

# QUEST FOR STATEHOOD: KOSOVO'S PLEA TO JOIN INTERNATIONAL ORGANIZATIONS

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Ermira Mehmeti

## *Abstract*

The State represents a central concept and a basic subject of international law. In order to function and engage in treaties and relations with other states in a growing globalized world, the State must be accepted and treated as independent by other states. But independence alone is not enough. Declaring independence is typically a unilateral act undertaken by one entity. Hence, there are states in the world today that are independent; however, their international subjectivity is not recognized. This makes their position and ability to engage in the international sphere more complex. As a result, authorities look into ways of bypassing formal recognition. Joining international organizations becomes one alternative.

This article explores the quest of Kosovo to join international organizations as a way to secure recognition and statehood. It begins with the United Nations, and briefly analyses the diplomatic efforts of Kosovar governments to accede. The focus of this article however, will be more specifically on Kosovo's application to join UNESCO, the United Nations' cultural organization, the Council of Europe and international sports federations, for this process will shed light on several important legal and political aspects of recognition: the application procedure, the political interests of states, the lobbying and securing of states' support in an entity's bid to obtain a seat at the organization. Membership in UNESCO is rightfully seen as a gateway to reach to a seat at the United Nations, while bypassing unilateral recognitions granted by states individually.

While membership in international organizations will not imply recognition of international subjectivity for a new entity, in practical terms, it offers to achieve what recognition promises. Kosovo has been able to sit at the same table with its regional counterparts and has been able to participate and share in various regional initiatives. As an initial phase of normalization of relations with Serbia, this represents a solid step forward. At a later stage, it could serve as an incentive, or even better as a catalyst to speed up securing full-fledged statehood.

*Keywords: International law, international organizations, recognition, statehood, United Nations, UNESCO,*

## 1. Introduction:

On 17<sup>th</sup> February 2008, members of the Assembly of Kosovo adopted a Declaration which declared Kosovo an independent and sovereign State. The Declaration, among other things, proclaimed:

- *Observing that Kosovo is a special case arising from Yugoslavia's non-consensual breakup and is not a precedent for any other situation; (Paragraph 6);*
- *Regretting that no mutually-acceptable status outcome was possible, in spite of the good-faith engagement of our leaders; (Paragraph 11);*
- *We hereby affirm, clearly, specifically and irrevocably, that Kosovo shall be legally bound to comply with the provisions contained in this Declaration, including, especially, the obligations for it under that Ahtisaari Plan. In all of these matters, we shall act consistent with the principles of international law and resolutions of the Security Council of the United Nations, including Resolution 1244 (1999). We declare publicly that all states are entitled to rely upon this declaration, and appeal to them to extend to us their support and friendship. (Item 12). ”<sup>15</sup>*

The declaration of independence in 2008 was followed by an affirmative diplomatic campaign launched by the Government of Kosovo to secure individual recognitions by states in an effort to accede to the United Nations. Serbia refused to grant recognition to an act it deemed unilateral, and had in continuity refused any form of cooperation with Kosovo, including the addressing of open issues that directly affected the lives of the people, particularly those of the Serb minority living in Kosovo. Moreover, Serbia continues to obstruct Kosovo's membership in regional initiatives still today, despite the fact that most of those initiatives aim at transforming and preparing the Western Balkans countries for European integration. This situation rightfully raises legal and political dilemmas related to the recognition of international subjectivity of an entity as well as how this can be achieved given the standing international relations and the existing balance of forces in the world.

## 2. How to recognize a State?

‘To recognize a political community as a State is to declare that it fulfills the conditions of statehood as required by international law’ (Lauterpacht). These conditions of statehood have been listed in the 1933 Montevideo Convention. But today, not all political entities that claim their right to Statehood or meet such conditions are recognized as States. Questions such as: ‘what entity is entitled to recognition?’, ‘what authority decides upon recognition?’, ‘why certain entities are denied the right to recognition?’ are just a few dilemmas arising from the debate. The Kurds in the Middle East are still struggling for their right to self-determination and their own homeland. Nagorno Karabakh (Azerbaijan), Abkhazia and South Ossetia (Georgia), Northern Cyprus (Cyprus) or Transnistria (Moldova), are few on a longer list of entities that have not been recognized, yet function as independent States.

