

KOSOVO:

Between universal non-recognition and 'derecognitions'

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INTRODUCTION

Recognition of states has been an integral part of developments in international law for more than 250 years. Since the emergence of territorial entities in Europe during the seventeenth and eighteenth centuries, states began to recognize the existence of other states through the establishment of diplomatic relations with them. But, with increasing number of states formed outside the process of decolonization, respectively of the formation of states as a result of the principle of self-determination, the process of recognition also come to the fore. This process, despite the numerous negative effects on the domestic plan of the claiming states, as well as on international politics, is not formally regulated by any instance or international law. In the absence of regulation, derecognitions are increasingly being used by states to undermine the legitimacy and international legal personality of unilaterally created states.

Although the United Nations does not legally have the competence to recognize states, the membership of states in this organization is widely seen as achieving universal recognition. The admission of states to the UN, even if opposed by certain states, in addition to the permanent members of the Security Council, has an automatic recognition and concluding effect on the state-building process. Since Kosovo has not managed to secure universal recognition, i.e. it has not managed to be a full member of the UN, it has been forced to choose individual recognition as a form of achieving consolidated international recognition. In addition to implementing this strategy, which is quite challenging and difficult, especially for the newly created states, Kosovo has also faced an aggressive campaign of derecognition by Serbia. This campaign, conducted during the period when the parties have been engaged in a dialogue process, which started in 2011 under the auspices of the EU, has aggravated and strained relations between the two countries. The campaign also resulted in stagnation of Kosovo's integration process, highlighting the need for all efforts to reach

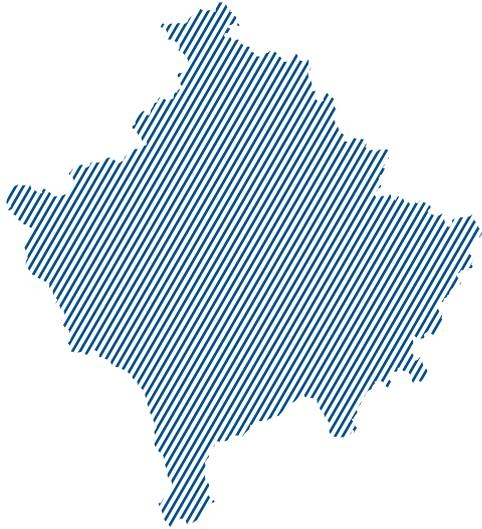
a final agreement between the two countries to be focused on mutual recognition.

This paper intends, first and foremost, to provide a theoretical framework related to the concepts of recognition and derecognition. Furthermore, the paper addresses the challenges that Kosovo has faced in relation to the consolidation of statehood, due to the lack of universal recognition. Furthermore, the paper provides a perspective on the developments and evolution of the dialogue process between Kosovo and Serbia, from the beginning of the technical process to the efforts to reach a final agreement, as well as linking the dialogue process with international recognition, i.e. non-recognition of Kosovo. The paper also addresses the impact that the recognitions proclaimed by Serbia had on the international consolidation of Kosovo.



THEORETICAL BACKGROUND OF RECOGNITION OF STATES UNDER INTERNATIONAL LAW





According to the Montevideo Convention (1933), the four qualifications that a state must possess as an actor of international law, are:

A
the permanent population

B
defined territory

C
the government

D
the capacity to enter into relations with other states.

The development and evolution of concepts related to the state as a subject of international law has often raised the need to define the criteria of statehood, in order to have formal limits and specifics for states seeking international recognition. The first step towards such a determination was the organization of the Seventh International Conference of American States in 1933. At this conference, the 16 participating states signed the treaty, known as the Montevideo Convention¹, which for the first time codified the classical criteria of statehood. According to this treaty, the four qualifications that the state must possess, as an actor of international law, are: a) the permanent population; b) defined territory; c) the government; and d) the capacity to enter into relations with other states.

The permanent population, as a key qualification of states, does not contain specific criteria regarding the size, nature, nationality or income of the population. Permanent population as a qualification implies the

existence of a stable community on a physical basis.² In terms of defined territory, as another qualification, this relates to the ability of states to exercise effective sovereignty over a given country, regardless of the size of the territory in question. The government, on the other hand, as a criterion of statehood, consists in the capacity that a political authority has to exercise effective and independent power over the population of a given territory. Even in this case, the form of state regulation, or the political regime exercised within the state, cannot be prejudiced. Last but not least is the capacity of states to enter into relations with other states, which means the state's capacity to implement international obligations under bilateral or multilateral agreements.

These criteria only make sense if they exist as a whole and are interdependent. Lack of any qualification, according to international law, renders the existence or formation of a state impossible. However, many authors have emphasized the need for statehood

1 Article 1, Montevideo Convention on the Rights and Duties of States (1933). Montevideo, Uruguay.

2 Crawford, J. (2019). *Brownlie's Principles of Public International Law*. United Kingdom: Oxford University Press. p. 192

and recognition criteria to be more comprehensive and up-to-date, based on increasingly dynamic developments in international law. Some of the other criteria that have taken place in the doctrines that address this issue in meritorious terms, are self-determination, democracy, minority rights and constitutional 'legitimacy'.³

During the 1990s, as a result of the situation in the former Socialist Federal Republic of Yugoslavia, the European Community and the member states of that time, at the International Peace Conference in Yugoslavia, agreed to establish an Arbitration Commission. The Commission, which according to many authors was extraordinary in importance but unusual in nature, would be responsible for providing opinions, which would then serve as principles on issues of statehood and succession. The opinions of this Commission, otherwise known as the "Badinter Principles", served to regulate some previous practices that were incoherent and contradictory among themselves, in terms of legal rationalization. ⁴The main purpose of these principles was to separate the principle of self-determination and territoriality from the ethnic principle of state formation. The first opinion of the Commission reconfirmed the hitherto worldview of the criteria of statehood, defining the state as "*community consisting of a territory and population, which are subject to the organization of *ae* political authority*".

Despite the existence of these basic criteria of statehood as a result of the different dynamics of the functioning of states in recent decades, many authors argue that recognition is an essential element that gives meaning to the existence of states.⁵ According to Lauterpacht, the main, perhaps the only condition for the recognition of states is the effectiveness of the power exercised in that state as well as the current

independence from other states. According to him, other conditions are almost irrelevant regarding the purpose and nature of the concept of cognition.⁶ In principle, only states that recognize each other can reach internationally recognized agreements, from which certain obligations also derive.

