

KOSOVO'S PATH TOWARD EU AND UN MEMBERSHIP

BODO WEBER AND AGRON BAJRAMI

Berlin – Prishtina
July 2018

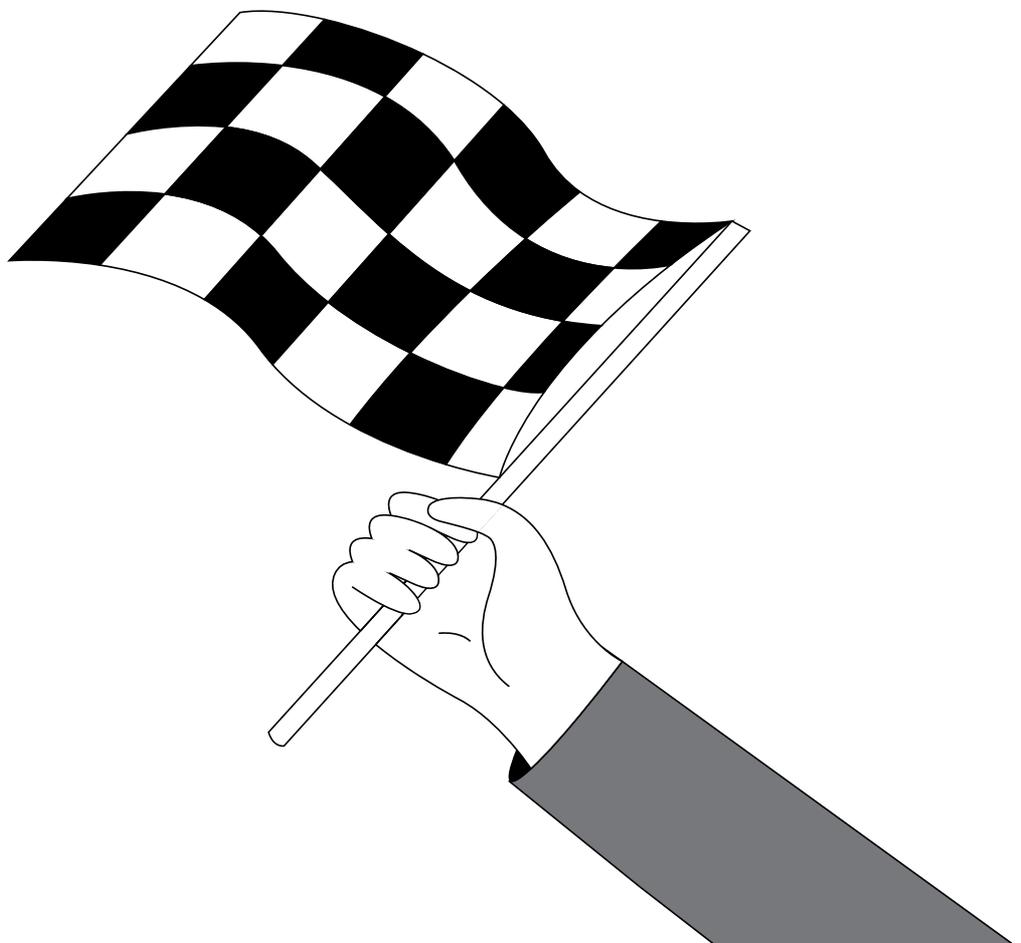


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A DPC-KFOS Policy Note Paper

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Authors:

Bodo Weber and Agron Bajrami

Editing:

Kirsty Campbell; DPC Editorial Committee (English)

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This Policy Note Paper Series is part of the dialogue and advocacy project “Strengthening the Kosovo Perspective – Negotiations on a Final Comprehensive Agreement between Kosovo and Serbia,” jointly organized by the Democratization Policy Council (DPC, Berlin), the Kosovo Foundation for Open Society (KFOS, Prishtina) and the Group for Legal and Political Studies (GLPS, Prishtina), and supported by KFOS.

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PREFACE

This paper is the third of a series of policy notes that will be published over the course of this year, dealing with the so-called “new phase” in the EU-led political dialogue between Kosovo and Serbia. Specifically, the series will address the negotiations over a final, comprehensive, and legally binding agreement on full normalization of relations between the two countries. It will cover the most important aspects and elements of a potential future agreement from both a Kosovan and international perspective, as part of a wider dialogue and advocacy project entitled “Strengthening the Kosovo Perspective - Negotiations on a Final Comprehensive Agreement Between Kosovo and Serbia” organized by the Democratization Policy Council (DPC, Berlin), the Kosovo Foundation for Open Society (KFOS) and the Group for Legal and Political Studies (GLPS; both based in Prishtina).

