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SUCCESSFUL STALEMATE: How serbia's derecognition Campaign stymied kosovo's March toward universal Recognition

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EUEuropean UnionUNUnited NationsICJInternational Court of JusticeUNSCUnited Nations Security CouncilUNGAUnited Nations General AssemblyPISGProvisional Institutions of Self Government of KosovoUSUnited StatesUKUnited KingdomUNESCO-United Nations Educational, Scientific, and Cultural OrganizationUNMIKUnited Nations Interim Administration Mission in KosovoSAAStabilization and Association AgreementIMFInternational Monetary FundIOCInternational Olympic CommitteeFIFAInternational Federation of Football AssociationsOICOrganization of Islamic Countries		
 UN United Nations ICJ International Court of Justice UNSC United Nations Security Council UNGA United Nations General Assembly PISG Provisional Institutions of Self Government of Kosovo US United States UK United Kingdom UNESCO United Nations Educational, Scientific, and Cultural Organization UNMIK United Nations Interim Administration Mission in Kosovo SAA Stabilization and Association Agreement IMF International Monetary Fund IOC International Federation of Football Associations 	_	
FIFA — International Federation of Football Associations	UN ICJ UNSC UNGA PISG US UK UNESCO- UNMIK SAA IMF	United Nations International Court of Justice United Nations Security Council United Nations General Assembly Provisional Institutions of Self Government of Kosovo United States United Kingdom United Nations Educational, Scientific, and Cultural Organization United Nations Interim Administration Mission in Kosovo Stabilization and Association Agreement International Monetary Fund
	FIFA —	International Federation of Football Associations

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Introduction

Kosovo's independence has proven to be a highly polarizing geopolitical issue for the last two decades. The country's supporters believe it deserves statehood because it possesses the characteristics of a state as outlined by the Montevideo Convention: A permanent population, defined boundaries, self-governance, and the ability to interact with other states. Opponents argue that Kosovo has attempted to secede from Serbia unilaterally and illegally.¹

Serbia is far from alone in opposing Kosovo's independence. A number of other countries, though less vocal than Serbia, remain steadfast in their refusal to recognize Kosovo, so long as no mutually agreed settlement exists. Most prominent among them are Russia and China, who, as permanent members of the UNSC, wield veto power over any substantive UNSC resolutions. They are joined by five EU member states, Spain, Greece, Cyprus, Romania, and Slovakia, each of whom avoids recognizing Kosovo for fear of lending credence to the latent secessionist movements within their own borders.² While these countries have long opposed Kosovo's recognition, there has been a wave of derecognitions over the past few years. As of November 2019, Belgrade claims that seventeen countries have derecognized Kosovo, a reversal of a trend that had previously favored Pristina.³

In the years following Kosovo's 2008 declaration of independence, an exhaustive diplomatic campaign waged by Kosovo and supported by the United States, the United Kingdom, Germany, and France succeeded in securing over 100 recognitions from UN member states.⁴ Flush with momentum from an encouraging ICJ ruling in 2010 and buoyed by support from its influential Western allies, universal recognition of Kosovo's statehood appeared inevitable.⁵ Within a few years, however, Serbia launched a competing campaign aimed at convincing smaller, more persuadable countries to withdraw their recognition of Kosovo. This campaign appears to have swung the momentum in Belgrade's direction – Israel's agreement to recognize Kosovo, announced in September 2020, ended a more than two-year drought dating back to Barbados' recognition in February 2018.⁶ Though Serbia and Kosovo dispute the numbers, at least 98 countries maintain their recognition of Kosovo.

Despite building considerable momentum in support of its independence movement in the years following its declaration of independence in 2008, Kosovo is yet to enjoy universal recognition of its sovereignty, which is achieved through United Nations membership. Beginning in 2017, Serbia's competing efforts to encourage derecognition of Kosovo have

¹ The Montevideo Convention on the Rights and Duties of States (1933),

https://www.ilsa.org/Jessup/Jessup15/Montevideo%20Convention.pdf.

² Visar Xhambazi, "The Incomplete Puzzle: How Kosovo Should Approach the 5 EU Non-Recognizers," Pristina Institute for Political Sciences, November, 2018.

³ "The Republic of Nauru Becomes the 17th Country to Revoke its Recognition of Kosovo," Ministry of Foreign Affairs of the Republic of Serbia, accessed November 28, 2020, <u>http://www.mfa.gov.rs/en/press-service/statements/19099-the-republic-of-nauru-becomes-the-17th-country-to-revoke-its-recognition-of-kosovo.</u>

⁴ "List of Recognitions," Republic of Kosovo Ministry of Foreign Affairs and Diaspora, accessed June 19, 2020, https://www.mfa-ks.net/politika/484/lista-e-njohjeve/484.

^₅ Ibid.

⁶ Ibid; Donika Emini, "Signatures for the Status Quo: No Big Breakthrough in DC," Pristina Insight, September 5, 2020, <u>https://prishtinainsight.com/signatures-for-the-status-quo-no-big-breakthrough-in-dc/.</u>

stymied Kosovo's progress towards European Union and UN membership. After meetings in Brussels in July and, most recently, Washington, DC on September 4th, a diplomatic ceasefire was implemented. Kosovo agreed not to seek membership in international organizations for the next year. In return, Serbia was to suspend its derecognition campaign for the same period.⁷ In light of this development, a look back at the derecognition campaign and its effect on the dispute seems appropriate.

