justice but for political reasons inasmuch as the expected Court's rule was hoped to sustain the caller's bargaining position on one hand and, on the other hand, to help such caller's original supporters getting out of a stalemating situation in which they got themselves trapped. But not only so; because we also established the rendered opinion's failure to provide a clear cut ideal ground delimiting the rights and obligations of the parties with no further need for compromise; indeed, we found the cruel reality of politics standing in the way of the search for justice and fairness whereas they would normally be sought independently of the benevolence of some key actors that are interested in the situation one way or the other. So if Kosovo truly deserves independence as it claims, the Court could not be of any help in the absence of Russia's crucial cooperation; a cooperation – it has to be stressed – which would be to the detriment of its growing convergence of interests with Serbia. Conversely, let us suppose that Kosovo does not truly deserve independence; here again, the Court could neither be of any help to Serbia in the absence of a US acceptance of the fact. The only solution that the Court was thus able to come out with was to open the door wide enough for politics by working out accordingly a meticulously worded opinion. And this was proved by the subsequent UN's call for a

resumption of negotiations under the umbrella of the EU as we saw above, which, in all likelihood, was emergently alerted to rescue the situation. The Court's ruling was in fact condemned to be so "sterile" (with all due respect) with a lack of pre-acceptance by the parties and their respective supporters of whatever it would command; for they apprehended that such order collides with their respective maneuvering margins in foreign policy.

The uncomfortable consequence of the above findings is that – as far as international law is concerned – Kosovo is a "stillborn state" if its claim is justified, and conversely that Serbia's position cannot be asserted if this latter's claim is justified.

Now, let us assume for a moment that all the grand actors were convinced that the Court should have been afforded with the power to decide independently of the prevailing balance and interests and regardless of any expressional poverty upon the referral of the case to it, but that either Serbia or Kosovo would refuse to cooperate depending on the substance of the Court's award; such assumption raises the question of what to do in a similar situation? Well! The answer to this question is available in very simple and clear terms in Chapter VII of the UN Charter; an ideal situation of course blocked by the reality of the circumstances.

The moral of Kosovo's case lies therefore in its contribution to shed light on the fact that the divides between politics and international law are diverging interests, anarchy, realism as well as grand and intermediate actors' high politics concerns when they are raised to the detriment of smaller actors, would the latter even be the own followers and bandwagons of the former ones; while the bridges are idealism (or pluralism), globalization and converging interests in all fields (socioeconomic matters, transportation,

communication, technology, trade, finance, ecological and environmental issues, transnational organizations and partnerships, etc...), justice and security needs for all actors indiscriminately and excluding grand and intermediate actors' logic of high/low politics. The number of bridges already built is appreciable, but the world still has a lot more to achieve in this respect to reach acceptable results; it being understood that nothing will ever be perfect or absolute, all the more that occasionally, where pluralism is likely to fail enforcing international justice among peoples, the realist approach to international relations may be inevitable, irrespectively of any goodwill.

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Annex 1

International Criminal Court (ICC) and Ad hoc Tribunals in International Law

Article 5 of the Statute of the Treaty of Rome determines that the crimes within the jurisdiction of the ICC are the following: (a) *The crime of genocide*, (b) *Crimes against humanity*, (c) *War crimes*, and (d) *The crime of aggression*.²⁷³ The ICC is a permanent court and it is seated in The Hague (The Netherlands). Ad hoc tribunals in international law have globally the same object than the ICC, but they have duration and territorial limits. Among such ad hoc tribunals, there are (i) those which are under the sole operation of the United Nations, like the International Criminal Tribunal for Rwanda

²⁷³ Note:

Articles 6, 7 and 8 of the Rome Statute of the International Criminal Court provide detailed lists determining respectively what crimes are considered as genocide, crimes against humanity and war crimes; among others, group killing and various kinds of mass murders and atrocities, forcibly transferring the children of a particular society to another one, murder, extermination, enslavement, deportation, torture, forced pregnancy, rape, sexual slavery and any form of sexual violence, persecution, enforced disappearance of persons, apartheid, various kinds of unjust treatment of prisoners of war, hostage taking, attacking civilians, bombarding towns and villages, using poisoned weapons, conscripting children, destroying or seizing properties, pillaging towns and places, etc..., etc...

With regard to the crime of aggression, the signatories of the 1998 Rome Statute did not care, back then, for considering a prior definition offered by UNGA resolution number 3314 (XXIX) adopted on the 14th of December 1974 whereby:

*“Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.
... ..”*

Thus, Article 5.2 of the Statute reads as follows:

“The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with Articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime.”

The said Articles 121 and 123 relate to amendments and reviews of the Statute (including amendments and reviews of the provisions Article 5). For about 36 years however, nothing new had taken place with regard to those 2 Articles in relation with the crime of aggression. Just recently in May/June 2010, at a conference held in Kampala, States have convened on the definition provided by UNGA resolution 3314. See the following references:

- Review Conference of the Rome Statute of the ICC held in Kampala and which concluded on the 11th of June 2010.
- Scheffer, D. (2010, July 1). Aggression is now a crime. *The New York Times*.

At any rate, we are just having here an overview of the areas of competence of the ICC as, for the purpose of the present thesis, we are more interested in the conditions and mode of operation of such jurisdiction rather than in drawing up an exhaustive inventory of all crimes amenable to it.

(ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY), and (ii) those which are called hybrid tribunals for being the result of combinations of contributions for each case respectively from the international level, supported by the United Nations, on one side, and from a national level on the other side. Examples of hybrid tribunals are (i) the UN assisted Cambodian tribunals for the prosecution of still alive Red Khmers officials on charges of crimes committed some thirty years ago, and (ii) the Special Tribunal for Lebanon (STL) in connection with the February 2005 assassination of former Lebanese Prime Minister Rafic Hariri.²⁷⁴

Just like ICJ, these other two types of jurisdictions are also qualified by Jean-Christophe Victor as actors of international relations.²⁷⁵

With regard to the ICC, Victor concludes that it is neither an entirely independent actor, nor one which is totally tributary of states. His reasoning is based on the fact that the ICC has a partial power since only 110 countries out of the 192 of the international community have ratified the July 1998 Treaty of Rome, due to the opposition of Russia, China and the United States and to the pressures exerted against an overall ratification.²⁷⁶

In this respect, Slomanson expressly reports about the public dissent of China and of the

²⁷⁴ References:

- Slomanson, W.R. (2007). Chapter 9: Arbitration and adjudication. *Fundamental perspectives on international law*, (5th ed.). Op-cit. (pp.399-426).
- Victor J-C. (2010, July 10, Part 1 of 2) Opcit.

²⁷⁵ Victor, Ibid

²⁷⁶ Note :

However minor a detail it is in comparison with the subject of our research, it would be more accurate to precise that according to the Status of the Rome Statute of the International Criminal Court, as at the 06th of October 2010, out of the 192 member States of the United Nations 139 were signatories of the Statute and 113 states had ratified it. The information was retrieved on the 06th of October 2010 from the Treaty Collection page in the following UN website: <http://treaties.un.org/> by clicking successively on “Status of Treaties (MTDSG)”, “Chapter XVIII Penal Matters” and “Rome Statute of the International Criminal Court”. Evidently, 3 more member States must have ratified the Statute between the date when Victor recorded his TV program and the 06th of October 2010.

United States under the Bush Administration in spite of the prior approval of the Clinton Administration; moreover, at the request of the United States bilateral treaties were signed with a considerable number of countries to avoid that US nationals be extradited upon an ICC demand.²⁷⁷

In fact the UN worked hard on the establishment of the ICC, and there have been several UNGA resolutions in this regard since 1992.²⁷⁸ But as pointed out by Slomanson, the opposition of three permanent members of the UNSC (having thus a veto right) stood in the way of rendering the ICC a proper judicial organ of the UN in due form. This gap has however been offset by a cooperation agreement between the UN and the ICC.²⁷⁹

The jurisdiction of the ICC is limited in the absolute to the 113 countries having ratified the Treaty of Rome and provided the case is not being heard by an involved state.²⁸⁰ But

²⁷⁷ References :

- Slomanson, W.R. (2007). Chapter 9: Arbitration and adjudication. *Fundamental perspectives on international law*, (5th ed.). Op-cit. (p.423).
- Article 98 of the Rome Statute of the International Criminal Court reads as follows:
“Cooperation with respect to waiver of immunity and consent to surrender
 4. *The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.*
 5. *The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.”*

²⁷⁸ See the November 28th 2000 report of the Sixth Committee to the UNGA on the establishment of the International Criminal Court submitted on the 55th session of the GA.

