

**INTELLECTUAL PROPERTY TREATY OBLIGATIONS IN KOSOVO
AFTER THE PURPORTED SECESSION
WHO IS RESPONSIBLE FOR GUARANTEEING THE INTELLECTUAL
PROPERTY RIGHTS IN KOSOVO?**

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INTRODUCTION

State succession, a phenomenon not practiced often in the former times; however frequently occurring now has become increasingly important in international law as a consequence of affecting the States and legal relationships between them in the international arena. Approximately, fifty states were in existence in the beginning of the twentieth century and by the Second World War this number considerably changed to seventy-five.¹ Currently, there are 192 states in the United Nations which demonstrates the extensive amount of states that have emerged over the past fifty years. As a result, the character of international law and its practice were influenced and this modern phenomenon of State succession has given rise to complex legal problems. State succession in respect to treaties is both important and complex. The question of whether the successor state undertakes the international rights and obligations of the predecessor State, and if so to what extent, is a highly debatable topic regarding the international law.

In this thesis, I will deal with the case of Kosovo regarding its international rights and treaty obligations after the purported secession. Moreover, the focus and analysis will be on the international rights and obligations regarding the Intellectual Property Rights (IPR). On the 17th of February 2008, Kosovo declared independence, seceding from Serbia. As such, Kosovo is currently recognized by sixty-nine states.² Previously, Kosovo was an autonomous region, within the Republic of Serbia, with a total population of nearly two million inhabitants of whom 90% were ethnic Albanians.³ Its substantial autonomy was terminated by the Serbian Government in

¹ James Crawford, *The Creation of States in International Law*. Second ed.: Oxford University Press, 2006. p.4-5

² Affairs, Ministry of Foreign, "Countries That Have Recognized the Republic of Kosova" <http://www.mfa-ks.net/?page=2,33> (accessed 31.05.2010).

³ James Crawford, *The Creation of States in International Law*. Second ed.: Oxford University Press, 2006. p.100-101

1990, and there has been a considerable measure of repression. More than one-sixth of the population fled abroad as refugees during the whole course of oppression.

International law scholars such as Menon, Vagts, and Schachter have identified two principles regarding the State succession and their rights and obligations, namely the clean slate principle and the continuity principle. The clean slate principle holds that States should not be bound by the treaty obligations of the predecessor State which is applicable to the States that have emerged from the process of decolonization. Whereas, the continuity principle embraces that the successor State accepts the obligations of the predecessor State, meaning that the new State still remains a party to the treaties of the successor State.

The thesis will analyze the situation in Kosovo concerning the IPR in order to identify the gaps and further provide recommendations for future actions based on the study of the existing regulatory, legal, and institutional framework which at the same time will be compared to the standards of the international organizations such as the World Trade Organization (WTO). It also investigates the situation regarding Kosovo's membership in WTO based on data provided from Kosovar officials and documents.

The thesis will examine to what extent a State claiming to be the successor State undertakes the obligations of a predecessor State. Who is responsible for dealing with cases of intellectual property rights and whether states can establish Kosovo's responsibility for the protection of intellectual property without recognizing it.

This study is structured as follows. In the first section, the theoretical framework will be outlined which shows the relationship between the IPRs and the economic growth. Secondly, State succession in respect to treaties will be investigated considering Kosovo and its international rights and obligations regarding the matter. Thirdly, a brief introduction of the

WTO and WIPO will be provided and the accession process including the requirements. The last section covers the empirical part of this study providing relevant facts on the situation of IPR in Kosovo, the importance of strong IPR regime, and its progress towards the membership in WTO. Finally, the study will answer the questions based on the legal documents analysis and facts and data collected from different officials in Kosovo.

The methodology used in the thesis contains the qualitative research paradigm of text analysis. Since the legal documents are subject of interpretation, therefore the analysis made by the writer interprets the objective truth. I will use and analyze legal documents and compare them to international conventions in order to find out where Kosovo stands regarding the protection of intellectual rights. This will be done aiming to answer the research question and conclude on Kosovo's present status in international law. Answering the question could contribute to a better understanding of the international law.

CHAPTER 1: THEORETICAL FRAMEWORK OF THE RELATIONSHIP BETWEEN THE IPRs AND ECONOMIC GROWTH

Intellectual property rights are playing a major role international trade, investment and especially in economic relations.⁴ A high interest in the link between protection of intellectual property rights and economic growth has stimulated extensive academic research in order to find out the impact of a strong IP regime in the economic development of a nation. The negotiation and implementation of the TRIPs Agreement by the WTO members have set minimum standards for the protection of IPR.⁵ Scholars concerned with this topic have questioned the impact of stronger intellectual property rights protection on growth in developing countries.⁶ The impact of stronger IPR protection on economic growth in developing countries will be examined in this section.

Falvey et al. demonstrate that the relationship between IPR protection and growth depends on the level of the development of the countries where in the low and high-income countries the strong IP regime consequently leads to economic growth whereas in the middle-income countries the relationship between the two is ambiguous.⁷ The reason why this occurs is that IPR protection encourages innovation in high-income countries, and technology flows to low-income countries.

⁴ Alikhan, Shahid, "The Role of Copyright in the Cultural and Economic Development of Developing Countries." *Journal of Intellectual Property Rights* 7 (2002): 489-505.

⁵ Organization, World Trade, "The Wto Agreements"

http://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr03_e.htm (accessed 31 May 2010).

⁶ Falvey Rod, Foster Neil, and Greenaway David, "Intellectual Property Rights and Economic Growth." *Review of Development Economics* 10, no. 4 (2006): 700-719.

⁷ *Ibid*, p.701

Falvey et al. also believe that the rate of economic growth is dependent on the rate of innovation.⁸ However, stronger IP regime does not lead to higher innovation and growth and providing innovators excessive protection will likely result in the decrease of new ideas and leading to monopoly.⁹ This phenomenon of monopolistic power can easily be witnessed by the huge corporations such as Microsoft in the global market.¹⁰ According to Kaushik, Microsoft has become a single and dominant player in its area of expertise. Kaushik agrees with Falvey et al. where he provides that such corporations keep out competition from the market as an effect of exclusive rights over an individuals or entities creation.

Both, R&D and innovation are more practiced in the developed countries whereas the developing countries perform less in regard to this and are mostly concentrated on imitation.¹¹ Imitation can be a useful and vital source of technological development in the developing countries. The strong protection of the intellectual property rights can easily destroy the economies of the developing states where pirated technologies were broadly used previously. Consequently, this would lead to a shift of profits to the companies in a foreign country and discourage the domestic firms for innovation activities. However, the authors admit that this case should not be overemphasized because the stronger protection and enforcement of IPRs would reward creativity and innovation and consequently reduce the firms which exhibit counterfeiting and imitation, providing a safe environment for foreign direct investment (FDI) and reducing the inefficient imitation companies.

⁸ Ibid, p.701

⁹ Ibid, p.701

¹⁰ Kaushik Laik, "Role of Intellectual Property in Economic Growth." *Journal of Intellectual Property Rights* 10 (2005): 465-473.

¹¹ Falvey Rod, Foster Neil, and Greenaway David. "Intellectual Property Rights and Economic Growth." *Review of Development Economics* 10, no. 4 (2006): 700-719.

Maskus states that international IP exploitation with minimum standards set from international organizations is vital for trade, foreign direct investment (FDI) and technology licensing across borders.¹² The conclusion of the Agreement on Trade-Related Intellectual Property Rights (TRIPS) is a foundation of the World Trade Organization and at the same time a great achievement. Moreover, the author also suggests that stronger intellectual property rights expand trade by showing evidence from his study which shows that strengthening of a country's IPRs would show a significantly positive increase in trade. Maskus also indicates that this phenomenon is more visible in large developing economies with significant imitative capabilities, than in small developing countries with low incomes. Finally, there is support from facts that intellectual property rights do affect trade flows and that TRIPS could have a positive impact even for low-income countries.

Falvey et al. argue that intellectual property rights protection has an effect on trade.¹³ They have observed that individual countries can acquire improved technologies through a variety of channels such as domestic innovation, imitation and piracy, trade, FDI, licensing, etc. Lastly their results indicated that there clearly is a positive and significant relationship between IPR protection and economic growth in low income countries which does not result from the encouragement of domestic R&D and innovation. They argue that stronger intellectual property rights protection encourages imports and foreign direct investment (FDI) from the developed countries without affecting negatively a domestic industry that relies on imitation. Therefore, countries with weaker IPR protection tend to decrease the chance for FDI in the low income countries.

¹² Keith E. Maskus, "The International Regulation of Intellectual Property." *Weltwirtschaftliches Archiv* 134, no. 2 (1998): 186-208

¹³ Rod Falvey, Neil Foster, and David Greenaway, "Intellectual Property Rights and Economic Growth." *Review of Development Economics* 10, no. 4 (2006): 700-719.

