

Peace Agreement between Kosovo and Serbia: **Opportunities and Challenges**



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Abstract

Since 2011, when the dialogue on the normalization of relations between Kosovo and Serbia, facilitated by the European Union, began, ideas have been circulated and a series of debates have been held on the possibility of reaching a peace agreement in the form of a legally binding document. Such a stance has been increasingly taking place in the context of media debates, official statements by state leaders of Kosovo and Serbia, and more recently, the European Union and the United States. This study sheds light on current debates on the possibility of finalizing this dialogue through a binding agreement of both countries, which would be binding and implemented under the auspices of the international community and would serve as a platform for a lasting and durable solution to all disputes between the two countries.

Keywords: *Peace agreement, treaty, Kosovo, Serbia, EU, US, normalization of relations, peace, stability.*

Introduction

Concerning the possibility and necessity of finalizing Brussels dialogue with a peace agreement, even alluding to a peace treaty between the two countries, the most vocal demands have come from both Kosovo's top state leadership and public discourse in Kosovo.¹

Such a persistent demand for the Kosovan side is based on four objective circumstances. Initially, such persistence is based on prior experiences drawn from two previous attempts by the international community to reach a peace agreement between Kosovo and Serbia. Since the Serbian side rejected both the peace agreement deriving from the 1999 Rambouillet negotiation process and President Ahtisaari's Comprehensive Proposal for the Kosovo Status Settlement, which came out of the Vienna 2006-2007 negotiation process, no agreement was reached by both parties, which would eventually resolve all the long-standing disputes between the two countries. This rejective approach of Serbia is already embedded in the collective memory of the political leadership and the citizens of Kosovo and has made them trust only the kind of dispute settlement mode with Serbia that would be reached through a legally binding agreement and under international guarantee, and in particular the United States of America (USA) and the European Union (EU).

Secondly, it is no accident, but rather logical for the Kosovan side to seek and expect such an agreement, given that the dialogue with Serbia was of incremental (gradual) nature, slipping from technical dialogue to political dialogue, which should be concluded with a peace agreement of a binding nature. Thirdly, despite the fact that the full implementation of all the agreements reached in the

Brussels dialogue still remains a challenge in itself,² the Kosovar side is convinced that the implementation of a final agreement with Serbia cannot be left to moral considerations and of the political will of the Serbian side, but which must be of a mandatory character and under the international guarantee. Fourthly, over the past two years, the finalization of this process through a comprehensive and legally binding agreement has been explicitly requested by the EU itself on the one hand, and by the US on the other. This stance makes the persistence of the Kosovan side increasingly legitimate.

On the other hand, the Serbian side has been more refrained in this regard, though they have not lacked their pledges to finalize this dialogue through a peaceful process of compromise logic, however without alluding to the conclusion of any peace agreement in the form of treaty or alike. Despite the twenty years since Serbia practically lost sovereignty over Kosovo, in public discourse within Serbia, citizens there continue to provide emotional descriptions of Kosovo. Studies show that only a small number of citizens (less than 20%) support a comprehensive and legally binding agreement, whichever means the official recognition of Kosovo by Serbia. The vast majority (over 70%) continue to object such a scenario.³ Serbian state leadership, on the other hand, insists on a compromise solution, leaving the option as too vague⁴, while Serbia's constitution still considers Kosovo part of it.

1 Research Institute of Development and European Affairs (RIDEA), "Voice of the People about the 'Grand Finale' between Kosovo and Serbia" (Volume II), June 2016, p.28.

2 European Commission (2018) 'Report on Kosovo'. SWD (2018) 156 final. Strasbourg, 17.4.2018, p.49; Research Institute for European Affairs and Development (RIDEA), "Study on the Substance and Status of Implementation of Kosovo-Serbia Dialogue Agreements", October 2019, p.20.

3 Center for Social Dialogue and Regional Initiatives (CSDRI), 'Normalization of Relations between Belgrade and Pristina from a Citizens' Perspective - What We Know and What We Feel?', Belgrade, October 2019, p. 3-4.

4 Gazeta Metro: "French press Vucic: If not the exchange, what is compromise for you?"(23/11/2019 | 15:32), available at: // gazetametro.net/francezet-e-zene-engushte-vucicin-nese-jo-exchange-what-som-per-ty-compromis/; Research Institute for Development and European Affairs (RIDEA) & Balkan Policy Research Group (BPRG), Scenarios of the 'Grand Finale' between Kosovo and Serbia, April, 2018, p. 16.



Studies show that only a small number of citizens **(less than 20%)** support a comprehensive and legally binding agreement, whichever means the official recognition of Kosovo by Serbia. The vast majority **(over 70%)** continue to object such a scenario

Concerning the position of the international community, the EU, the US, Germany, the United Kingdom, France and Italy, they have repeatedly stated that they continue to encourage Kosovo and Serbia to return to dialogue and find a durable solution to their Euro-Atlantic future.⁵

for reaching such an agreement between the two countries, including the elements that should be included in it, which would constitute the essence of the solution of open issues that would pave the way for constructive and long-term cooperation for both countries.