This paper discusses state recognition in the context of Kosovo and Serbia's rival campaigns, analyzing the theoretical underpinnings of both campaigns before examining their respective strategies and resulting effectiveness. The discussion begins with an overview of the legal background to the dispute, and then turns to the issue of recognition. Next is a section on derecognition, followed by an analysis of Serbia's derecognition campaign and its impact on Kosovo's prospects for universal recognition.

Self-Determination and the 'Sui Generis' Case

Although Kosovo's 2008 declaration of independence had been somewhat expected ever since Serbia withdrew completely from the region in 1999, news of the declaration had a polarizing effect on the international community. Serbia and Russia predictably opposed the move and were joined by many legal and political commentators who characterized Kosovo's actions as an illegal secession attempt. This contingent maintained that, by declaring independence without Serbia's consent, Kosovo had breached Serbia's territorial integrity, thereby violating international law.[®] Central to this argument was a section of UN Resolution 1244, which states that any agreement between the two sides must "[take] full account of... the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia.[®] Opponents of the declaration further contended that Kosovo's independence would set a dangerous precedent for secessionist movements worldwide, eroding the requirement of mutual separation that had previously governed secession.¹⁰

To better understand Kosovo's response to these accusations, it is practical to first examine the principle of self-determination as articulated by international law. Article 1 of the UN Charter provides strong support for a people's right to self-determination.¹¹ A group within an existing state might therefore hope to exercise this right by separating from that state. However, as the Supreme Court of Canada explained, a state enjoys the right to

University International Law Journal 26, no. 2 (2008): 418.

https://peacemaker.un.org/sites/peacemaker.un.org/files/990610_SCR1244%281999%29.pdf.

" "Charter of the United Nations," United Nations, accessed August 11, 2020, <u>https://www.un.org/en/sections/un-</u> charter/chapter-i/index.html.

⁷ Milica Stojanovic and Xhorxhina Bami, "Kosovo and Serbia Sign 'Historic' Deal Under Trump's Auspices," Balkan Insight, September 4, 2020, <u>https://balkaninsight.com/2020/09/04/kosovo-and-serbia-sign-historic-deal-under-trumps-auspices/.</u> ⁸ Daniel Fierstein, "Kosovo's Declaration of Independence: Incident Analysis of Legality, Policy and Implications," Boston

⁹ United Nations Security Council. "Resolution 1244 (1999)," accessed June 11, 2020,

¹⁰ Fierstein, "Kosovo's Declaration of Independence: Incident Analysis of Legality, Policy and Implications," 418.

defend itself from internal threats to its unity. Thus, there exists a strong presumption in favor of maintaining the territorial integrity of existing states by encouraging internal self-determination, or "a people's pursuit of its political, economic, social, and cultural development within the framework of an existing state."¹² The right to internal self-determination is available to all peoples. The right to external self-determination—the right to unilaterally secede and form a separate state—on the other hand, exists only under certain circumstances. As the court explained, such a right can be permissibly exercised only when "a people is blocked from the meaningful exercise of its right to self-determination internally."¹³ Some level of oppression must therefore be present to justify secession.

Angling to qualify for the right to external self-determination, Kosovo and its allies have long cited the human rights abuses perpetrated against Kosovars during the 1990's and emphasized that Kosovo presents a unique case for independence that would have little impact on international legal precedent.¹⁴ In a statement following Kosovo's declaration of independence, then-US Secretary of State, Condoleezza Rice wrote: "The unusual combination of factors found in the Kosovo situation—including the context of Yugoslavia's breakup, the history of ethnic cleansing and crimes against civilians in Kosovo, and the extended period of UN administration—are not found elsewhere and therefore make Kosovo a special case. Kosovo cannot be seen as a precedent for any other situation in the world today."¹⁵ Both Germany and the UK echoed these sentiments, writing of the sui generis nature of Kosovo's position in statements preceding the ICJ's 2010 Advisory Opinion. The UK's statement was particularly explicit: "There is no parallel or analogy from this situation to other circumstances in other places in which some group or other may wish to assert independence."¹⁶

Confident that the ICJ would recognize as sacred the principle of territorial integrity, and relying on the conventional hostility of the international legal community towards secessionist movements, Serbia initiated procedures for an ICJ ruling on the validity of Kosovo's declaration of independence.¹⁷ The question put to the Court by the United Nations General Assembly read: "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?"¹⁸ On July 22, 2010, the ICJ answered, issuing an advisory opinion that held that "the adoption of [the] declaration did not violate any applicable rule of international law."¹⁹ While this response was a major rebuttal of Serbia's position, the narrowness of the legal issue capped the degree to which it benefitted Kosovo. Because the legal question pertained

https://www.usip.org/publications/2010/09/icjs-advisory-opinion-kosovo

⁹ Ibid.

