

The EU, Kosovo and Serbia

The Quest for the Status

Andrej Semenov

The task of this paper is twofold. Firstly, it classifies and explores the three approaches to solving the conflict in Kosovo. The first approach, coined into the phrase ‘Kosovo as a unique case’, undermines academic debates revolving around Kosovo and it is of no use for scientific purposes. The second approach rests on the assumption that Serbia will eventually recognize Kosovo as a sovereign state in exchange for membership in the EU. However, there is no evidence for such a claim - quite the contrary, Kosovo remains an all-consuming issue for Serbs. The third approach states that Kosovo’s status will be of utmost importance only when Kosovo becomes fully ready for membership. This might have been the case prior to the Brussels Agreements; nevertheless, the agreements proved that even technical issues related to the improvement of Kosovars’ life cannot be achieved without touching upon the question of status. Secondly, this paper aims at setting prolegomenon for future discussions regarding the status. The formula runs as follows: Kosovo is to be independent of Serbia even if it means that Kosovo is not a sovereign country, and Serbia not to recognize Kosovo even if it means losing de facto and de jure authority over the region.

Keywords: European Enlargement, Kosovo Conflict, the West Balkans, Serbia

Introduction

After failing to impose itself as the ultimate power on its own turf during the conflict in 1999, the EU has since recognized its leverage and opportunity not only to facilitate peace, but also to create an environ-

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ment in which consensus can be reached. In October 2000, the citizens of Serbia decided to overthrow the regime of Slobodan Milosevic and elected a new democratic elite led by Zoran Djindjic, the president of Democratic Party (srb. *Demokratska Stranka - DS*), and Vojislav Kostunica, the leader of Democratic Party of Serbia (srb. *Demokratska Stranka Srbije - DSS*). Immediately after the election of the new government, the EU promised \$2 billion in reconstruction aid and \$300 million a year in aid over the next seven years.¹ This was the beginning of the process of Europeanization in Serbia, where the EU has been using a mechanism known as ‘reinforcement by reward’.² Increased European incentives did not give the expected results; while monetary incentives pushed the political elite towards the EU, primarily their standard of living, the process of normative transformation remained intangible. It seems that for the new political elite, governing Serbia has been more challenging than winning elections against Milosevic. Likewise, cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) turned out to be a stumbling block on the road to Europe. The cooperation with ICTY became obsolete once a new challenge started looming – Kosovo’s unilateral declaration of independence in 2008. The former trade Serbia faced – ‘membership in the EU for cooperation with ICTY’, has been replaced by ‘membership for recognition’. Along similar lines, the ‘stick and carrot’ strategy at the high political level had been accompanied with, and sometimes entirely replaced by, the idea of deconstructing a highly political question into technical issues. This comes as a natural consequence of the split that occurred among the members of the EU on the question of whether to recognize Kosovo or not. While the majority of the members recognised Kosovo, there were still the five states which decided to support Serbia due to their internal issues of similar nature. This division demands that the EU crosses the borders of its own comfort and seeks new methods and arguments in order to reach a consensus. The EU Member States have opted for the option to forge a united position on essential points regarding the future of the region but remain divided on the question of Kosovo’s status. This tactic brought remarkable results such as the Rule of Law Mission in Kosovo (EULEX) and the Brussels Agreements; nevertheless, the agreements on civil registry and cadaster, integrated boundary management and other agreements cannot be seen as a panacea for the Kosovo conflict. Even though technical agreements have

a spillover effect on sensitive political issues such as regional membership, this cannot overcome the major obstacle – the future status of Kosovo.

There are three approaches to tackling this issue: the first approach neglects the problem by introducing the thesis ‘Kosovo as a unique case’. The second approach, which assumes that Serbia is ready to trade Kosovo for membership in the EU, acknowledges the issue but assumes that time will water the problem down. The third approach acknowledges the existence of the problem and its solid structure, but reminds us that we still have several steps to take. Put differently, prior to the final settlement of the status of Kosovo, the region has to solve a variety of economic issues.