In order to ensure coherence in analyzing these developments, this study is divided into two parts. The first part focuses on the theory of peace agreements under international treaty law. Firstly, conceptual reviews will be provided on the nature and legal status of peace agreements, types, constituent elements, and the safeguards mechanisms in the process of their implementation. Such an elaboration in the spirit of international law creates an opportunity for a systematic and coherent understanding of the Brussels peace process for the normalization of relations between Kosovo and Serbia, especially in the sense that it can produce a comprehensive settlement agreement for durable solution of all disputes between them. The second part analyzes the current broad dynamics of the Brussels dialogue, the current state of relations between Kosovo and Serbia, as well as the recent developments and stances held by the various stakeholders involved in this dialogue regarding the possibility of reaching a comprehensive and legally binding agreement between both countries. This section will also elaborate the options and opportunities

⁵ U.S. Embassy in Serbia: Joint Statement by the Governments of France, Germany, Italy, the United Kingdom and the United States, available at: https://xk.usembassy.gov/joint_statement_by_ambassadors/

1

Theoretical Considerations on the Nature, Content and Implementation of Peace Agreements: International Law Perspective

Theoretical Considerations on the Nature, Content and Implementation of Peace Agreements: International Law Perspective

The nature of the peace agreements and their legal status

In the context of recent studies of peace processes and the resulting agreements, the researchers find that the more subfields of these types of studies evolve and get profiled, the greater the variety of documents created as peace agreements.⁶ An increasing need to study the role of peace agreements as instruments for ending conflicts came in the late 1990s. This necessity has been closely linked to the context of the increasing diversification of the nature of conflicts on the international stage, due to the fact that during this period intra-state conflicts were beginning to become widespread.⁷ This imposed the need to undertake many activities for peace negotiations, which resulted in concrete peace agreements, mainly in the form of peace treaties.

In the context of debates between authors of international treaty law and political scientists, also about the “predominance of documents that can be described as peace agreements ... the term ‘peace agreement’ remains largely vague and clearly unexplained.”⁸ However, greater clarity on peace agreements is provided through: a) terminology definition of their notion, b) categorization of all their types into several major groups, based on the criteria con-

tained in their provisions, and c) explaining to what extent they take on recognized legal forms, namely ‘get legalized’.

In a more general sense, it is considered that peace agreements provide some kind of rule-based approach and manifest themselves as the establishment of peace through a very formal document.⁹ Unlike the political pacts that international actors may conclude, or simple declaratory documents, international treaties and agreements are legally binding instruments with concrete mechanisms for their implementation.¹⁰ As can be seen, the terms ‘international agreement’ and ‘international treaty’ are used interchangeably, referring to more or less the same type of document. Furthermore, Article 2 of the Vienna Convention on the Law of Treaties of 1969, clearly states that a treaty is “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and disregarding its title”.¹¹ Referring to the way this convention defines international agreements, it turns out that some peace agreements seem to be treaties. The treaty may even refer to some types of peace agreements that address intra-state conflicts of a nature. Scholars often refer to the case of the General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the Dayton Peace Agreement.

6 Ghassem Bohloulzadeh, “The Nature of Peace Agreement in International Law”, *Journal of Politics and Law*; Vol. 10, No. 2; 2017, p.208; Christine Bell: Peace Agreements: Their Nature and Legal Status, *The American Journal of International Law* · May 2008, f. 373-385.

7 Paul R. Hensel (2001): *The More Things Change: Recognizing and Responding to Trends in Armed Conflict*: Florida State University, 2001, f.4.

8 Bell: Peace Agreements, 2008, f.374.

9 Bohloulzadeh, 2007, f.208.

10 Antonio Cassese (2005): *International Territorial Law* 63.

11 Vienna Convention on the Law of Treaties, May 23, 1969, Art. 2, 1155 UNTS 331, available at: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

Concerning the categorization of peace agreements, authors consider the various stages of the dispute as well as the subject they regulate in a conflictual context as criteria. Thus, a widespread categorization model in the literature of peace scholars consists of three systematic levels of peace agreements: pre-negotiation peace agreements, framework agreements (substantive agreements) and executive agreements (renegotiable agreements).¹² Based on most practices, the content of peace agreements includes information on the five key features. They contain provisions on military, political, territorial, justice and, finally, provisions relating to the implementation of the agreements.¹³

Although peace agreements are clearly legal documents, nevertheless, it is quite difficult to place them within the existing legal categories of international agreements, because of diverse content and type of signing entities.¹⁴ To better understand the legal status of peace agreements, some scholars have set some substantive criteria that indicate the level of their 'legality', such as: how 'legal' the nature of the document is, the accuracy of drafting, and the level of authority designated to a third party in relation to its interpretation and implementation.¹⁵

Components of a peace agreement: practices and cases

There are generally three main parts to the treaty: the introductory part covering the circumstances leading to the drafting of the treaty; the substantive part, containing the subject; and the transitional provision, which is defined as the technical part that makes the treaty effective and its effects vis-à-

vis other acts covering the same issue. However, in the substantive sense the treaties do not have any uniform rules on content, because moreover, each treaty seeks to regulate a particular matter which is different from other matters. However, peace treaties refer to these aspects:

→ **THE CESSATION OF HOSTILITIES:** is almost the first and unsurpassed element of the peace treaty for the fact that this element creates the other preconditions for moving forward in further implementation of the Peace Treaty. Thus, the Dayton Agreement¹⁶ Article 2 provides for the cessation of hostilities and the prevention of offensive operations against one another, including the exchange of combatants and civilians.

