

BALKAN DIALOGUES

TOWARDS WHICH STRATEGIC END?
UNPACKING KOSOVO'S POSITION IN THE
INTERNATIONAL SYSTEM FOLLOWING
POTENTIAL AGREEMENT WITH SERBIA

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BALKAN DIALOGUES: TOWARDS WHICH STRATEGIC END? UNPACKING KOSOVO'S POSITION IN THE INTERNATIONAL SYSTEM FOLLOWING POTENTIAL AGREEMENT WITH SERBIA¹

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The impasse in the dialogue between Kosovo and Serbia encountered greater levels of uncertainty and has incited political tensions. The EU led technical dialogue under the mantra of “constructive ambiguity” brought only few tactical benefits but strategically proved to be not a sustainable trajectory towards dispute resolution. It is no longer surprising that most of relevant actors relentlessly believe that the process should be dealt top-down rather than bottom-up. For both Kosovo and Serbia to have long-term stability, security and prosperity, it is almost inevitable that a sustainable legally binding compromise is reached. The agreement would be beneficial for people living in both Kosovo and Serbia and is particularly expected to pave the way for Kosovo's full integration into the international system. The strategic end of the agreement should be found around the nexus of Serbia accepting the existing reality of Kosovo's statehood in one hand and on the other hand it benefiting from the concession of special status for Serbs, EU integration and foreign direct investments. **The agreement should ideally follow a sequence in which its core provisions – Kosovo's membership in UN and its implicit or explicit recognition by Serbia – should be implemented first before other technically-related details of the agreement.**

¹ This policy paper has been based on the author's observation of political, security and societal developments in the relations between Kosovo and Serbia. As such, it solely represents author's view and should not be seen as the position of neither parties nor Kosovo in the potential deal between Kosovo and Serbia.

This policy paper examines three scenarios: there is one optimistic scenario, the other one "closer-to-reality" scenario and third a pessimistic yet, highly likely scenario of the continuation of status-quo. The first two scenarios have the potential to galvanise the process towards a legally binding agreement reached between the parties. The third, pessimistic scenario is in light of no agreement, but its likelihood is high if parties fail to reach a compromise. One cannot rule out that the political end may be a hybrid approach of these options:

- **Option 1:** Parties reach an agreement in which **Kosovo would be formally recognised by Serbia**. This option would not utterly translate into a silver bullet in Kosovo's integration prospects and developmental trajectory yet - by far - it represents the most sustainable option in terms of long-term peace and stability. With this agreement, Kosovo would have chances of gaining membership into the UN (provided that there is no veto threat from Russia and China); would commence membership path for NATO and EU as well as pave the way for membership in other international organisations (ex. CoE, UNESCO, INTERPOL, WHO etc). This agreement would be followed by a three-layer benefit to Serbia which would in brief imply the date for EU membership, additional guarantees for rights of Serbian community in Kosovo and Foreign Direct Investments (FDI) from the EU and the US. This type of agreement would be acceptable for Kosovo, most of the EU members (e.g. Germany) and the US. It would be less likely acceptable for Serbia but it would mark a strategic relief and discharge from a prevailing historic burden;
- **Option 2:** Parties reach an agreement in a format of **normalisation agreement without explicit recognition of Kosovo by Serbia**. This agreement would be framed in a similar arrangement to the model of two-Germaries (1972) in which both parties would recognise the existence of each other and would not perform or encourage others to act against each other in the international organisations. In other words, this would mark a de-facto recognition as a phased process towards formal recognition before Serbia's membership in the EU.

² Normalization of relations between Belgrade and Pristina from citizens perspective - What we know and what we feel? Centar za društveni dijalog i regionalne inicijative, Belgrade, 2019.

This agreement would potentially open the prospects for Kosovo's membership into the UN provided that Russia and China do not use veto in the process of replacing the existing UN SC Resolution 1244. In case of obvious veto threat, provisional solution granting Kosovo UN Observer State status combined with fast-track membership into NATO could be an option for an interim period of 3 years. This scenario raises dilemmas on whether some EU member states and particularly Cyprus would still recognise Kosovo. The agreement would be more acceptable to Serbia because it could be used as a "face-saving" mechanism in front of the nation, yet it would be barely acceptable for Kosovo;

- **Option 3:** Parties would not reach any agreement thereby instantly subscribing into status quo (frozen conflict). This is a likely scenario if parties will fail to reach a compromise. This would formally switch the existing state of play into a stagnation with a high probability of turning into regression. With the status quo, Kosovo would be on a survival mode prompting greater scepticism on the peace process thereby granting rise to ethno-national based approaches in defining its future. For Serbia, it would be consequential in the process of European integration. Potential dark scenarios are numerous but two that can be mitigated are: a.) Serbia's attempt to annex the northern part of Kosovo and b.) Increased call for creation of confederation between Albania and Kosovo. Both of these scenarios would instantly have a domino effect among Albanians in North Macedonia and Serbs in Bosnia and Herzegovina.

³ Emancipimi Civil Ma Ndryshe, *An Analysis of Numerous and Continuous Faults in Cultural Heritage*; Series analysis "What went wrong?", Prishtina, 2013, p. 15. ²⁷ Ibid, p. 21.

