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# RESEARCH REPORT

## - Consolidating Kosovo's Statehood: Processes, Problems, and Perspectives -

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*i.*        **BACKGROUND OF THE REPORT**

In broad terms, there are two dimensions of statehood: the internal and the external or international dimension of statehood. The Republic of Kosovo, the newest state in Europe, declared its independence on 17 February 2008. Judged against its special circumstances, it has made substantial progress in addressing both of those dimensions. Yet, there remain crucial challenges in further consolidating Kosovo's statehood, both domestically and internationally.

As far as the international dimension is concerned, to date, Kosovo's statehood has been recognized by more than 90 countries, including the United States of America (USA) and the majority of European Union (EU) Member States. The Republic of Kosovo also became a member of a number of important international organizations, such as the World Bank (WB) and the International Monetary Fund (IMF), both United Nations (UN) specialized agencies. However, there are still challenges to overcome before completing the international dimension of Kosovo's statehood. For instance, Kosovo was not yet extended recognition from the five non-recognizing EU Member States, namely Spain, Greece, Romania, Slovakia and Cyprus. Moreover, Kosovo is not yet a member of the UN and other relevant European and international organizations (*e.g.*, the Council of Europe [CoE] and the Organization for Security and Cooperation in Europe [OSCE]) and, considering the international political context, this may not be expected to happen soon. This rather brief background thus raises several important questions, perhaps the most important of such questions being the following: How should Kosovo institutions address the issue of consolidating further Kosovo's statehood internationally? In other words, what should be done in order for Kosovo to become a full member of the world community?

On the other hand, in terms of domestic consolidation of statehood, substantial progress has been made. This progress can be particularly noted in relation to the measures adopted and results achieved in the area of addressing the needs of minority communities.

For instance, the Serb minority in the central and southern Kosovo has begun to get integrated at the municipal and central institutions of Kosovo. The same case appears to be with all other minorities that live in various parts of Kosovo. Clearly, this progress could be deemed to be substantial. However, the other side of the mosaic relates to the still persisting problems and challenges, which are visible, too. The Government of Kosovo is still not able to extend its sovereign authority over the northern part of its territory, which remains the biggest challenge in terms of the consolidation of Kosovo's statehood internally. This, in turn, leads to numerous important questions. The following could be considered to be among the most important ones: How should Kosovo institutions deal with the internal dimension of statehood consolidation, in particular with northern Kosovo? What specific or strategic measures, -- be it political, economic, legal or other, -- need be adopted for the Government to be able to effectuate the integration of the remaining part of the Serb minority into the social and institutional setting of Kosovo?

The Report will be organized in such a way to present and describe the main points of discussions and conclusions by panellists at an international academic conference organized by RIDEA in March 2012, including further relevant discussions and research. The Report will also present a series of recommendations on both aspects of its focus: external and internal consolidation of statehood.

## ***ii. RESEARCH OBJECTIVE***

The main research objective of this Report is to identify some of the many potential answers or alternatives to the previously identified questions. To achieve this objective, the Report (like the Conference on the same topic organized months ago by RIDEA and the Centre for International Studies - University of Oxford) will address the following issues: (a) the first part aims to identify answers related to the internal dimension of Kosovo's statehood consolidation, in particular to the North Kosovo conundrum; and (b) the second part will discuss and seek to find out several answers regarding the question of international consolidation of Kosovo's statehood.

### ***iii. STRUCTURE OF THE REPORT***

As already indicated, this Report will draw, though not be limited, on the discussions and findings of the international Conference organized by RIDEA and the Centre for International Studies - University of Oxford in March 2012. Other sources, such as confidential interviews with Government, international and non-governmental representatives, including members of the academia, as well as any pertinent publication, will be also utilized.

As to the Conference, it was organized around two specialized panels with people coming from academia and practice. The panellists were renowned scholars and experts with particular knowledge on the themes addressed. One could note the multidisciplinary character of the knowledge that characterized the participants. The topics chosen (as represented above) were therefore tackled from a number of angles, such as international law, international relations, sociology, economy, culture and philosophy, and so on. The Conference's agenda, with the list of panellists and their institutional affiliations, is attached to this Report as an Annex.

Besides the panellists, the Conference hosted over forty (40) participants, which represented a very diverse group of people. High Government and international officials, representatives from civil society, and students (undergraduate and graduate), were among the participants. The Conference also received broad media coverage, and was reported in prime time news programs.

