




**THE EVENTUAL ACCESSION OF KOSOVO TO THE**  
**UNITED NATIONS SPECIALIZED AGENCIES:**  
PROCEDURES AND PROSPECTS

November 2019

Supported by:



Norwegian Embassy





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## Abbreviations

<b>ADB</b>	Asia Development Bank
<b>APEC</b>	Asia-Pacific Economic Cooperation
<b>CTBTO</b>	Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization
<b>FAO</b>	Food and Agriculture Organization
<b>GDR</b>	German Democratic Republic
<b>IAEA</b>	International Atomic Energy Agency
<b>ICAO</b>	International Civil Aviation Organization
<b>IFAD</b>	International Fund for Agricultural Development
<b>ILO</b>	International Labour Organization
<b>IMF</b>	International Monetary Fund
<b>IMO</b>	International Maritime Organization
<b>IOM</b>	International Organization for Migration
<b>ITU</b>	International Telecommunication Union
<b>OPCW</b>	Organization for the Prohibition of Chemical Weapons
<b>PLO</b>	Palestinian Liberation Organization
<b>PRC</b>	People's Republic of China
<b>ROC</b>	Republic of China
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>UNIDO</b>	United Nations Industrial Development Organization
<b>UPU</b>	Universal Postal Union
<b>WB</b>	World Bank Group
<b>WHO</b>	World Health Organization
<b>WIPO</b>	World Intellectual Property Organization
<b>WMO</b>	World Meteorological Organization (WMO)
<b>WTO</b>	World Trade Organization

## Introduction

1. Having declared its independence on 17 February 2008, the Republic of Kosovo has now acceded to several international and regional organizations, including the World Bank, the International Monetary Fund, the Permanent Court of Arbitration, the World Customs Organization, the European Bank for Reconstruction and Development, the Council of Europe Venice Commission, and the Regional Cooperation Council, among numerous other intergovernmental organizations.
2. Kosovo's membership in these organizations has brought mutual benefits to Kosovo, to the organizations concerned, and to their member states. Membership has confirmed and consolidated Kosovo's status as a sovereign and independent state; it has also contributed to the enhancement of regional and international security and to the promotion of friendly relations among states.
3. Membership of Kosovo in the United Nations, the universal organization *par excellence*, has remained elusive. While Kosovo arguably satisfies the criteria for membership in the United Nations, as discussed below, the political considerations of key UN member states have been an impediment to Kosovo joining the world organization.
4. The UN system is made up of the United Nations itself and some 17 affiliated programmes, funds, and specialized agencies, all with their own membership requirements and procedures. These include the World Bank and the International Monetary Fund, where, as noted, Kosovo is already a full member, and the United Nations Educational, Scientific and Cultural Organization (UNESCO), of which Kosovo sought membership unsuccessfully in 2015.
5. Further membership of the UN system would be of considerable benefit to Kosovo. This paper/study will provide analysis of the membership requirements of the United Nations and its affiliated bodies and assess the prospects of Kosovo

acceding to them. It will conclude with a discussion of policy options and recommendations.

## **Kosovo and UN Membership**

6. Article 4(1) of the UN Charter provides that '[m]embership in the United Nations is open to all...peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.' Article 4(2) goes on to state that the admission of any such state will be effected by recommendation of the Security Council followed by a decision of the General Assembly. The admission of new members is classified as an 'important question' in Article 18 of the Charter and hence requires in the General Assembly the support of a two-thirds majority of members present and voting, rather than a simple majority.
7. In its 1948 Advisory Opinion on the *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*, the International Court of Justice was asked to determine whether the criteria in Article 4(1) were exhaustive, or whether members of the Security Council and General Assembly retained the discretion to impose further conditions on an applicant for membership. The majority of the Court found that the conditions were exhaustive and hence that it was legally impermissible for members of the Security Council and General Assembly to take into account political factors not connected with the conditions of admission.
8. Kosovo clearly meets the exhaustive conditions for UN membership listed in Article 4(1). Kosovo has achieved statehood. The democratically elected representatives of its people declared its independence on 17 February 2008 as the end result of a UN-led international process for determining its status. Kosovo's independence was an inescapable necessity, dictated both by the history of oppression and brutal repression inflicted upon the people of Kosovo, including the tragic loss of civilian lives and their expulsion on a massive scale from their

homes and country and by the natural need for and right to freedom and self-determination. In an Advisory Opinion of 22 July 2010, the ICJ concluded that ‘the adoption of the declaration of independence of 17 February 2008 did not violate general international law, Security Council resolution 1244 (1999) or the Constitutional Framework. Consequently the adoption of that declaration did not violate any applicable rule of international law.’

9. Kosovo meets the criteria for statehood set out in the 1933 Montevideo Convention, widely accepted as reflecting those enshrined in customary international law: it has a permanent population, a defined territory, government, and the capacity to enter into relations with other states.<sup>1</sup> Kosovo’s statehood has been recognized by a majority of the members of the United Nations (116 out of 193).
  
10. Since attaining statehood, Kosovo has clearly shown that it is a peace-loving state which seeks always to act in accordance with the principles and purposes of the United Nations. Kosovo lives at peace at home and abroad, striving to govern itself in accordance with the principles and the requirements of democracy, human rights, and the rule of law. Kosovo does not threaten force against any neighbor. Human rights and fundamental freedoms are guaranteed in Kosovo’s Constitution and further supported by Kosovo’s membership of the Venice Commission of the Council of Europe. It cannot be doubted that Kosovo would be able and willing to carry out its obligations as a UN member. As noted above and discussed in further detail below, Kosovo is already a member of two of the UN’s 15 specialized agencies (the International Monetary Fund and the World Bank).
  
11. Kosovo’s right to become a UN member is supported by the principle of universal membership, which is implicit in the Charter and which has been affirmed by subsequent practice. A right of all peace-loving states to UN membership flows from the principle of the sovereign equality of states, a basic customary principle

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<sup>1</sup> Montevideo Convention on the Rights and Duties of States (1933), ‘165 LNTS 19; 49 Stat 3097, Article 1’ Available at: <https://www.ilsa.org/Jessup/Jessup15/Montevideo%20Convention.pdf> [Accessed on: October 10, 2019].



of the international legal order reflected in Article 2(1) of the UN Charter and confirmed in the Friendly Relations Declaration adopted by the UN General Assembly in 1970.<sup>2</sup> Given the importance of the UN and its Charter as a basic framework for the international legal and political order, it is widely accepted that all peace-loving states ought to be admitted to membership. The General Assembly in 1954 noted 'the growing general feeling in favor of the universality of the United Nations' (GA res 817(IX)). It has been noted that during the period from 1966 to 1969, more than 70 references to the principle of universal membership were made on the floor of the General Assembly.

**12.** The importance of universal UN membership is supported by UN practice. In the first decade of the United Nations, Cold War tensions saw a number of states aligned with either side blocked from UN membership by the use of the veto in the Security Council. However, in 1955-56 all these states were admitted in a 'package deal'. Following this early decade, new states emerging from decolonization or from the breakup of existing states have generally been admitted to the UN without opposition. In recent decades, universality has been almost wholly achieved. States that had originally refrained from seeking membership were admitted in the 1990s and early 2000s, including Switzerland and a number of small states in Europe and the Pacific.

**13.** Even though Kosovo meets the legal criteria for UN membership and thus has a right to be admitted in accordance with the principle of universality, it has so far refrained from applying for admission. This is primarily because of the probability that, contrary to the legal obligations of UN organs to consider only the criteria in Article 4 of the UN Charter (as clarified in the ICJ's 1948 Advisory Opinion), Kosovo's application would be prevented by the opposition of certain states which do not recognize its statehood. In particular, in the current climate, a Security Council resolution seeking to recommend Kosovo's admission in accordance with

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<sup>2</sup> UN General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, 24 October 1970, A/RES/2625(XXV). Available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/25A1C8E35B23161C852570C4006E50AB> [Accessed on: October 11, 2019].

Article 4(2) of the Charter would be vetoed. In an Advisory Opinion of 3 March 1950, the International Court of Justice ruled that the General Assembly could not admit a state in the absence of a recommendation from the Security Council.