¹² Reference re Secession of Quebec," Supreme Court of Canada, accessed August 11, 2020, <u>https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do.</u>

¹³ Ibid.

¹⁴ "Human Right Abuses in Kosovo 1990-1992," Human Rights Watch, accessed August 13, 2020,

https://www.hrw.org/legacy/reports/1992/yugoslavia/; Fierstein, "Kosovo's Declaration of Independence: Incident Analysis of Legality, Policy and Implications," 418.

¹⁵ "U.S. Recognizes Kosovo as Independent State," U.S. Department of State, accessed August 11, 2020, <u>https://2001-2009.state.gov/secretary/rm/2008/02/100973.htm.</u>

¹⁶ The United Kingdom, "Request for an Advisory Opinion of the International Court of Justice on

the Question 'Is the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo in Accordance with International Law?'" April 17, 2009, <u>https://www.icj-cij.org/files/case-related/141/15638.pdf.</u> ¹⁷ Richard Caplan, "The ICJ's Advisory Opinion on Kosovo," United States Institute of Peace, September 17, 2010,

¹⁸ "Accordance with International Law of the Declaration of Independence in Respect of Kosovo," Advisory Opinion, I.C.J Reports, 2010, 403.

only to the legality of the declaration of independence, the court was not obligated to address the issue of whether the people of Kosovo possessed a right to external self-determination. Distinguishing Kosovo's declaration from the condemned Rhodesia and Srpska iterations, the court found that "the illegality attached to [Rhodesia and Srpska's] declarations of independence thus stemmed not from the unilateral character of these declarations as such, but from the fact that they were, or would have been, connected with the unlawful use of force or other egregious violations of norms of general international law."²⁰ Because Kosovo's declaration was nonviolent, and because no legal prohibition against declarations of independence exists, the court—without addressing the merits of Kosovo's claim to statehood—concluded that the PISG's declaration of independence had not violated international law.

20 Ibid.

The Newest Country in Europe: **Theoretical and Practical Implications**

While the ICJ's opinion added significant credence to Kosovo's cause, the question of Kosovo's right to independence was ultimately left to the international community and subjected to the state recognition process. Underlying that process is a debate about the definition of statehood. Because states are the primary actors in international law, able to create and be subject to obligations, commentators and theorists have attempted to form ground rules to determine which entities should be considered states. In doing so, scholars have had the unenviable task of squaring state behavior and evolving international norms with principles of international law. That balancing act has produced two principal theories of state recognition.

The first, declaratory recognition, maintains that an aspiring state's status can be discerned using objective criteria.²¹ This perspective was endorsed by the signatories of the Convention on the Rights and Duties of States, ratified in Montevideo in 1933. The Montevideo Convention identified four defining characteristics of a state: (1) a permanent population, (2) defined territorial boundaries, (3) a government, and (4) the ability to enter into relations with other states. Under this framework, a state derives its sovereignty from these attributes, irrespective of recognition from other states. Article III of the Montevideo Convention is explicit on this point: "the political existence of the state is independent of recognition by other states."22

The second theory, constitutive recognition, contends that third party recognition is largely determinative of statehood.²³ Under the constitutive scheme, the Montevideo Convention's objective criteria serve as guidelines that other states may consider when deciding whether the aspiring state is deserving of recognition, but a new, independent state is not established until it is regarded as such by a critical mass of other sovereign entities. Critics of the constitutive approach cite the arbitrary nature of bilateral recognitions as cause for concern, focusing on the fact that "each act of recognition is a complex calibration of self-interest, normative solidarity, and situational circumstances."24 This calibration, critics argue, renders the constitutive model susceptible to a transactional framework that undermines the traditional notion that statehood should be dispensed on the merits.

While the declarative theory has conventionally prevailed as the dominant paradigm, as Daniel Fierstein writes, "the international response to the former Yugoslav crisis, with respect to Europe at least, suggests a shift away from a declaratory view of State recognition toward a more constitutive view."25 Serbia and Kosovo's tug-of-war over bilateral recognitions appears to provide further evidence of this shift. Under a declaratory understanding, Kosovo would presumably qualify as a state. Kosovo has a permanent

²² Konventa e Montevideos për të Drejtat dhe Detyrat e Shteteve (1933),

²¹ Rowan Nicholson dhe Thomas D. Grant, "Teoritë e njohjes së shtetit", në Routledge Handbook of State Recognition, bot. nga Edward Newman et al. Londër, Nju Jork: Taylor & Francis Grup: 2020), 25.

https://www.ilsa.org/Jessup/Jessup15/Montevideo Convention.pdf.

 ²³ Grant dhe Nicholson, "Teoritë e njohjes së shtetit", 25.
 ²⁴ Edward Newman dhe Gëzim Visoka, "Politika e jashtme e njohjes së shtetit", Foreign Policy Analysis 14 (2016), 369.

