

The Potential and Limits of the European Union as a Mediator in the Dialogue Between Serbia and Kosovo*

by Vladimir Medović



ABSTRACT

The dispute between Serbia and Kosovo over the status of the latter has the potential to destabilise other European states, including EU member states, which have unresolved ethnic, national minority or religious issues. The European Union has been acting as a facilitator of dialogue between Serbia and Kosovo since 2011. Both countries have a European perspective. Serbia is a candidate country while Kosovo is still a potential candidate for EU membership. The EU has made use of political, legal and financial instruments to shape its relations with the parties and has relied on the principle of conditionality, linking progress in the association and accession process with progress in the dialogue on normalisation of relations between the two. However, this strategy has shown certain limits. The EU's contribution as a facilitator of dialogue has been affected by internal divisions among the EU member states over the recognition of Kosovo's independence and by differences between EU institutions on the status of this country.

European Union | EU enlargement | Serbia | Kosovo | United States | Recognition | Normalisation of relations

keywords

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Both the European External Action Service and the Union delegations – and hence the European Union's diplomatic institutional machinery – remain largely unknown to the public. Yet, the European Union not only has a worldwide network of more than 140 'embassies', but at the same time it has assumed 'state-like' functions on the basis of the adoption of diplomatic rules that were originally created for states only. Many **challenges** do remain, but the deep and wide legal and policy powers – and the sheer size and universal network – of the European Union also offer **opportunities** that remain as of yet untapped.

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Introduction

The European Union has sought with mixed results to settle territorial disputes in the Western Balkans since the break-up of former Yugoslavia. The status of Kosovo*,¹ whose Assembly unilaterally declared independence on 17 February 2008, is the last and probably the most complex unresolved issue arising from the wars of the 1990s.

This issue has implications not only for its potential to provoke new conflicts in the region, but also for the stability of the same EU, given that both Serbia and Kosovo are on the path to joining the European Union. In addition, there are member states with unresolved tensions with separatist movements, chief amongst which in Spain as the central government's strained relations with Catalonia attest. It is not by chance that only twenty-two out of twenty-seven EU member states have recognised Kosovo's independence, while five member states have refused to do so.² The lack of unanimity is problematic since only if all member states in the Council vote in favour of Kosovo's application for membership can this country be granted candidate status. For all these reasons, Kosovo is one of the EU foreign policy priorities.³ In September 2020, the High Representative of the EU for Foreign Affairs, Josep Borrell, stated that the normalisation of relations between Kosovo

¹ The designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo* declaration on independence.

² The EU member states that do not recognise Kosovo's independence are Spain, Slovakia, Greece, Romania and Cyprus.

³ Andrew Grey, "Borrell to Visit Kosovo First as EU Foreign Policy Chief", in *Politico*, 7 October 2019, <https://www.politico.eu/?p=1203664>.

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and Serbia was a test for the EU to show that it is able to solve problems in the neighbourhood. He also said that “if we [the EU] don’t stabilise the Balkans, it’s going to be very difficult to be considered a geopolitical power. Because nobody else will do it – only the Europeans”.⁴

The key question is whether the European Union is capable of carrying out this task. In principle, the EU has political, legal and financial instruments to fulfil it. However, there are internal constraints and limits which prevent the EU from fully using these instruments effectively. In this paper, while acknowledging the efforts made so far by the EU, I will focus on such constraints and limits.⁵

1. International mandate

The EU’s role as a mediator between Serbia and Kosovo has a clear international mandate. It is based on UN resolutions and legally binding agreements between the European Union, Serbia and Kosovo. More specifically, the EU’s mandate is founded on a UN General Assembly Resolution of 10 September 2010.⁶ The resolution acknowledged the advisory opinion of the International Court of Justice of 22 July 2010, requested by the same UN body, in which it was recognised that the unilateral declaration of independence by the provisional institutions of self-government in Kosovo did not violate any applicable rule of international law.⁷ In its resolution, the UN General Assembly welcomed the readiness of the European Union to facilitate a process of dialogue between Serbia and Kosovo since this

⁴ Michael Peel and Ben Hall, “EU’s Neighbourhood ‘Engulfed in Flames’, Warns Foreign Policy Chief”, in *Financial Times*, 13 September 2020, <https://www.ft.com/content/aeab4c81-50d3-4aaa-9bf1-e6593b394047>.

⁵ For a general outlook on the accession of Western Balkan countries to the EU, see, for instance, Marko Kmezić, “Recalibrating the EU’s Approach to the Western Balkans”, in *European View*, Vol. 19, No. 1 (April 2020), p. 54-61, <https://doi.org/10.1177/1781685820913655>; Edilira Titini, “Western Balkans Accession to the European Union, Intertwined Interests”, in *Academic Journal of Interdisciplinary Studies*, Vol. 3, No. 3 (June 2014), p. 406-409, <https://doi.org/10.5901/ajis.2014.v3n3p406>; Jelica Minić et al., “The Future of the EU and the Western Balkans – A View from Serbia”, in *Foreign Policy Papers*, No. 03/2016, <https://library.fes.de/pdf-files/bueros/belgrad/12943.pdf>; Mark Heemskerk, “Bringing Europe to the Western Balkans: The Europeanisation of Croatia and Serbia Compared”, in *EU Diplomacy Papers*, No. 06/2020, https://www.coleurope.eu/sites/default/files/research-paper/edp_6-2020_heemskerk_0.pdf; Jelica Minić (ed.), *Advocacy Strategy for the EU Integration of the Western Balkans. Guidelines*, Belgrade, European Movement in Serbia, September 2016, <https://wbc-rti.info/object/document/15428>; Lucia Vesnic-Alujevic, *European Integration of Western Balkans: From Reconciliation to European Future*, Brussels, Centre for European Studies, 2012, <https://www.martenscentre.eu/?p=3739>; Andi Hoxhaj, “The Rule of Law Initiative Towards the Western Balkans”, in *Hague Journal on the Rule of Law*, Vol. 13, No. 1 (April 2021), p. 143-172, <https://doi.org/10.1007/s40803-020-00148-w>.