Through a variety of activities, the project strives to facilitate a dialogue process among Kosovo policymakers, civil society actors, and Western officials on Kosovo’s position in the upcoming negotiations. Rather than offering ready-made recommendations on Kosovo’s negotiating position, the policy notes intend to serve as a catalyst for intense and fruitful debate and dialogue. Using this approach, the authors, as well as the organizers of the overall project, aim to help overcome structural constraints relating to the forthcoming negotiations on a comprehensive final agreement. Their ultimate objective is to contribute to a sustainable solution to the Kosovo-Serbia dispute that will end the status of both countries as unfinished states and create important preconditions for a lasting peace in the region and for the sustainable democratic transformation of both Kosovo and Serbia.

EXECUTIVE SUMMARY

The issue of the Republic of Kosovo's international subjectivity, particularly its aspirations for membership in the European Union (EU) and in the United Nations (UN), constitutes one of the most contentious aspects of the country's dispute with Serbia. While Kosovo's statehood depends primarily upon its territorial integrity, sovereignty and institutional functionality, gaining full international subjectivity is also vital. Kosovo, like the other Western Balkan states, is part of Europe and it is a natural step for the country to seek EU membership. Serbia's membership aspirations have been used, if inconsistently, by the West as a bargaining tool to attain Belgrade's acceptance of Kosovo's statehood. In the post-WWII period, membership in the UN has generally been considered as a confirmation of sovereign status within international law. 1999 marked a turning point. While protected by NATO intervention that year, Kosovo simultaneously became the first victim of an accelerating crisis between the Western and non-Western members of the UN Security Council, in particular Russia. Kosovo's path toward EU membership has been blocked by five EU member states. Kosovo's aspirations for a UN seat have been blocked by two permanent UN Security Council (UNSC) members, Russia and China. Without those seven states' acceptance of its statehood, Kosovo's entry into these two bodies will remain elusive.

The issue of Kosovo's prospective EU and UN membership was revived with the beginning of political dialogue between Serbia and Kosovo

initiated in 2012. At the outset of the process, Kosovo's international subjectivity, territorial integrity and sovereignty were defined as the core objectives of the dialogue. The April 2013 Agreement led to a softening in the stance of the five non-recognizing EU member states and facilitated Kosovo's signing of an SAA with the EU. However, due to the lack of a master plan on the part of the EU, the political dialogue has since descended into crisis. There has yet to be a breakthrough on recognition or on Kosovo's EU prospects. In the long interim period, Serbia has continued to lobby against Kosovo's recognition. And the issue of Kosovo's UN seat has never even made it to the negotiating table

The announcement in July 2017 of a new phase in the dialogue, aimed at a final, comprehensive and legally binding agreement means the issue of EU and UN membership must finally be addressed. From both an international and Kosovan perspective, Kosovo's EU/UN membership prospects heavily depend on Serbia's future role and performance. Membership in those two organizations will only materialize if the non-recognizers reverse their position. This, in turn, will crucially depend on Serbia changing *its* position of not recognizing Kosovo as an independent state. It is hard to see how Serbia could convince those non-recognizers without itself fully, formally recognizing Kosovo first.

Any final comprehensive agreement thus requires robust, enforceable legal and political guaran-

tees from Serbia that it will not only abandon any attempt to prevent Kosovo's membership, but reverse its policy entirely. A comprehensive implementation plan, most likely integrated into the Serbian 'Chapter 35' benchmarks, will be as important as the final agreement itself, if not more so. Conditions must include to ensure Serbia not only reverses its position, but actively promotes recognition of Kosovo by the EU and UN(SC) non-recognizers. To a great degree, Serbia will be responsible for the non-recognizers' change of stance towards Kosovo. On Kosovo's UN membership bid, however, even a complete U-turn in Belgrade's policy, narrative and actions may not prove sufficient for Russia. In order to prevent Serbia from hiding behind its limited leverage over Russia, Belgrade's detailed obligations in the period until its accession to the EU must leave no room for ambiguity and maneuvers. On Kosovo's EU membership path, Serbia's entry into the EU will have to be conditioned with the five non-recognizers having recognized Kosovo before the EU signs its accession treaty with Belgrade. In addition, the EU's accession treaty with Serbia must suspend the country's voting rights on Kosovo's accession to the Union, as there exist no enforceable guarantees Serbia can give to the EU and to Kosovo it will not reverse its policy once it has entered the club.



The announcement in July 2017 of a new phase in the dialogue, aimed at a final, comprehensive and legally binding agreement means the issue of EU and UN membership must finally be addressed.

01 INTRODUCTION

The issue of the Republic of Kosovo's international subjectivity, particularly its aspirations for membership in the European Union (EU) and in the United Nations (UN), constitutes one of the core contentious aspects of the country's dispute with Serbia over its status. Also controversial are the closely linked questions of the country's recognition by Serbia and the status of Kosovo Serbs within Kosovo. Kosovo's statehood and membership in the EU and the UN involve a complex political-legal relationship. There exists no formal legal link between a country's reception into the EU and the UN and the recognition of that country's sovereign status by all members of both organizations. However, after its 2008 declaration

of independence, Kosovo's path to UN and EU membership was blocked by the two permanent UN Security Council (UNSC) members¹ and five EU member states respectively.² This clearly demonstrated that, without those seven states' acceptance of its statehood, Kosovo's entry into these two bodies will be obstructed.