Maskus has a different opinion on foreign direct investment compared to Falvey et al. Maskus maintains that foreign direct investment as a result of strong protection of intellectual property rights is ambiguous. Stronger patents, trademarks, and trade secrets should expand the profitability of FDI with expanded market as imitators are discouraged. There is evidence that IPRs have different effects on foreign direct investment regarding the variability of sectors. For example, investors with products that are difficult to copy pay little attention to the protection of IPRs whereas other firms with relatively easy imitating products or technology like software are more concerned with the protection of intellectual property rights.

All in all, the theory of the link between the strong IPR regime and economic growth provides the importance of the role of IPR protection which results in economic growth, however, the theory also suggests that this role is different among the high-income, middle-income and low-income countries.¹⁴ In the high-income and low-income countries stronger IPR protection tend to play a positive role in the increase of the wealth of the nations. It is no surprise that the countries with a higher per capita income are likely to grow rapidly as a reason for the stronger IPR regime because these countries invest high assets in R&D and the innovation is highly protected. As a result, the technology flows in the low-income countries with strong IPR protection which leads to economic growth in the low-income countries.

In the other hand, the importance of the role of IPR and the significant relationship between IPR protection and economic growth need not come as a consequence of the encouragement of domestic R&D and innovation. However, according to Falvey et al. “the explanation for the significant relationship between IPR and growth in low-income countries lies in the strong IPR protection which encourages imports and inward Foreign Direct Investment.”

¹⁴ Rod Falvey, Neil Foster, and David Greenaway, "Intellectual Property Rights and Economic Growth." *Review of Development Economics* 10, no. 4 (2006): 700-719.

The economic benefits from IP protection become visible from the strict enforcement of IP system by the courts and different enforcement agencies which are a vital element for the economic growth of nations.¹⁵ Therefore, it is crucial for governments to build up institutions and mechanisms for effective enforcement of strong IPR and undoubtedly this will lead to socio-economic benefits for a nation. Finally, developing countries such as the Republic of Kosovo who expressed the will to join WTO should benefit from the IP protection in the territory leading to economic growth as the theory suggests.

¹⁵ Shahid Alikhan, "The Role of Copyright in the Cultural and Economic Development of Developing Countries." *Journal of Intellectual Property Rights* 7 (2002): 489-505.

CHAPTER 2: STATE SUCCESSION IN RESPECT TO TREATIES

“Realization of statehood and the practice of the right to self-determination have grown rapidly particularly after the Second World War and the establishment of the United Nations. The modern phenomenon of decolonization and secession created a great number of different independent sovereign States in former dependent regions leading to massive change in the status quo which has given rise to complex legal problems.”¹⁶ The law of succession which determines the parallel rights and duties of States if a change occurs in their territorial sovereignty has created remarkable ambiguity and disagreement.

Succession of States in respect to treaties is both a very important and complex subject. The importance of this specific matter has risen because of the radical changes in the structure of international society.¹⁷ However, the main problem regarding the succession of states in respect to treaties is whether or not the new State succeeds to its predecessor’s international rights and obligations, and if so to what extent? Additionally, the issue dealing with the rights and duties of a third State which had nothing to do at all with the process of succession has the same level of importance as to whether or not the new State succeeds to its predecessor’s international rights and duties.

According to Menon, the subject under discussion is highly complex because there is an overlap of fundamental rules and principles of international law, namely, “the principle of consent and

¹⁶ P. K Menon, “The Succession of States in Respect to Treaties, State Property, Archives, and Debts” Canada: The Edwin Mellen Press, 1991

¹⁷ Ibid

good faith, the principle of equality of sovereign States, and the principle of inalienable right to self-determination”.¹⁸

State succession has always been an important topic for scholars of international law. Menon identifies two traditional views for the new States to start their existence which are the clean state principle and the continuity principle. The first, the clean slate principle holds that the new State is not bound by any treaties entered by the State of which it was a part and/or by which it was represented in its international relations.¹⁹ Menon provides that “a notice of termination of all the existing treaties by the new State immediately after it declares independence will undoubtedly create a legal emptiness because of the difficulty for the new State to economic and other relations with other nations.”²⁰ The wave of decolonization raised the interest of international lawyers and the efforts of U.N. International Law Commission in codifying the law of succession to treaties in the late 1960’s.²¹ The clean slate principle was considered controversial on the applicability to the newly independent states resulting for decolonization. International Law Commission member maintained that new states should not be bound by the agreements and treaties concluded by the rulers in the colony. Self-determination was also often discussed in regard of the clean-slate principle. Schachter provides that the application of the clean slate principle regarding the new States that emerged from separation rather than decolonization was not approved in the Vienna Convention. Contrasting with the colonies, the new States could conclude or accept the treaties based on their interests. Vagts confirms that now that the decolonization has come to an end there is still ambiguity and questions whether states

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid

²¹ Oscar Schachter, "State Succession: The Once and Future Law." *Virginia Journal of International Law* 33, no. 253 (1993).

which have seceded are able to claim the right of applying the clean-slate principle in choosing the treaties they want to be part of.²²

The second, the theory of continuity has been widely discussed by a lot of scholars including Max Huber.²³ Menon maintains that the new State accepts the rights and obligations of the predecessor State meaning that the new State still remains a party to the treaties that the predecessor State was bound. Keith and Jenks support that the new State is bound by the predecessor's treaties.²⁴ Schachter agrees with Keith and Jenks and provides that a general presumption of the continuity of treaties and obligations of the predecessor state will be accepted by the new states which have emerged as a result of secession or dissolution.

Works on international law provide little help on the matter of succession of treaties where most of the authors have their own views. The scholars' ideas are not strictly the law and what is said by them can be considered as suggestions for the creation of specific legal rules. Therefore, they are tools to determine the content of the rules. Furthermore, they not only make proposals, but they also summarize state practice and scrutinize *opinio iuris*.

The 1978 Vienna Convention on Succession of States in respect to Treaties deals specifically with the succession of states and their obligations regarding the treaties. According to Article 2 (b) of the Vienna Convention on Succession of States in respect of Treaties 1978, "succession of States" means the replacement of one State by another in the responsibility for the international relations of territory." "the responsibility for the international relations of territory" phraseology is used for the matter of neutrality as a consequence of the different statuses of the

²² Detlef F. Vagts, "State Succession: The Codifiers View." *Virginia Journal of International Law* 33, no. 275 (1993).

²³ P. K Menon, "The Succession of States in Respect to Treaties, State Property, Archives, and Debts" Canada: The Edwin Mellen Press, 1991

²⁴ *Ibid*, p.4

territories such as trusteeship, mandate, protectorate, dependent territory, etc.²⁵ Kosovo has declared its independence in convened in an extraordinary meeting on 17th of February, 2008, in Prishtina, the capital of Kosovo. The elected leaders of the people of Kosovo declared:

We, the democratically-elected leaders of our people, hereby declare Kosovo to be an independent and sovereign state. This declaration reflects the will of our people and it is in full accordance with the recommendations of UN Special Envoy Martti Ahtisaari and his Comprehensive Proposal for the Kosovo Status Settlement.²⁶

Therefore, according the Convention, Kosovo qualifies as a “successor state” defined as the State which replaces another State on the occurrence of a succession of States. It is also stated in the Kosovo Declaration of Independence that that the declaration was conducted in accordance with the international law. Kosovo is the newest country in the world and as such it is recognized by sixty-nine members of the United Nations, twenty-two of which are European Union members (in order of recognition date: France, United Kingdom, Germany, Latvia, Denmark, Estonia, Italy, Luxembourg, Belgium, Poland, Austria, Ireland, Sweden, Netherlands, Slovenia, Finland, Hungary, Bulgaria, Lithuania, Czech Republic, Malta, Portugal).²⁷

It is important to note that not all the cases of succession of States are covered by the 1978 Vienna Convention on Succession of States in respect of Treaties. According to Article 6, the convention applies only to the effects of a succession of States occurring in accordance with international law, and in particular, the principles of international law embodied in the Charter of the United Nations.²⁸

²⁵ Ibid, p.4

²⁶ Assembly of Kosovo, Kosovo Declaration of Independence, 2008.
http://www.mfaks.net/repository/docs/Dek_Pav_e.pdf

²⁷ "Who Recognized Kosova? The Kosovar People Thank You", <http://www.kosovothanksyou.com/> (accessed 01.05.2010).

²⁸ The United Nations. “UN Treaty.” *1978 Vienna Convention on the Succession of States in respect to Treaties*.
http://untreaty.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf. 5 May 2010

Furthermore, the scope of the Convention is narrowed down to the meaning of the term treaty under Article 2 (a) which states that ““treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments, and whatever its particular designation”²⁹ meaning that it refers only to treaties in written forms. However, Article 3 of the Convention goes further and provides that³⁰

(t)he fact that the present Convention does not apply to the effects of a succession of States in respect of international agreements concluded between States and other subjects of international law or in respect of international agreements not in written form shall not affect:

- (a) the application to such cases of any of the rules set forth in the present Convention to which they are subject under international law independently of the Convention;
- (b) the application as between States of the present Convention to the effects of a succession of States in respect of international agreements to which other subjects of international law are also parties.