→ **TERRITORIAL BORDERS:** given that hostilities also resulted in the movement of state borders or territorial changes, peace treaty necessarily includes this element and treats it seriously. In principle, in the matter of territory and state borders, there are two situations:

- Non-acceptance of territorial changes in accordance with the Helsinki Final Act¹⁷ (1975), refers to not changing boundaries despite the fact that the Helsinki Final Act has no binding character and no treaty status. Practically it has international adherence and applicability.
- Uti Possidetis - accepting the change of state borders that came about as a result of changes during the war and is based on the "as you possess under law" principle. African and Latin American countries were created based on this principle. In the context of the Western Balkans, this principle has served to end hostilities in Bosnia and Herzegovina and has become part of the Dayton Agreement by formalizing the division of Bosnia and Herzegov-

12 Peter Wallensteen & Margareta Sollenberg, "Armed Conflicts, Conflict Termination and Peace Agreements, 1989-96", *Journal of Peace Research*, vol. 34, no.3, 1997, f.34.

13 Peace Agreements 1975-2011 - Updating the UCDP Peace Agreement Dataset STINA HÖGBLADH Uppsala Conflict Data Program (UCDP), Department of Peace and Conflict Research, Uppsala University, f. 44, accessible at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.739.1886&rep=rep1&type=pdf>

14 Bell, p.379.

15 Ibid, p.385.

16 The General Framework Agreement for Peace in Bosnia and Herzegovina (1995), available at: <https://www.osce.org/bih/126173?download=true>

17 HELSINKI (1975) Conference on Security and Co-Operation in Europe Final Act, available at: <https://www.osce.org/helsinki-final-act?download=true>

ina's territory along inter-ethnic lines¹⁸ in the Bosnian-Croatian Federation and the Republika Srpska of Bosnia.

→ **POLITICAL:** political aspects including the mutual relationship of the parties (recognition) for the post-war period. This refers to upholding the effectiveness or withdrawal from the international legal obligations (treaties) to which the previous country had entered into (political, military, property and public debt treaties).

→ **REPARATIONS:** Damages caused during the period of hostilities that are in principle attributable to the party who initiated the war. War reparations are typically regulated by the Treaty of Versailles¹⁹ ordering Germany and Italy to pay reparations to the victorious countries.

Factors and mechanisms that guarantee the successful implementation of a peace agreement

Scholar Hampson states that the existence of peace agreements, in the sense of a formal document, is little more than an indicator of the path to true peace.²⁰ Therefore, a peace process that ends with a peace agreement, its effective implementation is crucial, especially in terms of key objectives. What makes a binding agreement effective in terms of implementation is a matter of debate. Scholars cite several factors that directly and indirectly affect the implementation or non-implementation of an agreement. Hehn, for example, mentions some important factors affecting the implementation of the agreements. Firstly, it focuses on the role of the environment, namely the contextual circumstances in which the agreement is implemented; the willingness of state leadership to show political will and apply constructive approaches to agreements; also the

typology and degree of legal status and the nature of the obligations created by the agreement play a role, as well as the status and position held by third parties that may be involved in guaranteeing the implementation of the agreement.²¹ Other scholars pay attention to several other factors such as: the accuracy and short-term objectives envisaged by the agreement; terminology accuracy of the provisions of the agreement; 'constitutional values as alternative legalization'; involvement of states or international organizations as 'witnesses', 'guarantors' and 'monitors' of the implementation of the agreement.²²

There are studies showing that the level of non-implementation of peace agreements in modern times has been very high. According to one study, it is shown that in the period between 1975 and 2011, more than 35% of the peace agreements reached were never implemented.²³ This fact highlights the weakness of international norms and mechanisms to impose rules of conduct for states and other contracting parties and indicates that in most cases the issue of implementing peace agreements remains entirely at the discretion of countries' political will and in good faith. Despite a renowned rule in international law *pacta sunt servanda* (agreements are to be kept), the UN Charter (Article 2, paragraph 2) and the Vienna Convention of 1969 (Article 26) have provided provisions that emphasize the parties' obligation to upkeep the agreements, namely the showing of good faith in their implementation.

It is worth mentioning the guarantee model in the implementation and interpretation of the Prespa Agreement of 2018, concluded between Greece and North Macedonia.²⁴ The Prespa Agreement is an agreement between sovereign countries, negotiated under the mediation of the UN Secretary Gen-

18 Agreement for Peace in Bosnia and Herzegovina, 1995, Annex II.

19 Article 231 Treaty of Versailles.

20 Fen Osler Hampson (1996): *Nurturing peace: why peace settlements succeed or fail*, United States Institute of Peace Press, p.221.

21 Arist von Hehn (2011): *The internal Implementation of Peace Agreement after Violent Intrastate Conflict*, Martinus Nijhoff Publishers, Lieden, Boston, 2011. f.37-53.

22 Bell: *Peace Agreements*, 2008, f. 395-400.

23 *Peace Agreements 1975-2011*, f.53.

24 Final Agreement for the Settlement of Differences as Described in United Nations Security Council Resolutions 817 (1993) and 845 (1993), The Termination of the Interim Accord of 1995, and the Establishment of a Strategic Partnership between the Parties, (2018), available at: <https://vlada.mk/sites/default/files/dokumenti/spogodba-en.pdf>

eral. It has a binding character while the measures ensuring its implementation are: a) first ratified by the second party (North Macedonia) and then by the first party (Greece); b) Good services – under Article 19, paragraph 2, the parties are entitled, in the event of a dispute, to turn to the UN Secretary-General to seek good offices as diplomatic means of resolving international disputes, and c) regarding disputes relating to the implementation and interpretation of this Agreement that the parties fail to resolve under Article 19 (2) (i.e., through good offices), the parties shall have the right, both together or individually, to submit it to International Court of Justice.