²⁷⁹ International Criminal Court (ICC), Negotiated Relationship between the International Criminal Court and the United Nations, adopted on the 04th of October 2004 and entered into force on the 22nd of July 2004. Article 17.1 of such ICC/UN agreement reads as follows:

“When the Security Council, acting under Chapter VII of the Charter of the United Nations, decides to refer to the Prosecutor pursuant to article 13, paragraph (b), of the Statute, a situation in which one or more of the crimes referred to in article 5 of the Statute appears to have been committed, the Secretary-General shall immediately transmit the written decision of the Security Council to the Prosecutor together with documents and other materials that may be pertinent to the decision of the Council.”

²⁸⁰ Either the state where the crime occurred or the state of the nationality of the accused.

in extreme situations (like when international peace and security are said to be at stake), the United Nations Security Council (UNSC) can refer to the ICC a specific case having a connection with a particular country which is not bound by the Treaty of Rome and against the will of such country.²⁸¹ The first such instance occurred on the 31st of March 2005 (UNSC Resolution 1593) and was about Darfur in Sudan.²⁸²

This does obviously not render the court a totally independent structure since (i) the permanent members of the UNSC have a veto right, (ii) three of them (Russia, China and the US) are unbound by the Rome Statute but did use an organ, product of such treaty, against another state which is neither bound by it, and (iii) in connection with Article 98 of the Rome Statute, an important number of bilateral treaties have been signed in order to avoid extraditions of US nationals to the ICC.

²⁸¹ References:

- The abovementioned Article 13(b) of the Rome Statute of the ICC reads as follows:
“*The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:*
(a)
(b) *A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or*
(c)”
- And as commonly known, Chapter VII of the UN Charter deals with measures (including the usage of force) against threats and breaches to international peace and security. Let us just recall here an extract of Article 42 and the wording Article 43.1, which both fall under Chapter VII of the Charter:
Article 42 (extract):
“... .. *it [the Security Council] may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.*”
Article 43.1:
“*All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.*”

²⁸² Slomanson, W.R. (2007). Chapter 9: Arbitration and adjudication. *Fundamental perspectives on international law*, (5th ed.). Op-cit. (pp.424-425).

Annex 2

Namibia's march to independence from South Africa; a brief history of the case

- In 1920, South Africa had been entrusted by the predecessor of the United Nations (the League of Nations) with a mandate over South-West Africa (Namibia today) for a territorial administration of this latter.
- By resolution number 1514 (XV), adopted on the 14th of December 1960, the UNGA affirmed the inalienable right of the people of Namibia to freedom and independence.
- By resolution number 2145 (XXI), adopted on the 27th of October 1966, the UNGA has terminated South Africa's mandate to administer the territory of Namibia because of a material breach on the part of the former.²⁸³
- But the breach was disavowed by South Africa; and on the 30th of January 1970, after an intense and unfruitful activity at the UN's level for more than three years, the UNSC had to adopt resolution number 276 declaring that the continued presence of South-Africa in Namibia was illegal.
- On the 29th of July 1970, the UNSC adopted resolution number 284 to seek the advisory opinion of the ICJ on "*the legal consequences for States on the continued presence of South Africa in Namibia notwithstanding Security Council*

²⁸³ Note : Among others, South-Africa had extended its apartheid system over Namibia; and cycles of violence were taking place concurrently with illegal trials of Namibians notwithstanding numerous warnings and protests from the international community; this situation endured up to the 1988 ceasefire which precluded Namibia's independence as we will see a little further.

resolution 276 (1970).” The request was filed by the United Nations’ Secretary General U Thant to the president of the ICJ the very same day.²⁸⁴

- On the 21st of June 1971, the ICJ rendered its advisory opinion which stated, in short, that South Africa had to **immediately** terminate its administration of Namibia and that, in dealing with South Africa, States had to act consistently with this opinion and had thus to refrain from processing any activity or proceed with any prior undertaking which would directly or indirectly support South Africa’s occupation of Namibia.²⁸⁵ But South Africa kept on prevaricating.
- On the 29th of September 1978, the UNSC adopted resolution number 435 deciding on a plan for the independence of Namibia.
- In 1988, after cycles of violence, a ceasefire was reached through an Angolan/Cuban mediation which opened the way for the independence of Namibia.
- On the 16th of January 1989, the UNSC adopted resolution number 629 fixing the 1st of April 1989 as the date on which the implementation of the plan decided by UNSC resolution number 435 (1978) would begin.
- On the 17th of April 1990, the UNSC adopted resolution number 652 recommending that Namibia be admitted to membership in the United Nations.

²⁸⁴ An interesting nuance should be noted here : the request was not on the legality of South Africa’s presence in Namibia, but on **the consequences** for States on such continuous presence. The reason is simple : after UNGA Resolution 2145 (1966) and UNSC Resolution 276 (1970), it was unquestionable for the United Nations that such presence was illegal; so the question was rather how States should handle this situation in order to remain consistent with the UN resolutions on the subject.

²⁸⁵ Both the request for advisory opinion of the ICJ and the opinion itself are available by clicking on “Advisory Opinions” in the following website: <http://www.icj-cij.org/>.

- Namibia integrated the United Nations on the 23rd of April 1990.²⁸⁶

²⁸⁶ See the list of United Nations Member States available on the following website :
<http://www.un.org/en/members/index.shtml>.

Annex 3

The perception of power as viewed by Thucydides

Thucydides was a kind of qualified realist who lived in the 5th century B.C. and whose observation of the course of the Peloponnesian War played a role in his perception of power. We may be tempted to describe him as a realist with a reasonable extent of idealist qualification for his concern about democracy and about the proper use of power. As a general in the Athenian army, he lost a Greek city attacked by the Spartans and was thus punished by being exiled for about 20 years. Since then, he spent his time observing and analyzing the circumstances of the Peloponnesian war, but most of all, the underlying reasons that would generally lead to war.

Roughly speaking, three levels of analysis may be observed in connection with Thucydides' perception of power : (i) at the level of individuals or groups of individuals, (ii) at the level of the polis (or the city) and, (iii) at a level involving the city with its external environment.

Thucydides was by far an advocate of the polis holding power for the benefit of its subjects, with the condition that democracy brings to rule the right citizen, as he attached an importance to the quality of leadership. Quoting a passage of the Funeral Oration of Pericles, Dora Pozzi exemplifies Thucydides' perception of the relationship of citizens with their polis; an affective relationship which should lead citizens to martyrdom for the polis, in particular if parents are still young enough for compensating their loss with other births.²⁸⁷ For his part, Erich Gruen illustrates how Thucydides viewed Pericles as an ideal

²⁸⁷ Pozzi, D.C. (1983, Feb.-Mar.). Thucydides ii,35-46: A Text of Power Ideology. *The Classical Journal*. 78(3). pp. 223 & 226.

leader in comparison with his successors whose failures were in large part attributed to their rivalries over first place positions while, unlike Pericles, they had not much to offer to the community in terms of skill and success.²⁸⁸

Regarded as such, the Funeral Oration of Pericles is like a message recognizing the merits of democracy but admitting also its limits when it brings to power the wrong or inappropriate citizen.²⁸⁹

Now, once democracy has properly vested power in the right citizen, this latter should pay special care to his way of using such power; for – as very well pointed out by A. French – Thucydides viewed power as a double-edged sword, whose misuse by the party holding it might lead to its self-destruction.²⁹⁰

The Melian Dialogue is an illustration of the misuse of force, where two key elements induce the emergence of war, namely : a change in the balance of power (BoP) on one side, and the fear (of other parties) generated by such change in the BoP on the other side.²⁹¹ These concepts of BoP and fear from the shift in BoP are fundamental in complementing and qualifying Thucydides' perception of power.²⁹² And as further commented on this idea, the weak is always at the mercy of the strong.²⁹³

²⁸⁸ Gruen, E.S. (1971, winter). Thucydides, His Critiques and Interpreters. *Journal of Interdisciplinary History*, 1(2), page 335 .

²⁸⁹ Ibid, p. 336 .

²⁹⁰ French, A. (1980, April). Thucydides and the Power Syndrome. *Greece & Rome 2nd Series*, 27(1). See pp. 28 & 29.

²⁹¹ Viotti and Kauppi, p. 58, Op-cit:

²⁹² Ibid pp. 59 & 101:

²⁹³ Ibid, page 88, footnote number 9

Thus at some point in his reasoning, Thucydides' came to the conclusion that morale, fairness and justice start having little to do with the matter. A time comes when the variables involved in the equation are rather the extent of ambitions of the most powerful and the capacity of resistance of the weakest. Nothing else than his interest is in the mind of the powerful, and the weakest should not mistakenly bet on resisting beyond his actual capacity. And this is what Thucydides portrays through the Melian Dialogue.