Kosovo would qualify as a successor state according to the Convention whereas Serbia would be eligible in referring to it as a predecessor state. The 1978 Vienna Convention on Succession of States in respect to Treaties defines ‘predecessor State’ as “the State which has been replaced by another State on the occurrence of a succession of States. The legal doctrine regarding succession yields separate approaches dealing with the legal consequences of succession: the continuity of treaties, claims, debts, etc. and the discontinuity “clean slate” or tabula rasa. According to the continuity principle provided by scholars, the new State accepts the rights and obligations of the predecessor State meaning that the new State still remains a party to

²⁹ Ibid

³⁰ Ibid

the treaties of the predecessor State. In the Kosovo's Declaration of Independence, the 9th point states that:

We hereby undertake the international obligations of Kosovo, including those concluded on our behalf by the United Nations Interim Administration Mission in Kosovo (UNMIK) and treaty and other obligations of the former Socialist Federal Republic of Yugoslavia to which we are bound as a former constituent part, including the Vienna Conventions on diplomatic and consular relations. We shall cooperate fully with the International Criminal Tribunal for the Former Yugoslavia. We intend to seek membership in international organizations, in which Kosovo shall seek to contribute to the pursuit of international peace and stability.³¹

Therefore, in compliance with the law and legal doctrine (continuity principle), the new State, in this case Kosovo has expressed the will to be bound by treaties and other obligations of the former Socialist Federal Republic of Yugoslavia including the Vienna Conventions on diplomatic and consular relations. Officials from the Ministry of Foreign Affairs in Kosovo provide that Kosovo is not party to any of the treaties concluded by the former Socialist Federal Republic of Yugoslavia, however it has signed a number of bilateral and multilateral agreements with a lot of countries since the declaration of independence in 2008.³² However, the list of the

³¹ Assembly of Kosovo, Kosovo Declaration of Independence, 2008.

http://www.mfaks.net/repository/docs/Dek_Pav_e.pdf

³² The agreements signed by Kosovo: "LOAN AND FINANCING AGREEMENT BETWEEN KfW FRANKFURT AM MAIN ("KfW") AND REPUBLIC OF KOSOVO REPRESENTED BY THE MINISTRY OF ECONOMY AND FINANCE (edited 07.04.2010)," "AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOSOVO AND THE SWISS FEDERAL COUNCIL ON THE READMISSION OF PERSONS RESIDING WITHOUT AUTHORISATION (edited 02.04.2010)," "AGREEMENT ON ECONOMIC COOPERATION THE GOVERNMENT OF THE REPUBLIC OF MACEDONIA AND THE GOVERNMENT OF THE REPUBLIC OF KOSOVO (edited 02.04.2010)," "AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOSOVO AND THE COUNCIL OF MINISTERS OF THE REPUBLIC OF ALBANIA ON MUTUAL TRAVEL ON CITIZENS (edited 02.04.2010)," "AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOSOVO AND THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA ON DEVELOPMENT COOPERATION (edited 02.04.2010)," "FRAMEWORK AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOSOVO AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY ON COOPERATION IN MILITARY FIELDS OF TRAINING, TECHNIQUE AND SCIENCE (edited 02.04.2010)," "AGREEMENT AND CONVENTIONS BETWEEN THE KINGDOM OF BELGIUM (BELGO-LUXEMBURG EKONOMIK UNION) AND REPUBLIC OF KOSOVO (edited 02.04.2010)," "BILATERAL AGREEMENT BETWEEN THE GOVE. OF THE REPUBLIC OF KOSOVO AND THE GOV. OF THE REPUBLIC OF THE GRAND DUCHY OF LUXEMBOURG ON THE IMPLEMENTATION OF FONDATION CARITAS LUXEMBOURG'S REGIONAL

agreements and treaties provide no treaty that Kosovo is party to as a result of secession and continuity principle since it has expressed the will to be bound by the treaties and obligations in the declaration of independence.

Newly Independent States

This section will deal with the newly independent States. Kosovo is not considered to be a newly independent state since it has not emerged from decolonization. However, this is important to see how the clean slate principle applies to the newly independent States which then

STRATEGY FOR BALKANS (2007-2010) (edited 02.03.2010)," "PROTOKOL BETWEEN THE GOV.OF THE R.OF KOSOVO AND THE GOV.OF THE R.OF TURKEY ON DEVELOPMENT COOPERATIONS AND ON THE STATUS OF THE TURKISH INTERNATIONALS COOPERATION AND DEVELOPMENT AGENCY KOSOVO PROGRAME COORDINATION OFFICE (edited 25.02.2010)," "LETTER OF AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATESOF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF KOSOVO (edited 25.02.2010)," "AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOSOVO AND THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA ON PROMOTION AND PROTECTION OF INVESTMENTS (edited 25.02.2010)," "AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF TURKEY AND THE GOVERNMENT OF THE REPUBLIC OF KOSOVO ON CO-OPERATION AND MUTUAL ASSISTANCE IN CUSTOMS MATTERS (edited 25.02.2010)," "AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOSOVO AND THE GOVERNMENT OF THE FRENCH REPUBLIC ON THE READMISSION OF PERSONS RESIDING WITHOUT AUTHORISATION (edited 27.01.2010)," "AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOSOVO AND THE COUNCIL OF MINISTERS OF THE REPUBLIC OF ALBANIA (edited 27.01.2010)," "AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOSOVO AND THE GOVERNMENT OF THE REPUBLIC OF MACEDONIA ON POLICE COORPORATION (edited 27.01.2010)," "BILATERAL AGREEMENT BETWEEN THE REPUBLIC OF KOSOVO AND THE GRAND DUCHY OF LUXEMBOURG (edited 22.01.2010)," "AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOSOVO AND THE GOVERNMENT OF SWEDEN ON DEVELOPMENT COOPERATION," "AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOSOVO AND THE COUNCIL OF MINISTERS OF THE REPUBLIC OF ALBANIA THE ON READMISSION OF PERSONS RESIDING WITHOUT AUTHORISATION," "JOINT COMMUNIQUE ON THE ESTABLISHMENT OF DIPLOMATIC RELATIONS BETWEEN THE REPUBLIC OF KOSOVO AND THE REPUBLIC OF MACEDONIA," "AGREEMENT BETWEEN THE GOVERNMENT OF REPUBLIC OF KOSOVO AND COUNCIL OF MINISTERS OF REPUBLIC OF ALBANIA ON COOPERATION AND MUTUAL ASSISTANCE IN CUSTOMS MATTERS," "AGREEMENT BETWEEN THE GOVERNMENT OF REPUBLIC OF KOSOVO AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY ON COOPERATION IN THE FIELD OF HEALTH," "AGREEMENT FOR THE PHYSICAL DEMARCATION OF THE BORDER BETWEEN THE REPUBLIC OF KOSOVO AND THE REPUBLIC OF MACEDONIA," "INVESTMENT INCENTIVE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF REPUBLIC OF KOSOVO," "BILATERAL AGREEMENT BETWEEN THE GOVERNMENT OF REPUBLIC OF KOSOVO AND THE GOVERNMENT OF THE GRAND-DUCHY OF LUXEMBOURG," "RATIFICATION OF KOSOVO'S MEMBERSHIP IN INTERNATIONAL MONETARY FUND AND WORLD BANK GROUP," "LOAN ASSUMPTION AGREEMENT BETWEEN INTERNATIONAL BANK FOR RECONSTRUCION AND DEVELOPMENT AND REPUBLIC OF KOSOVO," "AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOSOVO AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY ON ECONOMIC COOPERATION," "AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF DENMARK AND REPUBLIC OF KOSOVO ON DEVELOPMENT COOPERATION," "AGREEMENT BETWEEN THE GOVERNMENT OF REPUBLIC OF KOSOVO AND THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA ON DEVELOPMENT COOPERATION," and "AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF TURKEY AND THE GOVERNMENT OF THE REPUBLIC OF KOSOVO ON THE MUTUAL ABOLITION OF VISAS," <http://www.ks-gov.net/GazetaZyrtare/MN.aspx>

contributes to a better picture of the continuity theory. According to the Vienna Convention on State Succession in respect to Treaties 1978 a newly independent State defined as “a successor State the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible.”

Considering the Article 16 of the same Convention located in Part III under the Newly Independent States, one may notice the general rule with regard to the position of a newly independent State in respect of treaties previously applied to its territory by the predecessor State. It follows as such:

A newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of succession of States the treaty was in force in respect of the territory to which the succession of States relates.

The stated rule above creates one of the two principles of State succession in respect of treaties, the clean slate principle. The clean state principle applied to all treaties, both bilateral and multilateral. However, there is an exception of different cases of treaties covering boundary regimes and other territorial regimes as envisaged in Articles 11 and 12 of the Convention.³³

The clean slate principle goes hand in hand with the principle of right to self-determination. Article 34 of the Convention echoes the general rule in specifying that “a treaty does not create either obligations or rights for the third State without its consent.” Menon goes further and demonstrates that this closely follows Article 35 of the Vienna Convention on the Law of Treaties, 1969, where it is stated that

³³ Menon, P. K. “The Succession of States in Respect to Treaties, State Property, Archives, and Debts” Canada: The Edwin Mellen Press, 1991: p.23

An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.