Ratification and registration of peace agreements with the United Nations

Ratification of peace agreements – implies retroactive confirmation of international agreements. Article 14 of the Vienna Convention²⁵ states that ratification expresses the readiness of States to assume responsibilities from the treaty. On this basis, there is a contradiction as to when the agreements should be ratified. Some scholars think that ratification is only necessary if it is explicitly provided by the parties to the treaty. This approach is accepted by the UK.²⁶ On the other hand, it is also suggested that ratification is necessary in each case unless the agreement provides otherwise.²⁷ The constitution of Kosovo has specified the type of agreements that require ratification. Article 17 of the Constitution states, “International agreements relating to the following subjects are ratified by two thirds (2/3) vote of all Members of the Parliament: (1) territory, peace, alliances, political and military issues; (2) fundamental rights and freedoms; (3) membership of the Republic of Kosovo in international organizations; (4) the undertaking of financial obligations by the Republic of Kosovo;”²⁸

Registration of peace agreements with the United Nations - The issue of registration of ‘treaties’

25 Vienna Convention on the Law of Treaties

26 Malcolm Shaw (2003): *International Law – Fifth Edition*, Cambridge University Press, 2003, f. 820.

27 Ibid.

28 Constitution of the Republic of Kosovo.

and ‘other international agreements’ is expressly regulated by Article 102 of the Charter of the United Nations. Under this provision, every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it²⁹.³⁰ To reinforce this article, the UN General Assembly, through Resolution 97 (1) of 14 December 1946, also adopted regulations, which provide more details on the registration of international treaties and agreements.³¹ Article 2 of the Regulation provides that an agreement may not be registered before it has first entered into force between the signatory parties; while Article 10 provides for the deposit and registration of certain categories of international treaties and agreements which were not subject to the status of agreements under Article 102, which concerned only agreements and treaties concluded between UN member states. Thus, Article 10 (c) recognizes the possibility and obliges states that are not yet members of the UN to submit for registration any agreement where they are contracting parties.³²

29 Registration of the Peace Agreement in a procedural sense would mean: a) preparing the whole material (including text in authentic languages, reservations, statements, annexes, etc.); b) control measures if eventually the peace agreement is registered earlier; c) verification if there are any references to other agreements; d) prepare a certified copy of the entire text of the Agreement; e) if the Agreement is drafted in more than one language then a certified copy of the Agreement in all languages shall be prepared; f) when the Agreement is not drawn up in English or French, hard copy in English and French shall be produced; g) prepare all the material electronically and upload to CDs, DVDs and also sent by email; treatyregistration@un.org; h) send by mail or in person to; Treaty Section, Office of Legal Affairs, 380 Madison Avenue, 13 floor, New York, NY 10017, United States of America; i) the date of submission to the Secretariat is calculated as the date of registration and that the submitter shall also receive the certificate of delivery; j) If additional documents are required, the request will be sent to the deliverer. See more: United Nations, ‘Treaty Collection’, available at: https://treaties.un.org/Pages/Content.aspx?path=DB/UNTS/pageIntro_en.xml

30 Charter of the United Nations Article 102

31 General Assembly, Resolution adopted by the General Assembly on 20 December 2018 (A/RES/73/210), 14 January 2019, available at: <https://treaties.un.org/doc/source/docs/A-RES-73-210-Eng.pdf>

32 Zejnullah Gruda (2003): *International Public Law*, University of Prishtina, 2003, p.277.



In the context of debates between authors of international treaty law and political scientists, also about the “predominance of documents that can be described as peace agreements ... the term ‘peace agreement’ remains largely vague and clearly unexplained.

Given the interpretation of these provisions, including cases of agreement reached between Kosovo and Serbia, each of the two countries would have the opportunity to deposit the agreement for registration with the Secretariat, even though Kosovo has not yet have the status of a member state. However, since there is no precise timetable for registration of certain international treaties and agreements, there is a real possibility that, following a final agreement between Kosovo and Serbia, one of these countries

may submit the agreement in question for registration in the capacity of a sovereign country. This scenario may only apply if the final agreement provided for mutual recognition between Kosovo and Serbia and guaranteed Kosovo a seat at the UN. Under these circumstances, once Kosovo enacted this agreement through ratification, all possibilities would be created and the formal criteria for depositing it to the UN Secretariat for Registration and Publication are met.

2

**In search of the
Kosovo-Serbia Peace
Agreement**

In search of the Kosovo-Serbia Peace Agreement

The process of normalizing relations between Kosovo and Serbia in the spirit of Brussels dialogue: road to the final agreement

The latest history of open hostilities between Kosovo and Serbia began in 1989, when the Assembly of the Socialist Autonomous Province of Kosovo suppressed Kosovo's autonomy by force. Now exactly three decades since, it seems that the perspective of ending the conflicting relations between the two countries is not very clear. In fact, the conflicting relations between Kosovo and Serbia over the past three decades have dominated almost the whole discourse of political developments in the Western Balkans. The international community's efforts to appease the relations between them have always been evident and manifested in a number of diplomatic activities, through which extremely complex peaceful negotiation processes have been pursued.