Recognition and types

Until the beginning of the 20th century, only about 50 states were recognized in the world. Within a century of developments, including the two world wars, the number of states created has almost quadrupled.⁷ Only after the Second World War, as a result of decolonization process, the principle of self-determination and dissolution of states, over 100 new states were created, making this period known as the "Age of Secessionism". The creation of new states has consistently brought about the dilemma of whether this presents a factual or legal situation. In fact, the answer to this dilemma also determines the importance of recognizing states. If the creation of states is seen exclusively as the creation of a factual situation, then its recognition becomes a relatively insignificant and non-decisive factor. The importance of recognition increases almost proportionally with the transition from the creation of states as factual issues to the creation of states as legal issues. Because of these views, declarative and constitutive theories have been developed, which in essence tend to provide answers to the question of whether a state can exist without international recognition.

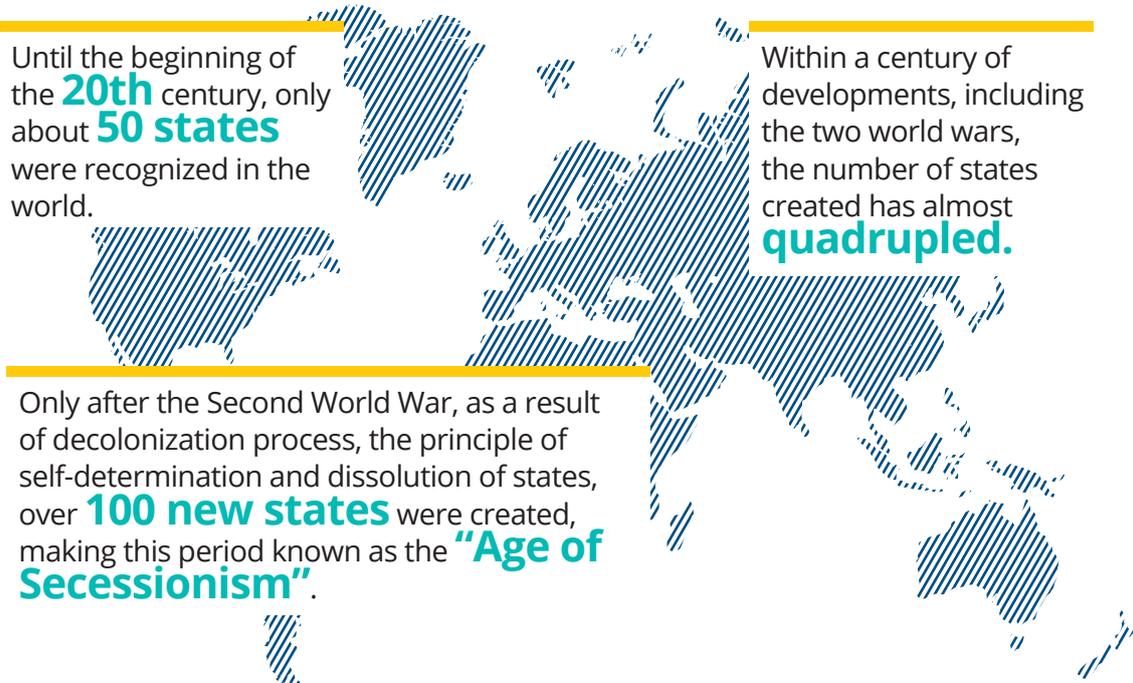
3 Grant, T. (1999). *The Recognition of States: Law and Practice in Debate and Evolution*. Westport: Greenwood Publishing Group. p. 84.

4 Craven, M. (1996). *The European Community Arbitration Commission on Yugoslavia*. *British Yearbook of International Law*, Volume 66, Issue 1. p. 334-336.

5 Shaw, M. (2008). *International Law*. New York: Cambridge University Press. p. 198-199

6 Lauterpacht, H. (2012). *Recognition in International Law*. United Kingdom: Cambridge University Press. p. 26-31.

7 Crawford, J. (2007). *The Creation of States in International Law*. New York: Cambridge University Press. p. 4



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The declarative theory of statehood, which is also regulated by international law, reduces recognition between states in formality, as it places additional emphasis on the assertion that the existence of new states is a factual situation, therefore, recognition is only an acceptance of the factual situation. Such a worldview is substantiated in the framework of the Montevideo Convention, which in its article 3 states that:

*"The political existence of the state is independent of recognition by the other states. Even before recognition the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize it self as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts. The exercise of these rights has no other limitation than the exercise of the rights of other states according to international law."*⁸

Furthermore, this Convention, in its Article 6, gives

irrevocable character to the decision for recognition, considering that "[...] Recognition is unconditional and irrevocable."⁹

Other promoters of this theory argue that the statehood or authority of the new governments does not depend on the consent given by the existing state, but is based entirely on the factual situation, respectively the previous one.¹⁰ Other authors argue that differences between these theories, especially regarding the validity of effective situations, carry the risk of turning international law into an ineffective system, due to a fatal 'conflict' between the legal and the factual aspect.¹¹ So, in principle, based on what was mentioned above, declarative theory enables objective assessment of the fulfillment of the criteria for the existence of the state, not limiting the recognition only in terms of legal or normative definitions, and it responds to the requirements of the time and international reality.¹²

8 Montevideo Convention on the Rights and Duties of States (1933). Montevideo, Uruguay. E qasshme në: <https://www.ilsa.org/jessup/jessup15/Montevideo%20Convention.pdf>

9 Ibid.

10 Hobach, N., Lefeber, R. & Ribbelink (2007). Handboek International Recht. Den Haag: Asser Press. p. 8.

11 Crawford, J. (2007). The Creation of States in International Law. New York: Cambridge University Press. p. 99

12 Gruda, Z. (2013). Public International Law. Prishtina: p. 79

Numerous critics who promote constitutive theory, on the other hand, point out that declarative theory reduces recognition to a mere formality, thus ignoring the fact that the act of recognition produces significant legal effects.¹³ In this sense, according to many, it is recognition that completes the state-building process. Moreover, it is considered that, given the purely political nature of the act of recognition, the existence of states cannot be relativized to the point that a state enjoys recognition by only a part of the states, and then seeks to assume obligations, and international law, which in essence represent the international personality of states.