This proves the consent since a newly independent State to which has not given its consent to a treaty cannot and must not be bound on a predecessor's treaty and to which is also not a party by its own volition.³⁴ "One might say that the clean slate principle has an advantage which is that newly independent States are able to avoid being bound by the international obligations and rights which it regards irrational."³⁵ There is no specific reason why the states should load themselves with burdens by obligations which were never contracted by itself. According to Menon, "the rule is not structured against succession, but simply as a denial of automatic succession."³⁶

A newly independent state is under obligation to proceed to apply its predecessor's treaties and whether the new state has the right to consider itself as a party to the predecessor's treaties after the declaration of independence.³⁷ The clean slate principle suggests a negative answer to the first question; however, a positive one to the second question. The principle does not hold in itself the rejection of the continuity of treaties, but does imply that States after attaining independent statehood are entitled to choose whether they want to continue specific treaties concluded by the predecessor's state or they want to terminate them.

³⁴ Menon, P. K. "The Succession of States in Respect to Treaties, State Property, Archives, and Debts" Canada: The Edwin Mellen Press, 1991

³⁵ Ibid, p.24

³⁶ Ibid, p.24

³⁷ Ibid, p.24

Separations of State

The establishment of a new State on part of the territory of a former State most of the times results in the new State starting its career and international life with a clean slate.³⁸ This effect of establishment is the emergence of the new State by secession. The predecessor State proceeds with its career and existence unchanged, however, with a diminished territory.

In the secession of Belgium from Netherlands in 1830, Belgium started its career based on the clean slate principle with an exception of treaties of a local or dispositive character. The treaties signed before the 1830 were continued in force for the Netherlands. Similarly, when Cuba seceded from Spain in 1890, the Spanish treaties were not seen as binding upon Cuba after the declaration of independence. Another case demonstrating the clean slate principle is the case of Panama secession from Columbia in 1903 where Panama did not consider itself bound by any of the Columbia's treaties, while Columbia still remained a State and bound by the treaties concluded by it.

Articles 34 and 35 of the 1978 Vienna Convention on Succession of States in respect of Treaties are concerned with the matter of succession in respect of treaties in cases of separation of parts of a State where Kosovo could be used as a case. The former regulates the effect of succession of States on treaties in force whether or not continues to exist, and the latter if predecessor state still continues to exist. Article 34 (a) states that any treaty in force at the date of succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed. The same article, Article 34 (b) provides that any treaty in force at the date of the succession of States in respect only of that part of the territory of the predecessor State which has become a successor State continues in force in respect of that

³⁸ *ibid* p. 53

successor State alone. However, the case of Kosovo is more complex because albeit Kosovo expressed the will to be bound by the treaties of the predecessor State in the “Declaration of Independence”, Kosovo is not part of the treaties that the predecessor State was bound. Suzana Krasniqi, Head of the Legislation Department in the Ministry of Foreign Affairs in Kosovo explains that the process of statehood recognition and the membership in the United Nations pose a barrier and a problem for Kosovo becoming a party to bilateral and multilateral treaties.³⁹ She also adds that the process of accession to international organizations is an issue for Kosovo, however, the Ministry of Foreign Affairs in Kosovo is insisting on initiating these processes. Krasniqi demonstrates that Kosovo is party to different bilateral and multilateral agreements where Serbia is not.

Concluding observations

There is little agreement in theory or practice between the scholars as to what extent the new State should consider and keep the rights and obligations of its predecessor. Different scholars and writers attempted to propound a theory of universal succession which would hold that all treaties of the predecessor State should be passed to new State. Other scholars demonstrated that the new State has a right to start its international career with a clean slate meaning to be free from all the obligations under the treaties concluded by the predecessor State.

The 1978 Vienna Convention on Succession of States in respect of Treaties reveals the changes made over time from the process of decolonization representing a development in international law. It is clearly visible that the Convention has taken into consideration the will of the newly independent States by giving full recognition to their practice and giving them an opportunity to decide which treaties concluded by the predecessor State are binding on them.

³⁹ Suzana Krasniqi, e-mail message to Besar Dinarama, May 02, 2010

However, the Convention maintains that in case of separation of states, as the in case with Kosovo, successor States or the new State is bound by the treaties of their predecessor State as stated in the Articles 34 and 35. Kosovo has expressed the will to be bound by the treaties but the matter is more complicated because Serbia still claims that Kosovo is part of Serbia. Statehood recognition can also be seen as an issue since Kosovo has been recognized by sixty-nine states which are member in the United Nations. All in all, according to the 1978 Vienna Convention on State succession in respect to Treaties, Kosovo should be bound by the obligations of the predecessor State.

CHAPTER 3: WORLD TRADE ORGANIZATION (WTO) AND WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

The following section will deal with the World Trade Organization (WTO) and World Intellectual Property Organization. This chapter briefly provides a history of both organizations, however, it is more focused on the admission criteria which are stated in the agreements establishing these organizations. The agreements establishing the organization will be examined in order to conclude whether Kosovo meets the necessary requirements for adhering to the WTO and WIPO. Lastly, information on the Kosovo's position towards the path of membership in both organizations will be provided.

World Trade Organization

The World Trade Organization is an intergovernmental organization which administers the trade agreements negotiated by its Members, such as the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS), and the Agreement on Trade Related Intellectual Property Rights (TRIPS).⁴⁰ The World Trade Organization was established in 1995; however, its trading system is half a century old.⁴¹ The WTO's fundamental idea is that both, open market and nondiscrimination are beneficial to the national welfare of all countries.⁴² Its primary function is to assist in the negotiations of binding agreements between the governments in order to agree on policies affecting international trade and reduce trade

⁴⁰ Bernard M. Hoekman and Petros C. Mavroidis. *The World Trade Organization: Law, Economics, and Politics*. Abingdon: Routledge, 2007.

⁴¹ World Trade Organization, "What is the World Trade Organization" http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm (accessed 31 May 2010).

⁴² Bernard M. Hoekman and Petros C. Mavroidis. *The World Trade Organization: Law, Economics, and Politics*. Abingdon: Routledge, 2007.

barriers, and to provide a mechanism through which governments or WTO Members can enforce the negotiated commitments.

WTO is an independent international institution. It is not a UN specialized agency like other specialized international organizations such as World Intellectual Property Organization (WIPO), International Trade Organization (ITU), and United Nations Conference on Trade and Development (UNCTAD). Even though the organization was established in 1995, its trading system is half a century old since the General Agreement on Tariffs and Trade (GATT) has provided the rules for the system.⁴³ The GATT was an international treaty which states and independent customs territories could become a contracting party. The World Trade Organization is the successor to the GATT. Furthermore, the WTO was created at the 1994 Ministerial meeting that concluded the Uruguay Round. For many of those opposing the process of globalization and of the world economy, the WTO has become a focal point.

“The World Trade Organization is quite small in respect to staff and has very few powers. 600 individuals work in the Secretariat, many of whom are translators and secretaries.”⁴⁴ Hoekman and Mavroidis demonstrate that the organization has limited responsibilities which are mainly to direct meetings and prepare documentation as a demand from the Members, support dispute settlement proceedings and undertake periodic reviews of the trade policies of Members.⁴⁵ The authors also stress that the WTO is a member driven organization, where all the members have a voice.

⁴³ World Trade Organization, "What is the World Trade Organization"
http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm (accessed 31 May 2010).

⁴⁴ Bernard M. Hoekman and Petros C. Mavroidis. *The World Trade Organization: Law, Economics, and Politics*. Abingdon: Routledge, 2007.

⁴⁵ Bernard M. Hoekman and Petros C. Mavroidis. *The World Trade Organization: Law, Economics, and Politics*. Abingdon: Routledge, 2007.

“In order to understand the WTO, it is necessary for one to look into its laws and the operating mechanism and procedures of the organization. For any country or independent customs territory, membership to WTO requires accepting the limitations on regulatory autonomy in five areas: trade in goods, trade in services, the protection of intellectual property rights, dispute settlement, and trade policy reviews.”⁴⁶ Political bargaining was the result of the evolution of the WTO legal framework. Therefore, the decision of the World Trade Organization to include the protection of the intellectual property rights as an area of the regulation was driven mostly by the Organization for Economic Cooperation and Development (OECD) industry groups such as pharmaceutical firms, banks, telecom providers in order to improve access to foreign markets for their products. Additionally, another important driver that contributed to the extension of the WTO to include agreements on the protection of the intellectual property rights was the retaliation against the countries that pursued policies which were harmful to the US exports, including the non-protection of US intellectual property.

The TRIPs Agreement

One of the multilateral agreements that the WTO administers is the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs). The TRIPs agreement is an international instrument on intellectual property rights (IPRs). The agreement establishes minimum standards on copyrights, trademarks, geographical indications, industrial designs, patents, integrated circuits, and undisclosed information (trade secrets).⁴⁷ TRIPs, negotiated in

⁴⁶ World Trade Organization, "Understanding the WTO: The Agreements"
http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm1_e.htm (accessed 31 May 2010).