The case of the United Nations is particularly complex and contradictory. Based on the UN's position in the postwar international order, in particular its universality, obtaining a seat in the UN is generally considered as "universal recognition," meaning the international acceptance of a country's status as a state in international law.³

1 Russia and China.

2 Spain, Cyprus, Greece, Slovakia and Romania.

3 The authors owe this reference to Dren Doli, co-founder of the Group for Legal and Political Studies (GLPS), Prishtina. Communication June 2018.

UNSC Resolution 1244,⁴ which ended the 1999 Kosovo war, formally reaffirmed the sovereignty of the former Federal Republic of Yugoslavia (Serbia-Montenegro) over Kosovo until a time its status can be agreed. The ongoing dispute between the permanent Western members of the UNSC – France, the United Kingdom, and the United States – and Russia (and China to a lesser degree) over Kosovo has been the first in a series of conflicts⁵ that indicate a post-1999 decline in the universal role of the UN. In Kosovo, this has been reflected in the controversial position of UNMIK following the 2008 declaration of independence, and its subsequent marginalization following the start of the EU-led political dialogue with Serbia.

The issue of Kosovo's prospective EU and UN membership was revived with the beginning of the political dialogue initiated in 2012. Kosovo took the important first step toward EU integration with the signing in 2015 of a Stabilization and Association Agreement (SAA). Kosovo's UN membership prospects, however, remain remote, and more so because the dialogue descended into crisis in the years following the signing of the April 2013 agreement. The announcement in July 2017 of a new phase in the dialogue, aimed at a final, comprehensive and legally binding agreement, means the issue of EU membership must finally be addressed. The issue of Kosovo's blocked seat in the UN must also be addressed.

This paper analyzes potential solutions to the issue of Kosovo's membership in the EU and UN in the context of the upcoming negotiations over a final, comprehensive agreement between Kosovo and Serbia. The first section examines what role

the debate over Kosovo's international subjectivity played in earlier Western attempts to solve the status dispute. The second section analyzes the significance given to EU and UN membership in the context of the EU-led political dialogue in 2012 and 2013, and examines relevant developments following the signing of the April 2013 Agreement. The third section looks at the role of Kosovo's EU and UN membership aspirations plays in the new phase of the dialogue so far. The final section draws general conclusions and presents potential solutions for Kosovo's EU and UN membership progress in the framework of a future comprehensive, final agreement on full normalization of relations between Kosovo and Serbia, both from an international and Prishtina perspective.

4 UNSC Resolution 1244, June 10, 1999, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>.

5 Succeeded by the US invasion of Iraq, the Russian annexation of Crimea and the Syrian war.

KOSOVO'S BLOCKED PATH TO UN AND EU MEMBERSHIP

Prior to Kosovo's declaration of independence, the issue of its UN membership had not been a priority; instead the emphasis was on membership in other international organizations.

Finnish president Martti Ahtisaari, acting as UN mediator during the 2006-2007 status talks, highlighted the situation in a statement in 2008:

“They [Kosovo] need to become members of international financial institutions like the IMF. The UN can come later, that is not so important if some countries are causing a problem.”⁶

For Kosovo, the biggest obstacle to UN membership in practice has been the permanent Security

Council members, Russia and China. This is due to their veto powers allowing them to prevent membership, even in the (hypothetical) case that all of the remaining UN members vote on the General Assembly in favor of Kosovo's entry. Of the two, Russia is seen as the more significant problem. Moscow has consistently and publicly opposed Kosovo's independence. In 2008, this opposition prevented a Security Council agreement on Ahtisaari's proposal for a permanent settlement of the status dispute with Serbia. As Ahtisaari explained in 2008:

“[Russian] behavior in the Security Council has prevented agreement in the Council and that has undermined ... the role of the Security Council.”⁷

6 “No going back on Kosovo, says Ahtisaari,” Reuters, March 7, 2008, available at: <https://www.reuters.com/article/us-serbia-kosovo-ahtisaari-interview-idUSL0749209020080307>.

7 Ibid.

The four-months Troika process⁸ led by the US, Russia and the EU, which began once Ahtisaari had unsuccessfully concluded the negotiations in Vienna, recognized the necessity of an agreed solution, primarily because it would remove the obstacles to Kosovo's membership in international organizations such as the UN and the EU. Theoretically, an agreed solution would have opened the doors to the UN for Kosovo.⁹ However, negotiations failed for the same reasons the Ahtisaari Plan had failed, i.e., Russia's and Serbia's position.