In addition to the theories that address the impact and character of recognition in the theoretical sense, recognitions are also important in terms of the type or model that is put in its function. There are different types of recognitions, which are divided according to their legal nature, quantity, recognition subjects and others. The two main and most cited types of recognitions are *de-facto* and *de-jure recognition*. *De-jure* recognition is permanent recognition which is usually given in express form through a formal act submitted by the state. Such a type of recognition includes all relations between the newly created state and the recognizing state. Given its more formal and legal nature, this type of recognition is, according to the authors, irreversible and irrevocable.¹⁴ Whereas, *de-facto* recognition is mainly provisional recognition that comes as a result of establishing different variations of relations between states, but that is not complete. *De-facto* recognition can be given to states, governments or heads of state or to insurgents and warring parties, depending on developments. This type of recognition is not irrevocable, therefore it can be rescinded. Usually, *de-jure* recognition is preceded by *de-facto* recognition.

In addition to the nature of recognitions, recognitions can be typified into other groups, depending on the substance of the act of recognition. Recognitions, for example, can be expressive or tacit. Expressive Kaczorowska-Ireland, A. (2015). Public International

Law. Fifth Edition. New York: Routledge. p. 213 recognition is given by a unilateral act of the recognizing state, while tacit recognition can be given by an act, which is not necessarily a telegram, statement or diplomatic note. In this case, the act may also have the form of action, respectively the decision to conclude agreements with the new state or the decision to exchange diplomatic representatives. Also, recognitions can be individual, respectively bilateral, or collective.

State Derecognition Concept

Usually, when the created states are recognized by other states, especially explicitly, states are not expected to rescind the recognition decision, as long as there is no substantial change in terms of meeting the statehood criteria.¹⁵ The formation of new states based on the principle of self-determination, without the support of the respective states, resulted in the creation of internationally contested states. Most of these states, in addition to the ongoing efforts for external consolidation through recognition, have also faced derecognition campaigns.

According to some authors, in theory, recognitions can be revoked, resulting in the concept of “derecognition”, which according to them, has a very significant role in world politics.¹⁶ Derecognition in principle consists in withdrawing, revoking or denying a decision recognizing the independence, sovereignty and international legal personality of an entity. Since recognitions are ultimately political actions, regardless of legal definitions or conditions, it is up to states to assess a particular situation as a reason for withdrawing recognition.¹⁷ Such an approach is mainly supported by scholars who object the declarative theory of statehood, as well as state that the act of recognition usually corresponds to the political interests of states. Derecognitions

13 Kaczorowska-Ireland, A. (2015). Public International Law. Fifth Edition. New York: Routledge. p. 213

14 Gruda, Z. (2013). Public International Law. Prishtina: p.81

15 Kaczorowska-Ireland, A. (2015). Public International Law. Fifth Edition. New York: Routledge. p. 211

16 Visoka, G., Doyle, J. & Newman, E. (2020). Routledge Handbook of State Recognition. New York: Routledge. p. 316

17 Shaw, M. (2008). International Law. New York: Cambridge University Press. p. 468

usually take place against states with partial international recognition, which are not part of the UN and which do not have international support. Some of the countries that have faced derecognition campaigns are Abkhazia and South Ossetia from Georgia, Kosovo from Serbia, Taiwan from China, and Western Sahara from Morocco.

Such an approach is opposed by a large number of authors, who, among other things, state that after accepting the existence of a state, there is nothing to rescind.¹⁸ When full formal recognition is granted and bilateral relations are established, recognition may not have retrospective effect on the undermining of the statehood of the concerned state. Moreover, derecognition only means that the existence of the claiming state vanishes only in relation to the recognizing state, but not with other states, in the eyes of which the claiming state continues to exist as an independent and sovereign country. Exceptions can be made only in cases of collective recognition, which can affect the existence of the state and its position in world politics.¹⁹

As mentioned earlier, de-facto recognitions, being a kind of temporary assessment, may be withdrawing in cases when, despite the establishment of relations, the state seeking full recognition has failed to meet the prerequisites of statehood, or in the view of the recognizing state, it no longer has the attributes of a state. Derecognition may take place through formal acts exchanged between states. On the other hand, in terms of de-jure recognition, there is more pronounced polarization between the authors. Most of them consider that recognition carries purely legal implications, and consequently, it cannot be rescinded, except in cases when the state in question permanently loses any of the attributes of statehood.

In addition to the two classical currents of elaboration of the concept and phenomenon of derecognition, another part of the scholars, taking into account the unregulated formal nature of recognition and derecognition, estimate that

these two actions are entirely discretionary upon states, based in their interests. Consequently, in the absence of a prohibitive or restrictive provision on derecognition, the international practice of states will continue to face actions of this nature. However, it is worth noting that rescinding of recognition is often confused with the breakdown of diplomatic relations. While the former, as will be elaborated in the following sections, is unorthodox in the context of international relations, the latter is more than common, as it is largely an expression of disagreement with the actions taken by the government of a particular state.

In the history of developments in international relations, derecognitions are not unprecedented. The first time a formal decision to "derecognize" was issued was the case of the United States, which in December 1978, under the presidency of Jimmy Carter, due to developments of the time, decided to withdraw recognition of Taiwan, recognizing the authority of the People's Republic of China over Taiwan, although at that time Taiwan was recognized by over 60 states.²⁰ Nowadays, changes the stance regarding recognition are mainly characteristic of "Third World" countries²¹, which have emerged as a result of the decolonization process, and which have these actions as the only asset in foreign policy.²²

Regarding the procedural aspect of derecognition, although there is no formal definition, three main steps have been elaborated that could lead to such a decision. According to Visoka, the first step is the internal and external contestation of the sovereignty and independence of the claiming state by the state that has exercised or is exercising partial authority over it. Secondly, it is the process of persuading other states to reconsider their decisions on recognition of the claiming state, which is followed by the final

18 Visoka, G., Doyle, J. & Newman, E. (2020). Routledge Handbook of State Recognition. New York: Routledge. p. 317

19 Ibid. p. 318

20 Ling, A. (1983). The Effects of Derecognition of Taiwan on United States Corporate Interests. *Loyola of L.A. International and Comparative Law Review*. Rev. 163. p. 163

21 Some of the states that have been involved in the derecognition process are Burkina Faso, the Central African Republic, the Dominican Republic, Gambia, Lesotho, Liberia, Malawi, Nauru, Panama, the Solomon Islands, Suriname, Tuvalu and Vanuatu.

22 Visoka, G., Doyle, J. & Newman, E. (2020). Routledge Handbook of State Recognition. New York: Routledge. p.322



Regarding the procedural aspect of derecognition, although there is no formal definition, three main steps have been elaborated that could lead to such a decision. According to Visoka:

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The internal and external contestation of the sovereignty and independence of the claiming state by the state that has exercised or is exercising partial authority over it.