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<sup>15</sup>Declaration of independence of Kosovo, 17 February 2008, available at: <http://www.assembly-kosova.org/?cid=2,128,1635>

The increase in the number of States witnessed in the aftermath of World War II, particularly with the collapse of communism, points to the huge transformation of the international system as a result of major historical milestones or events that took place and had as their corollary the emergence of new States. Warfare, collapse of empires, peaceful secessions, ending colonial rule, or belligerence, all eventually resulted with the creation of new entities. Every single plea on independence and statehood rested on the rather slippery right to self-determination. Were the so called statehood criteria sufficient? What would be the attitude of States that had themselves sought recognition and acknowledgment at different times in history? The independence of the United States and the recognition process<sup>16</sup> proves that such decisions have never been easy, or simple.

Recognition is in fact, about enabling a state to function in the international system. Independence, whether by secession, insurgence, belligerence or other means, demonstrates the will of the people of a given entity to live on their own, practice their own sovereignty, and decide freely of matters related to them or their country. And it is precisely the will of the people what does not always seem measurable or explicable through the legislative norms or scholarship. The 1933 Convention on Rights and Duties of States (Montevideo Convention), clearly lists four conditions that entities should meet in order to be recognized as States. But, if a political community is not recognized a State, then how can it demonstrate its ability to enter into relations with other states, under the present arrangements of international order?

Recognition of States represents a discretionary act undertaken by the State that extends recognition. One could say that this act is based on a primarily political assessment on whether to enter into inter-state relations with the State that demands recognition or not. There are two prevailing doctrines of recognition in international law: the constitutive, and the declarative doctrine. The constitutive theory of recognition derives from the positivist doctrines of 19<sup>th</sup> century, particularly from Hegel's writings, who is considered to be among the greatest proponents of the positivist legal doctrine. The constitutive theory claims that it is the act of recognition granted by another State that actually constitutes or conceives the new entity and grants it legal personality, rather than the process through which that given state has actually gained independence.<sup>17</sup> According to the declarative theory on the other hand, a State earns recognition and becomes a subject of international law, with the very fact of declaring itself as a legal entity in international law.

### **3. Membership in the United Nations**

The act of admission to the Organization of United Nations is rightly considered to be the practical mechanism of extending international recognition to [new] states. The United Nations is where the doctrine remains silent and the procedure takes over, while the political institutions of the

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<sup>16</sup> See Fabry, Mikulas, 'Recognizing States: International Society and the Establishment of New States Since 1776'; Oxford, University Press, 2010, p. 26-41

<sup>17</sup> M. N. Shaw, "International Law", Fourth Edition, A Grotius Publication, Cambridge University Press, Cambridge, 1997, p. 296

United Nations<sup>18</sup> are those that have the authority to decide upon the admission of new members in the world organization.

The United Nations were established in the aftermath of the Second World War in an effort by the countries to prevent the recurrence of such tragedies and massive loss of human lives. It was founded with the objective of securing international peace and security and with the aim to “reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,”<sup>19</sup> and in order to achieve these goals, “to practice tolerance and live together in peace with one another as good neighbors, and to unite [our] strength to maintain international peace and security...”<sup>20</sup>

Membership in the United Nations is regulated in Article 3 of the Charter. This article draws a clear distinction between “the original Members” and states admitted to the Organization. According to Article 3 paragraph 1, “The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with article 110.”<sup>21</sup>

Furthermore, Article 4 describes the procedure for the admission of new Members:

1. Membership in the United Nations is open to all other 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.
2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendations of the Security Council.<sup>22</sup>

Admittance in the United Nations is further classified as an “an important question” for which the General Assembly shall decide by a two-thirds majority of the members present and voting.<sup>23</sup>

The Charter does in no part speak of “recognition” of new States. Instead, it uses the term “admission”, which indicates that the organization does not deal with the evaluation of the fulfillment of the Montevideo criteria, “subject, *inter alia*, to the condition that the applicant be a state.”<sup>24</sup> This distinction in terms, however, does leave open the question of whether a state could be a state and admitted to the United Nations, and still not be fully recognized by the other members of the international community at a bilateral level. At the same time, it is not totally clear in terms of procedure at what point and based on what criteria the Security Council would recommend to the General Assembly to admit a new member to the organization. Typically, it should look at the

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<sup>18</sup>These are the organs of the United Nations as defined in Article 7 of the United Nations Charter: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat.

