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## Kosovo's Controversial 100 Percent Tariff: An Analysis of Its Imposition and the Issues Bleeding Into the Conflict Between Kosovo and Serbia

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# KOSOVO'S CONTROVERSIAL 100 PERCENT TARIFF: AN ANALYSIS OF ITS IMPOSITION AND THE ISSUES BLEEDING INTO THE CONFLICT BETWEEN KOSOVO AND SERBIA

## INTRODUCTION

It has been over twenty years since the United Nations (UN) Security Council Resolution 1244 passed, which demanded that Serbia put an immediate end to violence in Kosovo<sup>1</sup> and withdraw its military and police forces from the area following seventy-eight days of the North American Trade Organization's (NATO)<sup>2</sup> bombing campaign.<sup>3</sup> Moreover, it has

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1. The name "Kosovo" is used throughout this Note, as opposed to the Albanian forms, *Kosovë* or *Kosova*, due to the simple fact that Kosovo is what is widely used by English language speakers and publications. This is also recognized on Kosovo's official state website. When the website is in the Albanian language, the welcoming message reads "Mirësevini në portalin shtetëror të Republikës së Kosovës," whereas when the state website is switched into the English language, the welcoming message reads "Welcome to the state portal of Republic of Kosovo." See STATE PORTAL OF THE REPUBLIC OF KOSOVA, <https://www.rks-gov.net/EN> (last visited Apr. 24, 2020). However, throughout this Note, with one exception, when referring to cities in Kosovo, the Albanian spelling will be used because more than 90 percent of the Kosovo population is comprised of ethnic Albanians, and the Albanian language is an official language of Kosovo. See *Languages Spoken in Kosovo*, BE IN KOSOVO, <https://www.beinkosovo.com/languages-spoken-in-kosovo/> (last visited Apr. 24, 2020). The exception mentioned in the prior sentence refers to the city and capital of Kosovo, Prishtina. Albanians refer to the city as Prishtina. See KUSHTETUTA E REPUBLIKËS SË KOSOVËS [CONSTITUTION] June 15, 2008, art. 13 (Kos.), translated in KUSHTETUTA E KOSOVËS, <http://www.kushtetuta.kosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf> (last visited May 12, 2020). In the international community, however, and even in the English translated copy of Kosovo's Constitution, the capital city is generally referred to as Pristina. See *id.* When referring to international agreements that refer to Kosovo's capital, this Note will preserve the genuineness of the document and state Pristina. When this Note refers to the capital in a general sense, it will follow the Albanian spelling, which is Prishtina.

2. NATO is an alliance established by the North Atlantic Treaty and currently consists of twenty-nine territories in North America and Europe. See North Atlantic Treaty art. 5, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243 [hereinafter NAT]. See also, WHAT IS NATO?, <https://www.nato.int/nato-welcome/index.html> (last visited Nov. 16, 2019). According to the NAT, the parties united to safeguard their "freedom, common heritage and civilization

been twelve years since the assembly of the Republic of Kosovo announced its independence from Serbia, declaring it a sovereign state.<sup>4</sup> Nevertheless, even with this passage of time, Kosovo's sovereignty remains contentious, with Serbia and other countries—such as Russia, China, and Spain—refusing to recognize Kosovo as an independent state.<sup>5</sup> The hostility between Kosovo and Serbia still very much exists to this day, with constant threats potentially boiling over into armed conflict.<sup>6</sup>

The Council of the European Union,<sup>7</sup> in line with its objective of ensuring peace and stability in Europe,<sup>8</sup> facilitated the ongoing Belgrade-Pristina dialogue (the “Dialogue”) beginning in 2011 to encourage a meeting of the minds between political representatives of Serbia and Kosovo in order to normalize re-

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of their people” and to promote stability within the North Atlantic area. NAT, *supra* note 2, at pml. While the parties agree to resist armed attack, they also agree that an armed attack against one of the parties is an armed attack against all the parties and, accordingly, all parties will assist the party being attack in order to maintain peace within the North Atlantic area. *Id.*

3. S.C. Res.1244, ¶ 3 (June 10, 1999) [hereinafter SC Resolution]. The Security Council adopted Resolution 1244 on June 10, 1999. *Id.* The Security Council, in adopting Resolution 1244 and in condemning the violence occurring in Kosovo, was determined to resolve the “grave humanitarian situation in Kosovo.” *See id.* ¶ 1. Intent on doing so, it demanded that the Federal Republic of Yugoslavia put an end to the violent acts in Kosovo and withdraw all of its military and police to allow for the safe return of all refugees. *Id.* Resolution 1244 also permitted the deployment of international civil presence to the state to establish an interim administration for Kosovo to provide a transitional administration that would promote the establishment of an autonomous self-governing Kosovo. *Id.* ¶ 3.

4. Deklarata e Pavarësisë së Kosovës, (Kosovo 2008).

5. John R. Cook, *United States Recognizes Kosovo as an Independent State*, 102 AM. J. INT'L LAW, 638, 638–40 (2008).

6. This statement is based on the history Kosovo and Serbia share and the numerous adverse encounters between the two, all of which will be highlighted in this Note. *See infra* notes 96–124 and accompanying text.

7. The European Union is an international organization that is currently comprised of twenty-seven countries in Europe. *See About the EU: Countries*, EUR. UNION, [https://europa.eu/european-union/about-eu/countries\\_en](https://europa.eu/european-union/about-eu/countries_en) (last visited Feb. 16, 2020). The organization, among other things, governs the economic, political, and social aspects of its members in order to promote peace and stability. *See The EU in Brief*, EUR. UNION, [https://europa.eu/european-union/about-eu/eu-in-brief\\_en](https://europa.eu/european-union/about-eu/eu-in-brief_en) (last visited Dec. 31, 2019).

8. Council Directive 10555 /18, 2018 O.J. (EU).

lations between the two states.<sup>9</sup> According to a declaration by High Representative Catherine Ashton on behalf of the European Union (EU), the objective of the Dialogue is to “promote cooperation between the two sides, help them achieve progress on the path to Europe and improve the lives of the people.”<sup>10</sup> In addition to the EU seeking to promote peace and stability within Europe, both Kosovo and Serbia are intent on becoming members of the EU, making the need to normalize their relations a priority for both countries and a prerequisite to EU integration.<sup>11</sup> Moreover, Kosovo is a party to the Stabilization and Association Agreement (“Stabilization Agreement”), which outlines the mutual rights and obligations between Kosovo and the EU in hopes of strengthening their relationship.<sup>12</sup> The Stabilization Agreement is expressly conditioned on Kosovo’s “continued engagement towards a visible and sustainable improvement in relations with Serbia,” with the EU having the right to suspend the Stabilization Agreement if it deems Kosovo to be noncompliant.<sup>13</sup> Similarly, Serbia’s accession negotiations with the EU have been conditioned upon its commitment to the Dialogue.<sup>14</sup> In 2013, Kosovo and Serbia, through the Dialogue, executed the First Agreement of Principles Governing the Normalization of Relations, in which they agreed upon fifteen generally ambiguous terms in hopes of taking their first step toward normalizing their tense relationship.<sup>15</sup>

Since 2013, the two countries, through the EU-mandated Dialogue, have come together several times to discuss their rela-

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9. Krenar Gashi, Vjosa Musliu & Jan Orbie, *Mediation through Recontextualization: The European Union and the Dialogue between Kosovo and Serbia*, 22 EUR. FOREIGN AFF. REV. 533, 533–34 (2017).

10. European Commission Press Release 12516/10, Declaration by High Representative Catherine Ashton on behalf of the European Union on the ICJ advisory opinion (July 22, 2010).

11. Gashi, Musliu & Orbie, *supra* note 9, at 534.

12. Stabilisation and Association Agreement Between the European Union and the European Atomic Energy Community, of the One Part, and Kosovo, of the Other Part, EU, art. 1, 2015 O.J. (L 71/3) [hereinafter SAA].

13. *Id.* at 12.

14. Gashi, Musliu & Orbie, *supra* note 9, at 534.

15. First Agreement of Principles Governing the Normalization of Relations, Kos.-Serb., Apr. 19, 2013, [http://www.kryeministri-ks.net/repository/docs/FIRST\\_AGREEMENT\\_OF\\_PRINCIPLES\\_GOVERNING\\_THE\\_NORMIALIZATION\\_OF\\_RELATIONS,\\_APRIL\\_19,\\_2013\\_BRUSSELS\\_en.pdf](http://www.kryeministri-ks.net/repository/docs/FIRST_AGREEMENT_OF_PRINCIPLES_GOVERNING_THE_NORMIALIZATION_OF_RELATIONS,_APRIL_19,_2013_BRUSSELS_en.pdf) [hereinafter Brussels Agreement].

tionship in hopes of achieving European integration.<sup>16</sup> Nonetheless, despite the efforts of the EU, the Dialogue has been halted numerous times, with tensions between the two countries rekindling as recently as 2018.<sup>17</sup>

In November 2018, in response to Serbia's "aggressive campaign" against Kosovo joining the International Criminal Police Organization ("Interpol") and attempts to convince states to de-recognize Kosovo, Kosovo imposed a 10 percent customs tariff on goods imported from Serbia and Bosnia and Herzegovina.<sup>18</sup> When Interpol's rejection of Kosovo's membership was publicized later that month, Kosovo reacted by increasing the custom tariffs on Serbian and Bosnian goods from 10 to 100 percent.<sup>19</sup> While Kosovo's former Prime Minister Ramush Haradinaj stated that Kosovo's decision to impose the 100 percent tariff on Serbian goods was a "sovereign decision" that should not impact the relationship-normalizing negotiations with Serbia,<sup>20</sup> Aleksandar Vučić, Serbia's president, stated that Bel-

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16. *Kosovo Chronology of Events*, SEC. COUNCIL REP., <https://www.securitycouncilreport.org/chronology/kosovo.php?page=all&print=true> (last visited Nov. 16, 2019).

17. *Id.*

18. *Kosovo Hits Serbia with 100% Trade Tariffs Amid Interpol Row*, BBC (Nov. 21, 2018), [www.bbc.com/news/world-europe-46287975](http://www.bbc.com/news/world-europe-46287975). Another article, written by Maja Zivanovic and Morina Die, explains that a tariff was also imposed on Bosnia and Herzegovina because the country was making it difficult to export goods to them: "Bosnia's approach to Kosovo is the same [as Serbia's]; they put up barriers for Kosovo products, they do not even recognise our documents." See Maja Zivanovic & Morina Die, *Kosovo Imposes Customs Tariffs on Serbia, Bosnia*, BALKAN INSIGHT (Nov. 20, 2018), [balkaninsight.com/2018/11/06/kosovo-imposes-customs-tariffs-for-serbia-and-bosnia-and-herzegovina-11-06-2018](http://balkaninsight.com/2018/11/06/kosovo-imposes-customs-tariffs-for-serbia-and-bosnia-and-herzegovina-11-06-2018).