2

The process of persuading other states to reconsider their decisions on recognition of the claiming state, which is followed by the final stage of derecognition, which includes the cessation of diplomatic contacts, termination of bilateral cooperation, and the establishment of international neutral position towards the recognition claiming state.

3

In conclusion, this process usually is finalized by sending a verbal note to the state, which either confirms its sovereignty over the disputed territory, or by maintaining a neutral stance on the dispute between the two countries, until its peaceful resolution.

stage of derecognition, which includes the cessation of diplomatic contacts, termination of bilateral cooperation, and the establishment of international neutral position towards the recognition claiming state. In conclusion, this process usually is finalized by sending a verbal note to the state, which either confirms its sovereignty over the disputed territory, or by maintaining a neutral stance on the dispute between the two countries, until its peaceful resolution. In practice, the rationale for derecognizing is economic benefits, internal political dynamics, and geopolitical interests.²³ However, even the derecognition decision can be revoked in certain situations, resulting in the restoration of diplomatic relations.

The impact of derecognition on claiming states is undeniable, especially in political, legal, economic and human terms. This is mainly attributed to the fact that recognitions, especially if their number

is large in proportion to the total number of recognitions, can lead to the diplomatic isolation of those countries.²⁴ It is worth noting that in many cases, the effect of derecognitions is directly related to the reasonableness of their withdrawal, which were listed above.

23 Visoka, G., Doyle, J. & Newman, E. (2020). *Routledge Handbook of State Recognition*. New York: Routledge. p.322-324

24 Caspersen, N. (2014). *Degrees of Legitimacy: Ensuring internal and external support in the absence of recognition*. Geoforum.



FROM LACK OF RECOGNITION TO DERECOGNITION OF KOSOVO

The impact of universal non-recognition on the consolidation of Kosovo's statehood

States that have not enjoyed international recognition have been an almost inseparable part of international developments, but the reasons for non-recognition are what have usually made the difference.²⁵ Non-recognition is often seen as a sanctioning instrument, but also as a form of pressure on countries that are supposed to have been created through actions or acts that do not enjoy full support in international norms.²⁶ The International Court of Justice, in many of its decisions and opinions, has regarded recognition as a matter of an interstate character. But as the number and role of international organizations in international law, in terms of state recognition, has increased, various authors have argued about the potential of the United Nations as a forum for collective recognition, to achieve universal recognition from various states. In many cases, recognition, i.e. membership in international organizations is widely seen as the main form towards achieving universal recognition, given the growing complexity of the international order.

Kosovo declared independence on February 17, 2008, in coordination with most of the international community, including the United States and major European Union countries. The unilateral declaration of independence was preceded by a multi-year negotiation process led by the United Nations, namely by UN Secretary-General's Special Envoy Martti Ahtisaari. The latter, in its comprehensive proposal for resolution of Kosovo's status, had offered supervised independence, a proposal which was rejected by Serbia, as well as its key allies, Russia and China, which threatened to veto this proposal at the Security Council. In October 2008, Serbia initiated a resolution, which was adopted by the United Nations General Assembly, requesting an advisory opinion from the International Court of Justice on the

accordance of Kosovo's declaration of independence with international law. However, despite challenging the legality of the declaration of independence by Serbia before ICJ, Kosovo managed to secure 69 recognitions, from the declaration of independence until the publication of the Court's opinion in 2010, which is more than half the total number of recognitions. The International Court of Justice, on 22 July 2010, issued its advisory opinion, which held that the declaration of independence had not violated any applicable norm of international law, including international law as such, Security Council Resolution 1244, as well as the Constitutional Framework of Kosovo.²⁷ Despite expectations that the ICJ opinion would pave the way for new recognitions from countries that had hitherto been reluctant to make such a decision, Kosovo had managed to secure only three recognitions during that year, as well as 12 more during the next year. Also, since the ICJ, according to legal procedures is obliged to return the advisory opinion to the institution that requested it²⁸, i.e. the General Assembly, in the latter a resolution was adopted which foresaw the beginning of a new dialogue process between Kosovo and Serbia, facilitated by the EU, in order to normalize relations and improve the lives of citizens of both countries.

Lack of recognition by five EU member states²⁹ also had a significant impact on the approach used by the EU to Kosovo's statehood, and its commitment to enter into contractual relations with the latter. As the sphere of foreign policy of the EU states remains entirely the exclusive competence of the member states, the EU has been truncated in prioritizing the issue of Kosovo's statehood, compared to other issues such as the conflict in Ukraine and the nuclear program of Iran, which are considered prominent

25 Caspersen, N. (2012). *Unrecognized States*. Cambridge: Polity Press. p. 27

26 Shaw, M. (2008). *International Law*. New York: Cambridge University Press. p. 470

27 For more, see the ICJ Advisory Opinion on the compatibility of Kosovo's Unilateral Declaration of Independence with international law. Accessible on: <https://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-00-EN.pdf>

28 Summers, J. (2011). *Kosovo: A precedent? The Declaration of Independence, the Advisory Opinion and Implications for Statehood, Self-Determination and Minority Rights*. Boston: Martinus Nijhoff Publishers. p. 133

29 Greece, Cyprus, Romania, Slovakia and Spain.



February 17, 2008

Declaration of independence

October 2008

A resolution is adopted in the UN General Assembly (initiated by Serbia), which seeks advisory opinion on the compatibility of Kosovo's declaration of independence with international law.

July 22, 2010

ICJ publishes its advisory opinion - concluding that Kosovo's declaration of independence does not violate international law, resolution 1244 or the Constitutional Framework



February 17, 2008, 22 korrik 2010
69 recognitions



July 22, 2010 December 31, 2010
3 recognitions



2011
12 recognitions

by the EU.³⁰ However, despite differences over Kosovo's status, EU member states have in some cases reached the necessary consensus to establish a unified position on the establishment of the EULEX mission, the signing of a Stabilization Agreement and Association, as well as the issue of visa liberalization. Due to five non-recognizing states, two of which with harsher attitude against the state of Kosovo, resulted so far into Kosovo not being offered a clear perspective for European integration, compared to other Western Balkan countries.