**14.** UN practice suggests that a new state is only likely to be admitted after its statehood has been recognized by the previous sovereign or by any rival state claiming sovereignty over the same territory. For example, the admission of the 'divided states' of the Cold War was delayed until both governments agreed to recognize the other (in the case of Germany and Korea) or until one government succeeded in unifying the whole territory (in the case of Vietnam). In the case of Germany, neither German state was a member of the UN for several decades. The German Democratic Republic (GDR) applied for admission in 1966, but its application did not progress further because of the opposition of Western states, reflecting the policy of the Federal Republic of Germany (FRG) that it alone was the legitimate representative of the whole of Germany. After a change of government in the FRG, its position shifted, and in 1972 the FRG and the GDR recognized each other's statehood. Both states were then admitted to the UN in 1973. Similarly, neither the Republic of Korea nor the Democratic People's Republic of Korea were members of the UN until 1991, when following an agreement between both states they were admitted simultaneously.

**15.** A remaining legal problem resulting from the Cold War phenomenon of 'divided states' is the status of the Republic of China (Taiwan). Although the ROC government lost control of the Chinese mainland to the People's Republic of China government in 1949 and was driven to the island of Taiwan, it continued to represent China in the UN until 1971, when the General Assembly adopted Resolution 2758 (with 76 votes for, 35 against, and 17 abstentions) to expel its delegation from the UN and replace it with the PRC delegation. During this period, both governments shared the position that there was only one Chinese state: the dispute was over which government was its rightful representative. In recent decades, while Taiwan has not formally abandoned this 'one China' position and claimed a separate statehood, it has moved away from it in practice and sought separate membership in the UN in 1993-95 and more recently in 2007. However,

the PRC's strong opposition, and the acceptance of the 'one China' doctrine by most UN members, means that Taiwan's applications have never been formally considered. As there is no foreseeable prospect that the PRC's opposition to Taiwan's membership of the UN will shift, Taiwan has sought to participate in UN subsidiary and related organizations, although with relatively little success. Despite these setbacks, Taiwan continues to pursue membership or participation in international institutions and maintains a record of success in formal global and regional organizations such as the World Trade Organization (WTO) and the Asia Development Bank (ADB) and other international fora such as Asia-Pacific Economic Cooperation (APEC).

**16.** During the period of decolonization, former colonies were almost always admitted to the UN with the consent of and following recognition by the former colonial power. One partially exceptional case was Guinea-Bissau, where in the 1960s and 1970s, an independence movement (PAIGC) fought a long war against Portugal, the colonial power. In 1973, while the war was still continuing, PAIGC declared the independence of the Republic of Guinea-Bissau, which was recognized by some 40 states. The General Assembly in November 1973 adopted a resolution (resolution 3061 (XXVIII)) welcoming 'the recent accession to independence of the people of Guinea-Bissau, thereby creating the sovereign State of Guinea-Bissau'. In April 1974, the Portuguese regime was overthrown in the 'Carnation Revolution,' and the new government agreed to a ceasefire and entered into negotiations with PAIGC. On 12 August 1974, Guinea-Bissau's admission to the UN was unanimously recommended by the Security Council, but the agreement with Portugal to recognize Guinea-Bissau's statehood was concluded only on 28 August 1974. Guinea-Bissau was then admitted to the UN by the General Assembly on 17 September 1974. Thus, the Security Council recommended Guinea-Bissau's admission before Portugal had recognized its statehood, although recognition by Portugal was clearly inevitable by this stage. This reflects the strongly negative attitude taken by this point towards colonialism by the international community.

**17.** Bangladesh constitutes a contrasting example from the same period of secession outside the colonial context. Bangladesh, with the aid of Indian military

intervention, had achieved effective independence from Pakistan by the end of 1971, and by August 1972 had been recognized by 86 states. However, Bangladesh's application for admission to the UN was vetoed by China in the Security Council in August 1972, although the General Assembly adopted a resolution in November 1972, recognizing Bangladesh's eligibility and calling for its admission (resolution 2937 (XXVII)). Following a further increase in the number of states recognizing it, Bangladesh was finally recognized by Pakistan on 2 February 1974, after which it was admitted to the UN in September 1974.

**18.** A similar pattern can be observed in the post-Cold War period. In cases of secession from an existing state, new UN members have only been admitted following the consent and recognition of the 'parent' state. For example, the Baltic States were admitted to the UN following recognition of their independence by the Soviet Union in September 1991, and the other Soviet republics were admitted with the support of the Russian Federation as the state continuing the legal personality of the Soviet Union.

**19.** Unlike the cases of Bangladesh and the former Soviet Republics, which involved secession from a parent state which continued to exist, the breakup of the Socialist Federal Republic of Yugoslavia involved the legally distinct situation of the complete dissolution of the previously existing state. (The claim of the Federal Republic of Yugoslavia to continue the legal personality of the SFRY was rejected by the Badinter Commission and by the UN itself, and was abandoned in 2000). This distinction between dissolution and secession helps explain why Slovenia, Croatia, and Bosnia-Herzegovina were admitted to the UN in May 1992, before the FRY had formally recognized them. Another factor is that the FRY had already in April 1992 declared its willingness in principle to recognize the statehood of the other republics after further negotiations and had adopted a new constitution excluding the other republics from its scope.

**20.** This overview shows that, while Kosovo has a strong legal case that it has a right to admission to the UN, it is unlikely to overcome the obstacle of the Security Council veto while Serbia still refuses to recognize it. Previous states in a

comparable position, including Guinea-Bissau and Bangladesh, have obtained a General Assembly resolution explicitly recognizing their statehood. Although such a resolution could not without Security Council admit them to the UN, it bolstered their claim to statehood, encouraged further states to recognize them, and thus pressured the 'parent' state to recognize their independence, helping pave the way for admission. However, Kosovo should be cautious in pursuing this option. Serbia or other states which do not recognize Kosovo might contend that recognition of Kosovo's statehood would have a negative effect on international peace and security and thus fall into the category of 'recommendations with respect to the maintenance of international peace and security', which under Article 18 of the Charter is classified as an 'important question' for which a two-thirds majority is required. Currently 116 out of 193 UN member states (60%) have recognized Kosovo. Even if this reading is rejected and a simple majority would suffice to adopt the resolution, a close vote would do more harm than good by drawing attention to continued substantial opposition to Kosovo's statehood.

**21.**In view of the current political obstacles to Kosovo's UN membership, the next section of this paper will discuss other possibilities for Kosovo to participate in the UN system. Firstly, it will briefly discuss whether Kosovo could be recognized by the UN General Assembly as a non-member observer state (like the Holy See and Palestine). Secondly, it will discuss (also briefly) other possibilities for Kosovo to participate in UN organs, including in the International Court of Justice and the Economic Commission for Europe. Thirdly, it will consider the processes for admission to the specialized agencies of the UN and other related agencies, and Kosovo's prospects for admission to these agencies should it apply.

## **Permanent Observer Status in the UN**

**22.**Over the years of the UN's existence, certain non-member states, as well as a number of international organizations and (during the decolonization period) national liberation movements, have been granted limited participation rights in the UN General Assembly and its committees as permanent observers. The concept of a permanent observer is not mentioned in the Charter and is based

rather on subsequent practice. Currently, the UN Protocol and Liaison Service lists two states as 'Non-member States having received a standing invitation to participate as observers in the sessions and the work of the General Assembly and maintaining permanent offices at Headquarters': the Holy See and the State of Palestine.

**23.**In the early years of the UN the Secretary-General decided whether to accede to requests for observer status by non-member states. States accepted as observers on this basis included the Federal Republic of Germany and the Republic of Vietnam (in 1952), the German Democratic Republic (in 1972), and the Democratic Republic of Vietnam (in 1975). In recent practice, the decisions are taken by the General Assembly. The Holy See became a permanent observer at the United Nations in 1964, following approval by the Secretary-General of its request to participate in the General Assembly's work. The Holy See was a permanent observer on this basis for several decades, until the General Assembly adopted (without a vote) a resolution in 2003 confirming the Holy See's status as a permanent observer and its right to participate in the Assembly's sessions and work (Resolution 58/314). The Holy See has refrained from applying for UN membership, in light of its *sui generis* character.

