

KOSOVO'S INHERITED INTERNATIONAL DEBT
IN THE **CONTEXT OF AN EVENTUAL**
'GRAND FINALE' BETWEEN
KOSOVO AND SERBIA

October 2019

Supported by:



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Abbreviations

DoI	Declaration of Independence
EBRD	European Bank for Reconstruction and Development
IBRD	International Bank for Reconstruction and Development
ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Agency
IFC	International Finance Corporation
IMF	International Monetary Fund
MIGA	Multilateral Investment Guarantee Agency
NBS	National Bank of Serbia
PCA	Permanent Court of Arbitration
SFRY	Socialist Federal Republic of Yugoslavia
UN	United Nations
UNMIK	United Nations Mission in Kosovo
WB	World Bank

Introduction

1. This background note sets out the pertinent background that relates to the question of Kosovo's inherited international or external debt.
2. It will essentially be organized in four specific sections, beginning with (I) the internal source and scope of Kosovo's obligation to comply with the repayment of its inherited international debts; (II) exploring the experience of the other former Yugoslav countries; (III) to define the international creditors and measure or calculate the scope of inherited debt, including, as applicable, both the paid and remaining amounts. The study ends with section IV, which sets out conclusions and recommendations.

Internal Source and Scope of Kosovo's Obligation to comply with the Repayment of Inherited International Debt

3. Kosovo declared its independence on 17 February 2008. The Declaration of Independence (DoI), albeit an act of Kosovo, binds it internationally. The DoI by being made public and expressing clear and concrete commitments and intents represents a source of obligation for Kosovo. It declares publicly "that all states are entitled to rely upon this declaration, and appeal to them to extend to us their support and friendship."¹
4. The DoI is declared in "full accordance with the recommendations of UN Special Envoy Martti Ahtisaari and his Comprehensive Proposal for the Kosovo Status Settlement."² Through the DoI, Kosovo has accepted fully the obligations contained in the Ahtisaari Plan and embraced the framework it has set out to guide Kosovo in its future development. "We hereby affirm, clearly, specifically, and irrevocably, that Kosovo shall be legally bound to comply with the

¹Assembly of the Republic of Kosovo (2008), 'Declaration of Independence of Kosovo' Available at: https://www.assembly-kosova.org/common/docs/Dek_Pav_e.pdf [Accessed on October 13, 2019].

²Ibid. art. 1.

provisions contained in this Declaration, including, especially, the obligations for it under the Ahtisaari Plan,”³ is very explicit and unambiguous statement made in the DoI.

5. Article 9 of the DoI is the provision that addresses the question of Kosovo’s succession to treaty and other obligations, which would certainly cover debt. It reads in relevant part: “We hereby undertake the international obligations of Kosovo, including those concluded on our behalf by the United Nations Interim Administration Mission in Kosovo (UNMIK) and *treaty and other obligations of the former Socialist Federal Republic of Yugoslavia* to which we are bound as a former constituent part.”⁴ It is therefore clear that Kosovo has undertaken to assume treaty and other obligations ensuing from arrangements concluded by UNMIK on its behalf and the former Socialist Federal Republic of Yugoslavia (SFRY).
6. It ought to be clear that Kosovo has not undertaken to comply with treaty and other obligations of any other entity, such as Federal Republic of Yugoslavia (FRY), Union of Serbia and Montenegro, or the Republic of Serbia, as they existed and were transformed over time. However, Kosovo’s commitment to comply with its part of obligations deriving from those obligations that have belonged to the former SFRY is beyond any dispute.
7. In addition to the DoI, certainly, the Constitution of the Republic of Kosovo (“the Constitution”) is other instrument to look at. The Constitution was approved on 9 April 2008. It entered into force on 15 June 2008 and is, same as the DoI, fully compliant with the Comprehensive Proposal for the Kosovo Status Settlement prepared by the former Finnish President and the UN Special Envoy on Kosovo Status (S/2007/168/Add.1) (“Ahtisaari Proposal”).
8. The relevant part of the Ahtisaari Plan concerning inherited debt is Annex VI, entitled “International Debt.” It defines the principles that govern Kosovo’s

³Ibid. art.12.

