

**THE EVENTUAL MEMBERSHIP OF KOSOVO TO THE
ORGANIZATION FOR SECURITY AND CO-OPERATION
IN EUROPE (OSCE): PROCEDURES AND PROSPECTS**

November 2019

Supported by:



Norwegian Embassy



Mother Teresa Square, Entrance I · 59 A · No. 10
Prishtinë, 10000
Republic of Kosovo
T/F: +383 38 746 206
E-mail: ridea.institute@gmail.com
Website: www.ridea-ks.org

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Author: Research Institute of Development and European Affairs (RIDEA)

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Abbreviations

CiO	Chairman in Office
CSCE	Commission on Security and Cooperation in Europe
FIFA	International Federation of Association Football
FRY	Federal Republic of Yugoslavia
INTERPOL	International Criminal Police Organization
ODIHR	Office for Democratic Institutions and Human Rights
OMiK	OSCE Mission in Kosovo
OSCE	Organization for Security and Co-operation in Europe
UEFA	Union of European Football Associations
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNSC	United Nations Security Council
US	United States
USSR	Union of Soviet Socialist Republics

I. Introduction

Since declaring independence in 2008, Kosovo's foreign policy has been oriented in two mutually inclusive directions. The first being, to gain as many recognitions as possible of its independence by other states, whereas the second, to become a member of as many regional and international organizations and initiatives. So far, Kosovo has mostly succeeded in the first front, being recognized by 116 UN member countries. In contrast, it has not been so successful in becoming a member of international intergovernmental organizations, with just a dozen or so memberships and applications.¹ Kosovo has become part of a few major international organizations, mostly financial ones, such as the World Bank Group, the International Monetary Fund and the European Bank for Reconstruction and Development and sporting ones, such as International Olympic Committee, FIFA and UEFA. In contrast, it has neither applied for or become a member of major regional and international organizations, such as the Council of Europe, European Union, Organizations for Security and Cooperation in Europe, the North Atlantic Treaty Organization or the United Nations.

Kosovo has mostly used a "testing the water" approach of applications for membership into international organizations, such as applying and attempting to get membership in United Nations Specialized Agencies, like UNESCO, the International Criminal Police Organizations (INTERPOL), and organizations of smaller scale, as a means to test the support of states that have already recognized Kosovo's independence and the overall support of the international community in allowing Kosovo to become a full-fledged member of the international community. Unfortunately for Kosovo, it failed to become a member of UNESCO in 2015² and INTERPOL in 2018.³

¹ Ministry of Foreign Affairs of Republic of Kosovo (2019), 'List of Recognitions'. Available at: <http://www.mfa-ks.net/subdomain/oldwebsite/?page=1,259> [Accessed on: October 15, 2019].

² The Guardian (2016), 'Kosovo fails in UNESCO Membership Bid'. Available at: <https://www.theguardian.com/world/2015/nov/09/kosovo-fails-in-unesco-membership-bid> [Accessed on: October 15, 2019].

³ Balkan Insight (2018), 'Kosovo's bid to join INTERPOL fails'. Available at: <https://balkaninsight.com/2018/11/20/kosovo-s-bid-to-join-interpol-fails-11-20-2018/> [Accessed on: October 15, 2019].

Failing to become a member of UNESCO and INTERPOL should not set Kosovo back in its attempts to become a member of international organizations. There are numerous relevant regional and international organizations Kosovo could apply to and eventually become a member. One such organization is the Organization for Security and Cooperation in Europe (OSCE), which has a mission in Kosovo since 1999.⁴ Although OSCE's mission in Kosovo is based on the United Nations Security Council Resolution 1244 of 1999 and OSCE's Permanent Council Decision No. 305 of 1999, the objectives of such documents have mainly been achieved, and the OSCE could continue the mission even after Kosovo's membership in OSCE.

This paper/study analysis the case for Kosovo's application and eventual membership in the OSCE by first presenting and analyzing the origins and the coming into being of the OSCE from its founding document, the Helsinki Final Act, up to today's OSCE. Following the background and context, it will analyze the various rationales for application to and membership in the OSCE. Third, this study will examine and discuss in detail the membership process and the OSCE decision-making mechanisms and the challenges Kosovo will face, such as the voting by consensus. Further, the study will analyze the membership experiences of former Yugoslav countries and of other states which have joined OSCE recently as a means to learn any possible lessons that could help Kosovo in this process. Finally, it will discuss the possibility of a legally-binding agreement between Kosovo and Serbia and how that could affect or facilitate the application and membership of Kosovo into international organizations in general, and the OSCE in particular.