Power by then is at the service of interest and not justice; and the weak will ineluctably be accountable for not understanding this given.

This having been established, any strategy or process leading to the surrender of the weak is justified by the strong – who has absolutely no concern about the rights of the former – would that even look like blackmail or demoralization.²⁹⁴

When a weak gets confronted to such a situation, betting on an idealist position (favoring the "ought" over the "is") does no longer pay for him. As evident from the Melian Dialogue, the Melians lost against the Athenians after having adopted such utopist positions to oppose Athens' ambitions of hegemony.²⁹⁵

But is this the end of the story of Thucydides' thought about power ? Rather not if we consider that Athens finally lost the Peloponnesian war.

If we stop the analysis at this stage, the Funeral Oration of Pericles and the Melian Dialogue will undoubtedly look as two opposing images of Thucydides' thought. But if we go further in the analysis, like until the defeat of Athens, the Melian Dialogue takes the shape of a picture of what happens in the cycle after an ideal situation ceases to

²⁹⁴ Ibid, pp. 102 and 104.

²⁹⁵ Ibid page 102.

prevail (Pericles : a democracy bringing to power the ideal citizen). Regarded as such, the Melian Dialogue is a kind of paradox which complements the Funeral Oration in showing the negative aspects of the loss of an ideal situation; this was rightly clarified by Viotti and Kauppi who saw in the second half of Thucydides' Peloponnesian War « *a description of the degeneration of Athenian democracy* » which was far from his advocacy.²⁹⁶ The same contrast is also analyzed by Richard Ned Lebow.²⁹⁷

Summarizing therefore, it would not be unreasonable to deduce that Thucydides viewed power as an ascendancy over others not only in terms of military standards but also in terms of economic, cultural and moral standards, and – by and large – subject to a cycle evolving around basically two phases.²⁹⁸ In the first phase, the ideal situation would be for the citizens of the polis to contribute all together in order to vest power **(i)** in the polis and **(ii)** under the guidance of the "right" citizen. The worst in this phase would be for the citizens to struggle among each other for power to the detriment of the polis or to bring to rule an unqualified or unsuitable citizen.

In the second phase, the challenge would be the proper use for such power vested in the polis; and here comes the role of the qualified leader, for any misuse of the power under his control would lead to the self-destruction of the polis precipitated by the fear of other cities from the growing power and ambitions of hegemony of the polis, would those other cities even be allies to the said polis.²⁹⁹

²⁹⁶ Ibid, Page 59.

²⁹⁷ Lebow, R. N. Op-cit, pp. 10-11.

²⁹⁸ Ibid, pp. 10-11.

²⁹⁹ Ibid, pp. 11.

Thus in the second phase, the stake is the difficulty for the polis to maintain its standards of power without undergoing a fatal loss of control. It is thus dragged down to keep an eye on dependent allies or "clients" in order to prevent them from deserting to enemy powers, and at the same time to attract "clients" of those enemy powers in the sphere of influence of the polis.³⁰⁰ The outstanding strategy here is to apply the proper dosage in executing this maneuver so that other parties would not be pushed to a point where war would be the last resort. Indeed, from the very moment where victory is not guaranteed, a party's power leading such party to war becomes a double-edged sword for it.

In other words, in the second half of the cycle, power is most efficient as long as a party still holds it but without being compelled to use force if the outcome is uncertain.

This conception proves to make sense when one observes that, after having defeated Melos, Athens in turn was itself defeated in 413 B.C. by Syracuse and in 404 B.C. by Sparta, losing hence its empire.

³⁰⁰ Ibid, p. 11.

Annex 4

Globalism

If the aspects of interdependence are positively seen by the pluralists, they nevertheless are negatively described by most globalists as aspects of dependence. In terms of reference elements of identification for each school, both the pluralist interdependence concept and the globalist dependence concept are comparable to the balance of power concept in the realist tradition.³⁰¹ For the globalists, the terms of reference in international relations are neither the benefits of the exchanges lauded by the pluralists nor the East/West equilibrium which is a fundamental criterion for the realists; such terms of reference are instead the North/South dependency ratios resulting from the exploitation of the poor by the rich.³⁰² Without overlooking the East/West divide in international relations, globalists rather focus on a worldwide economic order and denounce the capitalist relation of dominance; as pertinently explained by Viotti and Kauppi, they attribute the subordination of Third World states and the prevalence of the capitalist system to economic factors.³⁰³

In line with the above globalist philosophy, dependency has roots in colonialism and has continued long after the end of formal colonization.³⁰⁴ And according to globalists, as reported by Viotti and Kauppi, the resultant is that less fortunate countries are exploited by dominant states and the former remain dependent on the latter. Notwithstanding a

³⁰¹ Viotti P.R. & Kauppi M.V., (1999), p. 215.

³⁰² Viotti P.R. & Kauppi M.V., (1999), pp.341-342

³⁰³ Viotti P.R. & Kauppi M.V., (1999), p. 342

³⁰⁴ Beavis. Op-cit. See the paragraph “Dependency Theory”.

margin of interplay between external and internal factors – whereby transnational class coalitions link elites in industrially developed countries with their counterparts in the South – dependency theorists primarily attribute the obstacles to autonomous development much more to external factors than to internal considerations, as Third World countries are kept dependent on First World countries.³⁰⁵

Thus, may we say, globalists are concerned about welfare or socioeconomic issues pertaining to less developed countries (LDCs) but they are not as much optimistic as pluralists are about the prospects for a peaceful change in this regard. In opposition to pluralism, the globalist image is rather influenced by Karl Marx's (1818-1883) philosophy which emphasizes that, through the dialectical unfolding of historical stages, the era of capitalism – dominated by the bourgeoisie – will eventually cease and give way to a proletarian class; but such influence is only partial because not all globalists are Marxists. The main distinction between globalism and Marxism is in the fact that perhaps most Marxists – like Rosa Luxemburg (1870-1919) for example – favor the reliance on revolution to change the existing world order, whereas a number of non-Marxists globalists would go for reforms as a better way to achieve the same goal. Among the globalists however, there is also a minority of reform-minded non-revolutionary scholars, like Eduard Bernstein, who nevertheless claim to be Marxists.³⁰⁶

The subject of exploitation of classes or groups of population by another one does not only correlate with dependency, but it calls inevitably anyone's attention to what is known as imperialism. Hans J. Morgenthau and Kenneth W. Thompson have defined

³⁰⁵ Viotti & Kauppi. (1999). Op-cit, pp. 349-351

³⁰⁶ Ibid, pp. 343-347

imperialism as being “*a policy that aims at the overthrow of the status quo, at a reversal of the power relations between two or more nations*”; clarifying their idea about the status quo, they proceed: “*A policy seeking only adjustment, leaving the essence of these power relations intact, still operates within the general framework of a policy of the status quo*”.³⁰⁷ In other words, and in opposition to globalists, a foreign policy aiming at maintaining an existing status quo between colonial powers and Third World countries or dependent societies was seen by Morgenthau and Thompson as conservative rather than imperialistic; there had to be an ensuing change in the power ratio, favorable to the First World power, for a policy to be qualified by Morgenthau and Thompson as imperialistic.³⁰⁸ The non-Marxist English economist John A. Hobson (1858-1940) has defined imperialism as an outcome of the fact that capitalist societies were faced with a threefold problem: “*overproduction, under-consumption by workers and other classes, and over-savings on the part of capitalists*”.³⁰⁹ The resulting endeavor of industry controllers to channel their surplus production in foreign markets and to seek foreign investments for their surplus wealth is firmly denounced by Marxists and globalists as North/South exploitation, whereas liberals just see in it an aspect of maladjustments in the global capitalist system that need to be balanced.³¹⁰ While Marx expected revolutions in all capitalist countries, Lenin (1870-1924) contended that, by buying off the European

³⁰⁷ Morgenthau & Thompson. (1985). Chapter 5, The struggle for Power : Imperialism. *Politics among nations – The struggle for power and peace*. (6th ed.). Op-cit, p. 59.

³⁰⁸ Ibid, pp. 58-61.

