

THE UNSUPERVISED STATE

IN SEARCH FOR INTERNATIONAL LEGITIMACY

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INTRODUCTION

Even though supervision of Kosovo's independence has ended, the state is facing limited legitimacy at the international level, and a "handicapped" legitimacy in the region and the European Union (EU). Following the passage of the necessary and remaining package of amendments to the Constitution by the Kosovo Assembly, the International Steering Group (ISG) announced the end of supervision for Kosovo's independence on 10 September 2012.¹ This means that the superior document – the Comprehensive Settlement Proposal (CSP), and the supreme authority – the International Civilian Representative (ICR) that ruled over Kosovo's Constitution and governing authorities respectively have now been removed. There are many problems of practical and legal nature that remain unresolved. Despite the end of supervision, the European Union Rule of Law Mission in Kosovo (EULEX), the Kosovo Force (KFOR), and the United Nations Mission in Kosovo (UNMIK) continue to be present based on different mandates. The EU's mission presence is now justified with the new mantra of "more EU" involvement, despite the internal divisions of the EU on Kosovo's status. Among other unresolved problems is Kosovo's international legitimacy which is being sought after with a *rushed-in* formula weighing heavily against the internal stable functioning of the state.

The ISG's departure in fact represents the bigger picture of the international community's trajectory in the Western Balkans. While the United States' (US) role in the region is diminishing, the EU still has not managed to convince all its Member States to have a unified position over Kosovo.

Despite internal divisions over Kosovo, the European Commission is attempting to advance the Union's relations with Kosovo; nevertheless, much of the EU's foreign policy still depends on individual Member States among which there are some that continue to hold a firm position against Kosovo. The Quint states are still important actors in assisting Kosovo in its quest for strengthened international legitimacy. Their approach, although similar in some aspects, is quite different and many times conflicting to solving Kosovo's international half-legitimacy. They all support the dialogue between Kosovo and Serbia, and all of them, together with the EU, views it as the only proxy for Kosovo to strengthen its legitimacy problems. However, just like various segments of the society and political establishment in Kosovo, states in the Quint have different views when it comes to the red-lines of the parties to the dialogue and the conditions they need to fulfill in order to improve the relations amongst themselves.

In a broader picture, the main cause for Kosovo's limited international legitimacy comes from the handicapped legitimacy in Europe. Globally, Kosovo is viewed as an unsettled regional problem – European or Euro-Atlantic – rather than an international problem. This is the driving pattern of the slow recognition process by other states in the world. There is a direct relationship between the contested legitimacy of Kosovo by the EU and the international one – if the remaining EU Member States recognize Kosovo less will be the chances for contesting the independence of Kosovo internationally. Strategically, Kosovo needs at least 125 recognitions to become a member of the main relevant international organizations. Given the slow pace of recognitions it is unlikely that Kosovo can count on a rapid

growth of recognitions given the current circumstances. Under these circumstances, Kosovo is being pushed by the EU and the US to strengthen its international legitimacy through normalizing the relations with Serbia in the EU facilitated dialogue.

Tying up its quest for international legitimacy to the dialogue with Serbia only, presents a risk for Kosovo. Kosovo was promised that entering the dialogue with Serbia would be beneficial for Kosovo in that it would be granted membership in the European Bank for Reconstruction and Development (EBRD); that the EU non-recognizer's stance towards Kosovo would soften which in the long-run would lead to increased number of recognitions from within the EU; and that it would establish contractual relationship with the EU. These were serious and tangible rewards which would inevitably strengthen Kosovo's international representation and legitimacy. However, given that none of these has ever materialized even after a yearlong dialogue process ended, and instead Kosovo adopted a footnote and some EU Member States even strengthened their position against Kosovo, the dialogue can be one of the, but not the only, proxy that Kosovo should rely on in its quest for more international legitimacy. While not necessarily abandoning the dialogue with Serbia, Kosovo should devise a political position which would enable the state to capitalize from the dialogue rather than being a passive participant in it. Kosovo should also follow a strategy that would take it out of its current *rush-in* for more international legitimacy while focusing more on internal institutional rearrangement the absence of which risk the basic functioning and stability of the state and the region as a result.