# **I. ARE WE APPROACHING THE ENDGAME IN NORTH KOSOVO? ALTERNATIVES AND SCENARIOS FOR SOLVING THE NORTH KOSOVO CONUNDRUM**

## **I.1. Background: the North Kosovo Conundrum**

In the context in which this study is carried on, it is worth noting that the issue of national minorities who find themselves 'trapped' or 'stranded' in states they do not want to be part of is a familiar one in the modern history of Central and Eastern Europe and the Balkans, and even wider in the international relations. Ever since the process of formation of sovereign states spread across the region nearly a century ago, at the end of the World War I, ethno-national communities who found themselves as a minority in a state they regarded as fundamentally belonging to another nation have been a perennial issue--and problem--in the politics of Eastern and Central Europe and the Balkans.<sup>1</sup> Therefore, in historical perspective, then, the issue of the Kosovo Serbs (in particular Serbs in North Kosovo) is nothing new, but rather the latest example of an old and familiar issue.

In this respect, this part of the study seeks to address a delicate, yet fundamental and certainly achievable goal, of enhancing and furthering the relationship between the Kosovo Serb community in North Kosovo and the central Government. In essence, the challenge of Serb minority integration in Kosovo and notably Serb minority in the northern part of Kosovo dates back from post-war period (1999). The study aims to foster the sense and reality of deeper integration of this community within the institutional setting of Kosovo. Furthermore, the problem being addressed is linked with the legacy of the past events. In fact, without returning to history, the particular context is that, after the Declaration of Independence of Kosovo and the establishment of post-independence institutions, some Serbs joined these institutions, and some not; the latter almost exclusively refer to those living in the northern part of Kosovo.

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<sup>1</sup> Bose, Sumantra, presentation given at the conference organized by RIDEA and the Centre for International Studies - University of Oxford in Pristina, March 2012.

In other words, northern Kosovo remains un-integrated into political, economic, social, and legal system of Kosovo. On the contrary, the Kosovar institutions agreed to implement the UN Special Envoy's Comprehensive Proposal for Kosovo Status Settlement - known as the 'Ahtisaari Plan', an essential feature of which was the establishment of a number of municipalities inhabited by a significant number of non-majority communities. Several new Kosovo Serbs dominated municipalities (excluding North Mitrovica) have been formally established so far in south and central Kosovo, and this was seen as a successful story by a majority in the international community of states.<sup>2</sup>

Against this background, this part of the present study aims at investigating and identifying most important causes or factors that condition the situation in North Kosovo. In addition, besides delimitation of the problem and conditioning factors, the aim is to identify alternatives and scenarios for solving the North Kosovo conundrum.

## **I.2. Analytical Tools**

The methodology used in this report, in a way, aims to be holistic and inclusive, rather than being exclusive. As regards the analytical framework utilized in the study of the North Kosovo conundrum, this study draws on, but is not limited to, the work of the American social scientist Rogers Brubaker. More concretely, this study makes use of Brubaker concept of "triadic nexus"<sup>3</sup>.

Brubaker's framework is used in the context of post-communist transformation and reconstruction of states in Southeast Europe (SEE). According to him, nationalist tensions in the process of state building or state reconstruction can be depicted by using a single relational nexus ("triadic nexus") that bounds together three different nationalisms, which are interlocking, interactive and mutually antagonist – "nationalizing" nationalism, "homeland" nationalism and "minority" nationalism. In other words, Brubaker's offers a framework of a triadic relationship between a new nationalizing state, its national

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<sup>2</sup> See the EC Progress Report on Kosovo 2011.

<sup>3</sup> Brubaker, Rogers (1996). National minorities, nationalizing states, and external national homelands in the new Europe. *In Nationalism Reframed: Nationhood and the National Question in the New Europe*. New York: Cambridge University Press.

minority or minorities, and the external national homeland (usually a neighbouring 'kin-state') of that minority or minorities.

Drawing on Brubaker's theory, David J. Smith has proposed a "quadratic nexus" as a framework of analysis in the study of state-building and reconstruction, thus linking nationalizing states, national minorities and external national homelands to the institutions of an increasing web of international institutions and organizations.<sup>4</sup> This reflects the increasing role of international actors in the region and tensions and conflicts between various actors. Similarly, in the case of Kosovo, and at this point in northern Kosovo, one cannot omit a fourth, and thus unavoidable factor, from the equation - which is the international community or international actors involved on the issue at stake.<sup>5</sup> In other words, we have to consider a variety of positions and stances, of such players as the U.S., the EU, its member states, and countries such as Russia, China, India and Indonesia, among others.

Consequently, the North Kosovo conundrum is situated in the context of this quadrilateral relationship between Kosovo, Kosovo Serbs (in particular those in northern Kosovo), Serbia, and the (divided) international community.

In essence, based on this analytical framework we can sketch the possible scenarios for solving North Kosovo conundrum and through this also to draw various recommendations for all relevant stakeholders involved in this conundrum.

