

# **FINALIZING AN OVERDUE PROCESS: KOSOVO-SERBIA RELATIONS CRUCIAL FOR A LONG TERM PEACE IN THE BALKANS**

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*Relations between Kosovo and Serbia remain one of the most heated and involving very complex issues in the Balkans region, having its impact in the security and cooperation between these two countries with ramifications on the whole region. As the relations between main global actors are at their lowest point in the post-cold war era, over the issues such as terrorism, trade quarrels, Syria, Ukraine (Crimea) etc., it is prematurely shifting the attention of global players from the Balkans region, thus allowing for the normalization of the relations to drag on for years with a possibility of the process going backwards. Global actors, especially the EU and the US with their integration and financial perspectives and incentives, need to be involved closely in the full normalization of relations in the region until the closure of the processes between Kosovo and Serbia, as well as in the whole region. They are called here the stakeholders of the process, making their stance very important. Different approaches regarding a final solution between Kosovo and Serbia seem to take headlines in political as well as academic circles such as preservation of the status quo, border changes / swapping of territories and normalization of relations in continuity of the EU facilitated dialogue. This paper will discuss these three approaches followed by a SWOT analysis. The paper will give a brief introduction into the historical process leading to Kosovo's declaration of independence, which is very important for the projection of the future of Kosovo-Serbia relations, and analyze current solutions.*

## **The declaration of independence, international community and normalization of relations**

Kosovo came to be a state as a result of the bloody dissolution of the former Socialist Federal Republic of Yugoslavia (SFRY) and followed by a huge humanitarian crisis during the 1997-1999 conflict that prompted NATO to react through air strikes in a 78 days' campaign, starting on 24 March 1999. Kosovo and Serb representatives failed to reach a deal during the negotiations held in Rambouillet France, during January and February of 1999 while the conflict was waging on the grounds. This was the first time that Kosovo and Serbia attempted more

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seriously to negotiate a lasting deal under international mediation. The final proposal placed on the table was accepted by Kosovo but refused by Serbian side claiming that it undermined its sovereignty over Kosovo. The Rambouillet proposal foresaw a substantial autonomy for Kosovo as *modus vivendi* leaving the final status to be resolved at another time which would take under consideration, among others, the will of the people of Kosovo.<sup>1</sup>

The technical military agreement of 9 June 1999 ended NATO airstrikes which allowed the United Nations Security Council to enact Resolution 1244 setting the largest UN administration in one single country. The UNSC Resolution 1244 suspended the sovereignty of the then Federal Republic of Yugoslavia (later Union of Serbia and Montenegro and after Montenegro proclaimed independence Serbia), until the final political settlement of the status of Kosovo. The UNSC Resolution was open on the issue of the final status, thus did not exclude independence or any other solution for that matter as may be reached in the future.<sup>2</sup>

The second time that Kosovo Albanian and Serb representatives came together under the international mediation to discuss the final solution started in 2005 under the mediation of the former Finnish President, Marti Ahtisaari. Preceding this, the informal Contact Group for Balkans, composed of representatives from the USA, Russia, United Kingdom, France, Germany and Italy formulated earlier a document on guiding principles for the final resolution of the status of Kosovo. This document formulated 10 guiding principles but one of them comes ahead of the others as we are discussing the future of relations between Kosovo and Serbia. Principle number 6 states that *“There will be no changes in the current territory of Kosovo, i.e. no partition of Kosovo and no union of Kosovo with any country or part of any country. The territorial integrity and internal stability of regional neighbours will be fully respected.”*<sup>3</sup>

Ahtisaari and his team got their mandate from the UN Secretary General in November 2005 which specified that they bring the parties together with the view of finding a final solution. However the mandate stated that if the parties fail to find a common solution, then he would propose a final one specifying that the pace and the duration of the political talks would be determined by him. In February 2007, after 2 years of negotiations, Ahtisaari proposed independence for Kosovo, which would create, among others, an environment for the highest protection of human rights and would take concrete steps to promote community rights, in

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<sup>1</sup> For more on the Rambouillet Conference see Marc Welle, “The Rambouillet Conference on Kosovo”, *International Affairs* (Royal Institute of International Affairs), Vol 75, no. 2 (April 1999), pp. 211-251. See also Tim Judah, NATO deadline on peace deal in Kosovo”, *The Guardian*, last updated 7 February 1999, available at [https://www.chicagomanualofstyle.org/tools\\_citationguide/citation-guide-1.html](https://www.chicagomanualofstyle.org/tools_citationguide/citation-guide-1.html).