DIPLOMATIC SKIRMISHES BETWEEN KOSOVO AND SERBIA OVER THE FORMER'S INTERNATIONAL LEGITIMACY

Ever since Kosovo declared its independence in February 2008, the 'diplomatic battles' between Kosovo and Serbia and their respective partners

in the international stage have been almost omnipresent. Despite the West's efforts in pressing both parties to normalize their relations through an EU facilitated dialogue, the diplomatic skirmishes between the parties occurred not only before, but also during this dialogue - and continue even after. Kosovo has, through its Western partners and their diplomatic instruments, continuously tried to gain international legitimacy mainly by increasing the number of recognitions and seeking membership in international organizations. It has done so by capitalizing on the US's sphere of influence and particularly France's and the United Kingdom's (UK) efforts to convince their former colonies as well as countries in Latin America. These efforts have resulted in 91 recognitions and a membership in two international organizations: the World Bank and the International Monetary Fund (IMF), in a period of almost five years. Kosovo has also devoted considerable diplomatic and financial efforts to promote and improve its image. Regardless, it is evident that Kosovo feels that its foreign affairs scoreboard is not positive without: (1) further progress in the EU accession process; (2) membership into more international organizations; and ultimately (3) membership into the UN.

On the other hand, Serbia used its entire diplomatic arsenal to counter Prishtina's and its partners' efforts in strengthening Kosovo's international legitimacy. It has done so by firstly, using the support of its number main ally—Russia to block any decision or resolution in the Security Council on Kosovo without Serbia's consent. Belgrade has also capitalized on its historical connections with the Member States of the Non-Aligned Movement (NAM). So far, 42 out of 120 or 35% of the NAM Member States have recognized Kosovo, which is proportionally lower than the 91 out of 193 or 47% of the total UN Member States that have recognized Kosovo.²

¹ ISG, Communique: Sixteenth and final meeting of the International Steering Group for Kosovo, (Prishtina, 2012) <http://tinyurl.com/97v4rzl> (accessed September 25, 2012)

Additionally, Serbia has also used a number of legal instruments at the UN to counter Kosovo's international legitimacy. First, it went to the International Court of Justice (ICJ) to seek an opinion on the legality of Kosovo's independence, which turned out to be a loss for Serbia. Second, it submitted a draft resolution to the UN General Assembly (UNGA) calling on both parties to find a mutually acceptable solution for all disputed issues through peaceful dialogue,³ which would have been a repetition of the Vienna status negotiations. Fearing the negative effects that such Resolution would have had on the overall regional security and stability, the EU and the US pressed Serbia to drop it accordingly⁴ resulting in a joint EU-Serbia sponsored resolution at the UNGA. This resolution "welcome[d] the readiness of the [EU] to facilitate a process of dialogue between the parties; the process of dialogue in itself would be a factor for peace, security and stability in the region, and that dialogue would be to promote cooperation, achieve progress on the path to the [EU] and improve the lives of the people."⁵ This perceived double defeat did not change Serbia's strategic aim to, first, delay any further recognitions for Kosovo pending the outcome of the EU facilitated negotiations; second, tie up Kosovo's international legitimacy to Serbia's 'stamp of approval'; and thirdly, take advantage of such negotiations into further progressing towards the EU accession process.

Consequently, making Serbia agree to negotiate with Kosovo under the EU umbrella did not prevent Belgrade from continuing its diplomatic battles against Prishtina within the EU's own structures. Belgrade used all the diplomatic means to convince the five EU non-recognizers not to change their position on Kosovo. Besides

² KIPRED's first hand in-house cross tabulation from the list of the NAM Member States and the list of UN member states that have recognized Kosovo

³ "Serbia submits Kosovo draft to UN GA," B92, July 28, 2010, accessed September 27, 2012, <http://tinyurl.com/94zsy2n>

⁴ "Serbia under pressure from the EU regarding Kosovo," Centre for Eastern Studies, September 15, 2010, accessed September 27, 2012, <http://tinyurl.com/932pl8h>

⁵ UNGA, Resolution adopted by the General Assembly, A/RES/64/298, 13 October 2010

their internal problems and for some of them historical ties with Serbia, the EU non-recognizers' slightest political move towards Kosovo is now conducive to Serbia's will and its position towards Kosovo, as a result. This has made the EU an unbalanced player in its affairs with Kosovo and Serbia; by not having a unified map for the Balkans, it is very difficult for the EU to have a unified policy for the Balkans. As long as the EU remains divided on the issue of Kosovo, the more difficult will it get for Kosovo to gain its international legitimacy through the dialogue with Serbia, and higher the rewards for Serbia for every slight compromise it makes in the dialogue. A divided EU also makes it illogical for it to condition Serbia into normalizing the relations with Kosovo more than its own club of 27 does. For instance, Serbia has better relations with Kosovo in many respects than does Spain or Cyprus.