II. Background: The Helsinki Process – from CSCE to OSCE

The OSCE came into being out of a momentum that was adequately used by opposing powers during the cold war. That momentum is usually referred to as the *détente*, which emerged following the averting of the Cuban Missile Crisis in 1962 between the US and the Soviet Union. During the *détente* period, the leading powers' approach towards each other changed from a zero-sum game to a positive-sum game, meaning the parties shall

⁴ OSCE (2017), 'Factsheet: OSCE Mission in Kosovo'. Available at: <https://www.osce.org/mission-in-kosovo/143996?download=true>. [Accessed on: October 15, 2019].

come with a solution about collective security and cooperation whereby either all win or no one loses.⁵ For that purpose, the leading powers and their allies started a series of meetings and summits named as the Conference on Security and Co-operation in Europe more popularly known as the Helsinki Process in 1973, which culminated with the adoption of the Conference on Security and Co-operation in Europe Final Act, most commonly known as the Helsinki Final Act in 1975.⁶ The Helsinki Final Act called for the continuation of meetings and Conferences to give effect to the document, thus marking the first steps towards institutionalizing the CSCE.⁷

The Helsinki Final Act established three main areas where CSCE would focus its efforts on ensuring security and cooperation in Europe. The first area deals with political and military relations and measures intending confidence and security building; second, CSCE focused on economic and environmental cooperation and third, exchange of culture, science and technology, and the universality of human rights.⁸ To give effect to these dimensions of the CSCE, the Helsinki Final Act adopted the Declaration on Principles Guiding Relations between the Participating States, which contain ten principles also known as the “decatalogue”.⁹

Through the ten principles of the Helsinki Final Act, the Participating states undertook to respect each other’s sovereignty and to treat each other equally and not to intervene in internal affairs; to refrain from the threat or use of force; recognize the inviolability of frontiers and territorial integrity of states; commit to the peaceful settlement of disputes; respect for human rights and fundamental freedoms; recognize the equal rights and self-determination of peoples; cooperate among themselves and fulfill in good faith obligations deriving from international law.¹⁰ The ten principles are a result of a balance and compromise made between the East represented by the Soviet Union and its allies, and the West represented by the US and its allies, concerning the three objectives or

⁵ David J. Galbreth (2007), ‘The Organization for Security and Cooperation in Europe’ p. 13.

⁶ CSCE (1975), ‘Conference on Security and Cooperation in Europe Final Act’. Available at: <https://www.osce.org/helsinki-final-act?download=true> [Accessed on: October 15, 2019].

⁷ Ibid.

⁸ Ibid., supra note 5.

⁹ Ibid., supra note 6, Helsinki Final Act.

¹⁰ Ibid.

dimensions of the CSCE for collective and comprehensive security and cooperation in Europe.

In the meetings, summits, and conferences that followed as a result of the Helsinki Final Act, the CSCE focused on measures giving effect to the Helsinki Final Act and the further institutionalization of the CSCE. The adoption of the Charter of Paris for New Europe in 1992 started the creation of the first CSCE institutions and the consequent transformation of the CSCE into today's Organization for Security and Co-operation in Europe (OSCE). The Charter of Paris created the Council of the CSCE consisting of Ministers of Foreign Affairs of the Participating States, which was responsible, among others, to "consider issues relevant to the Conference on Security and Co-operation in Europe and take appropriate decisions."¹¹ Further, a Committee of Senior Officials was created with the mandate to "prepare the work of the Council, carry out its decisions, review current issues and consider future work of the CSCE including its relations with other international fora."¹²

The Charter of Paris also created the CSCE Secretariat which was responsible for the provision of "administrative support to the meetings of the Council and the Committee of Senior Officials," to maintain the archive of the CSCE, provide information to the public and interested parties.¹³ The Charter of Paris created two additional CSCE institutions, the Conflict Prevention Centre (CPC) focusing on reducing the risk of conflict; and, the Office for Free Elections tasked with facilitating "contracts and the exchange of information on elections within participating States."¹⁴

The CSCE became OSCE in 1994 through the CSCE Budapest Summit Declaration which says that:

The CSCE is the security structure embracing States from Vancouver to Vladivostok. We are determined to give a new political impetus to the CSCE, thus enabling it to play a cardinal role in meeting the challenges of the

¹¹ CSCE (1990), 'Charter of Paris for a New Europe'. Available at: <https://www.osce.org/mc/39516?download=true> [Accessed on: October 15, 2019]

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

*twenty-first century. To reflect this determination, the CSCE will henceforth be known as the Organization for Security and Co-operation in Europe (OSCE).*¹⁵