Against the background of the failure of Ahtisaari and the Troika, the majority of Western countries concluded that a formal acknowledgement of Serbia's loss of Kosovo was the only viable and potentially sustainable solution to the long-term status conflict. This consensus led to the declaration of Kosovo's independence in 2008, coordinated with the US and the most important EU member states including Germany, France, the UK and Italy ("The Quint"). The declaration also provoked predictable resistance from the two permanent UNSC members (Russia and China) and, less predictably, from five of the then 27 members of the European Union - as a consequence blocking the Republic of Kosovo's path to UN and EU membership.¹⁰

A ruling in 2010 of the International Court of Justice (ICJ) found Kosovo's declaration of independence to be compliant with international law. The Court also assessed that in principle, the content of the UNSC Resolution 1244 did not prevent Kosovo's independence. In Prishtina, hopes were

raised in the immediate aftermath of the ruling that key UNSC and EU member states would abandon their position of non-recognition. However, such repositioning did not follow.¹¹

The positions of both Russia and China, but particularly that of Russia, are blocking Kosovo's UN membership prospects. Regarding China, in 2008 Western diplomats believed Beijing was ready to abstain from voting on any resolution that would allow Kosovo's entry to the UN.¹² Russia's rigid position was decisive. With regard to Kosovo, Russia has justified its policy with reference to strict adherence to international law, yet in other instances¹³ - such as its 2014 annexation of Crimea - has disregarded these very same principles of international law. Until 2014, Moscow had insisted that the Western intervention and the Western-backed declaration of independence constituted violations of international law. Despite this, Moscow cited the 'Kosovo precedent' as justification for annexing Crimea.¹⁴ Ironically, both Serbia and Russia have since pretended such citation has never happened, due to the disservice it did to both country's stance on Kosovo's independence.

Aside from the contentious UNSC veto, Prishtina officials have continuously lobbied for recognition from more states. The numbers of countries that have recognized Kosovo's independence has sometimes resulted in conflict with the Serbian government. While Kosovo Foreign Minister Behgjet Pacolli has advocated for wider international recognition, Serbia Foreign Minister Ivica Dacic has lobbied countries to withdraw their recognition of Kosovo.¹⁵

8 On the Troika negotiations, see: Bodo Weber/Agron Bajrami, *The Original Framework of the Political Dialogue*, DPC-KFOS Policy Note, Berlin-Prishtina, May 2018. Available at: <http://www.democratizationpolicy.org/summary/the-original-framework-of-the-political-dialogue/>.

9 Not for attribution discussion with a former member of Kosovo negotiations team, Prishtina, June 2018.

10 Ibid.

11 Ibid.

12 Not for attribution talk with several diplomats in Prishtina, May-June 2018.

13 <https://www.economist.com/leaders/2008/08/28/south-ossetia-is-not-kosovo>.

14 *Crimea is not Kosovo: Seven Arguments against a False Comparison*, Group for Legal and Political Studies (GLPS) policy note, Prishtina, March 2016: Available at:

15 The exact number of countries that have recognized Kosovo's independence has been disputed even within Kosovo itself: "Konfuzion rreth

EU AND UN MEMBERSHIP PERSPECTIVE IN THE POLITICAL DIALOGUE

The lead EU and US actors responsible for initiating the political dialogue between Kosovo and Serbia defined the ultimate objectives of the framework at the outset of the dialogue process.¹⁶ In addition to the territorial integrity and sovereignty of Kosovo, and institutional safeguards for normal living conditions for Kosovo Serbs (which included minority rights), the complete exercise of international subjectivity of Kosovo was also included. This entailed membership in all relevant regional and international institutions, with the EU and the UN taking priority. The EU's approach to the dialogue was made explicit by German Chancellor Angela Merkel when

she assumed EU leadership on the status dispute during the summer of 2011. The approach overtly linked Serbia's EU membership aspirations with the condition that Belgrade accept the reality of an independent Kosovo. Accordingly, Kosovo's EU membership prospects were the primary focus during the first years of the dialogue.

Thus, in the 2013 April Agreement the prime ministers of Kosovo and Serbia had agreed that:

“... neither side will block, or encourage others to block, the other side's progress in their respective EU paths.”¹⁷

numrit, sa shtete e kanë njohur Kosovën?” telegrafi.com, November 8, 2017, available at: <https://telegrafi.com/konfuzion-rreth-numrit-sa-shtete-e-kanen-njohur-kosoven/>.

¹⁶ On the original framework of the political dialogue, see: Weber/Bajrami, *The Original Framework of the Political Dialogue*.

¹⁷ *First agreement on governing the normalisation of relations*, Brussels, April 19, 2013. Available at: <http://www.rts.rs/upload/storyBoxFileData/2013/04/20/3224318/Originalni%20tekst%20Predloga%20sporazuma.pdf>.

