

Brussels Agreements: Is Serbia recognizing Kosovo step by step?

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ABSTRACT

Under the auspices of the EU, Pristina and Belgrade negotiate in Brussels since 2011 for the normalization of their bilateral relations. Over the years, various agreements were reached on specific disputes as the parties move toward the most sensitive issue: Kosovo's political status. This study examines whether the prevailing trend in the negotiations, so far, could indicate the most likely solution for Kosovo's final status at the end of the process. The pivot around which the research piece revolves is the "First Agreement of Principles Governing the Normalization of Relations" (First Agreement) by which Serbia endorses Kosovo's independent integration in the EU, that is afforded only to sovereign states. After analyzing the legal implications of this and other agreements, and using qualitative research methods, the author ascertains that Serbia, step-by-step, with every new agreement, acknowledges to the government in Pristina a clear legal and political authority over the entire territory of Kosovo. There is not a single agreement reached in Brussels in which Serbia does not anticipate the status of an independent entity for Kosovo. This agreement-by-agreement micro-recognition approach *de facto* lays the groundwork for the final macro-diplomatic recognition of Kosovo by the end of the negotiations.

KEYWORDS: Brussels agreements, Kosovo, Serbia, recognition

POVZETEK

Pod okriljem EU se Priština in Beograd od leta 2011 v Bruslju pogajata za normalizacijo dvostranskih odnosov. V preteklih letih so bili sklenjeni različni sporazumi glede spornih vprašanj, počasi pa se strani približujeta najbolj občutljivemu vprašanju: političnemu statusu Kosova. Ta študija preučuje, ali bi lahko dosednji trend v pogajanjih pomagal pri projekciji najverjetnejše rešitve za končni status Kosova na koncu tega procesa. Osrednje središče, okoli katerega se vrti celotna raziskava, je »Prvi sporazum o načelih, ki urejajo normalizacijo odnosov« (Prvi sporazum), s katerim Srbija podpira neodvisno integracijo Kosova v EU, ki je mogoča samo za suverene države. Po analizi pravnih posledic tega in drugih sporazumov ter po uporabi kvalitativnih raziskovalnih metod avtor ugotavlja, da Srbija korak za korakom z vsakim novim sporazumom priznava Prištini jasno pravno in politično avtoriteto na celotnem ozemlju Kosova. V Bruslju ni niti enega dogovora, v katerem Srbija tekmeču na drugi strani pogajalske mize ne predvideva statusa neodvisnega subjekta. Ta pristop mikropriznavanja po dogovorih *de facto* postavlja temelje za končno makrodiplomatsko priznanje Kosova do konca pogajanj.

KLJUČNE BESEDE: Bruseljski sporazumi, Kosovo, Srbija, priznanje

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INTRODUCTION

The paper examines the most likely impact of dozens of agreements – which Kosovo and Serbia have reached so far with the goal of resolving separate bilateral issues in the negotiations held in Brussels under the EU's mediation – on the final agreement on the political status of Kosovo. This issue represents a major dispute between Pristina and Belgrade. Relations between the former belligerents have never been good. They additionally deteriorated since Kosovo's declaration of independence in February 2008, and continuously produce political antagonisms between the two nations. The primary research purposes that prompted this paper intend to identify the major trend of the Brussels negotiations up to now and to establish if this trend lays the ground for the negotiations to address the most sensitive dispute between the parties - the political status of Kosovo. The paper's hypothesis is that the prevailing course of negotiations between Kosovo and Serbia on the normalization of their relations and resolving other specific issues have been mostly marked by realism, recognizing the reality imprinted by Kosovo's new political status, proclaimed with its declaration of independence.

The paper hypothesizes that both the mainstream of the negotiations until now, as well as the outline of the future status of Kosovo, can be projected on the basis of agreements adopted between the parties in Brussels regardless of whether this was the goal of the parties when they entered the process. Another hypothesis argues that Serbia is tacitly validating Kosovo's own path towards international integration, starting with regional and EU integration, where only sovereign countries are granted participation and membership. To attain the objective of this research, a qualitative approach was employed; secondary data was collected from relevant websites, books, articles, journals, newsletters and publications.

Seeking to provide more insight into the matter, the author pays special attention to analyzing, among others, the core and legal nature of the main accords, starting with the First Agreement. The official negotiating teams of the two countries are not accessible as primary sources for addressing the research question due to their lack of transparency in revealing anything significant about the negotiating process and its background. That is why analyzing the impact of the main accords turned out to be the most logical method to address the

research question. Such an approach leads to the conclusion that Serbia has agreed with Kosovo on a series of exclusively sovereign matters, tacitly granting, through implicit or explicit acts, the status of an independent and equal opponent to its rival on the other side of the Brussels negotiating table. Interpreted from the perspective of realism the true impact of the most important Brussels agreements led the author to assess that the majority of Brussels agreements can be considered a legal overture for the potential final diplomatic recognition of Kosovo.