19. *Kosovo Hits Serbia with 100% Trade Tariffs Amid Interpol Row*, *supra* note 18.

20. *Haradinaj Says Tax on Serbian Goods, Relations with Belgrade Shouldn't Be Linked*, RADIOFREEEUROPE/RADIODLIBERTY'S BALKAN SERV. (Jan. 31, 2019, 17:52 GMT), <https://www.rferl.org/a/kosovo-haradinaj-tax-serbian-goods-belgrade-relations-bosnia/29744510.html>. Ramush Haradinaj was appointed as Kosovo's Prime Minister on September 9, 2017. See *Kosovo Parliament Approves PM Haradinaj, Cabinet*, RADIOFREEEUROPE/RADIODLIBERTY'S BALKAN SERV. (Sept. 9, 2017, 19:57 GMT), <https://www.rferl.org/a/kosovo-haradinaj-new-prime-minister/28726185.html>. Haradinaj served as Kosovo's Prime Minister until July 9, 2019 when he resigned after receiving a summons to appear at The Hague for alleged war crimes. See *Kosovo PM Haradinaj Resigns Over War Crimes Summons*, BBC (July 19, 2019), <http://www.bbc.com/news/world-europe-49047355>.

grade would not continue the Dialogue until Prishtina lifts the 100 percent tariff.<sup>21</sup> Accordingly, the Dialogue came to a deadlock following Kosovo's introduction of the 100 percent tariff.<sup>22</sup>

Before analyzing Kosovo's imposition of the 100 percent tariff on Serbian and Bosnian goods and its effects, Part I of this Note will illustrate the political and territorial history of Kosovo and its relationship with Serbia. Taking this historical approach is necessary to trace the roots of the conflicts that exist between the two countries and bleed into the present. Part II of this Note will dive into the steps Kosovo and Serbia have taken to normalize their relationship and the issues that have stalled the goal of relationship-normalizing. Part II will also discuss Kosovo's imposition of the 100 percent tariff in more depth, including the impact that it had on the economies of Kosovo and Serbia, Serbia's response to the tariff, Kosovo's conditions to lift the tariff, and the international community's response. Part III will then analyze the Stabilization Agreement and other international agreements that Kosovo is a party to, including the Central European Free Trade Agreement (CEFTA), which was set up to regulate trade between countries seeking to join the EU.<sup>23</sup> In reviewing these international agreements, this Note will specifically analyze whether Kosovo has violated any international obligations and the potential repercussions. Part IV will focus on the efforts Kosovo has made since the imposition of the tariff and analyze Kosovo's options when deciding whether to maintain or abolish the tariff.

While Kosovo's imposition of the 100 percent tariff on Serbian goods: (i) arguably violates both the Stabilization Agreement and CEFTA; (ii) does not benefit Kosovo's economy; and (iii) puts a halt to the EU-mandated Dialogue, its imposition ironically acts as a necessary step in normalizing the relations between Kosovo and Serbia by outlining each countries' immediate needs.

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21. *Serbia's Vucic Says No Recognition of Kosovo Unless Belgrade Gets Something Too*, RADIOFREEEUROPE/RADIOLIBERTY (Mar. 5, 2019, 5:08 GMT, updated Mar. 5, 2019, 12:07 GMT), <https://www.rferl.org/a/serbia-s-vucic-says-no-recognition-of-kosovo-unless-belgrade-gets-something-too/29803920.html>.

22. *Kosovo Hits Serbia with 100% Trade Tariffs amid Interpol Row*, *supra* note 18.

23. Agreement on Amendment of and Accession to the Central European Free Trade Agreement, Consolidated Version of the Central European Free Trade Agreement (CEFTA 2006), annex 1, 20 I.L.M. 10 [hereinafter CEFTA].

## I. KOSOVO'S BLOODY HISTORY WITH SERBIA

Kosovo is one of the youngest countries in the world, only declaring its independence twelve years ago.<sup>24</sup> Its history is a complicated one that has been analyzed in numerous books, articles, and papers already. Nonetheless, in order to understand Kosovo's reasoning for imposing the tariff and the tumultuous relationship between Kosovo and Serbia, this Note will briefly highlight some key events in Kosovo's history in hopes of providing a general background.

A. *Battleground of Kosovo*

Professor Frederick F. Anscombe, in researching Serbia's claim to Kosovo with a specific focus on Kosovo under the Ottoman regime, starts his analysis by stating that Serbia should not have much of a state interest in Kosovo due to it being "small, with few economic prospects apart from mineral deposits along its northern edge, and strategically a dead end, its terrain difficult and costly to control," as well as Albanians outnumbering Serbians nine to one in 1990.<sup>25</sup> Serbians, however, are tied to Kosovo and adamantly believe that it was predominantly occupied by Serbians until very recently.<sup>26</sup>

Albanians,<sup>27</sup> on the other hand, in addition to believing that they are of Illyrian origin, continuously argue that Kosovo is a part of their ancient Illyrian homeland and, therefore, they were the primary occupants.<sup>28</sup> During the medieval period, specifically between 1180–1190, Stefan Nemanja, a Serbian prince, conquered Kosovo and turned it into a cultural center by establishing numerous Serbian religious, administrative,

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24. *Newest Countries 2020*, WORLD POPULATION REV. (Feb. 17, 2020), <http://worldpopulationreview.com/countries/newest-countries/>.

25. Frederick F. Anscombe, *The Ottoman Empire in Recent International Politics-II: The Case of Kosovo*, 28 INT'L HIST. REV. 758, 759 (2006).

26. TIM JUDAH, *KOSOVO: WAR AND REVENGE 2* (2000).

27. To clarify, individuals from Kosovo commonly refer to themselves as Kosovars, but on a general level, when referring to their ethnicity refer to themselves as Albanian. See Dan Bilefsky, *A Difficult Question for Kosovars: Who Are We?*, N.Y. TIMES (Dec. 9, 2007), [www.nytimes.com/2007/12/09/world/europe/09iht-kosovo.4.8660025.html](http://www.nytimes.com/2007/12/09/world/europe/09iht-kosovo.4.8660025.html). In fact, it is a popular belief in Kosovo that not referring to yourself as Albanian actually makes you a traitor. *Id.* Accordingly, throughout this paper and unless otherwise noted, reference to Albanians is intended to also refer to Kosovars.

28. MIRANDA VICKERS, *BETWEEN SERB AND ALBANIAN: A HISTORY OF KOSOVO* 1 (1998).

and cultural sites.<sup>29</sup> Throughout this period and the years following, Albanian history states that Serbians slowly started converting Albanians to Orthodox Christianity by baptizing children, imposing Serbian names upon children, and conducting religious ceremonies in the Serbian language.<sup>30</sup> Serbians, on the other hand, point to the religious sites in Kosovo and the names registered at churches as being predominantly Slavic as proof that Serbians actually lived there prior to Albanians.<sup>31</sup>

Who actually occupied Kosovo initially may never be agreed upon, as both nations have a vested interest in stating that their people came first.<sup>32</sup> What is not disputed by either state, however, is the defeat of the Serbian army by the Ottomans during the 1389 battle of Kosovo Polje.<sup>33</sup> Under Ottoman rule, Serbians migrated in large numbers out of the Ottoman Empire, specifically from Kosovo to Hungary.<sup>34</sup> During the great migration, Albanians in turn started reestablishing farming settlements in Kosovo.<sup>35</sup>

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29. *Id.* at 6–7.

30. *Id.* at 8. Additionally, before the Ottoman occupation, Albanian history dictates that Albanians were the majority in Kosovo:

The documents of the period after the Ottoman occupation of Kosovo, in 1455, and especially the land registers, provide many facts that show that these regions were inhabited by the Albanian population, while the Serbs who came as colonists, or as a ruling stratum during the Serbian occupation of these regions, constituted a minority, insignificant numerically but domination from a political and social standpoint.

*Id.* at 18. Of course, Serbian history contradicts this statement, arguing that Ottoman-registered property shows that Serbian princes owned a majority of the land in 1455. *Id.*

31. JUDAH, *supra* note 26, at 3–4.

32. NOEL MALCOLM, *KOSOVO: A SHORT HISTORY* 26 (1998).

33. Anscombe, *supra* note 25, at 760. As an interesting note, Serbian history tends to stay away from the notion that Albanians fought alongside Prince Lazar Hrebeljanović, the Serbian prince who refused Ottoman rule and whose army fought against the Ottomans, for acknowledging the same would inherently support the idea that there were Albanians living in Kosovo during the Serbian medieval period. See Peter Ronayne, *Genocide in Kosovo*, 5 *HUM. RTS. REV.* 57, 57–58 (2004).

34. *Id.*

35. VICKERS, *supra* note 28, at 17.



*B. The Rise of Serbia and the Aftermath of the Balkan Wars and World Wars*

In 1833, as a result of an agreement reached by the Ottoman Empire and Serbia, and due to pressure from Russia, Serbia received full autonomy from the Ottomans.<sup>36</sup> During the next several years, Kosovo changed hands between Serbia and the Ottoman Empire.<sup>37</sup> October 1912 marked the First Balkan War, in which Serbia, Montenegro, Greece, and Bulgaria formed an alliance to defeat the Ottomans and drive them out of the Balkans, resulting in Serbia and Montenegro gaining control over Kosovo.<sup>38</sup> Serbian military rule over Kosovo officially began in December 1912.<sup>39</sup>

The Treaty of Versailles<sup>40</sup> was executed in 1919, finalizing the declaration of the end of the First World War.<sup>41</sup> Among the signatories of this treaty was the “Serbs-Croat-Slovene State,”<sup>42</sup> which would later be known as Yugoslavia.<sup>43</sup> Kosovo, among other countries, fell under the umbrella of this newly established territory.<sup>44</sup>

After the outbreak of the Second World War, the lands of Yugoslavia were broken up and control was placed either into the hands of fascist sympathizers or directly under the occupation of Germany’s allies, with Kosovo specifically remaining under direct German control.<sup>45</sup> In 1945, Communist leader Josip Broz Tito finally succeeded in regaining control and formed a successor Yugoslav state, the Socialist Federal Republic of Yugoslavia, to which Kosovo was a party.<sup>46</sup> Under Tito, Kosovo was declared an autonomous province within Serbia.<sup>47</sup> During the late 1960s, Tito liberalized his policy towards Kosovo, which in turn

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36. Diana Sargsyan, *Principle of the Right of People and Nations on Self-Determination in International Law and its Implementation in Modern World*, 9 CASPIAN SEA J. 29, 40 (2015).

37. *Id.*

38. MALCOLM, *supra* note 32, at 249–52.

39. *Id.* at 257.