During these processes, the role of the United States and more recently the EU has been very instrumental, where both actors have framed and mediated the negotiation processes between the two countries in an effort to produce a peaceful solution to all long-standing and politically sensitive disputes. Following the declaration of independence of Kosovo by its legitimate institutions in 2008, a new political momentum was created which faced a myriad of responses. Although the vast majority of EU member states (including some of the most powerful countries in the democratic world) have recognized Kosovo's independence; Serbia flatly refused to do so, even launching a project to undermine Kosovo's statehood in the international arena. Initially, Serbia addressed a question to the International Court of Justice (ICJ) to obtain an advisory opinion on whether the act of declaring independence by Kosovo institutions was in accordance with international law. After more than two years of Serbia's active efforts to

prevent Kosovo from strengthening its subjectivity in the international arena, on July 22, 2010, the ICJ ruled that "the declaration did not violate any applicable international law".³³ However, on the same day as the announcement of the ICJ ruling, EEAS issued a joint statement stating that the verdict opened a new phase in which the EU expressed its readiness to facilitate a dispute resolution dialogue between Serbia and Kosovo, and that both countries had a future in the EU.³⁴ Following these developments, the UN General Assembly adopted a consensual resolution in October 2010, welcoming the EU's willingness to facilitate dialogue between Kosovo and Serbia, stating that "dialogue would be to promote cooperation, making progress on the road to the EU and improving people's lives."³⁵ On this basis, the EU has been involved in this process through a proactive approach, which still remains the most ambitious commitment ever made by the latter in the framework of the European External Action Service (EEAS).

Since 2011, under the leadership of the top officials of the European External Action Service, 40 rounds of high-level negotiations have been organized, not to mention countless rounds of technical negotiations. These rounds were conducted in three phases, where parties reached agreement on 33 issues, both technical and political.³⁶ The most important of these agreements remains the 'First Agreement of

33 International Court of Justice (2010): Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo. Request for Advisory Opinion (22 July 2010), icj Reports, 403.

34 *European External Action Service, 2010*, available at: http://europa.eu/rapid/press-release_PESC-10-213_en.htm

35 UN General Assembly Resolution (2010): Request for an Advisory Opinion of the International Court of Justice on Whether the Unilateral Declaration of Independence of Kosovo Is in Accordance With International Law (13 October 2010) A/RES/64/298, available at: http://www.kryeministri-ks.net/repository/docs/Rezoluta_e_OKB_per_Dialogun_e_Brukselit_e_9_Shtator_2010.pdf

36 RIDEA & BPRG, April, 2018, p.4.

Principles Governing the Normalization of Relations', shortly known as the Brussels Agreement, reached on 19 April 2013. This 15-point agreement provided the basic parameters for the integration of northern Kosovo³⁷ within the constitutional order of Kosovo and established the lines for the normalization of Kosovo-Serbia relations. But what is the real state of normalization right now?

The period between 2017 and 2019 has been full of tensions and incidents in bilateral relations between Kosovo and Serbia. However, the EU has not diminished its commitment to encourage both sides to return to continuing the process of normalizing relations between them.³⁸ During these two years a number of meetings were held between Serbian President Aleksandar Vučić and Kosovo President Hashim Thaçi, mediated by High Representative Mogherini. Both sides have agreed on a new and final phase of dialogue that will lead to the achievement of a comprehensive agreement for the full normalization of relations.

For the EU, the factual state of implementation of previously reached agreements is not sufficient.³⁹ This situation seems to have influenced EEAS officials to focus their commitment on encouraging the parties to reach a comprehensive agreement that would resolve all open issues between them. In the EU Enlargement Strategy for the Western Balkans, published by the European Commission in February 2018, the EU for the first time decisively emphasized that the essential condition for progressing on their

European path is that both countries reach 'A comprehensive, legally-binding normalization agreement'.

In addition, one of the features of recent developments in the process of normalizing relations between the two countries is the direct involvement of the United States in the process, although as stated with a supporting role for both negotiating parties and the EU as facilitating the process. Witnessing the total stagnation of the negotiation process, both the US and the EU have applied incentivizing approach to the parties, encouraging them to move towards a final settlement of the disputes. In this regard, the letters that US President Donald Trump sent to both Presidents Thaci and Vučić at the end of 2018 and early 2019 were considered encouraging. The US President has called on both sides for internal consensus and for efforts to facilitate the process of reaching a comprehensive agreement that would contribute to peace, stability and prosperity for both countries and the entire Balkans region. President Trump has been quite decisive, letting both sides know: "...Failure to capitalize on this unique opportunity would be a tragic setback, as another chance for a comprehensive peace is unlikely to occur again soon".⁴⁰ In the second letter, Trump added that ... "We see mutual recognition as the foundation of normalized relations and the basis for any comprehensive solution."⁴¹ Concrete initiative to move Kosovo-Serbia relations also came through German Chancellor Angela Merkel and French President Emmanuel Macron in the margins of the Western Balkans Leaders' Summit held in Berlin in April this year.

At present, there is no clear scenario on how to proceed with the dialogue process. While the Serbian government conditions the dialogue with the abolition of the 100% customs tariff on products im-

37 This part consists of four municipalities: North Mitrovica, Leposavic, Zubin Potok and Zvečan, which are ethnically Serb-majority populated.