Besides the EU's and US's efforts to press both sides to normalize their relations through the dialogue, the parties have not managed to establish the basic relationship that would make this dialogue fruitful to begin with. It was clear before and after the negotiations had started that Serbia would not stop fighting against Kosovo's international legitimacy, making it clear that Belgrade will not easily normalize the relations with Prishtina.⁶ Serbia agreed on entering the dialogue while turning this process into a platform that would freeze Kosovo's legitimacy. This was quite the contrary to what Kosovo was expecting to get out of the dialogue, and quite different to what the EU and the US had expected to get out of this process as well. This, as a result, makes the dialogue all more problematic for Kosovo to rely on as the only proxy to more international legitimacy.

⁶ For instance, few weeks after Serbia agreed to negotiate with Kosovo on the EU facilitated dialogue, Serbia's former President, Boris Tadic, had already sent 55 personal emissaries to as many countries, persuading them not to recognize Kosovo

THE DIALOGUE AS THE ONLY PROXY TO 'MORE LEGITIMACY' AND 'MORE EU': UNTYING THE KNOT

The end of supervised independence aims to transfer the international responsibility from the ISG over to the EU. This is also explicitly stated in the Commission's Feasibility Study for a Stabilisation and Association Agreement (SAA) between the EU and Kosovo of 10 October 2012.⁷ The EU, however, does not enjoy the leverage many believe it does. Given that it is internally divided over the status of Kosovo, the most serious, if not the only, instrument the EU enjoys in relation to Kosovo is the dialogue between Prishtina and Belgrade, in return for "more EU". The dialogue has also been presented to Prishtina as its only way to convince the non-EU recognizers to change their position towards Kosovo, thus making the dialogue also Prishtina's the only instrument to obtain 'more EU' and naturally 'more legitimacy'. As such, the dialogue has turned into an instrument that serves three different, and in the case of Kosovo and Serbia, opposing purposes:

- *For the EU* the dialogue seems to remain the most serious instrument on the table to tackle the issue of Kosovo's status – assuming its accession gravity (more EU) really stimulates parties in the dialogue to compromise and agree;
- *For Kosovo* the dialogue seems to be the most probable proxy for a way out of its international half-legitimacy; and
- *For Serbia* the dialogue seems to be a strong instrument to delay Kosovo in strengthening its international legitimacy and capitalizing on the EU accession process.

In light of this, Kosovo's international legitimacy is caught in the midst of EU's not

⁷ European Commission, Communication From the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo* (Brussels, 2012), <http://tinyurl.com/98h55fq> (accessed October 10, 2012)

well founded assumption about the true effects of its accession gravity, and Serbia's aims in the dialogue diametrically opposite to the aims and hopes of Kosovo. The EU promises both parties to the dialogue that the final outcome will be 'more EU' in terms of the accession process; it does so by not being aware that 'more EU' is overrated for Serbia while not viable for Kosovo. In the case of Serbia, the 'more EU' approach is not changing Belgrade's position. The very political elite that has compromised in the dialogue for the sake of obtaining 'more EU' (i.e the candidate status) has lost the elections against nationalists that today are if not for less EU certainly for 'more Kosovo', contrary to EU's expectations. Brussels continues to be blindfolded towards Serbia's real domestic problems which are severe economic conditions and corruption. These issues have been far more important for Serbia's citizens than what the EU has offered. Alternatively, the EU may just lack a different policy that would engage Serbia, first, to convince the latter's citizens that 'more EU' is worth having and, second, to push for more pro-European domestic reforms. In 2012, only 5.6% of Serbia's citizens show confidence in EU institutions.⁸ So, the current political establishment in Serbia does not seem to be willing to make their political opponents' mistake of rushing in to having 'more EU'.