40. Treaty of Peace with Germany (Treaty of Versailles) arts. 228–30, June 28, 1919, 225 Consol. T.S. 188.

41. *Id.*

42. *Id.*

43. MALCOLM, *supra* note 32, at 264.

44. *Id.*

45. VICKERS, *supra* note 28, at 121.

46. Sargsyan, *supra* note 36, at 41.

47. *Id.*

resulted in Albanians developing an “economic and cultural life” of their own.<sup>48</sup>

### C. Increase in Albanian Nationalism

During the nineteenth century, Albanians from Kosovo partnered with Albanians from Albania in hopes of unifying the two countries.<sup>49</sup> Together, in 1878, they formed the League of Prizren.<sup>50</sup> The League of Prizren was comprised of Albanians, majority Muslim landowners with the main mission of overcoming the Yugoslav communist rule.<sup>51</sup> The sight of Albanians uniting sparked an increased sense of Albanian nationalism.<sup>52</sup>

Shortly after Tito’s death in 1980, clashes between Serbians and Albanians increased.<sup>53</sup> This time, the youth took it upon themselves to revolt against Yugoslavia.<sup>54</sup> Students formed coalitions and started a string of protests in Kosovo’s capital, Prishtina, specifically gathering around the University of Prishtina.<sup>55</sup> Students from other cities in Kosovo took note of the protests in Prishtina, and they too began to join the protests.<sup>56</sup>

### D. The Rise of Milošević

Slobodan Milošević, a well-known politician within the Socialist Federal Republic of Yugoslavia Party, became president of Yugoslavia in 1989.<sup>57</sup> Soon after entering into office, Milošević began limiting the autonomous powers held by Kosovo until they disappeared entirely in 1990.<sup>58</sup> Serbia seized control over Kosovo’s government, police, educational institutions, and media, expelling Albanians in those fields.<sup>59</sup>

48. Ronayne, *supra* note 33, at 58.

49. MALCOLM, *supra* note 32, at 221.

50. Carole Rogel, *Kosovo: Where It All Began*, 17 INT’L. J. OF POL., CULTURE, AND SOC’Y 167, 169 (2003).

51. *Id.*

52. *Id.* at 169–70.

53. MALCOLM, *supra* note 32, at 334.

54. *Id.*

55. *Id.*

56. *Id.* at 335.

57. STEVEN WOEHLER, KOSOVO: HISTORICAL BACKGROUND TO THE CURRENT CONFLICT, CONGRESSIONAL RESEARCH SERVICE 5 (June 3, 1999), <https://fas.org/sgp/crs/row/RS20213.pdf>.

58. *Id.*

59. *Id.*; see also Ronayne, *supra* note 33, at 59.

Albanians responded by declaring Kosovo an independent nation on October 19, 1991, resulting in the creation of an underground government.<sup>60</sup> This underground government, led by Ibrahim Rugova, a prominent leader in Kosovo, advocated passive resistance methods in hopes of gaining worldwide recognition of Kosovo's struggles.<sup>61</sup> Albanians, dissatisfied with Rugova's choice of pacifist methods and his failure to gain international assistance and recognition of their independence, formed the Kosovo Liberation Army (KLA).<sup>62</sup>

### *E. Genocide in Kosovo*

Soon after its formation, the KLA marched into the streets calling for Kosovo as an independent and democratic nation and "preparing guerrilla operations against Serbia."<sup>63</sup> Milošević responded by sending troops and establishing a Serbian military force in Kosovo, which resulted in massive massacres of ethnic Albanians and Serbians alike.<sup>64</sup> The Raçak massacre of January 15, 1999 sparked international outrage when forty-five Albanian civilians were massacred at the hands of the Serbian military forces.<sup>65</sup> Determined to reclaim Kosovo under Serbian rule, Milošević launched an "ethnic cleansing" campaign that forced approximately 1.5 million Albanians to seek refuge; led to the murder of as many as 11,000 Albanians, with bodies dumped in over 500 mass graves; encouraged the use of rape and sexual violence as a wartime tool, leading to approximately 20,000 Albanians being raped;<sup>66</sup> and the complete destruction of homes, schools, and religious sites, specifically mosques.<sup>67</sup>

On March 23, 1999, NATO's secretary general, Javier Solana, directed the intervention against Yugoslavia, initiating air operations that lasted for a period of seventy-eight days.<sup>68</sup> On

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60. VICKERS, *supra* note 28, at 251–52.

61. Ronayne, *supra* note 33, at 60.

62. *Id.*

63. Rogel, *supra* note 50, at 175.

64. *Id.*

65. Ronayne, *supra* note 33, at 61–62.

66. Joanna Kakissis, *In Kosovo, War Rape Survivors Can Now Receive Reparations. But Shame Endures For Many*, NPR (Apr. 6, 2018), <https://www.npr.org/sections/parallels/2018/04/06/598832041/in-kosovo-war-rape-survivors-can-now-receive-reparations-but-shame-endures-for-m>.

67. Ronayne, *supra* note 33, at 63.

68. *Id.* at 63–64.

June 10, 1999, the UN Security Council (the “Security Council”) passed Resolution 1244, demanding Serbia withdraw its military and police forces from Kosovo.<sup>69</sup>

#### *F. Kosovo Declares Independence*

After the passage of Resolution 1244, Kosovo was placed under a transitional administration, which became known as the United Nations Interim Administration Mission in Kosovo (UNMIK).<sup>70</sup> For the next several years, UNMIK struggled to find its footing in the international world.<sup>71</sup> Finally, on February 17, 2008, the assembly of the Republic of Kosovo declared itself an independent, democratic, and sovereign state.<sup>72</sup> Immediately after the declaration, Serbia informed the UN Secretary General that the declaration “represented a forceful and unilateral secession of a part of the territory of Serbia” and requested an emergency public meeting with the UN Security Council, where Serbia announced that Kosovo’s declaration was an unlawful act—one which Serbia would not recognize.<sup>73</sup> On July 22, 2010, the International Court of Justice found that Kosovo’s declaration of its independence did not violate any international law.<sup>74</sup> As of 2020, twelve years after Kosovo’s declaration of independence, Serbia still refuses to recognize Kosovo as an independent state.<sup>75</sup>

## II. ATTEMPTS AT BRINGING PEACE TO THE BALKAN REGION

Before discussing the EU-mandated Dialogue, it should be acknowledged that there have been a few initiatives taken by the international community to stabilize the Balkan region,

69. SC Resolution, *supra* note 3.

70. *Id.*

71. This statement is made based on the nine-year gap between the passage of Resolution 1244, which removed Serbian forces from Kosovo, and Kosovo declaring its independence. *See generally Kosovo Chronology of Events, supra* note 16.

72. Deklarata e Pavarësisë së Kosovës, *supra* note 4.

73. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 403, ¶ 77 (July 22).

74. *Id.* ¶ 123.

75. Barbara Surk & Marc Santora, *Kosovo Voters Want a New Future, but Old Problems Linger*, N.Y. TIMES (Oct. 6, 2019, updated Dec. 3, 2019), <https://www.nytimes.com/2019/10/06/world/europe/kosovo-election-haradinaj-osmani.html>.

specifically the tensions between Kosovo and Serbia. Between the Rambouillet Conference and the UN's appointment of Martti Ahtisaari as special envoy for Kosovo, both of which are detailed below, the international community quickly learned that normalizing the relationships between these two states would not be an easy task.

*A. International Interventions Before the EU-Mandated Dialogue*

The first substantive diplomatic intervention occurred in February 1999, shortly after the Raçak massacre.<sup>76</sup> Known as the Rambouillet Conference, the United Kingdom and France tried to put an end to the violence in Kosovo by bringing Kosovo and Serbia to the table to discuss the idea of "substantial autonomy" for Kosovo.<sup>77</sup> After multiple rounds of discussion, Kosovo accepted a draft accord but Serbia rejected the same, resulting in a collapse of discussions entirely.<sup>78</sup>

The UN made a second attempt in 2005 when it approved the appointment of Martti Ahtisaari as its envoy to Kosovo.<sup>79</sup> Ahtisaari was tasked with bringing Kosovo and Serbia together to discuss, inter alia, Kosovo's future, protecting the rights of Serbian minorities in Kosovo, and improving Kosovo's economy.<sup>80</sup> In early 2007, Ahtisaari submitted to the Security Council a report in which he acknowledged that minimal progress had been achieved in the talks between Kosovo and Serbia.<sup>81</sup>

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76. Ronayne, *supra* note 33, at 62.

77. *Id.*

78. *Id.*

79. *Kosovo Chronology of Events*, *supra* note 16.

80. Robert McMahon, *UN Envoy: Kosovo Status Talks To Focus First On Minority Conditions*, RADIOFREEEUROPE/RADIOLIBERTY'S BALKAN SERV. (Dec. 20, 2005, 20:33 GMT), <https://www.rferl.org/a/1064028.html>.

81. U.N. Secretary-General, *Rep. of the Special Envoy of the Secretary-General on Kosovo's Future Status*, ¶ 2, U.N. Doc. S/2007/168 (March 26, 2007). Ahtisaari's report stated:

But after more than one year of direct talks, bilateral negotiations and expert consultations, it has become clear to me that the parties are not able to reach an agreement on Kosovo's future status. . . . Throughout the process and on numerous occasions, both parties have reaffirmed their categorical, diametrically opposed positions: Belgrade demands Kosovo's autonomy within Serbia, while Prishtina will ac-

In coming to the conclusion that Kosovo's reintegration into Serbia was not a viable option,<sup>82</sup> Ahtisaari endorsed the notion of Kosovo becoming an independent state subject to the supervision of the international community.<sup>83</sup> Unsurprisingly, Kosovo accepted Ahtisaari's report while Serbia rejected it.<sup>84</sup> The UN intervened another time, in the middle of 2007, when it approved the establishment of a troika that was comprised of representatives from the EU, Russia, and the United States.<sup>85</sup> The troika group, like Ahtisaari, was tasked with facilitating an agreement between Kosovo and Serbia on Kosovo's status.<sup>86</sup> During the course of four months, the parties discussed whether Kosovo should be fully independent, independent but supervised, substantially autonomous, or to partition its land.<sup>87</sup> Similar to the collapse of negotiations with Ahtisaari, the same occurred with the troika group when neither party was willing to surrender its position on Kosovo's sovereignty.<sup>88</sup>

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cept nothing short of independence. Even on practical issues such as decentralization, community rights, the protection of cultural and religious heritage and economic matters, conceptual differences—almost always related to the question of status—persist, and only modest progress could be achieved.

*Id.* ¶ 1–2.

82. *Id.* ¶ 3. Ahtisaari based this conclusion on Kosovo's history with Serbia and its distrust towards Serbia, stating that "a return of Serbian rule over Kosovo would not be acceptable to the overwhelming majority of the people of Kosovo. Belgrade could not regain its authority without provoking violent opposition. Autonomy of Kosovo within the borders of Serbia — however notional such autonomy may be — is simply not tenable." *Id.* at ¶ 7.