⁶ UN General Assembly, *Request for an Advisory Opinion of the International Court of Justice on whether the Unilateral Declaration of Independence of Kosovo* Is in Accordance with International Law* (A/RES/64/298), 9 September 2010, <https://undocs.org/A/RES/64/298>.

⁷ International Court of Justice, *Advisory Opinion of 22 July 2010: Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo**, <https://www.icj-cij.org/en/case/141/advisory-opinions>.

would be crucial for peace, security and stability in the region. Ultimately, this dialogue was a means to promote cooperation and progress on the path to EU membership and to the improvement of people's lives.

In addition to its role as mediator, the EU is present in Kosovo through the European Union Rule of Law Mission (EULEX). This mission was launched in 2008 and is the largest civilian mission of the EU⁸ and is in line with UN Security Council Resolution 1244 (1999).⁹ The EU mission, whose mandate has been extended until 14 June 2023, undertakes monitoring activities and has limited executive functions.¹⁰ EULEX's objective is to assist Kosovan authorities in establishing sustainable and independent rule-of-law institutions.¹¹

2. Political instruments: The EU Negotiation Framework with Serbia

Political instruments are based on the fact that both Serbia and Kosovo* are on the path towards the EU. They are participants in the Stabilisation and Association Process (SAP).¹² The main goal of the SAP is political, economic and social stabilisation of the region of the Western Balkans, aiming to lead to EU membership. Serbia has been a candidate country since 2012 and started accession negotiations in January 2014. Kosovo has the status of potential candidate. Further progress in the accession process of Serbia and Kosovo is conditional, amongst other things, on progress in the normalisation of relations between the two.

⁸ Council of the European Union, *Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO*, http://data.europa.eu/eli/joint_action/2008/124/2021-06-03.

⁹ This resolution requested "the assistance of relevant international organisations, to establish an international civil presence in Kosovo". See Recital No. 1 of Council Joint Action 2008/124/CFSP, cit.

¹⁰ In accordance with Article 3 of amended Council Joint Action 2008/124/CFSP, EULEX shall: (a) monitor selected cases and trials in Kosovo's criminal and civil justice institutions [...] while respecting the independence of the judiciary, and facilitate contacts and monitor relevant meetings within regional cooperation on cases concerning war crimes, corruption and serious and organised crime; (b) provide operational support to the EU-facilitated dialogue, as necessary; (c) monitor, mentor and advise the Kosovo Correctional Service; (d) retain certain limited executive responsibilities in the areas of forensic medicine and police, including security operations and a residual Witness Protection Programme and the responsibility to ensure the maintenance and promotion of public order and security including, as necessary, through reversing or annulling operational decisions taken by the competent Kosovo authorities; [...] (f) cooperate with relevant EU agencies, judicial and law enforcement authorities of member states and third states in the execution of its mandate.

¹¹ Council of the European Union, *Council Decision (CFSP) 2021/904 of 3 June 2021 amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo...*, <http://data.europa.eu/eli/dec/2021/904/oj>.

¹² European Commission, *Stabilisation and Association Process for Countries of South-Eastern Europe – Bosnia and Herzegovina, Croatia, Federal Republic of Yugoslavia, Former Yugoslav Republic of Macedonia and Albania* (COM/99/235), 26 May 1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:51999DC0235>.

The European Union laid down the criteria and conditions for Serbia's membership in the EU Negotiation Framework adopted by the Council of the European Union on 17 December 2013.¹³ The Council made clear that "continued engagement, in line with the Stabilisation and Association Process conditionality, towards a visible and sustainable improvement in relations with Kosovo*" is one of the criteria for Serbia's membership in the EU.¹⁴

This process shall ensure that both can continue on their respective European paths, while avoiding that either can block the other in these efforts and should gradually lead to the comprehensive normalisation of relations between Serbia and Kosovo, in the form of a legally binding agreement by the end of Serbia's accession negotiations, with the prospect of both being able to fully exercise their rights and fulfil their responsibilities.¹⁵

Specifically, Serbia is expected to continuously:

- a) Implement in good faith all agreements reached in the dialogue with Kosovo;
- b) Fully respect the principles of inclusive regional cooperation;
- c) Resolve through dialogue and spirit of compromise other outstanding issues, on the basis of practical and sustainable solutions and cooperate on the necessary technical and legal matters with Kosovo;
- d) Cooperate effectively with EULEX and contribute actively to a full and unhindered execution by EULEX of its mandate throughout Kosovo.¹⁶

The issue of normalisation of relations with Kosovo is addressed under Chapter 35 ("Other issues") as a specific item.¹⁷ The mentioned chapter is one of the three priority chapters¹⁸ which determine the pace of accession negotiations. If progress in these chapters significantly lags behind progress in the negotiations overall, upon the proposal of the Commission, the Council may decide by qualified majority not to open and/or close other negotiating chapters until the issue is addressed.¹⁹

The very same conditions which are central to the Stabilisation and Association Process apply to Kosovo.

¹³ Council of the European Union, *General EU Position. Ministerial Meeting Opening the Intergovernmental Conference on the Accession of Serbia to the European Union* (AD 1/14) [Negotiation Framework], 9 January 2014, <http://data.consilium.europa.eu/doc/document/AD-1-2014-INIT/en/pdf>; Council of the European Union, *European Union Common Position, Chapter 35. Item 1: Other Issues and Normalisation of Relations between Serbia and Kosovo* (AD 12/15), 30 November 2015, <http://data.consilium.europa.eu/doc/document/AD-12-2015-INIT/en/pdf>.