<sup>19</sup> Preamble to the United Nations Charter

<sup>20</sup> Ibid.

<sup>21</sup> United Nations Charter, Chapter II – Membership, Article 3 Paragraph 1

<sup>22</sup> United Nations Charter, Chapter II – Membership, Article 4, Paragraphs 1,2

<sup>23</sup> United Nations Charter, Chapter IV – The General Assembly, Voting, Article 18, Paragraph 2

<sup>24</sup> R. Cohen, “The Concept of Statehood in United Nations Practice”, University of Pennsylvania Law Review, Vol.109, No. 8 (Jun., 1961), pp.1127-1171



fulfillment of the Montevideo Criteria; however the practical cases seem to indicate that this has not been a universal criterion applied with regards to admission. During the first decade of the United Nations, although most of the original members had been recognized as states, there were six states, including India, which at the time of admission had not been fully independent:

*“Although India did not become fully independent until 15 August 1947, she had been an original and active member of the League of Nations and it would have been anomalous to exclude her from the United Nations. Similarly, the Philippines did not become fully independent until 4 July 1946, but in the light of her war record and promised independence, it would have been impolitic to refuse her original membership. Syria and Lebanon had both been Mandates under the League of Nations and, although their independence had been declared and generally accepted, final arrangements with the mandatory power, France, had yet to be completed in 1945. The admission of these States to original membership in the United Nations did not therefore seriously undermine the requirement of statehood contained in Article 3 of the Charter.”*<sup>25</sup>

At the same time, Article 4 paragraph 1 provides that membership to the United Nations is granted to ‘peace-loving’ states as well as states able to carry out the obligations of the Charter. The question remains, however, what objective criteria do member-states use to evaluate that states are in possession of such capabilities, and moreover, that they are peace-loving states? In its advisory opinion of 1948 on Conditions of Admission of a State to Membership in the United Nations, the International Court of Justice refers to the Security Council Rules of Procedure for an interpretation of the establishment of the criteria of a ‘peace – loving’ nation: “The Security Council shall decide whether in its judgment the applicant is a peace – loving State and is able and willing to carry out the obligations contained in the Charter, and accordingly whether to recommend the applicant State for membership.”<sup>26</sup> The Court finds, furthermore, that “Article 4 does not forbid the taking into account of any factor which it is possible reasonable and in good faith to connect with the conditions laid down in that Article. The taking into account of such factors is implied in the very wide and very elastic nature of the prescribed conditions; no relevant political factor – that is to say, none connected with the conditions of admission – is excluded.”<sup>27</sup> The Court in its Opinion acknowledges what it calls the ‘elastic’ nature of the prescribed conditions and indicates that the interpretation of such conditions is not immune to political interpretation.

Dugard is therefore right to conclude that “the questions whether the applicant is a peace-loving State and whether it is able and willing to carry out the obligations contained in the Charter depends on the discretion of the Security Council and the General Assembly; and the history of the United Nations, particularly during the first decade of its existence, points to the broad interpretations that may be placed upon these conditions by States politically determined to block the admission of applicants judged to favor an alien ideology or to support a rival bloc.”<sup>28</sup> Furthermore, Dugard recognizes that the judicial organ of the United Nations, i.e. the International Court of Justice can do little “to curb the excesses of political decisions exercised through an

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<sup>25</sup>J. Dugard, “Recognition and the United Nations;”, Hersch Lauterpacht memorial Lectures, Cambridge, Grotius Publications Limited, 1987, p. 53 - 54

<sup>26</sup> 1948 I.C.J. Reports, 63

<sup>27</sup> Ibid.