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Debates and Anti-Debates

In this section I will trace the history of the argument ‘Kosovo is a unique case’. In order to do so we need to be reminded of the four main debates across different fields on Kosovo. Each academic debate has been followed by anti-debate, an approach which is based upon loose argumentation aiming merely and primarily to undermine existing debates.

Ever since the dissolution of Yugoslavia, Kosovo has become a model employed in various fields of political theory, international relations, international law, ethics and philosophy. The complexity of the problem invites us to stop relying ruthlessly upon arguments from our own academic fields and to imagine ourselves as moral agents because Kosovo ‘has come to be a debate about ourselves, about what we hold as normal and what exceptional.’³ The case calls for participants to stray from their areas of comfort and utilize arguments from different academic fields. Therefore, rather than focusing on specific academic areas, the literature on Kosovo will be reviewed chronologically.

In the case of Kosovo, we find at least four major strands in literature. First, Kosovo has become the significant subject of scholarly research as the consequence of Yugoslav break-up. Before the internationalization of the case in 1999, Kosovo was studied mainly within the Yugoslavia’s specialist circles.⁴ Even though the crisis produced a number of meager writings as many authors never learnt the languages nor had any interest in the region prior to the conflict, this period produced

superb scholarship as well. One of the first attempts was to understand socio-historical ties between the region and the two nations.⁵ Second, owing to the NATO campaign against Yugoslavia outside the UN, based on the assumption of mass human rights violations, the question of legality and legitimacy of NATO's intervention in the internal affairs of Yugoslavia became the center of the dispute.⁶ This question contributed to the debate surrounding the use of military means against a sovereign state on the basis of mass human rights violations, but also contributed to the development of the framework of 'responsibility to protect' (R2P).⁷ The third debate revolved around the development of a sustainable international mission capable of managing the power vacuum and of subduing ethnic conflicts. In the early stage, the discussion revolved around the structure and mechanisms of a mission appropriate to regulate the conflict.⁸ In its mature phase, after the establishment of EULEX in 2008, the debate reflected on the role of the EU in mediating the conflict.⁹ The debate is partly the subject of this article with the difference that it neither sees the conflict as international nor as Serbia's internal question. The fourth debate appeared immediately after NATO's intervention but reached its culmination after Kosovo's unilateral declaration of independence: it concentrates on the 'national self-determination versus sovereignty' question and its implication of this dispute for the future status of the region.

This debate completes an important concept which looms in the background - the thesis of Kosovo as a unique case. Namely, each of the debates I have presented, have their 'anti-debates' which postulates that Kosovo cannot serve as a precedent for other cases. The thesis is nothing but dislocation from reality: when we face things that are inconsistent with our beliefs we attempt to dislocate those things. Due to space constraints, let me only indicate the logic of my argument. The persecution which is inconsistent with human rights and liberal values nourished by the USA is dislocated to Guantanamo. Arguing 'Kosovo is a unique case' represents a similar dislocation, although not geographical but logical. The idea abolishes the fact that the solution is applicable to other cases, i.e. it allows solutions which fall outside the domain of logic. It is worth emphasising a fairly obvious point here: each anti-debate has the same goal - to avoid contested views and pave the way for Kosovo's independence. The first anti-debate goes as follows: the uniqueness of Kosovo occurs because the region is the last piece of the final break-up of Yugoslavia.¹⁰ The second denies the debate on the

“use of military force versus sovereignty” by assuming legitimacy and legality of NATO intervention: ‘Kosovo is a unique situation, because NATO was forced to intervene in order to stop and then reverse ethnic cleansing... Those conditions do not pertain to any of the conflicts that are usually brought up in this context.’¹¹ The third anti-debate holds that Kosovo is a unique case on the grounds of unprecedented involvement of the UN:¹² Serbia does not exercise any governing authority over Kosovo, thus the ‘new reality’ is to be acknowledged.¹³ Needless to say, these concepts usually come from politicians supported by dubious interpretations of legal documents; nevertheless, a majority of scholars vigorously reject their arguments.¹⁴

The main consequence of the three anti-debates is, however, obstruction of the fourth debate – the status of Kosovo. Therefore, even despite the fact that the conflict in Kosovo received extensive coverage in the global press, there are surprisingly few large-scale scholarly publications regarding the future status and development of the political system in Kosovo. The literature falls into two strands: a number of scholars believe that Serbia will accept the loss of Kosovo for in exchange for EU membership,¹⁵ while others develop the view that the determination of Kosovo’s status cannot cure the deep economic, social and political crisis in the region.¹⁶ In the next section, we will see that there is no evidence to suggest that Serbia’s government would have accepted the membership for Kosovo trade; quite the contrary, Kosovo is still an all-consuming issue.