⁴Ibid. art 9 (emphasis added).

stance towards international debt inherited from the former SFRY or it being a formerly constituent part of the SFRY.

9. The Ahtisaari Plan provides for Kosovo's assumption of its share of debt from the Republic of Serbia, in particular to the World Bank, Paris Club and London Club of creditors. The method for the determination of Kosovo's share is that of negotiations between Kosovo and Serbia.

10. The Ahtisaari Plan also offers some guidance as to the principles that will help the parties reach a negotiation solution on the issue of debt. This guidance means following the principles used for the allocation of debt adopted by the other entities that have emerged as independent and sovereign States as a result of the SFRY's dissolution.

11. The language of Article 1 of Annex VI of the Ahtisaari Plan is as follows:

Kosovo shall assume its share of the international debt of the Republic of Serbia. International debt to be apportioned includes inter alia debt to the World Bank, Paris Club and London Club creditors. Kosovo's share shall be determined through negotiations between Kosovo and the Republic of Serbia taking into account the principles used for the allocation of sovereign debt in the case of the succession to the Socialist Federal Republic of Yugoslavia, in agreement with the relevant creditors.⁵

12. Article 2 of the same Annex clarifies what happens in case the debt is not fully reconciled and re-apportioned:

As long as the debt is not fully reconciled and re-apportioned in agreement with creditors, the Republic of Serbia shall, according to

⁵Assembly of the Republic of Kosovo (2007), 'Comprehensive Proposal For the Kosovo Status Settlement.' Available at: <https://www.kuvendikosoves.org/common/docs/Comprehensive%20Proposal%20.pdf> [Accessed on October 13, 2019].

its responsibility as sovereign borrower/guarantor, ensure the continuity of debt servicing. Kosovo shall refund to the Republic of Serbia Kosovo's duly established share of the debt servicing that the Republic of Serbia has paid pending the completion of the debt reconciliation process.⁶

13. In the absence of an agreement between Kosovo and Serbia, the Ahtisaari Plan foresaw arbitration as the institutional method to resolve the question of debt reconciliation and allocation. Article 3 of Annex VI of the Plan provides:

3.1 If, within one year after this Settlement has entered into force, Kosovo and the Republic of Serbia have not agreed to debt reconciliation and allocation, the International Steering Group shall nominate an international arbitrator after consultation with the parties, to apportion the international debt of the Republic of Serbia between the Republic of Serbia and Kosovo, or that part of the international debt which has not been agreed upon by the parties, in agreement with the relevant creditors.

3.2 The arbitrator's debt allocation shall be irrevocable and shall decide which debts are to be transferred to Kosovo.⁷

14. In connection to the creditors referred to in Article 1 of Annex VI, it ought to be clarified that Kosovo is a member of the World Bank, as well the International Monetary Fund (IMF), the only two United Nations specialized agencies to which Kosovo is a member. The World Bank group is in turn composed of five international institutions, namely the International Bank for Reconstruction and Development (IBRD), International Development Agency (IDA), International Finance Corporation (IFC), Multilateral Investment Guarantee Agency (MIGA), and International Centre for Settlement of Investment Disputes (ICSID). In terms of membership, the World Bank currently counts 189 States, same as the IMF.

⁶Ibid. annex VI, art. 2.

⁷Ibid. annex VI, art. 3.

15. Kosovo was admitted to the IMF and the World Bank Group in 2009. It became effective on 29 June 2009.

16. As to the other two creditors referred to in Article 1 of Annex VI of the Ahtisaari Plan, the Club of Paris is an informal group of officials from major creditor countries whose mission is to find co-ordinated and sustainable solutions to the payment difficulties experienced by debtor countries. Likewise, the London Club of Creditors is an informal group of private creditors on the international stage, and it is similar to the Paris Club.⁸

The Experience of other former Yugoslav countries: the 2001 Agreement on Succession Issues

17. The allocation of sovereign debt in the case of the succession to the Socialist Federal Republic of Yugoslavia has been decided through a multilateral agreement concluded by the new states that were established out of SFRY's dissolution. Indeed, the Agreement deals with succession issues pertaining to *(a)* movable and immovable property; *(b)* diplomatic and consular properties; *(c)* financial assets and liabilities; *(d)* archives; *(e)* pensions; *(f)* other rights, interests, and liabilities; and *(g)* private property and acquired rights.

