

# **A Romanian perspective on the future of Serbia-Kosovo relations and the Security in the South-East Europe<sup>1</sup>**

- Policy analysis -

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## **Abstract**

*Through the diplomatic representatives of its Ministry of Foreign Affairs, an unambiguous message has been sent over the past 10 years - Romania firmly supports Serbia's EU membership. But this ambiguity regarding Kosovo's evolution on the EU integration path, connected with Serbia's closing of Chapter 35, becomes even more complicated in the light of the most recent EC Enlargement strategy from February 2018<sup>2</sup>, which announces the year 2019 as the year when the normalization process is expected to end and President Iohannis's statement that he is open to mediate the Serbia-Kosovo relations in the first part of 2019. In this context, shall we expect a crucial change in Romania's position regarding Serbia-Kosovo relations during its own mandate for the rotating Presidency of the Council of the EU between January to June 2019? Such a shift in Romania's future approach towards Kosovo would imply a halt to its decade-long policy of non-recognition. But in order for such a change to be possible, it has to be the result of cooperation and consensus between the three main actors in the Romanian state, which are the Presidency, Government and the Parliament, that have to harmonize their views towards a possible reviewed position in terms of recognizing Kosovo's independence, and only after Serbia's own recognition. For that, a new boost is needed in the negotiations and we need to explore new solutions for the final settlement of Serbia-Kosovo relations.*

## **Introduction**

The reasons that fundament a country's non-recognition policy towards a break-away region most often combine elements of domestic politics (which are specific for each state), with strategic interests and a strict interpretation of international law. Different countries put different accent on the hierarchy of these main reasons for not legitimizing the use (and abuse) of the self-determination principle. But what happens when years pass and the relations between a state and its former province - now a state recognized by more than 115 other states - enter a new phase, close to settling their dispute? From this point of view, Romania's position towards the Serbia-Kosovo dialogue is of special interest, worth deeper reflection- as it is based on its long-standing close ties with Serbia, it is also following EU's overall foreign policy priority for supporting an EU membership perspective for the Western Balkans and maintains at the same time its firm position not to recognize Kosovo's

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<sup>1</sup> within the project "Internal Dialogue on Kosovo: security aspects" financially supported by the Open Society Foundation, Serbia.

<sup>2</sup> EU Enlargement Strategy, 06.02.2018, [https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf)

independence. Romania became an EU member in 2007 and ever since 2008 it has preserved its policy of non-recognition of Kosovo's independence by not aligning to the EU position on this matter for the last 10 years, along with the other 4 non-recognizing EU members: Greece, Cyprus, Slovakia and Spain. Despite ongoing evolutions in Kosovo's path towards EU integration, Romania's policy remained unchanged. The question is – if anything changes in the dynamic between the two entities, will Romania's position also change? The purpose of the following policy analysis is to assess the security impact on Romania of three such possible scenarios for the near future, in the Serbia-Kosovo relations.

The implementation of the agreement on the Association/Community (drafting the statute of the organization and confirming legal status inside Kosovo's jurisdiction) as the core of the Brussels Agreement, is long overdue<sup>3</sup>. Recent political events that invoked the 'Kosovo precedent' and the application of the self-determination principle, such as the illegal annexation of Crimea by Russia in March 2014 or the referendum for independence of Catalonia in 2017 shed a new light on EU's own entanglement between politics and law with its 23 countries that recognize, and 5 that do not recognize Kosovo's independence. EU's complex foreign policy positioning together with Romania's own domestic political contradictions will surely influence Romania's position on the topic in the future. But there is a need to reflect in which ways. Therefore, the following policy paper tries to assess, applying a SWOT analysis on the three possible scenarios available, on the evolution of Romania's position on the Serbia-Kosovo relations. As such, the paper will be structured as follows: the first section will describe a more general overview of Romania's position on the topic in the last decade since Kosovo's declaration of independence. Second, it will focus more specifically on the possible implications of each of the three scenarios in terms of the three main aspects: 1) interethnic-relations in your own country and its security policy; 2) bilateral/multilateral relations and 3) security in the region of South Eastern Europe.

### **Romania's position on Serbia-Kosovo relations – General Overview for 2018**

Overall, Romania's official position on the topic was linear for the last decade, consisting in the fact that it supports dialogue as a tool for finding a solution for the open political issues between Kosovo and Serbia, but that it does not recognize Kosovo's independence unless it is a result of negotiations accepted by Serbia. At the same, Romania also supports NATO's mandate in Kosovo – contributing to the KFOR mission, which upholds Resolution 1244 and does not conflict with Romania's non-recognition policy. Many Romanian professionals also work in EULEX, EU mission on rule of law in Kosovo (there is no official number, but their presence is consistent), but they are hired on individual basis, not sent by the Romanian MFA. In other words, Romania's presence is both absent and visible in Serbia-Kosovo relations.