Since the declaration of independence, the main priority of the Republic of Kosovo, materialized through the Strategic Foreign Policy Objectives, has been the consolidation of statehood through the continuous promotion of Kosovo's international position and the strengthening of international support for the recognition of Kosovo's sovereignty.³¹

In this regard, securing international recognition is seen as a precondition for Kosovo's international consolidation. According to official data from the Ministry of Foreign Affairs, Kosovo counts 116 recognitions.³² This accounts for 60% of the total number of members of the United Nations, although initial expectations had been for a larger number of recognitions. Merits for most of the recognition go to the support and intensive lobbying of friendly countries and proactive diplomacy of Kosovo. However, due to internal political developments, relatively weak economy, lack of trade, cultural or political ties with other countries, Kosovo began to lose the prospect of bilateral cooperation with many of the states that recognize its independence.³³ All this, adding the extremely active role and aggressive approach of Serbia, supported by Russia, in order to delegitimize Kosovo as much as possible in the international arena.

30 Armakolas, I. & Ker-Lindsay, J. (2019). *The Politics of Recognition and Engagement*. London: Palgrave Macmillan. p. 6.

31 "Strategic Foreign Policy Objectives" (2008). Ministry of Foreign Affairs, Republic of Kosovo.

32 For more details, see the list of the Ministry of Foreign Affairs and Diaspora of international recognitions of Kosovo. Available at: <https://www.mfa-ks.net/politika/484/lista-e-njohjeve/484>

33 Visoka, G., Doyle, J. & Newman, E. (2020). *Routledge Handbook of State Recognition*. New York: Routledge. p.328

The fact that Kosovo is not recognized by at least 2/3 of the UN members, of which two countries are permanent members of the Security Council, has led to the country not enjoying universal recognition and membership in other international organizations, which would contribute to the consolidation of Kosovo's statehood. Although Kosovo joined the World Bank (WB) and the International Monetary Fund (IMF) in 2009, as two organizations part of the UN institutional framework, the country has failed to join 13 other specialized UN agencies. In fact, in 2015, Kosovo by only three votes failed to secure the required 2/3 for UNESCO membership. This failure had a negative impact on other applications, which although announced after that period, were suspended due to fear of failure,

Universal non-recognition has made Kosovo diplomacy focused on seeking individual recognition by states, among the most difficult forms of international relations, especially for unconsolidated diplomacy, such as that of Kosovo, which after the declaration of independence was built from scratch, and largely dependent on the international support of friendly states, especially the US. According to scholars, Kosovan diplomacy has been vital in achieving international support for recognition, making known the circumstances on which the state was created, as well as emphasizing the inclusion of powerful states as co-owners and guardians of independence.³⁴

Securing "easy" recognitions, through the intensive lobbying of friendly western countries, according to various authors, is a thing of the past, thus highlighting the serious problems and limitations in its own lobbying capacity that Kosovan diplomacy faces.³⁵ Other problems of a political nature are added to this, including the lack of meritocracy, transparency and professionalism of Kosovo's diplomatic appointees, as well as other internal

developments that have taken place in Kosovo, including scenes of violence in the Kosovo Assembly, violent protests and similar, which have undermined the external image of Kosovo.³⁶

On the other hand, non-recognizing states, in terms of reasoning and arguments they use for non-recognition of Kosovo, may be broken down into three groups: i) states that, due to geographical distance and lack of bilateral relations, have no interest in recognizing Kosovo; ii) those who do not recognize Kosovo due to their internal problems; and iii) states that do not recognize Kosovo because of the proximity and influence that Serbia and its allies have, or because of their geopolitical position.

From Kosovo-Serbia technical dialogue to an eventual agreement on mutual recognition

The inability to pass the Comprehensive Proposal for the Kosovo Status Settlement, drafted in 2007 by UN Secretary-General's Special Envoy Martti Ahtisaari, forced Kosovo to follow a difficult path towards concluding the state-building process, i.e. seeking individual recognitions of different states. In this regard, even the ICJ Advisory Opinion in favor of Kosovo's declaration of independence had not brought the expected effects. Therefore, in 2010, as a result of Resolution 64/29 of the General Assembly³⁷, Kosovo and Serbia have started a dialogue process, facilitated by the European Union. The EU's direct involvement in this process, although opposed by various scholars on international legal grounds³⁸, represents a new and pragmatic EU approach to cooperation with countries which it does not formally recognize, or with which it only applies the practice of bilateral recognition. The policy of 'engagement without recognition' has been applied mainly with the aim of ignoring the sensitive normative and

34 Newman, E. & Visoka, G. (2018). The Foreign Policy of State Recognition: Kosovo's Diplomatic Strategy to Join International Society. *Foreign Policy Analysis*, 14 (3). pp. 367-378. p. 3

35 Armakolas, I. & Ker-Lindsay, J. (2019). *The Politics of Recognition and Engagement*. London: Palgrave Macmillan. p. 38-39.

36 Ibid.

37 UN Doc. A/RES/64/298. 9 September 2010.

38 Orakhelashvili, A. (2008). Statehood, Recognition and the United Nations System: A Unilateral Declaration of Independence in Kosovo. *Max Planck Yearbook of United Nations Law*, Volume 12. p. 36-39



The inability to pass the Comprehensive Proposal for the **Kosovo** Status Settlement, drafted in 2007 by UN Secretary-General's Special Envoy **Martti Ahtisaari**, forced Kosovo to follow a difficult path towards concluding the state-building process, i.e. seeking individual recognitions of different states.

political aspects related to the recognition or non-recognition of states.³⁹

Initially, seven rounds of discussions were held between the two countries, mainly related to regional cooperation, freedom of movement and the rule of law. As part of the technical process, which took place until the second half of 2012, Kosovo and Serbia had reached agreements on the movement of citizens, customs stamps, recognition of university diplomas, cadastral and civil registries, as well as integrated border management.⁴⁰ These agreements managed to significantly address the very purpose on which this process was initiated, regarding the promotion of cooperation, achieving progress on relevant paths to the EU and improving the lives of citizens.⁴¹ However, even today, there are various difficulties, mainly of a political nature, that have hindered the implementation of some of the agreements reached.

The Strategy for the Achievement of Full International Recognition of the Republic of Kosovo⁴², issued in June 2011, considers the process of technical dialogue between the two countries as a new momentum for Kosovo, since for the first time, at the dialogue table, Kosovo and Serbia are seen as equal participants. But, the strategy itself had recognized the negative effect that the dialogue process will have on the international recognition of Kosovo. In the context of membership in international organizations, it is worth mentioning that Kosovo and Serbia, in February 2012, had reached an Agreement on Regional Representation and Cooperation, otherwise known as the Footnote Agreement, which had enabled Kosovo's representation in all meetings and regional organizations. The representation of Kosovo was foreseen through denomination 'Kosovo*' followed by the footnote "*this designation is without prejudice to positions on status, and is in line with UNSCR 1244(1999) and the ICJ Opinion on the Kosovo declaration of independence.*"⁴³

39 Newman, E. & Visoka, G. (2018). The European Union's Practice of State Recognition: Between Norms and Interests. Review of International Studies. p. 2.