Serbia: Kosovo or Membership?

In this section I will tackle the second approach which states that if the EU pushes Serbia to choose between Kosovo and membership, Serbia will choose the latter. It is rather difficult (almost impossible) to oppose a hypothetical claim and prove that there is no evidence for something. Therefore, the main focus is on breaking the assumption that Serbia’s politics are inconsistent and chaotic (when it comes to Kosovo). Quite the contrary – Serbia drew the red line in the early days after democratic changes and that strategy has become the cornerstone of Serbia’s politics regarding Kosovo.

Once Milosevic was removed, the international community enthusiastically responded by lifting economic sanctions, providing aid, and creating a picture of a new Serbia. Overall, it seemed that nothing could

stop the processes of Europeanization and democratization. However, there was cooperation with the ICTY and Kosovo. While cooperation with the Hague tribunal (ICTY) divided the new democratic elite, a red line regarding Kosovo had been drawn at the very beginning. The new president Kostunica believed that Milosevic should not be investigated for war crimes, but rather for abuse of power and that he should face a domestic trial. On the other hand, Prime Minister Djindjic insisted that there was no time to waste and despite the fact that the Yugoslav Constitutional Court banned any extradition of Serbs to the ICTY, he arrested and extradited Milosevic to the tribunal in The Hague. This depicts the essence of the Djindjic-Kostunica problem: Kostunica favored reforms based on the rule of law while Djindjic wanted reforms by any means.¹⁷

Unlike the question of cooperation with the Hague tribunal, the issue of Kosovo did not divide the two leaders. Kostunica's view is uncontested among the experts; he insisted that Kosovo is part of Serbia, claiming that Kosovo's Albanians can get the widest possible autonomy but that talks regarding Kosovo's independence are unacceptable.¹⁸ On the other hand, many scholars take for granted the political mantra 'Djindjic saw Kosovo as de facto independent'¹⁹ and once faced with a choice between Kosovo and the EU, he would have chosen the European path. This approach is not only questionable, but has the potential to be highly dangerous. In his last interview, Djindjic emphasized the importance of dealing with Kosovo at the time, stressing that the final solution should neither be to make Kosovo a Serbian province as it was before 1999, nor an independent Kosovo.²⁰ This is a forerunner of Kostunica's red line for Kosovo coined into the phrase 'more than autonomy and less than independence'. Djindjic put forward the claim that the optimal solution might be a federation, where the Serbs would be constitutive people with their own institutions within the framework of common institutions.²¹ Along similar lines, Kostunica later proposed cantonization for Kosovo.²² This proposal implies the same idea as Djindjic's federation; Kosovo can be free to build democratic institutions while the Serbs would retain power in the places where they constitute a majority.

There is another idea which the international community found problematic but on which Djindjic and Kostunica had common ground – the link between the status of Kosovo and the secession of the Republika Srpska in Bosnia (RS) and Herzegovina:²³ 'Kostunica is

attempting to link the final status of Kosovo to the RS secession from Bosnia, which will result in continued Western frustration with the implementation of the Dayton Accords in Republika Srpska.²⁴ Djindjic also warned that: 'if it cannot be applied to Serbia what was signed in Dayton, that all the national communities got their collective status and that borders are unchangeable... if this does not apply to Serbia, I think it cannot be applied to anyone in future'.²⁵

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By observing the comparison between Djindjic and Kostunica, we can see that the two agreed when it came to questions of national importance. What Kostunica however lacked, a sense for political reality, Djindjic had - he prophetically predicted that the worst for Serbia would be that Kosovo becomes de facto independent but yet Serbia will have responsibility for it, which could be the major obstacle on the path to accession to the EU.²⁶ Further, one should admit that they opted for different approaches: while the Prime Minister (Djindjic) found that Serbia earned credit in the international community and thus it was the right time to start solving painful questions, the President (Kostunica) believed that Serbia's national question is not a matter of political trade but a subject of international law. Undoubtedly, Djindjic and Kostunica had enormous differences in their approach but they 'shared the same overall goals'.²⁷

First, they had clearly established the red line regarding Kosovo - that Serbia cannot recognize Kosovo as an independent state. Second, they believed that Serbia should be fully integrated into the EU if the EU acknowledges Serbia's national interests.