“COMPREHENSIVE NORMALIZATION” – THE FINALE OF DECADE-LONG TALKS

The Kosovo–Serbia negotiations are a series of EU facilitated talks between the governments of the two states. Rejecting its independence, Serbia still claims Kosovo to be its southern province. Kosovo, on the other hand, considers Serbia to be a neighboring state and expects the negotiations under EU auspices to end with mutual recognition. The negotiations began in Brussels, in March 2011. The dialogue has been chaired by the High Representative of the European Union for Foreign Affairs and Security Policy (who is at the same time the Vice President of the European Commission), and the team in the European External Action Service (EEAS). Meetings and working groups are convened at various levels in Brussels, both technical (at chief negotiators’ level) and political (at Prime Ministerial and/or Presidential level). The Brussels negotiations have been the first negotiations between the two sides, breaking the ice since Kosovo declared independence in 2008. Serbia fiercely opposed the move towards independence, and took the issue to the International Court of Justice (ICJ) for their advisory opinion (Lowen, 2009). The Court’s verdict was that “the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law.”² After the verdict, the UN General Assembly adopted, in its sixty-fourth session in September of 2010, a resolution in which the body “acknowledged the 22 July (2010) advisory opinion of the International Court of Justice on whether Kosovo’s declaration of independence was in accordance with international law.”³ The resolution transferred to the EU a mandate for facilitating a dialogue for the normalization of relations between Kosovo and Serbia, expecting that the proposed dialogue between the par-

2 <https://www.icj-cij.org/public/files/case-related/141/141-20100722-ADV-01-00-EN.pdf>; (Accessed 21 May 2021).

3 <https://www.icj-cij.org/public/files/case-related/141/141-20100722-ADV-01-00-EN.pdf>; (Accessed 21 May 2021).

ties would help promote cooperation, achieve progress on the path to the European Union and improve the lives of the people”.⁴

The EU-facilitated negotiations are set to serve the interests of both Kosovo and Serbia. Notably, progress in dialogue, the implementation of agreements reached so far and the normalization of relations with Kosovo, are key conditions for Serbia to advance in its EU accession negotiations. Kosovo’s progress on its EU path is also linked to progress in the dialogue. The first stage of the dialogue, between 2011-2012, was referred to as the ‘Technical Dialogue’. It led to a series of technical agreements addressing the most pressing issues of concern in their bilateral relations and communication, including freedom of movement across the border, for persons and cars. Belgrade has agreed to give Pristina copies of land registries and documents from the Registry of births, deaths, and marriages in Kosovo which it had in its possession prior to 1999; the parties agreed on mutual recognition of each other’s university diplomas; Belgrade has agreed to accept Kosovo Customs stamps stating “Customs of Kosovo”; a mutual trade embargo between Serbia and Kosovo has been lifted, paving the way for goods to flow freely through the two countries; integrated operations at crossing points between Kosovo and Serbia were agreed; independent representation of Kosovo at regional organizations was agreed; and liaison officers have been exchanged between Belgrade and Pristina.

The second phase began in 2013 and is referred to as the “High Level Dialogue”. Chaired by the High Representative-Vice President of the European Commission, it resulted in the First Agreement, signed between Kosovo and Serbia on Friday 19 April 2013. Considered a crowning achievement of the Brussels talks, it promptly triggered significant benefits for the parties in the EU accession processes. “After the EU brokered agreement on Friday, at the General Affairs Council on Monday morning the European Commission formally recommended to EU Member States that EU accession negotiations with Serbia and negotiations on an SAA with Kosovo be opened.”⁵ In July 2017, the EU facilitated dialogue moved to pursuing a comprehensive normalization of relations between Kosovo and Serbia. In its 2018 strategy (*A Credible Enlargement Perspective for an Enhanced EU Engagement with the Western Balkans*), the European Commission inaugurated a new ob-

4 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/479/71/PDF/N0947971.pdf?OpenElement>

5 https://web.archive.org/web/20130430071833/http://ec.europa.eu/top_stories/2013/190413__eu-facilitated_dialogue_en.htm (Accessed 12 August 2021).

jective of the Brussels talks between Kosovo and

Serbia: “effective and comprehensive normalization of Belgrade-Pristina relations” (European Commission, 2018). The Commission added that “without effective and comprehensive normalization of Belgrade-Pristina relations through the EU-facilitated Dialogue there cannot be lasting stability in the region” (ibid.).

A comprehensive, legally binding normalization agreement is urgent and crucial so that Serbia and Kosovo can advance on their respective European paths (ibid.).