83. *Id.* ¶ 4.

84. U.N. Secretary-General, *Rep. of the European Union/United States/Russian Federation Troika on Kosovo*, at 2 U.N. Doc. S/2007/723 (Dec. 4, 2007).

85. *Id.*

86. *Id.*

87. *Id.* The partitioning of land was controversial not only in Kosovo but in the international community as well. The troika discussed Kosovo being divided into Serbian and Albanian sectors. See *Troika Considers Kosovo Partition for the First Time*, BALKAN INSIGHT (Aug. 13, 2007), <https://balkaninsight.com/2007/08/13/troika-considers-kosovo-partition-for-the-first-time/>.

88. *Id.*

*B. EU Mandated Dialogue*

After three failed attempts at normalizing the relationship between Kosovo and Serbia and determining Kosovo's status, the EU, recognizing its position of power over both Kosovo and Serbia's accession into the EU, intervened by requiring the mandated Dialogue.<sup>89</sup> With normalizing the relations between the two countries being a necessary element for EU integration, both states were incentivized in commencing and continuing the Dialogue.<sup>90</sup> In facilitating the ongoing Dialogue, the EU acts as a neutral mediator.<sup>91</sup>

The Dialogue commenced in 2011 and has been considered one of the greatest efforts of the EU's Common Foreign and Security Policy and the largest stepping stone in normalizing relations between Kosovo and Serbia.<sup>92</sup> As previously noted, through the EU-mandated Dialogue, Kosovo and Serbia reached their first agreement in 2013.<sup>93</sup> Amongst the various terms, both parties agreed that (1) there would be an "Association/Community" of Serbian majority municipalities in Kosovo; (2) Kosovo would establish a single police force; and (3) both Kosovo and Serbia would refrain from blocking one another from their path towards EU integration.<sup>94</sup>

The next agreement between Kosovo and Serbia came two years later when the Prime Ministers of Kosovo and Serbia signed four new deals concerning the establishment of energy, telecoms, the Association/Community of Serbian Municipalities, and the opening of the Mitrovica Bridge.<sup>95</sup>

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89. Gashi, Musliu & Orbie, *supra* note 9, at 534.

90. *Id.*

91. Eur. Parl. Res. Serv., *Serbia and Kosovo: Normalisation of Relations*, at 1, PE 579.079 (Mar. 2016), [http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/579079/EPRS\\_ATA\(2016\)579079\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/579079/EPRS_ATA(2016)579079_EN.pdf). It is important to note that the EU has remained neutral on Kosovo's status, deciding that, in the absence of a unanimous recognition of Kosovo's sovereignty among EU member states, it would allow each member state to decide for itself whether or not to recognize Kosovo's declaration of independence. *Id.*

92. *Id.*

93. Brussels Agreement, *supra* note 15.

94. *Id.*

95. Catherina Valenzuela-Bock, *Serbia and Kosovo Finalize Four Agreements Regarding Normalization of Relations*, AM. SOC'Y INT'L LAW (Sept. 4, 2015), <https://www.asil.org/blogs/serbia-and-kosovo-finalize-four-agreements-regarding-normalization-relations-august-25-2015>. While the Mitrovica Bridge is located in Kosovo and is meant to connect the city of Mitrovica, it in

*C. Halts to the Dialogue*

Since 2015, there has been little to no movement to implement the existing agreements between Kosovo and Serbia, with the Dialogue having been halted numerous times.<sup>96</sup> 2017 proved to be a difficult year for the facilitation and progression of the Dialogue, starting with Prime Minister Haradinaj's arrest in France based on a 2004 Serbian warrant for alleged war crimes in connection with his role as a commander in the Kosovo Liberation Army.<sup>97</sup> Haradinaj's brother, Daut Haradinaj, a member of the Assembly of Kosovo, threatened war and the cleansing of Serbians from Kosovo if his brother were to be extradited from France to Serbia.<sup>98</sup> These statements were met with disapproval, both from the international community and from Serbians.<sup>99</sup>

A few days after Haradinaj's statement, a train traveling from Belgrade began route to Kosovo decorated in Serbian nationalist slogans and the words "Kosovo is Serbia" written in twenty different languages.<sup>100</sup> While the train was prevented from entering Kosovo, it sparked chaos within both the Albanian and Serbian communities.<sup>101</sup> Serbia's former president,

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fact splits the city in two, with Albanians living on the south of the bridge and Serbians living to the north of it. See Irfan Ličina, *The City Where Each Side Completely Ignores the Other*, VICE (Aug. 6, 2019), [https://www.vice.com/en\\_in/article/evyw9j/kosovska-mitrovica-life-serbs-albanians](https://www.vice.com/en_in/article/evyw9j/kosovska-mitrovica-life-serbs-albanians). South of the Mitrovica bridge, one will see Albanian flags and Albanian slogans. See Gareth Johnson, *Mitrovica – A City Divided*, YOUNG PIONEER TOUR (Feb. 27, 2020), <https://www.youngpioneertours.com/mitrovica-city-divided/>. In contrast, while standing on the north side of the bridge, one can see the Serbian flag, Serbian car plates, and Serbia currency being exchanged. *Id.* Irfan Ličina, writing for Vlog, states that the bridge is rarely used by locals—instead it is almost exclusively used for business purposes, with “everyone stay[ing] on their own side, among their own people.” Ličina, *supra* note 95.

96. *Kosovo Chronology of Events*, *supra* note 16.

97. *Former Kosovo PM Haradinaj Released in France*, BBC (Jan. 12, 2017), <https://www.bbc.com/news/world-europe-38603193>.

98. U.N. Secretary-General, *Rep. of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, at 2, U.N. Doc S/2017/387 (May 3, 2017) [hereinafter UN General Report].

99. *Id.*

100. Darko Vojinovic, *Serbian Nationalist Train Halts at Border With Kosovo*, N.Y. TIMES (Jan. 14, 2017), <https://www.nytimes.com/2017/01/14/world/europe/kosovo-serbia-train.html>.

101. *Serbia-Kosovo Train Row Escalates to Military Threat*, BBC (Jan. 15, 2017), <https://www.bbc.com/news/world-europe-38630152>.



Tomislav Nikolic, accused Kosovo of seeking a war,<sup>102</sup> dismissing the severity of the nationalistic slogans by saying “we sent a train, not a tank”<sup>103</sup>

With the Dialogue halted for a year, Kosovo and Serbia were set to recommence discussions on January 16, 2018.<sup>104</sup> That same day, Oliver Ivanović, a Kosovo Serb politician, was assassinated outside his party headquarters.<sup>105</sup> As a result, Serbia withdrew its delegate from the Dialogue<sup>106</sup> and tensions escalated in Kosovo.<sup>107</sup> Marko Duric, director of Serbia’s Ministry for Kosovo, stated that the assassination of Ivanovic was a deliberate attack on the stability of the Balkan region, and the “goal [was] to provoke chaos and to push Serbs in Kosovo and Serbia into the hell of fighting.”<sup>108</sup> Two months later, Duric was arrested by the Kosovo police for illegal entry into Kosovo.<sup>109</sup> The arrest was a result of a ban against allowing Duric to reenter Kosovo after Duric made what Kosovo’s Foreign Minister Behgjet Pacolli called “[statements of] fomented hatred.”<sup>110</sup>

Vučić responded by declaring Kosovo’s arrest of Duric a criminal act, threatening that such actions would not go “unpunished.”<sup>111</sup> Additionally, Kosovo’s declaration that same month

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102. *Id.*

103. Vojinovic, *supra* note 100.

104. Andrew MacDowall, *Kosovo Serb Politician Oliver Ivanović Shot Dead Outside Party Headquarters*, *GUARDIAN* (Jan. 16, 2018), <https://www.theguardian.com/world/2018/jan/16/oliver-ivanovic-serb-politician-in-kosovo-shot-dead>.

105. *Id.* An indictment was filed against six individuals in December 2019 by the Special Prosecution Office of Kosovo. *See* U.N. Secretary-General, *Rep. of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, at 4, U.N. Doc S/2020/255 (Mar. 31, 2020). All individuals are of Serbian decent. *See* Perparim Isufi & Adelina Ahmeti, *Oliver Ivanovic Murder: Indictment Names Kosovo Serb ‘Crime Gang’*, *BALKAN INSIGHT* (Dec. 10, 2019), <https://balkaninsight.com/2019/12/10/oliver-ivanovic-murder-indictment-names-kosovo-serb-crime-gang/>.

106. MacDowall, *supra* note 104.

107. Barbara Surk & Richard Pérez-Peña, *Oliver Ivanovic, Moderate Kosovo Serb Leader, Is Killed*, *N.Y. TIMES* (Jan. 16, 2018), <https://www.nytimes.com/2018/01/16/world/europe/kosovo-serb-oliver-ivanovic-killed.html>.

108. *Id.*

109. *Kosovo Departs Senior Serbian Official for Illegal Entry*, *RADIOFREEEUROPE/RADIOLIBERTY’S BALKAN SERV.* (Mar. 26, 2018, 17:50 GMT, updated Mar. 26, 2018, 19:17 GMT), <https://www.rferl.org/a/kosovo-serbian-official-djuric-police-detain-illegal-entry/29125254.html>.

110. *Id.*

111. *Id.*

of transforming its security force into an armed force surely did not help the rising tensions between Kosovo and Serbia.<sup>112</sup> Months later, in December 2018, Kosovo's Parliament approved legislation that would transform the Kosovo Security Force into an armed professional military force.<sup>113</sup> Serbia, worried about the Serbian population in Kosovo, replied to the legislation by stating that it was prepared to use its own army to protect its people and that it would request an emergency meeting with the Security Council regarding the legality of such legislation.<sup>114</sup> Haradinaj replied by reassuring Serbia and Serbians living in Kosovo that it would not use the army against either.<sup>115</sup> With tensions at an all-time high, Kosovo's imposition of the 100 percent tariff on Serbian and Bosnian goods created a complete standstill on any and all talks between Kosovo and Serbia.<sup>116</sup>

#### *D. Kosovo's 100 Percent Tariff*

On November 6, 2018, Kosovo imposed a 10 percent tariff on products imported from Serbia and Bosnia and Herzegovina, exempting only international brands produced in the two countries.<sup>117</sup> Haradinaj justified imposing the tariff on Serbia by noting Serbia's hostility towards Kosovo in general and the further tension generated as a result of Kosovo creating an armed force, stating: "We also took such action today because of the fact that we have illegal obstructions, [and because of the] threats from Serbia against innocent citizens of Kosovo just because their sons and daughters join the Kosovo Security Force."<sup>118</sup> With regards to Bosnia and Herzegovina, Kosovo's Minister of Trade and Industry, Endrit Shala, further stated that Kosovo imposed the tariff on them for their failure to recognize Kosovo as an independent county and for preventing the

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112. UN General Report, *supra* note 98, at 1–2.