**24.**The evolution of Palestine's status at the UN has been more complex. In 1974, in Resolution 3237 (XXIX), the General Assembly, 'taking into account the universality of the United Nations prescribed in the Charter...invite[d] the Palestine Liberation Organization to participate in the sessions and the work of the General Assembly in the capacity of observer.' The PLO was granted this status as an 'observer entity' representing the Palestinian people, not as a non-member state since the PLO did not claim that it had achieved statehood at that time. In 2011 Palestine made an application to the UN Secretary-General for admission as a UN member state. Given the reality that its application would be vetoed in the Security Council, in 2012, Palestine changed course and requested that its status in the General Assembly be changed from 'observer entity' to 'non-member observer State'. In Resolution 67/19 of 29 November 2012, the General Assembly decided to accord Palestine this status, with 138 states voting for, 9 voting against

and 41 abstaining. As in the previous cases of Guinea-Bissau and Bangladesh (discussed in paras [16] and [17]), the General Assembly has thus explicitly recognized Palestine's statehood.

25. Kosovo could potentially seek to become, like the Holy See and Palestine, a permanent observer non-member state at the UN. This could be effected by a resolution of the UN General Assembly without a recommendation from the Security Council. However, such an approach to UN membership would not be politically prudent for Kosovo for the following reasons. First, unlike the Holy See, Kosovo does not claim *sui generis* status and does not seek to limit its participation in the world organization. Instead, it seeks to exercise its rights as a sovereign state alongside the other 193 UN member states. Second, unlike Palestine, Kosovo is not seeking tactical gains in the short term, which can be achieved by upgrading its status. Palestine, for instance, enjoys new rights as a non-member state at the UN, including the right to bring cases against Israel to the International Criminal Court in the Hague. Kosovo is instead seeking to normalize its status in the international community. Seeking non-member state observer status would detract from Kosovo's claims of 'normal statehood'.

## **Membership of the International Court of Justice and the UN Economic Commission for Europe**

26. Two UN organs that Kosovo could potentially seek to participate in without becoming a UN member or permanent observer are: 1) the International Court of Justice and 2) the UN Economic Commission for Europe, a regional commission of the UN Economic and Social Council. The ICJ and the Economic and Social Council are two of the six principal organs of the UN (along with the General Assembly, the Security Council, the Trusteeship Council, and the UN Secretariat).

27. Article 93 of the UN Charter provides that 1) all members of the UN are *ipso facto* parties to the Statute of the ICJ and 2) a state which is not a UN member may become a party to the ICJ Statute by a decision of the General Assembly on

recommendation of the Security Council. Due to the likelihood of a veto in the Security Council, Kosovo cannot become a party to the ICJ Statute.

**28.** However, Article 35(2) of the ICJ Statute provides that the Security Council may lay down the conditions under which the Court shall be open to states which are not parties to the Statute. In resolution 9 (passed on 15 October 1946), the Security Council provided that the ICJ shall be open to any state, not party to the Statute, 'provided that such State shall previously have deposited with the Registrar of the Court a declaration by which it accepts the jurisdiction of the Court, in accordance with the Charter of the United Nations...and undertakes to comply in good faith with the decision or decisions of the Court and to accept all the obligations of a Member of the United Nations under Article 94 of the Charter' (which requires compliance with ICJ decisions in cases in which the state is a party). Such a declaration may be either particular (accepting the jurisdiction of the Court in respect only of a particular dispute or disputes which have already arisen) or general (accepting jurisdiction in respect of all disputes or of a particular class or classes of disputes, including those that may arise in the future).

**29.** In the past, declarations pursuant to Security Council resolution 9 have been filed by a number of states before they became UN members: particular declarations by Albania (1947) and Italy (1953) and general declarations by Cambodia (1952), Ceylon (1952), the Federal Republic of Germany (1955, 1956, 1961, 1965, and 1971), Finland (1953 and 1954), Italy (1955), Japan (1951), Laos (1952) and the Republic of Viet Nam (1952). More recently, Palestine in 2018 deposited a declaration accepting jurisdiction regarding disputes covered by article 1 of the Optional Protocol to the Vienna Convention on Diplomatic Relations, and has subsequently initiated litigation against the United States at the ICJ on this basis (the *Relocation of the US Embassy to Jerusalem* case).

**30.** Accepting the ICJ's jurisdiction could potentially enhance Kosovo's international legitimacy, as well as allowing Kosovo to initiate legal action against those states which have accepted the Court's jurisdiction under the ICJ Optional Clause or under any treaties which provide for ICJ jurisdiction and to which Kosovo is also



a party. It would be in line with Kosovo's previous decision, in 2016, to become a member state of the Permanent Court of Arbitration.

31. However, there are also reasons for Kosovo to be cautious before attempting to accept the ICJ's jurisdiction in this way. Firstly, it is unclear whether a declaration pursuant to resolution 9 would be accepted by the Registrar of the Court. The Registrar might be guided by the practice of the UN Secretary-General, whose policy is that he is unable to determine, on his own initiative, whether or not an entity of disputed status is a state. In such cases, the Secretary-General will only accept signature or ratification where a resolution of the General Assembly indicates that the entity in question is a state.<sup>3</sup> While Palestine's statehood has been recognized by the General Assembly (see para [24] above), the General Assembly has not (yet) adopted such a resolution regarding Kosovo. On the other hand, the Registrar might take the view that any concerns about the validity of the declaration would be matters for the Court itself to determine in the future. Secondly, the practical benefits and risks would also have to be assessed. While the declaration could potentially allow Kosovo to initiate litigation, it could also allow Kosovo itself to be sued. If a case involving Kosovo as a party did come to the Court, the Court might be compelled to pronounce on whether Kosovo is a state. While a favorable judgment on this point would be a great victory for Kosovo, a negative or doubtful judgment would be disastrous.

32. Another potential UN organ which Kosovo could seek to participate in is the Economic Commission for Europe, a regional commission of the UN Economic and Social Council. Although full membership of the Commission is reserved to UN members, Article 8 of the Commission's terms of reference states that '[t]he Commission may admit in a consultative capacity European nations not Members

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<sup>3</sup> The practice of the Secretary-General is laid out in this document: [https://treaties.un.org/doc/source/publications/practice/summary\\_english.pdf](https://treaties.un.org/doc/source/publications/practice/summary_english.pdf). Paragraphs [81]-[83] say the Secretary-General must follow the practice of the General Assembly in determining whether to accept an instrument of accession from an entity whose statehood is disputed. Para [83] states that the relevant GA practice is to be found in unequivocal indications from the GA that it considers a particular entity to be a state, and that such indications are to be found in GA resolutions. This suggests that it would not be sufficient that the majority of UN members recognise Kosovo; the GA would need to pass a resolution referring to Kosovo as a state, thus adopting this position as the view of the GA itself, not just of some of its members.

of the United Nations, and shall determine the conditions in which they may participate in its work, including the question of voting rights in the subsidiary bodies of the Commission'.<sup>4</sup> Rule 39 of the Commission's rules of procedure provide that decisions are taken by a majority of members present and voting.<sup>5</sup> Since 36 of the 56 members of the Commission (64.2%) have recognized Kosovo, it would have robust prospects for admission as a consultative member of the Commission. A successful application by Kosovo would follow the precedent of Mauritania, which joined the Economic Commission for Africa before becoming a UN member.

### **Application for Membership of UN Specialized Agencies: Overview**

33. Articles 57 and 63 of the UN Charter provide a legal framework by which 'various specialized agencies...in economic, social, cultural, educational, health, and related fields' shall be brought into relationship with the UN by agreement with the UN Economic and Social Council, with the approval of the General Assembly. Fifteen UN specialized agencies carry out particular functions in accordance with these provisions. These agencies are international organizations with separate legal personalities to the UN itself, but closely coordinate with it and are part of the more extensive UN system. The 15 specialized agencies are:

- The International Monetary Fund (IMF)
- The World Bank Group
- The International Fund for Agricultural Development (IFAD)
- The World Health Organization (WHO)
- The World Intellectual Property Organization (WIPO)
- The United Nations Industrial Development Organization (UNIDO)
- The Food and Agriculture Organization (FAO)
- The International Civil Aviation Organization (ICAO)
- The International Labour Organization (ILO)

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<sup>4</sup>UN Doc E/ECE/778/Rev.5, Available at: [www.unece.org/fileadmin/DAM/oes/mandate/Commission\\_Rev5\\_English.pdf](http://www.unece.org/fileadmin/DAM/oes/mandate/Commission_Rev5_English.pdf) [Accessed on: October 14 2019].