18. This Agreement, known as the Agreement on Succession Issues or the Yugoslav Agreement on Succession Issues ("the 2001 Agreement" or "the Yugoslav Succession Agreement"), has been concluded in 2001 in Vienna. The Parties to this Convention are Bosnia and Herzegovina, Croatia, Macedonia, Slovenia and the Federal Republic of Yugoslavia.

19. State succession with respect to the assets and liabilities of the former SFRY had been on hold for a long time because of the Milosevic regime. For several years,

⁸ Market Business News (2019), 'What is Paris Club? Definition and Meaning.' Available at: <https://marketbusinessnews.com/financial-glossary/paris-club-definition-meaning/> [Accessed on October 13, 2019].

the position of the FRY obstructed agreement between the five successor states to the SFRY. The FRY had claimed to be the exclusive legal and political continuator of the SFRY after the disintegration of the federation, leaving the other four republics only with a minor share of the former SFRY's assets and property. However, the change of regime in Serbia in October 2000 paved the way for the conclusion of the Yugoslav Succession Agreement. Otherwise, negotiations on this Agreement had begun in 1992 within the framework of the Working Group on Succession Issues of the International Conference on the Former Yugoslavia established by the United Nations and the European Community. Later, negotiations were continued under the auspices of the High Representative in Bosnia and Herzegovina.

20.The 2001 Agreement defines external debt, as well as the method for the allocation of that debt. Thus, "external debt ... is described as allocated debt if the final beneficiary of that debt is located on the territory of a specific successor State or group of successor States. Allocated debt is not subject to succession and shall be accepted by the successor on the territory of which the final beneficiary is located."⁹

21.The Yugoslav Succession Agreement therefore ratifies the principle of the territoriality of final beneficiary; if, for instance, the debt resulted from a loan that was approved for an investment in Croatia, that debt or any remaining part of it would be allocated to Croatia. By the same logic, if the beneficiary was located in the territory of Kosovo, the debt would be allocated to Kosovo.

22.It is significant to note that the 2001 Agreement recognizes the fact that some of the successor States had already reached agreements between themselves or between them individually and the institutions in which they have acquired membership. The latter situation would be applicable with respect to Kosovo

⁹ United Nations Treaty Collections (2001), 'Agreement on Succession Issues, Vienna, 29 June 2001' Available at: https://treaties.un.org/Pages/ViewDetails.aspx?chapter=29&clang=en&mtdsg_no=XXIX-1&src=TREATY [Accessed on October 14, 2019].

and its membership with the IMF and the World Bank and, later, also European Bank for Reconstruction and Development (EBRD), to the extent relevant.

23.Article 3 of Annex C (Financial Assets and Liabilities) of the Yugoslav Succession Agreement:

(1) A major portion of the assets and liabilities of the SFRY have already in practice been distributed on the basis of agreements between the successor States or agreements between them individually and the institutions concerned, namely:

(a) The SFRY's share of the assets and liabilities of the International Monetary Fund;

(b) shares of the World Bank and its affiliated institutions held by the SFRY;

(c) liabilities of the SFRY to the World Bank;

(d) shares of the European Bank for Reconstruction and Development, the African Development Bank and the Inter-American Development Bank held by the SFRY;

(e) the SFRY's debts to the European Investment Bank;...¹⁰

24.Given the date of Kosovo's independence and current stage of political negotiations, one could only apply—and naturally so—the principles agreed for by, and applied against, the other former SFRY units also to the allocation of sovereign debt between Kosovo and Serbia.

¹⁰Ibid. art. 3.