40 For more information, see all the agreements reached between Kosovo and Serbia in the dialogue module on the following platform: <http://votaimo.org/Public/Dialog>

41 Armakolas, I. & Ker-Lindsay, J. (2019). The Politics of Recognition and Engagement. London: Palgrave Macmillan. p. 29-30.

42 Ministry of Foreign Affairs, Republic of Kosovo (2011). The Strategy for the Achievement of Full International Recognition of the Republic of Kosovo Available at: [http://www.kryeministri-ks.net/repository/docs/STRATEGJIALOBIM\[1\].pdf](http://www.kryeministri-ks.net/repository/docs/STRATEGJIALOBIM[1].pdf)

43 For more information, see Arrangements regarding Regional Representation and Cooperation, conclusions agreed on 24 February 2012. Available at: http://votaimo.org/Uploads/Data/Documents/TekstiiMar-reveshjes_24shkurt2012_6Ms449yuN6.pdf

However, the technical level dialogue quickly evolved into a political dialogue, following meetings in October 2012 between the then Prime Ministers of the two countries, Hashim Thaçi and Ivica Dacic. Almost half a year after the first meeting, as a result of a series of meetings between the parties, on April 19, 2013, Kosovo and Serbia had reached the First Agreement of Principles Governing the Normalization of Relations. This agreement, consisting of a total of 15 points, addresses the formation of the Association of Serb Majority Municipalities, the integration of parallel judicial and police structures in the north of the country, in the legal system of Kosovo, the holding of local elections in 2013 in all municipalities, including those in the north, the need to intensify discussions on energy and telecommunications, and not to block the parties' progress on their respective paths to the EU.⁴⁴ The first agreement was followed by four other agreements, reached between the two countries in August 2015, dealing with the formation of the Association, the issue of energy, telecommunications and the issue of the Mitrovica Bridge over the Iber River. Despite the expectations and implementation plans, which provided for the implementation of these agreements during 2016, a significant part of them, especially those that had political implications regarding the status of the state of Kosovo, continue not to be implemented. In addition to non-implementation, the dialogue process has also faced sporadic developments and numerous incidents, which have often affected its suspension for certain periods. Relations between the countries had reached the maximum irritation during the end of 2018, when as a result of the aggressive campaign of Serbia, Kosovo's membership in INTERPOL was impossible, but also earlier in UNESCO. As a result of this campaign, the Government of Kosovo had initially set a 10% tariff on products imported from Serbia and Bosnia and Herzegovina, a tariff which was then increased to 100%. The tariff was used by Serbia as an argument for non-participation in the dialogue process, thus leading to the failure of

dialogue resumption initiatives, both by EU countries and the US. The aggravation of relations between the two countries has been greatly contributed by Serbia's campaign to withdraw recognition of Kosovo from different countries. Kosovo had consistently threatened to withdraw from the dialogue process if Serbia continued its anti-recognition campaign.⁴⁵

Such developments had highlighted the insurmountable need for the process to conclude with discussions on mutual recognition between the two countries. This was first made clear in 2017, when the then Minister of Foreign Affairs of Kosovo, during a discussion in the European Parliament, had stated that the dialogue process is useless if it leads to mutual recognition.⁴⁶ Such an approach was objected by various exponents in Kosovo, who insist that such a form of dialogue has provided an opportunity for states to postpone decisions on the recognition of Kosovo until the end of the dialogue.⁴⁷ However, despite Serbia's non-recognition, its campaign to block Kosovo's membership in international organizations, and its campaign to withdraw recognition, it is argued that Serbia has softened its stance on Kosovo's statehood in recent years as a result of reached agreements in the framework of the technical and political dialogue between the two countries.⁴⁸

The issue of recognition was not taken into account by the EU either, mainly due to the lack of a unique position of its own, but also because the methodology chosen to address the problems between Kosovo and Serbia is based on the so-called constructive ambiguity. But over time, it has become increasingly evident that, as Serbia moves closer to the EU, mutual recognition will be unsurpassed. In this regard, Germany has also played a crucial role, which has repeatedly reiterated the position that

44 For more information, see the First Agreement of Principles Governing the Normalization of Relations, 2013. Available at: http://votaimo.org/Uploads/Data/Documents/TekstiiMarreshjes_19prill2013_HGXf5EDTG4.pdf

45 Visoka, G., Doyle, J. & Newman, E. (2020). *Routledge Handbook of State Recognition*. New York: Routledge. p.328

46 Armakolas, I. & Ker-Lindsay, J. (2019). *The Politics of Recognition and Engagement*. London: Palgrave Macmillan. p. 33.

47 Ibid.

48 Newman, E. & Visoka, G. (2018). *The Foreign Policy of State Recognition: Kosovo's Diplomatic Strategy to Join International Society*. *Foreign Policy Analysis*, 14 (3). pp. 367-378. p. 19

Serbia may not become part of the EU without the recognition of Kosovo.⁴⁹ As a result of the start of discussions on mutual recognition, the parties had begun to offer their options for achieving such a goal. Among them, the border corrections, as a euphemism for the old idea of changing territories, as well as the creation of an Association of Serb-Majority Municipalities with increased powers, were the main ones. The correction option was also publicly supported by the presidents of the two countries, namely Hashim Thaçi and Aleksandar Vucic. However, none of these options had found clear support from the international community, whose key actors have had ambivalent access, with the exception of Germany which has been adamant in its stance against touching borders.