<sup>2</sup> See UNSC Resolution 1244, S/RES/1244 (1999), 10 June 1999, Art. 11.

<sup>3</sup> See Guiding Principles of the Contact Group for a settlement of the Status of Kosovo, European Stability Initiative, visited 27 August 2018, available at [https://www.esiweb.org/pdf/kosovo\\_Contact%20Group%20-%20Ten%20Guiding%20principles%20for%20Ahtisaari.pdf](https://www.esiweb.org/pdf/kosovo_Contact%20Group%20-%20Ten%20Guiding%20principles%20for%20Ahtisaari.pdf).

particular with specific provision on power sharing. As he specified in its report to the UNSC, this solution was proposed due to a history of enmity and mistrust that had long antagonized the relations between Albanians and Serbs.<sup>4</sup> Art. 1.8 of the Ahtisaari's proposal states that *"Kosovo shall have no territorial claims against, and shall seek no union with, any State or part of any State"*. Further, Annex VIII art. 3. 2. States that *"The territory of Kosovo shall be defined by the frontiers of the Socialist Autonomous Province of Kosovo within the Socialist Federal Republic of Yugoslavia as these frontiers stood on 31 December 1988..."*

Kosovo declared its independence on 17 February 2018 based on the Ahtisaari's proposal which obliges Kosovo to implement fully its provisions. Specifically Art. 8 of the Declaration states, among other things, that *"...Kosovo shall have its international borders as set forth in Annex VIII of the Ahtisaari Plan, and shall fully respect the sovereignty and territorial integrity of all our neighbors....."*<sup>5</sup>. Further, the Constitution of Kosovo is designed according to obligations placed by Ahtisaari's proposal and declaration of independence. Art. 1.1 of the Constitution of Kosovo states that *"The Republic of Kosovo is an independent, sovereign, democratic, unique and indivisible state."*<sup>6</sup>

Today, according to the Ministry of Foreign Affairs of Kosovo 116 countries worldwide have recognized Kosovo as an independent and sovereign state. This represents more than 60% of the UN member states. Out of 28 EU member states, 23 recognize Kosovo, while 25 out of 29 NATO member states recognize Kosovo.<sup>7</sup> Important countries in Europe and elsewhere remain opposed to recognizing Kosovo such as Russia, Brazil, India, China, Greece, Romania, Spain and Slovakia. Kosovo has become a member of many important international organizations such as the IMF, World Bank, EBRD, FIFA, UEFA etc. The highly required UN membership is still to come.

Despite the developments, Serbia still does not recognize Kosovo although it is engaged in the normalization of relations dialogue under the facilitation of the EU. With different approaches advanced lately by Kosovo as well as Serbian officials and also academic circles, it

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<sup>4</sup> See Letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council, S/2007/168, 26 March 2007, available at, <https://www.securitycouncilreport.org/atf/cf/%7b65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7d/Kosovo%20S2007%20168.pdf>.

<sup>5</sup> See Kosovo Declaration of Independence 17 February 2018 Art. 8, English version available at [https://www.assembly-kosova.org/common/docs/Dek\\_Pav\\_e.pdf](https://www.assembly-kosova.org/common/docs/Dek_Pav_e.pdf), and Comprehensive Proposal for the Status of Kosovo, Annex VIII, 2 February 2007 available at <https://www.kuvendikosoves.org/common/docs/Comprehensive%20Proposal%20.pdf>.

<sup>6</sup> See Constitution of the Republic of Kosovo, Kosovo Official Gazette no. K-09042008, last amendment published 13 March 2016, Art. 1.1, available at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>.

<sup>7</sup> For more see International Recognitions of the Republic of Kosovo, Ministry of Foreign Affairs, visited 30 August 2018, available at <http://www.mfa-ks.net/?page=2,224>.

leaves open as to how the future will look in this conundrum with possible ramification on the region.