	Options/Scenarios	Likelihood	Gradation 1-3 (1 the best - 3 the worst)	Benefits for Kosovo	Benefits for Serbia	Stakeholders Position
1	Agreement implying recognition of Kosovo by Serbia	Unlikely	<ul style="list-style-type: none"> - Kosovo (1.5) - Serbia (2.5) - EU (1) - US (1) 	<ul style="list-style-type: none"> - UN membership (likely); - Clear path to NATO, EU; membership in other intl. organisations; - FDI from EU and US 	<ul style="list-style-type: none"> - Date for EU membership; - Guarantees for Serbs in a format of ASM or similar; - FDI from EU and US 	<ul style="list-style-type: none"> - US and EU very much in favour; - China likely supportive; - Russia unpredictable
2	Agreement of normalisation without recognition of Kosovo by Serbia	Likely	<ul style="list-style-type: none"> - Kosovo (2.5) - Serbia (1.5) - EU (2) - US (2.5) 	<ul style="list-style-type: none"> - UN membership - (if not immediately, provisional solution in the next three years of UN Observer Status combined with NATO fast-track membership); - FDI from EU and US/FDI from EU and US 	<ul style="list-style-type: none"> - Clear prospects for EU integration; - Further guarantees for rights of Serbs as provided by Brussels Agreement; - FDI from EU and US 	<ul style="list-style-type: none"> - Part of EU likely in favour under the terms of its implementation; - The position of Cyprus unknown; - US unlikely supportive; - China's and Russia's stance unpredictable
3	No agreement reached: Subscription into status quo (frozen conflict)	Very likely	<ul style="list-style-type: none"> - Kosovo (3) - Serbia (2) - EU (3) - US (3) 	<ul style="list-style-type: none"> - Enhancing bilateral partnerships; - Special relationship with Albania; - Maintaining "comfort zone" 	<ul style="list-style-type: none"> - Continuing trajectory of economic development; - Strengthening partnership with China, Russia; - Maintaining "comfort zone" 	<ul style="list-style-type: none"> - EU and US not supportive

Table 1: Overview of the three scenarios

Kosovo declared independence in 2008 after international administration of nearly a decade. The trajectory of Kosovo's statehood was daunting. In the view of its majority population – Kosovan Albanians – after the defeat of the Ottoman Empire the decision of major powers for drawing the borders of the Balkans in London Conference in 1913 left Kosovo territory unacceptably under Serbia and consecutively Yugoslavia.² During different regimes Kosovan Albanians have been relentlessly subject to discrimination and segregation while the territory remained the most under-developed unit of former Yugoslavia.³

² Noel Malcom, *Kosovo: A short history* (New York: Pan, 1999).

³ Mark Weller, *Contested Statehood: Kosovo's Struggle for Independence* (Oxford: Oxford University Press, 2009).

On the other hand, two historic episodes marked reciprocal violence against the Serbs: during Nazi occupation of the territory of Kosovo (1941-1944) as well as pressure during 70's when Kosovo got its highest level of autonomy, almost equivalent to other Republics. The break-up of Yugoslavia peaked in the early 1990's as a result of many internal and external factors yet, primarily due to ethno-nationalism led by Serbian leader Slobodan Milosevic and latest increased dominance vis-à-vis other Yugoslav units. The oppression of civilians in Kosovo culminated into armed conflict between Serbian military/paramilitary forces and Kosovo Liberation Army (KLA). The large-scale ethnic cleansing of Albanians forced NATO to intervene in order to stop humanitarian disaster in the soil of Europe by also avoiding the mistake of late intervention in Bosnia which led to thousands of civilians being massacred.⁴ In June 1999 a technical military agreement was signed between NATO and (then) Yugoslav Army, which served as basis for adoption of UN SC Resolution 1244. As a consequence, Kosovo was placed under international administration made of NATO military presence (KFOR) and UN civilian administration (UNMIK), in the form of protectorate, for a period of 9 years.

⁴ Antonio Cassese, "*Ex iniuria ius oritur: Are we moving towards international legitimization of forcible humanitarian countermeasures*" European Journal of International Law Vol 10 (1999).

After an exhausted dialogue between delegations of Kosovo and Serbia, Kosovo declared independence on the 17th of February 2008 based on the proposal of UN envoy, coordinated by the so-called "Quint" countries⁵. Serbia fiercely opposed Kosovo's independence and actively worked against it. Kosovo became recognised by over 100 countries of the world: it established roughly 90 diplomatic relations to date and it managed to join dozens of international organisations especially in the financial/economic, sport and cultural domains. In 2010 the International Court of Justice (ICJ), responding to the legal question posed by Serbia on whether declaration of Kosovo violated international law, ruled that the declaration of independence did not violate international law.⁶ In the eyes of its elites and the countries recognising it, Kosovo fulfils nominally the four elements of statehood as provided by the Montevideo Convention⁷: it has a permanent population, a defined territory, a government and has capacity to enter into relations with other countries. While first three elements are well placed in the Kosovan statehood context the fourth one – capacity to enter into relations – is jeopardised as a result of lack of agreement with Serbia and Kosovo's struggle to integrate in the UN system.

⁵ Quint includes the following countries: United States, United Kingdom, Germany, France and Italy.

⁶ International Court of Justice, "Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo", Advisory Opinion 2010.

ICJ did not comment on Kosovo's secession as such but provided narrow interpretation to the question posed by Serbia.

⁷ Montevideo Convention, "Convention on Rights and Duties of States adopted by Seventh International Conference of American States" 1934.