The assassination of Djindjic in 2003 and the election of Kostunica as the new prime minister in 2004 did not lead to any substantial change towards Kosovo and the EU. Indeed, Kostunica's government prepared the Resolution on the EU Association in October 2004, specifying that membership in the EU was 'an undeniable strategic goal' and that Serbia was 'fully prepared to fulfil all the preconditions necessary to speed up integration into the EU'.²⁸

Only a year after the Serbian National Assembly adopted the resolution, the EU reacted with great enthusiasm and reward - negotiations for the Stabilization and Association. However, Kostunica was left without Djindjic, who advocated investigations and extraditions to the Hague tribunal, and had all the power to do what he thought it was right to do - to stop cooperation with ICTY. Consequently, Serbia lost precious time on the path toward the EU.²⁹

Cooperation with ICTY, as the main challenge, became obsolete as the new obstacle started looming, in February 2008 Kosovo unilaterally declared independence just days after the EU had taken over the international role from UNMIK through its EULEX mission. Kostunica's government resigned and a new election was called for on 11 May. Kostunica's DSS was severely punished for the Kosovo failure, receiving only 12 percent of the vote. At the same time, Kostunica had realized that the politics 'Kosovo and the EU', created during the days of the Djindjic-Kostunica relationship, was unattainable. In a short period of time, DSS had turned over from an enthusiastically pro-European to a somewhat Eurosceptic nationalist party, basing its politics on anti-Western populism.

The new general elections launched a new strongman in Serbia – Boris Tadic. Tadic won the presidential elections against Tomislav Nikolic, a candidate from the Serbian Radical Party (srb. *Srpska Radikalna Stranka – SRS*), which were seen as a 'European Serbia versus Milosevic's Serbia' game.³⁰ In the parliamentary elections, Tadic's DS received 38% of the votes, while DSS 12% and the SRS 29%, which makes together 41% of the vote. Ivica Dacic, known as "Little Slobo", and his Socialist Party of Serbia (srb. *Socijalisticka Partija Srbije – SPS*) became the determining factor in forming the government. Eventually, Dacic successfully persuaded older party members³¹ and threw his 8% to the former Socialist's foes – DS, opting for the already well-established Kosovo and the EU politics. However, he recently confessed that his decision was made under pressure from Frank-Walter Steinmeier, German Minister for Foreign Affairs at the time.³² Dacic replaced Milosevic's populism, which combined nationalistic and communist principles with a new Euro-Serbian populism, with pure opportunism. But how can one explain the politics of Tadic and his DS? Tadic wanted to represent himself as a progressive and pro-European leader while 'using nationalistic platitudes whenever he felt his popularity threatened'³³ which turned the concept of 'Europe and Kosovo' into politics between fear and trembling. A full mouth of Serbia's full integration in the EU whilst being afraid to confront Kosovo Serbs, the Church and ultranationalists did not have any concrete result. The outcome came in November 2011, less than four years after Kostunica's big turn; the EU did not grant Serbia candidate status. The President claimed that Serbia refused to recognize Kosovo, which was one of the conditions for Serbia to obtain candidate status.³⁴ It had become clear to Tadic that politics

of the EU and Kosovo was unlikely and unrealistic, therefore Tadic and his DS based their next campaign upon the idea of 'Europe has no alternative'. We can say that this was a big turn for Tadic. Between the EU and Kosovo, unlike Kostunica, he had chosen the EU. The outcome was the same – the voters penalized Tadic's politics.