### **I.3. Possible Scenarios for solving the North Kosovo Conundrum**

In principle, there are at least five scenarios or paths to follow when it comes to disentangling the North Kosovo conundrum.

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<sup>4</sup> Smith, David J. (2002) "Framing the National Question in Central and Eastern Europe: A Quadratic Nexus?" *The Global Review of Ethnopolitics* 2.1: 3-16.

<sup>5</sup> Bose, Sumantra, presentation given at the conference organized by RIDEA and the Centre for International Studies - University of Oxford in Pristina, March 2012.

The **first** of these paths is to re-unite Kosovo using force, on the lines of the government of Croatia's action against the *Republika Srpska Krajina* (RSK) in 1995 or the government of Sri Lanka's action against the rebel Tamil zone in northern Sri Lanka in 2009. This is not a viable option having in mind the present regional and geo-political context of Kosovo. However, if the problem continues to persist in the mid-term future, this option cannot be excluded in its entirety, since this issue is directly related to the security dilemma of –making or breaking Kosovo–.

The **second** possible solution would be to hive off the northern Kosovo areas and allow them to join with Serbia, in the manner in which Northern Ireland was created in the early 1920s as a part of the United Kingdom out of six northern counties of Ireland, while the other twenty-six counties became first the Irish Free State and later the Republic of Ireland. This option too is infeasible and is fraught with numerous difficulties and complications. It would require consensus or near-consensus in the polities of both Kosovo and Serbia, and would not address the question of Serbs living in central and southern Kosovo. In addition, it is unacceptable for the majority of the population in Kosovo. If happened, it is very likely that it would have a domino effect in the region (e.g., Albanians in south Serbia (Preshevo Valley), Albanians in Macedonia, Albanians in Montenegro, Serbs in Republika Srpska, Serbs in Montenegro, etc). In other words, it will open the Pandora Box and the majority of international community opposes this scenario. Therefore, it is also an unviable scenario.

The **third** path or scenario would be to grant the northern Kosovo areas radical autonomy, along the lines of the *Republika Srpska* in post-Dayton Bosnia and Herzegovina or the self-governing Turkish-Cypriot 'constituent state' of a nominally unified 'United Cyprus Republic' proposed by the United Nations in 2004. This is infeasible in the contemporary context of Kosovo, as it is very unlikely to be acceptable to the Kosovar Albanian political class and public. Similarly, it is supposed to be unacceptable to some of the ethnic Serbs living in the south of Kosovo. There is also no guarantee that it would secure Kosovo's recognition by Serbia. Finally, it will divide Kosovo internally (between Serbs in the northern part and Albanians and other communities in the remainder of territory)

and it will create even a division and asymmetric accommodation between Serb community living in the south and those in the north of Kosovo. At the end of the day, this solution (territorial autonomy for North Kosovo) would be a further step towards creating a basis for the secession of this part of the territory. It can also have a domino effect in Serbia proper, Macedonia etc. Consequently, having in regard the above-mentioned facts, this solution is unviable and not in line with the European values.

The *fourth* scenario would be to follow the example of Brčko in Bosnia and Herzegovina. In this case, the international community created a special “incubation zone” in order to promote multi-ethnic ties and democratic values and principles. However, this strategy “has less successfully integrated Brčko into the state of BiH, partially because of its unique relationship to the state, being held in “condominium” by both (and thus neither) of Bosnia’s two “entities,” the largely Bosniak-Croat Federation and the mainly Serb Republika Srpska”.<sup>6</sup> Considering the fact that to some extent North Kosovo is also in ‘condominium’ by both Kosovo and Serbia, this strategy would also be non-functional and consequently would generate a failed integration of North Kosovo with the remainder of Kosovo.

The *last* but not the least scenario would be the full implementation of Ahtisaari’s package in the north of Kosovo in a peaceful manner. In line with the quadrilateral relationship underlined in the previous section, this solution would satisfy Kosovo government, Serbs in south Kosovo, majority of the international community. However, for the time being this is not acceptable to Serbia and some Serbs in North Kosovo and partly to some parts of the international community (e.g., Russia). As the previous passages pointed out, there is no solution which will make completely happy all sides involved in the quadratic nexus in the case of the North Kosovo conundrum. However, according to this study, the implementation of the Ahtisaari’s principles in North Kosovo is the best and potentially the only viable solution for the North Kosovo conundrum. In

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<sup>6</sup> Binnendijk, H. et al (2006) “Solutions for Northern Kosovo: Lessons Learned in Mostar, Eastern Slavonia, and Brčko”, *Center for Technology and National Security Policy*. Available at: <http://www.ndu.edu/CTNSP/docUploaded/DTP%2034%20Mitrovica.pdf>

essence, the Ahtisaari package is also the only scenario and plan (from all those discussed in the previous sections) which is in line with European values and the concept of constitutional patriotism<sup>7</sup>, which forms the fundament of the European edifice. For instance, some of the dimensions of the Kosovar state that relate to the Constitutional Patriotism are the followings: **a)** constitution; **b)** political system; and **c)** state symbols.