<sup>5</sup> Ibid.

- The International Maritime Organization (IMO)
- The International Telecommunication Union (ITU)
- The Universal Postal Union (UPU)
- The United Nations Educational, Scientific and Cultural Organization (UNESCO)
- The World Meteorological Organization (WMO)
- The World Tourism Organization

**34.** Each of these organizations has its own rules and procedures for membership. Kosovo is already a member of two of the 15 UN specialized agencies, the IMF and the World Bank Group, having been admitted to both organizations in 2009. Both these institutions are administered by a board of governors representing the member states. Voting on the board is weighted in line with members' financial contributions to the organization. Since the significant donors to the IMF and the World Bank Group are states which have recognized and are supportive of Kosovo's statehood, it proved relatively straightforward for Kosovo to join these organizations. As well as providing further international recognition of Kosovo's statehood, membership of these major international financial institutions has provided significant economic benefits to Kosovo.

**35.** Since joining the IMF and World Bank, Kosovo has attempted to join one other UN-affiliated agency: UNESCO. However, its application to join UNESCO was unsuccessful. In contrast to the IMF and World Bank, weighted voting is not used in UNESCO. Rather, new members must be recommended by the UNESCO Executive Board and then approved by a two-thirds majority of members present and voting in the UNESCO General Conference (for further discussion, see paragraphs [68] to [72] below). While Kosovo succeeded in obtaining the recommendation of the UNESCO Executive Board, it failed at the second stage in November 2015. In the UNESCO General Conference, Kosovo's application received 92 votes in favour to 50 against (with 29 abstentions), three votes short of the required two-thirds majority. Kosovo's unexpected failure followed from the fact that several members that have recognized Kosovo's statehood (including

Japan, the Republic of Korea, Peru, and Poland) abstained rather than voted in favor.

**36.** In assessing Kosovo's prospects to join each agency, this report draws on the list of states which have recognized Kosovo's statehood, found on the website of the Kosovo Ministry of Foreign Affairs. According to this list, 116 States have recognized Kosovo: 114 of the 193 UN member States, as well as the Cook Islands and Niue, non-UN member states which are in free association with New Zealand. It should be noted, however, that there have been reports that some of these states have withdrawn their recognition of Kosovo, which, if true, would suggest that their votes could not be relied upon.

**37.** The specialized agencies whose admissions processes are most likely to allow Kosovo to become a member are IFAD, WHO, WIPO, and UNIDO. These agencies shall be considered first, followed then by the other UN specialized agencies.

**38.** The following analysis draws in part on the policy report 'Integrating Kosovo into the United Nations System', written by Lowell West and Albana Rexha of the Group for Legal and Political Studies and published in May 2018.

## **UN Specialized Agencies with the Best Prospects for Kosovo Membership**

### **The International Fund for Agricultural Development**

**39.** Article 3(1) of the Agreement Establishing IFAD<sup>6</sup> states that any state which is a member of the UN or of any its specialized agencies (or of the International Atomic Energy Agency) is eligible to apply for membership. As a member of the IMF and World Bank, Kosovo meets this eligibility criterion. The other requirement is that new applications for membership must be approved by the Governing Council

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<sup>6</sup> Agreement Establishing the International Fund for Agricultural Development (1976) 15 ILM 922.

(Art 3(2)), by a simple majority of the total number of votes (Art 6). As in the IMF and World Bank, IFAD members' votes in the Governing Council are weighted by financial contribution to the Fund (Art 6).

**40.** As with the IMF and the World Bank, most of the major donors to IFAD are states that recognize and are supportive of Kosovo. The United States, for example, is the single largest donor with 7.02% of the votes, followed by Germany with 4.13%, Japan with 4.05%, the UK with 3.89%, and France with 3.02%. Thus, Kosovo would be likely to be successful in a bid to join IFAD. IFAD could provide valuable assistance to help develop Kosovo's struggling agricultural sector. Another advantage is that IFAD raises most of its funds through voluntary contributions, so joining would not impose an onerous financial obligation on Kosovo.

## World Health Organization

**41.** Article 3 of WHO Constitution provides that membership of WHO is open to all states.<sup>7</sup> UN members have an automatic right to become members of WHO (Art 4), while non-UN members may be admitted as members of WHO by a simple majority vote of the Health Assembly (Art 6), where each member state is equally represented. All UN member states except Liechtenstein are members of WHO. In addition, the Cook Islands and Niue, which are states in free association with New Zealand, are members of WHO but not UN members. Of the 194 members of WHO, 115 have recognized Kosovo. If all of these states were to support Kosovo's admission in a WHO Assembly vote, its application would, therefore, be successful even if all non-recognizing states voted against. However, the failed application to join UNESCO shows the need for diplomatic action to make sure that all states which recognize Kosovo's statehood would, in fact, vote in favour of its admission rather than abstaining. As the Cook Islands and Niue are WHO members despite arguably not being fully sovereign states, Kosovo could argue that it should be admitted to WHO despite the controversy about its statehood. Given the high importance of WHO's functions in the field of public health, membership would

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<sup>7</sup> Constitution of the World Health Organization (2006) 14 UNTS 185. Available at: [https://www.who.int/governance/eb/who\\_constitution\\_en.pdf](https://www.who.int/governance/eb/who_constitution_en.pdf) [Accessed on: October 13, 2019].

likely be of practical benefit to Kosovo, although it would have to pay assessed dues reflective of its GDP and population.

**42.** However, despite the legal provisions in the WHO Constitution requiring only a simple majority vote, WHO practice is generally to decide on the admittance of new members through consensus of all members rather than by formal vote. Thus, in 1989 WHO deferred the consideration of an application by Palestine to join the Organization because of a lack of consensus. This practice would pose an obstacle to Kosovo's admission, which could potentially be surmounted in one of two ways. A group of existing WHO members could insist that the WHO depart from this general practice in the case of Kosovo and that the question be put to a vote. Or they could seek to pressure those states which do not recognize Kosovo to refrain from formally opposing its admission. Kosovo would need to mobilize the diplomatic support of its allies to achieve these outcomes.

**43.** There are also non-voting observers who participate in the work of WHO, although, like UN permanent observer status, this status has no formal legal basis in the WHO Constitution. The Holy See participates as an observer in WHO by invitation of the Director-General, reflecting the consensus of the World Health Assembly. Contrary to usual practice requiring consensus, the Palestine Liberation Organization was admitted as an observer in 1974 pursuant to WHA resolution 27.37, with 77 votes in favour, 1 against, and 16 abstentions. From 2009 to 2016, Taiwan was invited by the Director-General of WHO to participate as an observer at the World Health Assembly under the name of 'Chinese Taipei', reflecting a consensus in WHO during a period of better relations between China and Taiwan. However, following a change of government in Taiwan in 2016, China resumed its opposition to Taiwan's participation, and Taiwan has not been invited to attend the World Health Assembly since 2017.

## World Intellectual Property Organization

44. WIPO provides a framework for the protection of intellectual property rights internationally. The constituent instrument of WIPO is the WIPO Convention.<sup>8</sup> WIPO administers a significant number of multilateral treaties concerning intellectual property, including the Paris and Berne Conventions. WIPO has 192 members. All UN members except the Federated States of Micronesia, Nauru, Palau, and South Sudan are members of WIPO, as are 3 non-UN members (the Holy See, Niue, and the Cook Islands). Of these 192 members, 113 recognize Kosovo's statehood.
45. Kosovo has a legal right to become a member of WIPO simply by acceding to the WIPO Convention. Any state which is a member of the UN or one or more of its specialized agencies may join simply by ratifying or acceding to the WIPO Convention, while other states must gain the approval of two-thirds of members present and voting in the WIPO General Assembly (Arts 5(2) and 6(3)(d) WIPO Convention). Kosovo is already a member of two UN specialized agencies, the IMF and World Bank Group. Thus it does not legally require approval by a two-thirds majority of the WIPO General Assembly to join (which it would be unlikely to gain unless a large number of non-recognizing states abstained). If Kosovo wishes to accede to the WIPO Convention, it should also accede to one or more of the treaties administered by WIPO, such as the Paris and Berne Conventions (see Art 6 WIPO Convention). These treaties provide that they may be acceded to by 'any country', and the depository of these treaties is the WIPO Director-General, who would be expected to accept Kosovo's instrument of accession given that Kosovo fulfills the legal criterion for accession to the WIPO Convention.
46. Although Kosovo can legally join WIPO in this way without requiring the approval of the WIPO General Assembly, it would need to carefully consider whether this would be worthwhile. This unilateral course of action could cause resentment among those WIPO members who do not recognize Kosovo. Since decisions in the

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<sup>8</sup> Constitution establishing the World Intellectual Property Organization 828 UNTS 3 (1967). Available at: [https://www.wipo.int/treaties/en/text.jsp?file\\_id=283854#article\\_1](https://www.wipo.int/treaties/en/text.jsp?file_id=283854#article_1) [Accessed on: October 12, 2019].

