

THE SERBIA-KOSOVO RELATIONS: THREE SCENARIOS

by Vessela Tcherneva*

After the 6-year slowly moving Dialogue between Kosovo and Serbia, in March a new idea that was supposed to solve the stalemate made its way to the public attention. On March 14 the Serbian President Aleksandar Vucic said in a meeting with Wess Mitchell, the U.S. Assistant Secretary of State for European Affairs, that his country was ready for a compromise with Kosovo but not for “a humiliation of our own people”. Slowly, the idea about the possibility of a land swap between Kosovo and Serbia started unfolding, as a way to end the difficult dispute. At the European Forum Alpbach in Austria at the end of August this year, Vucic, together with his Kosovo counterpart Hashim Thaci, made clear during a panel discussion that they were considering the possibility of border changes. If the two sides could agree on some sort of final settlement, that would allow Kosovo to gain full international recognition and would remove the greatest obstacle to Serbia’s EU accession.

Although the idea has already been topic of discussions throughout the region of the Western Balkans, it had never been adopted as an official position by Belgrade or Pristina. While Serbian foreign minister, Ivica Dacic has for years been quite explicit about the possibility of a land swap with Kosovo, Vucic has only lately hinted at the idea that the agreement with Kosovo might require partitioning of Kosovo plus some territorial concessions by Serbia (Presevo).

Some European countries are concerned that the talks between Serbia and Kosovo will not solve existing problems but create new ones if they continue in their current direction. Nonetheless, it is unclear whether the discussions are going anywhere or whether citizens of Kosovo would accept a land swap. There is still a long way to go.

But Belgrade and Pristina do not appear to have worked out a detailed plan yet. Given the opposition to the idea in Kosovo, such an agreement would probably intensify mutual recriminations between Serbia and Kosovo if it failed part way through. This has often been the case with the EU-led dialogue in the past few years.

Meanwhile, the United States’ position on a land swap has shifted dramatically out of alignment with the EU’s in previous years. Vučić and Taçi believe that Washington has encouraged them to pursue the idea. Speaking in Belgrade in October, US Assistant Secretary of State Matthew Palmer said that the festering long-term dispute between

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Kosovo and Serbia poses a danger to stability. However, he added new conditions to a possible solution: it should be comprehensive and durable, and should have widespread public support in both countries.

The risks

There are several groups of risks of the idea of a land swap.

Although the idea has been in the public discussion for about a month already, the real plans behind it remain unclear. Neither Vučić nor Tači has made the details of their plans public yet. This invites not only possible criticism from the opponents but also unrealistic hopes among the supporters. It instigates public discussions based on no substance but big promises, which raise the stakes and can create tensions.

What many point out as the biggest risk is the possibility for a chain reaction in the region. The logic for possible change of borders based on the idea for ethnically homogeneous societies can have a destabilizing effect on other parts of the region at the moment when it has eventually stopped producing news for wars, secessions and conflicts and has received a (somewhat distant) European perspective. The dream of ethnically clean territories today rather than EU membership in a few years could lead Albanians in Macedonia and Serbs in Republika Srpska (RS) mobilizing for secession, potentially even leading to the outbreak of violence.

This is indeed the biggest worry in the region: the risk of revitalizing the idea of ethnically homogenous societies on the Balkans. Therefore the suggestion for land swap and its dissemination and propagation can lead to legitimising dangerous propaganda of ethnic ownership over the territory – a principle that has pushed the region on several occasions into bloody conflicts and is particularly worrying in the Balkans where ethnically homogenous states and societies are impossible in practice.

Last but not least, a proposal that receives the skepticism of the EU and the big member states looks like an open invitation for Russia. Russia has already proved that it monitors the situation in the region and uses every opportunity to harm the relations between the region and the EU.

Can the idea work?

There are several factors that point to the fact that the future of the idea is rather unsure.

On the one hand, it looks like hardly anyone seems to be in favor of this idea, especially those directly affected. The Serbian President Aleksandar Vucic is supposed to succeed in convincing the political circles in Serbia to support the deal, using his strong political influence in a possible future referendum. The internal situation in Kosovo, however, is more complicated. Thaci seems less able to forge the internal support that such an agreement would require. Even worse, the idea is being used by his internal opponents against him, as the 'Macedonian referendum model', whereby foreign leaders would come to Kosovo to persuade the population of the merits of the agreement, is not going to materialize. Without a certain degree of domestic backing, the agreement could not be carried out, or could be messy and possibly even violent.

The international support remains a serious challenge. It is unlikely that the European Commission goes further than what was already declared by HR/VP Mogherini. It is actually quite probable that actors like Germany and UK use their influence so that the EU takes a more direct position against the idea. Building on the US position is not of great use for the moment, as it is more an expression of a decreasing interest of the current US administration in the region, than a real engagement.

