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KOSOVO-SERBIA DIALOGUE: FROM BRUSSELS TO OHRID

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Abstract: *The EU-facilitated dialogue between Kosovo and Serbia, from its inception until today, has not realized the anticipated expectations and specified goals. Despite more than a decade of diverse engagement approaches by the involved parties, the situation remained precarious. The disputing parties persisted in their respective demands. Conversely, the facilitator/mediator primarily adhered to abstractly proclaimed declarations concerning integration perspectives rather than formulating instruments, measures, and strategies that could be imperative for a final settlement. The Russian aggression in Ukraine further complicated the dialogue, elevating the significance of geopolitics in the process. This paper aims to offer insights into the Kosovo-Serbia dialogue, emphasizing key factors and circumstances crucial for stability and the EU integration of the Balkans. The Franco-German proposal, recognized as an official EU document, holds particular importance. To achieve the paper's objectives, the authors employed the methods of legal analysis, teleological analysis, description analysis, logical analysis, and comparative analysis.*

Keywords: *Agreement; Mediation; Facilitation; EU; Proposal; Kosovo; Serbia*

INTRODUCTION

The International Court of Justice (ICJ) in 2010 issued an advisory opinion regarding the Kosovo Declaration of Independence, by which, among others, was stated that the Kosovo Declaration of Independence did not violate international law. After the ICJ advisory opinion, the UN adopted a resolution that opened the door for a dialogue between Kosovo and Serbia, which was thought to contribute to the normalization of reports between these two states. The Republic of Kosovo entered into dialogue with Serbia in order to respect the accepted obligations derived from UN Resolution A/RES/64/298, adopted on September 9, 2010. This resolution recognized the advisory opinion of the International Court of Justice regarding the Kosovo Declaration of Independence with international law. The EU managed to influence the UN General Assembly to include the EU request in the resolution so the EU would facilitate negotiations between Kosovo and Serbia to normalize relationships between these two states and help them progress in their path towards EU membership (ASHAK 2020). In order to succeed in this, “for both Serbia and Kosovo, mediation came ahead of the beginning of accession talks, with Serbia being offered the beginning of negotiations as the main reward, while Kosovo was offered a Stabilization and Association Agreement” (Bieber 2015).

In this regard, EEAS Councilor Robert Cooper initially facilitated the dialogue at the senior officials’ level from March 2011 to March 2012. From October 2012, the dialogue was facilitated at the high political level by the EU High Representative for Foreign Affairs and Security Policy/Vice-President of the Commission Catherine Ashton (October 2012-November 2014) and Federica Mogherini (November 2014-December 2019) (Belgrade-Pristina Dialogue 2022).

From the beginning until now, the Kosovo-Serbia dialogue has been accompanied by many ups and downs, and its result has always been difficult to foresee. As explained below, the dialogue started differently from the international practice, where “parties first reach a legally binding agreement” (Balkans Policy Research Groups 2017, 14). Furthermore, only after that do they begin to negotiate other vital issues in a practical sense. This was not the case with the Kosovo-Serbia dialogue. Parties entered into the process of negotiations with opposite goals. Kosovo entered the dialogue as an independent state recognized by leading world democracies. Serbia entered into the dialogue, refusing to treat Kosovo as a state. EU welcomed authorization to facilitate the process, even though it had no clearly defined tracks, tools, or strategies to lead to a final agreement. Each of the subjects of the dialogue held its understanding of themes. Kosovo showed official commitment to enter into the dialogue, and this was confirmed by the Kosovo Parliament, which adopted a “Resolution for normalization of relations between the Republic of Kosovo and the Republic of Serbia” on October 18, 2012. This resolution underlined that “the results of dialogue should be in accordance with Kosovo sovereignty, its international subjectivity, its territorial integrity and constitutional system of Kosovo” (Resolution No. 04-R-08). The resolution also determined that the attitudes that achieved agreements had to be ratified in respective parliaments.