³⁰⁹ Viotti & Kauppi. (1999). Op-cit, p. 344

³¹⁰ References :

- Morgenthau & Thompson. (1985). Op-cit. See the section “The Marxist, liberal and «devil» theories of imperialism”, pp. 61-63.
- Viotti & Kauppi. (1999). Ibid, p. 345

working class, it was imperialism which allowed capitalists a breathing space and postponed revolutions in Europe. Unlike Hobson and Joseph Schumpeter, for Lenin imperialism was not a matter of choice but of inevitability for the capitalists to save themselves and perpetuate their dominance.³¹¹

³¹¹ Viotti & Kauppi. (1999). Ibid, pp. 345-346

Annex 5

Tito's ruling policy, his succession and the impact of his legacy on Kosovo

Jozip Broz Tito was very well aware that the ethnic sensitiveness of the puzzle of communities of which he inherited the governance at the end of WWII had its roots way back in history with the Ottomans' occupation of the Balkans and an alternative rivalry between the Austro-Hungarian Empire with Germany on one side, and Serbia on the other side with the support of France and Britain.³¹² The resulting religious repartition in the peninsula which formed the ephemeral Yugoslavia of the 20th century is roughly the following :

- a Catholic Slovenia,
- a predominantly Catholic Croatia (with Orthodox and Muslim minorities),
- a predominantly Muslim Bosnia-Herzegovina (with Orthodox and Catholic minorities),
- a predominantly Orthodox Serbia (with a small Catholic minority and a Muslim minority, like in the province of Kosovo, the status of which relates to the subject of our present work),
- an Orthodox little Montenegro (Serbia's darling child which would later desert the family),
- an Orthodox Macedonia (with a Muslim minority).

³¹² Bennett, C. (1995). *Yugoslavia's Bloody Collapse – Causes, Course and Consequences*, pp.30-31.

By the end of WWI, only the symptoms (not the essential consequences) of the Turkish secular presence had disappeared to uncover on top of it the evidence of a latent Serbian/Croatian rivalry having left for history a notorious credit of violence.³¹³

Tito thus governed this volatile societal fabric with a subtle mixture of firmness and softness to prevent revolts and the eruption of interethnic violence.

Therefore, he humored some acute susceptibilities, like that of Serbia which considered itself as the “elder girl” of the Balkans, and conceded to the other federal states a measured extent of autonomy in an effort to contain any reinvigoration of their national feelings by Serbia’s being favored with a central position.

Indeed, although he was a Croat Catholic, Tito chose to stay in Belgrade and was thus able to attenuate the dissatisfaction of the powerful Serbian Orthodox Church and the nostalgic supporters of the Karadjordjević dynasty.³¹⁴ Conversely, Tito kept a severe eye around on any excessive local nationalist sentiment or activity of separatist inspiration which would ultimately lead to revolt or civil war and, by way of consequence, to the falling apart of the federal structure. One straightforward example of such ruling policy is his 1972 vehement reaction to face the Croatian nationalist movement which was surging up since the late sixties; Tito just smothered such movement with a striking brutality. But again, in 1974, he had to adjust backward giving up some autonomy to the benefit of remote areas, as we will see further in this Annex 5.

³¹³ As an example, in the interwar period throughout WWII, there was on one hand the Serbian Orthodox organization Četnik which supported the monarchy and which sided with the Allies in WWII, as Tito did but with a different philosophy and for different end goals; and on the other hand, there was the Croatian Catholic revolutionary organization Ustaša which assassinated the Serbian Orthodox king of Yugoslavia Alexander 1st in 1934, and which was supported by the Axis powers in WWII.

³¹⁴ It should however importantly be pointed out that Tito was excommunicated by Rome. His ethnic heritage was thus apparently not an obstacle for staying “comfortably” in Belgrade.

Without ever being encouraged, Church involvement – in order to be kept or brought back under control – was taken easy as long as its magnitude would neither shake the arduous process of soldering the joints of the ablaze puzzle (the Macedonian Orthodox Church in 1945) nor threaten the body once assembled (the Croatian Catholic Church after the 1972 purge of Croatia's League of Communists).³¹⁵

Also every once and a while, Tito had to adapt the Constitution to the circumstances of the moment in an effort to constantly keep the situation under control; which he skillfully did.³¹⁶ Notwithstanding however the effectiveness and necessity of such maneuver, the frequent constitutional changes are but a telling indicator of the fragility of the Yugoslav structure and of the critical need for extreme wisdom and caution in governing the whole. Furthermore, the very fact that Tito's tailor made Constitution vested him with immovability in his capacity as Yugoslavia's leader and stipulated that his succession should be assured collegially was another precursory sign announcing a vacuum of central power and struggles for hegemony coming up straight ahead after his departure; it also undoubtedly uncovered the volatility of such a synthetic societal fabric. Under such circumstances it would have been naïve not to expect claims for independence by the end

³¹⁵ References :

- Perica, V. (2002). *Balkan idols – Religion and nationalism in Yugoslav states*. pp.46 & 57.
- Vuckovic, G. (1997). *Ethnic cleavages and conflicts : The sources of national cohesions and disintegration – The case of Yugoslavia*, pp. 118-119.

³¹⁶ One example among others is the following: the 1946 Constitution became obsolete after the 1948 Stalin's expulsion of Yugoslavia from the Cominform (international group of communist parties); it was thus replaced by the 1953 Constitution which favored economic decentralization and allowed the federal republics a greater degree of autonomy (**a useful pressure-release valve for multiethnic communities**).

of Tito's era; and on top, the fact is that such claims were energized by the fall of the Soviet patron.³¹⁷

Thus, no matter how clever and skillful is a ruler, the risk for weak points in the structure remains; and in any process of adaptation or decision making, whereby one would try to satisfy a majority of constituents to consolidate the joints, a discontent minority is left. In the case of the Second Yugoslavia, no such discontent entity would ever dare challenging Tito's authority. And this indeed revealed to be true as the Serbs waited until Tito's death to show their dissatisfaction with the 1974 constitutional change, as very well explained by Vesna Pesic.³¹⁸ This undoubtedly accounted for in the 1989 revision of the Constitution by Milošević to reduce the autonomy of Kosovo and Vojvodina which, in turn, accounted for in the 1990 electoral process which chain-developed with a domino effect in each of the federal republics and which subsequently led to their independencies after cycles of violence.³¹⁹ It also led, by way of ultimate consequence, to the present status of Kosovo whose uncomfortable independence is, until further event, unconditionally tributary of permanent Western support.

It merits to be mentioned here that the phenomenon did not result from "newborn" circumstances. Serbia and Croatia, as largest ethnic groups of Yugoslavia, had an ancestral contention over Serbia's hegemony v/s Croatia's independence; and Serbia's

³¹⁷ Vuckovic G., Op-cit, pp.116 & 121-123.

³¹⁸ Pesic, V. (1996, April). Serbian nationalism and the origins of the Yugoslav crisis. *Peaceworks*.(8). Summary p.vi .

³¹⁹ Slovenia and Croatia accessed independence and integrated the United Nations in May 1992, and Macedonia in April 1993. Bosnia-Herzegovina did access independence and integrate the United Nations in 1992, but the final socio-ethnic balance characterizing the State was settled by the 1995 Dayton Agreement, whereby Bosnia-Herzegovina was a federation between Muslims and Croats on one side and Serbs on the other side. The domino process of defections that took place from May 1992 to April 1993 has thus reduced Yugoslavia back then to a Federation encompassing the States of Serbia and Montenegro, whereby Serbia comprised the provinces of Vojvodina and Kosovo.

conduct after Tito's death and the fall of the Soviet Union has made nothing else than awakening such contention which was only driven underground when Tito was still in office.³²⁰ And just as the national question remained unresolved by the end of the 1st Yugoslavia, so it did by the end of the 2nd Yugoslavia, affording thus this heterogeneous group of populations independence, when the choice between a unified Yugoslavia and local nationalisms fell due for the 3rd time in a so short laps of history.³²¹ The first time was of course upon the creation of the Kingdom at the end of WWI, and the second time was upon the creation of the communist federation at the end of WWII; the difference between the third time and the past two other occasions being principally in the fact that, upon the occurrence of the third, the circumstances had then availed such populations for more freedom of choice, given the fact that the international balance was undergoing a fundamental change of equilibrium at that time to the detriment of the historically hegemonic Serbia.³²² Consequently, about a decade after Tito's departure, when the 3rd Yugoslavia was due to be born, it was aborted by the circumstantialities of the moment. Indeed, back then, the remains of the Soviet empire were not powerful enough to permit a Russian vigorous opposition to a Western management of the Yugoslav terrain. Thus, after the 1989 Milošević revocation of Kosovo's constitutional autonomy and the ensuing Kosovar rebellion which was brutally repressed by the Serbs, the failure of the February 1999 Rambouillet (France) talks opened up the way for the March-June 1999 NATO bombing of the Serbian army, which was tacitly backed by the UN. It was a tacit support of course because, as pertinently pointed out by Christopher Joyner, Russia would have

³²⁰ Pestic, V., Op-cit, summary, pp.v-vi.