Chancellor Merkel's close ally in the Bundestag, MP Andreas Schockenhoff, was instrumental in drafting the Seven-Point-Plan of conditions put to Serbia for the opening accession negotiation with the EU.¹⁸ The aim of Kosovo's EU membership was made even more explicit within the plan. Point 7 outlined a legally binding agreement between Kosovo and Serbia on the normalization of relations,

“with the prospect of Serbia and Kosovo, as full Member States under the EU treaties, being able to exercise their rights and fulfil their responsibilities independently and together...”¹⁹

Both the provision to support each other's EU path and point seven of the Schockenhoff Plan – the latter almost verbatim – found their way into the EU's January 2014 Accession Negotiating Framework with Serbia.²⁰ Yet Kosovo and Serbia's commitment to the April Agreement was *not* legally binding. Against this background, in their autumn 2013 non-paper on the EU's Accession Negotiating Framework with Serbia,²¹ Germany and the UK insisted on:

“A watertight, binding mechanism to prevent either Kosovo or Serbia blocking the other's EU path (likely taking legal form in Serbia's accession treaty). This should be defined as part of the discussion of closing benchmarks for Chapter 35.”

The statement made only cursory reference to the only potential guarantee preventing Belgrade from blocking Kosovo's accession to the EU (presuming Serbia's prior entry): the suspension of Serbia's voting right, as a member of the EU, on Kosovo's EU accession in the EU's future accession treaty with Serbia.

Prishtina also highlighted the importance of the dialogue for Kosovo's EU membership prospects. In its March 2011 resolution, the Kosovo Assembly stressed the “acceleration to European and Euro-Atlantic integration”,²² and in its October 2012 resolution the parliament identified the political dialogue as a means of “advancing the European agenda for the two states [Kosovo and Serbia]...”²³

The incremental approach of the EU to the political dialogue allowed Kosovo's EU prospects to progress, as when the Union concluded a Stabilization and Association Agreement (SAA) with Kosovo in October 2015. The evolutionary nature of the process was mirrored in the legal form of the agreement. For the first time, the EU authorized the SAA as an ‘EU only’ agreement, i.e., an agreement between Kosovo and the EU only, and not including the individual EU member states. Kosovo was not listed with its official name (Republic of Kosovo) in the agreement, just as ‘Kosovo’ followed by a footnote that declared the EU's status neutral position. The EU thus managed to circumvent the problem of the five non-recognizers among its members, thereby facilitating Kosovo's progress on EU integration.²⁴

18 The plan, drafted and driven by several MPs from the ruling CDU-CSU party, later became known as the Schockenhoff Plan.

19 Andreas Schockenhoff, “Expectations concerning Serbia with regard to the start of accession negotiations,” September 13, 2012.

20 *Negotiating Framework. GENERAL EU POSITION. Ministerial meeting opening the Intergovernmental Conference on the Accession*, Point 12 and 19., January 9, 2014. Available at: <http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=AD%201%202014%20INIT>

21 The non-paper had a significant impact on the final version of the Negotiating Framework.

22 Assembly of the Republic of Kosovo, *Resolution for Dialogue Between Republic of Kosovo and Republic of Serbia*, Prishtina, March 10, 2011.

23 Assembly of the Republic of Kosovo, *Resolution on Normalization of relationship Between Republic of Kosovo and Republic of Serbia*, Prishtina, October 18, 2012.

24 See P. van Elsuwege, “Legal Creativity in EU External Relations: The Stabilization and Association Agreement Between the EU and Kosovo,” 22 *European Foreign Affairs Review* (2017) 3, pp.393 ff.

In addition, the political dialogue further enabled Kosovo's participation in regional fora (without Kosovo being represented with its official name, but simply as "Kosovo," and a reference that Kosovo's participation did not prejudice its final status). Participation had been agreed within the framework of the preceding technical dialogue, but in practice had been by and large blocked by Belgrade.

In contrast to Kosovo's prospects for EU membership, the issue of a seat in the UN remained far more uncertain in the dialogue. As explained by a government representative involved in the early phase of the dialogue, the German (and its Western allies') position implied that at some point in the political dialogue process, Kosovo should achieve UN membership. But Angela Merkel and her Chancellery did not explicitly communicate that provision to Belgrade.²⁵ During a September 2012 news conference in Belgrade, members of the Schockenhoff group remained vague on the issue of UN membership. As a member of the group explained, given the politically and emotionally charged nature of the UN issue, a 'softly softly' approach was adopted to avoid a controversy that would have overshadowed the main objectives of the dialogue.²⁶ Despite this, the inclusion of Kosovo's admission to the UN as part of the dialogue's original framework did not go unnoticed among the negotiating parties. In response to Kosovo Prime Minister Thaçi's statement contending that the aim of the dialogue was a UN seat for Kosovo, then Serbian Prime Minister Ivica Dačić noted:

"If we agree, everything is possible. We are not running away from that and we seek a comprehensive agreement, but for him to get that he also has to give something. That compromise has to satisfy both sides."²⁷

Despite some initial progress on Kosovo's EU integration path, since 2014 the political dialogue has gradually lost its way due to its core weakness – the lack of any long-term strategy. Over time, the lack of any plan that would have defined the steps necessary for Kosovo's accession to international organizations meant the issue of EU and UN membership was placed on the back burner. Following the signing of the April Agreement, there were some initial signals that the five non-recognizing EU member states were considering a softening of their stance. But hopes for even some of them to recognize Kosovo were eventually dashed.²⁸

At the same time, Serbia continued its fervent lobbying against Kosovo's goal of international organization membership, especially those under the umbrella of the UN. In Prishtina, where it had been expected that the political dialogue would bring "some level of change among at least some of the five non-recognizers,"²⁹ Brussels was increasingly seen as "totally inactive" in trying to achieve some positive change among non-recognizing EU-member states. Kosovo officials felt the EU was "not exerting sufficient pressure" on Serbia to refrain from lobbying against Kosovo's attempts to achieve wider international recognition.³⁰ The most prominent cases of Serbia's

25 Interview with German government official involved in the political dialogue in 2011-13, Berlin, June 2018.

26 Interview with member of the former Schockenhoff group, Berlin, May 2018.

27 "Dačić: Ne nudimo Kosovu mesto u UN," *Mondo.rs*, January 15, 2013, available at: <http://mondo.rs/a274935/Info/Srbija/Dacic-Ne-nudimo-Kosovu-mesto-u-UN.html>.

28 James Ker-Lindsay/Ioannis Armakolas (Eds.), *Lack of Engagement? Surveying the Spectrum of EU Member State Policies Towards Kosovo*, KFOS, Prishtina, December 2017. Available at: <http://kfos.org/wp-content/uploads/2017/12/Lack-of-Engagement.-Surveying-the-EU-Member-State-Policies-towards-Kosovo-ENG-01.pdf>.

29 Ibid.

30 Off the record discussion with a former member of Kosovo dialogue team, May 2018.

lobbying targeted Kosovo's bids for UNESCO and Interpol membership, as well as the International Olympic Committee (IOC), FIFA and UEFA.³¹

Increased dissatisfaction with the dialogue and the EU resulted in impatience among Kosovo's representatives. The government made several unilateral attempts to gain access to international institutions, without success. Belgrade responded with intensified counter-lobbying. Kosovo's unsuccessful attempt to attain UNESCO membership in 2015 provides an illustrative example.

Kosovo's membership of the UN cultural body would have represented another step in its bid for full international recognition.³² Kosovo applied for UNESCO membership despite being warned by several Prishtina-based Western diplomats that their governments considered this action premature and would therefore not actively support Kosovo.³³ The motion was lost by 3 votes. 92 states voted in favor, 50 against, and dozens abstained.³⁴ Due to Prishtina's unilateral membership bid, Kosovo's Western supporters only started to lobby for Kosovo's UNESCO membership reluctantly and late in the process. This most likely caused the bid to fail.³⁵ Moreover, the Kosovo team underestimated the necessity of working with *all* countries with a right to vote in UNESCO, taking for granted some of those which recognized Kosovo's independence. Those states, such as Japan and Poland, ultimately abstained from voting on Kosovo UNESCO membership.³⁶ Two years later, fearing another setback, Kosovo withdrew its bid to join UNESCO. In an official



... neither side will block, or encourage others to block, the other side's progress in their respective EU paths.

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statement, the Kosovo Foreign Ministry said the withdrawal was agreed in coordination with the US and the EU.³⁷

In parallel to this process, the foreign ministries in Prishtina and Belgrade continued to compete over the recognition of Kosovo by additional UN member states.

31 Kosovo failed to get membership in UNESCO and Interpol, but succeeded in becoming member of IOC, FIFA and UEFA.

32 <https://www.theguardian.com/world/2015/nov/09/kosovo-fails-in-unesco-membership-bid>.

33 Off the record discussion with diplomats from two Western states, May-June 2018.

34 UNESCO rules required two-thirds of the 142 members voting, i.e., 95 members, to support Kosovo's membership application.

35 Interviews with Western diplomats, 2015.

36 Ibid

37 "Kosovo gives up bid to join UNESCO", *Gazeta Express*, October 4, 2017. Available at: <http://www.gazetaexpress.com/en/news/kosovo-gives-up-bid-to-join-unesco-173051/>.

EU AND UN MEMBERSHIP IN THE CONTEXT OF A FINAL COMPREHENSIVE AGREEMENT

Brussels' announcement of the start of a "new phase" of the political dialogue in July 2017 prioritized negotiations over a final, comprehensive agreement on normalization of relations between Serbia and Kosovo and thus returned the issue of Kosovo's international subjectivity and its membership in the EU and UN to the forefront of political debates.