While in the case of Serbia it is overrated, the EU leverage on Kosovo is not viable. Besides that the citizens of Kosovo show far more (46.9%)⁹ confidence on EU institutions compared to citizens of Serbia, the fact that the EU is divided over Kosovo, makes its 'more EU' policy quite intangible. Contrary to what it had hoped, the outcome of the dialogue so far did not change much the EU non-recognizers' position towards Kosovo. Regardless of the few agreements that Kosovo has reached with Serbia, Spain continues to fiercely oppose the former's independence; it even goes as far as convincing its Latin American partners not to

recognize it.¹⁰ Spain has also decided, in March 2009, to gradually withdraw its troops from NATO led KFOR "as the logical consequence of Spain's opposition to Kosovo's unilateral independence and was simply announced as 'mission accomplished.'¹¹ However, Spain maintains a staff of 11 as part of EULEX, unlike Cyprus that abstained from any contribution that has to do with the EU mission in Kosovo.¹² Unlike the period before and during the dialogue when Spain was "generous" enough to allow Kosovo citizens to travel to Spain with the passports issued by the Republic of Kosovo, it has recently decided to ban any entry for Kosovo citizens¹³, a move backward in Spain's relations or views towards Kosovo.¹⁴ Similarly, Romania, as one of the EU non-recognizers, has initially closed down its Liaison Office in Prishtina in response to Kosovo's declaration of independence, but recently their Office seems to be re-opened with mostly administrative staff.

Greece and Slovakia, on the other hand, never closed and continue to maintain their Liaison Offices in Prishtina. Contrary to Spain's decision to ban the entry of Kosovo citizens into the country, Slovakia took concrete steps with the aim to liberalize the procedures which Kosovo citizens have to follow to be granted an entry visa.¹⁵ Far from being attributed to the success of the Kosovo – Serbia dialogue, this

⁸ "Gallup Balkan Monitor" accessed, September 25, 2012, <http://tinyurl.com/yfet36d>

⁹ "Gallup Balkan Monitor"

¹⁰ Jordi V. Fanés, "Spain's Position on Kosovo," Kosovo Calling: International Conference to Launch Position Papers on Kosovo's Relation with EU and Regional Non-recognizing Countries (2011)

¹¹ Jordi V. Fanés, "Spain's Position on Kosovo and "Ministry of Defense of Spain," Mission KFOR, (Madrid 2009), <http://tinyurl.com/8p5j64z> (accessed September 25, 2012)

¹² EULEX Official, e-mail message to author, 27 October 2012

¹³ Kosovo citizens attempting to travel to Spain, in person conversations in various occasions and e-mail message to author, 28 October 2012.

¹⁴ Although Kosovar citizens may practically enter through France or Portugal border zones, the entry and presence thereof of Kosovo's citizens in Spain is deemed to be illegal.

¹⁵ Slovakia was one of the non-recognizers of the Schengen Zone that had asked Kosovo citizens to apply for individual Slovak visa, even if they had a Schengen visa from a recognizing member state, but as of 20 July 2012, it joined the club of the recognizing Schengen states to share the issuance of visas for Kosovo citizens

decision was largely attributed to the precedence created by previous similar decision that Slovakia and other EU non-recognizing Member States have taken in relation to Taiwan. In the case of Taiwan (a non-UN Member State not recognized by any of the EU Member States) the EU acted in unison in accepting Taiwanese passports and allowing its citizens to travel throughout the EU, while in the case of Kosovo it remains divided, despite Kosovo's proximity to the EU, and EU's strategic interests in the region.¹⁶ It is difficult to comprehend the EU's policy towards Kosovo at this stage, but it is clear that it does not have the capability of convincing its own Member States to change their policy towards Kosovo and start improving the relations – something that the EU itself is asking from Serbia.

It is clear that Kosovo does not have the capacity to change the non-recognizers' stance by dialoguing with Serbia only, and that such expectations from Kosovo have been ungrounded. In terms of the credibility of 'more EU', the EU together with the recognizing Member States need to consolidate their Common Foreign and Security Policy (CFSP) vis-à-vis Kosovo. The EU has this responsibility, because whatever moves Kosovo makes, it is impossible for the new state to have more leverage on the EU non-recognizers than the EU itself. The alleged "normalization" of the relations with Serbia did not help Kosovo to convince its European non-recognizers to change their stance – some of them have gone as far as distancing themselves even more in their relation to Kosovo. The EU has this responsibility also because of its additional role in consolidating the new state's key institutions such as those of security and rule of law.