³²¹ Ibid, summary, p. vi.

³²² The collapse of the Soviet Empire.

used its veto power to block any formal UNSC resolution proposed under Chapter 7 of the UN Charter for a forcible action against Serbia in order to relieve the pressure on Kosovo.³²³ Thus, it wasn't the UN itself which dealt directly and exclusively with the matter; there was rather an international involvement through various international bodies.³²⁴ Among those bodies, the Contact Group had the major role and as relevantly noted by Marc Weller, there are enough indices showing that the United Nations indirectly supported the use of force against Serbia.³²⁵

NATO's intervention opened the way subsequently for the adoption of the June 1999 UNSC resolution number 1244 in accordance with Chapter VII of the Charter of the United Nations, which placed Kosovo under UN administration and which also was a kind of post-endorsement of the said intervention.³²⁶ And here was the beginning of the

³²³ Joyner, C.C. (2005). Chapter 8: Use of force law. *International law in the 21st century, rules for global governance*, (p.190).

³²⁴ Weller, M. (1999, April). The Rambouillet Conference on Kosovo. *International Affairs – Royal Institute of International Affairs 1944*. 75(2), p.212.

³²⁵ Ibid, pp. 221, 222, 224

³²⁶ United Nations Security Council Resolution number 1244 (1999), adopted on the 10th of June. Annex 2 to the resolution reads as follows:

“The Security Council,

... ..

7. Authorizes Member States and relevant international organizations to establish the international security presence in Kosovo as set out in point 4 of Annex 2

Annex 2

Agreement should be reached on the following principles to move towards a resolution of the Kosovo crisis:

... ..

3. *Deployment in Kosovo under United Nations auspices of effective international civil and security presences, acting as may be decided **under Chapter VII of the Charter**, capable of guaranteeing the achievement of common objectives.*
4. *The international security presence with substantial **North Atlantic Treaty Organization participation must be deployed** under unified command and control **and authorized to establish a safe environment** for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees.*
5. *... ..”*

long and determinate march of the Kosovars toward independence (1999-2008).³²⁷ Because, as Stephen Lee Myers of the New York Times made it clear, before the conference of Rambouillet in reality, no state of the international community was yet ready to consider with resoluteness the option of independence for Kosovo.³²⁸ This specific fact is therefore an all the more valid reason to consider such period of the Serbian province's history as the starting point for the road which has led to its declaration of independence; an independence which is shaky however precisely due to its **dependence** on unconditional Western support as it still lacks Eastern recognition; an imperative that the ICJ advisory opinion expectably failed to secure.

³²⁷ Remark: arguably, it may as well be considered that Kosovo's march toward independence started in 1989, when Milošević revised the constitution to reduce the autonomy of the Serbian province; but this is of course a minor detail in comparison with the depth of the subject.

³²⁸ Myers S.L. (1999, June 22). Crisis in the Balkans: NATO to consider letting Kosovars set up new army. *The New York Times*:
“Before the war with Yugoslavia, the United States and other NATO nations strongly opposed independence for Kosovo, but the abortive peace accord negotiated in Rambouillet, France, on the eve of the bombing called for an international consideration of the province's future within three years. Mr. Milošević rejected that deal, and now with NATO in control of the province, calls for a resolution of Kosovo's status could well come sooner.”

Annex 6

Summary of the failure of the negotiations over Kosovo's status at the end of the process:

Before its unilateral declaration of independence from Serbia in February 2008, the province of Kosovo had been under UN administration for about 8 years. A year earlier, in February 2007, the UN mediator's plan for the final status of Kosovo was first presented and it pleaded for a multiethnic province of Kosovo, democratically self-governed.³²⁹ Without explicit exclusion, the term "independence" was so far carefully avoided.³³⁰ But what was a potential chance for the ones was nothing else than a potential risk for the others. Both Russia and Serbia thus foresaw the independence coming up next and rejected that first plan. Disregarding the position of Russia and Serbia, on the 26th of March 2007, President Ahtisaari presented the final version of his plan which advocated a first phase independence under the supervision of the international community, as the only viable formula.³³¹ Since the beginning of the administration of the province by the United Nations, this was the first time the term "independence" was used.³³²

³²⁹ Back then, the UN mediator was former Finnish President, Martti Ahtisaari. He had been appointed in November 2005 and he exercised this function until March 2007.

³³⁰ United Nations News Center. (2007, February 2). Martti Ahtisaari présente ses propositions sur le statut du Kosovo [Martti Ahtisaari presents his propositions on the status of Kosovo]. *UN News Service*.

³³¹ References :

- United nations. (2007, March 26). Report of the special envoy of the Secretary-General on Kosovo's future status.
- Boloïon, P. (2007, December 9). Kosovo : l'échec des négociations ouvre la voie à l'indépendance [Kosovo : the failure of the negotiations opens the way to independence]. *Le Monde*, p.6.

Thus, in August/September 2007 the West attempted to materialize the independence of Kosovo, essentially on the basis of the UN backed Ahtisaari plan.³³³ But this was postponed by Russia which proposed rather to have talks again until the 10th of December 2007. The debate revolved around independence on one side (rejected by Belgrade) and autonomy under Serbian sovereignty on the other side (rejected by Pristina); about 10 lengthy and difficult sessions of negotiations took place without opening up however to a compromise by the 10th of December deadline.³³⁴ On the contrary, Russia adopted a tough policy of diplomatic confrontation as, on the 12th of December 2007 (just 2 days after the deadline), it rather suspended the execution of the Treaty on the Conventional Forces in Europe (CFE Treaty) instead of easing its position on Kosovo, or even showing the slightest intention to compromise.³³⁵ According to Philippe Boloignon, Russia did call for a new round of negotiations but the Kosovars turned down the offer with the support

³³² United Nations News Center. (2007, March 26). Kosovo : Martti Ahtisaari recommande l'indépendance sous supervision internationale [Kosovo : Martti Ahtisaari recommends the independence under international supervision].

³³³ Lasserre, I. (2007, October 14). Premiers pourparlers directs entre Serbes et Albanais sur le Kosovo [First direct talks between Serbs and Albanians over Kosovo]. *Le Figaro*.

³³⁴ Boloignon P. (2007, December 9). Op-cit.

³³⁵ Abi-Ramia, J. (2008, August 29). Op-cit, pp.43-44:

“La Russie émet de sérieux doutes sur les termes du Traité sur les forces conventionnelles en Europe (CFE), sur l'indépendance de la province serbe de Kosovo et l'éventualité de l'élargissement de l'Otan à certains Etats postsoviétiques comme l'Ukraine, de plus en plus atlantiste.

Face aux changements de la donne géostratégique en Europe, le 12 décembre 2007, la Russie suspend l'application du Traité sur les forces conventionnelles en Europe ; ce qui crée un remous au sein de l'Otan et à Washington.”

Translation :

“Russia expresses serious doubts on the terms of the Treaty on the conventional forces in Europe (CFE), on the independence of the Serbian province of Kosovo and the possibility of enlargement of NATO to reach certain post-Soviet States like Ukraine, which is more and more North-Atlantic oriented. Facing the geo-strategic changes in Europe, on the 12th of December 2007 Russia suspended the execution of the Treaty on the Conventional Forces in Europe ; a measure which caused a stir within the NATO and in Washington.”

of the West.³³⁶ Such offer indeed sprung too late as it was seen by the Kosovars and the West like a maneuvering to gain time; its rejection confirmed the imminence of Kosovo's unilateral declaration of independence and its Western support.

³³⁶ Bolopion P. (2007, December 9). Op-cit.

Annex 7

Summary of the 2009 / 2010 negotiation process on sanctioning Iran:

To prevent Iran from fabricating an atomic bomb, the International Atomic Energy Agency (IAEA) proposed in October 2009 that the Iranian uranium be enriched in another country. The original proposal suggested that Iran sends the largest part of its stock of 3.5% rich uranium to Russia for treatment to increase its richness to a little below 20%; the material would then be forwarded to France to be conditioned for usage as nuclear combustible and finally re-expedited back to Iran.³³⁷ Americans and Europeans had fixed the end of 2009 as a deadline for the Iranians to accept such offer if they wanted to avoid being sanctioned.³³⁸ This was an option for the group of Six and the

³³⁷ Beurdeley, F. (2010, January 8). Téhéran lance un ultimatum aux Occidentaux [Teheran issues an ultimatum to the Westerners]. *L'Hebdo Magazine*, p.34:
“... la fameuse offre a été présentée en octobre dernier par l'Agence internationale de l'énergie atomique (AIEA). Cette proposition suggérait à l'Iran d'envoyer en Russie 70% de ses stocks d'uranium faiblement enrichi (à 3,5%) afin qu'ils y soient retraités à un peu moins de 20%, pour être ensuite conditionnés en France et réexpédiés en Iran sous forme de combustible utilisable par le réacteur de recherche civile de Téhéran”.