In general, it is worth underlining that not just Serbia-Kosovo relations, but the entire Western Balkans region is absent from the Romanian public debate. Regional topics rarely appear in the news, with the exception of (most often negative) big events occurs, but there is little engagement on the topic, and it rapidly disappears from the

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<sup>3</sup> See more in Miruna Troncotă, 'The association that dissociates' – narratives of local political resistance in Kosovo and the delayed implementation of the Brussels Agreement", *Southeast European and Black Sea Studies*, Volume 18, 2018 - Issue 2: External Governance of State-Building in Post-Conflict Kosovo, pp 219-238.

public agenda. There are very few NGOs doing projects on and with the Western Balkans, there are no postgraduate programmes for a specialization on the region at any major University in Romania (not even specific courses), and in general there are very few academics doing research and writing on the topic. But the official webpage of the Romanian MFA names the Balkans, and their EU integration, as one of the main priorities of our foreign policy. The same goes for the priorities of our 2019 Presidency in the Council of the EU – Western Balkans are mentioned as the continuation of efforts of previous Bulgarian and Austrian Presidencies. But I personally think that there is an evident discrepancy between the official rhetorical engagement and its concrete implementation, and this affects also the visibility of Romania's actions towards Serbia-Kosovo relations. Moreover, it is worth underlining that in the last 10 years there was no elaborate debate at the political level in Romania on the issue of Serbia-Kosovo relations, either among elites or the general public, despite Romania's constant claims to have a strong interest in the European evolution of its neighbours. Romania also did not participate in the Berlin process, a German initiative to stimulate engagement in the enlargement process in the Balkans, in order to overcome Juncker's own announcement in 2014 for a slowdown in the process.

Overall, Romanian politicians seem to have limited expertise on the Balkans in general (most of them still trapped in the violent dissolution of Yugoslavia type of narrative), and the topic was most often absent from media, rarely present in academic circles and in broader public debates. The few debates on the Balkans in Romania were most often externally driven, part of international conferences or organized by the Representation of the European Commission in Romania (the think tanks Global Focus and News Strategy Center stand as an exception to that, together with the initiative of the National University of Political Studies and Public Administration to include a focus on the Balkans in the Bucharest Security Conference since 2017). These elements do not form a critical basis for further concrete Romanian engagement in the Serbia-Kosovo relations, except significant contributions on individual basis, of Romanian experts working in multilateral organizations (such as the outstanding Romanian diplomat H.E. Ambassador Simona Miculescu, representative of UN Secretary General in Belgrade, coordinating also UNMIK in Kosovo or Ms Doina Bologa, UNFPA Representative for Bosnia and Herzegovina, Country Director for Serbia, Republic of North Macedonia and Director for Kosovo).

But there are three moments that are worth mentioning for placing Romania in a different position than its traditional one: first, 2012, when it tried to block Serbia's candidacy to the EU using the ethnic card (asking Serbia to respect the rights of Romanians (Vlachs) living in Serbia); 2015, when the former Prime Minister Victor Ponta declared for several times that Romania needs to revise its position on Kosovo and align to our Transatlantic partners (being until now the only voice in Romanian politics, in an official position, that would assume this stance outspokenly) and in 2018 when the current President of Romania, Klaus Iohannis declared in a meeting with President Vucic in Bucharest that he is open to mediate Serbia-Kosovo relations and he offered readiness to take a role in this issue during first half of 2019<sup>4</sup>.

Those three events are notable mainly because in the last 10 years, Romania seemed more keen to leverage its support of Serbia's territorial integrity and to present itself as an honest broker with Belgrade, rather than look at the evolutions on the

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<sup>4</sup> <https://www.gazetaexpress.com/en/news/kosovo-turns-down-romania-s-offer-asks-bucharest-to-recognise-independence-173766/>

ground or Kosovo's progress in the EU integration process<sup>5</sup>. As shown in a previous analysis on the topic, the focus was particularly put (in many of public statements of former State Secretary in the Romanian MFA Bogdan Aurescu) on the need to respect territorial integrity, sovereignty and international law<sup>6</sup>. The former President Traian Băsescu subsequently mentioned that Romania will not recognize Kosovo, considering that it is Belgrade and Pristina who are responsible to negotiate Kosovo's status before any decision can be made. In fact, this type of argument would be a very diplomatic form of avoiding any review of Romania's position for the near future. But it is interesting that such a stance is not present anymore in the official discourse of current President Klaus Iohannis.

It is important to mention also that there are still representatives of the Romanian diplomacy that still regard Kosovo as the source for a precedent in the international system, regardless of the positions assumed by the European Council (who underlined its *sui generis* nature) or the ICJ's advisory opinion that confirmed that the declaration does not breach international law. In most of the cases, ambiguity still dominates Romanian diplomats' discourses on this sensitive subject, in which Romania tries to balance between the EU and the US pressure and its own policy of close ties with Serbia, together with condemning the situation in Moldova's own break-away region - Transnistria. In most recent statements, incumbent Minister of Foreign Affairs of Romania, Teodor Meleşcanu states that Romania supports the bid for the Western Balkans to join the EU and NATO<sup>7</sup>, but without explaining the status under which Kosovo would join the two international organizations – an independent state or part of Serbia. I previously argued for the need to have the Balkans specifically on our 2019 Presidency priority list<sup>8</sup>, but I believe that this ambiguity is not helpful, and it is in contrast with the President's own statements. But let us explore in greater detail each possible scenario for a future evolution on the topic.