<sup>28</sup> Ibid., p. 55 - 56

arbitrary veto.”<sup>29</sup> Indeed, in its 1948 Advisory Opinion, the Court held that “a Member of the United Nations which is called upon, in virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, is not juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph I of the said Article.”<sup>30</sup>

While the political realities after the Second World War were such that the statehood criteria could be bypassed and a country could become an original member of the United Nations even without having met the formal requirements, the question remains how to respond to demands for statehood in an ever changing world and what should be the role of the United Nations Organization and the application of the United Nations Charter? The quest for political balance and no impairment of the international system seems to have been and remains the corollary of all times, while political bargaining between the great powers, the original members or the members of the Security Council is an ongoing activity even today. Brown is right to conclude then, that “[I]n spite of the comments and theories of the writers on the subject of recognition the simple truth is that it is governed by no rules whatever. In the absence of a supranational state exercising supreme authority the act of recognition is political in nature and the prerogative of an independent sovereign state.”<sup>31</sup>

While at the time of the original membership, the United Nations could also agree to bring Ukraine and Byelorussia as members of the United Nations even though they were formally constituent units of the Soviet Union,<sup>32</sup> the prevailing dilemma remains how to reconcile demands for statehood more than a half a century after the founding of the United Nations? The ICJ Advisory Opinion of 1948 did not favor the plea of the Soviet Union to include all sixteen constituent republics individually and hence held that: “a Member of the Organization, cannot, while it recognizes the conditions set forth in that provision to be fulfilled by the State concerned, subject its affirmative vote to the addition condition that other States be admitted to membership in the United Nations together with that State.”<sup>33</sup> The Charter, originally drafted to secure lasting international peace and security, seems to have not anticipated, and therefore could not address fully the situations of putative emergence of new states that were the result of the end of the Cold War and the breaking up of socialist fashion federations. The Charter did not anticipate such a situation and hence, it fails to address completely the question of statehood – the conceiving but also the dismemberment of an entity.

At the dawn of the United Nations era, there were also ideas and attempts to address the putative emergence of new states through a collective organ of the international community, rather than leave it in the sphere of discretionary policies of individual states. At the Dumbarton Oaks Conference in 1945, Norway had even suggested that the United Nations is vested an exclusive authority by member states to grant recognition to new States, however that proposal gained little

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<sup>29</sup> Ibid.

<sup>30</sup> 1948 I.C.J. Report, 65

<sup>31</sup> Ph. Marshall Brown, “The Recognition of Israel”, the American Journal of International Law, Vol. 42, No. 3 (Jul., 1948), pp. 620 - 627

<sup>32</sup> Ibid., p. 53 -54, here Dugard explains the compromised solutions achieved at the Yalta and the San Francisco Conferences between the United States and the Soviet Union. The Soviets insisted that all sixteen constituent units of the Federation be admitted individually, to which quest the United States President Roosevelt had responded with the demand for all 48 American states to be admitted individually to the United Nations.

<sup>33</sup> 1948 I.C.J. Report, 65

support.<sup>34</sup> It follows from here that Lauterpacht was right to assert that, ““To recognize a political community as a State is to declare that it fulfills the conditions of statehood as required by international law. If these conditions are present, the existing States are under the duty to grant recognition. In the absence of an international organ competent to ascertain and authoritatively to declare the presence of requirements of full international personality, States already established fulfill that function in their capacity as organs of international law.”<sup>35</sup>

