THE KOSOVO OPINION OF 22 JULY 2010: HISTORICAL, POLITICAL AND LEGAL PRE-REQUISITES

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1. Introduction

In the past decades Kosovo has been theatre of extremely violent conflicts. At the same time this area has been a testing ground for the State Community's search for new conflict solution instruments. Many of the measures adopted had an incidental nature. To give structure to these measures and to interpret them from the viewpoint of existing international law represents a formidable challenge for international law theory and practice.

Pivotal events were the acts of repression by the Milosevic regime over a whole decade (1989–1999), NATO intervention in spring 1999, an act of humanitarian intervention engendering a never-ending political and theoretical-academic discussion, the introduction of an UN-sponsored administration and, finally, the measures of 18 February 2008, by which Kosovo took its destiny in its own hands and declared independence.

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This was, however, not yet the end of the tale. On the contrary, thereby the door was opened to new initiatives, to new controversies and to new academic discussions. All this led to an advisory procedure before the ICJ which was concluded on 22 July 2010. The Opinion published that day stands—together with the many further statements and documents published concomitantly or previously—at the centre of the contributions of this collective writing.

Notwithstanding the fact that the Kosovo Opinion has been the subject of much criticism there can be no doubt that this document will exert considerable influence on the interpretation of many questions of International Law (IL) and this influence goes much beyond of issues commonly associated first-hand with the Kosovo question.

It is the aim of this volume to analyse some essential questions that have come to the fore in this context. This book shall begin, however, with an analysis of the historical pre-requisites of this case.³

2. The Historical Development of the Kosovo Problem

It is hard to find a region in Europe where the problem of the “imagined communities”⁴ with the ensuing ethnical conflicts is more pervasive than on the Balkans. At the same time historic myths are present in an unique fashion.⁵ The reciprocal connection of these elements creates an explosive mixture. There are the ingredients for never-ending conflicts: If any group looks for retribution for purported injustice suffered in different periods of time it becomes impossible to state how a fair solution for the divergent claims should look like. It does therefore make little sense to interpret the present conflict in Kosovo with reference to the battle of Kosovo of 1389. At the same time, however, it cannot be contested that this legendary event whose political and military relevance is controversially discussed among historians is of enormous relevance as a source of