113. Barbara Surk, *Kosovo Parliament Votes to Create an Army, Defying Serbia and NATO*, N.Y. TIMES (Dec. 14, 2018), <https://www.nytimes.com/2018/12/14/world/europe/kosovo-army-serbia-nato.html>.

114. *Id.*

115. *Id.*

116. *Kosovo Hits Serbia with 100% Trade Tariffs amid Interpol Row*, *supra* note 18.

117. Vendim 01/74 [Decision 01/74], Qeveria e Republikës së Kosovës (Kos.). The exception to international brands was removed on December 28, 2019. See Vendim 06/82 [Decision 06/82], Qeveria e Republikës së Kosovës (Kos.).

118. Zivanovic, *supra* note 18.

import of products from Kosovo, likening Bosnia and Herzegovina to Serbia.<sup>119</sup>

On November 20, 2018, Kosovo's third bid to join Interpol was rejected when it failed to reach the two-thirds vote required for membership.<sup>120</sup> Following the failed bid, Kosovo issued a statement blaming the outcome on Serbia's campaign against Kosovo.<sup>121</sup> If Kosovo's bid would have been a successful one, Kosovo would then have been granted the right to request Interpol issue "red notices" for the arrest of Serbian war criminals in connection with the genocide that occurred in Kosovo.<sup>122</sup> Marko Duric applauded the failed bid, stating that if Kosovo was granted membership, it would have led to the harassment of Serbians.<sup>123</sup> As a result, on November 21, 2018, Kosovo increased the 10 percent tariff on Serbian and Bosnian and Herzegovinian imports to 100 percent.<sup>124</sup> In addition to the 100 percent tariff, numerous individuals from Kosovo's political party, Vetëvendosje, have urged Albanians to boycott Serbian products.<sup>125</sup>

At the time it imposed the 100 percent tariff, Kosovo was the largest importer of Serbian products.<sup>126</sup> As shown in Table 1 below, based on data that is determined solely on the month of February in a given year, Kosovo's imposition of the 100 per-

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119. *Id.*

120. Aya Batrawy & Dusan Stojanovic, *Kosovo's Bid to Join Interpol Fails, in Victory for Serbia*, ASSOCIATED PRESS (Nov. 20, 2018), <https://apnews.com/12c2b452f3d644dcabe63bad05040783>.

121. *Deklaratë e Qeverisë së Republikës së Kosovës*, ZYRA E KRYEMINISTRIT TË KOSOVËS, <http://kryeministri-ks.net/deklarate-e-qeverise-se-republikes-se-kosoves-34/> (last visited Nov. 17, 2019).

122. Batrawy, *supra* note 120. Red Notices are international alerts that are given to law enforcement worldwide and are issued for fugitives wanted in connection with a crime committed. *See View Red Notices*, INTERPOL, <https://www.interpol.int/en/How-we-work/Notices/View-Red-Notices> (last visited Apr. 23, 2020). As of April 23, 2020, there are 7,265 Red Notices in circulation around the globe, with twenty-eight being against individuals of Serbian nationality. *Id.* Of those twenty-eight open Red Notices, fifteen are against individuals charged with either crimes against humanity, war crimes, or genocide, all of which were requested by Bosnia and Herzegovina. *Id.*

123. Batrawy, *supra* note 120.

124. Vendim 01/76 [Decision 01/76], Qeveria e Republikës së Kosovës (Kos.). This decision also directed Kosovo Customs to prohibit the importation of products that are not labeled with Kosovo's official name. *Id.*

125. Zivanovic, *supra* note 18.

126. *Id.*

cent tariff had a great impact on the number of products imported from Serbia by decreasing the percentage of imports from 18.1 percent to 0.2 percent.<sup>127</sup>

**Table 1: Kosovo's Exports and Imports to and from CEFTA Countries**

Year	Kosovo's Exports to CEFTA countries	Kosovo's Exports to Serbia	Kosovo's Imports from CEFTA countries	Kosovo's Imports from Serbia
2017	~ 10.1 million Euros	7.8%	~ 60.5 million Euros	18.1%
2018	~ 9.7 million Euros	7.8%	~ 52.5 million Euros	14.7%
2019	~ 11.7 million Euros	7.2%	~ 33.2 million Euros	0.2%
2020	~ 18.1 million Euros	4.7%	~ 28.7 million Euros	0.2%

*Source: Author*

The amount of imports from countries that are a party to CEFTA between 2017 and 2020 decreased by a little over 30 million Euros, while Kosovo's exports to countries that are party to CEFTA during that same period increased by 8 million Euros. While Table 1 shows that Kosovo is no longer importing as much from Serbia, other countries—such as Slovenia, Bulgaria, Albania, and Macedonia—have benefited from the tariff imposition as the number of Kosovo's imports from these countries have drastically increased to compensate for the lack of imports from Serbia.<sup>128</sup> However, both Table 1 and Table 2 below show that Kosovo is gradually exporting more each year, implying an increase in domestic production. Matched with the gradual increase in exports, Kosovo has simultaneously increased the amount it imports as well.

127. 2017 figures are taken from *Kosovo International Trade Statistics February 2017*, KOS. AGENCY FOR STAT., <http://ask.rks-gov.net/en/kosovo-agency-of-statistics/add-news/international-trade-statistics-february-2017> (last visited Nov. 17, 2019) [hereinafter 2017 Trade Statistics]. 2018 figures are taken from *Kosovo International Trade Statistics February 2018*, KOS. AGENCY FOR STAT., <http://ask.rks-gov.net/en/kosovo-agency-of-statistics/add-news/international-trade-statistics-february-2018> (last visited Nov. 17, 2019) [hereinafter 2018 Trade Statistics]. 2019 figures are taken from *Kosovo International Trade Statistics February 2019*, KOS. AGENCY FOR STAT., <http://ask.rks-gov.net/en/kosovo-agency-of-statistics/add-news/international-trade-statistics-february-2019> (last visited Nov. 17, 2019) [hereinafter 2019 Trade Statistics]. 2020 figures are taken from *Kosovo International Trade Statistics February 2020*, KOS. AGENCY FOR STAT., <https://ask.rks-gov.net/media/5368/international-trade-statistics-february-2020.pdf> (last visited May 16, 2020) [hereinafter 2020 Trade Statistics].

128. 2019 Trade Statistics, *supra* note 127.

**Table 2: Total of Kosovo's Exports and Imports**

Year	Total of Kosovo's Exports	Total of Kosovo's Imports	Imports/Exports
2017	~ 23.6 million Euros	~ 197.8 million Euros	~8.4
2018	~ 22.3 million Euros	~ 205.2 million Euros	~9.2
2019	~ 24.0 million Euros	~ 232.7 million Euros	~9.7
2020	~ 35.9 million Euros	~ 263.4 million Euros	~7.3

Source: Author

Based on this information, it is unclear whether Kosovo has benefited from its own imposition of the tariff. In February 2019, three months after the imposition, Kosovo was importing 9.7 times more than it was exporting. Yet, in February 2020, Kosovo was only importing 7.3 times more than it was exporting—a 2.4 decrease. More information is needed as to whether Kosovo is benefiting from its imposition of the tariff on an economic level. Serbia, on the other hand, has been negatively impacted as a result of the tariff, with published estimates showing a loss of over one million euros daily.<sup>129</sup> Economists have estimated that Serbia's gross domestic product will decrease anywhere between 0.5 to 0.7 percentage points as a result of the tariffs.<sup>130</sup>

Haradinaj made it clear that Kosovo would not lift the 100 percent tariff until Serbia recognized Kosovo's sovereignty.<sup>131</sup> Haradinaj maintained this stance despite pressure from Kosovo's President, Hashim Thaçi, and the international community at large.<sup>132</sup> The EU warned Kosovo that it violated CEFTA

129. Stevan Rapaic & Sandra Davidovic, *Major Economic Issues in Relations Between Belgrade And Pristina*, 65 SERBIAN POL. THOUGHT, 451, 472–73 (2019), <http://www.ips.ac.rs/wp-content/uploads/2019/11/SPM-65-20.pdf>. On January 20, 2020, Serbia's Trade, Tourism and Telecommunications Minister stated that Serbia was losing 1.39 million euros per day. See *Serbia loses €1.39mn a day from Kosovo's 100% Import Tariffs*, BNE INELLINEWS (Jan. 20, 2020), <https://www.intellinews.com/serbia-loses-1-39mn-a-day-from-kosovo-s-100-import-tariffs-174897/>.

130. *Economist: Serbia to Suffer 0.7 Pct Points Fall in GDP Due to Import Tariffs*, N1 (Jan. 10, 2019), <http://rs.n1info.com/English/NEWS/a450932/Belgrade-may-lose-up-to-0.7-percentage-points-of-its-GDP-in-2019-due-to-Pristina-import-tariffs.html>.

131. Julija Simić, *Kosovo to Keep Tariffs Until Serbia Grants Recognition, Insists PM*, EURACTIV (Jan. 24, 2019), <https://www.euractiv.com/section/enlargement/news/kosovo-to-keep-tariffs-until-serbia-grants-recognition-insists-pm/>.

132. *Id.*

by imposing the tariff and declared that Kosovo must “immediately revoke these decisions.”<sup>133</sup> Similarly, officials from the United States, Kosovo’s strongest ally, issued a letter to Haradinaj urging him to remove the tariff.<sup>134</sup> Using their diplomatic ties as a negotiating tactic, the letter stated that their relationship would not be restored to the “previous robust level” until the tariff was removed.<sup>135</sup> Unphased, Haradinaj refused to remove the tariff.<sup>136</sup>

### III. KOSOVO AS A PARTY TO INTERNATIONAL AGREEMENTS

Serbia, the EU, and the international community have pointed to two international agreements that Kosovo allegedly violated when imposing the 100 percent tariff—the Stabilization Agreement and CEFTA. This section will review each agreement individually, looking at the intent of both documents and the roles and responsibilities each impose on Kosovo and the other respective parties. Based on that information, this Note will determine whether Kosovo violated either agreement and, if there was a violation, what the consequences for doing so would be. Since Kosovo joined CEFTA before it became a party to the Stabilization Agreement, and since its commitment to implement CEFTA is enumerated as one of its obligations in the Stabilization Agreement, this Note will review CEFTA first.