LEGALLY BINDING AGREEMENT WITH MUTUAL RECOGNITION OF PARTIES: LAND SWAPPING AND NORMALIZATION OF RELATIONS

The goals of the dialogue between Kosovo and Serbia were never clearly defined by either party or the facilitator. They were not explicitly formulated or stated. Various issues were discussed during the dialogue, ranging from the integration of the Serb minority into Kosovo institutions to the development of peace and democracy and even the possibility of a legally binding agreement with recognition at its core or land swapping. Kosovo representatives initially entered the dialogue to seek mutual recognition from Serbia, while Serbian representatives consistently opposed this and declared that Serbia would never recognize Kosovo.

Throughout the dialogue, there were instances of turmoil, primarily in Kosovo and, to a lesser extent, in Serbia. The 2013 Agreement and the Agreement on General Principles of Establishing an Association of Serb Majority Municipalities, which were reached between Kosovo and Serbia on 25 August 2015, as well as the proposals for land swaps or border corrections, were issues that faced significant opposition from the general public and led to the downfall of several Kosovo governments.

The European Union (EU) endorsed a more abstract formulation of provisions that allowed for different interpretations, contributing to the ongoing challenges and complexities of the dialogue.

Ms. Mogherini, in a letter to the Prime Minister of Kosovo, stated that the Association of Serb Majority Municipalities (ASM) would not possess any executive power. This communication occurred long after the Agreement was signed and after strong reactions were witnessed in Kosovo. However, when the topic of land swap began to emerge in various meetings, Ms. Mogherini’s opposition to the idea was not explicitly expressed. Statements such as “we approve whatever parties agree in the field” were made by influential figures from the international community, indirectly suggesting support for the idea.

Due to these ambiguities and lack of clear definition, the dialogue experienced short and prolonged interruptions. However, on April 2, 2020, Miroslav Lajčák was appointed the EU Special

Representative for the Belgrade–Pristina dialogue and other Western Balkan regional issues (EUSR). Initially, his mandate was set for 12 months, until March 31, 2021. Lajčák’s appointment was seen as a positive step towards revitalizing the dialogue. In July 2020, after a 20-month break, the dialogue resumed following Kosovo’s partial lifting of tariffs (Stanicek 2021). The mandate of the EU Special Representative was established as follows:

(a) As regards the core of the mandate, to facilitate on behalf of the HR the Belgrade–Pristina Dialogue in close coordination with the Member States, to work on the comprehensive normalization of relations between Serbia and Kosovo through the conclusion of a legally binding agreement that addresses all outstanding issues between the parties in accordance with international law and contributes to regional stability, and to monitor and assist as necessary the work of the parties on the implementation of past agreements reached within the framework of the EU-facilitated dialogue (Council Decision (CFSP) 2020/489, 2 April 2020).

Numerous analyses conducted by academics and various political or diplomatic entities, both at the local and international levels, have led to several general conclusions regarding the Kosovo–Serbia dialogue:

- The initial stages of the dialogue were beneficial, bringing some positive outcomes.
- However, the dialogue has not resulted in a final agreement between the parties involved.
- Over more than ten years, the dialogue has encountered increasing difficulties and challenges compared to its early stages.
- The mediator or facilitator of the dialogue was not adequately prepared and did not possess full authority to impose potential solutions, primarily due to the absence of appropriate mechanisms.
- Both parties, in different ways, have shown a lack of willingness and ability to reach a comprehensive agreement.

These conclusions reflect the overall assessment of the dialogue’s progress and the challenges faced throughout its course. It highlights the need for further analysis and efforts to address the underlying issues and obstacles to achieve a comprehensive and lasting agreement.

The dialogue held in Brussels did not succeed in resolving the dispute between Kosovo and Serbia. However, it did establish channels of communication and address certain specific issues. Belgrade and Pristina now face various choices regarding their relations, and each has advantages and disadvantages. The international community, as Miroslav Lajcak stated, “is looking for a win-win solution” (Jelisavac 2023, 1).

METHODOLOGY

This paper utilizes a combined methodology, incorporating the following methods:

- Teleological analysis: This method is employed to interpret legal norms and resources, seeking to implement goals derived from the constitution and other legal sources.
- Legal analysis: The legal analysis method analyzes legal resources such as jurisdiction, constitution, statutes, conventions, and laws. It aims to comprehend, draw conclusions, and summarize these legal resources.
- Description analysis: The description analysis method observes acts and activities during the dialogue and analyzes specific actions and activities.
- Logical analysis: The logical analysis method is used to draw conclusions based on the rules of logic. It involves interpreting legal acts based on articles and interpreting judgments provided by the Constitutional Court.
- Comparative analysis: The comparative analysis method is utilized to compare the viewpoints and opinions of authors, as well as the attitudes of states. This method also involves examining practical examples, sometimes through historical comparisons.