38 Miruna Troncota: "Brussels Based Talks are a Dialogue of the Deaf", Kosovo 2.0 (23.02.2017), available at: <https://kosovotwopointzero.com/en/brussels-based-talks-dialogue-deaf/>

39 European Commission (2018) 'Report on Kosovo'. SWD (2018) 156 final. Strasbourg, 17.4.2018, p.49, available at https://www.mei-ks.net/repository/docs/kosovo_report_2018_shqip.pdf A realistic assessment of the extent of implementation of all Kosovo-Serbia agreements remains quite challenging, "because the negotiating parties have consistently put forward different interpretations, even as the EU has often not intervened to support or refute the claims of representatives of Kosovo and Serbia." (Kosova Democratic Institute (KDI) & Transparency International Kosovo: Kosovo - Serbia Dialogue: Challenges and the Way Forward, March 2018, 18).

40 *President of Kosovo 2018*, available at: <https://www.president-ks.gov.net/en/news/president-thaci-received-a-letter-from-the-president-of-the-usa-donald-trump>

41 *President of Kosovo 2019*, available at: <https://www.president-ks.gov.net/en/news/president-trump-congratulates-president-thaci-on-the-11th-anniversary-of-the-independence-reiterates-the-importance-of-normalisation-of-relations-with-serbia>

ported from Serbia and Bosnia and Herzegovina; on the other hand, the Kosovo government has so far conditioned the abolition of this tariff with granting formal recognition by Serbia.⁴² During this fall, the United States have been strongly involved in encouraging and supporting Kosovo and Serbia to return to dialogue. Specifically, such support came through Deputy Assistant Secretary of State, Matthew Palmer, and the special envoy of the US president, Richard Grenell.

Word play: Peace Agreement or Agreement on Normalization of Relations?

The question of the applicability of a unique terminology by the EU as facilitator of the dialogue between Kosovo and Serbia has been and continues to be one of the most prominent phenomena of this process. Unique terminology was used to name the dialogue and later the resulting agreements. It may be considered that there are two factors that have driven the EU to operationalize such terminology in the process. Firstly, since the EU by its legal and political status is a unique entity in the international arena, therefore its approaches to dialogue processes, when presented as facilitators or mediators, are also unique. Secondly, in the case of facilitating this dialogue, the application of such a unique terminology was imposed by contextual circumstances. Specifically, since the baseline to be followed carefully throughout this process consisted in not addressing Kosovo's status, it led the EU to apply a so-called 'status neutral' approach, which later led to the application of another specific approach, 'of creative ambiguity'. Initially the negotiations were called 'negotiations for normalization of relations', without specifying any concrete element of their outcome and what was actually referred to with 'normalization'. Also the titles of reached agreements were often ambiguous (e.g.: Association/Community).

Even when expressing its views on the European perspective of the Western Balkans, the EU for the first time launched a somewhat clearer stance on the outcome of dialogue between the two countries, which must be concluded through a comprehensive and legally binding agreement. Indeed, the use of the term 'comprehensive' regarding this agreement again produced opportunities for ambiguous interpretations. Although 'comprehensive' defines substantive quality in legal terms, it has been interpreted by some actors in a somewhat political spirit. Thus, the state leaders of both countries, very soon after the interpretations of this term during the first half of 2018, at the event titled 'new perspectives on EU enlargement', held in Austria on 25 August 2018, came up with a controversial idea of 'adjusting borders' between the two countries, which would be the key to achieving a peaceful historical settlement between Kosovo and Serbia.⁴³

Although the exact content of such comprehensive agreement is not known, its legal nature is still unclear. Thus its character as a legally binding document, a priori, qualifies it towards the terms of a peace agreement, which may even be called a 'peace treaty'. Now a definition given by Yawanarajah and Ouellet seems to clearly define the notion of comprehensive agreements:

"Comprehensive Agreements address the substance of the underlying issues of a dispute. Their conclusion is often marked by a handshake, signifying an 'historical moment' that ends a long-standing conflict. Comprehensive agreements seek to find the common ground between the interests and needs of the parties to the conflict, and resolve the substantive issues in dispute".⁴⁴

The practice of international law recognizes several instances of reaching peace agreements with 'com-

42 Euractiv (2019): Kosovo to keep tariffs until Serbia grants recognition, insists PM (January 24, 2019), available at: <https://www.euractiv.com/section/enlargement/news/kosovo-to-keep-tariffs-until-serbia-grants-recognition-insists-pm/>

43 Balkan Insight: "Serbia, Kosovo's Presidents vow for new historic deal, August 26, 2018", available at: <https://balkaninsight.com/2018/08/26/serbian-kosovo-presidents-vows-for-new-history-08-25-2018/>

44 Nita Yawanarajah and Julian Ouellet, "Peace Agreements", available at: https://www.beyondintractability.org/essay/structuring_peace_agree

prehensive' designations. Perhaps the most representative cases are: "Framework for a Comprehensive Political Settlement of the Cambodia Conflict"⁴⁵; "The Comprehensive Peace Agreement between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army of 2002",⁴⁶ "Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal (Maoist), of 2006".⁴⁷

Principles and key components of the eventual Kosovo-Serbia agreement

There is no single criterion in the theory and practice of international law that would list the constituent elements on which a text of a peace agreement would be formulated. Text of each agreement is unique in nature and regulates the subject imposed by conflicting contextual circumstances. Recent attempts to tentatively frame a possible draft peace agreement between Kosovo and Serbia, based on a model of another agreement, would render the agreement 'mechanical' and ineffective. A peace Kosovo-Serbia agreement should be original and provide settlement to all disputes produced by the conflicting context between the two countries.

