Approaching the end of the dialogue: Could a land swap between Kosovo and Serbia (un)lock their way into the EU?

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Abstract

Following a long and intense series of negotiations aspiring the normalization of relations between Kosovo and Serbia, recent developments have shown that representatives of both parties may now be looking forward to conclude the dialogue process through a bilateral agreement. With the European Union as the mediator and the dialogue as a path towards the parties’ integration thereto, many would expect for the final agreement to be funded in EU values and principles. Nevertheless, a potential deal recently set forth by the presidents of Kosovo and Serbia triggered a torrid debate in both the local and international community for its controversial provisions, as it entails ethnic-based land swap. Hence, this paper aims to address this issue by firstly providing a briefing of the facts that characterized the conflict between Kosovo and Serbia, the events that lead to the sparking of the armed conflict and Kosovo’s declaration of independence. Subsequently, it will offer an overview of the dialogue process between the parties, to then tackle the detrimental impacts that an ethnic-based land swap would entail, not only for the concerned parties but for the region as a whole, in respect of their ambitions towards EU integration. Conclusively, the paper presents an analysis of the reactions caused thereof and the need for both Kosovo and Serbia to focus on solutions which do not pose a threat to the overall integration process.

Presented at the James Madison University - Max Weber Programme Graduate Symposium, EUI, Fiesole, Italy, 12 April 2019.
Introduction

In the course of its enlargement process towards the Western Balkans, the European Union has developed many instruments and policies,¹ which are designed to support their gradual integration within the Union. History shows that relations between countries in this part of Europe have undergone through unstable and intense periods, mainly due to nationalism and territorial disputes, which led to devastating armed conflicts.

Considering these particular circumstances, the Union is determined to facilitate the Western Balkans in overcoming the remaining difficulties by promoting peace, stability and economic development in the region,² with an emphasis on the establishment of friendly relations as one of the key pre-conditions for their accession to the Union.

When dealing with the entrenchment of friendly relations in the region, the normalization of relations between Kosovo and Serbia has been in the focus of EU institutions by reason of the impact that such a process has in the overall stability of the region. The EU has hence become the mediator of the dialogue established thereof.³ Ever since it commenced, the dialogue was strongly expected to result with a final and comprehensive bilateral agreement between the governments of Kosovo and Serbia. Additionally, such agreement was presumed to unquestionably enshrine the spirit and values of the European Union, taking into account the fact that the whole process was being developed under the supervision of the latter.

Almost a decade later, rumors about a possible deal broke out. Presidents of both Kosovo and Serbia ushered a “solution” to their long-standing disputes: an ethnic-based land swap between the two countries. The introduction of this controversial proposal aroused a fierce debate which quickly obtained international attention, and discussions apropos the implications to follow have been ongoing.

²Ibid.
In this regard, having in mind that ethnicity as a concept has caused many human rights violations and that ethnically pure states are in contradiction with EU values, this paper will therefore address the question of whether it is possible for an agreement containing such provisions to indeed grant Kosovo and Serbia a seat in the organization and the likely implications to appear thereof.

In this direction, the paper will thus firstly provide a briefing of the facts characterizing the conflict between Kosovo and Serbia and the events that lead to the armed conflict, to conclude the conflict period with a summary of NATO bombings which ultimately put an end to the war. Subsequently, the paper will further offer an overview of the dialogue process which took place thereafter, to then tackle the detrimental impacts that an ethnic-based land swap would entail, and argue that this solution could lead to undesirable consequences not only for the concerned parties but for the region as a whole, threatening to cause a setback in their path towards EU integration. Conclusively, the paper presents an analysis of the reactions caused thereof and the need for both Kosovo and Serbia to focus on solutions which do not pose a threat to the overall integration process.