The EU is, however, trying to convince its non-recognizers in the club to consider establishing a contractual relationship with Kosovo holding a footnote, which is key to moving forward with

its 'more EU' policy. The Commission's latest feasibility study provides that "[t]he possibility for the Union to conclude international agreements is not limited to generally recognized independent states or international organizations. Such agreements can be concluded with any entity with regard to which the other Contracting Party accepts that it can enter into an agreement that will be governed by public international law."¹⁷ This opinion by the Commission is very important as it provides a legal basis for the non-recognizers not to block Kosovo's progress towards the EU. The Commission further suggests that "an agreement with Kosovo [would] not constitute recognition of Kosovo by the Union as an independent state nor does it constitute recognition by individual Member States of Kosovo, provided that an express reservation to that effect is made. Equally, it does not constitute a reversal of recognition by the Member States which have already recognized."¹⁸ With this approach, the EU is attempting to avoid the non-recognizers' constant blocking of Kosovo's path towards the EU. But much depends on the non-recognizers' position towards the Commission's recommendations in the next Council meeting in December, since the Member States have not always acted upon Commission's recommendations.

Also, while reaffirming that the dialogue is a key instrument for offering 'more EU' to the parties in the dialogue, the Commission asks both parties to avoid blocking each other in their path towards the EU. Furthermore, the Commission suggests that the dialogue should lead to "the full normalization of relations between Serbia and Kosovo with the prospect of both able to fully exercise their rights and fulfill their responsibilities within the EU."¹⁹ It also asks that Serbia respects Kosovo's territorial integrity and that Kosovo respects the particular needs of the local population in the north. With this the Commission is attempting

¹⁶ This is not a matter of visa liberalization for Kosovo, but Spain could have restrained itself from banning Kosovo's citizens' entry into Spain just because they hold a passport of a state they don't recognize. Unlike their approach to Taiwan.

¹⁷ European Commission, Brussels 2012

¹⁸ European Commission, Brussels 2012

¹⁹ European Commission, Brussels 2012

to advance the process so that eventually both parties in the dialogue would be treated as equals in their relation towards the EU, and at the same time it shows that the EU facilitated dialogue is yet the only instrument the it has towards the parties. This is going to provide stimulation for Kosovo to continue considering the dialogue as its only proxy for strengthening its international legitimacy.

Despite the latest moves by the Commission, Kosovo's quest for strengthened international legitimacy is still going to depend on faltering grounds. It will depend on (1) Serbia's will to cooperate, (2) the EU's ability to measure the implementation of its conditions, especially Serbia's actions to block and sabotage Kosovo through its five EU non recognizing partners; and it will depend on (3) the non-recognizers' response to Commission's recommendation. Given these challenges, if it is to remain stable and functional at minimum, Kosovo cannot afford to and should not count only on a dialogue:

- In which both Kosovo and Serbia still maintain utterly opposing views and stands in terms of its outcomes;
- In which Serbia's current leadership is not ready and willing to compromise;
- Which is based on an overrated 'more EU' policy for Serbia and a not viable one for Kosovo; and
- In which Kosovo's compromises are made based not on society's potential to benefit in the long run, but on the weak and discredited leadership that is prone to easy outside pressure.

KOSOVO'S POSITION AS A QUASI DOMESTIC PRODUCT: ANOTHER CHALLENGE

Kosovo is not currently capable to build its own political position as part of the strategy for its quest for international legitimacy. Its position is largely shaped and driven by its main international partners – those among the Quint.

This poses difficulties for Kosovo, because, while Serbia builds its own position which serves as a starting point into solving its problems with Kosovo and as a result is treated as a real party to the problem, Kosovo's position is always identical to the position of its international partners. In other words, in the current dialogue, there is a "Serbia position" on one side, and an "international position on behalf of Kosovo" on the other. As such, when Kosovo and Serbia attempt to find a modus operandi for starting a dialogue process, it is Kosovo's international partners who are involved in "representing" Kosovo and setting the red-lines on its behalf and then convinces back the Kosovo leadership on why they should keep these red-lines. This approach is viewed as normal by Kosovo's entire political establishment since, according to them, the independence of Kosovo is sponsored by its international partners and consequently they have a stake in Kosovo's diplomatic position. However, overreliance and heavy dependence on international partners contradicts the meaning of end of supervision.