The dialogue format named by the European Commission as the “comprehensive, legally binding normalization agreement”, has been welcomed by all involved governments and third parties as it was seen as a strong motivator which will aid in accomplishing the task of finding a solution to the political status of Kosovo as the most intractable issue on the agenda of the Brussels negotiations. Although it produced the First Agreement, the High Level Dialogue proved more vulnerable than “the Technical Dialogue”. Led by the Prime Ministers of Kosovo and Serbia, respectively, the negotiations under their conductor’s baton always aligned the tune of the outcomes of the talks with issues deemed important by the domestic public, delaying them when it was in their interest. Namely, postponing negotiations ahead of elections, with the intention of politically profiting from the talks at home as much as possible, and not rushing into compromises which could lead to them suffering political damage at home. In order to accelerate the dialogue and increase the commitment of the negotiating parties to formulate a comprehensive, legally binding normalization agreement at the end of the talks, the Council of the EU, in April 2020, appointed Miroslav Lajčák as EU Special Representative for the Belgrade-Pristina Dialogue and other Western Balkan regional issues (Council of the EU, 2020).

The tasks of the new EU Special Representative will be to achieve comprehensive normalization of the relations between Serbia and Kosovo⁶, improve good neighborly relations and reconciliation between partners in the Western Balkans (ibid.).

6 The asterisk is the result of a 2012 agreement between the parties to allow Kosovo to represent its institutions without the authority of the UN Mission in Kosovo (UNMIK), in regional fora. The Brussels-negotiated Agreement on Regional Representation and Cooperation states that Kosovo shall be referenced at regional meetings and in regional agreements with an asterisk and a footnote reading “This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.”

Under the auspices of the EU, pressured by Lajčak, and attempting to make progress towards a more comprehensive agreement, Pristina and Belgrade recently made “full progress” in the areas of economic cooperation, missing persons and displaced people. Also, as Lajčak pointed out, Pristina and Belgrade “discussed for the first time, as part of the negotiations of a legally binding comprehensive agreement, arrangements for the non-majority community and also the settlement of mutual financial claims and property” (EEAS, 2020).

MAJOR AGREEMENTS BETWEEN KOSOVO AND SERBIA

Kosovo and Serbia have reached dozens of agreements in the framework of negotiations of normalization of relations and the resolution of many open issues among them. There is no publicly available and reliable official overview of everything that Kosovo and Serbia agreed on during the negotiations, which is a significant hurdle in analyzing the agreements and leads to misinformation being spread among their respective audiences. It is unclear if this is a conscious decision by both of the parties, or if it is mere negligence. The parties even differ in the number of agreements reached. The morass of agreements explains the lack of transparency towards the public. Also, since the dialogue is the first form of official contact between the two sides after the 1998-1999 war, both sides have tried to evade accusations of leniency or compromises being made towards the opposite side.

This research could not establish the exact number of agreements reached by the two parties since 2011, when the negotiations were launched. Each of the parties often prefers to talk about the agreements that are in their favor, as Serbia has been doing lately with the obligation of Kosovo to form the Association/Community of Serb majority municipalities (A/CSMM). Agreements like the reciprocal recognition of school diplomas are rarely if ever mentioned by Belgrade. On the other hand, the establishment of the A/CSMM is not a priority for Kosovo, says its Prime Minister Albin Kurti.⁷ The priority for Kosovo, according to him, is a mutual recognition between the two countries within the framework of a comprehensive and binding agreement at the end of the negotiations, which would resolve, at the same time, all unresolved specific issues in the package. A list of 17 agreements, that Belgrade has reached with Pristina so far, has been published on the

⁷ The Agreement on the A/CSMM “is not in the interest of Kosovo Serbs and is a service of official Belgrade,” said Kurti (<https://www.koha.net/arberi/300252/kurti-e-borrelli-perplasen-per-asociacionin/>).

website of the Office for Kosovo and Metohija of the Government of the Republic of Serbia (Office for KiM, 2012). In addition, six annexes were also published on this website. They specify the agreements already reached or determine the dynamics of their implementation. It is also not clear whether the parties treat them as annexes or separate agreements. According to Kurti “there are 33 agreements between Kosovo and Serbia, and two thirds of them have not been implemented by Serbia”.⁸ An independent and specialized website for the Kosovo-Serbia negotiations says that “Kosovo and Serbia reached 38 agreements”.⁹ These agreements are generally classified in agreements and sub-agreements, while the factors upon which these classifications are made, have not been strictly determined. However, according to this source, the typical form of the agreement classification is based on topics, which leads us to 15 agreements and 23 sub-agreements. The agreements are often classified based on their nature, respectively as technical or political. In this regard, 10 agreements are considered political and the rest of the 28 are technical. The Academy of Sciences and Arts of Kosova (ASHAK) has taken the most serious step, so far, in determining the results of the Brussels negotiations, publishing a complete set of all agreements, whether political or technical, major agreements or their annexes, agreements or sub-agreements. According to their calculations, Kosovo and Serbia have reached, to this day, a total of 27 agreements under the auspices of the EU (ASHAK, 2020). In the continuation of this research, the paper will focus only on the main agreements that serve the function of addressing the research question and tackling its hypothesis, but not the technical accords like those about car plates, diplomas, mutual recognition of chambers of commerce, etc.