Thus, as regards the Constitution of Kosovo - the text is basically irreproachable with constant references to Kosovo's multiethnic character, and to the equality of all citizens. Likewise, the political system enshrines and promotes these values through the application of the ethnic quotas principle in the electoral system and in the parliament. This is a positive example of Kosovo's commitment to provide for representation in the political system of all ethnic groups' interests. State symbols are also a reflection of the idea that any community needs some symbols that represent it and that individuals can identify with. Indeed, the flag and the anthem of Kosovo are in this spirit and seem to have been chosen very carefully to be potentially accepted by members of all communities.<sup>8</sup>

#### **I.4. Concluding Remarks**

The way the North Kosovo conundrum evolves in the coming months and years will depend above all on the nature of the evolution of the quadrilateral relationship between Kosovo, Serbia, Kosovo Serbs (particularly those in the north), and the international community. However, all the facts and features of the Ahtisaari plan and its full

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<sup>7</sup> Constitutional Patriotism was first formulated in 1979 by Dolf Sternberger, a German Political Scientist, and it was initially conceived in relation to a specifically German context. In the following decade, Jürgen Habermas adopted and further popularized this concept. Whereas Sternberger was particularly concerned with Germany, Habermas emphasized the idea that Constitutional Patriotism is the most suitable ground for national identity in any State, and also for a future European identity. He argues that if national identity is based on specific cultural features (such as language, religion or a specific ethnic tradition) this will exclude those individuals or groups within the State that do not share these features or identify with them, posing problems for social cohesion and integration. This consideration is particularly relevant given the fact that most States in the world are actually pluri-ethnic. In this context, Constitutional Patriotisms aim is to create a nation of citizens, whose political allegiance and collective identification is directed mainly towards a political, pluri-ethnic community, and towards a State that grants freedom and equal treatment to all. Rodriguez, Mateo Ballester, presentation given at the conference organized by RIDEA and the Centre for International Studies - University of Oxford in Pristina, March 2012.

<sup>8</sup> Ibid.

compliance with European values and principles make this scenario as the most viable solution for North Kosovo. Therefore, the current study supports as the only viable solution for North Kosovo the full implementation of the Ahtisaari plan in the entire territory of Kosovo. In the next section, we outline some of the policy recommendations of moving forward the implementation process of the Ahtisaari plan in the North Kosovo.

### **I.5. Policy Recommendations**

This study's recommendations are grouped into three categories: (a) to the Kosovo Government, (b) to Serbs in Kosovo (in particular those in North Kosovo), and (c) to the international community.

Ethnic conflicts within a state and at the present case (the North Kosovo conundrum) are resolved either by force and military victory or by negotiated settlement. However, as noted in the previous sections of this study, brute force is not a tool which can be used in solving the North Kosovo conundrum. Therefore, the first overall recommendation to all parties involved in solving the conundrum is that they should commit to dialogue.

#### **a) Recommendations to the Kosovo Government/Institutions:**

- *First*, prior to entering in any kind of dialogue either with Serbia (for normalization of bilateral relations) or with relevant stakeholders in the northern part of Kosovo in addressing the North Kosovo conundrum, the Kosovo Government should seek to achieve a higher level of political unity among the parliamentary parties in Pristina. The latest Resolution approved at the Kosovo Parliament could serve as a good model/example in developing an overall and broadly consensual platform within the Parliament. Similarly, MP's (and in particular opposition MP's and experts) through the Parliament committees should assist and participate in various technical teams through the entire process of dialogue. This also provides that all necessary and relevant political actors within Kosovo are involved in this process.