WIPO Assembly are taken by two-thirds majority of votes cast (Art 6)(3)(d) WIPO Convention) these states would potentially have sufficient numerical strength to block the provision of any WIPO assistance to help Kosovo build up its intellectual property regime, which would be one of the main practical benefits of WIPO membership.

47. The WIPO Assembly may also grant observer status to non-member states as well as international organizations and NGOs. Palestine has been granted observer status at WIPO.

### **United Nations Industrial Development Organization (UNIDO)**

48. UNIDO seeks to promote industrial development in developing countries. As with WIPO, UN members or members of any of the UN specialized agencies can be admitted to UNIDO simply by depositing an instrument of accession or ratification to the UNIDO Constitution (Art 3), while other states need the approval of the UNIDO Board and two-thirds of the members present and voting in the UNIDO General Conference.<sup>9</sup> As Kosovo is an IMF and World Bank member, it falls within the first category.

49. Thus, as a matter of law, it would be quite simple for Kosovo to join UNIDO by its own act, although, as in the case of WIPO joining this way could displease a significant proportion of the UNIDO membership. In joining UNIDO by this route, Kosovo would follow the lead of Palestine, which acceded to the UNIDO Constitution in May 2018. As Palestine is a member of a UN specialized agency (in its case, UNESCO), it was eligible to join UNIDO by depositing an instrument of accession and thus automatically became a member of the Organization.

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<sup>9</sup> Constitution of the United Nations Industrial Development Organization 1401 UNTS 3 (1979). Available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=X-9&chapter=10&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-9&chapter=10&clang=en) [Accessed on: October 13, 2019].



**50.** Whether joining UNIDO would provide practical benefits to Kosovo requires some consideration. A significant number of developed states have withdrawn from UNIDO, including Australia, Belgium, Canada, Denmark, France, New Zealand, the United Kingdom, and the United States. These withdrawals reflect concerns about the functioning of the Organization, as well as the view that industrial development can be more effectively promoted by market mechanisms rather than industrial policy. Of the remaining UNIDO membership of 170 states, 93 (54.7%) recognize Kosovo. If it became an UNIDO member, Kosovo would likely be somewhat isolated in the UNIDO General Conference.

**51.** The UNIDO Constitution also provides for observer status for those enjoying such status in the UN General Assembly, or otherwise by a decision adopted by a majority of members of the General Conference present and voting (Arts 4, 8). The Rules of Procedure of the UNIDO General Conference go beyond this and provide that non-UNIDO members who are members of any of the UN's specialized agencies may attend the UNIDO Conference and participate in its deliberation on any matter of direct concern, without the right to vote (Rule 30).<sup>10</sup> Kosovo, under Rule 30, has this automatic right to attend the UNIDO Conference as an IMF and World Bank member. The Holy See currently has observer status at UNIDO.

## **Other UN Specialized Agencies: Greater Difficulties for Kosovo Membership**

**52.** The admissions requirements for the other UN specialized agencies are more onerous than those discussed so far. In general, joining these organizations requires the approval of a supermajority of existing members of the organization, most often two-thirds of members present and voting. Some specialized agencies allow existing members of the UN to join without going through this process, but Kosovo as a non-UN member does not fall in this category.

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<sup>10</sup> Rules of Procedure of the General Conference. Available at: [www.unido.org/sites/default/files/2009-11/Rules%20GC-E\\_0.pdf](http://www.unido.org/sites/default/files/2009-11/Rules%20GC-E_0.pdf). [Accessed on: October 15, 2019].

## Food and Agriculture Organization

53. Admission to the FAO requires approval by a vote of the FAO Conference. Two-thirds of members present and voting must be in favor, and a majority of FAO members must be present (Art II.2, FAO Constitution).<sup>11</sup> Currently, the FAO has 194 members (all UN member states except Liechtenstein, and additionally the Cook Islands and Niue). Of these, 115 (59.3%) recognize Kosovo, falling short of a two-thirds majority. Assuming all states which recognize Kosovo voted in favour of its admission, 22 states which do not recognize Kosovo would have to abstain. The fact that the FAO Constitution refers to members as 'nations' rather than states (Art II.1) might encourage some members which do not recognize Kosovo's statehood not to oppose its admission.

## International Civil Aviation Organization

54. The ICAO currently has 193 members (all UN members except Liechtenstein, as well as the Cook Islands). It has a particularly burdensome procedure for non-UN members to join, requiring a) approval by the UN General Assembly; and b) approval by four-fifths of the total number of member states represented and with the right to vote in the ICAO Assembly (Art 93 Convention on International Civil Aviation;<sup>12</sup> Rule 53 Standing Rules of Procedure of the Assembly of the ICAO).<sup>13</sup>

55. Kosovo could potentially gain the support of a simple majority of members present and voting in the UN General Assembly, which is what is required by Article 18 of the UN Charter for the adoption of decisions on all matters other than 'important questions' (see also the discussion in para [6] above). Serbia or other states which do not recognize Kosovo might contend that approval of Kosovo's

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<sup>11</sup> Constitution of the Food and Agriculture Organization of the United Nations. Available at: [www.fao.org/3/a-mp046e.pdf](http://www.fao.org/3/a-mp046e.pdf). [Accessed on: October 15, 2019].

<sup>12</sup> Convention on International Civil Aviation, ICAO Doc 7300. Available at: [www.icao.int/publications/Documents/7300\\_cons.pdf](http://www.icao.int/publications/Documents/7300_cons.pdf). [Accessed on: October 14, 2019].

<sup>13</sup> ICAO Doc 7600/6. Available at: [www.icao.int/publications/Documents/7600\\_6ed.pdf](http://www.icao.int/publications/Documents/7600_6ed.pdf). [Accessed on: October 13, 2019].

membership of ICAO would have a negative effect on international peace and security and thus fall into the category of 'recommendations with respect to the maintenance of international peace and security', for which a two-thirds majority is required. It seems, however, like a strained reading of the text to contend that a decision (not a recommendation) to approve Kosovo's application to join ICAO would constitute a recommendation with respect to the maintenance of international peace and security. The support of a simple majority in the UN General Assembly would on this reading be sufficient.

**56.** However, since only 114 of the ICAO's 193 members recognize Kosovo, an application for Kosovo would almost certainly fall short of the requirement for approval by four-fifths of the total membership in the ICAO Assembly.

**57.** Taiwan has made a concerted effort to participate in the ICAO, asking ICAO to invite it to attend ICAO meetings as an observer. However, due to China's opposition these requests have not been successful, and Taiwan has only been able to coordinate with ICAO through indirect channels.

### **International Labour Organization**

**58.** The ILO has 187 member states. All UN members are also ILO members, with the exception of Andorra, Bhutan, the Democratic People's Republic of Korea, Liechtenstein, Micronesia, Monaco, and Nauru. The Cook Islands is also a member. The International Labour Conference, which meets once a year, is responsible for the admission of new member states. It is made up of four representatives from each member state: two representing the government, one representing employer organizations, and one representing employee unions.

**59.** Admission of new members (unless they are already members of the UN) must be approved by two-thirds of the delegates attending the Conference, including two-thirds of the government delegates present and voting (Art 1(4), ILO

Constitution).<sup>14</sup> 110 of the 187 ILO member states (52.4%) have recognized Kosovo. Thus, for Kosovo to receive support from two-thirds of the government delegates, at least 22 states which do not recognize Kosovo would need to instruct their government delegates to abstain.