The OSCE held a summit in Istanbul in 1999 and adopted the Istanbul Document, which incorporated several documents, such as the Charter for European Security; the Istanbul Summit Declaration; the Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe.¹⁶ The Istanbul Summit discussed the humanitarian crisis in Kosovo and the role and mandate of the OSCE in rebuilding efforts in Kosovo, following the adoption of the United Nations Security Council Resolution 1244.¹⁷

OSCE's involvement in Kosovo started in 1992 through the OSCE mission to Kosovo, Sandjak, and Vojvodina, which lasted until 1993 and later during the Kosovo war in 1998 through the OSCE Kosovo Verification Mission established by OSCE's Permanent Council.¹⁸ OSCE Task Force for Kosovo replaced the OSCE Kosovo Verification Mission for a short period between June and July 1999, when the Permanent Council established the OSCE Mission in Kosovo through Decision No. 305. The OSCE Mission in Kosovo or OMiK was found to contribute to the implementation of UNSC Resolution 1244. The OSCE Mission in Kosovo would, in particular, have the "lead role in matters relating to institution - and democracy-building and human rights."¹⁹ This role of the OSCE would be discharged through human resources capacity-building, through training of Kosovo Police officers and the operation of the Kosovo Police School, training of judicial personnel and civil service; democratization and governance through development of civil society organizations and political parties; organization and supervision of elections; monitoring and protection of human rights through, among others, the establishment of the Ombudsperson institution in Kosovo.²⁰

¹⁵ CSCE (1994), 'Budapest Document 1994, 'Towards a Genuine Partnership in a New Era'. Available at: <https://www.osce.org/mc/39554?download=true> [Accessed on: October 15, 2019].

¹⁶ OSCE (1999), 'Istanbul Document'. Available at: <https://www.osce.org/mc/39569?download=true> [Accessed on: October 15, 2019].

¹⁷ Ibid.

¹⁸ Ibid., supra note 5.

¹⁹ OSCE (1999), 'Permanent Council Decision No. 305'. Available at: <https://www.osce.org/pc/28795?download=true> [Accessed on: October 15, 2019]

²⁰ Ibid.

The OSCE today focuses more on two areas of concern: supporting democracy and fair elections and building confidence on the European Continent. The OSCE's Mission in Kosovo encompasses several activities focused on human rights; building capacities; elections; minority rights; media freedom and youth.²¹ As of today, the OSCE has 57 participating states from Europe, Central Asia, and Northern America.²² The OSCE includes all the members of the European Union and former Soviet Union Republics, US and Canada, and some other Central-Asian countries.

III. The rationale for application membership

Before we dwell on the membership process and the decision-making process within the OSCE and the challenges applicable to this process, we look at the rationale or the reasons why Kosovo should apply for OSCE membership. The *first* self-evident reason is for Kosovo's consolidation of its independence and integration into the international community. *Second*, Kosovo should apply to become a participating state of the OSCE with the purpose of contributing to the organization and its mission. *Third*, Kosovo should apply to become a participating member of the OSCE for the protection of human rights and national minorities' rights and to fulfill the commitments contained in the Helsinki Final Act and the Charter of Paris for New Europe. We will now elaborate on each argument separately.

Kosovo's independence is not complete without the full membership of Kosovo in international organizations. Gaining membership in the OSCE not only consolidates and confirms Kosovo's independence but, most importantly, brings Kosovo to the table of discussions and cooperation in Europe. Kosovo is unable to play its role in the international community unless its voice is heard from the direct representatives of the people of Kosovo.

Second, Kosovo has been at the receiving end of international organizations' efforts for peace and security in Kosovo. The OSCE has been contributing in Kosovo for more than 20 years. As Kosovo finishes its transition to sustainable peace and democracy, it could

²¹ OSCE (2019), 'Website'. Available at: <https://www.osce.org/>. [Accessed on: October 15, 2019].

²² OSCE (2019), 'Participating States'. Available at: <https://www.osce.org/participating-states> [Accessed on: October 15, 2019].

help with its experience elsewhere in post-conflict countries. In fact, Kosovo would be a good example of a successful transition, and post-conflict rebuilding process and valuable lessons could be shared by it with other countries in similar situations.