¹⁴ Paragraph 23 of the Negotiation Framework.

¹⁵ *Ibid.*, p. 10.

¹⁶ *Ibid.* See, for instance, Vladimir Medović, *Pridruživanje Srbije Evropskoj uniji* (Association of Serbia to the European Union), Novi Sad, University Business Academy, 2016, p. 74-81.

¹⁷ Paragraph 23 of the Negotiation Framework.

¹⁸ Chapter 23: Judiciary and Fundamental Rights and Chapter 24: Justice, Freedom and Security.

¹⁹ Paragraphs 24 and 25 of the Negotiation Framework.

3. Legal instruments: The EU stabilisation and association agreements with Serbia and Kosovo

Serbia and Kosovo took on certain legal obligations towards the European Union with regard to the normalisation of mutual relations when they agreed to negotiate their stabilisation and association agreements with the EU.²⁰ Respect for international and regional peace and stability, the development of good neighbourly relations and regional cooperation are central to the Stabilisation and Association Process and represent the essential elements of the agreements.²¹ In the case of noncompliance with one of these essential elements, the EU may suspend all or part of the stabilisation and association agreements with Serbia and Kosovo.²² Moreover, both Serbia and Kosovo agreed to fully implement the Central European Free Trade Agreement signed in Bucharest on 19 December 2006 (CEFTA 2006).²³

Kosovo has also agreed to some specific legal obligations. It has committed itself to continuing engagement towards visible and sustainable improvement in relations with Serbia. This obligation also constitutes the essential element of the Stabilisation and Association Agreement with the EU. The process of normalisation of relations with Serbia will ensure that both countries can continue on their respective European paths, while avoiding that either can block the other in these efforts. The agreements should facilitate the gradual comprehensive normalisation of relations in the form of a legally binding agreement.²⁴ In the above framework, Kosovo will continuously:

- (a) implement in good faith all agreements reached in the dialogue with Serbia;
- (b) fully respect the principles of inclusive regional cooperation;
- (c) resolve through dialogue and a spirit of compromise other outstanding issues, on the basis of practical and sustainable solutions and cooperate on the necessary technical and legal matters with Serbia;

²⁰ *Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part*, signed on 29 April 2008 in Luxembourg, <https://eur-lex.europa.eu/eli/dec/2013/490/oj>. The agreement entered into force on 1 September 2013. *Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo*, of the other part*, signed on 27 October 2015 in Strasbourg, http://data.europa.eu/eli/agree_internation/2016/342/oj. The agreement entered into force on 1 April 2016.

²¹ Articles 2 and 5 of Stabilisation and Association Agreement between the EU and Serbia. Articles 3 and 7 of the Stabilisation and Association Agreements between the EU and Kosovo*.

²² Article 133 of the Stabilisation and Association Agreement between the EU and Serbia. Article 140 of the Stabilisation and Association Agreement between the EU and Kosovo*.

²³ Article 14 of the Stabilisation and Association Agreement between the EU and Serbia. Article 16 of the Stabilisation and Association Agreement between the EU and Kosovo*.

²⁴ See, for instance, Vladimir Medović, "Sporazum o stabilizaciji i pridruživanju između Evropske unije i Kosova" (Stabilisation and Association Agreement between the European Union and Kosovo), in *Revija za evropsko pravo*, Vol. 18, No 1 (2016), p. 5-68, <https://1drv.ms/b/s!AmAc-hMBKbKicHx7zKGHBTpLMOM>.

(d) cooperate effectively with the Common Security and Defence Policy mission while in place and contribute actively to a full and unhindered execution of its mandate throughout Kosovo.

4. Financial instruments

Finally, the EU has significant financial instruments at its disposal. The EU is Serbia and Kosovo's biggest trade partner and donor.²⁵ Financial assistance is provided through the EU's Instruments for Pre-Accession (IPA) which aims to help Serbia prepare for assuming and effectively implementing the obligations of its future membership in the EU.²⁶

Kosovo has received more than 2.3 billion euro in EU assistance since 1999, and close to 1 billion euro in support to international presence (EULEX and other EU and international missions in Kosovo) over the past 20 years.²⁷

The new Investment and Economic Package for the Western Balkans, which aims to spur the long-term economic recovery of the region, provides for an additional 9 billion euro of IPA funding for the period 2021–2027.²⁸

5. Early diplomatic successes

Technical dialogue between Serbia and Kosovo, under the auspices of the EU, started in March 2011. Early EU involvement proved to be successful. The EU linked progress in the association and accession process to that in the dialogue leading to the conclusion of technical agreements.

During 2011 and 2012, Serbia and Kosovo concluded several technical agreements in the following areas: cadastre, mutual recognition of university diplomas, customs issues, freedom of movement, licence plates, liaison officers, the representation

²⁵ Article 13 of the Stabilisation and Association Agreement between the EU and Kosovo*. The EU has donated more than 3.6 billion euro to Serbia over the past 18 years. The EU is also the biggest lender to Serbia, with more than 4.3 billion euro worth of loan agreements. See the website of the EU Delegation to Serbia: *EU Assistance to Serbia*, <https://europa.rs/eu-assistance-to-serbia/?lang=en>; and the website of the European Union in Kosovo, *Kosovo* and the EU*, https://eeas.europa.eu/delegations/kosovo/1387/kosovo-and-eu_en.