## International Maritime Organization

**60.** The IMO currently has 174 member states, all of which are UN members except for the Cook Islands. The UN members which are not members of the IMO (unsurprisingly, almost all landlocked states) are Afghanistan, Andorra, Botswana, Burkina Faso, Burundi, Central African Republic, Chad, Eswatini (formerly Swasiland), Kyrgyzstan, Laos, Lesotho, Liechtenstein, Mali, Micronesia, Niger, North Macedonia, Rwanda, South Sudan, Tajikistan, and Uzbekistan.

**61.** Non-UN members may apply for IMO membership through the IMO Secretary-General. Before they can be admitted by acceding to the IMO Convention,<sup>15</sup> they must first be recommended by a simple majority in the IMO Council (consisting of 40 states elected for two-year terms based on regional representation and involvement in shipping) and then approved by two-thirds of all members in the IMO Assembly, in which each member has one vote (IMO Convention, Arts 7, 15, 16 and 57). A majority of states currently on the IMO Council in 2018-19 recognize Kosovo's statehood, so an application by Kosovo could be approved at this stage. However, Kosovo would be less likely to gain the support of two-thirds of members in the IMO Assembly, since it has been recognized by 103 members out of 174 (59.2%). In any case, since Kosovo is landlocked, the practical advantages of IMO membership would be limited.

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<sup>14</sup> Constitution of the International Labour Organization. Available at [www.ilo.org/dyn/normlex/en/f?p=1000:61::NO:61::](http://www.ilo.org/dyn/normlex/en/f?p=1000:61::NO:61::). [Accessed on: October 14, 2019].

<sup>15</sup> Convention on the International Maritime Organization 298 UNTS 3. Available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XII-1&chapter=12&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XII-1&chapter=12&clang=en) [Accessed on: October 14, 2019].

## International Telecommunication Union

**62.** The ITU has 193 member states: all UN members except Palau, as well as Vatican City. Admission of non-UN member states to the ITU must be approved by two-thirds of member states, excluding those which abstain (Art 2, Constitution and Convention of the ITU;<sup>16</sup> Rule 21, General Rules of Conferences, Assemblies and Meetings of the Union).<sup>17</sup> This approval may be given at a plenipotentiary conference representing member states, which is held once every four years, most recently in 2018 (Art 8). If an application for membership is made in the interval between two plenipotentiary conferences, the ITU Secretary-General shall consult the member states of the Union; a member state shall be deemed to have abstained if it has not replied within four months after its opinion has been requested (Art 2). Since the next plenipotentiary conference will not be held until 2022, this is the procedure which would be followed if Kosovo were to apply in the near future.

**63.** 113 of the 193 ITU members (58.5%) have recognized Kosovo's statehood. Thus, if all of the states which have recognized Kosovo were to support its application for membership, a further 24 non-recognizing states would need to abstain from the application to succeed. One might speculate that members inclining to either view would be more likely to abstain where voting is done by correspondence rather than taking place at a conference. If this is correct, it could make the result more unpredictable.

**64.** Although Kosovo is not a member of the ITU, the ITU assigned it a three-digit (+383) calling code in 2016. This was in accordance with an agreement with Serbia in September 2013 as part of the EU-led political dialogue between Pristina and Belgrade.

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<sup>16</sup> Constitution and Convention of the International Telecommunication Union adopted by the 2018 Plenipotentiary Conference. Available at:

[www.itu.int/en/history/Pages/ConstitutionAndConvention.aspx](http://www.itu.int/en/history/Pages/ConstitutionAndConvention.aspx). [Accessed on: October 15, 2019].

<sup>17</sup> ITU 'General Rules of conferences, assemblies and meetings of the union'. Available at: [www.itu.int/council/pd/generalrules.html](http://www.itu.int/council/pd/generalrules.html). [Accessed on: October 15, 2019].

## Universal Postal Union

65. Non-UN member states may apply for membership of the UPU by a formal declaration of accession to the Constitution and the obligatory acts of the Union, addressed to the Director-General. The Director-General then forwards the application for admission to all UPU members. The applying state will be admitted if its application is approved by at least two-thirds of member countries. Member countries which have not replied within a period of four months are considered to have abstained (Art 11, UPU Constitution).<sup>18</sup>

66. The UPU has 192 members. All UN member states except Andorra, Marshall Islands, Micronesia, and Palau are members. Vatican City is also a member, as are two groups of non-sovereign territories: the overseas constituent countries of the Kingdom of the Netherlands (Aruba, Curaçao, and Sint Maarten) and the UK overseas territories. Each group of dependent territories is represented as a collective by one member. Palestine has had the status of an observer since 1999. The United States, an existing UPU member, last year gave notice of its intent to withdraw from the UPU with effect from October 2019 in protest over 'unfair' international postal rates.

67. Of the 192 current UPU members, 112 (58.3%) have recognized Kosovo's statehood (assuming that Dutch and British overseas territories take the same view as the Netherlands and the UK). If all 112 were to respond in favour of an application by Kosovo, at least 24 states which do not recognize Kosovo's statehood would have to abstain. The fact that the existing UPU membership is not limited to sovereign states could perhaps make some of these states more willing to abstain. As in the case of the ITU, the fact that voting takes place by correspondence could make members, in general, more likely to abstain, increasing the unpredictability of the result.

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<sup>18</sup> Constitution of the Universal Postal Union (as amended). Available at: [www.upu.int/uploads/tx\\_sbdownloader/actInThreeVolumesConstitutionAndGeneralRegulationsEn.pdf](http://www.upu.int/uploads/tx_sbdownloader/actInThreeVolumesConstitutionAndGeneralRegulationsEn.pdf). [Accessed on: October 13, 2019].

## United Nations Educational, Scientific and Cultural Organization

**68.** UNESCO has 193 members. All UN member states are members with the exception of Liechtenstein, Israel, and the United States. The latter two states were previously members but withdrew in 2018, claiming that the organization has an anti-Israel bias. Three non-UN member states are members of UNESCO: the Cook Islands, Niue, and Palestine, which was admitted to UNESCO in 2011.

**69.** The admission of non-UN member states requires two steps (see Art II UNESCO Constitution).<sup>19</sup> Firstly, the applicant must be recommended by the UNESCO Executive Board. The board is made up of 58 member states elected for staggered four-year terms by the UNESCO General Conference. Meetings of the Board require a quorum of a majority of UNESCO members, and decisions are taken by a simple majority of members present and voting (Rules 27 and 50, Rules of Procedure of the Executive Board).<sup>20</sup> Once the recommendation has been obtained, admission must be approved by a two-thirds majority of member states present and voting at the UNESCO General Conference. Quorum is a majority of member states participating in the session of the General Conference (see Rules 62 and 85, Rules of Procedure of the General Conference).<sup>21</sup>

**70.** As has been discussed above, Kosovo applied unsuccessfully for admission to UNESCO in 2015. That application was approved by the Executive Committee (with 27 votes in favour, 14 against, and 17 abstaining or not present) but fell short of a two-thirds majority in the General Conference, receiving 92 votes in favour to 50 against and 29 abstentions.

**71.** At present, only 26 of the 58 states on the UNESCO Executive Board have recognized Kosovo. It is thus unlikely that the Board would recommend Kosovo's

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<sup>19</sup> Constitution of the United Nations Educational, Scientific and Cultural Organization. Available at: [http://www.unesco.org/education/pdf/UNESCO\\_E.PDF](http://www.unesco.org/education/pdf/UNESCO_E.PDF). [Accessed on: October 12, 2019].

<sup>20</sup> Rules of Procedure of the Executive Board. Available at: <unesdoc.unesco.org/ark:/48223/pf0000366759/PDF/366759eng.pdf.multi>. [Accessed on: October 12, 2019].

<sup>21</sup> Rules of Procedure of the General Conference. Available at: <unesdoc.unesco.org/ark:/48223/pf0000261751.page=22>. [Accessed on: October 13, 2019].

application for membership. (Serbia is also a currently a member of the board and would strongly oppose admission, although its term expires this year). If Kosovo were to gain the Board's approval, it would again face a significant struggle in the General Conference: 114 member states recognize Kosovo's statehood out of the total 193 (59.1%), significantly short of two-thirds. If all the recognizing states voted for Kosovo's admission, 22 non-recognizing states would need to abstain for Kosovo to succeed. Further, as discussed above, the 2015 attempt shows that some states which recognize Kosovo's statehood may choose to abstain rather than to vote for its admission.