### **Scenario nr. 1 - Continuation of the *status quo***

For the moment, I believe that Serbia-Kosovo relations are in a Catch 22 situation<sup>9</sup>: each side claims that it has implemented most of the obligations incumbent upon it by the agreements reached in the Brussels dialogue and that its few remaining obligations have not been met because their implementation depends on the other side's implementation of their obligations<sup>10</sup>. This situation is not conducive to any way out. So in these terms, I do not see the status quo scenario as sustainable, neither for the two countries, nor for EU or the Western Balkan region at large. I see mostly negative consequences, with the exception of the impact on Romania's position, which

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<sup>5</sup> see more in Miruna Troncotă and Dragoş Ioniţă, 2018, "Between Domestic Politics and International Law: Assessing Romania's Non-recognition Policy of Kosovo's Declaration of Independence" in Dušan Proroković (ed.), *Kosovo: sui generis or precedent in international relations*, Institute of International Politics and Economics, Belgrade, p 231  
[https://www.diplomacy.bg.ac.rs/pdf/knjige/2018\\_Kosovo\\_Dusan\\_Prorokovic.pdf](https://www.diplomacy.bg.ac.rs/pdf/knjige/2018_Kosovo_Dusan_Prorokovic.pdf)

<sup>6</sup> ibidem

<sup>7</sup> ibidem

<sup>8</sup> see more in Miruna Troncotă, <https://futurelabeurope.eu/2018/08/06/euroad2sibiu-via-the-western-balkans/> and <https://futurelabeurope.eu/2018/08/09/romania-s-first-presidency-of-the-council-of-the-eu-opportunities-and-challenges-ahead-of-sibiu/>

<sup>9</sup> a paradoxical situation from which an individual cannot escape because of contradictory rules.

<sup>10</sup> See more in Troncotă, 2018, *op cit*

would not change anything. This scenario would surely encourage Romania to continue its already existing policy on Serbia-Kosovo relations (marked by a certain level of ambiguity, as showed) – opposition to recognition of Kosovo’s independence and support for the EU integration bid of the Western Balkans in general. In this scenario, the EU will maintain its current level of engagement and will use EU conditionality to pressure both Kosovo and Serbia to further implement the existing agreements in the Brussels Dialogue, and maybe reach additional agreements, but without the obligation to sign a comprehensive and legally binding agreement between the two.

Overall, I believe that this status quo scenario is detrimental for the continuation of the EU integration process. Of course, the integration process is assumed to take place at different speeds for both entities – Serbia as a front runner with a perspective opened for 2025, and Kosovo as one of the last countries to join, together with Bosnia. From this point of view I think that this is not a realistic scenario, because the February 2018 Enlargement Strategy already stipulates the need for changing the approach and the end of the status quo (marked by the delayed implementation of the Brussels Agreement for the normalization of relations between the two countries) and that shows the determination of EU to be a game changer in the mediation process.

The evident weaknesses of this scenario reside in the impact on ordinary citizens who have to suffer from the unsolved bilateral issues and the lack of implementation of the Brussels Agreements – residents from the North, together with all citizens in Kosovo who will suffer from their ban from visa-liberalization and economic hardships associated with current political intricacies and time spent crossing borders and changing documents only for shopping, for example. The opportunities brought by this scenario would imply a consolidation for the non-recognizing countries in the Security Council (Russia and China) to strengthen their bargaining position and minimize EU’s failure to act like a global player by remaining stuck in the mediation process between the two entities.

In my view, the other ‘real winners’ of this scenario would be the two political leaders in the Serbia and Kosovo, because they will not be expected to compromise anything, they will remain in their ‘comfort zones’ and not lose their voters’ support, but they could manage to continue their ethno-nationalist political games that proved successful in blocking many reforms so far. Moreover, they will continue their blame-shifting strategies for the failed implementation of the 15 points in the Brussels Agreements. For Romania, such a continuation of the process would prove neutral, without influencing any change in its general views, which will continue to focus on Serbia’s position in the process. But I would also mention that the tensions between the Government and the Presidency on the Serbia-Kosovo relations represent a clear threat for Romania, as it became visible during the contradictions on the Romania’s participation in the Sofia Summit in May 2018<sup>11</sup>.

The main threats brought by this scenario would be the inability of the Kosovo-Serbia issue to gain momentum internationally due to the wider issues related to the refugee crisis, internal problems within the EU (EU elections in May 2019, the rise of extreme right wing parties and more vocal states that oppose the continuation of the enlargement policy), combined with reduced US commitment in the Balkans and the growing influence of Russia. Another great risk could be the lack of progress in the implementation of the existing agreements and increased political instability in

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<sup>11</sup> <https://europeanwesternbalkans.com/2018/03/31/romania-cyprus-join-spain-kosovo-ahead-sofia-summit/>

Kosovo and Serbia that constantly produces political crises, security challenges (looking at recent protests in Prishtina against the “land swap” debate) and could trigger new elections or prolonged instability. Another threat is also brought at the regional level by Brexit – the decision of United Kingdom to leave the EU by triggering article 5 of the Treaty of the EU (scheduled to take place in March 2019) adds also uncertainties to the picture. UK was (and promised to continue to be) a vivid supporter of the EU integration process in the Western Balkans, being very active in all multilateral initiatives in the region. How will Brexit affect UK’s support for enlargement when it will be outside the EU? Despite the assurance that the support will continue (sent also during the London edition of the Berlin process in July this year) there are many doubts regarding future evolutions, particularly in terms of security. In my view, Brexit is a threat more than an opportunity in the context of the continuation of the unsolved dispute between Serbia and Kosovo.