**A historical view of Kosovo’s path towards independence**

A. Kosovo and Serbia under the Socialist Federal Republic of Yugoslavia

   i. A general overview

Ever since Serbia’s occupation of Kosovo, following that of the Ottoman Empire, ethnic Albanians who comprised the absolute majority of the population were deprived of their political rights throughout these periods. In the aftermath of World War II, the Socialist Federal Republic of Yugoslavia was founded, and both Kosovo and Serbia became parts of the federation, albeit their different statuses. While Serbia was one of the six republics, Kosovo was firstly considered as an autonomous region of Serbia, to later become an autonomous province of the federation. Considering the continuous hindrance of their rights, Kosovar Albanians have constantly demanded higher levels of autonomy, if not unification with their mother-land Albania, while Serbs on the other hand responded against their requests by calling for the reassertion of Serbian

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control over Kosovo.\textsuperscript{5} Following the rise of tensions between the two ethnic groups, Yugoslav authorities engaged in a campaign whose main task was to ruthlessly suppress any nationalistic manifestation within the population. Dissatisfaction among Albanians led socialist authorities to strengthen the physical violence against those resisting. Due to these national, political and ideological distinctions, conflicts between ethnic Albanians and Serbs kept significantly increasing,\textsuperscript{6} with ethnic Albanians requiring higher levels of autonomy, and Serbs seeking for closer ties with Serbia.

Confronted with growing number of demands for improved political rights by Albanians,\textsuperscript{7} the constitutional changes of 1974 enhanced Kosovo’s political status within the federation, hence granting it a significant level of autonomy, its own internal constitution as well as their representation in the Federal Presidium of Yugoslavia.\textsuperscript{8}

\textit{ii. Pre-war events}

With the rise of Slobodan Milosevic to power, the long-accumulated tension between Kosovo Albanians and Serbs peaked. Regardless of enjoying an improved status with the 1974 constitution, Kosovo remained as one of Serbia’s autonomous provinces under the latter’s Constitution. Threatened by Kosovo’s new status, in 1989 the Serbian Assembly proposed amendments to its Constitution, which among others foresaw a decline in the independence held by the autonomous institutions of Kosovo. They additionally put forward a proposal stipulating the rename of Kosovo from how it originally was to naming it the “Autonomous Province of Kosovo and Metohija”.\textsuperscript{9}

The Assembly of Kosovo was subsequently dissolved,\textsuperscript{10} thus being put under direct control of Belgrade. Following these events, a cruel campaign against Albanians took place right after the occurrence of these events. Over 100,000 employees in public institutions were fired and replaced with Serbs, in compliance with a strategy of encouraging the latter to settle in Kosovo through various other inducements offered by the Serbian government.\textsuperscript{11} In response thereof, ethnic

\textsuperscript{5} Ibid.
\textsuperscript{7} Steven Woehrel. (1999). \textit{Kosovo: Historical Background to the Current Conflict}. CRS Report for Congress.
\textsuperscript{11} Steven Woehrel. (1999). \textit{Kosovo: Historical Background to the Current Conflict}. CRS Report for Congress.
Albanians built their own parallel institutions, including the Parliament, government, schools and hospitals, albeit the functioning of these institutions was continuously prevented by the Serbian police.

Under these circumstances, in 1991, Kosovar Albanians held a referendum calling for Kosovo’s independence, following which Kosovo’s “underground” parliament proclaimed independence. The refusal of the international community to positively address the then president Rugova’s call for a non-violent solution of the conflict at hand\(^\text{12}\) provided increased support to his opponents who argued that more radical measures need to be taken, especially after the topic of Kosovo was left out of the Dayton Peace Agreement.\(^\text{13}\) In this direction, in 1996 the Kosovo Liberation Army (KLA) emerged.

\textit{iii. Eruption of the armed conflict}

With KLA gaining control over a large area of Kosovo, the counterattacks from the Serbian force arising thereby were devastating. Following numerous massacres in several regions in Kosovo, especially in Drenica,\(^\text{14}\) KLA began its armed uprising against the Serbian government.\(^\text{15}\) This eventually led Serbian police and Yugoslav forces to reassert control over the region, where thousands lost their lives and nearly one million Kosovo Albanians were expelled out of their homes. A cruel firefight which led to the massacre of 60 members of the Jashari family in Drenica of which eighteen were women and ten were under the age of sixteen,\(^\text{16}\) provoked massive condemnation from the international community, with Madeleine Albright stating that "this crisis is not an internal affair of the FRY".\(^\text{17}\) Additionally, on 9 June 1998, US President Bill Clinton declared a "national emergency" (state of emergency) due to the "unusual and extraordinary threat to the national security and foreign policy of the United States" imposed by Yugoslavia and Serbia over the Kosovo War.\(^\text{18}\)