In the parliamentary elections of May 2012, Tadic lost the battle. His DS won 22%, The Serbian Progressive Party (srb. *Srpska Napredna Stranka* -SNS) reached 22%, and Dacic's socialists were to play kingmakers once again.³⁵ SNS was party established in 2008, after general elections as a result of a clash within the Radicals (SRS): Tomislav Nikolic and Aleksandar Vucic, the two faces from the 1990's (Vucic was the information minister whilst Nikolic was a man who criticized Milosevic for being too soft), realized that Vojislav Seselj's (president of SRS) rhetoric was obsolete. Seselj advised his party fellows not to give up on the concept of 'Greater Serbia' and to focus on developing an allegiance with Slavic and Orthodox countries.³⁶ However, Nikolic and Vucic, like many politicians before them, had recognized that the EU and Kosovo narrative paved the way to seizure of political power in Serbia. They put forward the claim that 'Serbia should be a bridge between the East and the West' and further stated that Kosovo is Serbia and will remain part of Serbia.³⁷ As the US Ambassador to Serbia at that time, Cameron Munter, noticed: 'In 2008 and 2009 they told me so; and I recall thinking that the 2008 vote was a choice for forward-to-Europe Boris [Tadic] vs. back-to-old-Serbia Toma [Nikolic], while the next vote would be Europe vs. Europe. And so it turned out in 2012. Both sides used the EU-and-Kosovo mantra...'³⁸

In the second round of the presidential elections in May 2012 (in the first round no candidate had over 50 percent), Nikolic won or, to be precise, Tadic lost: people voted against Tadic than for Nikolic's political vision.³⁹ It is worth emphasizing a surprising point here; Nikolic won the elections despite his controversial views such as the denial of the Srebrenica genocide.⁴⁰ The unexpected results in the presidential elections turned to be a milestone in Serbia's political life, Dacic justified his decision to support SNS but not DS this time with the reasoning that people chose SNS by electing Nikolic instead of Tadic. He further explained that the international community does not see Nikolic and SNS as anti-European anymore and that the new government does not mean going back to Milosevic's era.⁴¹ The newly elected president, Nikolic, paid his first visit abroad to Russia. Vladimir Putin stressed

that Russians firmly believe that Resolution 1244 must be implemented and expressed satisfaction that trade between Russia and Serbia increased by almost 50 percent in the last year. He concluded by saying that 'Serbia is not only our traditional, highly valued partner in the Balkans; we see Serbs as our spiritual brothers'.⁴² Nevertheless, Nikolic did not use this visit to make closer ties with Russians but rather to send a message to the European officials: 'Serbia is moving towards joining the EU. We will build our nation in accordance with the rules of the European Union. I have not heard that one of the conditions is that we must recognize the independence of Kosovo and Metohija'.⁴³

Nikolic clearly showed that Serbia's choice was to join the EU; equally important, he marked the red line when it comes to the recognition of Kosovo. The President and the new government continued exploiting the politics of 'Kosovo and the EU' although with one difference; this time, the government had really made a concrete move. The technical dialogue signed between Prishtina and Belgrade under EU mediation (known as the Brussels Agreement) has produced valuable compromises, among others – regional cooperation and representation, integrated boundary management, and a promise not to obstruct the other's path to the EU. The importance of the dialogue was twofold - on one hand, it relieves the life of people in Kosovo; on the other hand, it facilitates further political negotiations. The Brussels Agreement and Dacic's attempts to earn cheap political points have launched a new strongman – Aleksandar Vucic. In September 2011, Dacic said: 'Of course they [the EU] will not ask us to recognize Kosovo, but [the EU] will insist on recognition of the elements of statehood. They will ask us to abolish our institutions in northern Kosovo, to recognize customs as if it is a border. What is the difference?'⁴⁴ In March 2012, only two months before the elections, he went even further by saying that 'for 10 years, Kosovo was taboo. No one could officially tell the truth. Tales were told; lies were told that Kosovo is ours'.⁴⁵ In order to understand the real messages, the two statements need to be set in the correct context. The first statement was given when it was evident that Serbia was not going to make compromises in the Brussels negotiations when the new elections were approaching. Dacic relied on patriotic clichés to increase his popularity. He compared relations between Serbia and Kosovo with relations between Kosovo Serbs and Kosovo's institutions; he forgot that there is a fine difference between Serbia's rights and the rights of