AMBIGUITIES: TECHNICAL OR POLITICAL DIALOGUE

Florian Bieber (2015), citing Glaurdic and Richard Kaplan, notes, "The European Union has a considerable record of mediating in former Yugoslavia, although not always marked by success. In the 1990s, its efforts in the region largely failed - characterized by a lack of EU instruments, a lack of unity, and a lack of enforcement mechanisms and experience" (p. 7). Bieber (2015) further cites Glaurdic who stated that "in the 1990s, its efforts in the region largely failed - characterized by a lack of EU instruments, a lack of unity, and a lack of enforcement mechanisms and experience" (p. 7). Unfortunately, the lack of instruments, unity, and enforcement mechanisms continues to plague the Kosovo-Serbia dialogue today. Additionally, most signed agreements are characterized by a lack of clarity regarding their legal nature, either incomplete in standardized forms or lacking clarity regarding authorship. Furthermore, non-authorized persons have signed many agreements according to positive legislation or lack implementation mechanisms (Akademia e Shkencave dhe e Arteve e Kosovës 2020).

Nonetheless, during the entire dialogue, 38 agreements were achieved. Some were barely implemented, some were partly implemented, some were obstructed, and some had significant ambiguities. Indeed, the entire process may be treated as ambiguous - ambiguities in terms of the parties' intentions, ambiguity in the content, and ambiguity in the role the facilitator/mediator played in the dialogue process (Rahmani and Belegu 2023).

A technical dialogue turned into a political dialogue, and between October 2012 and June 2013, the negotiations shifted to a higher level, with the participation of the prime ministers of Kosovo and Serbia, Hashim Thaçi and Ivica Dačić, respectively. The first tangible agreement in December foresaw the establishment of liaison officers who would act as representatives of the two countries in their respective EU missions. While Kosovo treated this agreement as the equivalent of establishing diplomatic relations and assigned a former ambassador to the post, Serbia appointed a junior official without a diplomatic background (Bieber 2015, 21; KIPRED 2013, 1-24).

Some authors assert that countries in the dispute (Kosovo and Serbia) reached 38 agreements, while others claim 39, and so on. Broadly interpreted, all perspectives may be valid. However, the truth is that not all of them can be treated as agreements in the sense of the law on treaties. In general, there are agreements, revisions of agreements, modifications, plans for implementation, and more. The most controversial agreement signed between the two parties is the First Agreement of Principles Governing the Normalization of Relations (for establishing the Association of Municipalities with a Serb majority). This agreement emphasizes the ambiguity of the EU as the facilitator. Concerning the parties of the agreement, the term "party" is replaced with "sides", and the formulation of Kosovo's obligation for the Association/Community of Serb municipalities is very abstract, leading to potential misconceptions and various interpretations over the years.

It also resulted in several consequences for the mediation process, as it prevented the signing of formal agreements and treaties. Such formal agreements would have implied that both parties had equal status or that the agreement was legally binding. As noted by Nikolas Gvosdev, the agreement drew "on the time-honored principle of 'don't ask, don't tell', [leaving aside] these crucial status issues" (Bieber 2015). The agreement comprises 15 articles (First Agreement of Principles 2022). From these 15 articles, 6 pertain to the issue of the Association/Community of Serb-majority municipalities. Since its signing, this agreement has remained the "Achilles' heel" for all Kosovo governments. None of the governments had the courage or a clear strategy on how to implement it. Governments collapsed because of the Association/Community of Serb-majority municipalities (ASM). In many aspects, the Kosovo Constitutional Court found that the ASM is not following the constitution. This agreement was ratified by the Kosovo Parliament with the majority of votes, whereas "The Serbian Assembly accepted the government report on the agreement, with 174 of the 250 members voting in favor. The Assembly did not ratify the agreement, which would have implied its international nature, a position Serbia continues to reject" (Bieber 2015). It is worth analyzing and understanding how both sides of the same agreement did not bear the same duties. The Kosovo Parliament ratified the same agreement that the Serbian Parliament did not ratify. Almost in the same line, the Serbian Constitutional Court "rejected a petition by opposition MPs to assess the constitutionality of the Brussels Agreement, arguing that it was neither an international agreement nor legally binding domestically but, rather, a political document, which does not determine the final status of Kosovo" (Bieber 2015).