- **Second**, as the previous step is determined, Kosovo should demand from the international community to ensure and oversee the immediate withdrawal of the security, defence, justice, and as well as Serbian secret service officials from North Kosovo and elsewhere in Kosovo. At the best scenario this should happen prior to any start and/or follow-up of dialogue, either with relevant stakeholders in the North Kosovo or the Serbian government. The rationale behind this is related to the fact that this would create better conditions for dialogue - otherwise any kind of dialogue might be senseless. This is also in compliance with the UN Resolution 1244/99, which is the hyper-quoted document by the Serbian Government and institutions. At the same time, the Kosovo Government should support and strengthen further the newly established Administrative Office for North Mitrovica;
- **Third**, after the completion of first two steps, the Kosovo Government with the assistance and support of the international community shall commit and involve into dialogue with all relevant stakeholders in North Kosovo. This dialogue should address concerns and needs of all the citizens in North Kosovo. The best panacea for this is to raise the awareness among local Serbs about the many positive aspects of the Ahtisaari plan, and this should go hand-in-hand with a concrete socio-economic plan for the economic development of this part of Kosovo's territory. Kosovo Government with the assistance of international donors could establish a specific development fund for this part of Kosovo. Additionally, this dialogue should address and reach an agreement on the right and opportunity of all communities to return in their properties in North Kosovo, and vice versa, the right and opportunity for Serbs living in North Kosovo to return to their properties elsewhere in Kosovo. This process should lead to free, fair and democratic elections in all municipalities in North Kosovo, including the new municipality of North Mitrovica. Finally, the Kosovo Government should address and solve through this dialogue the integration of justice, police, education and any other institutional sector in the North with the remainder of

Kosovo, in line with the Ahtisaari plan and the Constitution of Kosovo. This should lead to the normalisation of this part of territory and a kind of an overall and comprehensive agreement between Kosovo's Government and the relevant stakeholders in North Kosovo, in line with Ahtisaari plan and Constitution of Kosovo;

- On the other hand, as regards the issue of dialogue with Serbia on normalization of bilateral relations, the Kosovo Government should insist on the completion of the second recommendation/condition pointed out in this section, prior to any follow-up of this dialogue. At this point, Kosovo should insist on the substantial implementation into practice of the IBM agreement and all other agreements which were reached in the technical dialogue between Kosovo and Serbia;
- The main topics that Kosovo should seek to address in the future dialogue with Serbia could be the followings: border demarcation, missing persons, Kosovar pension fund, which was stolen by Serbian authorities in 1999, the issue of successions and other-related issues. The Kosovo Government should not get involved in any discussion on other topics that would potentially open the issue of Kosovo's status or any other topics that are in direct violation of the Constitution of Kosovo.

**b) Recommendations to Serbs in Kosovo (in particular those living in North Kosovo):**

- The current situation in North Kosovo at the first instance is not in the interest of people that live there. A normal, peaceful and prosperous life is in the interest of all people living in North Kosovo. The only way of achieving this is through sincere commitment in a civil dialogue with Kosovo's Government and relevant international actors. A quick establishment of the legal rule of law institutions in North Kosovo, free, fair, and democratic elections and economic development are

above all in the best interest of the majority of citizens (regardless of their ethnicity) in North Kosovo;

- The process of decentralization in the rest of Kosovo was completed successfully. It is a very well-known fact that this process has changed in a positive way the life of many citizens in the newly created Serb-majority municipalities. This should serve as a good model or example for the citizens of North Kosovo, in order for them to support the establishment of a new municipality in North Mitrovica;
- The newly-established administrative office is a good step in the direction of building bridges of communication between the local Serbs and the Kosovo Government. Local Serbs should use its services more as a way of increasing their support for the process of decentralization in the north of Mitrovica. In this respect, citizens in North Kosovo should not dismiss *a priori* the Ahtisaari plan for a closer examination reveals the fact that it grants specific and extensive powers to Serb-majority municipalities to administer their own issues. In essence, it is “similar to governance structures in Belgium, Northern Ireland/UK, and Bosnia, it devolves substantial powers to sub-state units and even allows these units some powers of cross-border linkages with other states in the realm of specified issue-areas or functions”.<sup>9</sup> To illustrate this, it is worth mentioning the Belgium example. For instance, “Belgium’s linguistic communities regulate educational affairs on a functional principle, meaning that both the Francophone and Flemish communities govern particular schools within the territory of Brussels”.<sup>10</sup> In addition, both communities are eligible to sign treaties on educational policy with other states.<sup>11</sup> Essentially, the Ahtisaari plan provides similar powers to the Serb-majority municipalities and in particular to the North Mitrovica municipality. In addition, Serbs from North Kosovo should seek the

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<sup>9</sup> Stroschein, S (2008) “Making or Breaking Kosovo: Applications of Dispersed State Control”, *Perspectives on Politics*. Vol. 6/No. 4, pp. 655.

<sup>10</sup> *Ibid*, 656.

<sup>11</sup> *Ibid*.

opportunity to get integrated within the central institutions of Kosovo and to utilize the 20 guaranteed seats for minorities in the Parliament. It is worth noting that Kosovo in this respect is also quite advanced. For instance, Croatia and Slovenia assign 8 seats (out of 151) and 2 (out of 90)<sup>12</sup> respectively, which are very low figures compared to the case of Kosovo. Therefore, this illustrates the fact that the Ahtisaari plan provides for extensive rights and protection of minority interests, and therefore it is in the best interest of local Serbs in the North Kosovo to use this opportunity.