The dialogue process was suspended until 2019, when, after direct US involvement, through the appointment first of Matthew Palmer as Envoy to the Western Balkans, and then of Ambassador Richard Grenell as Special Envoy of the US President for achieving peace between the two countries, the process was significantly energized. Also, since the European Parliament elections, the attention and involvement of the EU has enhanced, especially after the appointment of Miroslav Lajcak as Special Representative of the EU High Representative for Foreign Affairs and Security Policy. As a result of the American involvement, the parties reached three agreements in the form of letters of interest, regarding the railway, the highway and the airline connection between the two countries. Also, at the end of June, a meeting was planned between the delegations of the two countries in Washington, where the parties were expected to reach an agreement, supposedly at the economic level, which would then pave the way for the process of political dialogue, led by the EU, Germany and France respectively. What stands out recently is that the US administration, but not only, has strongly pushed forward the idea that the dialogue process should conclude with mutual recognition between the

two countries.⁵⁰ Such an approach is welcomed by institutions in Kosovo⁵¹, but has been objected by authorities in Belgrade⁵², though not categorically as before.⁵³

“Derecognitions” proclaimed by Serbia and their impact

In parallel with the impossibility of securing universal international recognition and securing new recognitions⁵⁴, Kosovo since 2017 has also faced a campaign by Serbia, to withdraw recognition of Kosovo, especially from African and oceanic countries. The first withdrawal of recognition of Kosovo had come from Suriname, in October 2017, a few days before the visit of the foreign minister of this country to Russia.⁵⁵ During 2018, recognitions of Kosovo were withdrawn by eight other countries⁵⁶. By 2019, the number of recognition withdrawn dropped to five states⁵⁷, while in 2020, so far, Sierra Leone claimed to have rescinded the recognition of Kosovo.

49 For more information, see the news article: <https://www.reuters.com/article/us-kosovo-germany-serbia/serbia-must-accept-kosovo-independence-to-join-eu-german-foreign-minister-idUSKCN1FY329>

50 For more information, see: <https://www.state.gov/joint-statement-of-special-presidential-envoy-richard-grenell-ambassador-philip-kosnett-and-special-representative-for-the-western-balkans-matthew-palmer-on-kosovo/>, <https://europeanwesternbalkans.com/2019/02/15/trump-supports-mutual-recognition-new-letter-vucic-thaci/>, <https://balkaneu.com/pompeo-mutual-recognition-based-on-normalization-of-serbia-kosovo-relations/> and <http://rs.n1info.com/English/NEWS/a612782/US-envoy-in-Kosovo-Dialogue-will-end-in-mutual-recognition.html>

51 For more information, see: <https://www.aa.com.tr/sq/ballkani/hoti-objektiv-i-kosov%C3%ABs-n%C3%AB-dialog-me-serbin%C3%AB-%C3%ABsht%C3%AB-njohja-recipe/1872271>

52 For more information, see: <https://www.rferl.org/a/serbia-s-vucic-says-no-recognition-of-kosovo-unless-belgrade-gets-something-too/29803920.html> and <http://rs.n1info.com/English/NEWS/a610506/Serbia-s-Vucic-We-won-t-allow-recognition-of-Kosovo-on-US-meeting-agenda.html>

53 For more information, see: <https://www.aa.com.tr/en/europe/serbian-president-recognizing-kosovo-matter-of-time/1746130>

54 The last recognition of the Republic of Kosovo came in February 2018 from Barbados.

55 For more information, see: <https://web.archive.org/web/20180620231944/https://wp.caribbeannewsnow.com/2017/11/02/suriname-revokes-kosovo-recognition-heels-russia-visit/>

56 Burundi, Papua New Guinea, Lesotho, Comoros, Dominica, Grenada, Solomon Islands and Madagascar.

57 Palau, Togo, Central African Republic, Ghana, and Nauru.



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These withdrawals came mainly from countries in the regions in which Kosovo has failed to establish a solid diplomatic presence, space which has subsequently been exploited by Serbia or its allies, through various forms of influence.⁵⁸ Despite some conceptual objections that experts in international law have expressed over the concept of recognition⁵⁹, to date, Serbia claims that 18 countries have revoked their decisions for the recognition of Kosovo.⁶⁰ These statements have been repeatedly challenged by the Kosovo Ministry of Foreign Affairs, which has denied receiving any notes from the respective states for revoking recognitions. There have also been cases where the alleged withdrawal of recognition has been denied by some of the states themselves.⁶¹ Guinea-Bissau, although it withdrew recognition at the end of 2017, in February 2018 sent a verbal note to the Government of Kosovo, stating that

the decision to withdraw recognition had no legal effect. Liberia is another state, whose government officials, although during a visit to Belgrade in June 2018 declared the withdrawal of recognition, a few days later refuted such statement through a release of the Liberian Government, which had reaffirmed bilateral relations with Kosovo.⁶² The most problematic derecognition is that of Sao Tome and Principe. Although the Council of Ministers of this country in 2012 had adopted a resolution for the recognition of Kosovo⁶³, the decision was considered invalid by the President of this country in early 2013, thus casting doubt on whether there has ever been official recognition by this country or not.

58 Berisha, B. (2019). Kosovo's recognition in face of Serbia's sponsored de-recognition campaign: A summary report. Prishtina Institute for Political Studies. p. 9-10.

59 For more information, see: <https://kallxo.com/gjate/analize/cnjohja-e-kosoves-a-e-ekziston-dicka-e-tille/>

60 For more information, see the article: <http://www.mfa.gov.rs/en/press-service/statements/19195-minister-dacic-addresses-the-students-of-law-and-political-sciences-faculties-gour-national-priority-is-to-reach-a-political-solution-for-kosovo-and-metohijaj>

61 Berisha, B. (2019). Kosovo's recognition in face of Serbia's sponsored de-recognition campaign: A summary report. Prishtina Institute for Political Studies. p. 11.

62 For more information, see the article: <https://frontpageafricaonline.com/politics/diplomatic-snafu-liberia-in-row-with-kosovo-after-recognition-of-serbia/>

63 For more information, see the resolution: https://web.archive.org/web/20131016112008/http://www.1deputyprimeminister-ks.net/repository/docs/RESOLUCAO_RECOC_H_KOSOVO.PDF



The most problematic derecognition is that of **Sao Tome and Principe**. Although the Council of Ministers of this country in 2012 had adopted a resolution for **the recognition of Kosovo**, the decision was considered invalid by the President of this country in early 2013, thus casting doubt on whether there has ever been official recognition by this country or not.

Serbia's campaign for the international derecognition of Kosovo is in fact part of a strategy of Serbia, which in principle aims at the international delegitimization of Kosovo, making it impossible for the latter to secure the necessary votes for membership in international organizations, with a special focus aiming to ensure that "[...] *most UN member states do not recognize Kosovo's unilateral declaration of independence*"⁶⁴. Serbia's strategy against the recognition of Kosovo is based on the usual elements of counter-diplomacy of state recognition, which include - first, the claim of a state that it still has sovereignty over the breakaway territory, and second, ongoing diplomatic efforts to impede bilateral recognition of the breakaway territory and its membership in international organizations; third, the prevention of international legitimacy; and, finally, the taking of legal action to challenge the declaration of independence from the territory in question.⁶⁵ Serbia's campaign has also been indirectly aided by the great antagonisms that exist between Western powers and other states that oppose their domination.