⁴⁷ World Trade Organization, "The WTO Agreements"
http://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr03_e.htm (accessed 31 May 2010).

the Uruguay Round in 1994, basically incorporates the four international agreements in the field of intellectual property.⁴⁸

1 the Paris Convention (1967) for the protection of industrial property;

2 the Berne Convention (1971) for the protection of copyright;

3 the Rome Convention (1961) for the protection of performers, producers of phonograms and broadcasting organizations;

4 the IPIC (integrated circuits) treaty (1989).

According to Article 1 of the TRIPs Agreement, all WTO members are obliged to comply with the obligations stated in the agreement, however are entitled to pursue policies for adopting higher standards of intellectual property protection. Thus, the agreement clearly imposes a set of minimum standards for the WTO members regarding the protection of the intellectual property rights. Article 3 of the agreement proceeds further with the national treatment that Members are obliged to grant to IPR holders. Intellectual property right owners have the right to demand protection in the territories of the World Trade Organization Members since the IP rights are protected on a territorial basis.

Accession to WTO

WTO is open for membership to any state or customs territories that possesses full autonomy over their trade policies.⁴⁹ Furthermore, the whole application process goes through four different stages that are crucial for acceding to WTO. The primary stage involves information from the government acceding to it regarding their aspects of trade and economic

⁴⁸ Bernard M. Hoekman and Petros C. Mavroidis. *The World Trade Organization: Law, Economics, and Politics*. Abingdon: Routledge, 2007. p.71

⁴⁹ Organization, World Trade, "Understanding the WTO - Membership, Alliances and Bureaucracy" http://www.wto.org/english/thewto_e/whatis_e/tif_e/org3_e.htm (accessed 31 May 2010).

policies in compliance with the WTO agreements. The document submitted as a memorandum will be examined by the working party which is open to all WTO members. Secondly, after a specific progress on the aspects of trade, principles, and policies the prospective new member is entitled to parallel bilateral talks with individual countries. The talks will find out what the benefits for the member countries will be if the applicant country joins. Most importantly, the non-discrimination rule applies to everyone who expresses the will to accede to the organization. The negotiations with the member countries are crucial during the process of the application. Thirdly, the terms of accession are determined after the application is observed from the working party leading to the “protocol of accession” and “schedules” of the prospective member. Finally, the General Council receives a report on the progress of the government regarding the policies and principles where the applicant is entitled to sign the protocol if two-thirds of WTO members vote in favor. Hoekman and Mavroidis explain that decision-making in WTO is based on consensus. A two-thirds majority is necessary for most of the amendments.⁵⁰

WTO is has been established with the “Agreement Establishing the World Trade Organization” under which it operates. According to the “Agreement Establishing the World Trade Organization” under Article XII on Accession, paragraph 1 states that “any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto.”⁵¹ The second paragraph of the same article shows that “Decisions on accession shall be

⁵⁰ Bernard M. Hoekman and Petros C. Mavroidis. *The World Trade Organization: Law, Economics, and Politics*. Abingdon: Routledge, 2007.

⁵¹ Organization, World Trade. "Agreement Establishing the World Trade Organization." Article XII http://www.wto.org/english/docs_e/legal_e/04-wto.pdf (accessed 31 May 2010).

taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO.” Lastly, the last paragraph of Article XII on the accession states that “Accession to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Kosovo can be considered that possesses full autonomy in the conduct of its trade policies, however, the problem regarding Kosovo and its accession to WTO would be the two customs point located in the Northern Mitrovica bordering Serbia. “These two points, namely customs points 1 and 31 are not functional, however, are in operation with EULEX (European Union Rule of Law Mission in Kosovo) officials who are in charge of only recording the entry and exit of goods, that are not subject to customs control.”⁵² Regarding the matter, EULEX seems that is limited in operation and still unable to provide a political settlement between Prishtina and Belgrade. “EULEX: Still in Search of an Identity” report the status quo of the border in the North and maintains that the situation is unlikely to change very soon. The two custom points are not controlled by Kosovo authorities which means that the control of the goods moving in and out is not conducted by Kosovar authorities. Examining the regulation, I have found out that the “Agreement Establishing the World Trade Organization” does not deal with such an issue. However, officials in Kosovo discuss the matter and have different opinions regarding Kosovo’s accession in WTO where the matter is going to be discussed further and in depth in the last section, namely “IPR in Kosovo.”

⁵² Balkan Policy Institute, EULEX: Still in Search of an Identity. Prishtina, 09 April 2010. http://policyinstitute.eu/images/uploads/EULEX_Still_in_search_of_identity_English.pdf

The intellectual property rights covered by TRIPs

The areas covered by the intellectual property are: copyrights and related rights, trademarks and industrial designs, geographical indications, patents. Article 9.2 of the TRIPs agreement indicates that copyright protection shall extend to expression and not to ideas, procedures, methods of operation or mathematical concepts as such.⁵³ The rights protected with the agreement include cinematographic films, performers, computer programs, databases, producers of phonograms and broadcasting organizations.⁵⁴

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Different from the WTO, World Intellectual Property Organization (WIPO) is a United Nations specialized agency.⁵⁵ “The reason why WIPO was established is to provide a stronger (IP) system which rewards creativity, stimulates innovation which lead to economic development.” It was established by the WIPO Convention in 1967 with the aim to promote IP protection internationally in the course of cooperation between states and different international organizations. Currently, WIPO embraces 184 Member States including Serbia, Kosovo’s claimed successor from Kosovo officials. Serbia is party to 22 WIPO treaties and member of 15 WIPO bodies.

Unlike the accession criteria in WTO, “Convention Establishing the World Intellectual Property Organization” under Article 5 dealing with membership holds that:

⁵³ TRIPs agreement, article 9.2

⁵⁴ Bernard M. Hoekman and Petros C. Mavroidis. *The World Trade Organization: Law, Economics, and Politics*. Abingdon: Routledge, 2007.

⁵⁵ Organization, World Intellectual Property, "What is WIPO?" http://www.wipo.int/about-wipo/en/what_is_wipo.html (accessed 02 June 2010).

(1) Membership in the Organization shall be open to any State which is a member of any of the Unions as defined in Article 2(vii).

(2) Membership in the Organization shall be equally open to any State not a member of any of the Unions, provided that:

(i) it is a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, or the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice, or

(ii) it is invited by the General Assembly to become a party to this Convention.

Considering Article 5 of the WIPO Convention Kosovo is not entitled to become a member of World Intellectual Property Organization since it is not a member of any of the Unions mentioned in Article 2(vii), and is not a member of the United Nations. Therefore, the admission criterion does not allow Kosovo to become a member of it. As mentioned before, Serbia is a member of WIPO and albeit claiming Kosovo as a part of its territory, violations of intellectual property cannot be filed in the International Court of Justice. Claims against the violations occurring in the territory of Kosovo can only be filed in the courts of Kosovo since Kosovo is not a member in WIPO and the United Nations.⁵⁶

⁵⁶ Suzana Krasniqi, e-mail message to Besar Dinarama, May 3, 2010

CHAPTER 4: INTELLECTUAL PROPERTY RIGHTS (IPR) IN KOSOVO

It is a fact that there is insufficient information and data on the violation of IPR in Kosovo, however there is still evidence that imitated products including designer clothes, technology products, food and other consumables, software, music and films can be freely purchased in Kosovo.⁵⁷ Businesses who mostly suffer from the violations of IPR in Kosovo are those which represent foreign trademarks. In this section, in order to identify the gaps and lastly provide recommendations for future actions, a study of the existing regulatory, legal, and institutional framework will be conducted and the existing framework will be compared to the standards of the WTO agreements and European Union.

Problems with IPR protection

Presently, even though the Industrial Property Office exists in Kosovo and there are a set of procedures for registering trademarks, the enforcement of the laws is limited because of the lack of appropriate mechanisms. The report⁵⁸ emphasizes that businesses continue to blame the institutions for not acting accordingly in protecting the intellectual property rights.⁵⁹

According to the report provided by the American Chamber of Commerce in Kosovo artists and musicians can be considered as an interest group advocating the protection of IPR and the completion of legal structure.⁶⁰ They have protested several times against the Government stating that they will not pay taxes until the enforcement of IPR in Kosovo takes place from the Government of Kosovo. This was due the lack of implementation of intellectual property rights which was considered to be poor. The report also shows that the Industrial Property Office in the

⁵⁷ Kushttrim Shaipi, "The Importance of IPR for the Business Community in Kosovo." Prishtina: American Chamber of Commerce in Kosovo, 2009.