FIRST AGREEMENT OF PRINCIPLES GOVERNING THE NORMALISATION OF RELATIONS

Kosovo Prime Minister Hashim Thaçi and his Serbian counterpart Ivica Dačić, initialed in April 2013, in Brussels, the “First agreement of principles governing the normalization of relations” (The First Agreement). The brief, fifteen-point, text is the first top-level bilateral agreement between Serbia and Kosovo since the 1998-1999 war, (ASHAK, 2002, pp.67-69). Until today, this agreement is considered to be the biggest success of the talks on the normalization of the relations between the two countries. It is also considered to be a crowning achievement

8 *ibid.*

9 <https://dialogue-info.com> (Accessed 25 December 2021).

of the talks where the two parties, acting and treating each other like sovereign entities, have advanced the furthest in negotiating matters which are strictly speaking sovereign. Prelec (2013) says that the First Agreement between Kosovo and Serbia “is an earthquake in Balkan politics.”

The ground lurched, familiar landmarks toppled, the aftershocks are still rumbling and the new contours are only slowly emerging (ibid.).

Bieber (2012) notes that by the First Agreement “it is the first time that Serbia has accepted the Kosovo government to represent Kosovo at the international level directly, rather than being formally represented by the UN mission or being able to participate, but without a mandate.”

As a result, this solution could be path-breaking for Kosovo in the future (ibid.).

The First Agreement contains just two pages and 15 separate articles (Gazeta Zyrtare, 2013). The first 12 of them are dedicated to the normalization of the situation in the tense Serb-majority region of North Kosovo¹⁰ and to the integration of this region into the current rule of law and administrative system in Kosovo as well as to the dissolution of the parallel and Belgrade-backed systems which have existed and functioned in North Kosovo since the war. Paragraphs 1 to 6 concern the establishment, scope, and functions of the proposed A/CSMM. The First Agreement envisages in its first article that the A/CSMM will be established in Kosovo.¹¹ Paragraphs 7 to 9 concern police and security structures and conclude that “there shall be one police force called the Kosovo Police. All police in northern Kosovo shall be integrated in the Kosovo Police framework. Salaries will be only from the KP,” (Ibid.). This has been a major step taken by Serbia towards the recognition of the government in Pristina as the only power exercising governmental functions effectively in the northern part of the country, over which Serbia earlier had political control. One of the major preconditions for

10 The region is composed of four municipalities with ethnic Kosovo Serb majority: North Mitrovica, Leposavić, Zvečan and Zubin Potok. The region functioned independently from the institutions in Kosovo, as they refused to recognize the independence of Kosovo.

11 Political wrangling over Kosovo's status between Pristina and Belgrade has resulted in Kosovan authorities not allowing yet the formation of the A/CSMM. This organization would later turn into the major dispute between the parties in the Brussels talks particular regarding the A/CSMM's powers: for Serbia, it should be a union or community of municipalities with executive powers, while for Kosovo, it is merely an inter-municipal association like the Kosovo wide that already exists to help local governments coordinate and share expertise. The paper will not deal further with this dispute as it does not reflect significantly on the major research topic as well as on the research question and hypothesis.

an international recognition of a state is control over its territory. De la Cuba (2011, p.125) ads that the government of this state “must be in principle effective.”

It must exercise an effective control over the population and territory of the State meaning it must be in a position to exercise all governmental functions effectively (ibid.).

Scholars agree that the First Agreement *de facto* recognizes Kosovo's sovereignty over the northern part of the country which, with the encouragement by the Serbian government, had taken a consistently hard line towards and refused any loyalty to or cooperation with the government in Pristina. This tacit transfer of sovereignty over North Kosovo was further confirmed by a commitment of both parties, included in Article 8 of the First Agreement, that “members of other Serbian security structures will be offered a place in equivalent Kosovo structures”. Prelec (2003) assesses this as “the transfer of all security sector staff in Kosovo from Belgrade's payroll and jurisdiction to Pristina”. This “transfer of authority” becomes even more important, knowing that owing to its direct physical connection to Serbia through Kosovo's northern border and effective control of the fields of education and health-care by the Serbian system, many considered earlier North Kosovo to be a locked Serbian territory instead a Serb enclave within Kosovo. The territory was by far the largest of the Serb-dominated areas within Kosovo and, unlike the others, directly linked to, related to, and even partly geographically integrated into the Serbian mainland. Belgrade's transfer of control over this region handing over its security structures to Pristina was additionally enhanced by Article 10 of the First Agreement, which envisages the judicial integration of the region in the Kosovo system by stating that “the judicial authorities will be integrated and operate within the Kosovo legal framework” (ASHAK, 2020, p.68).

When the separate and Belgrade-loyal rule of law structures in North Kosovo were dislodged by their integration into the Kosovo rule of law system, the third step in the transformation of the political reality in North Kosovo, brought by the First Agreement, consists of Serbia's compliance with paragraph 11, which relates to the participation of North Kosovo's Serbs in the upcoming local elections that were organized by Kosovo authorities. The paragraph stated that “municipal elections shall be organized in the northern municipalities in 2013

with the facilitation of the OSCE in accordance with Kosovo law and international standards” (ibid.).