**c) Recommendations to the International Community:**

- The international community (in particular the European Union and the United States) should facilitate the dialogue between the Kosovo Government and ethnic Serbs in North Kosovo and the parallel dialogue for normalization of relations between the authorities in Pristina and Belgrade;
- The EU and the U.S. must demand and oversee an immediate termination and withdrawal of Serbia's security apparatus, including its secret service officers. In fact, achieving this goal requires only a good political will from the Serbian Government and the EU has a strong mechanism of the 'stick and carrot', which needs to be carried out and consequently orient the Serbian Government behaviour in North Kosovo. The EU must use this opportunity and should not let in another 'Cyprus' with unsettled borders;
- In solving the North Kosovo conundrum, the EU and the U.S. should promote and guarantee the implementation of the Ahtisaari plan. They need to point out that in reality, the Ahtisaari plan is a compromise outcome between Kosovo and international community and not an initial position of Kosovo. Any other solution which would lead towards territorial autonomy, as in the case of Catalonia in

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<sup>12</sup> Croatia to Hungarian, Italian, Czech, Slovak, Ruthenian, Ukrainian, German and Austrian. Slovenia to Hungarians and Italians.

Spain, South Tyrol in Italy, Crimea in Ukraine or Quebec in Canada, simply creates the basis for a 'mini state' within Kosovo. This would make the state of Kosovo dysfunctional and will simply be the initial step towards the definite secession of this part of territory from the remainder of Kosovo. And, in fact, "while the plan [Ahtisaari] officially avoids outlining territorial autonomy, a concentration of Serbian communities in the north, combined with the municipal structures, gives a wide degree of de facto territorial autonomy to this area."<sup>13</sup> Consequently, the legalization of the territorial autonomy in North Kosovo (which goes beyond the Ahtisaari plan) would be only the first step towards the new conflict in the region and international community should learn not to do this mistake. In fact, this may solve the conflict in short-term, but ethnic integration will remain elusive, thus making this idea incompatible with the European principles and values. Therefore, this study recommends to the international community the full implementation of the Ahitsaari plan as the best and the only panacea for solving the North Kosovo conundrum.

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<sup>13</sup> Stroschein, S (2008) "Making or Breaking Kosovo", 622.

## **II. INTERNATIONAL RECOGNITION OF KOSOVO: ‘STOCK-TAKING’ AND ‘LOOKING-FORWARD’ PERSPECTIVES**

The pertinent background of this section of the Study is certainly formed by the realities that surround the place and status of Kosovo in the international arena. A more detailed description of such realities would be as follows:

As of today, the Republic of Kosovo is recognized by more than 90 UN Member States, including 22 out of the 27 EU Member States, 34 of the 47 Council of Europe Member States, two-thirds of OSCE Member States, half of the Arab League Member States, and roughly half of the Organization of Islamic Cooperation Member States. Kosovo has also joined the World Bank and the International Monetary Fund.

The complete picture comprises another, yet not completed part of Kosovo’s aspiration to become a full member of the world community. The key challenges that remain refer to the fact that (a) Kosovo is not yet a member of the United Nations and a number of other relevant European and/or international organizations, such as the CoE and OSCE, and (b) it has not been extended recognition from five Member States of the EU (albeit these countries’ positions, at least in some respects, are not unified).

The further background is inescapably formed by such other decision process, as the Advisory Opinion of the International Court of Justice (ICJ) concerning the legality of Kosovo’s Declaration of Independence and the EU-facilitated dialogue between Kosovo and Serbia foreseen in the UN General Assembly Resolution 64/298 and, perhaps, in particular, the agreement reached between the parties on regional representation and cooperation of 24 February 2012.

This rather brief, though substantively rich, background raises a series of questions that are capable of affecting both the immediate and long-term decision-processes in and on

Kosovo and, broadly, of substantive relevance for others that see or seek utility in Kosovo's result for their own ends.

Among the many questions that are conditioned by the outlined context are: How should the institutions of Kosovo address the issue of consolidating further Kosovo's statehood internationally, both in terms of recognition and membership with aspired international organizations? What can and should be done in order for Kosovo to be a full member of the world community? What problems can be expected and what are the prospects for achieving the intended goals?

The following sections of this part will offer a discussion of these questions.

### **II.1. A Comparative Assessment: Kosovo and Others**

The first underlying method of this section is to look at past trends in decision in order to understand and explain the international realities of Kosovo, and to understand the proper effects and implications of such trends.