⁵⁸ Ibid

⁵⁹ Ibid

⁶⁰ Ibid

Ministry of Trade and Industry (henceforth MTI) is in possession of 17,000 applications for trademarks registrations which are pending due to limited cases of the office. Bashkim Navakazi, and Industrial Property Officer in MTI shows that the number of applications for property registration is approximately 20,000.⁶¹

“The Importance of IPR for the Bussiness Community in Kosovo” further demonstrates that Kosovo Customs was not able to register trademarks for businesses resulting in the inability to prevent the import of different companies’ products which were subject to intellectual property rights.⁶² However, several cases exist when international companies filed claims against illegal imitations where measures were taken by the Kosovo Customs. It was expected at the time that the situation would change completely with the promulgation of the new law which would determine the duties and responsibilities of the Kosovo Customs. Moreover, the report has also assessed the performance of the Commercial Court in Kosovo and found out that they were slow in enforcing intellectual property rights stating that there have been not a lot of cases addressed by this court regarding the IPR.

The intellectual property right violations in Kosovo have been a major problem since the end of the conflict in 1999. An article written by Arben Hajredinaj in the “Details”, a newsletter published by The OSCE Mission in Kosovo demonstrates that television stations in Kosovo have been given a deadline for obeying the guidelines provided by the Temporary Media Commissioner (TMC) in respect of copy right, back in 2004.⁶³ The TMC is in compliance with international law and practice concerning the protection of intellectual property rights. In 2004 already, every broadcast media in Kosovo was obliged to “obtain all proper copyright clearances

⁶¹ Bashkim Navakazi, e-mail message to Besar Dinarama, May 24, 2010.

⁶² Kushtrim Shaipi. *The Importance of Ipr for the Business Community in Kosovo*. Prishtina: American Chamber of Commerce in Kosovo, 2009

⁶³ Arben Hajredinaj, "Countdown to Legality." 4, no. 1 (2003).

http://www.osce.org/publications/mik/2004/03/14946_401_en.pdf [accessed 15.05.2010].

and permission for all programming (including music via CD and other means) prior to the airing of such programming by licensee.”

IPR violations were also harming the TV broadcasting stations in Kosovo. Leke Zherka, Director of Kohavision in Prishtina stated that there is no possibility for all the existing Kosovo TVs to broadcast pirate movies or programs. Zherka also provides that Kosovo-wide TV stations were facing issues from the smaller TV stations regarding the intellectual property rights.⁶⁴ Smaller local TV stations were broadcasting different sport packages including here the latest movies and other programs illegally just by connecting to a certain satellite whereas others were paying for the services obtained outside Kosovo. “Florin Kelmendi, Director of one of the biggest TV broadcast station, RTV 21, shows also how smaller local stations in Kosovo broadcast pirated DVD film illegal and sometimes also the re-edited RTV 21 programs.”⁶⁵ He demonstrates how piracy affects the TVs marketing because RTV 21 cannot keep up with the latest music or movies as a consequence of the high prices which are not affordable for them. It is clear from the statements of Kelmendi that due to the situation regarding the IPR these TV broadcast stations were encompassing a decrease in their revenues.

Furthermore, the violations of IPR were visible and harmful also in the regions outside Prishtina. Feim Kurhasani, Director in charge of RTV Dukagjini in Peja agrees with Zherka and Kelmendi where he points out that “his TV stations’ marketing has suffered from the piracy from the smaller local stations in the region.”⁶⁶ He admits that there are cases when other TV stations copy broadcast the programs emitted from them in an identical approach which obviously led to

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ Ibid

a diminishing profit for RTV Dukagjini. Liridon Cahani, the managing Director of Radio Television of Kosovo also maintains that the piracy is severely damaging their effort and work.⁶⁷

“We had given our outmost efforts to obtain high quality films which we have tested a week before the New Year’s Eve. Several other local private TV stations have broadcast the same films one or two days before the New Year’s Eve. Besides the financial loses, our biggest problem is the viewers we lose because of illegal competition from local TV stations,” states Cahani. ABC cinema located in Prishtina, which is one of the movie distributors in the Republic of Kosovo has also been suffering from piracy in Kosovo and has already complained several times.⁶⁸

Small businesses such as CD shops were considered to be violators of the IPR. According to Hajredinaj’s article “Countdown to legality” written in 2003, “piracy was unfortunately a widespread copyright violations phenomenon in Kosovo with numerous CD shops engaged in the selling pirated movies, music, and even computer software.”⁶⁹ The article confirms that in 2003 Kosovo possessed no specific and proper law related to the protection of intellectual property rights which is not the case with the developed countries. At the given time, the copyright law was being drafted by the Author’s Agency which was soon to be introduces in the Kosovo Assembly.

Immediately after the conflict that ended in 1999 where Kosovo was no longer under Belgrade’s control, the former Yugoslav Law was still applicable in the territory of Kosovo.⁷⁰ Hajredinaj’s article holds that according to Luljeta Bajcinovci, Head of the Authors’ Agency in Prishtina, the former Yugoslav federation law was still applicable at the time in Kosovo and all

⁶⁷ Ibid

⁶⁸ Arben Hajredinaj, "Countdown to Legality." 4, no. 1 (2003).

http://www.osce.org/publications/mik/2004/03/14946_401_en.pdf [accessed 15.05.2010].

⁶⁹ Ibid

⁷⁰ Ibid

the violations in the territory were dealt within this law, even though it was outdated. She was expecting the new law in Kosovo to be based on the European standards. Therefore, the situation related to IPR concerning the legislation was not due to non-existing laws but due to the mechanisms to enforce the law and the capacities of the staff working in the courts. However, The legislation in Kosovo regarding the intellectual property rights is basically comprised of three different laws, namely, the Law #2002/54 on Trademarks,⁷¹ Law #2004/45 on Copyright and Related Rights,⁷² and Law #2004/49 on Patents.⁷³ These laws were adopted for the purpose of protecting and developing the intellectual property rights in general. These laws were approved by the Kosovo Assembly due to the need and regulation of IPR in Kosovo generally which are in compliance with the European Union requirements and standards regarding this field.

Publicly owned companies were also considered to violate the law. Hajredinaj demonstrates how the law was violated by several public companies operating in Kosovo. He provides the case of PTK (Post and Telecom of Kosovo). "The work/photographies of an unknown author for Hajredinaj were used by the PTK on prepaid scratch cards which were sold in hundreds and thousands of them for commercial profit. PTK was taken to court because of using photographs an individual without his consent and any compensation. However, the case was pending for two years in the court as a result of slow procedures." This shows the incomplete legal infrastructure concerning the IPR and the staff capacities in the legal institutions in charge of dealing with enforcing the IPR.

The data provided above show that the situation of the IPR protection could be considered alarming immediately after 1999, the time when the conflict in the region ended.

⁷¹ Assembly of Kosovo. "Law on Trademarks." ed. Assembly of Kosovo, 02/L-54.

⁷² Assembly of Kosovo. "Law on Copyright and Related Rights." ed. Assembly of Kosovo, 2004/45.

⁷³ Assembly of Kosovo. "Law on Patents." ed. Assembly of Kosovo, 2004/49.

Businesses were suffering from the violation of intellectual property rights including here the artists. Mechanisms for enforcing law were present all the time, however they were not efficient as the Details article shows with the case of PTK (Post Telecom of Kosovo) where the case was pending for two years as a result of the non completion of legal infrastructure concerning the IPR. Furthermore, the former Yugoslavian laws were applicable after the conflict, however the legislation in Kosovo presently is comprised of three laws based on International and European standards. Nevertheless, the situation is still considered to be critical as a consequence of the lack of capacities of institutions in charge of registering and enforcing IPR.

WTO: a possible solution but a long road to it

“According the “Trade Policy of Kosovo” report written on August 2009 by the Ministry of Trade and Industry (MTI) and external expertise, Kosovar institutions even though aware of the complexity of the process have initiated the process of accession but still not applied in the World Trade Organization.”⁷⁴ This process is considered at the same time a challenge and a crucial step for Kosovo in the direction of its integration in the world trading system.

Membership in the World Trade Organization is a complex process for two reasons. Firstly, the whole process requires dedication for the implementation of policies that are associated with the membership process.⁷⁵ Secondly, the issues raised by the members of WTO regarding the matter during the negotiation process might also be seen as another reason which complicates the whole process for Kosovo. “The Trade Policy in Kosovo report” clearly provides that the negotiations for membership in WTO include different matters and issues related to them which are seen as highly complex from the government. These issues include the areas of

⁷⁴ Trade Policy of Kosovo. Prishtina: Ministry of Trade and Industry, 2009.

⁷⁵ Ibid

intellectual property, agriculture, industrial and products standards, textile, telecommunication, banking system, etc.

The report also emphasizes the benefits that countries gain from the process of negotiations adding the importance of the negotiations for the small countries such as Kosovo which depends greatly on the foreign trade.⁷⁶ “Membership in WTO requirements leads to full empowerment of policies and institutions of the country. Additionally, access to the world market is guaranteed upon the membership in WTO. The Republic of Kosovo would gain from the Most Favoured Nation clause, a status which holds equal or non-discriminatory treatment by the member of WTO.” According to the report, the preferences offered by the members of the organization would also apply to all the countries that are member in the organization, in this case including Kosovo. Finally, the mechanism of dispute settlement is highly important where Kosovo would be enabled to have access to it.