### **Scenario nr. 2 - Serbia-Kosovo border changes/swapping of territories**

Under various names like ‘land swap, ‘territory exchange’, ‘border correction’, ‘border adjustment, ‘swapping pieces of territory’, ‘peaceful form of ethnic cleansing’ or ‘partition of Kosovo’, this scenario seems to be the most controversial of all three. It had produced divided opinions and no concrete description on how could this agreement be finalized, but only speculations. I personally think that both in theory and in practice this scenario would be unacceptable for the two sides, and could rise multiple tensions at all levels – internally, in the region and if we think over-stretched it might even influence Romania’s own inter-ethnic relations, but to a much lesser extent than others. Instead of building trust and ameliorate the situation of people living next to the borders (by accepting the borders and not redefining them), this scenario would multiply the tensions, and this goes against what people expected from such a settlement. This scenario has been very present in public media starting with August 2018, after the Alpbach Forum statements of the two Presidents of Serbia and Kosovo, but no concrete proposal has been made public. In my view, this is one of the most contested prospects for the settlement of the Serbia-Kosovo problems. I think that this could be acceptable to Romania only if the two countries, and particularly Serbia accepts it. Which is also not feasible, looking at the most recent statements of President Vucic in September 2018<sup>12</sup>.

The main concerns regarding this solution is that neither of the presidents have been clear on what the deal would entail, leaving gaps in interpretations, which in itself might be considered a huge obstacle in the process. As I interpret it, this scenario implies that the Presevo Valley in Southern Serbia, where the population is mostly ethnic Albanian, would join Kosovo and in return, Serbia would re-establish full control over the majority ethnic-Serb area of Kosovo to the north of the River Ibar, which runs through the heart of Mitrovica. But such a solution would totally reverse all the agreements achieved so far in the Brussels Dialogue, which concentrated on the integration of Serbs in the North in Kosovo’s legal framework. So will the last 6 years prove to be wasted years in negotiating the rights of Serbs in Kosovo? There are many open questions raised by this solution, which becomes a security threat per se. Official

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<sup>12</sup> <https://www.reuters.com/article/us-kosovo-serbia/serbias-vucic-says-long-road-ahead-in-talks-with-kosovo-idUSKCN1LO0OV>

public debates on the matter did not take place, and this frustrates populations on both sides, as they feel that again their voices are left behind (after the elitist character of the Brussels Dialogue to discuss only behind closed doors). In the last month since the announcement, there were only leaders' statements focusing more on the pressure coming from the international actors to reach a final agreement, rather than concrete details on how this could be beneficial to the two countries. Also, the fact that this scenario still does not officially solve the recognition issue (will a simple land swap imply Serbia's recognition of Kosovo with new borders? Will this land swap be followed by a referendum for a change of Serbia's constitution?) is another big problem that does not solve, but deepens the confusion. I view it as the most divisive scenario, which raises the biggest security risks in the whole Balkan region.

The only strengths of this scenario would rely only in the possibility to put an end of the status quo (which is negative) and to be accepted by both sides and embraced by citizens living in those areas. But there is no evidence that this is feasible. Unlocking the border issue would surely speed the EU integration process for both countries, as promised by the EU. Some argue that this "border adjustment" could open new doors for Kosovo towards membership in the UN (one of the main preoccupations for Kosovo leaders), not only to the EU. Nevertheless, the weaknesses of this scenario reside in its prevailing uncertainties regarding the concrete implementation and the overall sentiment of opposition to border changes existent not only in the Balkans, but in the neighboring countries too. Looking at public statements from both sides on the topic in the last month, it is obvious that the solution has more detractors than supporters, which is an evident bad sign. The civil society in Kosovo seems to be very worried about the initiative, writing an open letter signed by 50 organizations and experts on the Balkans against the Serbia- Kosovo partition. The open letter is urging EU and the US not to agree to any territorial swap<sup>13</sup>. On the other side, Serbia's main opposition leader, with a renowned hardline nationalist discourse Vojislav Šešelj, dismissed land transfers saying that "Kosovo is just part of Serbia"<sup>14</sup> taking us back to the 90's narrative. For me, this shows that the initiative has the potential to activate hardline nationalist discourses on both sides, that would block any further cooperation and resolution of the dispute. The big threat of such a solution is that the majority of Kosovo Serbs do not live in the North and it is still puzzling what their statute would be after this possible "land swap". Moreover, the fact that the German chancellor, Angela Merkel, has come out strongly against the idea, represents another potential great weakness of the solution. If Germany is not on board, a big leverage inside EU is gone. Also, I would add that this is not quite a good international context for giving up on multi-ethnic states in Europe because such a scenario could strengthen separatist movements.