It must be noted at the outset that Kosovo is not the only state that has, at least for some time, attracted only partial, albeit relatively significant, recognition. The relevant post-World War II period offers ample evidence of the existence of states that have experienced varying degrees of recognition. Doctrinally, three such principal categories have been identified: First, it is the category of states that have achieved broad recognition only after a protracted period of non-recognition. Second, it is those cases in which entities have only gained limited recognition, and statehood was denied. And, third, there have been cases in which entities aspiring statehood have gained very little or no recognition at all.<sup>14</sup> Examples of entities which gained only limited or no recognition include: Abkhazia and South Ossetia in Georgia (which have attracted the recognition of six, respectively five UN Member States); Biafra in Nigeria (recognized only by five UN Member States); the Turkish Republic of Northern Cyprus (recognized only by Turkey);

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<sup>14</sup> Caplan, Richard, presentation given at the conference organized by RIDEA and the Centre for International Studies - University of Oxford in Pristina, March 2012.

Chechnya in Russia (recognized only by Afghanistan under the Taliban regime); Katanga in Congo (no recognition received); and Somaliland in Somalia (unrecognized by any country or international organization).

The example, however, that bears some resemblance with Kosovo is widely considered to be Bangladesh (formerly known as East Pakistan). Both in terms of the past experience (oppression or aggression by the former parent states) and later developments (*e.g.*, foreign military interventions: by NATO in Kosovo, and by India in Bangladesh), the two countries share critical similarities. Also, they were not fully recognized after their declarations of independence, and not recognized by the States from which they declared their independence. The key difference between the two, however, remains that the non-recognition of Bangladesh by Pakistan persisted for two years (until February 1974), after which Bangladesh was admitted to the United Nations, whereas Kosovo, over four years after its declaration of independence, is not recognized by Serbia nor admitted to the UN.

Until now, only the experiences of varying entities were presented. To what extent recognition is important or decisive for statehood is, however, another question to be tackled in the following section.

## **II.2. Recognition: Value and Importance for Statehood**

The theory of international law has come to recognize two predominant views over the importance of international recognition in the process of state-formation. These are the declaratory and constitutive theories.

The declaratory theory holds that recognition is only declaratory of statehood, a mere acknowledgment of the existence of the state. In this view, the act of recognition does not constitute the creation of a state. The classic 1933 Montevideo Convention on the Rights and Duties of States endorses the views of this theory. Article 3 of the Convention states:

*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 itself as it sees fit, to legislate upon its interests, administer its services and to define the jurisdiction and competence of its courts.*

The position endorsed by the Montevideo Convention was also embraced by decisions or opinions of various bodies of practice. For instance, the so-called “Badinter Commission”, EC’s Arbitration Commission on former Yugoslavia, held that “the effects of recognition by other States are purely declaratory.”

The opposing views are assembled around what is known as the constitutive theory. The constitutive view is based on the premise that recognition is not only declaratory, but it possesses some critical political role for the existence of statehood. Past trends in decision have, however, offered examples when states have functioned as such and enjoyed certain rights associated with statehood even in the absence of formal recognition or full formal recognition (*e.g.*, Israel in relation to non-recognition by Arab States; Macedonia in the years 1991 to 1993, etc.).

Notwithstanding the theoretical considerations, one can hardly deny the role and contribution of recognition by the world community of newly independent entities, not only for purposes of joining the world community of states (*e.g.*, the UN, etc.), but also for purposes of internal consolidation.

As already presented, Kosovo is recognized by less than, or almost, half of the UN Member States, and in terms of membership with international organizations, it is a member of a relatively few global organizations. Beyond the World Bank and the International Monetary Fund, the Republic of Kosovo has not been able to join any other organization of similar scope, though it is in a position to join some large European-based organizations such as the Council of Europe (CoE), and European Bank of Reconstruction and Development (EBRD). Even if it joins, chances are that the CoE membership is not expected to occur in any near-term (or very near) future, a scenario which wouldn’t seem to be applicable in the case of EBRD.

### II.3. Concluding Remarks

Contrary to what has been or appears to have been expected, the impact of the International Court of Justice's advisory opinion, besides its affirmative tone for Kosovo, has not changed in any significant or radical fashion the picture of recognition of Kosovo or of its status internationally. One can still put the question: What could have happened if the outcome was different (in a negative sense)?