Kosovo could not become fully fledged member of UN due to the veto power of Russia and possibly China which do not recognise the state of Kosovo. Similarly, it could not gain recognition from 5 members of the EU (see below). As of 2015, with increased populism around the world and changes of international constellation, Kosovo could no longer get cheque en blanco in terms of Western support for its state-building trajectory. Meanwhile Serbia increased its diplomatic offensive and worked in the campaign of de-recognition in order to stop Kosovo's dash into international system. This campaign arguably had a goal of portraying Kosovo's status as unsettled in lieu of Serbia's consent. The number of de-recognitions varies from 12-18⁸ though the exact figures are constantly contested by Kosovo Government.⁹ Nevertheless, the campaign marked tactical victory for Serbia in disrupting Kosovo's ambitions of reaching the maximum of its international consolidation within the existing constellation, especially vis-à-vis membership in multilateral organisations requiring simple or qualified majority. As a consequence, Kosovo's bid to join UNESCO and INTERPOL failed which gave the imprint that the country cannot complete its international subjectivity in lieu of agreement with Serbia.

⁸ Serbian MFA Statement, "Sierra Leone 18th country that derecognized Kosovo" <https://kossev.info/dacic-sijera-leone-je-18-dr-zava-koja-je-povukla-priznanje-kosova/> (accessed 27 August 2020).

⁹ Kosovo MFA, "Serbia is using arms sales for de-recognition of Kosovo" <https://reporteri.net/lajme/mpj-reagon-serbia-po-perdor-shitje-armesh-per-cnjojjet-e-kosoves/> (accessed 14 August, 2020).

In terms of EU integration, Kosovo is considered a potential EU candidate country after a signed treaty with the EU – the Stabilisation and Association Agreement (SAA)¹⁰. The EU's strategy for enlargement is explicit that Kosovo's path to the EU will be opened only "if objective circumstances allow"¹¹ – implying the "must" for normalisation of relations with Serbia as well as the "must" for receiving recognition by five EU member states.¹² EU provides extensive assistance to Kosovo while it still keeps the presence of the EULEX mission. While Kosovans are among the most pro-European citizens in the region¹³, the reputation of the EU is fading especially due to its failure to deliver visa liberalisation for Kosovo. In terms of relations with NATO, Kosovo does not have a contractual arrangement despite a strong aspiration to progress formally in membership towards this organisation. There are two overarching bounds between NATO and Kosovo: one is the presence of KFOR troops which maintains solid yet, consistent strength especially in the northern part of Kosovo and, second is the exchanged letters between NATO's General Secretary and Kosovo's Prime Minister on enhanced cooperation between NATO and Kosovo.¹⁴ There are four countries of NATO that still do not recognise Kosovo's statehood. Potential withdrawal of KFOR troops is subject to sustainable peace and secure environment as well as a possible legally binding agreement between Kosovo and Serbia. Kosovo maintains a strong bilateral partnership with dozens of countries - the US being in the lead.

¹⁰ SAA, Stabilisation and Association Agreement between EU and Kosovo, Brussels 2016, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:4314927&from=EN> (accessed 20 August, 2020).

¹¹ European Commission, *"A credible enlargement perspective for and enhanced EU engagement with the Western Balkans"* p.2

¹² To date, Kosovo is still not recognised by: Spain, Slovakia, Greece, Romania and Cyprus (the latest only EU member). The reasons for refusal to recognition are different with Spain being the strongest non-recogniser due to its fear of independence of Catalonia as well as Cyprus having similar concerns over Turkish Northern Cypriot Republic. The three other countries are referred to as "soft non-recognisers" due to them maintaining some relationship with Kosovo yet still not formally recognising the country mainly due to special relationship with Serbia.

¹³ Politico, "Kosovo: A young country, being shaped by its youth" <https://www.politico.eu/interactive/in-pictures-kosovo-10th-anniversary-future-being-shaped-by-its-youth/> (accessed 17 August 2020)

¹⁴ Letter of NATO Secretary General, Jens Stoltenberg addressed to Kosovo's Prime Minister, Isa Mustafa, 5 December 2016, SG(2016)0357, 1

In the domestic dimension, Kosovo has consolidated its administration capacities and it has established a solid security sector and judiciary. It exercises control over most of the territory with severe challenges in northern part. It had an economic growth of around 4% annually¹⁵ yet, there is high unemployment and general deprivation which is leading to massive immigration of citizens to the EU (especially Germany) in the recent years. Corruption is eroding the society where it has been deeply internalised especially in the procurement and recruitment of civil servants. The impact of COVID-19 seems to be devastating for the economy with severe implications in the short to medium terms and perhaps turning the country for the first time into recession.¹⁶ Kosovo Serbs have been largely integrated in the south of Ibër/Ibar river where the frequency of inter-ethnic violence has been greatly diminished with exceptions of some incidents of returned Serbs in the Dukagjini/Metohija region. The north part of Kosovo continues to resist full integration in Kosovo's system, albeit some progress in the area of police and judiciary as a result of the Brussels agreement. Strong ties and structural links with Serbia remain present in the north. The frequency of interaction with central level institutions in Pristina and Kosovo Albanians is lower when compared to their fellows in the Serbian majority municipalities

¹⁵ World Bank Index, Kosovo <https://www.worldbank.org/en/country/kosovo/overview#3> (accessed 19 August 2020)

¹⁶ OECD, "The Covid-19 crisis in Kosovo" 7.

What has been agreed so far?