Rosalyn Cohen submitted in 1961 with regards to admission in the United Nations that, “the political organs of the United Nations have completely ignored juridical criteria when they have been called upon to assess statehood, and that they have granted or withheld recognition of statehood solely on political grounds which have borne little relation to community interests.”<sup>36</sup> The quest to designate an international authority that would be vested with the power to grant international recognition to newly emerged states did not cease in time. On the contrary, the idea was seen by scholars as a way to de-politicize recognition and by transferring it into the collective responsibility of an international organization, also assume that recognizing a state would be an unbiased and objective process: “[M]any jurists who examine the vacillations of State practice on the law of recognition express the hope that some international agency will emerge to collectivize the recognition of States and thereby remove the arbitrary nature of the individual State’s decision. However, although they acknowledge the United Nations as a potential ‘international recognizer’, they hesitate to accept that its standard admission procedure is in itself capable of fulfilling this role, and instead suggest the adoption of special procedures for this purpose.”<sup>37</sup> Unfortunately, it seems that political interests prevail when admission of new states to the United Nations is concerned and this makes the legal conditions secondary, if not irrelevant. This makes recognition a political rather than a legal principle in international law.

Since the idea of a designated collective international organization authorized to extend recognition gained little support among the members of the international community, the policy of granting individual recognitions by members of the international organizations became a pretty much adopted model of dealing with the newly emerged entities. The case of Kosovo’s recognition by the member states of the European Union is a typical example of this approach.

According to Dugard, “scholarly opinion on the question of the relationship between admission to the United Nations and the recognition of States is sharply divided and ranges from outright hostility to the very idea of collective recognition by the United Nations to the claim that admission is a modern form of recognition.”<sup>38</sup> The founding principles of the United Nations were the prevention of new wars, the maintenance of international peace and security, the practice of tolerance and living together with one another as good neighbors, and the economic and social well – being as declared in the United Nations Charter. It follows from here that with regards to admission of new states, the United Nations should be guided by these noble principles and the

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<sup>34</sup> See the United Nations Conference on International Organization, Amendments and Observations on the Dumbarton Oaks Proposals (Norway), 4 May 1945, available at: [http://archive.org/stream/documentsoftheun008818mbp/documentsoftheun008818mbp\\_djvu.txt](http://archive.org/stream/documentsoftheun008818mbp/documentsoftheun008818mbp_djvu.txt)

<sup>35</sup> Lauterpacht,

<sup>36</sup> R. Cohen, “The Concept of Statehood in United Nations Practice”, University of Pennsylvania Law Review, Vol. 109, No. 8 (Jun., 1961), pp.1127 -1171

<sup>37</sup> Dugard, p.41

<sup>38</sup> Dugard, p.43

commitment to world peace and mutual respect and understanding. The reluctance to extend admission to states that formally have met the criteria for statehood as prescribed by the Montevideo Declaration and the postponement of a decision without further due could easily impair the prospects for more peace and good neighborly relations.

#### **4. Membership of Kosovo in UNESCO and other International Organizations**

Kosovo's applications to join international organizations is listed among the top priorities of Kosovo's foreign policy, promoted and affirmed by key government officials, including the President, the Prime Minister and the Minister of Foreign Affairs. It comes as a natural outcome of the ongoing integrating and globalizing processes in the world today.

- **UNESCO**

UNESCO<sup>39</sup>, the United Nations cultural organization was established with the mission to achieve peace and cooperation among peoples through culture, science, and education. The founding idea for UNESCO derives from the approach according to which politics and economy are not sufficient to reach reconciliation among people in the world. Today, UNESCO has 195 member-states and 10 associate members. This number clearly exceeds the number of member-states of the UN, as the founding organization. For the purposes of this paper, this number is proof that joining an international organization helps new entities bypass bilateral recognitions from every single State. The most typical example when an entity without a recognized international subjectivity has succeeded in joining a multilateral organization is the admission of the Palestinian Authority to UNESCO on 31<sup>st</sup> October 2011. The admittance of the Palestinian Authority to UNESCO is considered a major diplomatic victory in Palestine's battles to secure recognition of its international subjectivity, as well as a way to bypass the states that object its membership to the UN, by applying veto at the Security Council.<sup>40</sup>

Membership of states in UNESCO is regulated with the Constitution and the Rules of Procedure of the General Conference. According to Article II, paragraph 1 of the UNESCO Constitution, "Membership of the United Nations Organization shall carry with it the right to membership of the United Nations Educational, Scientific and Cultural Organization. However, Article II also foresees a procedure for non-member countries of the UN: paragraph 2 of Article II provides that, "Subject to the conditions of the Agreement between this Organization and the United Nations Organization, approved pursuant to Article X of this Constitution, states not members of the United Nations Organization may be admitted to membership of the Organization, upon recommendation of the Executive Board, by a two thirds majority vote of the members of the General Conference."<sup>41</sup>

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<sup>39</sup>The original name for UNESCO is United Nations Education, Scientific and Cultural Organization. UNESCO's bodies are: the General Conference, the Executive Body and the Secretariat.