#### A. *Central Europe Free Trade Agreement*

As noted earlier, CEFTA is an international trade agreement entered into by non-EU countries for the purpose of establishing a free trade zone.<sup>137</sup> By creating a free trade zone, not only are obstacles to trade between other signatory parties reduced and in theory eliminated, but states also sign onto CEFTA with

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133. *Statement by High Representative/Vice-President Federica Mogherini on the Kosovo Government decision on taxing goods from Serbia and Bosnia and Herzegovina*, EUR. UNION (Nov. 21, 2018), [https://eeas.europa.eu/headquarters/headquarters-homepage/54242/statement-federica-mogherini-kosovo-government-decision-taxing-goods-serbia-and-bosnia-and\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/54242/statement-federica-mogherini-kosovo-government-decision-taxing-goods-serbia-and-bosnia-and_en).

134. Misha Savic, *U.S. Pressures Kosovo over Stalled Talks with Serbia*, BLOOMBERG (Feb. 13, 2019), <https://www.bloomberg.com/news/articles/2019-02-13/u-s-puts-pressure-on-kosovo-over-stalled-talks-with-serbia>.

135. *Id.*

136. *Id.*

137. CEFTA, *supra* note 23, at pmbl.

the idea of “strengthen[ing] the process of economic integration in Europe.”<sup>138</sup>

CEFTA was originally executed in 1992, implemented in 1994, and amended throughout the years since.<sup>139</sup> Its original signatories were Poland, Hungary, the Czech Republic, and the Slovak Republic—all present day EU member states.<sup>140</sup> In 2006, CEFTA was substantially amended into what later became known as CEFTA 2006.<sup>141</sup> Currently, the signatories to CEFTA are Kosovo, Serbia, Albania, Macedonia, Moldova, and Montenegro.<sup>142</sup> For the purpose of this discussion, and since CEFTA 2006 incorporates the original CEFTA into the amendment, this Note will continue referencing CEFTA 2006 as CEFTA.

In July 2007,<sup>143</sup> UNMIK, on behalf of Kosovo, became a party to CEFTA.<sup>144</sup> According to Article 1 of CEFTA, the parties to the agreement were to establish a free trade zone by December 31, 2010.<sup>145</sup> In order to accomplish the same, among other obligations enumerated to the parties, Article 8 of CEFTA eliminates all customs duties on imports, as well as any and all charges having a similar effect on all products except for those industrial products listed in a separate document designated as Annex 2.<sup>146</sup> With regards to products listed on Annex 2, Article 8 of CEFTA states that the custom duties and other equivalent charges on those products are to be “progressively reduced and abolished” in accordance with the schedules provided in Annex 2, but no later than December 31, 2008.<sup>147</sup>

Based on the foregoing provisions, Kosovo’s imposition of both the initial 10 percent tariff and the later 100 percent tariff on Serbia and Bosnia and Herzegovina clearly violated CEFTA. CEFTA, however, provides certain exceptions in which parties can waive their obligations under the agreement and prohibit and/or restrict imports and likewise impose custom duties

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138. *Id.*

139. *History of CEFTA*, CENTRAL EUROPEAN FREE TRADE AGREEMENT, <https://cefta.weebly.com/history.html> (last visited Nov. 18, 2019).

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. CEFTA, *supra* note 23, at pmb1.

145. *Id.* art. 3.

146. *Id.* art. 8.

147. *Id.*

and/or similar charges to imports.<sup>148</sup> Article 17 of CEFTA, for example, outlines the following general exceptions as justifications for prohibiting or restricting imports and exports: “public morality, public policy or public security, the protection of health and life of humans, animal or plants, the protection of national treasures possessing artistic, historic or archaeological value, protection of intellectual property or rules relating to gold or silver or the conservation of exhaustible natural resources.”<sup>149</sup> These restrictions, however, only apply if domestic production or consumption is similarly restricted and if they do not discriminate against the parties to the agreement.<sup>150</sup>

Out of these general exceptions, Kosovo could argue that its tariff imposition is justified on the notions of public security and the protection of health and human life. Article 17 of CEFTA, however, limits these exceptions only to situations where domestic production or consumption is similarly restricted.<sup>151</sup> As previously noted, it seems as if Kosovo’s domestic production is not being restricted, but in fact increasing.<sup>152</sup> Similarly, domestic consumption has not been restricted since the products are simply being imported from other countries and are still being consumed. In addition to the general exception afforded by Article 17 failing due to the domestic production or consumption not being similarly restricted, the tariff imposed on Serbia and Bosnia and Herzegovina is discriminatory on its face since it is only imposed on Serbia and Bosnia and Herzegovina and not on the other signatories of CEFTA.

While Kosovo is likely to fail if it relies on Article 17’s exceptions, it may prevail under the security exceptions outlined in Article 18. Article 18 of CEFTA outlines certain security exceptions that allow a party to take any measures it deems necessary, which would otherwise be contrary to CEFTA, if the measure is taken with the intention of protecting the party’s security interests.<sup>153</sup> These exceptions, however, are limited in

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148. *Id.* art. 17–18.

149. *Id.* art. 17.

150. *Id.*

151. *Id.*

152. See 2017 Trade Statistics, *supra* note 127; 2018 Trade Statistics, *supra* note 127; 2019 Trade Statistics, *supra* note 127; 2020 Trade Statistics, *supra* note 127. See also Table 2, *supra* Part II.D.

153. *Id.* art. 18.



scope.<sup>154</sup> The exception that Kosovo would likely rely on, found in Section 2.c. of Article 18, allows a country to take measures contrary to those permitted under CEFTA if they are taken during a “time of war or other serious international tension constituting threat of war.”<sup>155</sup>

On November 29, 2018, Haradinaj stated that imposition of the 100 percent tariff was a result of “continuing obstacles that Serbia is making to our country.”<sup>156</sup> On December 3, 2018, Haradinaj posted on his Facebook page that the 100 percent tariff was imposed as a means to protect Kosovo’s sovereignty and national security and such imposition is in compliance with CEFTA.<sup>157</sup> These statements alone, however, are not sufficient. Section 2.c. of Article 18 makes clear that in order to prevail on the claim that the 100 percent tariff functions as a means of protecting Kosovo’s security interest, Kosovo would need to show that the imposition was taken during war time or during a time when “other serious international tension constituting threat of war” occurred.<sup>158</sup> Clearly, the imposition did not occur during a time of war, thus leaving Kosovo to prove that Serbia’s actions constituted “serious tension creating the threat of war.”

Kosovo could rely on Serbia’s years of hostility and efforts to undermine Kosovo’s legitimacy as a sovereign nation. Additionally, Kosovo could specifically point to the events that occurred throughout 2017 and 2018 as outlined in this Note: Haradinaj’s arrest based on a Serbian warrant, the “Kosovo is Serbia” train en route to Kosovo, Ivanović’s assassination, Duric’s arrest, Kosovo’s transformation of its Security Force into an armed force and the backlash it received from Serbia,

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154. *Id.*

155. *Id.*

156. *Statement of the Government of Kosovo* (Nov. 29, 2018), <http://kryeministri-ks.net/en/statement-of-the-government-of-kosovo-6/>.

157. Ramush Haradinaj (@RamushHaradinajOfficial), FACEBOOK (Dec. 3, 2018), [https://www.facebook.com/RamushHaradinajOfficial/posts/990088074448940?\\_\\_xts\\_\\_%5b0%5d=68.ARC2kqLQwCWaiQiqG4FrghfJaZCvnYpzOIndHbd-P53joGL-2CzlfIMH75SpXHGl5XwjJirjNmF9c-sTT5zAeRAktzLifAurledLy999ktbJDsWauU0QQ7RB-gNjCgqkD0uFGZ4RgeT4sjIyp5siAYAl1Ng6c4Z12itJmh64aAVFU\\_us0aUhqSBFjX8-4fvcl6UC1gDbEANhSJIIlyECoM0PVAvMMIZ0lSAH1XVygxm\\_4KsYgoCRGp70TxkTvixjRxjAxgnBuVyLA5OHHzggV8PGfMKS7jNZDUGQmB0dFWSVHQYoIEASuekMG-Z6ncfD-qRSUGvC5DenZwvAf\\_j93DE&\\_\\_tn\\_\\_=-R](https://www.facebook.com/RamushHaradinajOfficial/posts/990088074448940?__xts__%5b0%5d=68.ARC2kqLQwCWaiQiqG4FrghfJaZCvnYpzOIndHbd-P53joGL-2CzlfIMH75SpXHGl5XwjJirjNmF9c-sTT5zAeRAktzLifAurledLy999ktbJDsWauU0QQ7RB-gNjCgqkD0uFGZ4RgeT4sjIyp5siAYAl1Ng6c4Z12itJmh64aAVFU_us0aUhqSBFjX8-4fvcl6UC1gDbEANhSJIIlyECoM0PVAvMMIZ0lSAH1XVygxm_4KsYgoCRGp70TxkTvixjRxjAxgnBuVyLA5OHHzggV8PGfMKS7jNZDUGQmB0dFWSVHQYoIEASuekMG-Z6ncfD-qRSUGvC5DenZwvAf_j93DE&__tn__=-R).

158. CEFTA, *supra* note 23, art. 18.

Serbia's campaigns to undermine Kosovo's efforts to join Interpol, and its campaigns to have Kosovo derecognized, among others. Even if these events were to constitute "serious international tension," whether they would also constitute a threat of war is up for debate.

While it would be difficult to prove that these events, particularly the campaign to deny Kosovo's bid to join Interpol, constituted a threat of war, if Kosovo had waited just a few weeks, its argument in justifying a violation of CEFTA due to its security interests may have prevailed, assuming, once again, the events constituted "serious international tension." When Kosovo was discussing transforming its Security Force into an armed professional military force, Serbia vocalized their disapproval of the same.<sup>159</sup> Once the transformation was underway, Serbia's prime minister, Ana Brnabić, responded with a threat of war by stating "I hope that we will never have to use our army, but at the moment it is one of the options on the table, because we cannot watch a new ethnic cleansing [of Serbs] and new Storms."<sup>160</sup> This statement was made on December 5, 2018, one month after the initial 10 percent tariff imposition and approximately two weeks after the 100 percent tariff imposition.<sup>161</sup> This declaration could be argued to justify Kosovo waiving its obligations under CEFTA and imposing the 100 percent tariff had it been imposed after the declaration.

What may become an even greater hurdle for Kosovo to overcome is the process by which disputes between parties to CEFTA are resolved. According to Article 42 of CEFTA, the parties in a dispute must first attempt to resolve the issue by cooperating and consulting with one another.<sup>162</sup> If the issue remains unsolved, then the issue gets submitted to the Joint Committee for consultation, which is a group of individuals that represent the signatories to CEFTA,<sup>163</sup> including a third-party mediator if the same is requested and agreed upon for

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159. U.N. Secretary-General, *Rep. of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, at 3, U.N. Doc S/2018/407 (May 1, 2018).

160. Andrew Rettman, *Serbia Threatens to Invade Kosovo, Stirring Bad Memories*, EU OBSERVER (Dec. 6, 2018), <https://euobserver.com/foreign/143620>.