²⁵ Fierstein, "Shpallja e Pavarësisë së Kosovës: Analizë rasti e ligjshmërisë, politikës dhe implikimeve", 440.

population of 1.8 million and possesses well-defined borders. Although the United Nations Interim Administration Mission in Kosovo and other entities have provided governance for periods of time, Kosovo has been administered by a government of Kosovars for years. As for its ability to conduct foreign relations, Kosovo's thirty embassies and thirty-one consulates dotted throughout the globe, as well as its participation in deals like the EU Stabilization and Association Agreement, exhibit ample evidence of an ability and willingness to enter into interstate agreements.²⁶

Despite satisfying these criteria, Kosovo's statehood remains contested. Many states evidently feel that it is not in their best interests to recognize Kosovo. These missing recognitions have consequences. China and Russia's opposition to Kosovo's independence has effectively deterred Kosovo from seeking a UNGA vote on UN Membership. Many benefits, such as business and monetary services, are regulated by legal agreements available only to UN members, meaning Kosovo operates at a disadvantage compared to multilaterally recognized states (those recognized by the UN).²⁷ Thus, while bilateral recognitions may not necessarily dictate whether Kosovo exists as a sovereign entity, they influence its ability to function on par with UN members. Aware of this state of affairs, Kosovo and Serbia both operate on the premise that these recognitions

Marching for Recognition

Because it has been unable to achieve UN membership, Kosovo has prioritized bilateral recognitions, centering its foreign policy agenda around diplomatic engagement engineered to achieve universal recognition. In the initial aftermath of its declaration of independence, Kosovo received a great deal of assistance from its western allies. Both the US and UK lobbied countries around the world to recognize Kosovo. With the support of these and other influential actors. Kosovo guickly received a bevy of recognitions—a total of sixty-four by the end of 2009.28 Within a few years, however, Kosovo's cause began to lose the focus of its powerful backers. Changes in leadership in Europe, as well as the relative stability of Kosovo compared to other regions of the world, shifted the spotlight away from Kosovo and caused its once-steadily increasing recognition numbers to plateau. In 2011, the Government of Kosovo consolidated its recognition efforts into a single campaign, the "Strategy for the Achievement of Full International Recognition of the Republic of Kosovo," which formalized the process by which Kosovo would pursue universal recognition.²⁹ That process, which is ongoing, includes engaging with individual countries, leveraging regional partnerships, and targeting multinational organizations to win recognitions.

²⁶ "Embassies of the Republic of Kosovo," Republic of Kosovo Ministry of Foreign Affairs and Diaspora, accessed June 19, 2020, https://www.mfa-ks.net/en/misionet/493/ambasadat-e-republiks-s-kosovs/493.

²⁷ Jieun Choi, "The Costs of Not Being Recognized as a Country: The Case of Kosovo," Brookings Institute, November 16, 2017, www.brookings.edu/blog/future-development/2017/11/16/the-costs-of-not-being-recognized-as-a-country-thecase-of-kosovo.

[&]quot;Countries That Have Recognized Kosovo as an Independent State," Be in Kosovo.com, accessed June 19, 2020, https://www.beinkosovo.com/countries-that-have-recognized-kosovo-as-an-independent-state/; "List of Recognitions," Republic of Kosovo Ministry of Foreign Affairs and Diaspora, accessed June 19, 2020, https://www.mfaks.net/politika/484/lista-e-njohjeve/484.

²⁹ Newman and Visoka, "The Foreign Policy of State Recognition," 376.

When working with individual states, Kosovo often takes an incremental approach to lobbying for recognition. The Ministry of Foreign Affairs first aims to establish diplomatic relations, arranging for official visits to the target country, building relationships with representatives at international forums, and developing other lines of communication.³⁰ Though its strategy may change depending on whether a country is deemed likely to provide recognition, Kosovo has made sure to build and maintain relations with some of the EU member states currently withholding recognition, such as Greece, Romania, and Slovakia, each of whom has a liaison office in Kosovo.³¹ Institutional cooperation of this nature is designed to foster diplomatic interaction and encourage those non-recognizing countries to eventually reconsider recognition.

Though it no longer receives the level of support it did immediately following its declaration of independence, Kosovo's ties to influential countries have continued to bear fruit. The UK's lobbying efforts on behalf of Kosovo led to recognitions from Commonwealth countries. France similarly used its clout within the francophone community to Kosovo's benefit—Kosovo is now a member of the International Organization of La Francophonie, despite lacking any substantive connections to French culture.³² Though its constitution makes clear that Kosovo is a secular state, it's majority Muslim population has earned it support from the Organization for Islamic Cooperation (OIC).³³ While Kosovo's affiliation with these organizations could be seen as straining its credibility, its willingness to join these organizations speaks to the power of multinational organizations, which have proven particularly valuable to its recognition campaign. Membership in such groups not only affords legitimacy, but also facilitates interaction with ambassadors and other important individuals. Kosovo has obtained membership in the World Bank, IMF, European Bank for Reconstruction and Development, and the Council of Europe Development Bank, as well as the IOC and FIFA. Lobbying within multilateral organizations allows Kosovo to use the existing structure of those organizations to persuade other member countries to consider recognition of Kosovo. For example, the OIC has provided such a forum: OIC members such as Turkey and Albania have sponsored several resolutions urging other OIC members to recognize Kosovo.³⁴

While the recommendations of regional and cultural leaders have often proven decisive in securing certain recognitions, Kosovo's diplomatic corps has done further leg work where necessary, often following up with countries to establish direct relationships by emphasizing shared values and realities. For example, Kosovo's outreach to Middle Eastern countries tends to include references to religious commonalities, while its communication with island nations in the Pacific focuses on life as a small state. Within Europe, the slogan "Kosovo: the Young Europeans" was deployed to promote a shared identity with European states.³⁵ These tactics have paid dividends; between 2011 and

³⁰ Ibid, 375-382.