Beyond these bilateral effects, the impact of this scenarios will directly affect regional security, especially with reference to the situation in countries that have areas inhabited by minorities that constitute in that specific part a majority of the population. The most often used example is Bosnia Herzegovina, where in Republika Srpska there is a majority of Serb population that could also request the same

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<sup>13</sup> <http://www.balkaninsight.com/en/article/experts-and-organisations-pen-letter-against-serbia-kosovo-partition-08-31-2018>

<http://www.balkaninsight.com/en/file/show/Citizens%20and%20Friends%20of%20the%20Balkans%20against%20Partition.pdf>

<sup>14</sup> <https://www.voanews.com/a/talk-of-kosovo-land-swaps-worry-serbian-faithful-/4586262.html>

treatment. In Bosnia, the Dayton negotiations, which now became entrenched in its constitutional order which is the source of its dysfunctionality, were about how to create ethnically clean territories. Talking about some lessons learnt from Bosnia, I believe its experience of failed integration shows that homogenizing territories is not in itself a guarantee for state-building. But there are also such situations in all non-recognizing countries – Hungarians living in Slovakia, Catalans living in Spain, Turkish Cypriots living in Northern Cyprus and so on. There is also the case of minorities living in Romania, but the possibility of this incident to rise a claim for “land swap” with neighboring countries (like Hungary) is totally not realistic, taking into consideration what both countries are EU members and committed to respect the principle of “good neighborly relations” which is enshrined in EU conditionality for membership and in the Copenhagen criteria.

But let’s reflect a bit on the potential impact on interethnic-relations in Romania and its security policy. I believe it is worth asking: Could this exchange of territory affect Romania and its internal problems with the Hungarian minority? Surely not, as they have no legal way of asking an exchange of territories with neighboring Hungary, neither base on national law, nor under EU law. Nevertheless, this year Romania celebrates the Centennial of modern statehood (after the unification of all its historic provinces on 1<sup>st</sup> December 1918 in Alba Iulia), which was an occasion for some fierce revisionist discourses from Hungarian authorities who declared in different occasions that they have no reasons to celebrate this event<sup>15</sup> and with Hungarian historians openly contesting the Trianon Treaty (and implicitly contesting the current borders between Romania and Hungary as a ‘historic error’).

At this point, it is important to clarify once and for all also the ambiguity referring to the fact that Romania fears a possible secessionist movement in Szekely Land, the counties where there is majority of Hungarian population living in Romania. Romania’s legal framework denies international recognition of secession on the basis of collective rights and without the consent of the losing sovereign state. This legal view was often interpreted (but never phrased as such by the political representatives in Bucharest) in connection with the ethnic Hungarian minority located in two counties in the centre of Romania. Indeed, the Hungarian problem is from time to time reignited by some Hungarian minority representatives, but this does not influence Romania’s strict position on Kosovo. It was never mentioned by any authority of the Romanian state. As such, in the context of the “land swap scenario” it is important to underline that the analogy of potential Hungarian separatism was not made and could not be taken too seriously by any Romanian authority.

The main threats of this scenario – at the regional level – would be that nationalist politicians might use a territory swap to agitate for the break-up of Bosnia. This is something realistic, especially after the harsh discourses inside the Bosnian election campaign last weeks. It is also relevant to mention that by now, already three former international High Representatives to Bosnia expressed their fears about the negative impact of the land swap on Bosnia<sup>16</sup>. In my view, a border settlement on

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<sup>15</sup> [https://www.stiripesurse.ro/hungary-s-pm-orban-says-union-centennial-no-festive-moment-for-romania-s-hungarians\\_1280267.html](https://www.stiripesurse.ro/hungary-s-pm-orban-says-union-centennial-no-festive-moment-for-romania-s-hungarians_1280267.html)

<sup>16</sup> In an open letter, Carl Bildt, Paddy Ashdown, and Christian Schwarz-Schilling said that any change to Kosovo’s borders would “give comfort” to those seeking to break up Bosnia and Herzegovina. See



ethnic lines sets a dangerous Balkan precedent for other regions, not only for the unsolved problems in former Yugoslav countries. This very idea of ‘ethnically clean territories’ takes us back to the Laussane treaty in 1923 of population exchange between Greece and Turkey. Is this all we can come up with after several waves of genocidal massacres inside Europe? This could become a model which will create ripple effects throughout Europe and beyond, and strengthen radical “essentialist” ideologies which are already exploited by far right movements. This will also stir the anti-refugee sentiments of the same populists promoting hate speech and nationalistic homogenization. As such, I see no future opportunities opened by this scenario, with the exception of an idealized perspective of peaceful reconciliation and cooperation between Serbia and Kosovo, as future EU member states, ‘living happily ever after’ for which I do not have evidence for the moment.