The local 2013 elections were held in November. These were the first elections in which Kosovo Serbs participated in significant numbers since the independence declaration of Kosovo. They have continued to do so ever since, and this is another tectonic pro-Kosovo outcome of the First Agreement. The beginning of the participation of ethnic Serbs in North Kosovo in the political life of the Republic of Kosovo and the integration of the rule of law sub-system in the North into Kosovo’s one were considered by many observers as fundamental concessions made by Serbia towards setting up Kosovo’s sovereignty over the whole territory of the country.

THE “EUROPEAN” RECOGNITION OF KOSOVO BY SERBIA

Further analysis of the First Agreement shows that, unintentionally or not, all the above-mentioned changes in the functioning of North Kosovo were just a prelude for an accord between Kosovo and Serbia envisaged in Article 14 of the First Agreement, which most explicitly recognizes Kosovo’s separate journey towards the membership in the EU. “It is agreed that neither side will block, or encourage others to block, the other side’s progress in their respective EU paths,” reads the First Agreement (2003, p.2). The recognition by Serbia of Kosovo’s independent path towards the EU, at first glance, might seem to be an insignificant commitment without any major effects on the current state of their relations, in particular if Belgrade continues to not recognize Pristina. But, the majority of independent commentators argue that paragraph 14 of the First Agreement essentially represents a separate and high-level political recognition of Kosovo by Serbia as an independent entity on its path to the EU and in developing its relations with the Union, including those concerning its European integration. Prelec (2013) appraises these developments as “tectonic shifts, whose effects will be felt no matter what happens with the early attempts to implement the deal”. Also, the fact that the parties have been discussing and making agreements on their European future, according to Lehne (2013), means that dialogue has “a strange dual nature. It was about resolving open problems between long-term adversaries, but it was also about meeting the conditions necessary to make further progress toward the EU.”

In its founding acts, the EU has committed itself to be open to all European countries who want to be a part of it, provided that they deliver in their reforms and transformations as required by European standards. This advantage of becoming a member of the EU can only be used by countries on the European continent. They can embark on the European integration journey if they see their future in EU membership and if they are willing to adopt and implement European standards in all major areas and fields of their legislature and institutional functioning. Therefore, from the EU point of view, only states and not provinces or territorial autonomies can embark on the EU path. In its conditions for membership, the European Commission insists that “the Treaty on the European Union states that any European country may apply for membership if it respects the democratic values of the EU and is committed to promoting them”.¹² Consequently, providing an independent “European path” for Kosovo that the two parties agreed to in Brussels, can only mean one thing: it is the path that leads Kosovo’s transformation from non to EU country and its admission into the European family, respectively. Commenting on paragraph 14, Serwer (2013) said: “This provision acknowledges implicitly that Kosovo is an independent and sovereign state. It will progress towards the EU at its own pace and enter separately without Serbia exercising a veto”. Serbia’s reconciliation with Kosovo’s independent journey in European integrations and towards becoming a member of the EU can be interpreted as a politically soft or “European” recognition of Kosovo by Serbia. It is not a *de jure* acknowledgment of the Republic of Kosovo but a recognition of the right of Kosovo to independently conduct its foreign policy in relation to the EU or, as Coppieters (2018, p.345) points out, it is allowing “an entity to be identified as a state, irrespective of whether or not it is recognized, [...]”. “In accordance with this agreement, each will apply for EU membership as an independent and sovereign state.” (Serwer, 2013).

All these comments confirm that paragraph 14 of the First Agreement contains the greatest official deviation of Serbia from the policy of non-recognition of Kosovo as an independent state so far. It can also be considered the country’s most significant move towards the full recognition of Kosovo to act as an independent state within the European framework. But, it does not mean that the status dispute between Kosovo and Serbia has been overcome. Lehne (2013) says that after the First Agreement “the full normalization of bilateral relations between

12 https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership_en

Serbia and Kosovo is still years away,” but the First Agreement “should make it easier to complete the journey when the time comes”.

Researchers have also been interested in wider impact of the First Agreement:

All this will—if correctly implemented—represent an important step toward more normal relations between Serbia and Kosovo and should help to defuse one of the remaining hot spots in the Western Balkans (Lehne, 2013).

Of course, relations between Serbia and Kosovo will remain on the agenda and the agreement does not resolve the many remaining questions, but it might turn out to be a bigger step than the mediators and the parties have anticipated. (Bieber, 2012).

There are only two sure things about the agreement, both are very important, and neither is spelled out anywhere in its text. The first is that the Serbian government has given up on keeping northern Kosovo in its system and has ceded its authority to Pristina. The second is that Belgrade has implicitly recognized that Kosovo is a state (Prelec, 2013).

Even envisaging a set of separate local powers for the North can serve as additional evidence that the First Agreement explicitly provides for the integration of the North into Kosovo’s constitutional and legal framework with respect to the police, the judiciary and with regard to elections. The 15-point document grants devolved powers to North Kosovo pertaining to economic development, education, healthcare and urban planning, and a number of mechanisms that allow for a certain degree of autonomy in justice, policing and electoral matters in relations with Pristina. The North also gets a district appellate court and a role in choosing a district police chief.