On the other hand, the Kosovo Constitutional Court addressed this agreement. Kosovo's imperative to engage in the dialogue was more pronounced compared to Serbia's. This was due, among other reasons, to Kosovo's isolation, the impossibility of membership in international organizations, a lack of perspective, the absence of cooperation with the West, a limited potential for Kosovo's progress, and, ultimately, the non-implementation of aspirations expressed by the constitution for Euro-Atlantic integrations. Kosovo ratified agreements that were generally not supported. In addition to this, Professor Austin was correct when he emphasized as follows:

(...) loaded with a big number of agreements, many are asked about why Kosovo has signed a lot of bad agreements. First, elite has not an appropriate quality to negotiate. Second, governments hire and employ family members and party militants who are terribly unqualified. Third, and this is what is believed by majority that presented indictments and accusations, means that they will be doing all what

they are told to be doing by the international community, even then when these requests [by the international community] are directly against the state interests of Kosovo (Austin 2021, 295).

As mentioned, the pressure to achieve the agreement stemmed from the interests of the parties and the EU's desire to achieve facilitation/mediation results. However, whether creative or not, ambiguity did not contribute to reaching the objectives. As Nikolas Gvosdev notes, "The strength of [the] agreement, however, is also its weakness. For it to work, all sides will have to accept certain fictions" (Bieber 2015). Hence, the agreement was signed, but the parties acted differently. When difficulties arose, especially regarding the agreement's implementation, international pressure was oriented towards Kosovo. Clarifying the ambiguity was attempted as a letter to convince Kosovo to be a party to the agreement. This was exemplified by the letter sent to Kosovo's prime minister by Federica Mogherini, where she underlined:

In the context of our discussions on the establishment of the Association/Community of Serbian majority municipalities, I would like to confirm that it is the EU's understanding that the Association/Community - in accordance with the first agreement and Kosovo law - will not constitute a third level of government and will not have executive powers (Mogherini 2015).

This letter goes precisely in line with what Nikola Gvosdev stated. The strength of the Agreement lies in its weakness, and the parties accepted fictions. Why Ms. Mogherini did not raise this during the discussions before signing it is a question that requires no further explanation.

THE PERSPECTIVES

When the dialogue began, it "started differently from international practice, where parties initially achieve an agreement, principle legally binding and then continue to negotiate technical and practical issues along with their implementation. In these negotiations, something else happened" (Balkans Policy Research Groups 2017, 15). It was interrupted. It restarted, but it never concluded with outcomes. Russian aggression in Ukraine influenced the EU's approach regarding the dialogue and its objectives. Russian aggression homogenized the democratic opinion of the West to face the political and economic consequences of this war. The Balkans were fragile even before the war; hence, it remains a concern for the EU, US, and NATO, even though dynamics changed. It was continually stated that the future of the Western Balkans belongs to the EU. This was witnessed in the Thessaloniki Summit in 2003, and this sentiment was reiterated in the Athens Summit held just recently. If an analysis of these declarations is carried out, even a superficial one, it will be found that within these ten years, only one country managed to become an EU Member State. The other countries remain candidates or countries that still lack explicit guarantees for their secure and rapid integration. In the context of the integration of the Western Balkans, it should be noted that geopolitics played a significant role. In 2003, the wars in the territories of former Yugoslavia ended (the last one occurred in the Republic of Macedonia in 2001). The US was occupied with the wars in Afghanistan and Iraq, while the EU had the necessary vision that the stabilization of Europe meant EU integration for all of the southeast part of Europe (Surroi 2023).