Kosovo Serbs in Kosovo. From Serbia's perspective the Brussels Agreement is concerned with the rights of Serbs in the province. Obviously, a year later, Dacic recognized the difference and assured citizens that signing the Agreement does not imply recognition.⁴⁶ The second statement that Kosovo is not Serbian was followed with an explanation that 'the Serbian president cannot go to Kosovo, nor the prime minister, nor ministers, nor the police or army. Serbs can only leave Kosovo. That's how much Kosovo is ours and what our constitution and laws mean there.'⁴⁷ The art of this statement is that Dacic successfully sent a message to EU officials that he would cross the red line, but at the same time he softened it by using the ubiquitous cliché 'Kosovo is de facto not part of Serbia' for the domestic audience. In September 2012, several months after the elections, Dacic sent a new message offering a new solution: he claimed that the EU cannot force Serbia to recognize Kosovo, therefore, division of Kosovo is the only possible solution.⁴⁸ While Dacic had continued Tadic's politics between fear and trembling, being feared by his own voters and trembling in front of changes, Vucic has insisted that Kosovo is part of Serbia⁴⁹, reminding Serbs that the Brussels Agreement is not perfect but 'it is the only way for Serbia to survive, to exist and remain united in the search for a path to a better future'.⁵⁰ In the latest elections in April 2016 Vucic and his SNS won an absolute majority in parliament, therefore we can confidently conclude that Serbia is not going to change its position regarding Kosovo and the EU.

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The EU in Kosovo: Time for Status

Following the fact that the case of Kosovo cannot be expected to be solved by facing Serbia with a stark choice 'Kosovo or the EU' and cannot be seen as a unique case, this section explores the third approach – there are still several steps to make before the status becomes of utmost importance. It is my contention that the Brussels Conclusions have shown that even agreements aiming to improve the life of ordinary citizens cannot be fully realized when touching upon sensitive questions. On two occasions so far, the EU saw a very European issue as non-European and allowed others to arrange its own garden thus it is not a surprise that American-Russian relations have resulted in the ignominy of the Brussels administration.

Humiliation

On the 10th June 1999, almost three months after NATO's intervention, the UN Security Council passed Resolution 1244.⁵¹ The Interim Administration in Kosovo (UNMIK) and the NATO-led the Kosovo Force (KFOR) missions responsible for ensuring peace catastrophically failed: 230,000 Serbs and Roma immediately fled from Kosovo.⁵² Ironically, UNMIK and KFOR proved to be successful in protecting Serbs as much as the Serbian police were in protecting Albanians. The second wave of violence in March 2004, 'spurred by sensational and ultimately inaccurate reports that Serbs had been responsible for the drowning of three young Albanian children,'⁵³ signaled that UNMIK and KFOR lost their authority in Kosovo. Kofi Annan, at the time the UN Secretary-General, appointed Kai Eide to deliver a report on situation in Kosovo. Eide concluded that the UN 'leverage in Kosovo is diminishing' and the EU 'will have to pay the most prominent role in Kosovo'.⁵⁴ He further stressed the importance of integration of Kosovo and Serbia into European-Atlantic institutions and the necessity of status talks.⁵⁵ It became apparent that Kosovo was a European issue and that the EU had the highest leverage inasmuch both sides had opted for the European path.

The Security Council welcomed this recommendation and decided to 'start a political process to determine Kosovo's Future Status'.⁵⁶ Nevertheless, the power was still in the hands of the USA and Russia. Following the Council's recommendation, the Contact Group, composed of the USA, the UK, France, Germany, Italy, and Russia, delivered guiding principles for a settlement of the status of Kosovo: *inter alia*, the Group concluded that the future status should conform to European standards and values, while excluding the possibility of returning to the pre-1999 situation.⁵⁷ The Contact Group regularly met Martti Ahtisaari, who was soon afterwards appointed by the UN to oversee the process. He launched direct talks between Prishtina and Belgrade where it became evident that the two sides were not able to find common ground on the status issue.