Translation :

“... the famous offer was presented last October by the International Atomic Energy Agency (IAEA). This proposal suggested Iran to sent to Russia 70% of its low level rich uranium (at 3.5%) to be retreated up to a little less than 20%, and to be thereafter conditioned in France and re-expedited to Iran under the form of usable combustible for the civil research reactor of Teheran”.

³³⁸ References:

- La Chine appelle l'Iran à se joindre à un consensus international [China calls Iran to join an international consensus]. (2010, January 5). *L'Orient – Le Jour*, p.10:
“Alors qu'Américains et Européens ont fixé à Téhéran la fin 2009 comme date butoir pour répondre à leur proposition de faire enrichir l'uranium à l'étranger sous l'égide de l'IAEA, le ministre iranien des Affaires étrangères, Manouchehr Mottaki, leur a posé à son tour samedi samedi un « ultimatum » pour la fin janvier.”

Translation :

“While Americans and Europeans had fixed the end of 2009 as a deadline for Teheran to answer their proposal to have the uranium enriched abroad under the auspices of the IEAE, the Iranian Minister of Foreign Affairs, Manouchehr Mottaki, has in turn issued an « ultimatum » on Saturday with end of January as deadline”.

IAEA to make sure that the level of enrichment stays below the minimum necessary to produce the bomb (about 80 to 90%). Iran's official position did not oppose the principle itself, but the original debate revolved essentially around sending the Iranian uranium for enrichment abroad either (i) in one single lot, as requested by the Six, or (ii) in several lots, as preferred by Iran. Furthermore, this latter wanted that the exchange of its uranium with the 20% enriched uranium takes place simultaneously and preferably in its own territory or else either in Brazil, or in Japan, or in Turkey; but the West categorically rejected the idea of exchanging the uranium in Iran and was not really in favor of such substitutes suggested by the Iranians.³³⁹

-
- Téhéran laisse entendre qu'il va produire de l'uranium hautement enrichi [Teheran gives to understand that it is going to produce high rich uranium]. (2010, January 25). *L'Orient – Le Jour*, p.10.

“Les Occidentaux, qui avaient donné de leur côté jusqu'à fin 2009 aux Iraniens pour accepter la proposition des Six, ont entamé mi-janvier des discussions sur un renforcement des sanctions internationales contre Téhéran”.

Translation :

“Westerners, who had from their side given Iranians up to end 2009 to accept the proposition of the Six, have started mid-January discussions to reinforce international sanctions against Iran.”

³³⁹ References:

- L'Iran renvoie la balle à l'Occident [Iran returns the ball to the West]. (2010, January 4). *L'Orient – Le Jour*, p.10:

“L'Iran ... a proposé des échanges d'uranium simultanés et en petites quantités. Téhéran a aussi exigé que ces échanges se fassent en Iran, avant de renoncer à cette condition en évoquant la possibilité échange au Brésil, au Japon ou en Turquie”.

Translation :

“Iran has proposed simultaneous exchanges of uranium and in small quantities. Teheran has also requested that those exchanges take place in Iran, before renouncing to this condition and evoking Brazil, Japan or Turkey”.

- Les USA renforcent les sanctions contre les gardiens de la révolutions [The USA strengthen the sanctions against the guards of the revolution]. (2010, February 11). *L'Orient – Le Jour*, p.11, quoting Mr. Ali Akbar Salehi who leads the Iranian Organization for Atomic Energy :

“Il a toutefois réaffirmé l'exigence de son pays qu'un éventuel échange d'uranium faiblement enrichi contre du combustible nucléaire soit simultané et s'opère sur son territoire, ce que refusent les puissances occidentales”.

Translation :

“He has however reaffirmed his country's request that a possible exchange of low level enriched uranium against nuclear combustible be simultaneous and takes place in its own territory; which is refused by Western powers”.

On the 2nd of January 2010 however, i.e., the very next working day after the deadline set by Americans and Europeans, rather than to bother trying any other compromise, the Iranians counterattacked by a volte-face maneuver which reversed their bargaining position from defensive to offensive, and thus turned back the pressure exerted on them toward the opposite side. Indeed, it was then the Iranians themselves who summoned the Six to accept their conditions by the end of January 2010, warning these latter that they would otherwise perform their own enrichment of uranium.³⁴⁰ This Iranian coup de théâtre mirrored the then powerlessness of the Six as they were divided over the issue of sanctions; it also showed that Iran was betting on the fact that either Russia or China would veto any UNSC resolution on imposing such new sanctions at an international level.³⁴¹ The ensuing negotiation balance had therefore relatively twisted favorably to

³⁴⁰ Note :

The first written Iranian reaction to the IAEA's position, whereby they still offered to negotiate, was issued by the Iranian Ambassador to the IAEA, Ali Asghar Soltanieh, on the 18th of February 2010; about a month and a half hence after Iran's own summon : see *L'Orient – Le Jour* of the 24th of February 2010, p.11 : Téhéran répond officiellement par écrit à l'offre de l'AIEA (translation of the title : Teheran officially answers by writing the offer of the IAEA).

Such letter from Ambassador Soltanieh was also subsequent to the Iranians announcement, on the 8th of February 2010, that they were proceeding to enrich their uranium themselves. : see (i) *L'Orient – Le Jour* of the 9th of February 2010, p.11 : L'Iran lance la production d'uranium enrichi à 20% malgré les pressions (translation of the title : Iran launches the production of 20% enriched uranium despite pressures), (ii) *L'Orient – Le Jour* of the 11th of February 2010, p.11 : Les USA renforcent les sanctions contre les gardiens de la révolutions (translation of the title : The USA strengthen the sanctions against the guards of the revolution), and (iii) *L'Orient – Le Jour* of the 12th of February 2010, p.11 : Ahmadinejad s'en prend à Obama et l'accuse de « servir » les intérêts d'Israël (translation of the title : Ahmadinejad attacks Obama and accuses him of « serving » Israel's interests).

The above facts, and particularly their chronology, may hint either an Iranian limitation in capacity and an artifice to obtain the maximum out of the forthcoming negotiations; or conversely, an Iranian stratagem to appease the IAEA's apprehensions while moving forward in the development of Iran's capacities.

³⁴¹ References:

- Moscou déplore l'attitude de Téhéran [Moscow deplores Teheran's attitude]. (2010, January 23). *L'Orient – Le Jour*, p.11:
“Interrogé sur l'éventualité de nouvelles sanctions contre l'Iran, le ministre russe des Affaires étrangères, Sergueï Lavrov, a souhaité la poursuite des efforts diplomatiques en vue de régler le dossier. « Nous regrettons que l'Iran, selon toute apparence, ne juge pas possible d'accepter la formule qui lui a été présentée pour la production de combustible nucléaire destiné à son réacteur de recherches de Téhéran », a-t-il dit aux journalistes. « Nous sommes persuadés qu'il est

Iran until further event since, instead of being sanctioned yet, this latter had indirect talks with Washington through Turkey and subsequently Brazil, in their capacity as nonpermanent members of the UNSC.³⁴² Other reports referred to a proposal made by

impératif de faire des efforts supplémentaires, à la fois sur ce dossier précis et, plus largement, sur la question de la reprise des discussions en vue de résoudre tous les aspects du programme nucléaire iranien »,

Il a précisé que le Conseil de sécurité des Nations unies pouvait « bien sûr » discuter d'un nouveau train de sanctions contre Téhéran, tout en plaidant pour la retenue et la réflexion. « Si notre logique est de punir l'Iran ou si nous adoptons la posture de l'offensé (...), ce ne sera pas une approche réfléchie ». « La situation n'est pas simple et le contexte politique intérieur en Iran ne facilite pas les choses », ».