Back to the dialogue, in the meantime, a proposal was presented to the parties in the dispute, which was agreed upon in Brussels. However, after a very short time, one party expressed unwillingness to accept it and showed no readiness to implement it. In the overall context, and especially in recent developments (including this proposal), doubts about the objectivity and neutrality of the EU have increased, both within Kosovo and outside Kosovo. Thus, a few weeks ago, an influential group of politicians (European and US) wrote a letter requesting changes in the approach to the Kosovo-Serbia dialogue. The lack of pressure in Serbia was criticized in this letter. They state that the current approach is not functioning, and they add that “the international community should learn from our past and ensure we do not adopt a Belgrade-centered policy for the Balkans” (O’Carroll 2023). In the letter, signed by US Sen. Bob Menendez, chair of the Senate Foreign Relations Committee, and his counterparts in Germany, the UK, Ukraine, and other countries, the lawmakers said US and European Union negotiators were not putting enough pressure on Serbian President Aleksandar Vucic. The signatories include Bob Menendez, the chair of the US Senate Foreign Relations Committee; Michael Roth, chair of the Foreign Affairs Committee of the German Bundestag; and Alicia Kearns, the chair of the UK’s Foreign Affairs Committee, along with politicians from the Czech Republic, Ukraine, Ireland, Lithuania, Estonia and Iceland (The Guardian/Associated Press 2023).

THE EUROPEAN PROPOSAL

After numerous proposals and ideas from various institutions, both official and unofficial, including non-papers, etc., a proposal known as the Franco-German proposal became the official European document intended for implementation by Kosovo and Serbia. It was agreed upon in Brussels and was expected, among other things, to be signed in Ohrid in March 2023. The “European proposal” envisions a similar model for the normalization of relations between Belgrade and Pristina, as provided in:

The Basic Treaty signed by the Federal Republic of Germany (FRG) and the German Democratic Republic (GDR) in 1972, and it was already mentioned as a possible model in the initial phase of the normalisation process (2011-2013). The FRG never recognised the GDR as an independent state under international law, but it accepted that the GDR acted *de facto* like a sovereign state. In international law, ‘*de facto*’ refers to a state of affairs that is generally accepted as valid, even though it has not been formally recognised under international law (*de jure*) (Vulović 2023, 2).

While the EU and the US representatives took the stage and proclaimed the agreement accepted, mixed signals came from the Serbian representatives, who highlighted that nothing was signed and that only the implementation steps were agreed upon, but that is yet to be seen what the results will be. That stance led to several acts that can be seen as a breach of the agreement, including the withdrawal of the representatives of the Serbian community from the local elections held in Kosovo to delegitimize the process. Furthermore, voted against the beginning of the procedure of Kosovo becoming a member of the Council of Europe, which is in direct conflict with the article of the European agreement on the normalization process and the fact that Serbia should

refrain from any attempts to prevent Kosovo to become a member of international organizations. On the other side, Pristina representatives have still not started any process on the establishment of the self-government mechanisms for the Serb community, which was presented as a red line for Belgrade and a prerequisite for any further compromises within the normalization process (Vladislavljjev 2023, 1).

The Franco-German proposal, endorsed - but not signed - by Serbian President Vucic and Kosovo Prime Minister Kurti in Ohrid on March 18, 2023, "offered a roadmap towards the normalization of relations while calling on both parties to engage in a number of confidence-building steps. Yet, while the aftermath of the Ohrid verbal agreement demanded a focus on rebuilding trust, both parties have instead engaged in actions that do the exact opposite" (Mucznik 2023, 1).

Based on international law on treaties, categorizing the Franco-German proposal is problematic. It does not fit the classic definition of an agreement between two states to be classified as a bilateral agreement. Nor is it something that can be unequivocally categorized as a legal treaty. However, theory and international practice teach us that agreements, whether signed or not, have produced effects and even duties for states. It is evident that bilateral agreements produce legal effects, but when non-implementation occurs, customary law will be applied (Kolb 2017; Berridge 2020; Bajrami 2018; Puto 2010; Merrils 2017).