³¹ Xhambazi, "The Incomplete Puzzle," 9-11.

³² "Kosovo is Accepted as an Associate Member of the International Organization of the Francophonie," Republic of Kosovo Ministry of Foreign Affairs and Diaspora, October 11, 2018, <u>http://www.mfa-ks.net/en/single_lajmi/text=MFAD_publications.</u>

^{3a} "MFAD Welcomes the Organization of Islamic Cooperation Resolution Calling on Member States to Recognize Kosovo Independence," Republic of Kosovo Ministry of Foreign Affairs and Diaspora, December 10, 2020, <u>https://www.mfa-</u> <u>ks.net/en/single_lajmi/4240.</u>

³⁴ Newman and Visoka, "The Foreign Policy of State Recognition," 380-81.

³⁵ Annea Hapçiu and John Sparks, "The Internal Effects of the Kosovo: the Young Europeans Nation Branding Campaign on the Kosovoar People," October 2012, <u>https://library.fes.de/pdf-files/bueros/kosovo/09780.pdf.</u>

2014, Kosovo's minister of foreign affairs visited twenty-five non-recognizing countries, established diplomatic relations with thirty-eight, and secured recognitions from thirty-one.³⁶

³⁶ Ibid, 377.

Derecognition and International Law

Within the umbrella of recognition theory exists the parallel theory of derecognition. Derecognition occurs when a state withdraws its recognition of another state's sovereignty.³⁷ In practice, derecognition appears straightforward; one country decides to no longer confer recognition upon a specific state or entity. From a theoretical standpoint, however, derecognition's existence has important implications.

In fact, many theorists actually reject the possibility of derecognition. As Visoka writes, "In theory, the revocation of recognition is seen as impossible unless recognition is reassigned or extended to another entity or unless the original conditions for recognition no longer exist."³⁸ According to the declaratory theory, statehood is granted only to those entities that fulfill the Montevideo criteria. Therefore, under that theory, all states are deserving of statehood. To revoke recognition of statehood would thus imply that the state in question had somehow regressed so as to no longer satisfy the criteria. However, no country that has withdrawn recognition of Kosovo has justified that decision by questioning Kosovo's qualifications for statehood. Instead, they either argue that Kosovo's declaration of independence was illegal or they point to ongoing negotiations between Kosovo and Serbia as evidence that Kosovo's status is unresolved and that recognition is therefore premature.³⁹

This reality is more consistent with the constitutive theory's perception of derecognition. From a constitutive perspective, there is no obligation to recognize an entity that fulfills the Montevideo criteria. Existing states must be compelled to recognize claimant states. As Ahmed Sheikh observes, "While a state that meets [the Montevideo] requirements may 'exist' in the world community, other states generally will extend recognition only if there are no overriding political considerations dictating a contrary policy."⁴⁰ When taken to the extreme, the constitutive approach therefore opens the door for self-interest to dictate recognition determinations, rendering such decisions subject to change (via derecognition) should sufficient incentive avail itself.

From this hyper-constitutive standpoint, it becomes clear why derecognition is used to suppress claimant states. Serbia, hoping to evade the question of Kosovo's legitimacy as an independent state, finds it much easier to persuade other states to derecognize Kosovo than to litigate whether Kosovo merits statehood. Moreover, as Visoka writes, "Derecognition undermines countries' ability to engage in diplomatic relationships with other states, it undermines their interests and excludes them from multilateral bodies, and it complicates the ability of their subjects to travel, to trade or to interact with other states and societies."⁴¹ By winning derecognitions, Serbia both subtracts from Kosovo's recognition tally and receives tacit support for its territorial claim over Kosovo from the derecognizing country. In this way, derecognition is useful as a means to handicap a

³⁷ Gëzim Visoka, "The Derecognition of States," in Routledge Handbook of State Recognition, ed. Edward Newman et al. (London, New York: Taylor & Francis Group: 2020), 316.

³⁸ Ibid.

³⁹ Gëzim Visoka, "How Can Kosovo Respond to Serbia's Derecognition Campaign?" Balkan

Insight, March 5, 2020, https://prishtinainsight.com/how-can-kosovo-respond-to-serbias-derecognition-campaign/.

⁴⁰ Ahmed Sheikh, "The United States and Taiwan After Derecognition: Consequences and Legal Remedies" Washington and Lee Law Review 37 (1980), 325.

¹¹ Ibid

claimant state's diplomatic capacity. By reducing Kosovo's recognition total, Serbia impedes Kosovo's ability to join multilateral organizations (most of which require two-thirds a majority for membership) and benefit from the increased interaction and diplomacy that those memberships provide.