## The future of Kosovo-Serbia relations

### I Preservation of the status quo

Preservation of the *status quo* may represent the least desired approach in an already prolonged solution. With the struggling economy, problems of state consolidation, weak rule of law, high level of corruption, this approach may prolong the transition period which would prevent the parties from focusing on issues relevant for prosperous future. It is highly likely that maintaining *status quo* could lead to further frustration of the people, especially in Kosovo, which may trigger unrest and popular uprising but also bringing hard line parties into power. In 2004, the frustration of Kosovo Albanians with the *status quo* incited uprising justified by drowning of three Kosovo Albanian children in the River Ibar in Mitrovica. It led to several individuals being killed and also destruction of private, public and religious property.<sup>8</sup>

The preservation of the *status quo* might have negative effect on an already ailing implementation of technical agreements reached between Kosovo and Serbia.<sup>9</sup> Also, very important here is the stance of global stakeholders in the process, the EU and the US, who are not keen to see the *status quo* reign for a long time.<sup>10</sup> EU HR Federica Mogherini reiterated their commitment for a final solution to be reached in the early 2019.<sup>11</sup> A prolonged *status quo* may lead to losing the momentum of the current dialogue and also hit the patience of global

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<sup>8</sup> For more see Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2004/348, 30 April 2004, available at [https://unmik.unmissions.org/sites/default/files/old\\_dnn/S-2004-348.pdf](https://unmik.unmissions.org/sites/default/files/old_dnn/S-2004-348.pdf). See also "Status Quo?", *the Economist*, 14 October 2004, visited on 30 August 2018, available at <https://www.economist.com/europe/2004/10/14/status-quo>.

<sup>9</sup> See documents and reports on technical dialogue agreements and their implementation available at Kosovo PM official website, visited 29 August 2018 <http://kryeministri-ks.net/en/documents-en/?kategoria=marreveshjet-e-dialogut-teknik&viti>.

<sup>10</sup> A report from the Columbia University Institute for the Study of Human Rights published on 5 September 2017 recommends that the West takes tougher stance to help implement signed agreements and finalize the dialogue between Kosovo and Serbia with recognition of former by latter, see "Implementation Review of the Kosovo-Serbia Dialogue", Columbia University Institute for the Study of Human Rights, 5 September 2017, visited 2 September 2018, [http://www.humanrightscolumbia.org/sites/default/files/2017\\_09\\_05\\_kosovo-serbia\\_report.pdf](http://www.humanrightscolumbia.org/sites/default/files/2017_09_05_kosovo-serbia_report.pdf). See also EU "Strategy for the Western Balkans", European Commission, 6 February 2018, visited 1 September 2018, available at [https://ec.europa.eu/commission/news/strategy-western-balkans-2018-feb-06\\_en](https://ec.europa.eu/commission/news/strategy-western-balkans-2018-feb-06_en).

<sup>11</sup> See Andrew Rettman, "EU eyes Kosovo and Serbia enlargement deal", *euobserver*, 1 September 2018, visited on 29 September 2018, available at <https://euobserver.com/enlargement/142709>.

stakeholders to uphold their determination to help bring about a final solution on Kosovo-Serbia relationship. The deteriorating international security situation is taking its toll on the process and the further it drags on it may complicate the situation on the ground more.

Further, keeping the *status quo* may directly impact the integration of both countries in the EU and NATO as none of these organizations would be ready to incorporate a problem within its ranks. The lack of European perspective would have negative ramifications on economic development, rule of law and human rights and in general on overcoming the transition period. The lack of perspective would lead people, especially young ones, to leave our countries for better future, thus creating a demographic crisis and thus spiraling negative consequences.<sup>12</sup> *Status quo* could easily lead to creating a fertile ground for radicalization of politics and bring hard line parties in power which might complicate further the whole situation and normalization of relation.