On the other hand, Kosovo has so far not developed a proper strategy for approaching this campaign, but is mainly limited to issuing negative reactions of recognition, or imposing economic measures on Serbia. The silence of Kosovo's international partners in the face of Serbia's aggressive campaign for the recognition of Kosovo has also played a negative role in this regard.

64 For more information, see the article: <https://kossev.info/dacic-sierra-leone-18th-state-to-withdraw-kosovos-recognition-pristina-denies/>

65 Visoka, G., Doyle, J. & Newman, E. (2020). Routledge Handbook of State Recognition. New York: Routledge. p.295



Regarding **Serbia's** arguments for withdrawing recognition of **Kosovo**, but also those of states that have already made such a decision, **dialogue** between countries has almost always been used, a process facilitated by the **EU**.

However, there have been cases when these withdrawals of recognition have been linked to corruption scandals, on the basis of which the decisions in question have been taken.⁶⁶ In 2019, a well-known African medium reported on a scandal, in which it was reported that the Minister of Foreign Affairs of Serbia, Ivica Dacic, has paid over 300 thousand dollars to the Republic of Central Africa, for the latter to withdraw the recognition of Kosovo. Also, in the framework of the Serbian campaign for the withdrawal of recognitions, it has been reported about the direct involvement of Russia, which has reached an agreement on the abolition of visas, or even an agreement on military cooperation, with some of these countries that have decided to withdraw recognition of Kosovo.⁶⁷

Regarding Serbia's arguments for withdrawing recognition of Kosovo, but also those of states that have already made such a decision, dialogue between countries has almost always been used, a process facilitated by the EU.⁶⁸ Dialogue has also been used as a pretext to delay decisions on the recognition of Kosovo by states that have not done so. Such an action has its theoretical roots in one of the most common justifications for recognition - domestic and international efforts to resolve conflicts over sovereignty peacefully. In fact, the main argument used by Serbia in the campaign against the recognition of Kosovo is that the recognition of Kosovo may undermine the conflict resolution process and discourage the parties from reaching consensual agreements in accordance with international norms and laws.⁶⁹

66 For more information, see the article by the former Minister of Foreign Affairs of Kosovo, Petrit Selimi, regarding the corruption scandals behind the Serbian campaign for the delegitimization of Kosovo. Available at: <https://medium.com/@petrit/serbias-derecognition-campaign-unraveling-as-corruption-scandals-mount-b3a761f65ca5>

67 For more information, see: <https://www.koha.net/arberi/176038/lidhja-ruse-ne-terheqjen-e-njohjeve-te-kosoves/>

68 For more information, see the decisions to withdraw the recognition of Kosovo by the Republic of Nauru and Ghana. Available at <http://www.mfa.gov.rs/sr/images/slike/desk-top/3idn221119.jpg> and http://www.mfa.gov.rs/en/images/Nota_Ghana111119.jpg

69 Visoka, G., Doyle, J. & Newman, E. (2020). Routledge Handbook of State Recognition. New York: Routledge. Fq.325



CONCLUSIONS

Derecognition and non-recognition of states are concepts that usually find application among states operating outside the UN system, making these concepts more important to them than to other states that enjoy universal recognition.

There is a deep split among various scholars, but also of the main countries in the international arena, in terms of the legality of the unilateral declaration of independence by Kosovo, in terms of the norms and international law. The consequences of this split have inevitably implicated the issue of withdrawal of recognition of Kosovo by various states, which have precisely used the arguments of the legality of independence and the current process of dialogue between the two countries to change their attitudes regarding Kosovo's independence. In this regard, even after the ICJ opinion, which had clearly concluded that the declaration of independence had not violated any international or domestic norms, Kosovo failed in convincing some states, especially those that had initially stated that they would consider the decision of the ICJ to recognize its statehood. In fact, the recognition process has already been linked to the conclusion of dialogue by most of these states.

The state of Kosovo, proclaimed on February 17, 2008, does not yet enjoy universal international recognition, as it has failed to join the UN or the EU, but also most of the other important international organizations, with the exception of the World Bank and the IMF. Non-recognition by the five EU member states, non-recognition by two of the Security Council member states, made Kosovo, unlike all countries in the region and beyond, pursue the strategy of individual recognition, the most difficult strategy in international consolidation.

Kosovo did not yield the desired success in the full implementation of the Strategy for the Achievement of Full International Recognition, which envisaged the full integration of Kosovo as an equal country in the community of free countries. This Strategy should already be in the amendment process in order to adapt to the current context of international developments, without ignoring the potential of Serbia and its allies to persuade states to withdraw

recognition of Kosovo, or to slow down the decision-making process for a positive decision.

In parallel with the problem of lack of universal recognition, Kosovo has in recent years faced a campaign by Serbia to withdraw recognition of the youngest state in Europe. In the absence of a consolidated diplomacy of Kosovo, as well as the inability of the latter to enhance relations with the recognizing states, Serbia has managed to convince dozens of states to withdraw recognition of Kosovo. This campaign was also based on Russia's bilateral and multilateral relations with many countries, influencing their decision not to recognize Kosovo, and in other cases, to withdraw the recognition.

Despite the views of many authors regarding the existence of the possibility of withdrawing *de jure* recognition, the fact that over 10 countries have already changed their position regarding the recognition of Kosovo, although there are no direct legal effects, impacts the political process of consolidation of Kosovo statehood, especially in terms of membership in international organizations. In this regard, the technical dialogue process with Serbia, followed by political dialogue, especially the one called the 'final phase', in parallel with the campaign for the delegitimization of Kosovo in the international arena through recognition, has been used as an argument by Serbia, respectively its allies, to seek the suspension of decisions on the recognition of Kosovo until final clarification of Kosovo's status. Also, the dialogue process has negatively affected the acquisition of new recognitions, since from many countries, the decision to recognize Kosovo is conditioned by the end result of the dialogue process between Kosovo and Serbia.

Therefore, in this regard, it is essential that Kosovo intensifies efforts to reach a final agreement with Serbia, potentially for mutual recognition, which would get rid of the dilemma among vast majority of states that do not recognize the state of Kosovo, because of absence of consent by Serbia with the declaration of independence.



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