The preliminary observations could be that, although critical in the sphere of international relations, the question of whether the declaration of independence is or has been in accordance (or not in contradiction) with international law may not be of entirely determinative value. In this sense, international law appears to be only a segment of a gamut of factors that form the state of affairs in the international arena. Thus, the extent to which the 21 new recognitions from the time the ICJ's advisory opinion was rendered have been impacted by this decision of the World Court may not be easily measured on any objective way. The overall sense is that it has at least provided some highly authoritative and credible ingredient to the argument in favour of recognition, in particular in relation to those countries that have formed (or stated so) their positions based on the legal or illegal nature of the act.

Beyond the realm of pure international legal considerations, there is a widely shared conception that the notion of *effectivité* of an entity is the linchpin of statehood. Both the external and internal (as discussed in the previous part of the Report) dimensions of consolidation are important. Looking back, and assessing what has been achieved in Kosovo, one may safely conclude that both the internal and the external *effectivité* are far from being insignificant.<sup>15</sup> Thus, the creation of a whole of internal legal and institutional structures and their operation, as well as recognition by more than 90 UN Member States, are far from being negligible achievements. In the absence of UN membership (internationally), or full exercise of authority in certain part of territory, in the north

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<sup>15</sup> D'Aspremont, Jean, presentation given at the conference organized by RIDEA and the Centre for International Studies - University of Oxford in Pristina, March 2012.

(internally), the situation is also such that does not satisfy the aspirations of a full member of the world community of states.

This background therefore demands efforts, strategies and measures that advance the aspired goals. Since the pronouncement over the international legality of Kosovo's statehood is now behind, and that pronouncement has been made by the highest judicial organ of the world community, the focus ought to be shifted on matters related to obtaining and maintaining the internal and external *effectivité*. While the next sub-section offers some more detailed recommendations, it is absolutely inescapable to note that there remain two irreplaceable avenues for further or possible consolidation of Kosovo's statehood: (1) the consolidation of Kosovo's democratic credentials; and (2) the consolidation of the state of economy. Therefore, improving and perfecting the already established democratic virtues and reviving the economy remain deeply vital to not only consolidating the internal *effectivité*, but also boosting the external dimension of Kosovo's statehood.

#### **II.4. Policy Options and Recommendations**

The relevant state of affairs in Kosovo, although with notable degrees of achievements, needs further progress and consolidation in order to achieve what is ultimately aspired: a full and uncontested member of the world community of States. How to achieve that? What should Kosovo institutions do, or how should they address the issue of further consolidation of Kosovo's statehood internationally? These are the key questions to which offer the following policy options and recommendations:

- Internal consolidation remains key to a positive and sympathetic external perception. Kosovo should continue to advance further democratic and economic development processes, including in the fundamental field of rule of law. This way, it will not only develop for itself, but also minimize external criticism and scepticism over its behaviour and sustainability, and convince others of the need and merits of a decision to recognize.

- In the absence of recognition by Serbia or admission to UN membership, Kosovo should continue and intensify its active international lobbying. In this context, it should continue to work in close partnership with its key allies, who are or can be influential in particular countries and/or regions.
- Kosovo should use every opportunity in regional and international organizations in which it is a member to assert its statehood, and to establish and deepen relations with non-recognizers.

## ANNEX

### PROGRAMME OF THE CONFERENCE

#### 16 March 2012

Arrival of Speakers/Panellists

20:30 – 22:30

Dinner at Tiffany Restaurant hosted by organizers.

#### 17 March 2012

**9.00 Registration and Coffee**

**9.30 Welcoming Remarks**

**Conference Chair: Dr. Labinot Greiçevci (RIDEA)**

**9.45 First Panel:**

**International Recognition of Kosovo: 'Stock-taking' and 'Looking-Forward' Perspectives-**

**Panel Chair: Dr. Qerim Qerimi (RIDEA and University of Prishtina)**

**Speakers:**

**Professor Richard Caplan**

University of Oxford

**Dr. Ralph Wilde**

University College London (UCL)

**Dr. Jean d'Aspremont**

University of Amsterdam

**Dr. Othon Anastasakis**

University of Oxford

**Elizabeth Pond**

John Hopkins University

**11.15-11.30 Coffee Break**

**11.30.-12.30 Discussion**

**12.30-14.00 Lunch**

**14.00 Second Panel:  
Northern Kosovo: ‘Stock-taking’ and ‘Looking-Forward’ Perspectives-**

**Panel Chair:** CIS (Oxford University) Representative

**Speakers:**

**Professor Sumantra Bose**  
London School of Economics and Political Science (LSE)

**Nida Gelazis**  
Wilson Center, Washington

**Professor Bruno Sergi**  
University of Messina

**Dr. Mateo Ballester Rodriguez**  
Universidad Complutense Madrid

**15.30-15.45 Coffee Break**

**15.45-17.00 Discussions**

**17.00-17.30 Conclusions**

**20.30 Dinner**