Kosovo has some of the highest levels of human rights and minority rights protections incorporated in its Constitution. Becoming a participating state of OSCE would increase and further strengthen the level of protection, in particular of the national minorities of Kosovo. In this regard, Kosovo would have to adopt the Helsinki Final Act and the Paris Charter for a New Europe, which contains guarantees for human rights and minorities' rights. Most importantly, however, are the mechanisms for the adequate protection and implementation of minorities' rights. Joining the OSCE, Kosovo would be subject to monitoring by ODIHR and the OSCE High Commissioner for National Minorities, which, in case Kosovo would not meet its political commitments or international obligations, the High Commissioner would assist by providing recommendations and guidelines for action.

IV. OSCE Institutional Mechanism and Membership Process

The main institutions and decision-making mechanisms of OSCE include the Chairman-in-Office (CiO) and the Troika system, or the past, present, and future chairmanship, which provide for institutional memory and assist the CiO. The CiO has a mandate of one year. Next is the High Commissioner on National Minorities, which deals exclusively with issues of national minorities. The Office for Democratic Institutions and Human Rights (ODIHR) is charged with the task of working on the "basket" of Human Dimension of the Helsinki Final Act.

ODIHR is an autonomous organ of the OSCE working on democratization, human rights, gender equality, tolerance, and non-discrimination and elections. ODIHR exercises its mandate mostly through field missions. The Parliamentary Assembly of the OSCE is comprised of 323 parliamentarians from the participating states and serves as a forum for parliamentary diplomacy and debate, and strengthens international co-operation on political, security, economic, environmental, and human rights issues. The OSCE

Representative on Freedom of the Media observes developments in the field of media and assists the participating states in meeting their obligations towards freedom of expression and the media. The Secretariat provides operational support to the organization and is led by the Secretary-General. Two other institutions of the OSCE include the Court of Conciliation and Arbitration as well as the OSCE Minsk Group.

The political decision-making mechanisms include the Ministerial Council, which is composed of the Foreign Ministers of Participating States and meets at least once a year in the country, which is currently holding the Chairmanship. The Ministerial Council is the central decision-making and governing body of the organization. In the interim period between the meetings of the Ministerial Council, the Permanent Council is the principal decision-making body for regular political consultations and for governing the day-to-day operational work of the OSCE. The Permanent Council implements the decisions taken by OSCE Summits at the highest level and the Ministerial Council. The Permanent Council meets once a week in Vienna and is chaired by the Chairperson-in-Office. The Permanent Council is composed of delegates from 57 participating states. Another institutional mechanism that deals mostly with military security and stability is the Forum for Security Co-operation.

The decision-making procedures are laid out in the Rules of Procedure of the OSCE. Article 1 of the Rules of Procedure provides that “all States participating in the OSCE shall do so as sovereign and independent States and in conditions of full equality.”²³ Article II (A)2 provides that “decisions of the OSCE decision-making bodies shall be adopted by consensus. Consensus shall be understood to mean the absence of any objection expressed by a participating State to the adoption of the decision in question.”²⁴ Article II(B)2 of the Rules of Procedures provides that “the highest OSCE decision-making body is the Meeting of the Heads of State or Government (Summit), which takes decisions, sets priorities, and provides orientation at the highest political level”²⁵. The second-highest decision-making body is the Ministerial Council which consists of ministers of foreign affairs of the participating states. Article II(B)3 of the Rules of Procedure states that the

²³ OSCE (2006), ‘Rules of Procedure of the Organization on Security and Cooperation in Europe’ Available at: <https://www.osce.org/mc/22775?download=true> [Accessed on: October 15, 2019].

²⁴ Ibid.

²⁵ Ibid.

Ministerial Council “is the central forum for political consultations within the OSCE and may consider and take decisions on any issue relevant to the Organization.” The Permanent Council is the principal decision-making body between meetings of the Ministerial Council on day-to-day issues of the Organization.

Based on the above, it follows that for an admission of a new participating state within the OSCE, such as Kosovo, a decision must be taken by the Ministerial Council consisting of the foreign ministers of 57 participating states. Such a decision must be made with consensus, meaning no state shall object to the membership of Kosovo in the OSCE. In turn, we will look at the voting procedure and whether – at this point - Kosovo can achieve consensus among the different participating states of OSCE and become a full member.