Kosovo's statehood has been instantly and proactively contested by Serbia. To date, none of the attempts or agreements directly or indirectly implied "untying the Gordian Knot" – reconciling of Kosovo and Serbia and latest refrainment from contesting Kosovo's statehood. The Brussels facilitated dialogue in the period of 2011-2017 brought some tactical benefits in the normalisation of relations but strategically did not manage to provide a framework for full and final normalisation of relations between Kosovo and Serbia. These technical agreements have been partially implemented by parties whereas most of those implied broader issues of: freedom of movement and goods, northern Kosovo, cadastre,¹⁷ etc. The EU's negotiation strategy was rooted on the grounds of so-called "constructive ambiguity" masterminded by former EU facilitator Robert Cooper.¹⁸ This allowed for parties to interpret the agreements from their own perspective which often led to tensions and misunderstandings. Overall, the EU's success has been limited and its methodology of gradually and slowly solving the dispute did not translate into a long-term solution.

There are two types of agreements that could serve as an initial step of a compromise leading to formalisation of state of play. The first one is on Kosovo's representation in the regional representation and the other one is on reintegration of Serbian parallel structures into Kosovo's legal and political system.

¹⁷ BPRG and RIDEA, "Scenarios for Grande Finale between Kosovo and Serbia".

¹⁸ Augustin Palokaj, "There will not be agreement anytime soon between Kosovo and Serbia" <https://www.koha.net/veshtrime/232736/nuk-do-te-kete-se-shpejti-marreveshje-mes-kosoves-dhe-serbise/> (accessed 10 August 2020).

Agreement on regional representation represents one of the most controversial agreements in the eyes of the Kosovo elite because of its political and legal sensitivities. It was one of those agreements marking constant diplomatic battle between Kosovo and Serbia. This agreement granted Kosovo access to regional initiatives under the provision that it would use a standard footnote/disclaimer at the outset of the documents stating that “this designation is without prejudice to positions on status, and is in line with UNSC Resolution 1244/99 and ICJ Opinion on Kosovo's Declaration of Independence”¹⁹. The so-called footnote agreement was largely unpopular in Kosovo whereas the former chief negotiator claimed the “Asterix [disclaimer] is like a snowflake that will suddenly disappear”²⁰ – a claim which turned into a fallacy. This agreement paved the way for Kosovo's representation in some regional initiatives with the landmark membership in the Regional Cooperation Council (RCC). Nevertheless, its membership and representation in most of the organisations was followed with constant diplomatic tensions and obstructions which made this agreement partially implemented to date.

Agreement on integration of former Serbian parallel structures in the northern Kosovo marked a milestone in terms of nominally placing northern Kosovo under the Kosovan system. Since 2013, the citizens in four northern municipalities participated in the elections though the agreement artificially created a political structure – Serbian List linked to Serbian Progressive Party (SNS) – which proved detrimental to the pluralism among Kosovo Serbs. The agreement disbanded the structures of Serbian Ministry of Interior operating in northern Kosovo²¹ including the “Civil Protection” Units. It also paved the way for establishment of a regional Kosovo Police Command operating solely in northern Kosovo while the agreement on judiciary also began to be implemented in which the courts and prosecution are now fully integrated into Kosovan judiciary system.²² The implementation of this agreement and its subsequent components has been faced with criticism especially among part of the Serbian elite who consider it as submission towards Kosovo which would allow Pristina's extended footprint in northern Kosovo.²³

¹⁹ European Parliament, “Serbia-Kosovo relations: Confrontation or normalization?”

²⁰ For more see <https://insajderi.com/edita-tahiri-ende-shpreson-se-fusnota-eshte-nje-fluske-bore-qe-te-shkrihet/> (accessed 14 August 2020)

²¹ Isidora Stakic and Maja Bjelos, “The future of Civil Protection in North Kosovo”

²² BPRG, “Perspectives on the technical dialogue agreements between Kosovo and Serbia”

²³ For example see Marko Jaksic, an important political figure from North Kosovo <http://www.nspm.rs/politicki-zivot/briselski-sporazum-je-akt-najvece-nacionalne-izdaje-u-modernoj-istoriji-srpskog-naroda---zbog-lokalnih-koalicija-sa-sns-om-dss-rizikuje-da-nestane-sa-politicke-scene.html?alphabet=l> (accessed 30 August 2020)

End game: Alternatives and solutions leading to agreement

There are a number of potential solutions that have been analysed to date with the purpose of solving the dispute between Kosovo and Serbia. This paper thereby presents three types of options: the first option implies an agreement that would be concluded with formal recognition of Kosovo's independence by Serbia; the second option denotes agreement without recognition that would include a normalisation framework in a format of "two-Germany model" or "Brussels 2" and third is an option of no-agreement which is formal subscription to status quo and frozen conflict.

Option 1 – Comprehensive legally binding agreement implying explicit recognition

This option would designate a final legally binding agreement that would lead to an unequivocal dispute resolution between Kosovo and Serbia. The agreement would be sufficiently clear and unambiguous in its end so not to provide space for interpretation by different parties in the future. It could be either labelled into a classic "Peace Treaty" or another similar name. The end goal of this agreement would be centred around formal recognition of Kosovo by Serbia as a precondition for long-term solution. Indeed, the ways and means for reaching the end goal would be mixed of different elements and incentives (see below).

In this option, Serbia would ratify the agreement in the Parliament, thereby modify its Constitution and remove the reference to Kosovo. It would then send an official letter to Pristina indicating that it has formally recognised Kosovo and it could either opt to establish diplomatic relations by exchanging ambassadors or choose for other "softer" arrangements of establishing relations. The parties could envisage opening of consulates in respective locations based on the mutual understanding (ex. Serbia in Mitrovica and Kosovo in Presevo). The border would be demarcated by an international commission made of representatives of Kosovo and Serbia following a pre-defined methodology. On the other hand, Kosovo would also be required to ratify agreement in the Parliament and behave responsibly and reciprocally with Serbia in all steps of the implementation of such agreement.