Since 2013, when the Brussels Agreement was reached, and until now, voices about the final phase of the process of normalization of relations between the two countries have been intensifying. During this time many ideas, plans, and even such practices of resolving such disputes have been recommended, with reference to concrete practices both inside and

outside Europe. The two most mentioned models are the case of the 1972 agreement between the Federal Republic of Germany and the German Democratic Republic⁴⁸ and that of the 1972 respectively 1998 agreements between the United Kingdom and Ireland.⁴⁹

If we refer precisely to the conceptual content of the EU's stance on a "comprehensive and legally binding agreement", the range of issues that would need to be regulated under a possible peace agreement would be quite wide. The nature of the issues of disagreement between the two countries is very divisive. They derive from issues relating to disputes over state subjectivity and territorial integrity, to disputes over succession and reparations. They also range from issues of a technical character to those with psychological motivation. Speaking plainly, a possible peace agreement should provide a solution to every issue or dispute (including unresolved issues during earlier dialogue), which may be considered as unaddressed, potentially becoming a threatening element of undermining the viability of that agreement, and consequently, of peace in general.

A very complex dimension in defining a list of all open issues for which a peace agreement would offer a solution is that there is a great deal of difference between the two sides about what principled positions can actually be considered as "Open issues" for consideration. Of course, in the later stages of formal dialogue, the first compromise between the two countries will be the issue of specifying all the problems that the peace agreement is expected to address.

Below are some of the key principles and elements that an eventual peace agreement should contain:

- The text of the agreement should be formulated with very clear terminology provisions. This would

45 Framework for a Comprehensive Political Settlement of the Cambodia Conflict, available at: https://peacemaker.un.org/sites/peacemaker.un.org/files/KH_911023_FrameworkComprehensivePoliticalSettlementCambodia.pdf

46 The Comprehensive Peace Agreement, available at: https://peacemaker.un.org/sites/peacemaker.un.org/files/SD_060000_The%20Comprehensive%20Peace%20Agreement.pdf

47 Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal (Maoist), available at: https://peacemaker.un.org/sites/peacemaker.un.org/files/NP_061122_Comprehensive%20Peace%20Agreement%20between%20the%20Government%20and%20the%20CPN%20%28Maoist%29.pdf

48 Treaty on the Basis of Relations Between the Federal Republic of Germany and the German Democratic Republic and Supplementary Documents, 21 December 1972.

49 Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of Ireland, also known as the Belfast Agreement or the Good Friday Agreement.

avoid the possibility of ambiguous interpretations of the content of the agreement.

- The agreement should be built on such principles that are in the spirit of fostering reconciliation between the two countries and promoting a neighborly, constructive cooperation, in line with the mission and objectives set forth in the Charter of the United Nations.
- The peace agreement should also convey a psychological message of reconciliation and confidence-building between the two countries, and a spirit based on which they would reflect constructivism in the prospect of future cooperation within regional and international mechanisms.
- The agreement should have provisions reconfirming the willingness of the two countries to assume all the responsibilities arising from the agreements reached during the current dialogue process in Brussels, including technical and political dialogue.
- Specifying time limits for the implementation of certain provisions of the agreement should also be one of the essential elements of this agreement. Doing so would avoid any possibility of manipulating the implementation of the agreement in terms of time for both countries.
- Concerning the eventual possibility of establishing a “legal entity” of Serb-majority municipalities in Kosovo, the agreement should ensure that this entity (regardless of name) does not constitute a third level of government and does not affect the unitary character of state regulation of Kosovo.
- In any version, the agreement would bring recognition to the Republic of Kosovo by the Republic of Serbia, and guarantee Kosovo a UN seat.
- The agreement should clearly describe the inviolability of the current territorial integrity of both countries during the border demarcation process with Serbia, and that borderline would enjoy the status of the border between the two sovereign countries.
- Concerning the modalities for establishing diplomatic relations between the two countries (which would derive from mutual recognition), the agreement should contain specific provisions referring to specialized international conventions regulating diplomatic and consular relations between countries.
- Against its background, the agreement should lay down clear terms for cooperation between the two countries in resolving the fate of persons missing since the recent war in Kosovo. Provisions must be binding in accordance with international standards on missing persons.
- The agreement should have specific provisions regulating the issue of rights and obligations as a successor country. The question of succession should focus on treaties and debts.
- Concerning religious and cultural heritage, Kosovo should reaffirm its country’s readiness to protect this heritage, regardless of identification along ethnic lines. This should be done in the spirit of rebuilding mutual trust and accepting religious diversity as a positive value of Kosovan society. In this regard, it should not go beyond the compromise incorporated in the ‘Ahtisaari Package’, unless there is a need to issue additional legal acts by the Kosovo institutions that would enable this objective to be more effectively achieved.
- The agreement could also contain provisions regulating certain matters for which the two countries would agree at the formal stage of drafting negotiations, but which would be in line with the spirit of guaranteeing peace and stability in the region and wider.

The mode and mechanisms of guaranteeing and implementing the agreement

The situation of non-implementation of all agreements (especially by Serbia), achieved so far in the Brussels dialogue, has significantly discredited the seriousness of the Serbian side and called into ques-

tion the EU's credibility as a facilitator. Doubts in the eyes of Kosovo's leadership and citizens have been reinforced by the EU's controversial stance on recent ideas to adjust the Kosovo-Serbia border, as an option for a comprehensive settlement. In the form of official statements, both the former prime minister and the president of Kosovo demanded direct US involvement in the process.⁵⁰ Kosovan side considers the US involvement as extremely important and vital for the progress of the finalization of the dialogue, and subsequently, for the implementation of the eventual peace agreement. Such an assessment by Kosovo is backed by EU's lack of unity regarding recognition of Kosovo's statehood as its five members remain entrenched in their initial positions by not recognizing Kosovo as an independent country.