²⁶ Council of the European Union, *Council Regulation (EC) No. 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA)*, p. 81, <http://data.europa.eu/eli/reg/2006/1085/oj>; European Parliament and Council of the European Union, *Regulation (EU) No 231/2014 of 11 March 2014 establishing an Instrument for Pre-Accession Assistance (IPA II)*, p. 11, <http://data.europa.eu/eli/reg/2014/231/oj>.

²⁷ See above, footnote 25.

²⁸ European Parliament and Council of the European Union, *Regulation (EU) 2021/1529 of 15 September 2021 establishing the Instrument for Pre-Accession Assistance (IPA III)*, <http://data.europa.eu/eli/reg/2021/1529/oj>.

and participation of Kosovo in regional fora, and Integrated Border/Boundary Management (IBM) and joint crossing points.²⁹

As a reward for its constructive engagement in technical dialogue, Serbia was granted candidate status for EU membership on 1 March 2012.³⁰ However, the EU made the opening of accession negotiations subject to further, visible and sustainable, progress in the normalisation of relations with Kosovo. In the same year, the European Commission launched the Structured Dialogue on the rule of law and drafted a visa liberalisation roadmap for Kosovo in 2012.³¹ In October 2012, the European Commission published a feasibility study for a Stabilisation and Association Agreement with Kosovo.³² As in the case of Serbia, the opening of the negotiations for this agreement followed further progress in the normalisation of relations with Belgrade. It should be noted that progress in the association and accession process was linked to an increase in donations from pre-accession funds. This was an additional reward for Serbia and Kosovo. At the end of 2012, the stage was set for the next phase of dialogue between Serbia and Kosovo, which began in 2013.

The EU pushed for more comprehensive, political, agreements. As a result, in 2013 and 2015 Serbia and Kosovo signed the so called "Brussels agreements" that brought them closer to a final settlement. This phase saw the beginning of a "high level dialogue" chaired by the High Representative of the Union for Foreign Affairs and Security Policy (first Catherine Ashton and since late 2014 Federica Mogherini).

On 19 April 2013, representatives from Serbia and Kosovo signed the "First Agreement on Principles Governing the Normalisation of Relations".³³ The agreement provides for the integration of Serbian parallel institutions in the Kosovo legal system and the establishment of the Association of Serbian Municipalities in areas with a Serbian majority. Following this historic achievement, the European Council conclusions of 28 June 2013 gave the green light to the opening of accession negotiations with Serbia and that of the Stabilisation and Association Agreement with Kosovo.³⁴ As a result, negotiations with Kosovo started in October 2013 and the accession negotiations with Serbia began a few months later, on 21 January 2014.

²⁹ See, for instance, Aleksandar Kovačević, "Wider Context of the Belgrade-Pristina Technical Dialogue", in *European Western Balkans*, 19 July 2019, <https://europeanwesternbalkans.com/?p=32328>.

³⁰ European Council, *Serbia Is Granted EU Candidate Status* (EUCO 35/12), 1 March 2012, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/128445.pdf.

³¹ European Commission, *EU-Kosovo: Further Step to Consolidate Rule of Law*, 30 May 2012, https://ec.europa.eu/commission/presscorner/detail/en/MEMO_12_394.

³² European Commission, *On a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo** (COM/2012/602), 10 October 2012, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52012DC0602>.

³³ Kosovo and Serbia, *First Agreement on Principles Governing the Normalisation of Relations between Serbia and Kosovo**, Brussels, 19 April 2013, <https://www.srbija.gov.rs/cinjenice/en/120394>.

³⁴ European Council, *Conclusions* (EUCO 104/2/13 REV 2), Brussels, 28 June 2013, p. 12-13, <https://register.consilium.europa.eu/pdf/en/13/st00/st00104-re02.en13.pdf>.

A further development was the signing of the second Brussels agreement on the establishment of the Association of Serbian Municipalities, on the use of the bridge in Mitrovica and on telecommunications on 25 August 2015. In the same year, Serbia and Kosovo signed the so-called "Initial agreement on energy supplies".

As a reward, the EU signed the Stabilisation and Association Agreement with Kosovo* on 27 October 2015.³⁵ The Commission was also authorised to open several negotiation chapters in the accession negotiations with Serbia.

6. Lack of implementation of the agreements

While the conclusion of international agreements was a relatively smooth process, their implementation was much more difficult. The problems started immediately after the signing of the second Brussels agreement. In December 2015, Kosovo's constitutional court ruled that the Brussels agreements on the Association of Serbian Municipalities were contrary to the spirit of the Kosovan constitution. To date, Kosovo has not implemented the key part of these agreements. In addition, many of the Technical Dialogue agreements have not been fully implemented by one or by both parties (recognition of university diplomas, cadastre, licence plates, IBM, etc).³⁶

Tension further grew in the autumn of 2018 when Kosovo imposed a 100 per cent tariff on goods from Serbia and Bosnia and Herzegovina. This led to the suspension of the dialogue for almost two years. Kosovo's move breached the 2006 CEFTA and the Stabilisation and Association Agreement with the EU.³⁷ For its part, Serbia did not implement part of the IBM and crossing points agreement, which led to the suspension of EU funds in July 2018.³⁸

³⁵ Council of the European Union, *Council Decision (EU) 2015/1988 of 22 October 2015 on the Signing, on Behalf of the Union, of the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part*, <http://data.europa.eu/eli/dec/2015/1988/oj>.

³⁶ European Commission, *Serbia 2020 Report* (SWD/2020/352), 6 October 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020SC0352>; European Commission, *Kosovo* 2020 Report* (SWD/2020/356), 6 October 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020SC0356>.