Serbia Launches a Derecognition Campaign

Serbia's derecognition campaign, developed in response to Kosovo's recognition efforts, has proven effective. Employing a tactic known as 'checkbook diplomacy,' Serbia has approached small, developing countries with offers to trade economic assistance and visa privileges for derecognition of Kosovo.⁴² Checkbook diplomacy was notably deployed by China in its derecognition campaign against Taiwan.⁴³ In that instance, China used the allure of increased trade and outright gifts (usually military equipment) to poach the allegiance of countries that Taiwan was known to be courting for recognition.⁴⁴ While Sao Tome and Principe became the first country to derecognize Kosovo in 2013, the derecognition campaign started in earnest in 2017, when Suriname declared it had withdrawn recognition of Kosovo, writing in its decision that derecognizing Kosovo "represents a good basis for the development of bilateral cooperation between Serbia and Suriname, especially in the field of the economy."⁴⁵ Though few countries have been as explicit about the impetus for their decision to derecognize, there is good reason to believe similar incentives are at work. The Central African Republic, for example, was allegedly offered more than 300,000 Euros by the Serbian government in exchange for a letter of derecognition.⁴⁶ Russia has also played an active role in these ploys. According to Radio Free Europe, Russia signed bilateral cooperation agreements with Suriname, Burundi, Dominica, Grenada, Madagascar and Palau shortly before each revoked its recognition of Kosovo.⁴⁷ In Burundi's case, the turnaround was reportedly just nine days.⁴⁸ In addition, Serbia and Russia are known to target countries that Kosovo has engaged diplomatically, following up Kosovar outreach with visits of their own, as well as protest notes that characterize Kosovo's claim to independence as a violation of international law.⁴⁹

While the derecognition campaign has claimed fifteen victories during a period in which Kosovo has gained only one recognition, it is unclear how much concern this trend warrants. On one hand, Kosovo's international reputation takes a hit every time a defection occurs. Each derecognition allows Serbia to generate press coverage questioning Kosovo's legitimacy and speculating as to why Kosovo has stopped securing recognitions.

- 45 Edona Peci, "Dispute Arises Over Kosovo's 98th Recognition," Balkan Insight, January 10, 2013,
- https://balkaninsight.com/2013/01/10/kosovo-s-number-of-recognitions-questioned/; Visoka, "The Derecognition of States," 324.
- ⁴⁶ Milica Stojanovic, "Derecognising' Kosovo: Is it Even a Thing?" Balkan Insight, February 14, 2020, https://balkaninsight.com/2020/02/14/derecognising-kosovo-is-it-even-a-thing/.

⁴² Checkbook diplomacy refers to the use of economic or other incentives to entice another country to publicly support a particular diplomatic objective.

⁴³ Ibid, 323.

⁴⁴ Shattuck, "The Race to Zero? China's Poaching of Taiwan's Diplomatic Allies," 347.

⁴⁷ Radio Free Europe, "Radio Free Europe on the "Russian Connection" in Kosovo," b92, July 25, 2019.

⁴⁸ Ibid.

⁴⁹ Newman and Visoka, "The Foreign Policy of State Recognition," 379.

It can also be argued that some of these derecognitions were inevitable given the general trend toward a constitutive view of statehood. Taiwan's difficulties with recognition demonstrate that checkbook diplomacy works, and is therefore likely to persist. Small countries, often desperate for foreign investment and humanitarian aid, are known to rent their ability to recognize to the highest bidder. Kosovo was never likely to be the highest bidder. As Visoka explains, "[Kosovo's] weak economy and its lack of trade with many regions meant that recognition was granted on the basis of intangible prospects of future political and economic cooperation."⁵⁰ With Russia-backed offers entering the equation, some number of derecognitions could reasonably be expected.

At the same time, however, there is a cap to the number of derecognitions Serbia can accrue. While economic incentives have predictably swayed those states susceptible to checkbook diplomacy, not every country is receptive to those methods. Derecognition comes with a price, damaging the reneging country's credibility and potentially jeopardizing beneficial relations with those countries that support Kosovo. It remains to be seen whether the derecognition campaign can continue to identify and persuade individual countries to withdraw recognition; there are undoubtedly more countries that would be receptive to Serbia's and Russia's offers, but there is also no guarantee that the campaign can continue at its current pace.

Derecognition and Its Impact

While the gains made by the derecognition campaign may have been somewhat predictable, the campaign's impact transcends the numbers game. In addition to lobbying for derecognitions, Serbia has fiercely opposed Kosovo's attempts to join multilateral organizations, most notably Interpol and UNESCO. In November 2015, UNESCO denied Kosovo's bid for membership after it failed to receive the two-thirds majority required for membership. Serbia was quick to claim credit for this outcome, with then-President Tomislav Nikolic calling it a "just and moral victory" for the people Serbia.⁵¹ A similar situation unfolded in October 2019, when Serbian lobbying was deemed responsible for Kosovo's withdrawn Interpol bid, its second failed bid in as many years.⁵² Membership in these organizations constitutes a significant objective of Kosovo's recognition campaign. By hampering this goal, Serbia prevents Kosovo from forming and deepening the diplomatic relationships that could bolster its cause.