72. Rule 6 of the Rules of Procedure of the UNESCO General Conference also makes provision for the Executive Board to decide, before each session of the General Conference, upon a list of non-UNESCO member states which are to be invited to send observers to the Conference. This decision requires a two-thirds majority of members of the Executive Board. These observer states may make oral statements in plenary meetings and meetings of committees, commissions, and other subsidiary organs (rule 66). The Holy See is the only non-member state which currently has the status of a permanent observer.

## World Meteorological Organization

73. Article 3(c) of the WMO Convention provides that any non-UN member state 'fully responsible for the conduct of its international relations and having a meteorological service' can be admitted to the WMO by acceding to the WMO Convention after approval of its admission by two-thirds of WMO state members.<sup>22</sup> Membership decisions are made by a two-thirds majority of votes cast for and against in the WMO Congress, where each member state has one vote (Art 11). (Dependent territories with their own meteorological service may also join the WMO, but they do not have a vote in the WMO Congress on membership applications and other important questions: Art 11).

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<sup>22</sup> Convention of the World Meteorological Organization. Available at: [library.wmo.int/pmb\\_ged/wmo\\_15-2015\\_en.pdf](http://library.wmo.int/pmb_ged/wmo_15-2015_en.pdf). [Accessed on: October 14, 2019].



74. Currently, the WMO has 187 member states. Eight UN members are not WMO members: Equatorial Guinea, Grenada, Liechtenstein, Marshall Islands, Palau, Saint Kitts and Nevis, Saint Vincent, and the Grenadines, and San Marino. Of non-UN member states, the Cook Islands and Niue are WMO members. 110 out of the 187 WMO member states (58.8%) recognize Kosovo, again short of a two-thirds majority.

## World Tourism Organization

75. Membership of the World Tourism Organization is open to all sovereign states. Applications must be approved by a two-thirds majority of full members (i.e., members that are states and not dependent territories) present and voting in the Organization's General Assembly provided that this also constitutes an (absolute) majority of all full members of the Organization (Art 5, Statutes of the Organization).<sup>23</sup>

76. The Organization has a smaller membership than most other UN specialized agencies, with 158 member states. (The Holy See and Palestine have been granted permanent observer status by the Assembly). A number of significant states which recognize Kosovo's statehood are non-members, including Australia, Belgium, Canada, New Zealand, the UK, and the US, due to budgetary considerations and disagreements with the Organization's priorities. 78 out of the 158 current members (49.4%) have recognized Kosovo's statehood, making the Organization the only UN specialized agency in which less than half of the membership has recognized Kosovo. Thus, any application by Kosovo to join is highly unlikely to be successful.

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<sup>23</sup> Statutes of the World Tourism Organization. Available at: [www2.unwto.org/en/about/statutes](http://www2.unwto.org/en/about/statutes). [Accessed on: October 14, 2019].

## UN-related Organizations

77. In addition to the UN specialized agencies, there are several related organizations that have a cooperation agreement with the UN but do not fall under the formal framework of Articles 57 and 63 of the UN Charter. These are:

- The International Atomic Energy Agency (IAEA)
- The International Organization for Migration (IOM)
- The World Trade Organization (WTO)
- The Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO Preparatory Commission)
- The Organization for the Prohibition of Chemical Weapons (OPCW)

### The International Atomic Energy Agency

78. The IAEA has 171 members. Most UN member states are IAEA members. Non-members include the Democratic People's Republic of Korea, Guinea, Guinea-Bissau, Somalia, South Sudan, Suriname, and Timor-Leste, as well as a number of very small states. The Holy See is a full member of the IAEA.

79. The IAEA's admissions procedure takes place in two stages (see Art IV IAEA Statute): First, an application must be recommended by the Board of Governors, made up of 35 state representatives elected by the General Conference of all members.<sup>24</sup> Currently, a bare majority of members of the Board recognize Kosovo (Serbia is also on the Board and would presumably strongly oppose any application by Kosovo to join the IAEA). A simple majority of the members present and voting is all that is required, but two-thirds of Board members must attend a meeting to constitute a quorum. Thus, 6 non-recognizing states would need to be willing to attend a meeting with Kosovo's application for membership on the agenda for the vote to go ahead.

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<sup>24</sup> Statute of the International Atomic Energy Agency. Available at: [www.iaea.org/about/statute](http://www.iaea.org/about/statute). [Accessed on: October 15, 2019].

**80.** The second stage of the admission process requires approval by a simple majority of members present and voting at the IAEA General Conference. A majority of the total membership must be present to constitute a quorum. A majority of the IAEA membership – 96 out of 171 current members (56.1%) – recognizes Kosovo. Thus, a membership application could succeed if it got to this stage, presuming that Kosovo could successfully mobilize all those states which recognize its statehood to vote for it.

### **The International Organization for Migration**

**81.** Admission to the IOM is open to states ‘with a demonstrated interest in the principle of free movement of persons’ which undertake to make a financial contribution to the administrative requirements of the Organization (Art 2, IOM Constitution).<sup>25</sup> Admission must be approved by a two-thirds majority vote of members present and voting in the IOM Council, on which each member state has one vote. The Organization has 173 member states, all of which are UN members except for the Holy See. The Council may also admit non-member states as non-voting observers by a simple majority of members present and voting (Arts 8, 24). Eight UN members participate in the IOM as observers: Bahrain, Bhutan, Indonesia, Kuwait, Qatar, Russian Federation, San Marino, and Saudi Arabia. A number of states are neither members nor observers, including Barbados, Brunei, the Democratic People’s Republic of Korea, Lebanon, Iraq, Malaysia, Oman, Syria, and the United Arab Emirates, as well as a few other very small states.

**82.** Kosovo has been recognized by 100 out of 173 IOM members (57.8%). If all these states were to vote to admit Kosovo, an additional 23 non-recognizing states would need to abstain for Kosovo to be successful. Kosovo could more easily meet the simple majority vote requirement for observer state status if this was considered to be a sufficiently valuable achievement.

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<sup>25</sup> Constitution of the International Organization for Migration. Available at: [www.iom.int/constitution](http://www.iom.int/constitution). [Accessed on: October 15, 2019].

## The World Trade Organization

**83.**Joining the World Trade Organization is a complex and usually lengthy process involving examination of the applicant's trade regime by a WTO working party and a series of parallel bilateral talks between the applicant and existing members to negotiate the terms of accession. The process eventually leads to the finalization of the terms of accession, which must be approved by a two-thirds majority of all WTO members (Art XII, Marrakesh Agreement).<sup>26</sup> However, by longstanding practice, decision making in the WTO is almost always by consensus rather than formal voting.

**84.**WTO membership is not restricted to sovereign states but is also open to autonomous customs territories. Thus, for example, Hong Kong has a separate membership of the WTO to that of China, and Taiwan is also a member under the designation of the 'Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu (Chinese Taipei).' The fact that non-sovereign states may join the WTO may defuse opposition to Kosovo's membership from those members who do not recognize Kosovo's statehood. However, the WTO practice that decisions should be made by consensus could potentially frustrate any application by Kosovo if certain members refuse to acquiesce. For instance, Iran was unable to initiate an application from 1996 to 2005 due to strong opposition from the United States, preventing the emergence of a consensus.

**85.**Given the complexity involved in WTO membership negotiations, and the fact that most of Kosovo's trade is already covered by the Central European Free Trade Agreement and the Stabilisation and Association Agreement between the EU and Kosovo, Kosovo could seek observer status (if relevant) at the WTO as an alternative to immediately pursuing membership. Observer status can be granted to a state for five years, after which a state is expected to decide on whether to pursue WTO membership. The Holy See has been granted an exceptional permanent observer status.

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<sup>26</sup> Marrakesh Agreement Establishing the World Trade Organization. Available at: [www.wto.org/english/docs\\_e/legal\\_e/04-wto\\_e.htm](http://www.wto.org/english/docs_e/legal_e/04-wto_e.htm). [Accessed on: October 13, 2019].

**86.** However, an application by Kosovo for observer status would need to be accepted by the WTO General Council, and as with full membership, the WTO convention of decision making by consensus would allow it to be blocked by a determined minority of members. For example, Palestine has expressed interest in participating in the WTO and has attended the WTO Ministerial Conference as an *ad hoc* observer, but its attempts to achieve formal observer status have been frustrated by a lack of consensus. Palestine's supporters in the WTO have not felt able or willing to depart from the traditional consensus-based approach and put the matter to a vote.