³⁷ Article 5 CEFTA 2006 provides that no new custom duties on imports, charges having equivalent effect, and import duties of a fiscal nature shall be introduced, nor shall those already applied be increased, in trade between the parties as from the day preceding the signature of this Agreement. In addition, Article 8 provides that the parties shall abolish all customs duties on imports, all charges having equivalent effect, and all import duties of a fiscal nature in trade between the parties on the date of entry into force of this Agreement. According to Article 16 of the Stabilisation and Association Agreement, Kosovo* shall continue to implement CEFTA 2006.

³⁸ According to the Commission, Serbia did not engage constructively in starting the establishment of the permanent IBM crossing points on the Serbian side (Jarinje, Mucibabe, and Konculj). European Commission, *Serbia 2019 Report* (SWD/2019/219), 29 May 2019, p. 54, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019SC0219>.

Between 2018 and 2020, the EU, along with Germany and France, tried, without success, to restart the dialogue. The EU failed to take full advantage of the provisions of the Stabilisation and Association Agreement, including the power to suspend in full or in part the application of the Agreement. Such a political choice undermined the credibility of the EU as a facilitator of dialogue and the guardian of the agreements.

The EU's passivity made room for other international actors to step in. The United States tried to take the leading role in the dialogue between Serbia and Kosovo in 2019. Former US ambassador to Germany, Richard Grenell, was appointed special presidential envoy to the Serbia - Kosovo dialogue. With little or no coordination with the EU, the United States managed to restart the dialogue. The US's efforts resulted in the Agreement on the Normalization of Economic Relations, signed in Washington on 4 September 2020. In this document, Serbia and Kosovo agreed to implement some previously reached agreements, to join a "mini Schengen zone",³⁹ and work together with the US International Development Finance Corporation and Export-Import Bank (EXIM) on joint infrastructural projects, many of which had already been agreed within the framework of the German-led "Berlin process". The latter was an initiative taken by a group of EU member states led by Germany in 2014.⁴⁰ It was designed to achieve the following goals: a) the resolution of outstanding bilateral and internal issues; b) achieving reconciliation within and between the societies in the region; c) enhancing regional economic cooperation; d) laying the foundations for sustainable growth. Cooperation in these areas was expected to bring Serbia and Kosovo closer together.

These two countries also agreed to implement a one-year moratorium on Kosovo's application for membership in international organisations⁴¹ and Serbia's suspension of the de-recognition campaign.⁴²

The US-brokered deal included controversial elements, which are explained in greater detail below. For the time being, it is more important to note that the

³⁹ "Mini Schengen" regional cooperation initiative, modelled after the Schengen Agreement, was created by Serbia, Albania and North Macedonia in October 2019. "Mini Schengen" was renamed "Open Balkan" on 29 July 2021.

⁴⁰ "Berlin Process" is an initiative aimed at stepping up regional cooperation in the Western Balkans on specific projects and is taking place with the support of the European Commission, the EEAS, and international financial institutions. The EU member states involved in the Process are Austria, Croatia, France, Germany, Italy and Slovenia, and the United Kingdom. Annual summits are organised every year in one of the member states involved in the process. For more information, see the official website: <https://www.berlinprocess.de>.

⁴¹ Point 15 of the Agreement on the Normalization of Economic Relations signed in Washington on 4 September 2020.

⁴² In response to Kosovo's application for membership in international organisations, Serbia initiated a de-recognition campaign against Kosovo's statehood. As a result of that campaign, several African, Caribbean and Pacific states revoked recognition of Kosovo: Burundi, Central African Republic, Ghana, Comoros, Dominica, Guinea-Bissau, Grenada, Lesotho, Liberia, Madagascar, Palau, Papua New Guinea, Sao Tome and Principe, Solomon Islands, Suriname and Togo.

(apparent) success of the US in un-locking the blocked dialogue laid bare the structural weaknesses of the European Union as a diplomatic actor.

7. Structural weaknesses of the EU as a diplomatic actor

The main problem of the European Union relates to its inability to define and carry out a consistent policy towards Kosovo. First, there is no intra-EU consensus on the status of Kosovo. While twenty-two member states recognise Kosovo as an independent state, five – Cyprus, Greece, Romania, Slovakia and Spain – do not.

Second, the EU institutions also have different positions regarding the status of Kosovo. The European Parliament (EP) has endorsed its independence and has passed several resolutions calling on the five member states to recognise Kosovo.⁴³ This institution has recently taken the position that “recognition would be beneficial to the normalisation of relations between Kosovo and Serbia, would enhance and consolidate the stability of the region, and facilitate the EU integration of both states”.⁴⁴ On the other hand, the European Council, the Council and the Commission⁴⁵ pursue a policy of status neutrality. For example, the day after Kosovo unilaterally declared independence, the Council adopted a set of conclusions in which it took note of the declaration and left the decision on that matter to the member states.⁴⁶

As a result of the lack of consensus on this matter, the Stabilisation and Association Agreement with Kosovo was signed as an “EU only agreement” in contrast to other association and stabilisation agreements, which also involve the member states. Moreover, Article 2 of the Agreement expressly states that, “none of the terms, wording or definitions in this Agreement [...] constitute recognition of Kosovo* by

⁴³ European Parliament, *Resolution of 8 July 2010 on the European Integration Process of Kosovo* (P7_TA (2010) 0281), point 1, https://www.europarl.europa.eu/doceo/document/TA-7-2010-0281_EN.html; European Parliament, *Resolution of 29 November 2018 on the 2018 Commission Report on Kosovo* (P8_TA (2018) 0479), point 33, https://www.europarl.europa.eu/doceo/document/TA-8-2018-0479_EN.html; European Parliament, *Resolution of 25 March 2021 on the 2019-2020 Commission Reports on Kosovo* (P9_TA (2021) 0113), point 63, https://www.europarl.europa.eu/doceo/document/TA-9-2021-0113_EN.html.