This attitude comes with some problems. In the absence of clear political position of Kosovo in its quest for international legitimacy, its international partners have difficulties in consolidating their position as well. In some issues the Quint states have a joint position, but in some others they have opposing positions on how they assist Kosovo in its pursuit for more international legitimacy. One important issue they have a joint position on is that Kosovo should continue the dialogue with Serbia, which they see as the only proxy that will help Kosovo consolidate its international legitimacy. However, where they seem have a different and in some aspects conflicting positions is (1) on the form the dialogue has to take; (2) the pre-conditions that parties to the dialogue have to meet, and whether these pre-conditions should be met before or during the dialogue, and (3) the issues that need to be discussed in the dialogue.

Italy's position is that Kosovo should carry out the needed internal reforms as well as continue the dialogue with Serbia without any position as to what specific issues should be part of the dialogue. From the Italian perspective, the dialogue with Serbia helps Kosovo to revitalize its regional image and it makes it easier for Kosovo to integrate, and that the dialogue should be viewed as an opportunity rather than be afraid of it.²⁰ The UK supports the dialogue with Serbia and views the improvement of the relations between the two, which can be reached through the dialogue, as highly important. From the UK's perspective, the dialogue should resume urgently and that the issues to be discussed are the issue of northern part of Kosovo while claiming that wider local governance competences should be part of the solution to the problem.²¹ Contrary to its British Quint partner, representatives of France believe that the solution for the north, if discussed in the dialogue, should be within "Kosovo documents" - the Ahtisaari Plan.²²

Germany on the other hand, while in support for the dialogue, has taken a different approach on it. Germany has been clear several times that Serbia's integration to the EU is conditioned with its good neighborly relations with Kosovo. It has been straightforward and has taken steps in this regard. Recently Germany has conditioned Serbia with, among others, (1) the implementation of all the previously reached agreements between Kosovo and Serbia, (2) the beginning of the removal of parallel security structures from Kosovo, (3) the influence Belgrade should wage on the Kosovo Serbs living in the north to cooperate with EULEX and KFOR, and (4) the readiness that Serbia has to show for normalizing the relations with Kosovo, resolve open conflict with the latter, and be ready to progress towards the EU was

equals in terms of their rights as foreseen by the EU Treaty.²³ This is a completely unique approach compared to its other Quint partners that have not yet presented Serbia with such clear conditions, for instance, or clarified their expectations from Serbia. The US does not have the leverage of its European Quint partners in terms of EU accession gravity, but its general position is that Kosovo should be committed to the dialogue and that Serbia should implement the agreements.²⁴

Therefore, while Serbia presents its position and is treated as a real party to the problems it has with Kosovo, Kosovo still relies, almost entirely, on the approach its international partners take in this problem. For instance, when asked by Ashton about whether he is willing to continue the dialogue with Kosovo, Serbia's President, Tomislav Nikolic, has not shown readiness to do so at this point. On the other hand, "Kosovo's position" is taken for granted, because when asked, Kosovo's Deputy Prime Minister, Hajredin Kuqi, has claimed that the continuation of the dialogue depends on the EU and the US – a clear lack of a strategic position to the problem.²⁵ A homemade and home based position as a strategy for Kosovo to gain more international legitimacy would help its international partners in consolidating their positions as well and assist Kosovo more efficiently in this regard. It would, furthermore, help Kosovo find an alternative to the current only proxy – the dialogue with Serbia, to strengthen its legitimacy while not necessarily weaken the functioning of the state in the long run.

²⁰ Arben Ahmeti, "Giffoni: Duhet reforma the dialog," Koha Ditore, September 29, 2012

²¹ "Cliff: Dialogu duhet të nisë urgjentisht," KohaNet, September 28, 2012, <http://www.koha.net/?page=1,13,116910> (accessed September 28, 2012)

²² "Fitou: Veriu nuk do të jetë temë në dialog," Setpember 6, 2012, <http://tinyurl.com/9mf53la> (accessed September 29, 2012)

²³ "Shtatë kushtet e Gjermanisë për Serbinë," Telegrafi, September 13, 2012, <http://tinyurl.com/9ytweu2> (accessed September 29, 2012)

²⁴ "US: Continue dialogue, implement reached agreements!," Info Globi, April 4, 2012, <http://tinyurl.com/9d74anj> (accessed September 29, 2012)

²⁵ Faton Ismajli, "Bisedimet në mot," Gazeta Express, October 1, 2012, <http://www.gazetaexpress.com/?cid=1,13,93074> (accessed September 29, 2012)

WHAT IS THE SOLUTION THEN?