The Rules of Procedure of the OSCE do not lay out any specific conditions other than those contained in Article I.1, i.e., that the participating states shall be sovereign and independent. Nevertheless, the conditions for admission to the OSCE have been laid out in the practice of OSCE in admitting new participating states. To apply for admission and to get admission into the OSCE, Kosovo must first and foremost adopt the Helsinki Final Act, the Charter of Paris for New Europe, and all other documents of the CSCE and OSCE. This can be done by a Declaration submitted to the Chairman-in-Office. Second, Kosovo must declare that it accepts all obligations and commitments contained in the above documents and that it will act per their provision.²⁶

Kosovo’s application or the Foreign Minister’s letter sent to the Chairman-in-Office would be forwarded to participating states and would be put in the agenda of the next meeting of the Ministerial Council for a decision. The Ministerial Council may adopt a decision in one of the following two ways, through a consensus reached during a meeting, meaning no state has opposed to the adoption of the decision; or, through a silence procedure, whereby the Chairman circulates a draft decision among the participating states along with a specified period for any objections to the draft decision. If no objections have been received during the silence procedure, the decision is considered to be adopted, whereas, on the other hand, if a complaint is received during the silence procedure, that means the

²⁶ See e.g., First Meeting of the Council, Summary of Conclusions, Albania Declaration (1991) p.4. Available at: <https://www.osce.org/mc/40234?download=true> [Accessed on: October 15, 2019].

decision has not been adopted. It is almost if not impossible, for Kosovo to secure consensus currently within the OSCE since at least a couple of participating states would object to Kosovo's admission to the OSCE. The first of such states is Serbia, along with its allies, such as Russia and former Soviet Republics.

V. Challenges: Consensus building

As illustrated above, decisions at the OSCE are taken with the consensus of 57 participating states. This means that no opposition must be raised by the participating states when voting on Kosovo's application for membership. Achieving consensus for Kosovo's admission to the OSCE seems mission impossible at this point, especially taking into account the enraged relations with Serbia and Bosnia and Herzegovina due to the 100% tariff applied by Kosovo on imports from these countries. The second group of states that are likely to oppose Kosovo's admission bid to the OSCE is the non-recognizing member states of the European Union, in particular, Spain and Romania. Thirdly, Russia and a number of former Soviet Republics are likely to oppose Kosovo's bid as well due to their alliance with Russia and the latter's alliance with Serbia.

Kosovo should present the case for membership in the OSCE as crucial for human rights and the Human Dimension of the OSCE. Kosovo's admission to the OSCE would mean Kosovo would take on even more obligations towards its citizens, in particular, national minorities such as Serbs, Roma, and Ashkali and other minorities. Kosovo's admission would benefit, in particular, these communities, as they would acquire new mechanisms and forums to address their concerns and complaints.

Besides, another argument that Kosovo should use in building consensus should be the use of OSCE mechanisms and experience in Kosovo for inter-ethnic dialogue between all Kosovo citizens, in particular between the Albanian majority and the Serb minority with the aim of reaching sustainable peace and reconciliation. Further, Kosovo could agree on an observer status instead of full admission as an equal member. This would be the first step towards full membership later.

VI. Membership Experiences

The CSCE was established in 1973, and the participating states at the time were the major European states, USSR, United States, and Canada. Albania joined the OSCE in 1991, whereas several former Soviet Republics, as well as countries from Central-Asia, joined the OSCE in 1992. North Macedonia joined OSCE in 1995 through a decision of the Permanent Council, instead of the Ministerial Council. Serbia joined OSCE in 2000 whereas Montenegro joined OSCE in 2006.

We will look at these countries' experiences and whether Kosovo could learn anything in its path towards OSCE membership. Kosovo's situation and the report with the OSCE is unique compared to that of the other countries. *First and foremost*, OSCE's Mission in Kosovo is based on the United Nations Security Council Resolution 1244, which despite not mentioning OSCE specifically, the Decision No. 305 of 1 July 1999 of the Permanent Council establishing the OSCE Mission in Kosovo refers to the UNSC Resolution 1244. *Second*, Kosovo's relationship with Serbia is unique and significant in the context of OSCE admission, taking into account that Serbia does not recognize Kosovo and undertakes everything possible to undermine its existence. With this context in mind, it is puzzling that any experience of other countries may be helpful in the case of Kosovo, except for the North Macedonia's one.

Albania

Albania is one of the first countries to join the CSCE from the region, having done so in 1991. The Minister of Foreign Affairs of Albania, Mr. Muhamet Kapllani sent a letter to the CSCE's Chairman-in-Office Mr. Hans-Dietrich Genscher, by which it stated that the Government of Albania adopts the Helsinki Final Act, the Charter of Paris for a New Europe and all other CSCE documents and that it accepts all obligations and commitments contained in those documents. Further, the letter stated that the Republic of Albania welcomes a Rapporteur Mission to report on the progress achieved in Albania towards

fulfilling CSCE commitments.²⁷ Following the letter of application by Albania, the Foreign Ministers of the participating states welcomed Albania as a participating state of CSCE during the Berlin Meeting of the CSCE Council held on 19 and 20 June 1991.²⁸ Albania will be chairing the OSCE during 2020, starting 1 January 2020, taking over from Slovakia, in which case the Foreign Minister of Albania will hold the Chairman-in-office position during the chairmanship of the OSCE²⁹.