On the other hand, the EU has officially announced that this proposal is an official document, even though it was not signed. Thus, this agreement is a document that carries binding power for parties, and the parties, since its agreement, are treating it differently. As soon as the Ohrid meeting was over, one party to the agreement declared that this was not binding for Serbia since it was not signed or even thought to be signed. The other party considered the agreement a good basis to be discussed in its totality and, after that, implemented. Meanwhile, the facilitator/mediator holds an unbalanced attitude. Professor Weller (2023), in this context, says:

It proves that the dialogue is being led by the current EU Facilitator in an extremely unbalanced way, as much as it endangers the continuation of the process. By accommodating Serbia's refusal to sign the Brussels Basic Agreement of February 27, 2023, the process seems to focus only on issues that the Republic of Serbia wants to discuss and that require sacrifices from the Republic of Kosovo (p. 1).

However, an explanation related to the nature of this proposal, even superficial, should be given. The EU formalized this as an official document based on the literature and international practice. When/if this is done, the document has binding power for parties. The party that refuses to implement it shall bear consequences. The party that has shown commitment to accept it should start with the implementation, which, in a way, would be an advantage. The well-known principle *argumentum ad implentium non est adimplendum* is a good guide for this case. Kosovo should commence with implementing duties that derive from the accepted proposal, and there is no need for any delay in implementation. By doing so, Kosovo will gain the advantage of asking for reciprocity. In line with this, by fulfilling duties from the document, Kosovo will be in a better position to require EU actions. This will show respect for the principle *pacta sunt servanda*.

Serbian officials continually declare that this agreement (European proposal) does not obligate Serbia, as Serbia will not sign agreements due to its non-recognition of the state of Kosovo, etc.

However, the same officials seem to forget they have indeed signed agreements with Kosovo. Additionally, they request the implementation of a signed agreement reached in 2013, displaying a double standard and a selective approach. This is similar to the double standards regarding the position it holds related to the Russian aggression in Ukraine.

Returning to the Ohrid agreement, Serbia asks for the implementation of Article 7, which deals with the issue of self-management of the Serb community. Again, the only issue raised is the issue of the Association/Community of Serb Municipalities (ASM) issue. Article 7 of the European proposal is, again, either a creative or destructive ambiguity, depending on the interpretation.

Why is there a request to implement an agreement deemed unconstitutional by the Kosovo Constitutional Court? Why design an article (Article 7) if those issues are parts of the 2013 agreement? Why request the implementation of an agreement on one side and declare that Kosovo is not asked to implement something against its constitution on the other side? Why isn't it made clear to Serbia that the agreements are binding for both parties, etc.? Many other unanswered questions may be raised when we return to the European proposal; obviously, article seven leaves room for interpretation. However, an appropriate solution may be available if dealt with carefully. A solution might come from the known *lex posterior derogat legi priori* principle.

In dealing with Article 7, Kosovo may act according to this principle. Along these lines, Kosovo shall take concrete steps to create an association of major Serb municipalities in full compliance with its constitution and alignment with the international community's requests. This means that parts of the 2013 agreement will be taken to be implemented as part of the obligations derived from the European proposal. When this is done, neither party will have the right to oppose this action and solution. These potential activities by Kosovo will demonstrate a willingness to resolve the dispute with Serbia.

In contrast, the European proposal may only serve as a path leading toward the desired final decision, which would be easier if the issue of mutual recognition is in place. Serbian President Aleksandar Vucic said "an easy fix" would be recognition but added that he would not do it (Gashi and Novaković 2020, 6). Given the attitude held by official Serbian politics, a simple question may arise: Why engage in dialogue and efforts when the outcome is known beforehand? For years, the international community asserted that the dispute would be resolved with a comprehensive agreement involving mutual recognition. Now, we are posed with the attitude of the United States supporting a solution with recognition. On the other hand, the European Union supports an agreement that concludes the conflict but does not explicitly mention recognition, mostly because five of its members do not recognize Kosovo" (Gashi and Novaković 2020, 6).

If the issue of mutual recognition continues to be postponed for a more opportune time, that better time may come too late. It cannot be foreseen. Creative ambiguity will not be a solution to the Kosovo-Serbia dispute. If the Kosovo-Serbia dispute is not resolved with a comprehensive, legally binding agreement that includes recognition as a fundamental part of the agreement, then the dialogue could potentially lead to a similar situation observed in the Oslo talks between Palestine and Israel. In that case, we would be faced with destructive ambiguity, which was rightly presented in a report as follows:

The problem with mutual recognition within the Oslo Process was that it contained 'destructive ambiguity'. This ambiguity masked large gaps in each side's conceptualization of what mutual recognition meant in practice. Rather than

providing reassurance that the zero-sum game was over, 'destructive ambiguity' heightened the sense of threat to the core objectives of both sides and thus contributed to the development of a 'spiral of insecurity' based on mutual suspicion rather than mutual trust (Rynhold 2009, 49).