The other important threat brought by this scenario would be that it proclaims the failure of international community to build a viable multi-ethnic governance system in Kosovo (which was the main aim of the Ahtisaari Plan), that would protect all minorities and would help former warring parties to peacefully co-exist. In this sense, I find the words of former High representative in Bosnia Paddy Ashdown as insightful: "Sustainable peace can only come when we learn to live in multi-ethnic communities, rather than re-drawing borders to create mono-ethnic ones. [There is] no policy more likely to lead us back to division and conflict in the Balkans than the one which some are apparently now supporting."<sup>17</sup>

The other question that is worth asking is: will this hypothetical exchange of territories represent a final settlement between Belgrade and Pristina? No, in my view this would be a process that would require further assistance in order to be properly implemented. How exactly could that take place? Re-drawing borders is never a solution on its own. Will a new border solve the problems between Serbia and Kosovo - the situation of all Kosovo Serbs leaving in Kosovo or the problem of Serbian Church properties within Kosovo and its religious cultural heritage that has been threatened by ethnic revenge acts in recent years? I believe that the answer is no. The basis of the Ahtisaari Plan was to protect the rights of all non-Albanian communities, including those of the ethnic Serbian citizens, which aimed to create a multi-ethnic governance system in Kosovo, in which all minorities should feel safe. A land swap scenario would denounce this view as a failed attempt, and would contradict EU’s own motto – unity in diversity. Kosovo Serbs are today an indispensable part of the Kosovo reality, and they must be assured that their continued presence in the land of Kosovo is not questioned, let alone threatened. Opening the ‘closed doors’ of cynical diplomatic negotiations, ordinary citizens in both countries need to understand what would this land exchange imply and how it change their everyday lives for the better. Also, taking into consideration the frequently stated importance of the Brussels dialogue in improving the overall inter-ethnic situation in Kosovo, the land swap scenario proves to be detrimental to the very stated goals in the process. As such, I would stress the potential negative impact of this scenario on security in the region of South Eastern Europe.

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more in <http://www.balkaninsight.com/en/article/experts-and-organisations-pen-letter-against-serbia-kosovo-partition-08-31-2018>

<sup>17</sup> <https://www.bbc.com/news/world-europe-45423835>

### **Scenario nr. 3 - Normalization of relations based on legally binding bilateral agreement to be reached through the ongoing EU-moderated Serbia-Kosovo negotiations.**

Out of all the three scenarios discussed above, one of the most appealing from a Romanian point of view would be the third – an EU mediated legally binding agreement that would not involve any exchange of territories and would be endorsed by both sides. As the country that will hold EU Presidency in the first 6 months of 2019, I believe that it will be difficult for Romania to act as an honest broker/facilitator in the process, mainly because of its non-recognizing status towards Kosovo. This scenario could prove the only one to have a positive impact at three levels that we referred to: 1) interethnic-relations in your own country and its security policy; 2) bilateral/multilateral relations and 3) security in the region of South Eastern Europe.

First, I think it is worth reflecting on the reasons why EU should be the main actor to continue the mediation process and commit the two sides for a solution. The only common denominator was that the process was supported by the EU and was presented by it from the beginning as an indispensable first step on the path leading the two parties to membership of the EU.

It is important to highlight the fact that in February 2008 the EU did not recognize Kosovo's newly declared independence, the reason being simply that recognition was, and is, a matter of individual states and not of the EU as an institution. However, it issued a statement clarifying that the case of Kosovo was unique (*sui generis*), and could not create a precedent, meaning that, in the eyes of the EU, the case of Kosovo could not be invoked to justify other secessionist/separatist moves. Later on in 2017, the EU proved to be consistent with own position on this topic and acted in full compliance with it in the case of Catalonia. In my view, the handling of the Catalonia case (by considering the referendum illegal) by the EU must reassure the governments of Spain and of other non-recognizers who refuse to recognize Kosovo out of fear of potential other abuses of "Kosovo precedent". As such, it was made clear that Kosovo's independence remains *sui generis* and does not constitute a precedent in the eyes of the EU. I believe this an important strength of this scenario – for leaving the EU to finish its job started by Catherine Ashton back in 2011. Another strength in this process, within the EU-mediated solution scenario, lies in the overall impact of the whole process of negotiation, the signing the Brussels Agreement and implementation had evident positive results – it provided for the creation of an Association of Serb Municipalities (still postponed), the unification of the Kosovan police and judiciary, discussions on energy and telecoms, and an agreement by both sides not to block each other's entry into the EU.

Second, we need to keep in mind that any EU-mediated solution needs to offer a solution to both sides' claims. The other main strength resides in continuity of the already achieved results. President Vucic repeatedly underlined the need for protection of the Serbian religious and cultural heritage in Kosovo, the protection of the rights of the Serbian Orthodox Church and of the ethnic Serbs living in Kosovo, including in particular the property rights of the Church and of the Serbian citizens of Kosovo - as the main objectives for Serbia in the normalization process. For Kosovo, official recognition and a seat in the UN is the main expectation. Supporting this scenario, I strongly believe that solutions that should satisfy both sides in sufficiently equal measure can be found and EU diplomats already gained valuable experience in the process. A compromise deal between the two implies a change in holding their

mutually exclusive assumptions. An important weakness of this scenario is the ways in which the two sides could sell the agreements to their domestic audiences, which can easily express feelings of 'betrayal'.