Croatia and Slovenia

Croatia's and Slovenia's membership experiences might be important for Kosovo. Croatia, along with Slovenia, were the first countries to declare independence from the Socialist Federal Republic of Yugoslavia on 25 June 1991. Following the declaration of independence, the Council of Ministers of the European Economic Community established the Arbitration Commission of the Conference on Yugoslavia, most commonly known as the Badinter Commission which produced fifteen (15) opinions on various legal questions concerning the dissolution of Yugoslavia and the consequent recognition of the new states. Opinion 1 of the Badinter Commission confirmed that Yugoslavia is in the process of dissolution. Opinion 7 recommended the recognition of Slovenia's independence, whereas Opinion 5 initially ruled that Croatia's independence should not yet be recognized because the new Croatian Constitution did not incorporate the protections for minorities required by European Community", following which the President of Croatia gave assurances that the deficiencies will be remedied.

Based on these assurances, the European Community recognized Croatia as well. Following the recognition of their independence by the European Community and while the Conference on Yugoslavia was still on-going, Croatia and Slovenia applied for membership in the CSCE. The Council of CSCE granted Observer status to Croatia and

²⁷ CVCE (1991), 'Albanian FM Letter to CiO' Available at: https://www.cvce.eu/en/obj/letter_from_muhamet_kapllani_to_hans_dietrich_genscher_tirana_18_june_1991-en-83a484c0-bf69-43c4-82e9-917cf4b50238.html [Accessed on: October 15, 2019].

²⁸ CSCE (1991), 'First Meeting of the Council, Summary of Conclusions, Statement on the Situation in Yugoslavia'. Available at: <https://www.osce.org/mc/40234?download=true> [Accessed on: October 15, 2019].

²⁹ OSCE (2019), 'Albania's OSCE Chairmanship to focus on "Implementing OSCE commitments, together", Acting Minister for Europe and Foreign Affairs Gent Cakaj tells Permanent Council'. Available at: <https://www.osce.org/chairmanship/425459> [Accessed on: October 15, 2019].

Slovenia during the Prague Meeting of 30-31 January 1992.³⁰ Two months later, during the First Additional Meeting of the Council of CSCE, on 24 March 1992, the Foreign Ministers accepted Croatia and Slovenia as participating States. The Summary of Conclusions of the First Additional Meeting of the Council states as follows, “the Ministers welcomed Croatia, Georgia, and Slovenia as participating States, following receipt of letters accepting CSCE commitments and responsibilities from each of them. The Ministers do not consider that the admission of Croatia and Slovenia affects in any way the Conference on Yugoslavia nor prejudices the results of this Conference. The Ministers support the efforts of the Brussels Conference on Yugoslavia in search of an overall political settlement of the Yugoslav crisis.”

The context in which Croatia and Slovenia became members of CSCE differs from today’s context in that the CSCE was not institutionalized to the level the OSCE is today. Both Croatia and Slovenia were already recognized by all the members of CSCE and the international community. Further, these states and other states willing to join the CSCE had to commit to adopt and respect the Helsinki Final Act. OSCE today is fully institutionalized international organizations with institutions and decision-making mechanisms that make it almost impossible for Kosovo to join unless its independence is recognized by all the OSCE members.

Bosnia and Herzegovina

Bosnia and Herzegovina declared independence from the former Yugoslavia on 3 March 1992, following a referendum held between 29 February and 1 March 1992³¹. Bosnia and Herzegovina declared independence amidst Yugoslavia’s process of disintegration after Croatia and Slovenia had done so. The Serb community within Bosnia and Herzegovina boycotted the referendum and, consequently, the declaration of independence, thus igniting the conflict that would define the period between 1992 and 1995 in Bosnia and

³⁰ CSCE (1992), ‘Second Meeting of the Council, Summary of Conclusions, Prague Document on Further Development of CSCE Institutions and Structures’ Available at:

<https://www.osce.org/mc/40270?download=true> [Accessed on: October 15, 2019].

³¹ Helen Walasek (2015), ‘Bosnia and the Destruction of Cultural Heritage’, Ashgate Publishing Limited, p.4. Available at:

https://www.google.com/books/edition/Bosnia_and_the_Destruction_of_Cultural_H/HeNxCAAQBAI?hl=en&gbpv=1&printsec=frontcover [Accessed on: October 15, 2019].