Translation :

“In response to questions about the possibility of new sanctions against Iran, the Russian Foreign Affairs Minister, Sergueï Lavrov, has wished the proceeding of diplomatic efforts in order to settle the case. He told reporters : «We regret that Iran, apparently, doesn't judge it possible to accept the formula which was presented to it for the production of nuclear combustible for its research reactor in Teheran. We are convinced that more efforts are imperative, both on this matter and, more generally, on the question of resuming discussions in order to settle all aspects the Iranian nuclear program »,

He made clear that the Security Council of the United Nations could «of course» discuss a new set of sanctions against Teheran, while pleading at the same time restraint and reflection. «If our logic is to punish Iran or if we adopt the posture of the offended (...), it will not be a thoughtful approach ». «The situation is not simple and the internal political context in Iran does not facilitate things », ».

- L'Iran lance la production d'uranium enrichi à 20% malgré les pressions [Iran launches the production of 20% enriched uranium despite pressures]. (2010, February 9). *L'Orient – Le jour*, p.11:
“Qualifiant l'annonce iranienne de « chantage », le chef de la diplomatie française, Bernard Kouchner, a toutefois dit anticiper une «discussion longue » au Conseil de sécurité, notant que la France n'avait «pas encore convaincu » la Chine, qui dispose d'un droit de veto.”

Translation :

“Describing the Iranian announcement as «blackmail », the head of the French diplomacy, Bernard Kouchner, has nevertheless anticipated a «lengthy discussion » at the Security Council, noting that France had « not yet convinced » China, who has got a veto right”.

³⁴² Ahmet Davutoglu (title). (2010, February 19). *L'Hebdo Magazine*, p.12:

“Le ministre turque des Affaires étrangères, a, selon des sources bien informées à Ankara, conduit des négociations en coulisses entre le ministre iranien des Affaires étrangères, Manouchehr Mottaki, et James Jones, le conseiller pour la sécurité nationale du président américain Barack Obama. Ce contact indirect entre Téhéran et Washington a eu lieu en Allemagne durant la première semaine de février, en marge de la Conférence de Munich sur la sécurité 2010. Les mêmes sources rapportent que contrairement aux déclarations négatives faites en public, les deux camps seraient très proches de la signature d'un accord pour échanger l'uranium, ce qui empêcherait Téhéran d'enrichir la matière première par ses propres moyens. Les responsables du gouvernement Erdogan ont même proposé que l'échange ait lieu en Turquie.”

Translation :

“The Turkish Foreign Affairs Minister has, according to reliable sources in Ankara, conducted behind the scenes negotiations between Iranian Foreign Affairs Minister, Manouchehr Mottaki, and James Jones, the National Security Counselor of American President Barack Obama. This indirect contact between Teheran and Washington took place in Germany during the first week of February, on the fringe of

Japan (another nonpermanent member of the UNSC) to serve as the go-between for the process of enriching Iranian uranium abroad.³⁴³

Aside from those indirect talks and from the absence of sanctions at once, the Iranians gambled consistently with their ultimatum, as they started enriching themselves their uranium up to 20% according to a declaration they made on the 8th of February 2010.³⁴⁴

This is still way below the 80 to 90% needed to produce a bomb, but there are reports about barely veiled Iranian threats to increase enrichment up to significant levels.³⁴⁵ As a

Munich's Conference on the 2010 security. The same sources report that contrary to the negative statements made in public, the two sides would be very close to signing an agreement to exchange uranium, which would prevent Teheran to enrich the raw material by its own means. officials of the Erdogan government have even proposed that the exchange takes place in Turkey."

³⁴³ References:

- Le Japon propose à l'Iran d'enrichir son uranium [Japan proposes to Iran that it enriches its uranium]. (2010, February 25). *L'Orient – Le Jour*, p.11.
- Clinton Compare le nucléaire iranien à crise des fusées de 1962 [Clinton compares the Iranian nuclear issue to the missile crisis of 1962]. (2010, February 26). *L'Orient – Le Jour*, p.11.

³⁴⁴ L'Iran lance la production d'uranium enrichi à 20% malgré les pressions [Iran launches the production of 20% enriched uranium despite pressures]. Op-cit:
*"L'Iran a notifié hier à l'AIEA sa décision de commencer à produire de l'uranium hautement enrichi malgré les pressions internationales. Le lancement se fera aujourd'hui, sur le site de Natanz (centre), selon le représentant iranien à l'AIEA Ali Asghar Soltanieh.
Cette décision a été prise, selon Téhéran, en raison du blocage des discussions avec les Six sur la fourniture à l'Iran du combustible enrichi à 20% dont il dit avoir besoin pour un réacteur de recherche médicale".*

Translation :

*"Iran has notified yesterday the IAEA of its decision to start producing high rich uranium despite international pressures. The launching will be made today, in the site of Natanz (center), according to Iran's representative at the IAEA, Ali Asghar Soltanieh
This decision has been taken, according to Teheran, due to the stalemating discussions with the Six on providing Iran with 20% enriched combustible, which it says it needs for a medical research reactor".*

³⁴⁵ Ahmadinejad s'en prend à Obama et l'accuse de « servir » les intérêts d'Israël [Ahmadinejad attacks Obama and accuses him of « serving » Israel's interests]. (2010, February 12). *L'Orient – Le Jour*, p.11:
"Le président iranien Mahmoud Ahmadinejad a défié hier l'Occident sur le nucléaire à l'occasion du 31^e anniversaire de la République islamique.

... ..

Il a assuré que l'Iran était capable d'enrichir de l'uranium «à plus de 80% », mais qu'«il ne le fera pas car il n'en a pas besoin »,"

Translation :

"On the occasion of the 31st anniversary of the Islamic Republic, the Iranian President Mahmoud Ahmadinejad has challenged yesterday the West regarding the nuclear issue.

matter of fact, persons like former director of the Central Intelligence Agency, R. James Woolsey, believe that Iran has nearly done three-quarters of the job to produce a bomb.³⁴⁶ And hence, whatever expectation is closest to reality, Obama administration officials did not exclude the possibility for Iran to become a nuclear power in a relatively short period of time.³⁴⁷

Nevertheless, the fact is that the sanctions were not applied at once when the Western ultimatum expired (31st of December 2009). The reason is simple: 2 of the 5 permanent members of the United Nations Security Council (UNSC), Russia and China, were not yet ready to accept the principle of imposing a new set of sanctions against Iran, and would have thus vetoed any such resolution. Another difficulty stems from the fact that a majority of 9 over 15 votes is needed to pass a UNSC resolution, and this latter condition wasn't yet guaranteed as well.³⁴⁸ Consequently, as a result of the inability to impose sanctions at once, there has been a twofold intense diplomatic activity: the West was still

... ..

He has assured that Iran was capable of enriching the uranium «up to more than 80% », but that «it will not do it because it does not need it»,”.

³⁴⁶ Woolsey, R.J. (2010, May 7). Too much Mr. Nice Guy on nuclear disarmament. *International Herald Tribune*. p.6:

“The problem is that if a country enriches uranium up to 3 percent, which is suitable to generate electricity, it has done nearly three-quarters of the work needed to move along the road to 90 percent enrichment, which is what is required to make a bomb”.

³⁴⁷ Undisclosed activities by Iran worry U.N. nuclear inspector. (2010, February 19). *The International Herald Tribune*, pp.1&4:

“The report contains no assessment of how long it would take Iran to produce a nuclear weapon, and as recently as early last month, Obama administration officials said they believed it would be a year and a half, or maybe significantly longer, before Iran could become a weapons power.”

³⁴⁸ AFP. (2010, May 20). Sanctions/Iran: majorité en vue à l'ONU [Sanctions/Iran: a foreseen majority at the UNO]. *Le Figaro*:

“Une majorité de 9 membres sur les 15 composant le Conseil de sécurité est nécessaire pour l'adoption d'une nouvelle résolution contre l'Iran, sans veto de l'un des cinq membres permanents”

Translation :

“A majority of 9 members over the 15 constituting the Security Council is necessary for the adoption of a new resolution against Iran, provided there is no veto from any of the five permanent members.”

trying on one side to obtain an acceptable agreement from Iran whereby this latter would subcontract the enrichment of its uranium and, on the other side, was endeavoring to mobilize preferably all 15 current members of the UNSC, or at least a comfortable majority, to vote for a new resolution sanctioning Iran in case of failure of the first option. The diplomatic ballet went on all the way thru up to the 17th of May 2010, when the abovementioned Turkish-Brazilian mediation gave birth to a tripartite agreement signed by Turkey, Brazil and Iran whereby this latter agreed to subcontract the enrichment of uranium; essentially, the deal provides for the transfer of 1200 kg of Iranian uranium to Turkey against the delivery by France and Russia, within a year, of 120 kg of 20% rich uranium, suitable for being used as nuclear fuel for a reactor devoted for medical purposes.³⁴⁹ But according to Adèle Smith of *Le Figaro*, quoting a diplomat, the Six were upset by the fact that the Turkish-Brazilian initiative was conducted without consulting with them.³⁵⁰ As a matter of fact, and as inferred by a March 2010 article in the *International Herald Tribune* from Britain's Foreign Secretary, David Miliband, there were anterior signs of apprehension from the West about the extent of the Turkish-Brazilian cooperation and its relevancy with the immediate objectives of the international community in handling the Iranian nuclear issue.³⁵¹ Furthermore, there were concerns

³⁴⁹ Vampouille, Th. (2010, May 18). Nucléaire : L'Iran signe un accord d'échange d'uranium [Nuclear issue : Iran signs an agreement to exchange uranium]. *Le Figaro*.