In 2018, in response to that year's Interpol struggle, Kosovo implemented a one-hundred percent tariff on goods manufactured in Serbia.⁵³ This move was met with heavy criticism from all corners, including Kosovo's allies such as the US and UK, who characterized the

⁵¹ Matthew Brunwasser, "Unesco Rejects Kosovo Membership in Victory for Serbia," The New

2019, https://balkaninsight.com/2019/10/15/kosovo-withdraws-application-to-join-interpol.

⁵⁰ Visoka, "The Derecognition of States," 328.

York Times, November 9, 2015, <u>https://www.nytimes.com/2015/11/10/world/europe/unesco-rejects-kosovo-membership-in-a-victory-for-serbia.html.</u>

⁵² Adelina Ahmeti, "Kosovo Withdraws Application to Join Interpol," Balkan Insight, October 15,

⁵³ Ker-Lindsay, "Intensifying Battle of Kosovo's Recognition is Futile."

tariff as an impediment to negotiations.⁵⁴ The tariffs have now been fully retracted, but their impact was significant. By effectively blockading Serbian goods, exports from Serbia into Kosovo dropped from 450 million euros worth of goods in 2017 to just six million in 2018. These goods were largely replaced by Turkish, Israeli and Slovenian products that failed to mitigate the impact on Kosovo's own economy, which experienced inflation and an increase in food prices.⁵⁵ These conditions polarized the country; disagreement over the tariffs resulted in protests, violence, and political turbulence.⁵⁶

Kosovo's internal divisions and the negative impact of the tariffs on both economies allowed Serbia to frame the tariffs as an unwarranted escalation on the part of an uncooperative and unstable Kosovo.⁵⁷ This was a helpful narrative for Serbia, which has had its own difficulties balancing its EU aspirations (conditioned on an agreement with Kosovo) with the Serbian public's opposition to recognizing Kosovo.⁵⁸ Though Serbia has come to acknowledge that it may eventually be forced to recognize Kosovo, it remains committed to extracting as many concessions from Kosovo as possible, mostly in the form territorial adjustments that would place Serb-populated regions of Kosovo back in Serbia's possession.⁵⁹ By provoking Kosovo into reactionary moves like the tariff, Serbia is able to portray itself as the more constructive participant in negotiations while also benefitting from the resulting political turmoil in Kosovo.

These developments, all of which have undermined Kosovo's image as a stable democracy worthy of recognition, have the potential to weaken support for Kosovo amongst its allies. Though the Quint nations—US, UK, Germany, France, and Italy—remain strongly in favor of an independent Kosovo, their practical commitment to achieving UN and EU membership has shown signs of waning. The UK, in particular, may not be willing to offer the level of support it once did. As a result of Brexit, the UK will likely be less involved on the European continent, a change that could weaken British support for Kosovo, should its cause not be deemed a priority. On this point, James Ker-Lindsay paints a bleak picture: "There is a sense in British official circles that the amount of diplomatic effort to try to encourage [further recognition of Kosovo] is just not worth it."⁶⁰ Ker-Lindsay goes on to suggest that the same sentiment prevails amongst other Quint members.⁶¹ If Kosovo is perceived as prone to rogue decision-making that increases the futility of its cause, countries like the UK may be less willing to put their diplomatic reputations at risk. As of now, the US and EU are significantly engaged in the dialogue, wrestling over

54 Ibid.

⁵⁵ Arta Sopi and Rrahman Ramaj, "A Year of the Tariff," Pristina Insight, November 21, 2019,

https://prishtinainsight.com/a-year-of-the-tariff/.

⁵⁶ Xhorxhina Bami, "Kosovo Political Crisis Deepens as Government Given Ultimatum," Balkan

Insight, March 20, 2020, <u>https://balkaninsight.com/2020/03/20/kosovo-political-crisis-deepens-as-govt-given-ultimatum/.</u>⁵⁷ Brikena Berisha and Petrit Gashi, "The Impact of 100% Tariffs on the Import of Goods from Serbia and Bosnia and Herzegovina," Further Support to the Development of Trade in Kosovo, May, 2019, 4.

58 Amy Mackinnon and Robbie Gramer, "Vucic: Most Serbs Prefer a 'Frozen Conflict' with

Kosovo," Foreign Policy, March 4, 2020, https://foreignpolicy.com/2020/03/04/serbian-president-aleksandar-vucicinterview-frozen-conflict-kosovo/; Aleksandar Vasovic and Ivana Sekularac, "Accept Reality, Serbia Does Not Control Kosovo: Vucic," Reuters, May 27, 2019, https://www.reuters.com/article/us-serbia-kosovo/accept-reality-serbia-does-notcontrol-kosovo-vucic-idUSKCN1SX1U2.

⁵⁹ "Serbian Leader Hints Kosovo Recognition Possible: ANSA," AFP, March 4, 2019,

https://www.france24.com/en/20190304-serbian-leader-hints-kosovo-recognition-possible-ansa; Guy Delauney, "Kosovo-Serbia Talks: Why Land Swap Could Bridge Divide," BBC, September

5, 2018, https://www.bbc.com/news/world-europe-45423835.