In Kosovo, the unresolved issue of a seat in the UN has been raised by various officials. Deputy Prime Minister, Enver Hoxhaj, for example, commented on the upcoming negotiations, stating:

"We are expecting to end the dialogue by reaching a legally binding agreement, with mutual recognition and admission to United Nations, on a timetable of around two years."³⁸

In the long interim period between the July 2017 announcement and the upcoming negotiations, Belgrade has engaged in intensive political spin at home and advocacy abroad. This has involved the lobbying of Western officials for political 'solutions' that fall outside the firm red lines that defined the original framework of the political dialogue.³⁹ Serbia made a significant U-turn in its

38 "[EWB Interview] Hoxhaj: Kosovo expects mutual recognition and admission to UN;" europeanwesternbalkans.com, March 20, 2018. Available at: <https://europeanwesternbalkans.com/2018/03/20/ewb-interview-hoxhaj-kosovo-expects-mutual-recognition-admission-un/>.

39 Weber/Bajrami, *The Original Framework of the Political Dialogue*.

political narrative on Kosovo in the period since the signing of the April Agreement in 2013. As part of this, Serbian state officials have hardened their stance on Kosovo's membership in key international organizations like the UN. In January 2018, Foreign Minister Dačić described UN membership for Kosovo as a fantasy, stating:

“It would be good if a lasting solution were to be found. But when they talk about a solution for Kosovo in the West, they mostly think of us accepting the unilaterally declared independence of Kosovo, and that's a fairytale. For Serbia to recognize Kosovo, for Kosovo to get a seat in the UN, for us to suggest to Russia to vote in favor of it - that's not a fairytale, that's a mirage. That won't happen.”⁴⁰

In similar spin starting after July 2017, Serbian President Aleksandar Vučić suggested a ‘compromise’ in the form of ethno-territorial division, which would enable Serbia's support for a Kosovo seat in the UN in return for Kosovo conceding its insistence on territorial integrity:

“I don't see how Prishtina could enter the UN without a comprehensive and serious and painful compromise that they will have to agree on with Belgrade, in order for Belgrade to enable that.”⁴¹

The clash between Kosovo's current Foreign Minister Behgjet Pacolli and his Serbian counterpart Ivica Dačić over recognition for Kosovo escalated in 2018, with Dačić lobbying developing countries

that had previously recognized Kosovo to reverse their decision.⁴²

Against the background of the uncertainties in the new phase of the dialogue, one of the five EU non-recognizers, Spain, has drifted away from its previous approval of the EU's dialogue policy in 2018.⁴³ This move seems to have been additionally motivated by the escalating domestic conflict over Catalonia's bid for independence. Spain had tended to abstain from any pro-active role in EU enlargement towards the Western Balkan countries, but from January 2018 onwards began to take a more active position in matters relating to Kosovo. In January, the government of Prime Minister Mariano Rajoy reacted to leaked drafts of the European Commission's new Western Balkans Strategy. In the run up to the Commission's finalization of the strategy, Madrid sent a non-paper to the EC. The non-paper communicated a specific aversion to the use of the term “Western Balkan Six (WB6)” and any mention of Kosovo's membership prospects in the draft strategy. In the paper, the Spanish Foreign Minister contended that:

“The concept of ‘WB6’ does not fit the enlargement dynamic. Kosovo is not part of the enlargement process and has its own differentiated framework.”⁴⁴

In May, Rajoy refused to participate in the EU-Western Balkan Summit in Sofia because an invitation had been extended to Kosovo President Thaci along with the other Western Balkans heads of states.⁴⁵

40 “Recognition fairytale, UN membership mirage” - FM on Kosovo,” *B92.net*, January 23, 2018. Available at: https://www.b92.net/eng/news/politics.php?yyyy=2018&mm=01&dd=23&nav_id=103325.

41 <http://rs.n1info.com/a365481/Vesti/Vesti/Vucic-o-Kosovu-i-proglasenju-nezavisnosti.html>

42 “Liberia annuls letter of recognition of Kosovo,” *B92.net*, June 20, 2018. Available at: https://www.b92.net/eng/news/politics.php?yyyy=2018&mm=06&dd=20&nav_id=104444.

43 This drift occurred under the conservative government led by Prime Minister Mariano Rajoy. Rajoy's government was toppled in a no-confidence vote on June 1, 2018, paving the way for a minority government led by the Socialist leader, Pedro Sánchez.

44 “Spain tells EU to cut Kosovo from enlargement plan”, *euobserver.com*, January 30, 2018, available at: <https://euobserver.com/enlargement/140771>.

45 “Spanish PM decides to snub EU-Balkans summit over Kosovo,” *B92.net*, May 15, 2018. Available at: <https://www.b92.net/eng/news/world>.