A year later, Ahtisaari presented the final plan to Ban Ki-moon, the UN Secretary-General: besides a comprehensive plan regarding the structures and institutions, Ahtisaari proposed 'provisional independence'.⁵⁸ The UK, the USA, and France endorsed Kosovo's independence while Russia was against imposed solutions and demanded further negotiations. It very soon became apparent that new negotiations needed to be held, therefore the new process, on German suggestion, was

launched under three sides – the USA, the EU, and the Russian Federation. The process was best summarized by Glenny, an expert on South-eastern Europe:

For several months, both Russia and the us have in effect supported the maximalist demands of their chosen proxies in the Balkans: Serbia and Kosovo. This neutered the most recent negotiations of the US-EU-Russia troika, which were a last-ditch attempt to hammer out a compromise between Belgrade and Pristina... Neither side had any incentive to compromise, and the EU was exposed again as incapable of managing a political crisis in its own backyard, while its taxpayers will be compelled to clear up the resulting mess.⁵⁹

The conflict of Kosovo was a forgotten European issue which returned with vengeance as an imminent impediment to the EU's common policy. Instead of taking control over its soil, the EU allowed the USA and Russia to humiliate the Union.⁶⁰ The final act of this humiliation was Kosovo's unilateral declaration of independence on 17 February 2008. The EU ended up as an instrument of American and Russian machinations because they took even stronger positions than Albanians and Serbs themselves:⁶¹ as a result the EU was unscrupulously forced into an onerous challenge – to maintain a status neutral mission in Kosovo whilst its members were everything but neutral to Kosovo's status.⁶²

Kosovo as a European Issue

Just a day before the declaration was passed, the EULEX mission (the most ambitious and numerous EU mission outside the EU) had begun. Brussels did not have time to recover from the previous humiliation but already has faced legal chaos and rage of both ethnic groups.

For Kosovo Albanians, the EULEX was supposed to be an organ invited and welcomed to supervise the implementation of the Ahtisaari Plan,⁶³ nevertheless they very soon realized that because the EULEX operates under the UNMIK umbrella, the UNMIK maintains its executive and legislative authority in Kosovo under Resolution 1244. Thus 'circumstances on the ground due to Kosovo's declaration of independence merely limited UNMIK'S operational but not legal capacity.'⁶⁴ The UNMIK, and consequently the EULEX, are not compatible with Kosovo's status as an independent state as 'from the perspective of a Kosovo

constitutional law, UNMIK does not exist as an authority but merely as a historical fact.⁶⁵ This issue has open space for anti-European populism among Kosovo Albanians based on narratives that the EULEX legitimizes Serbia's demands; not only does it not recognize Kosovo's independence but it also exercises unlimited executive power.⁶⁶ This rhetoric came from a group named "Self-determination" (alb. Vetëvendosja), which organized a series of violent events against EULEX's personnel.⁶⁷ On the other hand, for Kosovo Serbs and Serbia, the EULEX cannot be a status-neutral mission as it operates under Resolution 1244, which guarantees Serbia's sovereignty over Kosovo. Furthermore, Kosovo Serbs saw the EULEX mission as a Western attempt to implement the Ahtisaari Plan without the UN Council, and it was no surprise that they reacted by firstly attacking⁶⁸ and then boycotting the international missions in Kosovo.⁶⁹

It was under these circumstances that the EU decided to take an active role and mediate between Kosovo and Serbia. On one side there was the EU, effectively pushed by the UN, and on the other were Kosovo and Serbia, which were driven exclusively by European integration. The result was the technical dialogue which has brought agreements on regional cooperation and representations, integrated border management, regulation of customs steps, return of cadastral records and civil registry, and recognition of university diplomas. The technical dialogue aimed to promote cooperation between Kosovo and Serbia, and to improve the lives of ordinary people.⁷⁰ Even though the agreed conclusions use technical language, they had a spillover effect on sensitive political issues such as the removal of barricades made by Kosovo Serbs and recognition of Prishtina's authority over the north of Kosovo. Undoubtedly, interim options can pave the way for a future solution; nevertheless, the implementation process has demonstrated that utilization of the agreements is a rather difficult task as the question of the status overshadows the process itself. The best illustration is the Agreement on Customs Stamps and Cadaster, which the Constitutional Court of Serbia proclaimed as unconstitutional. Consequently, the 'agreed conclusions' are not ratified by the Serbian parliament and therefore are not binding under international law. In other words, there is no guarantee that these agreements will be obeyed by a Serbian government in the future. If we add that Kosovo's opposition parties have perceived the agreements as harmful to Kosovo's sovereignty⁷¹ and that most of political statements on Kosovo are related to the sta-

tus of Kosovo,⁷² we can confidently conclude that the status is still an all-consuming issue.