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\text{\textit{\textsuperscript{14} Human Rights Watch. (1998). Humanitarian Law Violations in Kosovo.}} \\
\text{\textit{\textsuperscript{15} Ibid}} \\
\text{\textit{\textsuperscript{16} Human Rights Watch. (1998). Humanitarian Law Violations in Kosovo.}} \\
\text{\textit{\textsuperscript{17} U.S. Department of State Archives. (1998, March 8). Statement at the Contact Group Ministerial on Kosovo.}} \\
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Consequently, Resolution 1199 of United Nations Security Council\(^9\) expressed 'grave concern' at reports that over 230,000 people had been displaced from their homes by 'the excessive and indiscriminate use of force by Serbian security forces and the Yugoslav Army', demanding that all parties in Kosovo and the Federal Republic of Yugoslavia (Serbia and Montenegro) terminate hostilities and maintain a ceasefire.\(^{20}\)

Pursuant to the above-mentioned calls for peace, talks headed by NATO Secretary General Javier Solana took place in 1999 in Rambouillet, France. While the concords were not satisfactory enough for Albanians, they were too radical for the Yugoslavs. Thus, the latter prepared a drastically revised text which sought to reopen the political status of Kosovo and remove all provisions invoking “the will of the people of Kosovo” in determining the final status thereof. Similarly, the substituted text also withdrew the chapter on humanitarian assistance and reconstruction, thus it was refused.

The final accords called for Kosovo to be put under NATO administration as an autonomous province within Yugoslavia, the Serbian rejected the presence of NATO troops and therefore no agreement was reached. The peace talks ended in failure, thus the matter was handed to NATO for military action.\(^{21}\)

**iv. NATO bombings**

Following the failure of the negotiations in France, the international community was determined to end the bloodshed in Kosovo, where thousands of ethnic Albanians were fleeing their homes.\(^{22}\) An attempt of NATO member states to receive authorization for military action from the United Nations Security Council encountered the objection of China and Russia, which threatened to veto the proposal. Despite the lack of such authorization, NATO launched Operation Allied Force on

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\(^{20}\) Ibid.


\(^{22}\) Yoshihara, Susan Fink. (2006). "Kosovo".
March 24. Thus, air strikes against Yugoslavia began, marking the first time that NATO had undertaken military action without prior approval by the UN Security Council.\textsuperscript{23}

The campaign aimed the immediate termination of the repression carried by Milosevic’s government, the withdrawal of all military and paramilitary forces from Kosovo and the establishment of UN peacekeeping troops, return of refugees and displaced persons and the establishment of a political agreement for Kosovo in consistency with international law and the Charter of the United Nations.\textsuperscript{24}

The Yugoslav Army responded aggressively to the start of this intervention by forcibly displacing around 700,000 ethnic Albanians to neighboring countries, with another 230,000 listed as internally displaced. By April 850,000 refugees had left Kosovo.\textsuperscript{25} In the wake of this situation, German Foreign Minister Joschka Fischer claimed the refugee crisis was produced by a Yugoslav plan codenamed “Operation Horseshoe”.\textsuperscript{26}

The campaign lasted 78 days, after which Milosevic agreed to withdraw Yugoslav and Serbian troops from Kosovo, and air strikes were therefore called off. Around 45,000 NATO troops entered Kosovo after the withdrawal of Serbian troops. Kosovo Liberation Army agreed to disarm, and the United Nations established an UN-led interim administration (UNMIK) and the Kosovo Peace Implementation Force (KFOR).