04 CONCLUSIONS

Given these developments since the announcement of a new phase in the political dialogue, for the EU (supported by the US) to begin meaningful negotiations in Brussels with Serbia and Kosovo over a comprehensive agreement, a profound preparatory reset⁴⁶ is required, specifically relating to Kosovo's full exercise of international subjectivity. The lead Western capitals will have to remind Serbia that, by encouraging the five EU non-recognizer states to block Kosovo's EU membership aspirations, it is non-compliant with its obligations under the April Agreement and the Accession Negotiating Framework. Such a reset will also require to make clear to Belgrade that, while the issue of a UN seat for Kosovo was not previously made explicit to Serbia, this does not

mean that it is not an objective of the original framework of the political dialogue.

Membership in those two organizations will only happen if the non-recognizers change their position on recognizing Kosovo. Such a change in position, in return, will heavily depend on Serbia changing its position of not recognizing Kosovo as an independent state. On that background, and given Serbia's history of counter-lobbying with the non-recognizer states, Belgrade will have to be made responsible to a great degree for the non-recognizers in the EU and the UNSC to change their position on Kosovo. From an international and Kosovan perspective, it is hard to see how Serbia could convince those non-recog-

php?yyyy=2018&mm=05&dd=15&nav_id=104161.

46 On a preparatory reset, see: Bodo Weber/Agron Bajrami, *The Original Framework of the Political Dialogue*.

nizers without itself fully, formally recognizing Kosovo first.⁴⁷

Any final, comprehensive agreement between Serbia and Kosovo thus requires robust legal and political guarantees from Serbia that it will reverse its previous activities to prevent Kosovo's membership.

To have meaningful impact, conditions included in the future agreement should explicitly preclude Serbia from blocking Kosovo's EU membership bid. The condition should include mechanisms to enforce Serbia to radically change its course in a demonstrable way. If Serbia is willing to sign - and to subsequently implement in a consistent way - an agreement in line with the original framework of the political dialogue, it is in its core interest that both Kosovo and Serbia's EU membership aspirations do not continue to be blocked by some of the existing member states. Conditions will therefore have to be put in place to ensure Serbia actively encourages the recognition of Kosovo, reversing its advocacy towards the five non-recognizers. These conditions will have to be divided into quantifiable diplomatic activities and a reversal of the public narrative on the issue of Kosovo's international recognition by Serbia's high-level officials. Due to Serbia's previous testing of the boundaries, the conditions will have to outline auditable benchmarks that leave no room for ambiguity. The conditions would form an important part of the agreement's implementation plan that, to be most effective, would have to be integrated as a new set of benchmarks into Chapter 35 of the EU's accession negotiations with Serbia. The condition depends on using Serbia's entry into the EU as a bargaining tool. Serbia should not be allowed into the EU before the five non-recognizers have recognized Kosovo.

Still, Serbia is likely to gain EU status prior to Kosovo, thus there currently exist no safeguards against Belgrade reversing its course once a Union member, then blocking Kosovo. There is no way to guarantee that Serbia will not block Kosovo other than what was proposed in 2013 by Germany and the UK in their non-paper on the accession negotiating framework: that a future EU-Serbia accession treaty must include a clause obligating Serbia to vote in favor of Kosovo's EU membership. In essence, this equates to the suspension of Serbia's right as an EU member state to veto Kosovo's accession to the EU.

Serbia has relied on Russian support for in its rejection of an independent Kosovo. Relations between the West and Russia have continuously deteriorated in the decade since Kosovo's declaration of independence, particularly since its seizure of Crimea. This will definitely complicate Serbia's accession path. But it also makes Kosovo's full international subjectivity even more crucial in relation to UN membership.

A Serbian U-turn on Kosovo's independence, aimed at China and Russia reversing their position, demands a quantifiable action plan. This would logically start with asking Serbian diplomats to reach out to those states in Latin America, Africa and elsewhere they have engaged with on the matter since 2008, demarching them on Belgrade's policy change, to advocate for the recognition of Kosovo. There is no guarantee that the two permanent UNSC members China, and particularly Russia, will change their stance towards Kosovo, even if Serbia will ask them to do so. Nevertheless, provisions must be included in the final, comprehensive agreement, that oblige Belgrade to engage with Moscow in an auditable way to lobby for Russian recognition

47 On the issue of Serbia's recognition of Kosovo, see: Bodo Weber/Agron Bajrami, *How to recognize reality? The issue of Serbia's recognition of Kosovo*, DPC-KFOS Policy Note, Berlin-Prishtina, June 2018.

of an independent Kosovo - even if such actions only result in demonstrating to the Serbian public, Kosovo and the West that Belgrade has limited leverage over Moscow and that Serbia's and Russia's interests are not genuinely congruent.

For the nearer future, important intermediary steps in the implementation plan should define Kosovo's progress towards membership in international bodies such as *inter alia* UNESCO, the Council of Europe or Interpol.



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