## **II Kosovo-Serbia border changes / swapping of territories**

Another approach that is being debated recently is border changes / swapping of territories. This approach is placed forward, albeit with many question marks over it. During the European Forum Alpbach the Presidents of Kosovo Hashim Thaçi and Serbia Aleksandar Vucic left the issue of border changes open, without giving any clarifications.<sup>13</sup> However, Kosovo leaders including current Prime Minister and majority of opposition parties are opposing such an idea.<sup>14</sup> Similarly, international community has reacted differently with the US advisor on national security Michael Bolton stating that the US does not oppose to any solution brought by common agreement between parties<sup>15</sup> while German Chancellor Angela Merkel firmly opposes any swapping of territories or border changes.<sup>16</sup> Former UN High Representative in Bosnia

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<sup>12</sup> According to the UNDP Public Pulse Analysis 60% of the young population of Kosovo would consider leaving Kosovo in the next 3 year. For more see “Public Pulse Analysis: Challenges and Perspectives of Youth in Kosovo”, UNDP, Prishtina 11 September 2018, available at

[http://www.ks.undp.org/content/kosovo/en/home/library/democratic\\_governance/public-pulse-analysis.html](http://www.ks.undp.org/content/kosovo/en/home/library/democratic_governance/public-pulse-analysis.html).

<sup>13</sup> Andrew Gray and Ryan Heath, Serbia, Kosovo Presidents broach border changes for historical deal, Politico, 25 August 2018, visited on 26 August 2018, available at: <https://www.politico.eu/article/aleksandar-vucic-hashim-thaci-serbia-kosovo-balkans-eu-enlargement-alpbach-forum/>. For more on European Alpbach Forum 2018 see <https://www.alpbach.org/en/forum/forum2018/>.

<sup>14</sup> See Arton Konushevci, “Thaçi e Haradinaj te ndare rreth korrjimit te kufirit”, Radion Free Europe Albanian Version, updated 8 August 2018, available at <https://www.evropaelire.org/a/29419973.html>, see also “Veseli: Kosova do te hyje ne OKB me kufijte e saj te pavarësisë”, Kohanet, updated 6 Gusht 2018, available at <https://www.koha.net/video/109542/veseli-kosova-do-te-hyje-ne-okb-me-kufijte-e-saj-te-pavaresise/>.

<sup>15</sup> Andrew Gray, “US open to Kosovo border changes, Trump adviser says”, Politico, updated 24 August 2018, available at <https://www.politico.eu/article/kosovo-border-changes-us-opinion-donald-trump-john-bolton/>.

<sup>16</sup> Andrew Gray, “Angela Merkel: No Balkan Border Changes”, Politico, updated 13 August 2018, available at <https://www.politico.eu/article/angela-merkel-no-balkan-border-changes-kosovo-serbia-vucic-thaci/>, see also “Germany’s Merkel warns against possible changes to Serbia, Kosovo border”, News4Europe, 28 August 2018,

Wolfgang Petritsch reportedly referred to some sort of cosmetic changes without any clear reference as to what that might mean in reality<sup>17</sup> while a former EU envoy to former Yugoslavia Karl Bild stated that the discussion of border changes between Kosovo and Serbia could ignite crisis in the Balkans.<sup>18</sup> In a response letter to the question asked by the online newspaper Gazeta Express on this issue, the EU High Representative office replied that they want to see a realistic solution between the parties in accordance with the principles of international law.<sup>19</sup> The civil societies of both Kosovo and Serbia sent a joint open letter to EU High Representative Mogherini to not allow swapping of territories or the partitioning of Kosovo.<sup>20</sup> According to a recent survey, around three quarters of Kosovo citizens oppose swapping / change of territories.<sup>21</sup>

The swapping/changes of territories approach contains many unknown variables which make any determinative conclusion much harder to reach. This approach lacks any clear guidelines as to how this solution would look like both legally and physically with respect to clear delimitation of territory. It may sometimes be understood that the territories in question include Northern part of Kosovo on Kosovo side and Preshevo Valley from the Serbian side. This would mean that Serbs in Northern Part of Kosovo would be integrated into Serbia while the Albanians of Preshevo Valley be united with Kosovo. Still, it is not clear what would include the territory of Northern Kosovo on one side and what does Preshevo Valley mean in respect of territory and population on the other side. Nevertheless, this solution might worsen the situation of any remaining Albanians in Serbia and the same stands for the remaining Serbs in Kosovo.<sup>22</sup> It could possibly trigger displacement of what could be perceived as remaining

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available at, [http://www.news4europe.eu/6375\\_european-union/5615935\\_germany-s-merkel-warns-against-possible-changes-to-serbia-kosovo-border.html](http://www.news4europe.eu/6375_european-union/5615935_germany-s-merkel-warns-against-possible-changes-to-serbia-kosovo-border.html).