To sum up, after the machinations performed by the USA and Russia, the EU was pushed to take responsibility for the conflict and its answer has been rather effective but one should not foster the illusion that reaching the agreements are a means in itself. Put bluntly, not only will full membership in the EU require the question of status to be solved, but even the idea of improving ordinary people's lives cannot prosper without prior settlement of the status.

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Conclusion

The unilateral declaration of independence has opened an interesting paradox. Under the UN administration, Kosovo was universally accepted; however, after the declaration that was no longer the case. At this point, Kosovo has operated under a supervised independence and such 'independence' is not compatible with EU norms. In other words, it seems that the declaration is the noose around the neck of Kosovo Albanians. As Ker-Lindsay and Economides conclude:

There is a good argument to be made that it should have simply continued in this format with indigenous Kosovo institutions gaining more and more authority, thereby replacing UN control in real terms and avoiding the problems that have now arisen. In this regard, the unilateral declaration of independence (UDI) has in fact created many more problems than it has solved.⁷³

In the same vein, the declaration has put the Serbian government between two fires. On one hand, the Serbs are aware that the current solution for Kosovo is nothing but recognition which will bring defined borders to the state.⁷⁴ On the other hand, recognition of the situation when the vast majority does not support such a decision would lead to further political instability.

Even though the situation looks demoralizing, there is a grey zone in which a solution can be found. Due to space constraints, let me only indicate the logic of the solution. Instead of merely focusing on Kosovo Albanians – independence and Serbs – sovereignty, we should turn their desire and wishes upside down. From the discussions above, we can see that Kosovo Albanians do not compromise when it comes to their independence regarding Serbia.

Put it differently, they strongly oppose Serbia's authority over the region and strongly advocate their independence from Serbia, nevertheless they obediently accept EU authority. Similarly, Serbia denies Kosovo as a sovereign state but has no illusion that it has lost jurisdiction over the region and again has no problem accepting the EU supervision in Kosovo.

Taking into account what was previously said, the solution has to satisfy the two criteria: (a) Kosovo to be independent from Serbia even if it means that Kosovo is not a sovereign state; (b) Serbia not to recognize Kosovo even if it means that Serbia will lose *de facto* and *de jure* authority over the region. What I have in mind is that Kosovo should acquire a special status within the EU where 28 members of the Union would share sovereignty over the region. Based on the fact that both nations see themselves with a European heritage and future, there is no doubt that European supervision is most welcome: what would further amplify the sense of belonging is that Kosovo should be regarded not merely as a supervised region but as a European patrimony. How does Kosovo as a European patrimony differ from Kosovo as a supervised independence? Kosovo's status would not be contested and Kosovo would be on a fast track to the EU, which is the main carrot for the citizens of Kosovo. In the same vein, losing Kosovo would be a tailwind for Serbia: firstly, that would permanently solve chapter 35, and secondly, joining the EU would automatically mean that Serbia regains authority over the province (although shared with other members).

Finally, finding a solution for the status means that future failures could be addressed to particular institutions. At a moment, Kosovo is in legal chaos: supervised by several civilian missions, peace is provided by NATO, while Kosovo Albanians possess *de facto* institutions of a sovereign state and Serbia claims *de jure* right over the province. Everyone's house is usually no one's house. Such a claim is best illustrated in the series of scandals related to the EULEX mission,⁷⁵ and more importantly in the exodus of young people from Kosovo.⁷⁶ We need to acknowledge the fact that if Europe does not come to Kosovo, Kosovars will come to Europe.



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*The EU
Kosovo
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