The identification of international creditors and the scope of Kosovo's inherited debt

25. As now indicated, Kosovo was admitted to membership with the IMF and the World Bank Group on 29 June 2009, over a year after its declaration of independence. The relevant procedure and process is set out in the Law on Membership of the Republic of Kosovo in the International Monetary Fund and World Bank Group Organizations.¹¹ These are the only UN specialized agencies that Kosovo is so far a member of.
26. Kosovo joined EBRD, another financial institution, on 17 December 2012. The Law on Ratification of the Agreement Establishing the European Bank for Reconstruction and Development marks the final step in this membership process.¹²
27. Kosovo's inherited international debt in relation to the IMF and the World Bank Group is determined in the Loan Assumption Agreement between the IBRD and Kosovo.¹³
28. As of 29 June 2009, the date of Kosovo's membership with the World Bank, the outstanding principal of Consolidation Loan C amounts to three hundred eighty-one million two hundred eight thousand nine hundred sixty-five Euros and ninety cents (€381,208,965.90).¹⁴ It is to be noted that the total amount that the FRY, later Serbia, had to pay to the World Bank in respect of Kosovo was four hundred thirty million six hundred ninety-five thousand nine hundred twenty-eight Euros and four cents (€430,695,928.04). This sum was defined and

¹¹ Assembly of Republic of Kosovo (2009), 'Law No. 03/L-152 on Membership of the Republic of Kosovo in the International Monetary Fund and World Bank Group Organizations.' Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2639> [Accessed on October 15, 2019].

¹² Assembly of the Republic of Kosovo (2012), 'Law No. 04/L-169 on Ratification of the Agreement Establishing the European Bank for Reconstruction and Development.' Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=11176> [Accessed on October 15, 2019].

¹³ Assembly of the Republic of Kosovo (2009), 'Loan Assumption Agreement between International Bank for Reconstruction and Development and Republic of Kosovo.' Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8482> [Accessed on October 15, 2019].

¹⁴Ibid. letter G.

specified in the 2001 Loan Agreement between the IBRD and the FRY, when FRY succeeded to the membership of the SFRY.

29. This means that the FRY, subsequently Serbia, had paid to the World Bank in respect of Kosovo (from 2002 to 2009) forty nine million four hundred eighty-six thousand nine hundred sixty-two Euros and fourteen cents (€49,486,962.14) until Kosovo's assumption of its loan (or inherited debt) in 2009.

30. The Consolidation Loans between the IBRD and FRY were negotiated in November 2001. They became effective on 8 January 2002. The process of consolidation had three main elements: (i) calculation of the principal outstanding for each existing loan to FRY; (ii) calculation of the capitalized value of interest arrears and overdue charges (to include also interest on overdue principal that was not yet billed) for each loan, which would be added to outstanding principal to determine an updated principal value of each loan to be consolidated; and (iii) apportionment of these existing loans across the six Consolidation Loans (A to F).

31. Loans A, B and C consolidated loans (or parts of loans) were taken for the benefit of Serbia and Kosovo. Three of the six loans (D, E and F) consolidated existing IBRD loans (or parts of loans) deemed to have been taken for the benefit of Montenegro. After its independence in 2006, Montenegro signed a Loan Assumption agreement for each of these loans after signing the Articles of Agreement of IBRD and IDA.

32. During negotiations between the IBRD and the FRY on the latter's membership, FRY had proposed consolidating all of the existing loans (or parts of loans) which were taken for the benefit of Kosovo into a single loan: Consolidation Loan C (CLC). This loan, along with the other consolidation loans, became effective on 8 January 2002.

33. CLC consolidated eleven full loans and parts of seven other loans, all taken between the years 1970 and 1983. All eighteen loans had outstanding principal

or interest due at the time CLC was negotiated. This apportionment, as with the other consolidation loans, was based on a methodology similar to that applied on earlier cases of apportioning external debt of the other ex-Yugoslav republics.

34. Serbia, as the Borrower of Record, has been servicing Consolidation Loan C since 2002. The original principal of CLC—as now indicated—was €430.7 million. Following the 15 March 2009 payment, the remaining balance was €381.2 million.

35. The Loan Assumption Agreement defines clearly Kosovo’s rights and responsibilities in regard to the inherited debts obligations from the FRY and Serbia, respectively:

Section 2.01. The Republic of Kosovo hereby accepts the rights and benefits, and assumes the obligations, of the Republic of Serbia (also referred to as “former Borrower”) set forth or referred to in the Assumed Loan Agreement, including the obligation to make payment of principal, interest, and other charges, and to carry out the activities set forth or referred to in the Assumed Loan Agreement.

Section 2.02. The Bank hereby acknowledges, confirms, and accepts the assumption by the Republic of Kosovo of the obligations referred to in Section 2.01 of this Assumption Agreement.