Herzegovina. The independence of Bosnia and Herzegovina was recognized almost immediately by the European Community, the US, and other states. Bosnia and Herzegovina became a participating state of the CSCE on 29 April 1992 in a swift process and differently than Croatia and Slovenia. The decision to admit Bosnia and Herzegovina was taken by the then Committee of Senior Officials and not by the CSCE Council, as was the case with Croatia and Slovenia³². The decision to admit Bosnia and Herzegovina was to be confirmed in the next meeting of the CSCE Council, but that did not occur. Despite this, Bosnia and Herzegovina became a member state of CSCE³³.

North Macedonia

North Macedonia joined the OSCE in 1995, two years after it had become an observer state within the OSCE. North Macedonia became a participating state through the decision No. 81 of the Permanent Council.³⁴ In all other cases, the Ministerial Council has decided on the admission of new participating states, whereas in the case of North Macedonia, it was the Permanent Council. Greece had expressed concern over North Macedonia's name back then. That is why the Decision No. 81 was able to be approved after it contained a reference which stated that this participating state "would be provisionally referred to for all purposes within the OSCE as 'the former Yugoslav Republic of Macedonia'". The Greek delegation would always make interpretative statements reminding this phrase in all documents approved by the participating states.³⁵

Serbia

Serbia became a member of OSCE on 10 November 2000, first as the Federal Republic of Yugoslavia, then as the State Union of Serbia and Montenegro, and finally as the Republic of Serbia since 29 June 2006.³⁶ Before joining the OSCE in November 2000, FRY was

³² Arie Bloed (1995), 'The Conference on Security and Cooperation in Europe: Analysis and Basic Documents, 1972-1993' Kluwer Academic Publishers, p. 109 [Accessed on: October 15, 2019].

³³ Ibid.

³⁴ OSCE (1995), 'Permanent Council Decision No 81' Available at: <https://www.osce.org/pc/20341?download=true> [Accessed on: October 15, 2019].

³⁵ See e.g., the Istanbul Document of 1999.

³⁶ OSCE (2006), 'Permanent Council Decision Nr. 733' Available at: <https://www.osce.org/pc/19697?download=true> [Accessed on: October 15, 2019].

suspended from OSCE on May 12, 1992, by a decision of the Committee of Senior Officials.³⁷ The suspension decision was taken by a precedent-setting voting procedure called “consensus minus one”, which meant that FRY consent for the decision was not required.³⁸ As we have seen earlier, all decisions at the OSCE are taken by consensus. Thus the OSCE bodies had to come up with a solution to suspend the FRY. The decision to suspend FRY stated that “in the view of clear, gross and uncorrected violations of CSCE commitments appropriate action on matters relating to the crisis will until 30 June be taken in the absence of the consent of the delegation of Yugoslavia”.³⁹

FRY was admitted to the OSCE on 10 November 2000. During the Eighth Meeting of the Ministerial Council, the OSCE adopted the Vienna Declaration on the Role of the OSCE in South-Eastern Europe, which provided the outline for OSCE’s Mandate in the region, including Kosovo. FRY’s and Serbia’s membership in the OSCE is relevant for Kosovo taking into account the precedent of “consensus minus one” voting decision based on which FRY was suspended from OSCE. A similar voting mechanism could be used for Kosovo’s admission to the OSCE in the absence of Serbia’s consent for the admission, provided Kosovo has reached consensus with other participating states of the OSCE.

VII. The Importance and Effect of a Final Agreement between Kosovo and Serbia on the membership into OSCE

Kosovo and Serbia are likely to re-start soon a process of negotiations, which should lead to a final agreement on their differences concerning Kosovo’s independence. At present, however, there are some key obstacles to overcome before a final round of negotiations takes place. The first of such barriers is the 100% tariff imposed by Kosovo on goods imported from Serbia. As the tariff has led to Serbia abandoning the table of negotiations, the tariff should be removed entirely, or suspended temporarily, until Serbia signals a change in its blacking-behavior towards Kosovo. The second obstacle, which is an internal one, is the definition of the negotiating policy or platform of Kosovo towards

³⁷ Valery Perry (1998), ‘OSCE Suspension of Federal Republic of Yugoslavia’. Available at: https://www.cvce.eu/content/publication/2005/11/7/3766bd03-0e5c-4541-b4d6-5412e1489a76/publishable_en.pdf [Accessed on: October 15, 2019].

³⁸ Ibid.

³⁹ Ibid.