Economic and political approaches are necessary for modifying the operational environment in Kosovo in order to develop Kosovo’s competitive position in the international market.⁷⁷ The report emphasizes that production, exports, and growth in investment would lead to higher economic growth and well-being of the society which means that Kosovo should attract investment. The most important mechanism in the revitalization of the economy in Kosovo is the inflow of foreign investments which would influence a rise in exports.

“Kosovo is an open economy where the foreign trade is mostly dominated by imports. This fact makes Kosovo dependent on imports which have approximately more than 50 percent of the GDP share and in the short term experts demonstrate that this fact shall not significantly

⁷⁶ Ibid

⁷⁷ Trade Policy of Kosovo. Prishtina: Ministry of Trade and Industry, 2009.

change.”⁷⁸ It is worth mentioning that exports have also significantly increased after the conflict in which are mainly in the form of raw material and unfinished products such as scrap metal (iron, steel, copper, zinc, etc.), mineral products. These products were mainly sold in Greece, Macedonia, Italy, and other countries. The main Kosovo’s trade partners are the EU countries and CEFTA members (Macedonia, Albania, Bulgaria, Montenegro, Kosovo, Serbia, Moldova).

The Foreign Direct Investment level has proved to be dissatisfactory and FDI is of high importance for Kosovo’s development. “The reports shows that the level of Foreign Direct Investment has been insufficient after the conflict until now which is also considered to be an important factor for revitalizing the economy of the country especially for those countries which find themselves in a transition period.”⁷⁹ One of the factors leading to this is the impediment related to economic policies is law enforcement. However, the Government of Kosovo is dedicating resources in enacting new policies and legislation in promoting new opportunities for change which will consequently lead to development and economic growth. Furthermore, this will also result in development of relationship with the European Union countries which is crucial to economic development in Kosovo. With regards to the EU’s market and its capacity to always enlarge, Kosovo would benefit from the demand of its products and investments in the EU countries. Finally, the investment mentioned would lead to transfer of technology and innovations affecting Kosovo’s economy positively.

“The “Trade Policy in Kosovo” report points out that Kosovo is committed to trade liberalization. In 2006, Kosovo negotiated and became a part of the CEFTA (Central Europe Free Trade Agreement) agreement where it has responsibilities regarding it but also benefits. The positive aspect of this agreement would primarily be the free flow of goods and services. The

⁷⁸ Ibid

⁷⁹ Ibid

purpose of CEFTA is the creation of certain instruments and rules in order to govern foreign trade which is in compliance with the standards of the European Union.”⁸⁰ This is very important for Kosovo since its economy is dependent on imports. Most importantly, Kosovo is in the course of creating mechanisms and policies including the legal infrastructure regarding the intellectual property rights in accordance with European Union standards and also requirements from WTO. The strong protection of intellectual property rights which are vital for trade, FDI, and technology licensing across borders would lead presumably to economic growth. The theory also supports that intellectual property do affect trade flows and TRIPS could have a positive impact even for low-income countries such as Kosovo.

The theory presented in the first section of the thesis also suggests that strict protection of intellectual property rights results in economic growth. R&D and innovation which are more likely to occur in the developed and high-income countries lead to economic growth. According to the theory R&D and innovation are less likely to occur in the low-income countries such as Kosovo but Kosovo would benefit from the technology flows coming from the developed countries as a result of strict IPR protection. If a country possesses institutions and legal infrastructure with the capacity to enforce laws and protect intellectual property rights then it is likely that technology would flow from the developed countries in the developing ones. Therefore, the purpose of CEFTA and building the capacities of institutions in charge for registering and enforcing IPR is the creation of an attractive market in Kosovo which would create opportunities for foreign investors and domestic businesses. This is vital for economies particularly the case of Kosovo, since FDI is highly important in improving competitive position of Kosovo in international market.

⁸⁰ Trade Policy of Kosovo. Prishtina: Ministry of Trade and Industry, 2009.

Government officials and economic experts provide different opinions on Governments' planning and organizing the application for the World Trade Organization (WTO). Lutfi Zharku, Minister of Trade and Industry (MTI) of the Republic of Kosovo says that Kosovo's membership in World Trade Organization is a top priority of the Government.⁸¹ Eventhough the application process and membership are difficult and complex, he confirms that the Ministry of Trade and Industry has prepared the necessary requirements in order to apply for membership, but still did not do so. "We are conducting all the technical arrangements where the development of staff, development of legal infrastructure, and the membership in different regional organizations are included," states Zharku.

Law enforcement in Kosovo is still considered to be a major problem. Economic advisors state that the matter of law non-enforcement in Kosovo is still one of the majors problems. Safet Gerxhaliu, president of the Kosova's Chamber of Commerce states that Kosovo has still not met the requirements and necessary preconditions for applying in the World Trade Organization.⁸² This is contraversial to what Zharku states regarding the fulfilment of the necessary requirements in order to accede to the World Trade Organization. Gerxhaliu argues that in respect to the membership in WTO, Kosova still faces economic and political problems. Furthermore, Gerxhaliu stresses that the competent Kosovar institutions are still unprepared in respect to its involvement in the international markets. Another major issue that Gerxhaliu emphasizes is the low number of States which have recognized Kosovo compared to the overall member in the UN.

Gerxhaliu provides that "a paragraph in the Agreement establishin the World Trade Organization indicates that only states whi have fil autonomy overs their trade policies can

⁸¹ Nadie Ahmeti. "Sfidat Per Anetaresim Ne OBT." (09.09.2010). <http://www.evropaelire.org/content/article/2007704.html> [accessed 15.05.2010].

⁸² Safet Gerxhaliu, e-mail message to Besar Dinarama, May 21, 2010

become a contracting party to the WTO. Moreover, the country has to be a member of the United Nations with a lot of other countries recognizing it.” Referring back to Article XII on Accession, paragraph 1 which states that “any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto,” the article does entail that Kosovo should be a member of the UN prior to adherence in the organization. However, what Gerxhaliu meant maybe was that during the negotiations of the member states in WTO this would complicate the case because of countries that do not recognize Kosovo and happen to be at the same time participants in the negotiating process. Coming back to the rules of accession in WTO, the working parties which are members in WTO vote and a majority of 2/3 is needed in order for a decision to be made. In my opinion, this could pose a problem for Kosovo if in the working party there are countries negotiating which have not recognized Kosovo.

Even though the current number of countries that have recognized Kosovo’s independence is sixty-nine,⁸³ it is still a small number as compared to the United Nations members which reaches 192. Minister Zharku indicates that the statehood recognition is not a precondition of WTO membership, still it is a challenge for the Kosovar institutions.⁸⁴ Zharku also adds that the Ministry of Trade and Industry is waiting for the right time to apply to the WTO in order to have a better chance for acceptance. “The WTO’s most decision-making is based on consensus. Therefore, if there is a country that opposes Kosovo’s independence in the working group, this

⁸³ Ministry of Foreign Affairs. "Countries That Have Recognized the Republic of Kosova" <http://www.mfa-ks.net/?page=2,33> (accessed 31.05.2010).

⁸⁴ "Kosovës i Duhet 15 Vjet Për T’u Anëtarësuar Në OBT." (2010). <http://www.koha.net/index.php?cid=1,5,18731> [accessed 24.05.2010].

might lead to problems with the recommendations that must be submitted to the General Council that takes decision with 2/3 of the votes,” explains Minister Zharku.

Additionally, economic experts confirm that one of the preconditions of the membership in WTO is the need of the country to have an full autonomy over its trade policies, and considering the issue of the failure of the customs operation in Kosovo in a part of the Kosovo’s territory, Kosovo will have difficulties and challenges in its path towards the membership in WTO.⁸⁵ Gerxhaliu also considers this as a barrier pointing out that customs points 1 and 31 are still not under Kosovo Customs control and this poses a problem. According to WTO’s website which provides the rules of application, “Any state or customs territory having full autonomy in the conduct of its trade policies may join (“accede to”) the WTO, but WTO members must agree on the terms.”⁸⁶ It is true that Kosovo has full autonomy in the conduct of its trade policies; However, since Kosovo does not have control over the trade in the two custom points bordering Serbia which under EULEX control, Kosovo will have a problem because of the products that might leak through there and at the same time would violate the IPR.

Responsible officials for trade in the Republic of Kosovo’s Government have still not submitted the application for membership in the depositary which is located in Geneva, confirms “Koha Ditore”, a daily news paper in Kosovo. The leaders of the Ministry of Trade and Industry have not commented on the reasons for not applying in the WTO. Whereas, economic experts and ex-leaders of the government consider that by now Kosovo had to earn the status of the candidate for the membership in the World Trade Organization.⁸⁷ Bujar Dugolli, parliament member and former Minister of the Ministry of Trade and Industry declares that the application

⁸⁵ Ibid

⁸⁶ Organization, World Trade, "Understanding the WTO- Membership, Alliances and Bureaucracy" http://www.wto.org/english/thewto_e/whatis_e/tif_e/org3_e.htm (accessed 31 May 2010).