Overall, Kosovo finds itself in a position where more international legitimacy translates into less domestic stability and functionality. The dialogue with Serbia – viewed as the only proxy for more legitimacy – has led Kosovo to make certain domestic compromises (i.e. the footnote), and is likely to lead to compromises regarding the north (i.e. beyond the Ahtisaari Plan)²⁶, which weakens the state and it makes it difficult for it to function normally. It is even more difficult for Kosovo to compromise on these issues on its current fragile state and especially when the ‘more EU’ policy is not viable for Kosovo yet. If it continues with this sort of political positioning, Kosovo might have a slight chance of gaining more recognitions and membership in international organizations as well as make a little progress towards the EU, but risks to do so as an unstable and dysfunctional state. It seems that its leadership is trying to center their successes in terms of what they are bringing in (i.e. recognitions or memberships), and promote this over the domestic problems that are more crucial to deal with such as: high public sector corruption, weak economy with high unemployment, almost collapsed health and education sector and so on. Its quest for more international legitimacy, therefore, is being conducted in a rushed-in fashion while disregarding its major internal problems.

The EU should learn a lesson from its involvement and failure in the Western Balkans from the beginning of 1990ies by declaring that it was the “hour of Europe” to settle the crisis in former Yugoslavia. Two decades ago Europe was not united on what to do with the emerging conflict in the former Yugoslavia. It was this lack of unity which caused failure of Europe in the region, and the escalation of wars in the former Yugoslavia. Right now it is the “final hour” of Europe to unify and solve once and

for all the interstate problems in the Western Balkans. It is this very unification which is fundamental for the EU to show that it can take full responsibility for stability and prosperity of the European continent.

In light of these challenges, Kosovo needs to diversify its strategy for attaining more international legitimacy while strengthening the state domestically by including the following elements in this enhanced political position:

Relations with Serbia:

- **Kosovo should stick to principles that the continuation of the dialogue with Serbia should begin with the complete and verified removal of parallel security structures in the north.** The dialogue which aims at having conclusions reached and implemented in good faith between the parties is difficult to be “constructive” and productive if one party to the dialogue is involved in subversive activities in the other party’s territory and institutions. The case is even stronger when such presence is against international law – the Resolution 1244 requires Serbia to remove its security apparatus from Kosovo, unlike its independence, which Serbia views as illegal, but which at the same time was proved in contrary by the ICJ;
- **Kosovo should condition the continuation of the dialogue with the implementation of the previously reached agreements.** It should especially capitalize on the implementation of the Integrated Border Management (IBM) which is a strong case Kosovo can use to inform the states that are at this point soft in not recognizing Kosovo to prove that an agreement which defines and clarifies the border between Kosovo and Serbia has been reach between the parties. This is a diplomatic instrument Kosovo can use to counter similar instruments Serbia has used with the non-recognizers whose decision is pending upon the agreements reach in the dialogue. The conditioning of the dialogue with the

²⁶ See KIPRED’s policy paper “Autonomy for the Northern Part of Kosovo” Unfolding Scenarios and Regional Consequences” July 2012, <http://tinyurl.com/ccsn5gh>

implementation of the agreements goes hand in hand with EU's policy with Serbia which has also asked the latter the same things. Kosovo does not have to be softer on Serbia than the EU is;