Serbia in the final round of negotiations. So far, Kosovo has failed to produce a viable and unifying policy towards Serbia for the final round of negotiations. There have been various topics and ideas being tossed at the public opinion, but there is no yet unified position to this. An eventual deal between Kosovo and Serbia which would result in the mutual recognition of statehood, could ease the process of accession of Kosovo to OSCE and other international organizations, as well.

VIII. Conclusions

1. The CSCE and later OSCE emerged as a result of the utilization of the momentum created as a consequence of the rapprochement of relations between the great powers that dominated the world after the Second World War. The Soviet Union and the United States realized that the “I win – You lose” zero-sum game they were playing until they almost triggered their real arsenal during the Cuban Missile Crisis in 1969, would only lead to destruction. The best way to avoid similar, possibly destructive confrontations in the future is to discuss and cooperate with each other on matters of security and other common interests.
2. The CSCE adopted the Helsinki Final Act, which even though it is not a treaty in the traditional sense, the “decatalogue” or ten principles contained in it, are primarily regarded as customary international law, hence, obligatory for the participating states of the OSCE.
3. The CSCE has transformed into today’s OSCE, which in turn has positioned itself as a unique international organization dealing with matters concerning security and co-operation; prevention and monitoring of conflicts; institutional and democracy-building in post-conflict countries; promotion and monitoring of human rights.
4. As noted, there are three main rationales on why membership to OSCE is essential in the context of Kosovo. First, gaining membership in the OSCE would consolidate the independence of Kosovo, and it strengthens integration into the international community. Second, Kosovo would be able to contribute to the organization and its mission, based on its unique experience. And last, OSCE membership would enable Kosovo to further protect human rights and national minorities’ rights.
5. The critical challenge for Kosovo in becoming a member state to the OSCE is the mandatory unanimous consensus between the 57 states. In the case of Kosovo, three groups of countries that would potentially refuse Kosovo’s admission bid can be distinguished. The first group is Serbia and Bosnia and Herzegovina, due to the political context between the parties. The second group consists of the non-

recognizing member states of the European Union, chiefly, Spain, and Romania. And, the third group that is likely to oppose Kosovo's membership are the former Soviet Republics due to their alliance with Russia, and consequently with Serbia.

- 6.** Considering the unique political situation of Kosovo as a result of the 1244 UNSC Resolution and the complex relationship with Serbia, it is unlikely that any previous experience of other countries could be applicable for Kosovo. A minor exception might be the case of North Macedonia.
- 7.** OSCE's Mission in Kosovo has been fundamental in institution building and the preparation of the first modern police forces in Kosovo and the judicial authorities and civil administration following the Kosovo war in 1999.
- 8.** OSCE's Mission in Kosovo has been fundamental in capacity building, the creation and support of civil society, political parties and media organizations in Kosovo after the Kosovo war in 1999.
- 9.** The OSCE Mission in Kosovo is contributing to this day in Kosovo, in particular concerning national minorities' rights, the monitoring, and holding of elections in some areas of Kosovo inhabited with national minorities.
- 10.** Kosovo is able and willing to implement the obligations and commitments arising from the admission to the OSCE and the adoption of the Helsinki Final Act and the Paris Charter for a New Europe of the OSCE.
- 11.** The Ministerial Council of the OSCE is the responsible decision-making body for the admission of new participating states within the OSCE. It can do so with the consensus of all the participating states.

IX. Recommendations

1. Kosovo should engage with the OSCE Mission in Kosovo with a view to express its readiness and interest for admission in the OSCE and request the assistance of the OSCE mechanisms in this process.
2. Kosovo should aim to reach a comprehensive and legally binding agreement with the Republic of Serbia, which would unlock the international perspective for Kosovo, including the process of becoming a member of international organizations, including OSCE.
3. Kosovo should work with its allies, in particular, the US and EU member states to support its bid for admission to the OSCE and to help Kosovo build consensus among the participating states of OSCE.
4. Kosovo should ask for the support of its allies, in particular, the US and EU member states, for engaging the “consensus minus one” voting mechanism in case Kosovo does not reach a final, binding agreement with Serbia.
5. Kosovo should prepare its application for membership along with a detailed justification on how admission to OSCE would help in the protection of human rights and national minorities’ rights.
6. By considering the uniqueness and the special political situation of Kosovo, it is hard to draw a parallelism between other former Yugoslav republics/countries' accession to the OSCE and Kosovo. Accordingly, Kosovo should create its independent path towards becoming a member state of the OSCE and not try to illustrate its situation to previous membership cases.
7. In its application for admission to OSCE, Kosovo should adopt the Helsinki Final Act, the Paris Charter for a New Europe and other CSCE documents, and commit to fulfilling the obligations contained in these documents.