Before analysing the opportunities and also the threats of such a scenario, there is a crucial question that remains to be answered: what is going to be the content of this 'legally binding agreement'? And, who will decide the content of the agreement? EU Commissioner Hahn explicitly announced that the agreement needs to be owned exclusively by Serbia and Kosovo. I was in Belgrade taking part in the public press conference Commissioner Hahn attended on 8 February this year, when he stated that "The paper [of the agreement] is completely empty" and that the EU "has no solution prepared in advance" but, instead, "everything depends on the outcome of the (Belgrade-Pristina) dialogue." When asked at the same press conference whether the agreement demanded by the EU would mean "recognition," he answered that "there are many possibilities for a solution and it is too early to speak about a concrete one."<sup>18</sup> This is a confirmation of EU's status neutral position - given that five of its own members have not recognized Kosovo, the EU cannot directly ask a third country (like Serbia) to do so. Therefore, the ball is in the court of the two countries, but first action should be taken by Serbia (and I believe that the opening of internal Dialogue in 2017 by President Vucic is a confirmation that, beyond internal resistance, Serbia is mature enough to take this step).

Serbia's joining the EU has been directly connected with a deal on Kosovo by the February 2018 Enlargement strategy, which will be the roadmap of next years. The most hated words of them all - "recognition"- is absent from the official text, of course, but the words used as its substitute could not be clearer: the normalization of relations must be "effective" and "comprehensive" consummated by a "legally binding agreement". At this point I would like to make a clear distinction between the specificity of 'Membership talks' and 'Accession process / EU integration path" or other synonyms such as "rapprochement", or "approximation", "approach", "start of, or conducting, accession negotiations" which refer to a much larger process and does automatically includes membership. This distinction is visible when EC talks about the Serbia's prospects in contrast with Kosovo's prospects. The terminology used in this regard is essential. Indeed, taking the road to the EU does not necessitate, nor does it presuppose, Kosovo's recognition; but concretely becoming a EU member, does. The solution proposed by the EU needs to outline this aspect. In light of past experiences (the Cyprus case as the most problematic), the EU is determined not to accept new members with unresolved issues with their neighbors, especially issues concerning borders. Therefore, recognition of Kosovo prior to its EU accession is implicit in all promises of EU membership given to it.

We need therefore to clarify this element of recognition and I believe that this scenario aims in this direction. Normalization of relations is different when applied between two countries and different when it concerns a country and its former province, with contested statehood. From this point of view, it should also be noted that high ranking EU officials repeatedly stated at the time of launching the dialogue back in 2011, after the ICJ opinion, the purpose of it was to help Serbia come to terms with, and eventually recognize, the new reality in Kosovo. In my view, it is evident that

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<sup>18</sup> see more in [https://www.eliamep.gr/wp-content/uploads/2018/03/89\\_2018\\_-WORKING-PAPER- Dimitris-A.-Moschopoulos.pdf](https://www.eliamep.gr/wp-content/uploads/2018/03/89_2018_-WORKING-PAPER- Dimitris-A.-Moschopoulos.pdf) pag 26.

the EU will not allow the Balkans to join without having resolved border issues. This talk about ‘settling border issues with neighbors’ is nothing but a diplomatic euphemism for in fact the request to recognize Kosovo’s statehood in a form that would offer certain guarantees for Serbia (that is why the fact that is legally binding would be an assurance on both sides). From the beginning of Serbia’s steps on the path to EU membership, it became clear for most of Serb politicians, and experts in EU integration alike, that the recognition of Kosovo would be necessary before attaining EU membership. What is now new in the whole picture is that the time is approaching that Serbian leaders will have to admit that necessity publicly, and to convince them that it is in their interest to recognize the Kosovo reality. The greatest challenge for Serbian politicians in power is how to translate this request in something acceptable, how to make this euphemism easy to understand for ordinary citizens without naming it ‘recognition’. This proves extremely difficult especially because of their own contribution to it – the fact the talks on Kosovo were based on strong anti-recognition discourses in the last decade, so how could the same people support completely opposite political solutions? The attitude seems schizophrenic and could easily bring massive loss of votes and or even public rage. This is, in my view, the greatest threat of this solution. The other source of tension comes also from EU itself and its own idiosyncrasies - with EU officials and leaders of EU member states that were often quoted in recent years as publicly reassuring Serb politicians that Kosovo recognition is not a precondition for Serbia’s rapprochement to the EU. This proves detrimental to settling the dispute.

What would be the impact on Romania of Serbia’s recognition of Kosovo independence? Here, I would argue that what Romanian policy makers need to take seriously into consideration is that the key message of the EU Enlargement Strategy from February 2018 referring to Serbia and to Kosovo is the following: *“Without effective and comprehensive normalization of Belgrade-Pristina relations through the EU-facilitated Dialogue there cannot be lasting stability in the region. A comprehensive, legally binding normalization agreement is urgent and crucial so that Serbia and Kosovo can advance on their respective European paths.”*<sup>19</sup> This carefully worded paragraph sums up the current situation of Serbia and Kosovo both in relation to each other and in relation to the EU and I think this mirrors the feasibility of this third scenario. In my view, if Romania truthfully supports the EU integration of the whole region, that it is reasonable to expect that it would support only mutually agreed terms of agreement in the case of a Serbia-Kosovo deal and in such a scenario it would recognize Kosovo, based on prior recognition by Serbia.