⁵⁰ James Ker-Lindsay and Ioannis Armakolas, "Lack of Engagement? Surveying the Spectrum of EU Member State Policies Towards Kosovo" Kosovo Foundation for Open Society, December, 2017, 14.

mediation of the negotiations, but that level of engagement could drop off significantly should it become politically expedient.⁶² The Trump administration, for example, showed an unexpected level of interest in its final months, but the Biden administration's approach is yet to be determined.⁶³ A decrease in support from either the UK or US, let alone both, would greatly limit Kosovo's options from a diplomatic standpoint.

Here it becomes relevant to revisit the UNSC. Russia and China can be expected to oppose resolutions concerning Kosovo's membership, and it is unclear how Kosovo can circumvent this roadblock. There is little indication, at this stage, that fighting with Serbia over bilateral recognitions from small, developing countries will meaningfully tip the scales in Pristina's favor. Barring a near consensus number of recognitions, the recognition total alone is unlikely to sway either superpower on an issue that has polarized global politics for over a decade. At this juncture, a UNGA vote will not take place unless Kosovo can overcome the impediment presented by the Security Council.

Given this state of affairs, Kosovo seems best served by devoting its diplomatic capital to an alternative strategy. One such alternative would be to take advantage of the ostensible suspension of the derecognition campaign (as mandated by the September agreement in Washington, DC) by countering Serbia's narrative that it is more committed to a resolution than Kosovo. Retracting the tariff was a productive first step in this direction, and may help to mend the domestic divide, but Kosovo could go further by harnessing the cooperation it demonstrated in September to build a true national consensus, one which unequivocally supports resolution-building and demonstrates to Serbia and other interested parties that Kosovo is serious about ending the stalemate. Should it pursue this plan, Kosovo could take substantive steps to bolster this new image. Some have suggested creating an agency dedicated to international cooperation and diplomatic development.⁶⁴ Though such a move could be perceived as aggressive by Serbia, it would demonstrate to Kosovo's allies that it has rejuvenated its commitment to ending the stalemate. Winning the approval of the US, UK and EU is tantamount to increased bargaining power and could put the pressure back on Serbia to reciprocate cooperatively or risk damaging its EU aspirations.

Whatever strategy is ultimately pursued, it will likely require significant assistance from the US, UK, and EU. From this perspective, the derecognition campaign has had two important effects. First, it has detracted from Kosovo's recognition tally, a number that affects its ability to join multilateral bodies and will be important should a vote on UN membership occur. Second, by further disrupting the dialogue, the derecognition campaign has succeeded in jeopardizing what is perhaps Kosovo's greatest strength: strong support from western powers.

61 Ibid.

 ⁶² Gëzim Krasniqi and Adrian Prenkaj, "US and EU Policy on Kosovo is in Disarray" Balkan Insight, June 17, 2020, <u>https://balkaninsight.com/2020/06/17/us-and-eu-policy-on-kosovo-is-in-disarray/.</u>
 ⁶³ Visar Xhambazi, "Kosovo is Moving Back onto the US Radar" Prishtina Insight, October 9, 2019,

⁶⁹ Visar Xhambazi, "Kosovo is Moving Back onto the US Radar" Prishtina Insight, October 9, 2019, <u>https://prishtinainsight.com/kosovo-is-moving-back-onto-the-us-radar/.</u>

Conclusion

Kosovo's future may have important implications for state recognition on a global scale. Should Kosovo receive recognition from Serbia, a potential path to independence for contested territories will have been blazed. If not, and the current stalemate continues, it will exemplify the difficulty of earning recognition, even when equipped with state-like attributes. The developments so far, in particular the success of the derecognition campaign, indicate that constitutive practices like derecognition and checkbook diplomacy will continue to shift the motivations that determine recognition away from the Montevideo Convention's criteria and towards political capital.

This trend advantages Serbia because of the tendency for smaller, more vulnerable countries to arrive at their decisions about recognition based on inducements from more powerful countries. Thanks to Russia's greater capacity for, and willingness to pursue, checkbook diplomacy on behalf of Serbia, the derecognition campaign has taken full advantage of this shift and succeeded in stymying Kosovo's progress towards full recognition. If this tactic continues with impunity, Kosovo may be facing a negatively reinforcing cycle in which global tolerance for checkbook diplomacy increases, leading to greater dominance of a transactional view of statehood, which potentially drives supporters of Kosovar independence to invest less diplomatic capital in Kosovo, further enabling derecognition efforts.

The stakes are high, and not just for Kosovo. In a world increasingly dominated by constitutive statehood, recognition and derecognition matter immensely, determining who wins multilateral recognition and the benefits it confers. Serbia's derecognition campaign has laid bare this reality. By stagnating the Kosovo-Serbia dialogue, the derecognition campaign has frustrated Kosovo's allies, compounding geopolitical divisions between the US, UK, and EU. Though Kosovo appears to still have committed support from these backers, the impact to-date of the derecognition campaign makes one dynamic clear: stagnation appears to benefit Serbia.

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