Indeed, the practice of guaranteeing peace agreements by third parties has shown that the presence of the US as guarantor has been crucial to the longevity of these agreements. In the current context, the involvement of the US in this process remains at the level of debate. Apart from what was made known already that there will be a serious engagement by them at this stage of the dialogue, the capacity of this engagement remains to be clarified. It is not clear whether the US will only engage as an EU supporter in facilitating the remainder of the dialogue, and with an encouraging role for both countries to move towards a final deal, or it would take a role of mediator and eventually the guarantor of the agreement.

Concerning the mechanisms that would play the role of monitor and guarantor, the agreement should provide opportunities for wider involvement of international mechanisms, in particular the United States, the United Kingdom, Germany and France, as well as organizations such as the EU, OSCE, etc. With regard to the EU's role as guarantor, condition-

ing measures should be further applied to Serbia to conclude 'Chapter 35' of the *aquis* and, at a later stage, conditioning must be linked with the ratification of the treaty for EU membership. In fact, even for Kosovo, the EU should use the conditioning instrument to open accession negotiations for the candidate country. All of these measures could be applied in case of realistic assessment of failure to implement the eventual agreement. This situation would be ascertained by a joint working group composed of representatives of Kosovo, Serbia, the United States, the United Kingdom, Germany, France and the EU. Of course, as the practice of international law permits, by the will of the parties, provisions should be included within the agreement to provide for international mechanisms to which they may resort to peacefully resolve any eventual disputes between them. Even in the event of a possible Kosovo-Serbia agreement, parties would have to refer to the 1969 Vienna Convention on the Law of Treaties (Article 66)⁵¹ as an instrument that guides parties on how they would resolve disputes at the implementation stage of the agreement.

50 Beta (2017): Haradinaj urges United States to engage in Kosovo negotiations (June 09, 2019, available at: https://www.b92.net/eng/news/politics.php?yyyy=2017&mm=06&dd=09&nav_id=101508); KlanKovova (2017): Thaçi has called for US involvement in dialogue with Serbia- KlanKosova, (September 02, 2017), available at: <https://klankosova.tv/thaci-ka-kerkuar-perf-shirjen-e-shba-se-ne-dialog-me-serbine/>

51 Vienna Convention on the Law of Treaties, May 23, 1969, Art.66.

Conclusions and Recommendations

Although there has been a recent push by the international community towards both countries to return to dialogue and finalize it through a final agreement, imposing certain negotiating agendas that would go against the will of Kosovo would be against the very logic of the peace process and would strongly discredit the whole process.

The above considerations note that there are scenarios and modalities for the conclusion of the dialogue, without overlooking any kind of agreement that would have implications to territorial changes. Even recently, such scenarios have received tacit or explicit approval from many international actors. For the Kosovan side, such a solution should be excluded from every option. Of course, as reported by some sources,⁵² direct US involvement in the process would open the door to a Russian request to do the same.⁵³ In fact, the Serbian side would welcome such Russian involvement, and this is now considered a real option in Serbia's political circles. This scenario would greatly strengthen Serbia's position regarding pushing forward its agenda of partitioning Kosovo, as the most realistic compromise for Serbia.⁵⁴

During the final stage of concluding an agreement, it would be very important for both countries to implement some agreements that address issues affecting the daily lives of Kosovo citizens, such as: the agreement on mutual recognition of university degrees, the energy agreement as well as the agreement on regional representation and cooperation. This would raise the chances of creating increasing

relaxed climate in terms of easier acceptance of the final agreement by the broader masses of both countries. Both countries must return to dialogue and Kosovo must show commitment to reaching an agreement that does not violate its territorial integrity and constitutional order. In return for this, the Kosovo side should continue to provide a fair treatment to Kosovo Serbs (and other non-majority communities), in line with commitments given through the declaration of independence, constitutional provisions and legal order in force. Such a treatment would strengthen Kosovo's position against Serbian demands for further compromises. Internationally, this would strengthen Kosovo's image as a country that promotes one of the most important EU values, namely inter-ethnic cohabitation. Guaranteeing the rights of Serbs by the Kosovo institutions would keep Serbia under obligation in the face of the international community to recognize its statehood, and eradicate the Serbian alibi for interfering in Kosovo's internal affairs in the name of caring for Serbs living in Kosovo.

Building internal political consensus, with the widest involvement of all local political actors in Kosovo, would strengthen Kosovo's negotiating position in the face of Serbia's destructive demands, and at the same time enable more efficient absorption of pressure on Kosovo that may come from the international community. Likewise, despite external pressures, the timing of the dialogue should never become a more important issue than its content and final outcome.

52 RIDEA & BPRG, April, 2018, p. 23.

53 B92 (2019): It is in Russia's interest that Kosovo issue remains unresolved? (18 November 2019), available at: https://www.b92.net/eng/news/world.php?yyyy=2019&mm=11&dd=18&nav_id=107526; IndeksOnline (2018): Serbian analysts: Involvement of the US and Russia in the dialogue with Kosovo is required (November 22, 2018), available at: <https://indiksonline.net/analistet-serbe-duhet-perfshirja-eshta-ve-dhe-rusise-ne-dialogun-me-kosoven/>

54 Ibid, p.23.

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