<sup>17</sup> “Ambasadori Petritsch perfshihet ne debatin per korrigjimin e kufijve”, Telegrafi, updated 6 August 2018, visited 30 August 2018.

<sup>18</sup> Carl Bild, “Further Balkanizing the Balkans is a recipe for disaster”, the Washington Post, 9 August 2018, visited 20 August 2018, available at [https://www.washingtonpost.com/news/global-opinions/wp/2018/08/09/further-balkanizing-the-balkans-is-a-recipe-for-disaster/?utm\\_term=.7387066dac8f](https://www.washingtonpost.com/news/global-opinions/wp/2018/08/09/further-balkanizing-the-balkans-is-a-recipe-for-disaster/?utm_term=.7387066dac8f).

<sup>19</sup> “Zyra e Mogherinit hesht rreth çeshtjes se levizjes se kufijve mes Kosoves e Serbis”, Gazeta Express online, 6 August 2018, visited 30 August 2018, available at <https://www.gazetaexpress.com/lajme/zyra-e-mogherinit-hesht-rreth-ceshtjes-se-levizjes-se-kufijve-mes-kosoves-dhe-serbine-565112/>.

<sup>20</sup> See “Open letter to Federica Mogherini from Serbia’s and Kosovo’s CSOs against the division of Kosovo”, European Western Balkans, 7 August 2018, visited 1 September 2018, available at <https://europeanwesternbalkans.com/2018/08/07/open-letter-federica-mogherini-serbias-kosovos-csos-division-kosovo/>.

<sup>21</sup> See Kosovo Democratic Institute survey of public opinion in September 2018, visited on 29 September 2018, available at <http://kdi-kosova.org/en/publications/public-opinion-survey-september-2018/>.

<sup>22</sup> In an interview for the daily online Kosovo journal in Albanian language Zeri, President of the Kosovo Serb Democratic Progressive Party of Kosovo, stated that 99% of Kosovo Serbs from South of Ibar river do not support border changes/swapping, see “99 e serbeve te jugut nuk e perkrahin idene per shkembim te territoreve”, Zeri, 29 August 2018, available at <http://zeri.info/aktuale/213873/99-e-serbeve-te-jugut-nuk-e-perkrahin-idene-per-shkembimin-e-territoreve/>.

population on each side. A sensitive issue pops up relating to the Ujmani/Gazivoda damn which furnishes many Kosovo families with drinking water and supports operational activities of economic sector in Kosovo. To the same token, there is the issue of Trepça, with its natural resources that can help boost economic development of Kosovo.

The approach of swapping/change of territories without having recognition from Serbia maximizes the complexity of the already complex situation. Opening another issue while not closing an already open one may have negative effect on the continuing of current process of normalization and could possibly postpone yet further the normalization of relations. In addition, there is no clear indication as to the readiness of global actors to be involved more heavily in any future dialogue discussing this approach. It would be very difficult for Kosovo and Serbia to bring any solution without a direct involvement of the EU and the US, and currently we don't see any clear indication in this direction. Swapping / changes of territories would hit at the core of the Kosovo project, supported and advanced as such by international community. The idea behind this project, as outlined in the Ahtisaari Proposal, was to create a European model multi-ethnic society based on core values of human rights, democracy, power sharing and the rule of law. Opting for this approach would mean that Kosovo and its supporters have failed to realize this project. After all Kosovo was recognized as a state based on this conditionality.