Alongside Thaçi and Dačić, on behalf of the EU, the First Agreement was initialized by the High Representative of the European Union for Foreign Affairs and Security Policy/Vice President of the Commission, Catherine Ashton, who was also chaired the negotiations that preceded the conclusion of the agreement. By this, the EU recognized that it was a third party to this deal, elevating the First Agreement to a multilateral one by being a third-party in its conception. Hailing the First Agreement, the European Commission (2013) reaffirmed the logic of

the separate and independent paths of Kosovo and Serbia inaugurated by the First Agreement when it comes to their European integration, saying in a press release that it was a “historic agreement” between Kosovo and Serbia that “paves the way for decisive progress in their EU perspectives”, (Ibid.). This made Lehne (2013) underline that “the Serbia-Kosovo agreement proves that clever diplomacy combined with the power of the prospect of EU enlargement can still deliver significant results”.

AGREEMENT ON REGIONAL REPRESENTATION AND COOPERATION

In 2012, Kosovo and Serbia reached an agreement that enabled Kosovo to participate in regional organizations and arrangements as an independent political entity (Office for KiM, 2012). The Agreement on Regional Representation and Cooperation confirmed Kosovo and Serbia’s “commitment to effective, inclusive and representative regional cooperation” and, further, envisaged that Kosovo “participates on its own account and speaks for itself at all regional meetings”. Moreover, it stipulates that Kosovo will enjoy the same status at “meetings with EU institutions in the context of the European agenda,” (Ibid.). The agreement makes no mention or qualification of Kosovo as a state, but grants it the same rights that only states enjoy at international gatherings: to take part equally, speak on its own and sign multilateral agreements. Bieber (2012) describes importance of this recognition:

Serbia recognizes Kosovo as a separate entity with a government, while stopping short of international recognition. Such a solution could open the door for membership in other international organizations and also eventual EU membership. The step to extending this solution from regional meetings to international organizations is small and has now become conceivable.

Judging by the profound effects that this agreement on the strengthening of Kosovo’s international image and subjectivity, the author is of the opinion that it could rank immediately after the First Agreement by its importance. Nevertheless, Serbia has managed to slightly relativize Kosovo’s ability to participate independently in regional organizations and gatherings, because the agreement stipulates that the only denomination that can be used for Kosovo at regional forums is the one with a footnote (Kosovo*) that reads: “the designation is without prejudice to position on status, and is in line with UNSC 1244 and the ICJ Opinion

on the Kosovo declaration of independence” (Office for KiM, 2012). In the author’s perspective, the footnote represents the most controversial of all of the Brussels agreements as it tries, unsuccessfully, to pacify two irreconcilable international official assessments: “Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia” (UNSC Resolution 1244¹³) and that “the declaration of independence of Kosovo adopted on February 17 did not violate international law” (ICJ, 2010).¹⁴

AGREEMENT ON TELECOMMUNICATIONS

After two years of negotiations, in 2013, Kosovo and Serbia reached the Agreement on Telecommunications. They agreed to allocate an international country code to Kosovo, to define the border of telecommunications operations between the two parties and to regulate the issue of unlicensed operators from Serbia in Kosovo:¹⁵ VIP, Telekom Srbija, and Telenor (Balkans Policy Research Group, 2013). The agreement granted Kosovo the right to administer its own country code, like other independent states do. In January 2016, Austria applied for the country code on Kosovo’s behalf, and in December 2016, the **International Telecommunications Union (ITU) allocated** to Kosovo the +383 international country code. Kosovo’s country code started to function in February 2018 and it is when the country won its telecommunications independence. Serbia’s recognition of Kosovo’s sovereign right to regulate its telecommunication and administer its own international country code represent a huge step forward for Pristina towards universal international recognition. While a separate international country code alone cannot make a state independent, however, it strengthens Kosovo’s independent image and sovereign standing in the eye of the international community. To Philpott (2020):

Sovereignty, though its meanings have varied across history, also has a core meaning, supreme authority within a territory. It is a modern notion of political authority.

That was exactly what the agreement acknowledged to Kosovo, enabling it to become the holder of telecommunication sovereignty on

13 https://unmik.unmissions.org/sites/default/files/old_dnn/Res1244ENG.pdf

14 This topic merits a separate academic research and will not be evaluated further in this paper.

15 Prior to the agreement, these telecommunication providers had operated in the territory of Kosovo along with domestic operators, creating two parallel telecommunication systems in the country: The Serbian unauthorized system and Kosovo’s system.

its territory. At the same time, Serbia's green light to Kosovo's own country code is not only a new contribution to the EU's project of the negotiations building bridges between Kosovo and Serbia but can be considered a "another building block in the embankment of Kosovo's independence," being *de facto* continuously built during the Brussels negotiations.