In terms of Kosovo's path to the international system, the agreement would – as a first step – pave the way for a newly sponsored UN resolution that would replace the existing UN SC Resolution 1244. This resolution would be ideally co-sponsored by reputable UN member states (preferably led by a member of UN SC Permanent 5) that would open the door for Kosovo to become a fully-fledged member of the UN. Prior to that, Serbia would have been required to notify all member states (including Russia and China) as well as other international organisations that it has reached a contractual agreement with Kosovo and no longer contests its statehood. It is important that Serbia formally notifies all countries while not informally encouraging “some” to block Kosovo's membership – that being the mere strategic end of the agreement. This assumption is based on experiences with the agreement on representation in regional organisation in which Serbia spoiled Kosovo's membership, participation and engagement through blocking powers of other member countries.

Indeed, explicit recognition may not be considered a silver bullet with respect to Kosovo's membership in the UN. There are rightful dilemmas whether this goal will be reached due to the (un)predicted position of Russia in particular but also China. While neither power warned they would veto such an agreement, there are uncertainties on whether they would ultimately endorse it. Instead, the two veto holders could use this situation as a bargaining chip for their own interests in other regions. Russia is especially seen as problematic in this frontier because of its traditional interests in the Balkans and the tendency to juxtapose annexation of Crimea with Kosovo's secession.²⁴ Russia's public narrative is that it would support “any” agreement that would be acceptable for Serbia,²⁵ but it is very unpredictable as far as the prospective voting in SC is concerned. China, on the other hand, is competing heavily in taking global primacy and may want to be consulted at the latter stage yet, it is expected to have less interest in the potential deal between Kosovo and Serbia. China follows a position of non-interference, which means the moment Kosovo and Serbia agrees, China would accept though it is still clustered along Russia in the framework of unpredicted actors when voting in the SC occurs.

²⁴ For more see the statement of Russian Minister of Foreign Affairs <https://tass.com/politics/854422> (accessed 30 August 2020)

²⁵ For more see the statement of Russian President <https://www.rts.rs/page/stories/sr/story/9/politika/3987739/vucic-putin-razgovor.html> (accessed 11 August 2020)

In terms of other international organisations, provided that the agreements' end goal implies recognition, Kosovo would have no major obstacles in joining international multilateral organisations requiring a simple majority (ex. the World Health Organisation – WHO); multilateral organisations requiring qualified majority (ex. UNESCO, Interpol, Council of Europe) and potentially other organisations having veto of a single member provided that either Russia, China or any other country would not veto (ex. OSCE, World Trade Organisation etc). For each of these international organisations, Kosovo would have to fulfil the criteria for membership in addition to the lifting of political barriers. Simultaneously, it could seek formal recognition from the countries that have not done so to date and establish further diplomatic bilateral relations.

As for the Euro-Atlantic integration frontier, this agreement could almost ultimately grant recognition to Kosovo from the remaining five members of EU. Greece, Romania and Slovakia have announced they would endorse any agreement reached by the parties whereas agreement being sufficiently explicit on recognition by Serbia would resolve the issue of recognition by Spain²⁶ and potentially Cyprus.²⁷ This would lead to Kosovo formally apply for EU candidate status. When it comes to NATO membership, a fast-tracking integration process in this organisation could be designed having in mind that Kosovo already fulfils largely the political criteria whereby in military terms its progress to NATO would be tailored with the goal of reaching defence capabilities of the Kosovo Security Force (KSF).²⁸

²⁶ For more see <https://euobserver.com/enlargement/149467> (accessed in 22 September 2020)

²⁷ Isabelle Ioannides, "Cyprus firmly committed to the non-recognition of Kosovo" in James Ker Lindsay and Ioannis Armakolas, *The Politics of Recognition and Engagement: EU Member State Relations with Kosovo* (London: Palgrave Macmillan, 2019) 214

²⁸ Anton Quni, "Kosovo Army with full military capacities in 2027" <https://frontonline.net/quni-ushtria-e-kosoves-me-kapacitete-te-plota-ne-vitin-2027/> (accessed 29 August 2020)

Serbia would get three layers of benefits that would be both beneficial in different dimensions but also 'face-saving' domestically. First, it would get a date for membership into the EU. This would mean its path to the EU will be accelerated provided that Serbia would have to fulfil all criteria, especially those pertaining to rule of law, in order to become a fully-fledged member of the EU. Serbia's treaty for accession into the EU should include explicit reference to it having no direct or indirect role in blocking Kosovo's future membership of the EU so to avoid re-occurrence of tensions in the future also following the recent spoiling examples between Greece-Macedonia and Slovenia-Croatia. Second, Serbia would get Foreign Direct Investment (FDI) from the EU and the US and the expectation would be that key corporates would be encouraged to open factories in Serbia as well as in Kosovo. This would facilitate development but also freedom of goods and people. Countries like the US could have lifted Serbia's debt as a sign of good gesture. Third, further guarantees for Serbs in Kosovo would be provided through a format of Association of Serbian Municipality (ASM) or similar arrangements. In this way, Kosovo Serbs would be granted cultural autonomy in the broader issues of education, health, religious sites, social care as well as other rights to be embedded in Kosovo's legal framework yet, avoiding any scenario leading to use or misuse of these powers to the detriment of Kosovo Albanians.