But this preoccupation with geopolitics distracts from the real issues Serbia must address before it can join the EU – particularly weaknesses in democracy and the rule of law. Vučić may have persuaded himself that, because Kosovo is so important to European policymakers, Serbia can avoid difficult democratic reforms and join the EU if it pushes through a border agreement. He may imagine that the EU is longing for a heroic Balkans strongman who can strike geopolitical deals, whereas it really wants Serbia to become a predictable, well-run country that minds its own business and gets on with its neighbors. "Stability over democracy" is the mantra of the Serbian government and most of its international partners (as it was of the government of then Macedonian prime minister Nikola Gruevski in 2015-2016). An agreement with Kosovo should in the ideal case take place alongside needed reforms, not instead of them.

A land swap deal works only if it is done in consultation with those most affected by it, i.e. the people living in Northern Kosovo and in the Presevo Valley. The agreement could also take root only if it is a part of a larger, honest attempt at reconciliation between Kosovo and Serbia. But due to Serbia's evident lack of ambition to improve relations with Kosovo and the absence of dialogue with local communities, the territorial exchange proposal falls within the tradition of top-down ethnic homogenisation seen in the Balkans in the early 1920s. Any substantive deal on a land swap today will likely proceed from high-level diplomatic negotiations. This is quite different to, for example, the delineation of the border between Denmark and Germany, which involved extensive consultation with residents in affected areas.

Lastly, this type of agreement would primarily threaten to destabilize the region – but it could also boost nationalists engaged in territorial disputes elsewhere in Europe, from Trieste to Transylvania and Tyrol.

The positives

The idea however brings several positives. The main one is that the renewed European focus on the Western Balkans has produced a momentum for the leaders of the region. Both Thaci and Vucic have realized the need for normalization of the relations between Kosovo and Serbia. They already see their interest in the process and are ready to work for a compromise. Such compromise however, should not be self-defeating or bring the feeling of humiliation of any of the societies.

The idea also exposes the current limits of any possible and acceptable solution of the Serbia-Kosovo gridlock. This deal should help Vucic save face while recognizing Kosovo's statehood, which would allow Serbia to join the EU in a few years. It should also allow Kosovo to gain further international recognition.

The Bulgarian Perspective

For Sofia improving the relations between Kosovo and Serbia had become around the beginning of 2018 a goal as part of the Bulgarian EU Presidency's Western Balkans agenda. Bulgarian prime minister Borissov travelled in April to Mostar, in order to meet with Vucic and Thaci (within a regional forum) and encourage both sides to take active steps aiming at better relations. In the midst of occasional bilateral escalation of tensions, the Bulgarian EU Presidency still continued highlighting achieved successes in the dialogue and invested significant efforts in getting all Member States witness the handshake between Thaci and Vucic at the Sofia Summit on 17 May 2018. Even Spain, whose leadership had threatened not to attend the Summit because of Kosovo's presence, finally agreed to keep a representative at the table (albeit not at PM level).

All of those efforts, however, had two aspects: 1) As part of the WB agenda, they were happening within the parameters of the "old" Belgrade-Pristina dialogues. 2) They were taking place simultaneously with the fast developing process of resolving Macedonia's name dispute with Greece, which created pressure to act, and to achieve a comparable success.

Once the 'land swaps' idea crystallized and the fears of Pandora-box effects echoed in various corners of the Balkans, the Bulgarian government stopped commenting publicly on it. The only official statement on the issue was given by PM Borissov at the UN in September, where after mentioning the solution of the name dispute between Macedonia and Greece, he notes:

“Two other neighboring countries face a very difficult dilemma. We support the dialogue between Belgrade and Pristina, we welcome their striving for a normalization of bilateral relations with the EU mediation. At the same time, we believe that, at this stage, a possible "border adjustment" is not a workable solution.”

Both with a view to the risk for Bosnia and Herzegovina, but especially to Macedonia, Bulgarian officials highlight unofficially the Badinter rules and their implications in the region and beyond. The idea that self-determination is a right separate from changing borders is considered key to upholding peace in the Balkans, where almost all ethnic groups live also outside their national borders:

“As they are given the right of self-determination, individuals may demand and obtain their recognition as being part of a group of persons of their choice. This would be done through precise mechanisms, bringing with them guarantees, which have to be negotiated and settled at international level. This would not, however, have any effect upon the territories of those States concerned. Frontiers would remain unchanged.”
(<http://eijil.org/pdfs/3/1/1175.pdf>)

Should this principle be neglected, experts in Sofia fear, that precedent can be deployed by Russia in expanding towards foreign territories populated by ethnic Russians (Crimea).

Possible Third Scenario: A new Basic Treaty

The stalemate between Serbia and Kosovo is not the only one of a similar kind in history. After the World War II, the German Democratic Republic, established in 1949, was not recognised by the Federal Republic of Germany for a long time (until 1972). As part of its Hallstein Doctrine West Germany rejected to maintain diplomatic relations with all those countries that recognized the German Democratic Republic.