An argument supporting this approach may come forward that if parties manage to find a solution than it would mean recognition of Kosovo by Serbia and further it would enable Kosovo to acquire long awaited UN membership. However, taking into consideration that it will have to be approved by Russia (and also China as non-recognizer) through UN Security Council, it is hard to believe that in current global state of affairs it is likely to happen. In this scenario it is highly that Russia is going to use Kosovo case for its own gains in situations like that in Ukraine (including Crimea) and Georgia (Abkhazia and South Ossetia). Russia's Foreign Minister Sergey Lavrov earlier has stated that Russia's stance on Kosovo is not about Serbia but about UNSC 1244.<sup>23</sup>

Another angle of analysis of this approach may come from a legal point of view and the stance of international law on the issue. There may be two answers to this question in this respect. The first is the standing of *uti possidetis juris* principle which is utilized during the decolonization process and later during the dissolution of the SFRY and the USSR. This principle states that former administrative borders shall become international borders between the new

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<sup>23</sup> "Foreign Minister Sergey Lavrov's Interview with Serbian Information Agency BETA", The Ministry of Foreign Affairs of the Russian Federation, 19 February 2018, accessed 5 September 2018, available at [http://www.mid.ru/en/foreign\\_policy/news/-/asset\\_publisher/ckNonkJE02Bw/content/id/3084489](http://www.mid.ru/en/foreign_policy/news/-/asset_publisher/ckNonkJE02Bw/content/id/3084489).

states. From this perspective the borders of Kosovo shall be the same as they were during the SFRY as administrative borders. This leaves place only for demarcation which is more of a technical process. That is the prescription of the already established borders. This is in line with the Ahtisaari's proposal.<sup>24</sup>

The second answer is that the principle of self-determination allows states to make determination upon their state of affairs and thus also decision regarding territorial issues, as long as they don't infringe the rights of other states. This principle would allow Kosovo and Serbia to swap / change territories under the condition that they agree on the scope of their territorial changes. When territorial changes are in question, one may invoke a not so well established principle of equity which was used in some cases by the Permanent Court of Arbitration and the International Court of Justice. In one of the disputes heard by the latter regarding the Gulf of Main between Canada and the U.S., the ICJ stated that in the delimitation process the court, among other things, ought to take in consideration that the end process does not result in a radical inequitable process, meaning that the livelihood and well-being of the population concerned does not entail "catastrophic repercussion".<sup>25</sup> Here the court did not come to a conclusion as what amounts to "catastrophic repercussion". However, as of current situation, it may not be the case here.

Having considered these legal principles, while Serbia still does not recognize Kosovo, it seems that the former principle, *uti possidetis juris*, shall prevail until Serbia recognizes Kosovo tacitly or expressly and only then, on equal footing, the parties may discuss territorial changes / swapping based on the principle of self-determination. Discussing territorial swapping / changes would be tantamount to extracting Kosovo from all important historical processes that have brought it here.

However, from a rather creative perspective, the whole saga of territorial swapping / changes may be a way of attracting attention from global players to put more efforts in reaching the final solution already in place through normalization process. Shifting attention from the region looks scary and prematurely. Therefore the region needs more focus from the EU and the US to solve remaining issues sooner rather than later.

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<sup>24</sup> For more on the work of the Badinter Commission see Alain Pellet, "The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples", *European Journal of International Law*, 3 EJIL (1992) 178.

<sup>25</sup> See *Canada v. U.S.A., the Gulf of Main Case*, 1984, I.C.J. para. 237.



### **III Normalization of relations based on legally binding bilateral agreement to be reached through the ongoing EU-moderated Kosovo-Serbia negotiations**

After the declaration of independence and worldwide international recognition of Kosovo, Kosovo and Serbia started the process known as “Normalization of relations” that would see the two parties coming together under the EU facilitation to agree on regulating the life of citizens, such as integration of the Kosovo Serb community in Kosovo’s public life, police, and judicial system, and also freedom of movement of Kosovars through Serbia, agreements on sectorial areas such as energy, transportation, telecommunication, education etc. In particular, the EU has become a major factor in pushing the normalization of relations due to incentives it provides to both parties with financial support and also integration perspective, as both parties are struggling hard to progress further on their independent paths of integration in this organization. This is the third time that the parties are negotiating under an international supervision/moderation but this time the focus is not the final status of Kosovo but the normalization of relations. The first agreement between parties was signed in April 2013 and opened the way for the signing of other technical agreements regarding energy, transportation, telecommunication, freedom of movement, police, association of Serb communities etc.<sup>26</sup> The status of implementation of these agreements remains a matter of debate, with some of them hardly or not implemented at all.<sup>27</sup> Hot point remains the Association of Kosovo Serb municipalities and its competences due to be enacted by a governmental decree but also the final political agreement to fully normalize relations as supported by the EU.<sup>28</sup> Regarding the Association of Kosovo Serb municipalities, it is understandable for Kosovo authorities to be careful not to create another dysfunctional state in the region, having a bad lesson from Bosnia and Herzegovina in mind. The final formal binding agreement, required by the EU to be reached by spring of next year, might be in a form of a peace treaty which would finally define future relations between Kosovo and Serbia.