Overall, this option would be largely beneficial to the long-term prospects of peace and security in the region. Kosovo would find it acceptable because it would grant full membership into international organisations and, particularly, the EU and NATO. Serbia would be formally discharged from the burden of the Kosovo issue both systemically but also in the public narrative – in addition to the three-layer benefits as mentioned. The international community would fully endorse this type of agreement, be it countries that recognised Kosovo but also those that have not done so. Countries having still doubts could be exceptional, but this would not have a severe impact in the international consolidation of Kosovo's statehood.

Option 2 – Comprehensive legally binding agreement with no formal recognition

Another alternative for Kosovo-Serbia dispute resolution is making the case for the difference between recognition and acceptance of a state. Silent acceptance of Kosovo as an independent state, and refraining from active opposition against the country, is what at this stage and context, seem to be more realistic achievements, as a phase towards formal recognition. This option would imply a de-facto recognition, in a format of an agreement that would include all of the components that have been agreed in Brussels including some other remaining issues of people's concern framed into a normalisation agreement. The format of this agreement could be either defined into a "two-German model" or "Brussels 2" but at the core would not include recognition of Kosovo by Serbia at least in the beginning provided that the recognition as such would take place just before membership of Serbia in the EU. The agreement would normalise relations based on the guarantees provided through its provisions, under the strict guidance of an international authority such as the EU. Its implementation would be observed in the context of both Serbia and Kosovo's pathway to the EU.

With this option, Serbia and Kosovo would need to ratify the agreement in their respective parliaments. Serbia would have to remove its reference to Kosovo from its Constitution whereas Kosovo would have to do constitutional amendments reflecting the components of a legally binding agreement. Serbia would be expected to inform all countries and international organisations that it has reached a legally binding agreement with Kosovo which would give guarantees that it will neither block Kosovo's membership of international organisation nor encourage others to do so. Kosovo in turn would be committed to implementing the provisions deriving from the agreement especially those pertaining to guarantees for Kosovo Serbs and other commitments within its scope and territory. The agreement, among others, should include provisions for demarcating the border between both countries in order to make easier the access towards membership in international organisations, including the EU and NATO.

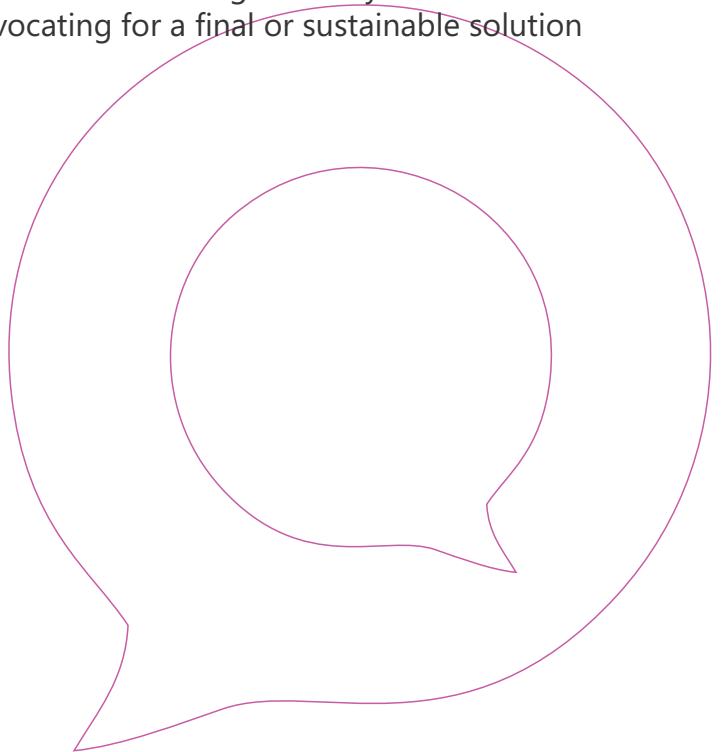
For the option of a de-facto recognition to be acceptable to Kosovo, it must lead though to – first and foremost – a change of the UNSC Resolution 1244 and membership in the UN. However, the dilemma here, even more emphasised than in the first option, would be the position of Russia and China to the agreement and whether or not they would veto such a move. If change of resolution is faced with “resistance” at this stage, the alternative to this could be Kosovo's provisional access to UN through the so-called back door – UN Observer Status – similar to Palestine and Vatican which would require simple majority of UN member states without veto rights by the UN Permanent 5. This option, largely unpopular among Kosovo and its key supporters, could be accepted only as a provisional solution (example in the period of next 3 years) and may be tailored to other key processes. To complement this potential scenario, a fast-tracking process for Kosovo's membership in NATO could provide an alternative guarantee of belonging to a regional collective self-defence organisation.

In another frontier, this option would open the door for Kosovo's membership in other international organisations with no veto right (ex. UNESCO, CoE, INTERPOL, WHO etc) and potentially other organisations like OSCE, WTO provided that Russia or other country would not veto Kosovo's membership. In turn, it could very likely trigger changes in the positions of five EU non-recognisers. While the signals are arguably positive from Greece, Slovakia, Romania and potentially Spain, there are no clarity on the Cypriot position on such an agreement due to its staunch position against recognising Kosovo. The Cypriot stance was that even if Serbia would recognise Kosovo it would not follow this pattern due to its deliberate tailoring of Kosovo's secession with the Turkish North Cypriot Republic (TNCR).²⁹ This scenario would potentially fix Kosovo's membership prospect for NATO but not necessarily the EU membership unless all EU member states speak with a single voice thereby ensure recognition from all remaining member states.

²⁹ For more on recognition of Kosovo see James Ker Lindsay and Ioannis Armakolas, *The Politics of Recognition and Engagement: EU Member State Relations with Kosovo* (London: Palgrave Macmillan, 2019).