Since its Declaration of Independence, Kosovo has been recognized by 115 states. This is a well-known fact that should not be neglected. Contrarily, aside from this fact, the dialogue in almost all phases seemed like a dialogue before Kosovo's independence. The West "generally ignores Serbia's transgressions, such as its campaign that has convinced at least 15 countries to 'revoke' their recognition of Kosovo, its purchase of sanctioned weapons from Russia, or its growing authoritarianism" (Kushi 2021). The European proposal (Franco-German) in Article 4 states the following: "The Parties proceed on the assumption that neither of the two can represent the other in the international sphere or act on its behalf [and] Serbia will not object to Kosovo's membership in any international organization" (Belgrade-Pristina Dialogue 2023).

Unfortunately, this article, a principle even before, has not been respected by Serbia in all dialogue phases. Having shown the commitment to respect the European proposal by acting based on the principle *argumentum inadimplenti non est adimplendum*, Kosovo should always loudly make this known and ask for reciprocity, which they should respect.

CONCLUSION

The EU and all European states found themselves unprepared and without a clear strategy for dealing with new crises that may aggravate at any time. Like in many other crises, this organization enters, becomes involved, and prepares responses only after the problems appear. Geopolitically, despite being strong enough and having significant resources, it lacks a clear power to impact or impose solutions.

Concerning the efforts of the EU in the Kosovo-Serbia dispute, they are not deemed adequate and appropriate. In some aspects, parties are not being treated equally. The stick-and-carrot approach is not balanced, with sticks being more directed at Kosovo and carrots mainly at Serbia. The neutrality regarding Kosovo's status itself makes the dialogue more difficult. As the organization has not convinced the five EU Member States to recognize Kosovo, this weakens the EU's authority in Kosovo and beyond.

The parties to the dispute are unprepared to implement the Franco-German proposal fully. Serbia has not demonstrated any readiness to sign, indicating that it will be prepared to implement only selected parts. Kosovo has shown readiness to accept the proposal, treating it as a good basis for further phases of negotiations. The EU has not clarified how to enforce the proposal to the parties, even though it was considered an official document. Serbia conditioned everything by creating the Association/Community of Serb Municipalities (ASM) based on the 2013 agreement.

In contrast, Kosovo has expressed readiness to draft a statute of ASM based on the Kosovo Constitution, the Constitutional Court decision regarding the agreement, etc., but not as conditioned by Serbia. The EU remained in the form of declarations without being able to impose the implementation.

The EU should undergo internal changes and not act solely as a firefighter when the situation worsens. It should refrain from maintaining a neutral stance regarding the statehood of Kosovo. Furthermore, EU institutions should engage more in convincing the five EU Member States that still hesitate to recognize Kosovo as an independent state. The policy of stabilitocracy should be avoided because it has shown that in the Balkans, it does not achieve the expected results. Dealing with stabilitocracy indirectly gives more space to autocracy and autocrats. The EU should avoid dealing with creative ambiguity since, in the circumstances of the Balkans, it may turn into destructive ambiguity. Regardless of the dangerous situation with the war in Ukraine, the Kosovo-Serbia dialogue should be resolved without drawing a connection between the conflicts. Only a comprehensive agreement with mutual recognition will prevent other malign influences. Most states in the Western Balkans are oriented towards NATO and the EU. Only one state may be on the opposite side (adhering to measures). Concrete steps of implementation should accompany declarations. Concrete instruments to obligate parties should be implemented, and there should be no alternatives for an unbalanced approach.

CRediT AUTHOR STATEMENT

Bashkim Rrahmani: Conceptualization, methodology, writing - original draft.

Petrit Bushi: Provided materials and literature research and assisted in drafting the article.

Flamur Gashi: Edited and assisted in drafting the article.

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