Despite legal assurances taken by Kosovo to respect the highest standards of human and community rights (whereby minority communities are given a great deal of power sharing beyond their actual representation such as seats in the parliament, government, lawmaking

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<sup>26</sup> See First agreement of principles governing the normalization of relations, as protocolled by the Kosovo PM Office, 01/1039, 19 April 2018, available at [http://www.kryeministri-ks.net/repository/docs/FIRST\\_AGREEMENT\\_OF\\_PRINCIPLES\\_GOVERNING\\_THE\\_NORMALIZATION\\_OF\\_RELATIONS,\\_APRIL\\_19,\\_2013\\_BRUSSELS\\_en.pdf](http://www.kryeministri-ks.net/repository/docs/FIRST_AGREEMENT_OF_PRINCIPLES_GOVERNING_THE_NORMALIZATION_OF_RELATIONS,_APRIL_19,_2013_BRUSSELS_en.pdf).

<sup>27</sup> See in general supra note 10.

<sup>28</sup> See “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on A Credible enlargement perspective for and enhanced EU engagement with the Western Balkans”, European Commission, 6 February 2018, COM (2018) 65 final, visited 2 September 2018, available at [https://eeas.europa.eu/sites/eeas/files/communication-credible-enlargement-perspective-western-balkans\\_en\\_0.pdf](https://eeas.europa.eu/sites/eeas/files/communication-credible-enlargement-perspective-western-balkans_en_0.pdf).

procedures, etc.), Kosovo is still struggling to fully integrate Serb community in the north of Kosovo due to their resistance.<sup>29</sup> On the other hand, the Kosovo Serb community seem to be in an awkward position since if they present them more cooperative in the integration process they are labeled as traitors.<sup>30</sup> Nevertheless, Kosovo Serb community's participation in local and general elections in Kosovo are seen as positive signs in this process.

Regarding international relations, Kosovo is still struggling to get its long awaited UN seat due to the lack of recognition by Russia and China as UNSC permanent members. The UN seat would open the door for easier membership in other organizations. Kosovo is struggling to get through the process of European and NATO integration due to divisions within these organizations. Full normalization of relations might ease these processes although it is still unclear what impact it would represent with regard to the stance Russia and China as the membership process should go through UNSC in a substantial decision making procedure whereby its permanent members have the right to veto it. On the other hand, for Serbia the lack of normalization of relations with Kosovo is having impact in overcoming its past burden but also in putting itself on a path of strong economic development and overcoming of already long and hard transition which might see this state join the EU. It is important for the parties to work on such a solution that is supported and guaranteed by global stakeholders as the history has shown that the parties alone find it almost impossible to find a common solution. Gathering the momentum and working on past achievements by keeping the EU and the US focused in the process seems to be favoring the continuation of the process of normalization of relations.

Below is a SWOT analysis of the proposed approaches:

### **Strengths:**

#### *I Preservation of the status quo / postponing the solution*

1. No particular strength other than rolling the dice and wait for the future to bring leaderships in both countries that could reach a common solution, and it is very hard to believe that it will happen.

#### *II Kosovo-Serbia border changes / swapping of territories*

1. A historic long term 'fight' for territories between Kosovo and Serbia would be ended with an agreement.

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<sup>29</sup> See in general Constitution of Kosovo regarding composition of Government, Parliament, Judicial system etc. Also see Chapter III on community rights.

<sup>30</sup> See "Serb Community in Kosovo", Report by Helsinki Committee for Human Rights in Serbia, June 2012, visited 2 10 September 2018, available at <http://www.helsinki.org.rs/doc/Serb%20Community%20in%20Kosovo.pdf>.