This agreement would be followed by incentives for both Serbia and Kosovo in terms of clarity towards the EU integration processes; FDI facilitated by EU key member states and US to both Serbia and Kosovo and further constitutional guarantees for the rights of Serbs in Kosovo. As for the latest, the existing agreements reached followed by additional people's related components would be enshrined in the final version of the agreement without touching the dysfunctionality of the political, legal and societal order of Kosovo.

Overall, this agreement would reach the nominal goal of normalisation. However, its risks when compared to the first option is that it would be subject to the re-opening of tensions in the future and leaving the dispute to future generations. The agreement could be barely accepted by Kosovo but perhaps more a solution for Serbia in terms of "face-saving" though not necessarily of discharging from the burden of Kosovo issue. On the other hand, this type of agreement could reach support from dozens of countries that have recognised Kosovo but also some that have not done that to date. It could potentially face reluctance among the key stakeholders facilitating the process advocating for a final or sustainable solution on Kosovo.



Option 3 – Formalising status quo and subscribing to frozen conflict

While option 1 and 2 provide the potential scenarios leading to final comprehensive and legal agreement between Kosovo and Serbia, option 3 does not represent a framework for agreement but only a formalisation of the status quo. In other words, both parties would fail to agree in reaching any of the agreements discussed above or similar agreement. The agreements that has been reached to date and potentially any other agreement of economic nature could be implemented but parties would not solve the dispute at the core which would formally lead to frozen conflict with potential devastating implications in the future. In the eyes of a significant bulk of Serbian respondents, it is better not to reach agreement on Kosovo now because the international constellation may turn more favourable for Serbia³⁰ consequently claiming sovereignty or some form of tutelage over Kosovo. Similarly, in the eyes of a significant number of Albanians, the time would work more for Kosovo and Albanians in general by claiming that Albanians have never been better positioned in modern history.³¹

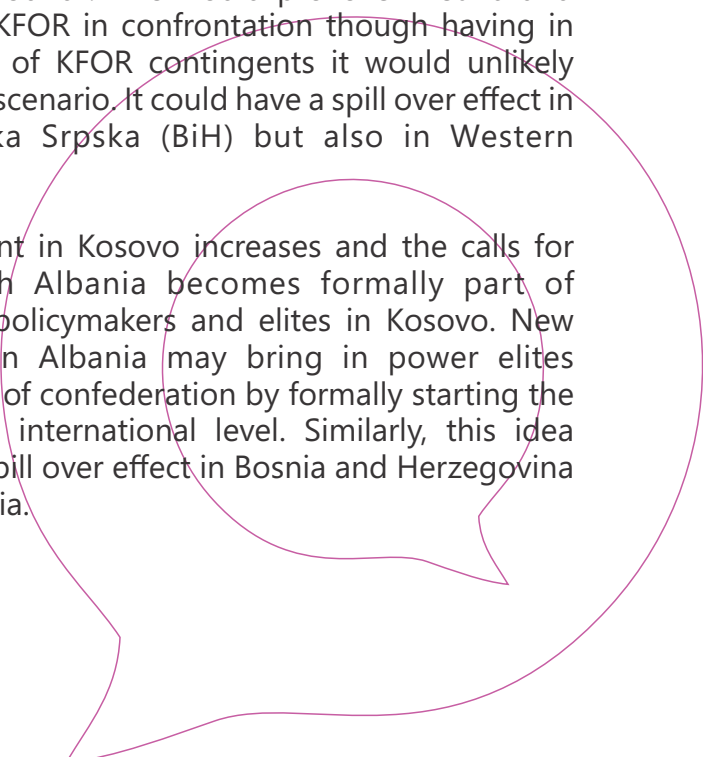
Indeed, with formalisation of the status quo, Kosovo would only survive as a state. It would maintain control over most of its territory and rely on bilateral agreements with major powers and other countries. Its "survival corridor" with Albania would be essential in keeping the state of Kosovo alive but the country would barely develop under these circumstances. It would not have chances for further progressing into international system and the prospect for EU and NATO membership would be faded. The funding that country would receive combined with remittance and potential small FDI could be the main revenue for the economy.

³⁰ For more see <https://www.bbc.com/serbian/lat/balkan-45104701> (accessed 12 August 2020)

³¹ KCSS, Focus Groups for Kosovo Security Barometer, 2017, 2018.

Serbia would have nominally better prospects for economic development if no agreement has been reached. Nevertheless, the prospects for EU integration would be locked because the EU would not want to offer membership to a country with a territorial dispute. The nationalist narrative would prevail vis-à-vis developmental and rule of law related issues. Serbia's policy would be switched further towards East in having special bounds with China along with Russia. Its strategic re-orientation would potentially turn into a challenge for the EU in its near neighbourhood.