- **Kosovo should capitalize on Germany's conditions on Serbia**, whose accession negotiations with the EU have been conditioned with Serbia taking concrete steps in improving the relations with Kosovo, which are presented above. In this respect, Kosovo should increase its diplomatic activity through its formal and informal channels with Germany's Foreign Ministry, Bundestag, and Chancellery in terms of vigorously informing them on the implementation of the agreements between Kosovo and Serbia, which Germany follows closely;
- **When these requirements are met, Kosovo should continue the dialogue with Serbia on topics that do not risk its minimum functioning and stability.** Issues to be avoided in the dialogue are those regarding special statuses about parts of its territory, special statuses about select members of its communities and peoples, especially when such alleged special statuses divide the same community in Kosovo. Dialogue is a good political instrument to improve relations with neighbors, but dialoguing does not mean that you have to talk about everything. Kosovo should focus only on topics that in the long run improve the functioning of the state and the wellbeing of its citizens and its neighbors. The Ahtisaari Plan should be the benchmark for its minimum functioning and stability;
- **Kosovo's should hold firmly onto the above positions in order relieve some international pressure and channel it away from it.** Absorbing international pressure that goes beyond these principles, Kosovo risks becoming a failed state difficult to recover. Given that a failed state at the EU's border goes against its European Security Strategy, and against an outcome the

Quint wants in the Balkans, these principles should be carefully presented to the international community in order for them to reconsider a more capable addressee for absorbing international pressure should it wage such pressure at all. There is one caveat in this respect, that the pressure is usually waged on individuals and not necessarily on the state and its institutions which is a risk in itself.

- **In the long term, Kosovo should view the "normalization" of the relations with Serbia as an instrument for a UN seat.** It should at the same time continuously inform its Western and EU partners that this is what "normalization" of the relations means for Kosovo. Normalization of the relations with Kosovo, which the EU has conditioned Serbia with, is a broad conditions and a difficult one to measure. However, Kosovo needs to make sure that it demands from the EU and the United States that this normalization should result with Kosovo's membership in the UN, implying that Serbia does not block Kosovo at the UNGA or at the Security Council (through Russia), and disengages itself from contesting Kosovo's statehood internationally.

Relations with the EU:

- **Kosovo should invest more resources and efforts in its relations with individual EU Member States.** While activities in Brussels should remain strong, it should build a more strategic relationship with especially Berlin, London, and Paris. The capitals of the EU Big 3 are more capable and serious when approaching the non-recognizers and potential steps they can take on improving the relations with Kosovo compared to Brussels. It is unlikely that the EU recognizers will wage any pressure on their other EU partners (Kosovo non-recognizers) just because of Kosovo; however, more concrete moves can be reached through bilateral diplomatic channels than through Brussels at this point.

- **In the short term, Kosovo should try to be as much an equal partner as the other states of the Western Balkans are with the EU.** This cannot be reached until all the Member States have recognized Kosovo, but it can certainly work on shrinking the inequality gap that it exists now. This can be done by holding firmly on the above mentioned political position and that any potential compromise Brussels wants Kosovo to make should be bound to tangible rewards from Brussels in return. Any rewards that are short of contractual arrangement with the EU whereby internal reform becomes a more genuine benchmark to measuring Kosovo's progress towards the EU should not be considered serious enough. If Brussels cannot offer tangible rewards to Kosovo, there is no reason why Kosovo can compromise on things that falter its domestic functioning;
- **In the medium term, Kosovo should ask the EU for credible guarantees that the dialogue with Serbia will lead to all the EU Member States to recognize Kosovo.** So far, the dialogue with Serbia was not a guarantee for this. As a consequence, Kosovo should view Brussels as a serious actor only when Brussels proves that it is taking the necessary steps to make the non-recognizers soften their stance towards Kosovo and eventually lead to recognition. If Brussels is not capable and lacks instruments to do so, than the pressure that the EU

wages over Kosovo's leadership should not be taken as seriously. Kosovo is incapable of and incompetent to solving the EU's internal divisions in their Common Foreign and Security Policy (CFSP), and until the EU fixes the problems in their unanimous foreign policy making, it is not as serious of a partner as it is for Serbia and other hopefuls in the Balkans. Kosovo should not be trapped under the belief that "difficult decisions" in the dialogue with Serbia will change the EU non-recognizers stance towards Kosovo.

The quest for international legitimacy is both legitimate and necessary. However, the legitimacy it currently enjoys provides enough space for it to focus on *real* things that also are linked to genuine EU conditionality such as: the fight against corruption and organized crime; strengthening the rule of law; carrying democratic elections; developing education and economy, as fundamental areas for proper and normal functioning of the state. At the same time, unless Kosovo develops its diplomatic posture as provided above, the current miscalculated rush for more international legitimacy will translate in a weaker state and institutions. The above mentioned political positioning of Kosovo in its relations to Serbia and the EU will help its quest for international legitimacy to be safer and more fruitful.

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