2. An agreement on territorial issues would mean recognition of Kosovo, even if done tacitly.

### III Normalization of relations based on legally binding bilateral agreement

1. Dialogue already in place and build on the momentum to reach a final bilateral binding agreement.
2. Direct support and heavy involvement of international community, in particular in the form of facilitation from the EU. The parties alone (Kosovo and Serbia) would have it difficult to reach an agreement.
3. Involvement of global actors would serve as a guarantor for implementation of any agreement in the future.
4. Respect of the process that brought Kosovo to this point (WG for Balkans Guiding Principles, Ahtisaari's Comprehensive Proposal). Kosovo's recognitions came under the condition that it respects above mentioned documents.
5. Kosovo declared its independence based on Ahtisaaris' proposal.
6. Kosovo as such represents a sui generis case.

### **Weaknesses:**

#### I Preservation of the status quo / postponing the solution

1. No clear guidelines as to how long this postponement may last.
2. There is no guarantee that in the future the circumstances arise where parties may easily reach a common solution.
3. No support from the people to keep the status quo.
4. Would not make use of the momentum created by the current negotiations and already reached agreements.
5. Bad effect on economical and EU integration perspective for the region, especially Kosovo.

#### II Kosovo-Serbia border changes / swapping of territories

1. No clear definition of possible delimitation lines.
2. Lack of public support.
3. International efforts for Kosovo, focusing on building a modern EU model multi-ethnic state based on values of human rights, democracy and the rule of law and not pure mono ethnic state, would go in veins.
4. Opening another issue, while still negotiating the normalization of relations, would prolong the process of normalization of relations indefinitely.

5. Undermines Ahtisaari's proposal and goes against the well-established principle in international law of *uti possidetis juris* that was a founding principle for the dissolution of SFRY.

### III Normalization of relations based on legally binding bilateral agreement

1. Not yet clear the framework of the Final Binding Bilateral Agreement, but it should be based on the development of Kosovo as a functional state.
2. Lack of full implementations of already signed agreements might prolong the continuation of the process.

### **Opportunities:**

#### I Preservation of the status quo / postponing the solution

1. No particular opportunity other than taking chances on possible shift of policies which might bring new political elites who might easily reach a common solution.

#### II Kosovo-Serbia border changes / swapping of territories

1. Draw the attention of international community to the seriousness of the situation in order to have them focus more on the Balkans and bring about a final solution sooner rather than later, which might spill out of control.
2. Any agreement would be seen as a good opportunity for the peace at bilateral level, but it could mean opening of issues in other states of the region.
3. Creation of mono-ethnic communities might be seen as an opportunity for some political parties and their supporters.

### III Normalization of relations based on legally binding bilateral agreement

1. Full normalization of relations between Kosovo and Serbia that would mean recognition of Kosovo by Serbia, either tacitly or expressly.
2. Ease of tensions and focus on issues that would better the life of people, such as economic development, rule of law, fight against corruption.
3. Positive reflection on the security and cooperation in the region.
4. Furthering of the EU and NATO agenda.
5. Opening of opportunities for Kosovo to apply for UN membership and membership in other international and regional organization.
6. Normalization of relations might incite further recognition by, as of now, non-recognizing states in the region and beyond.

## **Threats:**

### **I Preservation of the status quo / postponing the solution**

1. Possible unrest due to raised frustration among people.
2. Obstacle to the EU and NATO integrations as these organizations are unwilling to import problems within its ranks.
3. Rise of nationalist rhetoric and shifting of agenda away from issues that improve daily life of people such as economic development, education, human rights, rule of law, fighting corruption etc.
4. Possible negative ramification in the region.

### **II Kosovo-Serbia border changes / swapping of territories**

1. Possibility of negative ramification in the region, such as the division of Bosnia and Herzegovina, Macedonia etc.
2. Rise of nationalist ideologies which may threat security and cooperation.
3. Might incite displacement of remaining ethnic groups on the other side.
4. Opening of other issues such as border swapping or changes may shift the attention and ultimately prolong reaching the final binding agreements.
5. Global actors might just not be ready to deal with another issue and might turn away from the final processes.

### **III Normalization of relations based on legally binding bilateral agreement**

1. The final agreement should not create a dysfunctional state. The basics of any agreement should be based on the Ahtisaari's proposal and finalization of some issues reflecting the scent of this proposal.
2. A lack of full implementation of already signed agreements might put in jeopardy the future of the dialogue.