For the moment, a big weakness of this scenario is that there seems to be no consensus among the main political institutions of the state regarding the recognition of Kosovo’s independence. It is difficult to consider such a turn feasible in a few months, taking into consideration the current strained relations between the Government and the opposition (which culminated with the 10<sup>th</sup> of August anti-Government protests which have been brutally repressed by the law enforcement institutions). I would argue that one of the biggest weaknesses of this scenario is that for the next months and in the context of the upcoming Presidential elections in autumn 2019, there is no incentive for Romania (except EU and US intensive pressure) to start a wide political debate on a change in its official position regarding Kosovo’s independence, but there is a room of opportunity of the two countries reach in the meantime a mutually acceptable deal.

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As a matter of the EU enlargement legal procedure, any new member's accession treaty must be ratified by all EU member states (through Parliament or referendum), in accordance with their respective national constitutional requirements. Unanimity is the general rule on this subject. As things stand now, with 22 out of 27 EU member states (UK not counted) having recognized Kosovo, is it realistic to expect that all those 22 member states will ratify a treaty with a country which claims as part of its own territory an area that they have already formally recognized as an independent state? No. In other words, in legal terms it is unconceivable that Serbia could overcome that hurdle by simply amending its constitution and eliminating the provision that Kosovo and Metohija is an integral part of Serbia's territory. As Moschopolous rightfully argued, in the UN, Serbia and Kosovo can co-exist without mutual recognition (like the two Germanys during the Cold War; in the EU, in its current legal and institutional setup, they cannot co-exist without mutual recognition.<sup>20</sup> As such, all five non-recognizing countries have constantly subscribed to EU statements to the effect that all six Western Balkan countries (WB6) have a European future, that is, they are expected to join the EU once they have fulfilled the membership criteria. As such, I would argue that Romania should be expected to recognize Kosovo if Serbia gets a compromise deal with Kosovo that results in recognition and change in its constitution. There are individuals in Romania that consider that there is no contradiction in supporting WB 6 EU integration policy and maintain a non-recognizing policy for Kosovo arguing that Kosovo should enter the EU as a Serbian province. But they do not mention the fact that that would be a highly unlikely scenario, so the only feasible scenario is for Serbia to recognize Kosovo.

To conclude on this scenario, I believe that in order for this scenario to positively impact at all levels, Presidents of both countries need to stop their double-sided discourses - one towards the EU, and an opposite one towards their domestic audiences -, which end up feeding into nationalist hardliners' own agenda. This keeps them away from their shared goal - to enter the EU. For example, even after opening the internal dialogue on Kosovo, president Vucic has continued to make statements such as 'everyone knows Kosovo is lost', while also continuing to call Kosovo a 'province' and reassuring Kosovo's Serbs that Serbia under his rule will not tolerate any assault on their rights or violence against them<sup>21</sup>. This ambiguity does not help the process. At the same time, Prishtina's latest move delaying the publication of the draft statute for the Association/ Community of Serb Municipalities (expected in August 2018) is not conducive either to improve relations, build trust and show commitment to the dialogue. One of the most important threats of this scenario is whether Russia and China will decide to recognize Kosovo even after Serbia changes its own constitution. If not, there will be renewed scepticism about the future and security instability in the whole region. In the end I would like to stress that. I totally support

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<sup>20</sup> [https://www.eliamep.gr/wp-content/uploads/2018/03/89\\_2018\\_-WORKING-PAPER- Dimitris-A.-Moschopoulos.pdf](https://www.eliamep.gr/wp-content/uploads/2018/03/89_2018_-WORKING-PAPER- Dimitris-A.-Moschopoulos.pdf) p 10

<sup>21</sup> *ibidem*

the idea that Serbia's road to the EU passes through Pristina, no less than Kosovo's road to the EU does through Belgrade.

## **Conclusions**

Overall, I strongly believe that the negotiations between Belgrade and Pristina must continue, but they require new strategies. As I tried to argue, the alternative to an agreement between Serbia and Kosovo is simply stasis and a permanently frozen conflict, which would keep Kosovo out of the UN and Serbia out of the EU for an undetermined duration. This will heavily impact on the economic well being of their citizens. The EU paths of the two countries are inextricably intertwined. Due to the fact that Kosovo's EU path has been tied to the dialogue with Serbia, it is in its interest to insist in having a final agreement with Serbia that will bring about full normalization of relations. It is also worth concluding that in my view, the EU-facilitated dialogue between Kosovo and Serbia remains a very divisive and politicized issue in both countries, and the 5 non-recognizing countries have also contributed to this process.

The scenario of redrawing 'ethnic borders' does not respect EU's own values, but the contrary – it takes us back to the year 1923, when the Treaty of Lausanne, Greece and Turkey agreed to uproot two million people in a massive population exchange. Clearly, of all the three scenarios, this is the most dangerous, unfeasible in the current circumstances. Both Serbs and Kosovo Albanians will try to exploit these divisions, while the success of the process of normalising Serbian-Kosovar relations will in fact depend upon effective pressure from the West (and will keep us stuck in the status quo which is negative for the democratic transformation of both countries).