⁸⁷ "Kosovës i Duhet 15 Vjet Për T’u Anëtarësuar Në OBT." (2010). <http://www.koha.net/index.php?cid=1,5,18731> [accessed 24.05.2010].

and other elements regarding the path towards Kosovo's membership in WTO was prepared in early 2007. "We have had the support of the European Commission and we were assured by the World Trade Organization that Kosovo can apply as an independent customs territory," confirms Dugolli. According to him, the matter was discussed between the Government of the Republic of Kosovo and the United States Agency for International Development (USAID) where recommendations were provided that Kosovo should apply in WTO after the declaration of independence. "We were assured for WTO that we will become members with accelerated procedures," states Dugolli who was the Minister of Trade and Industry until the end of 2007. Dugolli did not explain what the "accelerated procedures" stated by him meant and this is somehow controversial because WTO provides equal and non-discriminatory opportunities by its members for everyone. Therefore the "accelerated procedures" mentioned by him are in contradiction with the "Agreement Establishing the World Trade Organization."

Safet Gerxhaliu, president of the Kosovo's Chamber of Commerce points out that it will take a long time for Kosovo to become a member of the World Trade Organization. "Besides the European integration this is another important challenge and at the same time a top priority for the Government."⁸⁸ Gerxhaliu indicates that until now there were only discussions regarding the matter. In this process more than 150 individuals should be involved because the path towards the membership in WTO might take up to fifteen years. "The actual situation in the Northern Mitrovica is one of the major problems because member in the WTO must have full autonomy in the conduct of its external commercial relations and of the other matters."

Gazmend Pallaska, a legal consultant specialized in commercial law, intellectual property law, and regulatory public law provides his view on the matter of intellectual property rights in

⁸⁸ Safet Gerxhaliu, e-mail message to Besar Dinarama, May 24, 2010

Kosovo.⁸⁹ He indicates that the Republic of Kosovo is still not a member of the United Nations, therefore it has barriers to membership in different international organizations. He confirms that the Republic of Kosovo has not applied yet to the World Trade Organization because such application for a country requires it to be a member of the United Nations. It is true that accession to WIPO requires UN membership, but not WTO and this shows that the contradiction between officials in Kosovo. According to the study, none of them has a clear picture what these organizations require indeed.

Even though Kosovo has still a distant and “rocky” road on the way to WTO, the Government of Kosovo is working in initiated the processes by fulfilling standards required for accession. The Industrial Property Office in Kosovo in the Ministry of Trade and Industry was founded in 2007 and until now has received 23,000 applications for trademark registration, patents, and industrial design. Furthermore, the office of industrial property has also started to provide certificates to the entities that register trademarks, patents and industrial design in 2010, states Pallaska.

Isa Dukaj, head of Industrial Property Office in the Ministry of Trade demonstrates that the office has provided a limit of one year for the revalidation of trademarks which were registered in Belgrade before Kosovo has seceded.⁹⁰ He adds that the Industrial Property Office intends to create an electronic database in order in order to provide information and data for those interested. Dukaj shows that in case of any kind of violations related to the matter, the competent court for taking legal action is the Municipal Court. Therefore, there is an opportunity for penal, administrative, and civil prosecution for the violators of the protected trademarks. Industrial Property Officer in the Ministry of Trade and Industry, Bashkim Navakazi provides

⁸⁹ Gazmend Pallaska, e-mail message to Besar Dinarama, May 24, 2010

⁹⁰ Isa Dukaj, e-mail message to Besar Dinarama, May 22, 2010

that the Industrial Property Office was founded on the 19th of November 2007. Until now the office has received approximately 20,000 applications.⁹¹ Trademark applications received since the offices' formation reaches 10,160, whereas the number of revalidated trademarks which were previously protected in ex-Yugoslavia is 7969. Moreover, patent applications accepted from IPO since the end of 2007 reaches 602 in addition to the 997 revalidated patents protected previously from ex-Yugoslavia. Finally, 77 applications for industrial design were received including both, the new applications and the ones revalidated. Navakazi confirms that after an examination of several applications, the Industrial Property Office has issued 1200 verdicts for trademarks.

It is worth mentioning that the Republic of Kosovo is still not a member of WIPO but Kosovo recognizes WIPO certificates and those trademarks certified by WIPO have an advantage in the registration process occurring in Kosovo.⁹² Kosovo has expressed the will to join international organizations but the main barrier regarding the matter is the statehood recognition which currently is 69 states. According to Pallaska, this number is not sufficient to join international organizations.

The Parliament of the Republic of Kosovo has approved the Law on Customs Measure for Protection of Intellectual Property Rights on December, 29, 2009.⁹³ According to Florentina Grubi, the new regulations substitutes the previous regulation, Implementing Customs measure regarding goods Infringing Intellectual Property Rights, where the new regulation is created based on corresponding European Union regulations. "IP holders are the ones who benefit from the new regulation because they are not required to go to court in order to get hold of approval

⁹¹ Bashkim Navakazi, e-mail message to Besar Dinarama, May 24, 2010

⁹² Gazmend Pallaska, e-mail message to Besar Dinarama, May 24, 2010

⁹³ Florentina Grubi, "Kosovo New Law on Customs Measures for Protection of Intellectual Property Rights." (2010). <http://www.petosevic.com/resources/news/2010/01/000299> [accessed 27.05.2010].

from the judge in cases of destruction of counterfeit or pirated goods. Bear in mind that this applies only to those cases which possess the consent of the importer.”⁹⁴

According to the Law on Customs Measure for Protection of Intellectual Property Rights, the Kosovo customs will be able to reject imported goods which are believed to be infringing the intellectual property right in Kosovo.⁹⁵ The law will assist the protection of intellectual property rights in the Republic of Kosovo. Kosovo has approved different laws regarding the protection of IP rights such as “Law on Trademark”, “Law on Patents”, and “Law on Industrial Design”.⁹⁶

⁹⁴ Ibid

⁹⁵ Ibid

⁹⁶ Ministry of trade and Industry, "Law" <http://www.mti-ks.org/?cid=2,381> (accessed 28.05.2010).

CONCLUSION

The character of international law and its practice were influenced as a consequence of the modern phenomenon of State succession which has given rise to complex legal problems. Considering the legal doctrine (continuity principle) and the 1978 Vienna Convention on Succession of States in respect to Treaties, Kosovo has expressed the will to be bound by treaties and other obligations of the former Socialist Federal Republic of Yugoslavia including the Vienna Conventions on diplomatic and consular relations. Article 34 (a) states that any treaty in force at the date of succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed. Therefore, this also applies to Kosovo since it is considered to be a new State. Article 35 goes further by providing that when after separation of any part of the territory of a State the predecessor continues to exist, any treaty which at the date of the succession of States was in force in respect of the predecessor State continues in force in respect of its remaining territory unless:

- (a) The states concerned otherwise agree:
- (b) It is established that the treaty related only to the territory which has separated from the predecessor State; or
- (c) It appears from the treaty or is otherwise established that the application of the treaty in respect of the predecessor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

However, in the case of Kosovo is more complex because its' international status is currently being discussed in the International Court of Justice and still the court has not notified when the decision will be made. According to the theory and the convention, Kosovo should be bound by

its predecessor's international rights and obligations, however its status poses a problem in answering this question.

Furthermore, the study shows that Kosovo has developed its laws regarding the IPR protection but it is not party to a treaty or a member in an organization related to IPR such as WTO or WIPO. There are contradictions between officials in Kosovo regarding Kosovo's progress in IPR regime and its status and accession to WTO and WIPO. The former requires for an applicant country to have full autonomy in the conduct of its external commercial relations which Kosovo in my opinion does not have that because of the two customs points controlled by EULEX in the Northern part of Kosovo bordering Serbia. The latter requires UN membership as an admission criterion which Kosovo does not fulfill. However, the Government of Kosovo has initiated the processes and is working towards the adherence to WTO. It is very important for Kosovo to develop its own laws and institutions regarding this matter which would lead to accession in WTO at some point. The study also found out that there is a significant relationship as the theory suggests between the strong IPR regime and economic growth. There is evidence that the low-income countries attract FDI which is important for the developing countries. Therefore, it is crucial for governments to build up institutions and mechanisms for effective enforcement of strong IPR and undoubtedly this will lead to socio-economic benefits for a nation.

Lastly, according to the data and facts, the study finds that currently, Kosovo is solely responsible for dealing with the cases of intellectual property rights because of its status and the question of their declaration of independence legality. The study found out that until further notice from the International Court of Justice advisory opinion on the legality of declaration of independence, only Kosovo courts should deal with the violation of IPR in its territory. Furthermore, other states who have not recognized Kosovo are not able to establish Kosovo's

responsibility for the protection of intellectual rights. One might say that Kosovo is still a part of Serbia but then this would be controversial related to specific matters. Kosovo operates under its own law and violations occurring there cannot also be established in the responsibility of Serbia.

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