Section 2.03. All actions taken, rights acquired or obligations incurred under the Assumed Loan Agreement by the Republic of Serbia shall be valid and binding upon the Republic of Kosovo.¹⁵

36. In 2009, upon Kosovo’s admission to the World Bank, a total of 123.7 million Euros were paid to the World Bank as part of its inherited €381.2 million debt – Consolidated Loan C. This amount was, however, paid with the support of international donors, of which the United States government was the principal

¹⁵Ibid. art. 2.

donor. The following table 1 presents the details:

Table 1: Payment made in 2009 – Consolidated Loan C (World Bank)

Year	2009
Country/Organizations	Amount (million Euro)
Republic of Kosovo	34.59
United States	84.12
European Commission (European Union)	5.00
Total amount	123.71

37. From 2009 to date, another 110.5 million Euros were paid by Kosovo towards its inherited World Bank debt. This makes a total of 234.24 million Euros already paid.

38. Kosovo's remaining World Bank debt currently stands at 146,97 million Euros. Kosovo is set to pay this debt until the year 2031.¹⁶

39. Officials from the Ministry of Finance and other relevant institutions have not been able to confirm the rest of creditors and the amount of debts Kosovo has

¹⁶ These data are taken from Ministry of Finance's *Quarterly Data on Total Debt*, October 2018. They are also reconfirmed by Senior Officials from Ministry of Finance dealing with international financial cooperation and issues of debt.

inherited from the SFRY times. They have cited lack of any official data or records as reason for their inability to confirm or provide inherited amount owed to the other creditors.

40. Alternatively, one data source that has been available and could be taken as a reference point is the official account provided publicly by the National Bank of Serbia (NBS) with regard to Kosovo's inherited debt it has undertaken to pay. Multiple news media both in Kosovo and Serbia have publicized these data.¹⁷

41. According to the NBS data, Serbia has undertaken to pay off a 932.73 million Euro debt which was incurred between the 1970s and 1990s for the benefit of Kosovo. It has already paid almost 650 million Euro, and has just over 300 million left to pay to various creditors. This debt has been restructured during 2002-2005, and Serbia is not paying any foreign debt that Kosovo has incurred since then.

42. According to the NBS data, the inherited debt that Serbia has undertaken to pay in relation to Kosovo is owed to the following main creditors in the amounts as set out in Table 2.

¹⁷See, for example, "Serbia paguan borxhin miliardësh të Kosovës", available at: <https://kallxo.com/serbia-paguan-borxhin-miliardesh-te-kosoves>; "Serbia po shlyen borxhin një miliard euro të Kosovës", available at: <https://www.reporter.al/serbia-po-shlyen-borxhin-nje-miliard-euro-te-kosoves>; "Serbia Pays Off Kosovo's Billion Euro Debt", available at: <http://www.balkaninsight.com/en/article/serbia-covers-kosovo-s-billion-euro-debt-07-11-2017>; "Serbia paguan borxhe të Kosovës deri në vitin 2041", available at: <https://www.koha.net/arberi/30072/serbia-paguan-borxhe-te-kosoves-deri-ne-vitin-2041>; "Serbia thotë se ia paguan borxhet Kosovës deri në vitin 2041", available at: <https://www.gazetaexpress.com/lajme/serbia-thote-se-i-paguan-borxhet-kosoves-deri-ne-vitin-2041-400644/?archive=1>; "Serbia thotë se i paguan borxhet Kosovës deri në vitin 2041", available at: <http://lajmi.net/serbia-thote-se-i-paguan-borxhet-kosoves-deri-ne-vitin-2041>

Table 2: Main Creditors other than World Bank – according to NBS

No.	Creditor	Amount owed (million Euro)
1.	European Bank for Reconstruction and Development	433.31
2.	Paris Club	297.2
3.	London Club of creditors	169.85

43. Smaller amounts are reported by the NBS as being inherited in relation to the following creditors and in the amounts listed in Table 3.