³⁵⁰ Smith, A. (2010, May 20). ONU : vers une majorité pour des sanctions contre l'Iran [UNO : toward a majority favoring sanctions against Iran]. *Le Figaro*:
According to the above article, after the signature of the May 17, 2010 agreement, it was believed that Japan, Bosnia, Gabon, Mexico and Austria would go along with the sanctions; Lebanon, Brazil and Turkey would not; Nigeria and Uganda were hesitant; China would go along but with restrictions over the extent of sanctions and would use its veto right if such "red lines" were crossed.

³⁵¹ Miliband, D. (2010, March 27). Averting the Iranian nuclear flashpoint. *International Herald Tribune*, p.4:
"The U.N. Security Council needs to take seriously its responsibilities, not just countries such as Britain and China but non-permanent members such as Brazil and Turkey".

about the fact that, from the 8th of February 2010 (when Iran said it started the 20% enrichment process) up to the 17th of May 2010, the Iranian stock of uranium had increased to 2400 kg, thus twice the amount that Iran would send abroad for enrichment.³⁵² To crown it all, Iran elucidated the mystery by declaring that it would keep enriching itself part of its uranium and that such fact was not in violation of the May 17 Agreement. Iran further made clear that if such right was denied to it, or if sanctions were imposed, it wouldn't be bound by such Agreement and would thus proceed enriching itself all of its uranium.³⁵³ Abiding by the rules and regulations regarding the matter, Iran did officially inform the IAEA of the Turkish-Brazilian Agreement within a week after signature; but Secretary of State Hillary Clinton immediately objected about numerous uncertainties and omissions in the Iranian letter to the IAEA.³⁵⁴ There was thus an inborn

³⁵² Barluet, A. (2010, May 18). Nucléaire iranien : vers de nouvelles sanctions [Iranian nuclear issue : toward new sanctions]. *Le Figaro*:

“Or, depuis l’automne dernier, l’Iran a accru de moitié son stock d’uranium faiblement enrichi, estimé par l’AIEA à plus de 2400 kg dont il conserverait donc la moitié, aux termes de l’accord turco-brésilien. Un nouvel accord nécessiterait donc une « mise à jour », avait exigé Washington, le mois dernier, pour tenir compte des nouveaux stocks et des nouvelles capacités d’enrichissement de l’Iran.”

Translation :

“But, since last autumn, Iran has increased by half its stock of low enriched uranium, estimated by the IAEA to more than 2400 kg of which it would keep one half of it, in accordance with the terms and conditions of the Turkish-Brazilian Agreement. Washington had thus requested that a new agreement «with updates » be concluded, to take into account the new stocks and the new Iranian capacities of enrichment.”

³⁵³ Ibid:

“... ... la République islamique a réaffirmé ce lundi qu’elle continuerait de produire de l’uranium hautement enrichi (20%), un processus officiellement lancé en février dernier. ...

... ...

... ... un diplomate occidental ... voit dans ce dernier épisode du feuilleton nucléaire un nouvel « écran de fumée » mis en place par Téhéran pour esquiver des sanctions.”

Translation :

“... ... the Islamic Republic has reasserted this Monday that it would continue producing high enriched uranium (20%), a process officially launched last February. ...

... ...

... ... a Western diplomat ... sees in this last episode of the nuclear serial a new « smoke screen » set by Teheran to avoid sanctions.”

³⁵⁴ AFP. (2010, May 25). Iran: la lettre à l’AIEA “pleine de lacunes” [Iran: the letter to the IAEA “full of omissions”]. *Le Figaro*. (Quoting Secretary of State Hillary Clinton):

controversy over the interpretation of the Agreement by the international actors involved, as to Iran's declared intention to continue its own enrichment of uranium.³⁵⁵ Consequently, the West kept on the agenda the negotiation process of the package of sanctions with the members of the UNSC, in the hope to have them voted during the first half of June 2010.³⁵⁶ A resolution (1929) was adopted on the 9th of June 2010 imposing

“Nous avons assez longuement discuté des insuffisances de la proposition avancée par l’Iran dans sa lettre à l’AIEA Il y a un certain nombre de lacunes, ce qui ne répond pas aux préoccupations de la communauté internationale”.

Translation :

“We have discussed lengthily enough the insufficiencies of the proposition put forward by Iran in its letter to the IAEA There is a certain number of omissions, a fact which does not provide answers to the questions that are matters of preoccupations for the international community”.

³⁵⁵ References:

- AFP. (2010, May 22). Uranium/accord: menace de l’Iran [Uranium/agreement : Iran’s threat]. *Le Figaro*:
“Selon Téhéran, cet accord reconnaît le droit de l’Iran à enrichir l’uranium à des fins pacifiques. L’accord «nous offre des choses de même qu’à l’autre partie. C’est un cadre logique pour des pourparlers» a déclaré M. Larijani.”
Translation :
“According to Teheran, this agreement recognizes the right for Iran to enrich uranium for pacific purposes. The agreement «offers us things as well as to the other party. This is a logical frame for talks» Mr. Larijani declared.”
- Reuters. (2010, May 24). Accord/nucléaire: L’Iran avise l’AIEA [Agreement/nuclear : Iran advises the IAEA]. *Le Figaro*:
“Les puissances occidentales considèrent que l’accord, qui reprend les grandes lignes d’un compromis accepté il y a plus de six mois puis renié par l’Iran, est dépassé par les événements, Téhéran ayant réaffirmé sa volonté de poursuivre ses activités d’enrichissement d’uranium.”
Translation :
“Western powers consider that the agreement, which winds up the headlines of a compromise accepted and then just denied by Iran more than six months ago, is outdated by developments, since Teheran has stated again its intention to keep ongoing the process of its uranium enrichment activity.”

³⁵⁶ References:

- Smith, A. (2010, May 20). ONU : vers une majorité pour des sanctions contre l’Iran [UNO : toward a majority favoring sanctions against Iran]. Op-cit:
“La représentante de Washington, Susan Rice, proche de Barack Obama, espère obtenir une résolution dans la première quinzaine de juin, quitte à faire l’impasse sur le vote du Brésil et de la Turquie, membres non permanents du Conseil.”
Translation:
“The representative of Washington [at the UN], Susan Rice, a person close to Barack Obama, hoped to obtain a resolution by the first half of June, even at the price of unfavorable votes of Brazil and Turkey, who are nonpermanent members of the Council .”

softer sanctions than targeted by the West because of Russia and China's resistance to a broader set of sanctions.³⁵⁷

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- AFP. (2010, May 27). « Grave désaccord » USA-Brazil sur l'Iran [« Serious disagreement » USA-Brazil over Iran]. *Le Figaro*:
“Malgré cet accord, le Conseil de sécurité de l'ONU a examiné le 18 mai un nouveau projet de sanctions contre l'Iran, rédigé par les Etats-Unis et approuvé par les autres puissances chargées du dossier (Chine, France, Grande-Bretagne, Russie, et Allemagne).”

Translation :

“Despite this agreement, the UNO Security Council has examined on the 18th of May a new project of sanctions against Iran, drafted by the United States and approved by the other powers in charge of the matter (China, France, Great Britain, Russia and Germany).”

³⁵⁷ Reuters. (2010, May 20). Iran rejects 'legitimacy' of proposed expanded sanctions. *International Herald Tribune*, p.6:

“The draft resolution, agreed upon by all five permanent Security Council members after months of negotiation, targets Iranian banks and calls for inspection of vessels suspected of carrying cargo related to Iran's nuclear or missile program.

... ..

Western diplomats say the text was the result of a compromise between the United States and its main allies in Western Europe – which had pushed for much tougher sanctions against Teheran – and Russia and China, which sought to dilute them.”

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