No agreement and formal subscription to status quo would not only translate into political and security stagnation but slide into regression. The nationalist sentiments would be increased in both frontiers that could potentially lead to following two backward scenarios (though not the only):

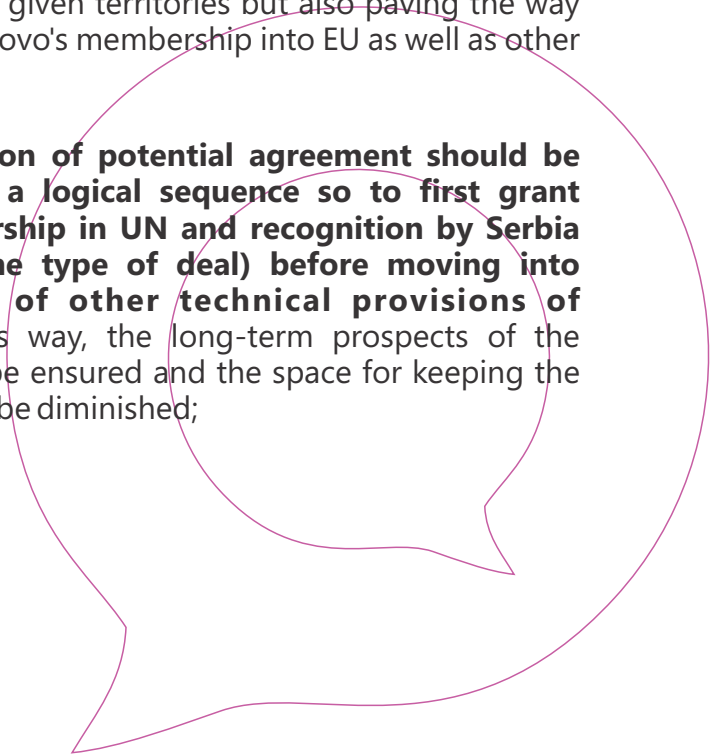
- Serbia attempts to militarily annex northern Kosovo in order to create new circumstance under the classic strategic advantage of "boots on the ground". This would provoke Pristina and potentially involve KFOR in confrontation though having in mind a diverse set of KFOR contingents it would unlikely engage to stop this scenario. It could have a spill over effect in not only Republika Srpska (BiH) but also in Western Macedonia;
 - Nationalist sentiment in Kosovo increases and the calls for confederation with Albania becomes formally part of vernacular among policymakers and elites in Kosovo. New political changes in Albania may bring in power elites reinforcing the idea of confederation by formally starting the consultation in the international level. Similarly, this idea would have also a spill over effect in Bosnia and Herzegovina and North Macedonia.
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Overall, the option of status quo or no agreement would be detrimental to both Kosovo and Serbia. This would have implications not only in the relations between Pristina and Belgrade but also regionally. It would be naïve to expect that no agreement would just mark no political progress: it would actually turn into a daunting regressive trajectory with severe implications for the life of citizens, inter-ethnic relations in the region and developmental prospects. This option would be beneficial only to nationalist circles in both Serbia and Kosovo but also would serve the narrative of dozens of intellectuals in both sides who believe that time would work for them respectively. It may also serve the interest of non-western circles trying to weaken and spoil the investments of Western countries in the region in the last three decades.

Conclusions and Recommendations

Resolving the dispute between Kosovo and Serbia is an outmost precondition for peace and prosperity in the Western Balkans. Failure to find a solution would be detrimental to the EU's security interests in the region, lead to weakened states and deterioration of rule of law. Migration waves amid a growing disappointment with a lack of resolution of the conflict, is one potential outcome. The EU's emerging agency as a conflict manager would also be under question, having failed to resolve disputes on its courtyard. In order to reach the strategic end, both countries should be flexible in reaching a compromise. The momentum that has been re-brought recently should be utilised extensively whereas the facilitators – the EU and US – should invest unequivocally their political and economic capital in simultaneously pushing forward an agreement and also being ready to deliver incentives. The future steps in the coming months should have in mind the following principles and preconditions which are framed into recommendations:

- 1> **The option of no agreement should be avoided by all means** due to its severe effects in the stability, prosperity and security in the Western Balkans. The facilitators of the dialogue should invest a significant bulk of their political and economic weight so to make the parties reach agreement that would, in all counts, be highly more beneficial than no agreement;
- 2> **The final text of the agreement should, by no means, adhere the methodology of constructive ambiguity.** Any attempt to frame its provisions ambiguously would have daunting implications in terms of its implementation. Parties should not be given space for interpretation and contestation in a such complex setting. Upcoming generations should not be vested the burden of mistakes especially for agreement reached in a time of peace;
- 3> **Any agreement should lead, among others, to a border being demarcated between Kosovo and Serbia.** This would be a precondition not only for respective exercise of sovereignty in their given territories but also paving the way for Serbia's and Kosovo's membership into EU as well as other organisations;
- 4> **The implementation of potential agreement should be directed through a logical sequence so to first grant Kosovo a membership in UN and recognition by Serbia (depending on the type of deal) before moving into implementation of other technical provisions of agreement.** In this way, the long-term prospects of the agreement would be ensured and the space for keeping the dispute alive would be diminished;



- 5> The **internal arrangements for further guarantees for Serbs in an agreed format (ex. Association of Serbian Municipalities)** should have in mind the extent to which its **powers and scope could be used or misused to the detriment of majority Kosovo Albanians**. The provisions pertaining this arrangement should exclusively pay attention on the issue of potential dysfunctionality that it may cause in Kosovo system;
- 6> The agreement should be explicit that **parties will refrain from use of force**. It should be clear that none of the parties shall be engaged directly or encourage others to block or work to the detriment of other party;
- 7> The final agreement has to be **overseen by an international authority** solely designed for the purpose of scrutinising its implementation. This authority should be provided a date – preferably no later than 3 years – to oversee the implementation of its provisions in a l sequence as mentioned above.
- 8> **Serbia would be conditioned in implementing its part of agreement in the context of EU integration** whereas **Kosovo's conditionality on the cultural autonomy for Serbs in Kosovo could be conditioned in the context of membership in Council of Europe**.



BALKAN DIALOGUES

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INTERNATIONAL SYSTEM FOLLOWING
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