Table 3: Smaller Creditors and inherited debt owed to them – according to NBS

No.	Creditor	Amount owed (million Euro)
1.	Council of Europe Development Bank	5.79
2.	European Railway Company <i>Eurofima</i>	4.62
3.	State of Kuwait	18.1
4.	European Union	0.43 <i>(430 thousand)</i>
5.	Libya	3.44

6.	Former Czechoslovakia	1.57

44. According to the NBS data, Serbia currently owes 304.54 million Euros to the European Bank for Reconstruction and Development, the Paris and London Clubs and Kuwait. The debt to the EBRD is due to be repaid by December 2031, the debt to the Paris Club is due by March 2041, to the London Club by 2024, and to Kuwait by July 2034.

45. Serbia has taken over Kosovo’s share of the debt of the former SFRY in 1991 after the forceful removal of its autonomous status in the former federation. After that, Serbia paid Kosovo’s debts until United Nations sanctions were imposed on FRY in 1992. It resumed paying the debts in 2001 after the UN membership and membership with other international organizations, including the international financial institutions.

46. As part of the negotiation process, officials of the Republic of Kosovo should request from their Serbian counterparts the official documentation that the Republic of Serbia possesses on the question of Kosovo’s inherited international debt, as well as the documented amounts it has already paid.

47. Kosovo ought to review the submitted documentation with due care and expertise. Such documentation or any claims put forward by the Republic of Serbia could also be verified with the relevant creditors.

Conclusions and Recommendations

- I.** Kosovo has acknowledged the assumption of its share of the international debt of the Republic of Serbia on the basis of the principles used for the allocation of sovereign debt in the case of the other former SFRY

republics. As revealed in this study, the 2001 Yugoslav Succession Agreement conceived the external debt as “allocated debt if the final beneficiary of that debt is located on the territory of a specific successor State... Allocated debt shall be accepted by the successor on the territory of which the final beneficiary is located.” Kosovo has additionally demonstrated its intent to undertake this international obligation through its IMF and World Bank membership and the assumption and continued repayment of its share of debt. Kosovo should attempt to find a solution to the issue of debt with the Republic of Serbia on the basis of the ratified practice in the 2001 Yugoslav Succession Agreement. However, in order for a potential agreement to be reached, the Republic of Serbia should provide all necessary documentation it possesses with regard to the inherited debt and the amount of serviced debt. Kosovo can also reach out to the relevant creditors for purposes of data verification and confirmation.

- II.** During the negotiating process, Kosovo should in parallel with the assumption of inherited international debt request that the issues of succession to immovable and tangible movable State property of the SFRY (as succeeded by Serbia) be solved in accordance with the principles of the 2001 Yugoslav Succession Agreement, namely that it passes “to the successor State on whose territory that property is situated.” Additionally, Kosovo can validly claim— and it should insist—that the SFRY diplomatic and consular properties succeeded by the Republic of Serbia are proportionately shared with the Republic of Kosovo.
- III.** Should the parties be unable to reach an understanding through negotiations, Kosovo should alternatively aim for a settlement through arbitration. The Ahtisaari Plan has already envisaged arbitration as a potential mechanism to resolve the question of inherited international debt between Kosovo and Serbia, or whatever part of debt that the parties are not able to agree. At the time, the Plan foresaw the International Steering Group as the nominating body of the arbitrator (*“If ... Kosovo and*

the Republic of Serbia have not agreed to debt reconciliation and allocation, the International Steering Group shall nominate an international arbitrator after consultation with the parties, to apportion the international debt of the Republic of Serbia between the Republic of Serbia and Kosovo, or that part of the international debt which has not been agreed upon by the parties, in agreement with the relevant creditors.”). However, given the changed circumstances, Kosovo could at this stage pursue two potential avenues:

(a) Permanent Court of Arbitration (PCA). The nominating power of the arbitrator(s) could be left to the Secretary-General of the PCA. Kosovo is already a member of the PCA, joining it in 2016.

Or:

(b) An arbitral tribunal to be constituted by the European Union or, more specifically, the European Commission on its behalf. Depending from the persisting differences and complexity perceived, Kosovo might request a body of three arbitrators, as opposed to a single arbitrator, as stated in the Ahtisaari Plan. It is certainly critical that the arbitrators have, beyond the requisite standards of reputation or professional integrity, demonstrable experience and expertise on questions of State succession and sovereign debt allocation. The arbitral award is by definition final (unless the parties specifically agree to foresee the possibility for revision, including the timeframe for it).