<sup>40</sup>Meanwhile, the United States has announced its decision to withdraw from the organization, in reprisal for the acceptance of Palestine as a member of the organization. This is a mere indication of the political implications over recognition and the power-play of great powers that sit on the first tables in relevant international organizations.

<sup>41</sup>UNESCO Constitution available at: <http://unesdoc.unesco.org/images/0021/002161/216192e.pdf>

The Rules of Procedure of the General Conference also define the procedure for the admission of new members to the Organization. Rule 85 of Chapter XV – Voting requires a two-thirds qualified majority of Members present and voting for the admission of “new Member States which are not Members of the United Nations, on the recommendation of the Executive Board.” Rule 99, paragraph 1 provides that, “Any state not a Member of the United Nations which desires to become a Member of UNESCO shall submit an application to the General Secretariat. This application shall be accompanied by a statement that the particular state is willing to abide by the Constitution, to accept the obligations contained therein and to contribute to the expenses of the Organization,”<sup>42</sup> while Rule 100 provides that, “Applications by states not Members of the United Nations for membership of UNESCO shall, upon recommendation of the Executive Board, be dealt with by the General Conference in accordance with the provisions of Article II, paragraph 2, of the Constitution.”<sup>43</sup>

Kosovo applied for membership of UNESCO in 2015. Its candidature was refused by a tiny difference of only three votes against. The rejection of Kosovo’s membership application is considered among the biggest diplomatic failures of Kosovo foreign policy ever since the country’s independence, in particular because of the triumphant public opinion created ahead of the big meeting. Serbia’s lobbying and influence against Kosovo’s membership because of its failure to protect sites of cultural heritage of the Serb minority community, particularly the churches and monasteries is believed to have been prevailing and ultimately decisive in the decision making process. During 2017, the Kosovar officials undertook a second campaign to attempt to join UNESCO during its 2018 session. Serbia, on the other hand, used its regional authority and influence by threatening to even withdraw its recognition of Macedonia as an independent state, in order to prevent another diplomatic victory of Kosovo.<sup>44</sup> Consequently, Kosovo has decided to temporarily withdraw its application for membership and to prolong it to another opportunity in the future.

- **Council of Europe**

The Council of Europe is the oldest European organization established by the founding fathers of the European Union in the first years following the end of Second World War, more precisely in 1949. It consists of 47 member states, of which 28 are also members of the European Union. The Council of Europe is an organization dedicated to democracy and the protection of human rights through universal standards embraced and promoted by its member-states. Its basic document is the European Convention of Human Rights. Membership of this organization is rightfully considered as a very important step for the states that require international recognition.

Membership of the Council of Europe is regulated with the Statute of the Council of Europe, Article 4 of which proclaims that, “Any European State which is deemed to be able to fulfill the obligations of Article 3 may be invited to become a Member of the Council of Europe by the Committee of Ministers. Any State so invited shall become a Member on the deposit on its behalf

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<sup>42</sup>The Rules of Procedure of the General Conference can be accessed at UNESCO basic documents: <http://unesdoc.unesco.org/images/0021/002161/216192e.pdf>

<sup>43</sup>Ibid.

<sup>44</sup>See for instance the statements by Ivica Dacic, Serbia’s Foreign Minister and the diplomatic crisis between Skopje and Belgrade in the summer and early fall of 2017.



with the Secretary General of an instrument of accession to the present Statute.”<sup>45</sup> Even though the Statute clearly lists the duties and obligations to be met by aspiring States, it provides the Council of Ministers the authority to make the final decision. The Council of Ministers, the decision-making body of the Council of Europe, is comprised of Ministers of foreign affairs of Member-states.