B. The declaration of independence

Apart from installing UNMIK and KFOR, the UN was also authorized to facilitate a political process which would assist in determining Kosovo’s final status. In this direction, in consultation with the UN Security Council, Secretary-General Kofi Annan appointed Martti Ahtisaari (former Finnish president) as his special envoy for leading the talks. Ahtisaari and his team worked in close touch with the Contact Group (consisting of the United Kingdom, Germany, France, Italy, Russia, and the United States). Although the group had agreed on the “guiding principles” to be followed

\textsuperscript{24} NATO. (April 12, 1999). The situation in and around Kosovo. Retrieved from www.nato.int
during the negotiations, it was soon apparent that regardless of the length of these talks, the reach of a mutually agreed solution between the parties was most likely impossible. Ahtisaari therefore submitted his “Comprehensive Proposal for the Kosovo Status Settlement” to the UN Secretary-General. While the European Union and the United States endorsed this “plan”, Russia prevented the UN Security Council from backing it.

Facing the deadlock created in the international community and with no progress in sight, on 17 February 2008, the Kosovo Assembly unanimously voted to declare independence from Serbia, and it was committed to follow the provisions contained in the Ahtisaari plan in full.27

Consequently, Serbia recalled its ambassadors from countries that recognized Kosovo as an independent state for several months, and it also indicted Kosovar leaders on charges of high treason. In attempting to seek international validation as regards its stance on the illegality of Kosovo’s declaration of independence, Serbia delivered the matter to the International Court of Justice. In its Advisory Opinion of 22 July 2010, the latter declared that the declaration of independence was indeed in compliance with international law.28

C. The dialogue process

Ensuing the Court’s opinion and following the adoption of the UN General Assembly Resolution 64/298, negotiations between the governments of Kosovo and Serbia were launched in 2011, primarily at a ‘technical’ level.

Facilitated by the European Union, the dialogue process aims at achieving the normalization of relations between Prishtina and Belgrade, promote cooperation and solve their long-standing disputes, by thus contributing to the elimination of the barriers that hinder their way towards the European Union with good neighborly relations being a pre-condition for EU accession.

The negotiations are currently strained after Pristina’s decision to impose a hundred percent tariff on Serb and Bosnian goods, which resulted due to Belgrade’s continuous campaigns against Kosovo’s membership in international organizations.

The idea of ethnic-based land swap and complications to follow thereafter

Almost a decade after the dialogue began, recent developments and declarations from representatives from both Kosovo and Serbia, as well as actors of the international community have shown that there is a rushing willingness for a solution to be reached. In this direction, rumors regarding an ethnic-based land swap emerged last year, and since then torrid debates have sparked in both regional and international level. While the achievement of a bilateral agreement has indeed been the aim of the dialogue process, serious concerns were raised to the implications which would follow should this idea take the form of a final deal.

The proposal of an ethnic-based land swap as a possible solution to Kosovo and Serbia’s complex disputes was brought forth for the first time in a discussion held in Alpbach, Austria in 2018. The putative land swap, euphemistically referred to as ‘correction of borders’ encompasses the establishment of Serbia’s full control over the Serb-dominated municipalities in the north of Kosovo, whereas in exchange part of Serbia’s territory in the south, namely the Presevo Valley which is mainly populated by ethnic Albanians would therefore join Kosovo.

The proponents of a consensual agreement containing the above-mentioned provisions argue that such an approach could in fact offer a practical solution and put an end to the unremitting stalemate which has been going on for years now. On the other hand, opponents of such settlement have been asserting that border changes, and especially those driven by the element of ethnicity could on the contrary deepen the divisions, instead of resolving them. Moreover, the latter denote that in a broader context, endorsing the reasoning behind this impeding deal would indeed validate the ethnically-driven atrocities for which the European Union has been long fighting against.

By concluding a mutually recognized agreement backed by Brussels, Serbia would hence overcome the key obstacle standing in front of its path towards its membership in the European Union, with Kosovo drifting closer to the Union alike. Additionally, a mutual recognition would moreover facilitate Kosovo’s eventual membership in the United Nations, currently blocked by Serbia’s historical ally – Russia.

A. Local, regional and international reactions
A possible change in the borders has been largely antagonized by the civil population in both Kosovo and Serbia, as well as by local NGOs, opposition parties and neighboring countries. However, the international community’s approach, particularly the one of the European Union came through as surprising. Considering EU’s ironclad principle against ethnically pure states, one would expect the immediate repudiation for such an agreement to take place under their supervision. The majority of those opposing such ideas claim that a territorial swap could indeed trigger a contagious effect in the Balkans.