⁴⁴ See Viola von Cramon-Taubadel, *Report on the 2019-2020 Commission Reports on Kosovo* (P9_TA (2021), A9-0031/2021), 3 March 2021, para. 63, https://www.europarl.europa.eu/doceo/document/A-9-2021-0031_EN.html.

⁴⁵ In all official documents, the Commission uses an asterisk and footnote (Kosovo*) to refer to the status neutral position on Kosovo. The asterisk refers to the following footnote: “This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence”. The asterisk is the result of the Brussels-negotiated Agreement on Regional Representation and Cooperation signed in Brussels in 2012. See, for example: European Commission, *Kosovo* 2021 Report* (SWD/2021/292/2), 19 October 2021, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021SC0292\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021SC0292(01)).

⁴⁶ Council of the European Union, *2851st Council Meeting External Relations - Conclusions* (6496/08), 18 February 2008, p. 7, https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/gena/98818.pdf.

the EU as an independent state nor does it constitute recognition by individual Member States of Kosovo* where they have not taken such step".⁴⁷

In 2019, France and Germany launched an initiative to restart the dialogue on an intergovernmental basis, which jeopardised the leading role of the EU High Representative. German Chancellor Angela Merkel and French President Emmanuel Macron jointly organised a summit of the Western Balkan leaders on 29 April 2019 in Berlin. By staging the summit outside the aegis of the EU, France and Germany were effectively upstaging Brussels. Although the EU High Representative Federica Mogherini was invited to the summit, she was given a bit part. She came under criticism for failing to break the impasse between Kosovo and Serbia, despite months of trying.⁴⁸ The summit was organised with the goal of resolving the conflict between Serbia and Kosovo over tariffs and restarting the dialogue. However, Kosovo refused to revoke the 100 per cent tariffs on Serbian goods. The summit ended with a vague promise by Serbian and Kosovo leaders that both countries would continue to work together to diffuse the existing situation. Another summit was scheduled for July 2019 in Paris. However, due to a lack of progress, the meeting was cancelled.

Two weeks after the Berlin summit, sensing a growing rift between Brussels and Berlin, Kosovo's Prime Minister Ramush Haradinaj asked for EU High Representative Federica Mogherini no longer to oversee the talks on the normalisation of relations between Serbia and Kosovo. He claimed that "under her guidance, the presidents of Kosovo and Serbia, as well as Albania's prime minister, had 'probably' negotiated a division of Kosovo".⁴⁹ Although she continued to act as mediator in the dialogue between Serbia and Kosovo, her position was seriously weakened.⁵⁰

⁴⁷ *Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo*, of the other part*, cit.

⁴⁸ EU High Representative Federica Mogherini was also criticised for embracing a plan that would allow for a so-called land swap, an exchange of territories along ethnic lines, between two countries. Matthew Karnitschnig, "Merkel's Balkan Breakdown", in *Politico*, 3 May 2019, <https://www.politico.eu/?p=1109843>. According to German media reports, Mogherini had not been initially officially invited to the summit. She still attended the talks but only because the President of the Commission, Jean-Claude Juncker, was unavailable. German broadcaster Deutsche Welle claimed that the German Chancellor Merkel was "extremely angry" at EU High Representative Mogherini over her support for a land swap. Nenad Kreizer and Darko Janjevic, "A Cold War Solution for Serbia and Kosovo", in *Deutsche Welle*, 29 April 2019, <https://p.dw.com/p/3Hc8U>. Such allegations were not substantiated. See below, footnote 49.

⁴⁹ Julija Simić, "Kosovo's Haradinaj Wants Mogherini Out of Dialogue with Belgrade", in *Euractiv Serbia*, 13 May 2019, <https://www.euractiv.com/?p=1339984>.

⁵⁰ Such allegations were not substantiated, though HR Mogherini was ambiguous on this issue. Speaking to reporters after a meeting of EU foreign ministers in Vienna on 31 August 2018, she said: "whatever outcome that is mutually agreed would get our support provided it is – as it is being discussed currently – in line with international law and with the European Union acquis". She also added: "European history is based on overcoming and preventing any idea of ethnically pure nation states. I hope this reassures everybody, who is getting nervous on ideas that are floating around". European External Action Service (EEAS), *Remarks by HR/VP Mogherini at the Press Conference following the Informal Meeting of Foreign Affairs Ministers (Gymnich)*, Vienna, 31 August 2018, <https://europa.eu/!FNy4fm>.

In these circumstances it is no wonder that the EU was unable to define a coherent approach to the tensions between Serbia and Kosovo and to react decisively when agreements were breached by both parties.

In order to resolve this problem, the EU followed the US example and on 3 April 2020 the Council appointed the Slovak politician and diplomat Miroslav Lajčák as EU Special Representative for Belgrade - Pristina dialogue and other Western Balkan issues. He had a mandate of twelve months. Lajčák's task was to achieve comprehensive normalisation of the relations between Serbia and Kosovo and to contribute to the consistency and effectiveness of EU action in the Western Balkans. In comparison to his US counterpart, the EU Special Representative has to carry out the delicate task of finding common ground between the member states on Kosovo, which requires great diplomatic skill.

The fulfilment of the Special Representative's mandate faces an important challenge. He has to ensure that any agreement between Serbia and Kosovo is in line with European values. Apart from the principles of democracy, respect of the rule of law and protection of fundamental freedoms and minority rights, it is not quite clear what this means in practice. So far, European values have only been mentioned in the context of prohibiting a change of borders between Serbia and Kosovo.⁵¹

The application of European values in the final agreement raises two questions. First, is it realistic to expect countries that have serious problems in applying European values internally to be able and willing to apply them in good faith in a final agreement on the comprehensive normalisation of mutual relations? Second, how does the application of European values fit into the plans and activities of other international actors? It is not certain that Russia, China and Turkey attach the same importance to these values as the EU does.