AGREEMENT ON INTEGRATED BORDER MANAGEMENT (IBM)

Kosovo and Serbia reached the Agreement on Integrated Border/Boundary Management (IBM) in 2011. Using the IBM model of the EU, the Agreement envisaged the gradual establishment of joint points at all six border crossings (Merdarë, Bernjak, Mutivodë, Jarinje, Dheu i Bardhë/Konçulj, and Muçibabë/Depce), along the entire border line between Kosovo and Serbia that stretches over a total of around 380 km. Joint IBM points would be built with financial assistance of a total of over 21 million euros from the EU's Instrument for Pre-Accession Assistance (IPA). The Agreement envisages that three of these crossing points (Merdarë, Bernjak and Mutivodë) would be hosted by Kosovo and the other three (Jarinje, Dheu i Bardhë/Konçulj and Muçibabë /Depce) by Serbia. The joint IBM points (and later permanent IBM buildings) will be located in the neutral zones, and officials of Customs, Police and other border agencies will work and perform the necessary controls next to each other and, even, together. The two governments agreed to not display symbols of their respective jurisdictions in these common IBM areas (ASHAK, 2020, p.29). The aim of IBM was to establish the free movement of people and goods, by enhancing coordination within and between agencies (Border Police, Customs, Veterinary and Phytosanitary services) and ensure open, but secured, borders. Parties committed to gradually harmonizing their legislation with the EU Acquis and, in particular, to applying the concept of IBM, given that both countries are part of the EU's Western Balkans agenda. So far, only the Mutivode and Merdare crossing points are completed. Construction for the remaining four permanent crossing points has yet to begin, leaving the IBM agreement still unfulfilled (*ibid.*).

IBM marks a successful and important agreement as it addresses and successfully solves an issue which has been always one of the most sensitive subjects of the negotiations: the line of the territorial division between the parties. The Agreement also represents the continuation of Serbia's tacit and, step by step, partial recognitions of Kosovo within

the Brussels negotiating framework. Rudolph (2005) stresses the importance of borders for constitution of a state by saying that “borders serve as an increasingly important symbolic function in maintaining stable conceptions of national identity that constitute the cornerstone of the nation-state”. For the first time in the Brussels dialogue, IBM would ensure a clear assignment of applicable legal responsibilities and liabilities to each party’s jurisdiction, recognizing the reality on the ground that the parties are territorially divided by a border. The Agreement was built upon the fact that there are sovereign regimes on both sides of the border that control the movement of people, goods, services and capital across their territories and borders. With the IBM Agreement, Serbia tacitly not only recognized Pristina’s jurisdiction over Kosovo’s territory. Moreover, establishing crossing points between the two territories, Belgrade *de facto* quietly also agreed to principally demarcate the existing border between Serbia and the sovereign jurisdiction of Kosovo, although *de jure* it does not officially recognize its existence.

Another significant implication of the IBM Agreement concerns North Kosovo, whose secession from Kosovo and annexation by Serbia many scholars identified as Belgrade’s main political goal and gain which would compensate for the loss of the entirety of Kosovo. According to the Agreement, everything that applies in general to the newly established regime along the whole border between Kosovo and Serbia is also valid in Kosovo’s northern border section and at two border crossings (Brnjak and Jarinje) with Serbia. By adopting the IBM Agreement, Belgrade has recognized *de jure* the north as an inseparable part of Kosovo’s territory. Concerning the North, the Agreement recognizes that the border between Kosovo and Serbia stretches over Bernjak and Jarinje and not some 40 kilometers further south and along the Ibar River between northern and southern Mitrovica. Bernjak and Jarinje are being controlled nowadays by police and customs officers employed by Pristina and with the flag emblem of the Republic of Kosovo on their shoulders.

AGREEMENT ON CUSTOMS STAMPS

Kosovo and Serbia reached the agreement on Custom Stamps in 2011 (ASHAK, 2020, p.27). With only three articles, it is the shortest of the agreements that the parties reached in the negotiations. But this does not diminish the significance of this agreement, as it relates to an ex-

clusively sovereign matter. The second article of the Agreement reads: “The Custom stamps, stating ‘Kosovo Customs’, as confirmed to all CEFTA parties, will be accepted [...]”.¹⁶ Inclusion of CEFTA¹⁷ in the text of the Agreement can be interpreted as that the recognition of independent Kosovo Customs was not approved directly by Belgrade, but it was settled within the CEFTA mechanism, which recognized Kosovo Customs stamps on behalf of its members, including Serbia. However, the recognition of the Kosovo Customs stamps by Serbia is indisputable, whether it is done directly or through CEFTA or done tacitly or publicly. Since its conclusion, the Agreement has been implemented on the border between Serbia and Kosovo. Pristina can boast of being a holder of one of the most important symbols, but also prerogatives of sovereignty, which only independent states have and results in the collection of duties levied by a government on imported goods. Evaluating a role that the customs service plays for independent countries, Adeniji (2018, p.1) says:

“The customs service plays a major role in the economic wellbeing of any given country. Equally, significant aspect of the same is that it plays a key role in the sovereignty of a country. “

The implementation of the Custom Stamps agreement alone took time, but over years, it made significant progress, enabling the free movement of goods; regulating the trade between the two countries, allowing Kosovo’s export to and through Serbia; and enabling Kosovo to join the World Customs Organization, an important international step towards its universal recognition by advancing its economic relations and trade with the world.