Kosovo is not a member of the Council of Europe yet. Membership in this organization however, is listed among the top priorities of Kosovo’s foreign policy ever since independence, not only because of its relevance as an institution, but also because of the opportunities it creates for the citizens of Kosovo to gain access towards international instruments on the protection and guaranteeing of their human rights: “Kosovars are the only people in Europe that cannot count on the protection offered by the European Court of Human Rights, even though, as highlighted in numerous EU progress reports, Kosovo has marked a solid progress in creating a credible democracy with a modern constitution which protects the minorities and secures appropriate balance and accountability.”<sup>46</sup>

Since 2014, Kosovo is a member of Venice Commission, an important body of the Council of Europe supporting the building of democratic institutions of member-states. Kosovo has also been a member of the Council of Europe Development Bank since 2013. In the formal legal sense, Kosovo should make an application, that is, make a request for membership of the Council of Europe, and this application should be reviewed and possibly even approved by the Council of Ministers. Not being a Member-state, the Kosovo delegation at the Parliamentary Assembly of the Council of Europe has the status of a guest country, with no right to attend plenary sessions, no right to vote, and no right to participate and intervene in the legislative process during the Assembly’s working bodies.

- **Sports federations**

On 3<sup>rd</sup> May 2016, with 28 votes in favor, 24 against and two abstentions, Kosovo officially became a full-fledged member of UEFA, the European Football Federation, an act that was unanimously acknowledged as a historical achievement by both political actors, the sports community and the overall public opinion in Kosovo. Becoming a member of UEFA required a simple majority vote, and the Secretary General of the organization said in a statement following the vote of the Congress that it had been “a highly democratic process, and a process during which rather frank discussions among representatives of national associations took place. We respect the results of the Congress’ vote,” Theodore Theodoridis concluded.<sup>47</sup>

While admission to a sports organization could be qualified as a non-political matter, the discussions during the consideration of the application of Kosovo to join UEFA were not totally resistant of the political dimension of the issue. Tomislav Karadzic, the Serb representative, had objected the process by claiming that it represented interference of politics in sports: “This is a political, not a footballing proposal,” he said. “It would create tumult in the region and open a

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<sup>45</sup> The Statute of the Council of Europe is available at: [http://assembly.coe.int/nw/xml/RoP/Statut\\_CE\\_2015-EN.pdf](http://assembly.coe.int/nw/xml/RoP/Statut_CE_2015-EN.pdf)

<sup>46</sup> Kosovo’s New Foreign Policy Roadmap, a speech by Kosovo’s Foreign Minister Hashim Thaci at the London School of Economics, London, 2014: <http://www.mfa-ks.net/?page=2,98>

<sup>47</sup> <http://www.uefa.org/mediaservices/newsid=2359883.html#football+federation+kosovo+joins+uefa>

Pandora's Box throughout Europe.”<sup>48</sup> Meanwhile, during the regular session of the Congress in Budapest, the legal director of UEFA, Alasdair Bell, had responded to the Serb objections according to which Kosovo is not recognized as a state by the United Nations, with the following statement: “The United Nations has no competence to recognize states; states recognize states; you are either a member of the UN or not, the fact you are not a member of the UN does not mean you are not a state; this is a legal matter. The four criteria to become a state are a defined territory, a population, a government and an ability to make treaties with others. Therefore, the members of the Congress will decide on their own if Kosovo deserves to be admitted to UEFA.”<sup>49</sup> The (then) Serb Prime Minister Aleksandar Vucic on the other hand, has announced that Serbia will fiercely oppose with all legal mechanisms at its disposal the decision of UEFA to admit Kosovo to membership, since, in his words, “The decision is not in accordance with UEFA's statute, which clearly underlines that only members of the UN can join the organization.”<sup>50</sup> This dispute illustrates in the best light the meaning of recognition of a state as a subject of international law. What initially looks like a mere sports issue gains political implications for the fact that the international subjectivity is a determining element to enter international relations, to build relations with other states or between a state and various organizations. The position of Russia supports the questioning of Kosovo's membership of UEFA. Russia has in fact voted against Kosovo's membership and moreover, its delegation has announced that Russia teams will refuse to play in matches with the national representation or teams from Kosovo.<sup>51</sup>