Reactions in Kosovo have been widely uniformed, with the majority of the population, as well as public figures opposing the idea of land swap, except for president Thaci and his close colleagues. In this regard, a group of activists calling themselves “Citizens and Friends of the Balkans against Partition/Land Swap” have sent an open letter to Western policymakers, calling them to reconsider their position and plainly reject any proposal for the partition of Kosovo, emphasizing that such alterations could pose a serious threat to the return of conflict in the region. Others as well insist that regardless of mutually accepting this solution, the region will therefore be destabilized and will have a “domino effect”. Seeking solutions based on ethnic divisions is feared to open “Pandora’s box” in the Balkans, and it poses a direct threat for the destabilization of the region and the emergence of a new disaster in the Western Balkans, where tensions in general have recently been on the rise.

Despite those denying that such effects would likely arise, this agreement was rather unwelcomed by most Balkan countries. Bosnia and Herzegovina has been vocal in opposing this deal, and any territorial exchange will indubitably be closely watched considering that the autonomous part of Republika Srpska continuously threatens to secede. The former’s fragile statehood has the necessary pre-conditions for the initiation of a new spiral of nationalism, and this kind of deal between Kosovo and Serbia could be enough to trigger instability.

In the midst of many consequences that this deal would result for countries of Western Balkans, there is also Kosovo’s neighbor, Macedonia. A quarter of the population there is constituted by ethnic Albanians, mostly residing in the north and west of the country. A land swap between Kosovo and Serbia could therefore encourage ethnic Albanians in Macedonia to demand a similar “merger” with neighboring Kosovo, or even Albania.
On the edge of these developments, it is thus much likely that a far greater formation of a political axis to commence among Albanians across the Western Balkans, a development which could thereby shake the region’s stability in whole.

As regards the international community, the European Union and the United States have embraced a potential solution involving the change of borders, as long as the agreement is in compliance with international law. On the opposite, Germany has made clear its position against it with Chancellor Angela Merkel flatly rejecting any form of border changes, additionally warning that a border swap could resurrect past ethnic tensions in the Balkans.

The above-stated arguments against a possible territorial swap between Kosovo and Serbia, with an emphasize on the threat that this solution would pose for the Western Balkans countries in general, aim at determining the fact that the European Union’s ironclad principle against ethnically pure states should remain as such. Both Kosovo and Serbia, as well as the European Union should instead focus on resolving the stalemate in the relations between the parties thereof in the light of respect for human rights. Instead of going back to what was historically proven to fail, the parties should focus on achieving a final bilateral agreement which promotes and enhances minority rights rather than creating divisions based on ethnicity. It is therefore crucial for Kosovo and Serbia to make sure that the intended solution will bring lasting normalization of relations and accordingly promote cultural diversity and respect of human rights throughout the region.
Conclusions

Following the sudden willingness of Kosovo and Serbia to reach a mutual agreement after a decade of negotiations, the presidents of both countries came forward with the proposal of ethnic-based territorial changes. In this direction, this paper aims at asserting that border changes, and especially those driven by the element of ethnicity could on the contrary deepen the divisions, instead of resolving them. Within a broader context, endorsing the reasoning behind this impeding deal would indeed validate the ethnically-driven atrocities for which the European Union has been long fighting against. Considering EU’s ironclad principle against ethnically pure states, one would expect the immediate repudiation for such an agreement to take place under their supervision. However, the European Union as an institution has embraced a potential solution involving the change of borders as long as the agreement is in compliance with international law, which leads to the belief that this deal could in fact open the way of Kosovo and Serbia towards their integration thereto. However, many keep fearing that seeking solutions based on ethnic divisions could open “Pandora’s box” in the Balkans, by posing a direct threat for the stability of the region considering its special circumstances. Hence, instead of going back to what was historically proven to fail, the parties should focus on achieving a final bilateral agreement which promotes and enhances minority rights rather than creating divisions based on ethnicity. It is therefore crucial for Kosovo and Serbia to make sure that the intended solution will bring lasting normalization of relations and accordingly promote cultural diversity and respect of human rights throughout the region.
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