### **The Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization**

**87.** The Comprehensive Nuclear-Test-Ban Treaty (CTBT) provides for a complete ban of all nuclear explosions and for the establishment of an organization, the CTBTO, to monitor and verify compliance with the treaty.<sup>27</sup> The treaty has 168 parties but is not yet in force. This is because the treaty requires 44 specified 'annex 2' states to ratify the treaty before it can enter into force, and 8 of these States have not ratified the treaty. Before the entry of the treaty into force, all states which have signed the treaty (even if they have not also ratified the treaty) are members of the CTBTO Preparatory Commission. The functions of the Preparatory Commission are to promote the signing and ratification of the treaty so that it can enter into force as soon as possible and to prepare an operational verification regime in the interim.

**88.** Membership of the CTBTO Preparatory Commission does not require a vote of existing members but instead follows automatically from the signature of the Treaty. Art XI of the Treaty provides that the Treaty is open to 'all States' for signature before its entry into force. However, the depository of the treaty is the UN Secretary-General, which would create an obstacle to Kosovo signing the

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<sup>27</sup> Comprehensive Nuclear-Test-Ban Treaty. Available at: [www.ctbto.org/the-treaty/treaty-text/](http://www.ctbto.org/the-treaty/treaty-text/). [Accessed on: October 12, 2019].

treaty. As already discussed, the official policy of the Secretary-General is that he is unable to determine, on his own initiative, whether or not an entity of disputed status is a state. In such cases, the Secretary-General will only accept signature or ratification where a resolution of the General Assembly indicates that the entity in question is a state. Kosovo's ability to sign or ratify the CTBT thus requires a previous UN General Assembly resolution recognizing it as a state. The prospects for obtaining such a resolution were discussed in para [20], above.

## **The Organization for the Prohibition of Chemical Weapons**

**89.** Unlike the CTBT, the Chemical Weapons Convention (CWC) is in force and has 193 state parties (all UN member states except Israel, Egypt, the Democratic People's Republic of Korea and South Sudan, and in addition the Holy See, the Cook Islands, Niue and Palestine).<sup>28</sup> The CWC establishes the Organization for the Prohibition of Chemical Weapons (OPCW) as the implementing body of the Convention. All States Parties to the Convention are members of the Organization, so a state becomes a member of the OPCW by merely acceding to the Convention without a vote of existing members being required. Any state may accede to the Convention (art XX). However, as the UN Secretary-General is the depository of the treaty, the same obstacle applies as in the case of the CTBT. The Secretary-General will be unable to accept Kosovo's accession to the treaty unless the UN General Assembly passes a resolution recognizing Kosovo as a state.

## **Conclusions and Recommendations**

**90.** Success in joining the United Nations and any of its membership organizations would represent further international recognition of Kosovo's statehood and, therefore, should be pursued. However, since the processes of accession are different for the United Nations and for each of its specialized agencies, Kosovo's

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<sup>28</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction 1975 UNTS 45. Available at: <https://www.opcw.org/chemical-weapons-convention/download-convention>. [Accessed on: October 14, 2019].

prospects for membership vary. Kosovo should only apply for membership, where it has a high likelihood of success as failure would constitute a very public setback. Kosovo should also assess what it would gain in practical terms from participation in the particular activities of each agency and whether the gains outweigh the cost of membership. Membership of some agencies would carry more practical benefits than others.

**91.** Kosovo has a firm legal case that it has a right to admission to the UN. However, it is unlikely to overcome the obstacle of the Security Council veto while Serbia still refuses to recognize it, especially given the support that Serbia enjoys from Russia (and to a lesser degree, China) on the Security Council. Previous states in a comparable position have obtained a General Assembly resolution explicitly recognizing their statehood. Although such a resolution would not suffice for Kosovo to gain admission to the UN (a Security Council recommendation would be required), it would arguably bolster Kosovo's claim to statehood, encourage additional states to recognize Kosovo, and thus pressure Serbia to recognize its statehood. This is a risky option, however, which Kosovo should be cautious about pursuing. Serbia or other states which do not recognize Kosovo might contend that recognition of Kosovo's statehood would have a negative effect on international peace and security and thus fall into the category of 'recommendations with respect to the maintenance of international peace and security', which under Article 18 of the Charter is classified as an 'important question' for which a two-thirds majority is required. Even if this reading is rejected and a simple majority would suffice to adopt the resolution, a close vote might do more harm than good by drawing attention to continued substantial opposition to Kosovo's statehood.

**92.** Non-member state observer status as an alternative to membership is not a prudent option for Kosovo even though, in many cases, currently, it may be the only available option for any formal participation in these bodies. Seeking non-member state observer status would detract from Kosovo's claims of 'normal statehood'.

- 93.** Membership of two other UN organs is possible: the International Court of Justice and the Economic Commission of Europe. Accepting the ICJ's jurisdiction could potentially enhance Kosovo's international legitimacy. However, it carries the risk that the UN Secretary-General would only accept Kosovo's signature or ratification subject to an affirmation of Kosovo's statehood by the General Assembly or, more risky still, leave Kosovo's statehood vulnerable to a challenge by the Court. By contrast, seeking membership of the UN Economic Commission for Europe as a consultative member would be less risky as the decision would require a majority of members, and currently, 36 out of 56 members of the Commission have recognized Kosovo. A successful application by Kosovo would follow the precedent of Mauritania, which joined the Economic Commission for Africa before becoming a UN member.
- 94.** This analysis shows that Kosovo could apply immediately to join two UN specialized bodies with good prospects of success: these are the International Fund for Agricultural Development (IFAD), which uses weighted voting, and the World Health Organization (WHO), where a simple majority in the World Health Assembly is legally sufficient. Kosovo also has a right to join the World Intellectual Property Organization (WIPO) and the United Nations Industrial Development Organization (UNIDO) as an existing IMF and World Bank, member.
- 95.** In contrast, Kosovo would almost certainly not succeed in meeting the requirements for admission to the International Civil Aviation Organization (ICAO), which is the most onerous of any of the UN specialized agencies. Applications to any of the other UN specialized agencies would face an uphill battle, given that they require a two-thirds majority vote from the existing membership. While in each of these organizations (except for the World Tourism Organization), a majority of members recognize Kosovo's statehood, in none do two-thirds or more of the members.
- 96.** It is possible that Kosovo could succeed in an application to those organizations if a significant number of states which do not recognize Kosovo were willing to abstain. However, there would remain a risk of failure if not enough of these states



were to abstain, or conversely, if some states which recognize Kosovo's statehood nonetheless decided to abstain from supporting Kosovo's admission, as occurred at the UNESCO General Conference in 2015.

- 97.** Any decision to seek admission to these agencies would require an intensive investment of diplomatic resources to increase the likelihood of a successful result. Kosovo would need to consider carefully whether this investment would be justified given the benefits of membership of the organization in question.
- 98.** In any case, where it applies to join a UN specialized or related agency, Kosovo must invest diplomatic resources to ensure that all states which recognize its statehood vote in favour of its admission in order to avoid a repeat of its 2015 failure at the UNESCO General Conference.
- 99.** Kosovo will enhance its prospects for accession to the United Nations and its specialized agencies if it increases the number of member states that recognize its statehood. With regard specifically to the United Nations, more recognitions will increase the likelihood of a favorable Security Council reception and will bring the General Assembly closer to the two-thirds majority required for accession. The difficulty remains China's and Russia's possible use of the veto, which may only be overcome when Serbia's objections are overcome.
- 100.** Normalization of relations between Serbia and Kosovo, leading to mutual recognition, will greatly facilitate UN member state recognition of Kosovo and unblock most if not all doors to membership in the United Nations and its specialized agencies. Non-recognizing states are inclined to view the question of Kosovo as a case of 'non-consensual' secession, notwithstanding the unique circumstances that have given rise to Kosovo's statehood. And as states have done in the past, they will take their cues from the 'parent' state, in this case, Serbia. The European Union needs to work more energetically to promote normalization between Serbia and Kosovo, and to ensure that normalization is a requirement for the accession of Serbia to the European Union.