Kosovo's admission to UEFA is considered as an initial step towards the country's full-fledged membership to FIFA, the world football federation.<sup>52</sup> Hence, only a week after UEFA's decision, on 13<sup>th</sup> May 2016, at its Congress held in Mexico City, FIFA decided that Kosovo and Gibraltar can become new members of the Federation, thus allowing them to compete in the 2018 World Cup qualifiers.

As of December 2014, Kosovo is officially a full-fledged member of the International Olympic Federation, and Kosovar representatives participated for the first time in the Olympic games of Rio de Janeiro in the summer of 2016. The executive board of the Olympics had found that “Kosovo is an independent nation and acceptable to compete”<sup>53</sup>, hence raising dissent among Serb officials. The then Serbian Minister of Sports, Vanja Udovicic, had released a statement to the press agencies, asking, “What were the motives to accept the so-called European state that is not recognized by the United Nations...? And that is happening in a pre-Olympic year, with the games taking place in Brazil, a country which did not recognize Kosovo.”<sup>54</sup> Kosovo, on the other hand, made history at its first Olympic games ever, as Majlinda Kelmendi, the Kosovar judoist, earned a gold medal, the first ever gold medal for Kosovo in Olympics. A state whose recognition and right to membership had

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<sup>48</sup>Ibid.

<sup>49</sup><http://www.reuters.com/article/uk-uefa-kosovo-idUKKCN0XU11D>

<sup>50</sup>[http://europe.newsweek.com/serbia-will-fiercely-oppose-uefa-admission-kosovo-456003?utm\\_source=social&utm\\_medium=twitter&utm\\_campaign=/serbia-will-fiercely-oppose-uefa-admission-kosovo-456003?rx%3Deu](http://europe.newsweek.com/serbia-will-fiercely-oppose-uefa-admission-kosovo-456003?utm_source=social&utm_medium=twitter&utm_campaign=/serbia-will-fiercely-oppose-uefa-admission-kosovo-456003?rx%3Deu)

<sup>51</sup>Ibid.

<sup>52</sup>As of January 2014, Kosovo is allowed to play matches with members of FIFA, former Yugoslav countries excluded. However, during such matches, no display of national symbols is allowed, apart from patches worn on the footballers' uniforms, and the anthem of the Republic of Kosovo may not be played either. Previously, those matches must be approved by the Serb Football Federation, while FIFA would act as a mediator, by receiving a notification of a specific match 21 days in advance.

<sup>53</sup><http://europe.newsweek.com/kosovo-becomes-205th-country-join-olympics-290415>

<sup>54</sup><http://europe.newsweek.com/kosovo-becomes-205th-country-join-olympics-290415>

been denied, was crowned with a gold medal, thus leaving a dilemma open whether a denied statehood implies a denied golden medal too?!

Membership in sports organizations ultimately brings to the surface the meaning and importance of recognition for an entity, for it is a precondition to join the international system, not only in the political sense, but in other spheres of social organization too. Even though a state might be able to survive without recognition, and there are such examples particularly in the former Soviet Union territories, its international subjectivity will always be disputed, that is, illegitimate.

## **5. Conclusion**

Kosovo's accession to various regional and international organizations does not imply a direct or automatic recognition of its international subjectivity as a new entity. However, in practical terms, this form of action could aim to achieve what recognition as a political act promises to do. Kosovo has so far been able to sit at the same table with most of its neighboring countries and to discuss on equal terms on the various regional challenges. By participating in such regional initiatives, Kosovo has in fact become part of the solution, and not remained part of the problems of the Western Balkans region. As an initial phase of normalization of relations with Serbia, such an approach represents a secure step forward. In a later phase, this strategy could serve as an incentive, or even more, as a catalyst to speed up securing a full-fledged statehood for Kosovo.

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