For some time, even the United States was open to a possible change of borders as part of a final settlement between Serbia and Kosovo, despite the opposition of the EU and some of its member states.⁵² The Washington agreement is an example of this more pragmatic, albeit problematic, approach. Although it unlocked the dialogue, the US asked the parties to agree on a number of foreign policy issues⁵³ related

⁵¹ At an informal meeting in Vienna on 31 August 2018, EU ministers voiced concern "about talk of potential border changes between Kosovo and Serbia, warning that it could destabilise the Balkans, a region still simmering with ethnic tensions". Georgi Gotev, "EU Ministers Wary of Kosovo-Serbia Border Changes", in *Euractiv*, 31 August 2018, <https://www.euractiv.com/?p=1266862>.

⁵² See, for instance, Open Society Foundations, *Belgrade and Prishtina. Dialogue about Dialogue*, Belgrade, 2020.

⁵³ Kosovo* and Serbia agreed to: diversify their energy supplies, prohibit the use of 5G equipment supplied from untrusted vendors in their communication networks, designate Hezbollah in its entirety as a terrorist organisation. In addition, Kosovo* and Israel agreed to mutually recognise each other. Serbia agreed to move its embassy from Tel Aviv to Jerusalem.

to the Israeli-Palestinian conflict, the use of a 5G network and the diversification of gas supplies away from Russia. Most importantly, the Washington agreement contributed to complicating the relationships of both Serbia and Kosovo with the EU, as parts of it directly contradict the EU Common Foreign and Security Policy (CFSP), such as the commitment to relocating embassies from Tel Aviv to Jerusalem.⁵⁴ It may be wondered whether it was appropriate for US diplomacy to step in without coordinating with the EU.

Greater synergies between the United States and the European Union in addressing the dispute would be desirable, bearing in mind that the EU should have the leading role in settling the conflict since both Kosovo and Serbia have a European perspective.

In a report issued by the Commission in October 2020, we understand that Kosovo has lifted the 100 per cent tariff on imports from Serbia and Bosnia and Herzegovina, which had been imposed in November 2018, as well as all reciprocity measures. The Commission stated that “this has allowed for a restoration in trade with Serbia and Bosnia and Herzegovina and for the resumption of the EU-facilitated Belgrade-Pristina dialogue”.⁵⁵

8. Options for a final agreement

So far, the EU Special Representative has managed to resume dialogue between Serbia and Kosovo, which is currently being conducted on two levels: at an expert and at a higher, political level. It remains uncertain, though, whether full normalisation of relations is possible.

Serbia and Kosovo have already concluded the Agreement on Principles Governing the Normalisation of Relations but have failed to implement it. A further problem should be stressed: as a consequence of the *stick and carrot approach* adopted by

⁵⁴ On 7 September 2020, European Commission spokesman Peter Stano said that the EU voiced “serious concern and regret” over Belgrade’s commitment to move its embassy in Israel to Jerusalem. He also said that the EU was still committed to the “two state solution” – under which Jerusalem would be the capital of Israel and the future Palestinian state. “In this context any diplomatic steps that could call into question the EU’s common position on Jerusalem are a matter of serious concern and regret”. See “EU Warns Serbia over Jerusalem Embassy Move”, in *Euractiv*, 7 September 2020, <https://www.euractiv.com/?p=1503302>. The EU also expressed regret over Kosovo’s decision to open an embassy in Jerusalem. HR Josep Borrell said on 19 November 2020 that “The question of Jerusalem is a final status issue. In line with the United Nations (UN) Security Council resolution 478 of 1980, which called on all UN members to move their embassies to Tel Aviv, all EU Member State embassies, as well as the EU Delegation to Israel, are located in Tel Aviv.” See European Parliament, *Answer given by High Representative/Vice-President Borrell on behalf of the European Commission to Parliamentary Question E-005098/2020*, 19 November 2020, https://www.europarl.europa.eu/doceo/document/E-9-2020-005098-ASW_EN.html. See also European Council, *Conclusions (EUCO 19/1/17 REV 1)*, 14 December 2017, p. 4, <https://www.consilium.europa.eu/media/32204/14-final-conclusions-rev1-en.pdf>.

⁵⁵ European Commission, *Kosovo* 2020 Report*, cit., p. 3.

the European Union throughout the dialogue, the representatives of Kosovo and Serbia have learned to view dialogue as a sort of transaction.⁵⁶ Both countries have expectations in return for concessions. Serbia expects an acceleration of the accession negotiations, and Kosovo is looking for visa liberalisation. But EU institutions may have run out of carrots. They are not in a position to make any promises because these are matters for the member states to decide. After Brexit, enlargement has been put on hold.⁵⁷ Furthermore, some member states are opposed to visa liberalisation for Kosovo because of problems of corruption, organised crime and illegal migration that beset it.⁵⁸ The EU has become a victim of its own policy of conditionality which produced good results in the first and second phase of the dialogue but has now exhausted its propulsive function.

Two scenarios as a result of the restored dialogue seem possible.