161. *Id.*

162. CEFTA, *supra* note 23, art. 42.

163. *Id.* art. 40.

consultation.<sup>164</sup> If the dispute has yet to be settled after ninety days from the date of the receipt of the request for consultations, it may be referred to arbitration by any party.<sup>165</sup>

On November 28, 2018, Brnabić, on behalf of Serbia, sent a request for Joint Committee consultations.<sup>166</sup> That consultation, however, did not produce a positive result as the representatives of Kosovo and Albania walked out following a “contested statement” from the Serbian representative.<sup>167</sup> Ninety calendar days from November 28, 2018 was February 26, 2019. As of the date of this Note, Serbia has not requested that this dispute be referred to arbitration.

If Serbia were to submit a request for the dispute to be referred to arbitration, then pursuant to Article 43 of CEFTA, the Arbitral Tribunal would hear the issue and settle the dispute in accordance with CEFTA and international law requirements.<sup>168</sup> Article 43 of CEFTA states that the Arbitral Tribunal is to be governed by Annex 9 of CEFTA.<sup>169</sup> Accordingly, Annex 9 states that the Arbitral Tribunal is comprised of three members: two of which are chosen directly by the parties in dispute—one by each party—and the third member being one that the two parties jointly elect, who is not from nor resides in either state in the dispute, and is appointed as the President of the Arbitral Tribunal.<sup>170</sup> If the three members are not desig-

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164. *Id.* art. 42.

165. *Id.* art. 43.

166. *Serbia Submits Request to CEFTA Over Pristina's Measures*, B92 (Nov. 28, 2018), [https://www.b92.net/eng/news/politics.php?yyyy=2018&mm=11&dd=28&nav\\_id=105623](https://www.b92.net/eng/news/politics.php?yyyy=2018&mm=11&dd=28&nav_id=105623).

167. U.N. Secretary-General, *Rep. of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, at 2, U.N. Doc S/2019/102 (Feb. 1, 2019). There are numerous news articles as to what the “contested statement” was. Some report that it was due to Serbian and Bosnian delegations referring to Kosovo as Kosovo and Metohija (a name used to refer to Kosovo in the Serbian Constitution) instead of the Republic of Kosovo. See *Kosovo, Albania Delegations Quit CEFTA Committee Meeting*, N1 (Dec. 6, 2018), <http://rs.n1info.com/English/NEWS/a441878/Kosovo-Albania-delegations-quit-CEFTA-committee-meeting.html>. Other news articles state that in addition to Serbian delegates insisting that UNMIK chair the meeting, they referred to Kosovo institutions as “provisional” and “UNMIK.” See *CEFTA Meeting Cut Short After Serbia Referred to Kosovo as UNMIK*, RTK (Dec. 7, 2018), <https://www.rtklive.com/en/news-single.php?ID=12947>.

168. CEFTA, *supra* note 23, art. 43.

169. *Id.*

170. *Id.* annex 9.

nated by a certain date, then either party in the dispute may request the Secretary-General of the Permanent Court of Arbitration at the Hague to designate a member.<sup>171</sup> Within six months from the date the President of the Arbitral Tribunal is appointed, the Arbitral Tribunal must issue a decision on the dispute.<sup>172</sup>

The issue for Kosovo in the process of resolving disputes between parties to CEFTA is that Kosovo itself is not a party to CEFTA, UNMIK is. Accordingly, throughout this process, UNMIK would be the party that receives notices from Serbia regarding the dispute, the party that Serbia negotiates with, and the party able to delegate a member to the Arbitral Tribunal—not Kosovo. Although UNMIK is required to act in a neutral manner,<sup>173</sup> pursuant to CEFTA, Serbia and UNMIK could potentially come to a resolution without ever consulting Kosovo in the matter. With the Special Representative of the Secretary-General and Head of UNMIK, Zahir Tanin, previously expressing concerns about Kosovo's imposition of the 100 percent tariff,<sup>174</sup> Kosovo may be apprehensive about the extent of its involvement if Serbia submits a request for the dispute to be referred to arbitration.

### *B. Stabilization Agreement*

The EU's approach to entering into stabilization and association agreements with countries that seek to become members of the EU is part of the EU's Stabilization and Association Process.<sup>175</sup> Kosovo's process of integrating into the EU happens to differ from countries within Central Europe that, upon signing certain agreements, are able to join the EU.<sup>176</sup> Due to the Balkan region being traditionally an area of turmoil and political instability, countries in Southeast Europe have to go through

171. *Id.*

172. *Id.*

173. *Mandate*, U.N. MISSION IN KOSOVO, <https://unmik.unmissions.org/mandate> (last visited May 12, 2020).

174. *SRSR Tanin Expresses Concern Over Announced Duty on Goods*, U.N. MISSION IN KOSOVO (Nov. 21, 2018), <https://unmik.unmissions.org/srsg-tanin-expresses-concern-over-announced-duty-goods>.

175. Christian Pippan, *The Rocky Road to Europe: The EU's Stabilization and Association Process for the Western Balkans and the Principle of Conditionality*, (2004) 9 EUR. FOREIGN AFFAIRS REV. 219, 219 (2004).

176. Afrim Hoti & Dren Gërguri, *The Copenhagen Political Criteria for Joining the EU: The Case of Kosovo*, 54 TEORIJA IN PRAKSA, 1008, 1011 (2017).

an additional step of showing stability before they are allowed to join the EU.<sup>177</sup>

On October 27, 2015, Kosovo signed off on the Stabilization Agreement, which took effect on April 1, 2016.<sup>178</sup> As previously mentioned, the Stabilization Agreement outlines the mutual rights and obligations between Kosovo and the EU in hopes of Kosovo's integration into the EU.<sup>179</sup> In determining whether Kosovo violated the Stabilization Agreement when it imposed the tariffs, Article 16 states that "Kosovo shall continue to implement the Central European Free Trade Agreement."<sup>180</sup> On its face, Kosovo clearly violated the Stabilization Agreement by contravening CEFTA. However, as previously noted, if Kosovo can show that its obligations under CEFTA were waived due to its security interests, then that exception would in theory carry over to the Stabilization Agreement.

On a broader scale, the Stabilization Agreement reinforces Kosovo's obligation to engage in normalized relations with Serbia.<sup>181</sup> Article 5, for example, states that Kosovo is to continue working "towards a visible and sustainable improvement in relations with Serbia . . . [which] shall underpin the development of relations and cooperation between the Parties."<sup>182</sup> One of the remedies afforded to the EU if Kosovo breaches its covenant under Article 5 is the suspension of the Stabilization Agreement.<sup>183</sup> This general requirement appears again in Article 13 where Kosovo covenants to resolve outstanding issues with Serbia through dialogue "on the basis of practical and sustainable solutions and cooperate on the necessary technical and legal matters."<sup>184</sup> As a means of ensuring that the same is being done, Article 13 states that the Stabilization and Association Council, as described in further detail below, shall review Kosovo's progress and can deliver recommendations and decisions based on its findings.<sup>185</sup>

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177. *Id.*

178. *Id.* at 1012.

179. SAA, *supra* note 12.

180. *Id.* art. 6.

181. *Id.* art. 5

182. *Id.*

183. *Id.*

184. *Id.* art. 13.

185. *Id.*

Pursuant to Article 137 of the Stabilization Agreement, disputes between the parties are to first be submitted to the Stabilization and Association Council,<sup>186</sup> which, according to Article 127, consists of representatives of both parties.<sup>187</sup> Besides a statement made by Federica Mogherini, European Union High Representative for Foreign Affairs and Security Policy and Vice-President of the European Commission, positing that the tariffs were contrary to the “spirit of the Stabilization and Association Agreement” according to the UN Secretary-General reports issued three times a year, there is no indication that Kosovo’s imposition of the tariff has been brought to the Stabilization and Association Council, nor is there any indication that the EU is suspending the Stabilization Agreement in the near future.<sup>188</sup> Kosovo, however, should be aware that even if it were to prevail on the argument that security interests warrant an exception to its obligations under CEFTA, it is still required to engage in discussions to normalize its relationship with Serbia.

#### IV. KOSOVO’S NEXT STEPS

On July 19, 2019, former Prime Minister Ramush Haradinaj unexpectedly resigned after announcing that he was summoned for questioning to the Kosovo Specialist Chambers.<sup>189</sup> As a result, the Kosovo Assembly voted to dissolve itself, triggering snap elections.<sup>190</sup> On October 6, 2019, Vetëvendosje claimed victory by winning twenty-nine seats in the assembly,<sup>191</sup> and on

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186. *Id.* art. 137.

187. *Id.* art. 127.

188. U.N. Secretary-General, *supra* note 105.

189. Associated Press, *Kosovo Leader Resigns After Being Called to War Crimes Court*, N.Y. TIMES (July 19, 2019), <https://www.nytimes.com/2019/07/19/world/europe/kosovo-leader-resigns-after-being-called-to-war-crimes-court.html>.

190. Misha Savic, *Kosovo Parliament Dissolves Itself, Opening Way to Snap Election*, BLOOMBERG (Aug. 22, 2019), <https://www.bloomberg.com/news/articles/2019-08-22/kosovo-assembly-dissolves-itself-opening-way-to-snap-ballot>.

191. *Parliamentary Election Results Set to be Certified*, PRISHTINA INSIGHT (Nov. 27, 2019), <https://prishtinainsight.com/parliamentary-election-results-set-to-be-certified/>.

January 20, 2020, President Hashim Thaçi nominated Albin Kurti as Kosovo's next prime minister.<sup>192</sup>

On February 27, 2020, Kurti announced that he would seek to incrementally withdraw the 100 percent tariff, but he would only completely abolish the tariff "once Serbia 'proves it has stopped the campaign [against Kosovo's recognition]."<sup>193</sup> This announcement yielded mixed reactions from the international community, with the EU welcoming the news by stating that "this step could have a positive effect on restoring regional trade and offer an opening for the resumption of the Dialogue between Belgrade and Pristina."<sup>194</sup> Conversely, the United States did not support the announcement, calling it a "half measure" and a "serious mistake."<sup>195</sup> Days after this announcement, Donald Trump Jr., in retweeting United States Senator David Perdue's tweet about the need for Kosovo to abolish the tariff, stated: "Agree. There are 650 US troops in Kosovo. Time to get them home."<sup>196</sup>

Sticking to the plan, on March 31, 2020, Kurti announced that the 100 percent tariff would be temporarily lifted on raw materials imported from Serbia commencing as of April 1, 2020 and terminating on June 15, 2020.<sup>197</sup> During this time, reci-

192. *Kosovo President Nominates Albin Kurti as Prime Minister*, ASSOCIATED PRESS (Jan. 20, 2020), <https://apnews.com/df8849387983d55178427153e17d3b13>.