The two countries were admitted to the UN (West Germany in 1952, East Germany in 1972). Their confrontational relations however prevented them from becoming full members of the UN and they retained their observer status until 1973 and the Basic treaty. After a change in the government in Western Germany with the new chancellor Brandt, a series of direct negotiations were initiated with Poland, the Soviet Union and GDR. That led to West Germany recognizing the Oder-Neisse line as Germany's eastern border and the signing of the Basic treaty, which was to regulate the relations between the two countries. In it East and West Germany recognized, and agreed to respect each other's authority and independence. The two agreed to exchange "permanent missions," which meant that their relations stopped short of full diplomatic recognition. This granted de facto, albeit not de jure, legal recognition to the German Democratic Republic. In the treaty the Federal Republic and the GDR agreed that each would inform the other of the submission of their respective applications for U.N. membership. At the 28th United National General Assembly on 18 September 1973, GDR was admitted as the 133rd U.N. member and the Federal Republic as the 134th.

The Basic Treaty formula is a good example for normalisation of relations in a situation of stalemate between two countries.

The formula of the Basic treaty gives several elements that can be used solving the Serbia-Kosovo gridlock. The de-facto recognition gives the face-saving option to both sides. It also relieves the reservations of other international actors, as it technically does not change the political map. The treaty from 1972 gives an instrument for achieving international recognition after a long period of mutual blocking. It also gives a path for solving the stalemate without the element of swapping of territories and change of borders.

The Basic treaty formula needs to be based on several pre-conditions. First, it includes direct negotiations between the two sides. Secondly, it can be realised in a situation when the two sides are ready to make compromise with their positions with the understanding that there are possible gains to be obtained. Thirdly, the international community should play its role of a guarantor. It needs to accept, back and, if necessary, to deliver on the achieved compromise between the two sides: an option for a UN seat for Kosovo.

Other elements of such agreement would cover the rights of the Serbs in the North of Kosovo including arrangements for Gazivoda and Trepca, the orthodox sites in the South, and a compensation for Serbia to accept the solution (if not recognise it). This compensation could come in a form of economic and investment stimulus package.

The Three Scenarios in comparison

Regardless of the result of the current negotiation, it seems that from the three possible scenarios, *1) preserving a status quo/ postponing the solving of the problem; 2) Serbia-Kosovo border changes/ swapping of territories; and 3) normalisation of relations based on legally binding bilateral agreement to be reached through the ongoing EU-moderated Serbia-Kosovo negotiations*, **the first scenario seems to be appreciated by most actors**. Only the Serb government and President Thaci (plus only very few Kosovars) are convinced that the EU-led Belgrade-Pristina dialogue is no longer a viable avenue for cooperation and that “it is time to move away from constructive ambiguity to clarity on Serbia-Kosovo” (as an ECFR delegation has been told by a Serbian official recently). Status quo definitely serves the government and political parties in Kosovo best, as PM Haradinaj confirmed in a conversation in September. It is also probably least feared by the WB region. It may however be untenable given that some of the main actors (Serbia, US, EEAS, France) have moved on.

The **second scenario looks very risky** for the reasons discussed above and will not necessarily solve the general issue: create better common future for Serbia and Kosovo and stabilise the region.

A **third scenario that entails a UN seat for Kosovo plus enough reasons for Serbia (and Russia) not to block it**, but does not presuppose any border changes may be the best way forward. It could bring together the current opponents and supporters of the land swaps idea and put the bilateral relationship between Kosovo and Serbia on a better, more robust footing. It could happen only if there is a clear EU dimension to the solution, and an active engagement by the EU institutions.

Scenario 1	Status Quo
Strengths	Appreciated by Kosovo and possibly most of the WB region; currently this is how stability is defined
Weaknesses	Does not produce many results for Kosovo and stops Serbia on its EU path; most other actors have moved on
Opportunities	Incremental and slow improvement; clear limits (EU perspective)
Threats	It can easily and suddenly implode

Scenario 2	Land Swaps
Strengths	New momentum in the Serbia-Kosovo dialogue; renewed focus of the international community on the region
Weaknesses	Not supported in Kosovo, by the region and by major European players; not consulted with local communities; devil in the detail; geopolitics instead of reforms.
Opportunities	Break-through of the deadlock
Threats	Pandora-box effects; precedent for Russia; Risk of creating no robust agreement.

Scenario 3	A new Basic Treaty
Strengths	UN seat for Kosovo and face saving option for Serbia; No risky border changes;
Weaknesses	Not clear what a sufficient compensation for Serbia would be and who would pay for it (especially after Merkel's departure); What status for the Serb municipalities in Kosovo and how to enforce it.
Opportunities	Using current momentum in the talks; bringing all sides on board; Creating a robust solution, which would establish new type of relationship between Serbia and Kosovo.
Threats	Russian veto.