The first is that the European Union manages to broker a final deal. In this case, benchmarks for the implementation of the agreement will have to be set and the Union will need to effectively monitor this process. However, this is exactly what the European Union failed to do earlier. In addition, the Union would have to keep its own side of the bargain and offer a clear European perspective for Kosovo and Serbia. In this respect, the European Union must not make the same mistake it did in the case of North Macedonia. The latter was the first former Yugoslav republic to sign the Stabilisation and Association Agreement with the EU in 2001. It was awarded the status of candidate country in 2005. However, Greece blocked the opening of accession negotiations with Macedonia because of the dispute over its official name. The EU encouraged the Macedonian government to accept a compromise and to sign the Prespa agreement with Greece in June 2018, by which it renounced its official name of "Macedonia" and adopted the name "North Macedonia".⁵⁹ The Prespa agreement split public opinion in North Macedonia and Greece. The main argument of the Macedonian government was that the agreement had opened a European perspective for Macedonia. Yet, in October 2019, France blocked the start of the accession negotiations with Macedonia demanding reform of the accession process and in December 2020 Bulgaria opposed the opening of membership negotiations with North Macedonia. No doubt, the governments of Kosovo and Serbia learned the lessons from the Macedonian case. They will demand firmer guarantees from the European Union before deciding to make painful concessions

⁵⁶ See above, section 5: Early diplomatic successes.

⁵⁷ "Closer ties between the European Union and the countries of the Western Balkans, and their effective accession once the European Union has been reformed and made more effective and responsive for its Member States and candidate countries, will also make Europe more sovereign and more united". French Government, *Non-Paper. Reforming the European Union Accession Process*, November 2019, <https://www.politico.eu/wp-content/uploads/2019/11/Enlargement-nonpaper.pdf>.

⁵⁸ European Commission, *Kosovo* 2021 Report*, cit., p. 5-6.

⁵⁹ Greece and FYROM, *Final Agreement for the Settlement of the Differences as Described in the United Nations Security Council Resolutions 817 (1993) and 845 (1993), the Termination of Interim Accord of 1995, and the Establishment of a Strategic Partnership between the Parties*, signed in Prespa on 17 June 2018, <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280544ac1>.

and sign an agreement on the comprehensive normalisation of relations.

The second possible outcome of the dialogue is that the parties fail to reach an agreement. In this situation, the European Union will have two options. The first is to take a merit-based approach and assess which party was responsible for the failure of the dialogue. However, this may prove to be difficult bearing in mind the existing divisions among the member states. In addition, it could exacerbate the tensions between Serbia and Kosovo, which in turn may again attract the unwanted attention of other international actors. As a consequence, the region of the Western Balkans would become the permanent playground of geopolitical powers: Russia, China, Turkey. All these countries are already present in various forms (political, financial, cultural, religious) in the area. The second option is that the EU continues to act as a facilitator of technical agreements. In such a case, Serbia and Kosovo should be allowed to advance on the European path, depending on the fulfilment of the conditions and criteria for membership in the EU. The basic objection to this scenario is that the European Union does not want to import unresolved bilateral disputes, including territorial disputes or disputes over the legal status of a territory.⁶⁰ However, this objection is not quite justified. In the past, the EU admitted states with outstanding international disputes. Examples abound. In 1973, the United Kingdom joined the then European Economic Community (EEC) in spite of unsolved territorial problems in Northern Ireland and Gibraltar, which of course also involved two other member states, namely Ireland (which joined along with the United Kingdom) and Spain (a member since 1986), respectively. Greece became a member in 1981 although it had an ongoing dispute with Turkey over the Aegean Sea border. And, of course, Cyprus joined the Union in 2004 notwithstanding that it had just rejected a UN-devised plan to re-unify with Northern Cyprus, the Turkish part of the island. In most of these cases, membership in the EU eased tensions. In one case, Northern Ireland, being a member of the EU, might have contributed to the Good Friday agreement which was signed twenty-five years after its accession.⁶¹ There are no reasons why the same result could not be achieved in the case of Serbia and Kosovo. During the association and accession process, Serbia and Kosovo would gradually increase mutual trust through various regional initiatives sponsored by the European Union and the United States, such as the Berlin process and the mini-Schengen area.

⁶⁰ "There are still important bilateral disputes between countries in the region [Western Balkans] which remain to be solved. The EU will not accept to import these disputes and the instability they could entail. Definitive and binding solutions must be found and implemented before a country accedes." European Commission, *A Credible Enlargement Perspective for and Enhanced EU Engagement with Western Balkans* (COM/2018/65), 6 February 2018, p. 3, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0065>.

⁶¹ For example, the Good Friday Agreement on Northern Ireland, signed in Belfast on 10 April 1998.

Conclusion

Crises and wars in former Yugoslavia have always been a test for European diplomacy. One of the main challenges has been achieving unity among the member states with respect to the status of Kosovo.

The European Union should also reconsider its current strategy. The conditionality policy obviously has not produced the expected results in the final stage of the dialogue. The conclusion of the final agreement should not be a precondition for membership. It can be achieved as a result of membership. Instead, the Union should insist on the full application of European values: democracy, rule of law, observance of fundamental freedoms and minority rights. This is the prerequisite for reaching a sustainable agreement on a comprehensive normalisation of relations between Serbia and Kosovo.

In the new round of dialogue, the European Union should insist on the full implementation of the reached agreements. This would increase its credibility, strengthen the trust between the parties and create a favourable climate.⁶²

HR/VP Borrell's statement concerning the stakes for the European Union in the Balkans⁶³ was based on the wrong premise: the fundamental issue is not whether the Union will be a geopolitical power, but whether it will succeed in fulfilling its primary purpose – ensuring peace and prosperity in Europe.

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⁶² It appears that the EU Special Representative Lajčak has adopted such an approach by calling for the full implementation of the reached agreements. See "Lajčak: International Organizations Are 'Eyes and Ears' on Kosovo", in *European Western Balkans*, 14 October 2020, <https://europeanwesternbalkans.com/?p=39885>.

⁶³ "If we [EU] don't stabilise the Balkans, it's going to be very difficult to be considered a geopolitical power". See Michael Peel and Ben Hall, "EU's Neighbourhood 'Engulfed in Flames', Warns Foreign Policy Chief", cit.

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