193. Xhorxhina Bami, *Kosovo PM Offers to 'Partially' Lift Serbian Import Tariff*, BALKAN INSIGHT (Feb. 27, 2020), <https://balkaninsight.com/2020/02/27/kosovo-pm-offers-to-partially-lift-serbian-import-tariff/>.

194. *Kosovo: Statement by the Spokesperson on the Announcement to Lift Import Tariffs*, EUR. UNION (Feb. 28, 2020), [https://eeas.europa.eu/headquarters/headquarters-homepage\\_en/75286/Kosovo:%20Statement%20by%20the%20Spokesperson%20on%20the%20announcement%20to%20lift%20import%20tariffs](https://eeas.europa.eu/headquarters/headquarters-homepage_en/75286/Kosovo:%20Statement%20by%20the%20Spokesperson%20on%20the%20announcement%20to%20lift%20import%20tariffs).

195. @RichardGrenell, TWITTER (Feb. 27, 2020, 5:27 PM), <https://twitter.com/RichardGrenell/status/1233156712720424960>. Richard Grenell was appointed by President Trump as the Special Presidential Envoy for Serbia and Kosovo Peace Negotiations on March 3, 2019. *See President Donald J. Trump Announces Intent to Appoint Individual to a Key Administration Post*, WHITE HOUSE (Oct. 3, 2019), <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-intent-appoint-individual-key-administration-post-6/>.

196. @DonaldJTrumpJr, TWITTER (Mar. 10, 2020, 8:54 AM), <https://twitter.com/DonaldJTrumpJr/status/1237361127513784322>.

197. Kryeministri në Detyrë, Kurti: Po e Fillojmë Zbatimin Gradual të Reciprocitetit si Zëvendësim për Tarifën, ZYRA E KRYEMINISTRIT TË KOSOVËS, <https://kryeministri-ks.net/kryeministri-ne-detyre-kurti-po-e-fillojme->

procuity measures shall be taken such that goods imported from Serbia will need documentation that “comply with the constitution of the Republic of Kosovo and the applicable legislation.”<sup>198</sup> Then, on June 15, 2020, Kosovo would assess the progress made by both countries, with monthly reviews until then.<sup>199</sup> In the same press conference, Kurti announced that the 100 percent tariff was completely abolished as against Bosnia and Herzegovina, since “Bosnia and Herzegovina suffers from Serbia [too]. Serbia fights against us from outside, whereas it fights Bosnia and Herzegovina from inside.”<sup>200</sup> This decision was met once again with discontentment from the United States, with the US Embassy in Kosovo stating that Kosovo should have abolished all tariffs and that the US is opposed to the reciprocal measures taken by Kosovo.<sup>201</sup>

Days before Kurti announced the temporary lift on the 100 percent tariff, Kosovo’s government “collapsed” when its Assembly passed a motion of no confidence, plunging Kosovo into constitutional chaos.<sup>202</sup> The motion to dismiss the Vetëvendosje-LDK coalition government was sparked, in part, by tensions regarding the best practices to tackle the COVID-19 outbreak.<sup>203</sup> Kurti, in implementing restrictions on the movements of Kosovo’s citizens, declined to declare a state of emergency—a move that would transfer significant power to Thaçi.<sup>204</sup> Before Kurti entered into office, Thaçi and Serbian President Vučić entertained the idea of swapping land between the two countries, a proposal that was met with much discontentment from Kosovo’s citizens but with support from the Trump administra-

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zbatimin-gradual-te-reciprocitetit-si-zevendesim-per-tarifen/ (last visited Apr. 25, 2020) (translation by author).

198. *Id.* (translation by author).

199. *Id.* (translation by author).

200. *Id.* (translation by author). Kurti further stated that even though the two countries do not recognize one another as sovereign states, he hopes that by abolishing the tariff against them, the visa regime between Kosovo and Bosnia and Herzegovina would be abolished as well. *Id.* (translation by author).

201. *Statement from the U.S. Embassy on the Tariffs*, U.S. EMBASSY IN KOSOVO (Apr. 1, 2020), <https://xk.usembassy.gov/april01st/>.

202. Patrick Kingsley, *Coronavirus Helps Bring Down Kosovo’s Government, With Nudge From U.S.*, N.Y. TIMES (Mar. 25, 2020), <https://www.nytimes.com/2020/03/25/world/europe/kosovo-serbia-coronavirus.html>.

203. *Id.*

204. *Id.*



tion.<sup>205</sup> In responding to the vote of no confidence, Kurti accused Special Presidential Envoy Grenell of playing a role in the government's collapse: "My government wasn't overthrown for anything else but simply because Ambassador Grenell is in a rush to sign a deal with Serbia which I strongly believe is harmful since it includes territorial exchange."<sup>206</sup>

Pursuant to Article 100 of Kosovo's Constitution, if a motion of no confidence is passed in the Assembly, then the government is considered dismissed.<sup>207</sup> Further, pursuant to Article 82 of Kosovo's Constitution, Kosovo's president may dissolve the assembly following a passage of a no confidence vote.<sup>208</sup> Accordingly, under Article 66, if the Assembly is dissolved, then regular elections are to be held within forty-five days of the dissolution.<sup>209</sup> What remains ambiguous in Kosovo's Constitution is what occurs when a government is considered dismissed but not dissolved. Thaçi has since requested Kurti propose a candidate to be mandated as the new Prime Minister.<sup>210</sup> Kurti, however, insists that new elections for the Assembly are required.<sup>211</sup>

Even with the vote of no confidence having the potential to cause constitutional chaos and the formation of a new government, Kosovo will surely monitor closely Serbia's reaction to the reciprocity guidelines set by Kurti when temporarily lifting the 100 percent tariff. Regardless of who the new Prime Minister will be, the reasoning behind the initial imposition and the subsequent temporary lifting of the tax must be taken into consideration when determining Kosovo's next steps with regards to the tariff.

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205. Marc Santora, *Talk of Ethnic Partition of Kosovo Revives Old Balkan Ghosts*, N.Y. TIMES (Sept. 19, 2018), <https://www.nytimes.com/2018/09/19/world/europe/kosovo-partition-aleksandar-vucic.html>.

206. Llazar Semini, *Kosovo PM accuses US envoy involved in his govt' overthrown*, ABC NEWS (Apr. 20, 2020, 1:41 PM), <https://abcnews.go.com/International/wireStory/kosovo-pm-accuses-us-envoy-involved-govt-overthrown-70246041>.

207. KUSHTETUTA E REPUBLIKËS SË KOSOVËS, *supra* note 1, art. 100.

208. *Id.* art. 82.

209. *Id.* art. 66.

210. *Thaçi Sends Third Letter to Kurti, Asks for the Name of PM Candidate*, RTK (Apr. 15, 2020), <https://www.rtklive.com/en/news-single.php?ID=16454>.

211. Perparim Isufi, *Kosovo Leaders Tussle Over Plan to Form New Govt*, BALKAN INSIGHT (Apr. 20, 2020), <https://balkaninsight.com/2020/04/20/kosovo-leaders-tussle-over-plan-to-form-new-govt/>.

While it may appease Serbia and the international community, rescinding the tariff without receiving anything in return would make this year-and-a-half-long battle worthless for Kosovo. While the EU and the United States would support such an action, Kosovo needs to weigh its options and balance the potential consequences of being found in violation of its international obligations. If Kosovo were to abolish the tariff altogether, it may be able to move forward in negotiations with Serbia in normalizing the relations between the two, eventually leading to possible EU integration. Kosovo, however, must determine whether normalizing relations with aid from the EU and the Trump Administration is its best option, with the obvious knowledge that land swapping is an idea supported by the Trump Administration.

If Kosovo continues to implement the reciprocity decision, on the other hand, then not only may it be found in violation of international agreements, but it may continue straining its relationship with Serbia and the international community. Similar outcomes will likely result if Kosovo rescinds its reciprocity decision and reverts to maintaining the tariff. If Kosovo chooses either of these last two options, then in addition to taking into consideration the above mentioned consequences, Kosovo must review the implications the reciprocity decision and/or the maintenance of the tariff have on its economy and citizens, particularly because upholding the tariffs seems to be detrimental in the long run unless Kosovo can increase its domestic production. Moreover, if Kosovo can maintain the reciprocity decision, it may decide that it is in its best interest to wait until a new United States president is sworn into office and a new administration is established—one that may be more sympathetic to the desires of Kosovo's citizens than the one that currently exists.

## CONCLUSION

Kosovo and Serbia share a gruesome and tumultuous past, which continues to bleed into present-day interactions. Numerous international actors have attempted to ease the tension between the two countries but have consistently failed. Kosovo's imposition of the 100 percent tariff on the import of Serbian and Bosnian goods only exacerbated these conflicts.

In reviewing whether the tariff violated international agreements that Kosovo, directly or indirectly, is a part of, this Note

found that the imposition could arguably violate CEFTA. It follows that a violation under CEFTA would simultaneously contravene the Stabilization Agreement. Not only may Kosovo be found in violation of both international agreements, but it could potentially be left in the dark all together if certain arbitral proceedings occur. The same would be detrimental to Kosovo and potentially cause further tensions between Kosovo and Serbia.

With a potentially unstable government,<sup>212</sup> Kosovo faces extremely challenging hurdles ahead when determining its next steps regarding the 100 percent tariff. Whether it decides to maintain or abolish the same, or maintain its reciprocity decision, Kosovo will invariably disappoint the international community. That, however, should not dissuade Kosovo from rendering a decision that best supports its economy and citizens.

*Ernira Mehmetaj\**

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212. Due to publication deadlines of this Note and the ever-evolving nature of the topic addressed herein, this Note covered events up until April 30, 2020. With the situation of Kosovo's government continuously changing, the author advises readers who are interested in learning about the evolution of the 100 percent tariff to follow the news and read decisions published by the Constitutional Court of Kosovo for updates.

\* B.A., Hunter College (2016); J.D., Brooklyn Law School (Expected 2021); Managing Editor, *Brooklyn Journal of International Law* (2020-2021). This Note is dedicated to my mother and father, Gal and Kapllan Mehmetaj, two immigrants from Kosovë who left everything they knew and loved so that my brothers and I could become everything they envisioned for themselves and so much more—thank you for making a home out of foreign lands. Likewise, I am deeply grateful to the *Journal* staff for all their work in the publication of my Note, as well as my family and friends who read countless drafts and provided invaluable feedback along the way. Additionally, I give my angels, Mergimtare and Liridona Bojkaj, my deepest appreciation for continuously wrapping their loving wings around me for the past several years. Finally, to all the readers of this Note, I would like to say that I tried to remain neutral and objective throughout the writing process. Although my relationship to Kosovë and the Albanian community does not necessarily constitute a conflict of interest, the integrity of this Note requires disclosure of the possibility of such potentially distorting influences. All errors or omissions are my own.