AGREEMENT ON ENERGY

Serbia and Kosovo reached the Agreement on Energy in 2013. This Agreement enabled Kosovo to operate independently in controlling its energy system and cooperating with other states in the field of energy transmission (ASHAK, 2020, p.40). The necessity to normalize the energy relations between Kosovo and Serbia came as a result of Serbia’s control over Kosovo’s energy infrastructure that continued

16 The other two articles of the agreement concern the obligation of Kosovo and Serbia to “make every possible effort to ensure free movement of goods in accordance with CEFTA” and that “all accompanying documents and communication will also reflect this usage”.

17 The Central European Free Trade Agreement (CEFTA) is an international trade agreement between countries mostly located in Southeastern Europe.

even after Pristina declared independence. Kosovo's Transmission System Operator (KOSTT) was part of SMM (Serbia, Montenegro and North Macedonia) Control Bloc, which was coordinated by Serbia's Transmission System Operator (EMS). KOSTT could not operate independently also because it was not recognized by the European Network of Transmission System Operators for Electricity (ENTSO-E). It disabled Kosovo to charge other countries' companies using its energy transmission routes, resulting in financial losses for Kosovo.

Agreement on energy aimed at normalizing energy relations between the two parties' transmission system operators (KOSTT and EMS). In December 2019, KOSTT and Albania's transmission system operator (OST) signed the agreement on establishing a regulatory block of energy system Kosovo-Albania. It was followed by an agreement between KOSTT and ENTSO-E, signed in April 2020, on terms for connecting to the European electric grid. This marked the end of Serbia's control over Kosovo's energy infrastructure and the reliance of its system on the Serbian power grid. The agreement established Kosovo's electro-energetic independence from Serbia by establishing Kosovo's control over its energy system. Nowadays, Kosovo is no longer a part of the SMM control block but operates as an independent regulatory zone within the **Kosovo-Albania Regulatory Block (AK block)**, under the synchronous area of Continental Europe.

AGREEMENT ON EXCHANGING LIAISON OFFICERS

The Agreement on Exchanging Liaison Officers between Kosovo and Serbia was reached in 2013. Parties agreed to have the liaison offices set up inside the premises of EU delegations in both countries (ASHAK, 2020, p.63). This is the first time Kosovo and Serbia have ever exchanged official representatives. The aim was to establish direct relations and communications between the parties and set up the pre-conditions for directly solving everyday problems that might appear. Comparing the status guaranteed by this Agreement to the liaison officers on the both sides, with the one guaranteed to accredited diplomats by the Vienna Convention on Diplomatic Relations (UN, 1961), it can be concluded that there are no essential differences between the two diplomatic statuses. Kosovo-Serbia liaison officers are treated in the same way as diplomatic representatives of sovereign states. They enjoy identical privileges that diplomats have by default: inviolability of office, documents and official correspondence; 24/7 protection of

official premises and private residence; personal inviolability and 24/7 protection; freedom of movement and travel; immunity from civil or criminal prosecution in receiving country; tax exemption for all articles for official and personal use; diplomatic car plates; and the same treatment of the family (except for personal protection) (Ibid.). What is more, the two liaison officers enjoy additional one privilege that accredited diplomats do not have. Namely, the agreement does not provide for the possibility that they may be declared *persona non grata* by the host country, which is envisaged for diplomats under Article 9 of the Vienna Convention on Diplomatic Relations if they engage in activities incompatible with their diplomatic status. Here is what the Convention says on the matter:

The host nation at any time and for any reason can declare a particular member of the diplomatic staff to be *persona non grata*. The sending state must recall this person within a reasonable period of time, or otherwise this person may lose their diplomatic immunity (ibid., pp. 4-5).

Thus, the agreement provides the liaison officers of Kosovo and Serbia with maximum diplomatic privileges that are enjoyed, under international law, only by diplomatic staff of sovereign countries. In practice, this is of great political importance for Kosovo since Serbia, as the receiving country, has allowed for it to post its diplomatic representatives to Belgrade for the first time since the declaration of independence.

AGREEMENT ON MUTUAL VISITS OF OFFICIALS

The parties in the Brussels negotiations set, in 2014, specific rules and modalities for the visits of Kosovo officials to Serbia and vice versa. Accordingly, they agreed by mutual consent that respective parties will announce and notify the other side of visits by their officials to the other party (Office for KiM, 2012). The agreement is based on absolute equality of the parties when it comes to official visits, introducing in this regard complete reciprocity between Kosovo and Serbia. It can be interpreted as a diplomatic victory for Kosovo, as Pristina has been in the position, for the first time, to grant or refuse official visits from Serbia. Another important privilege of Pristina, established by this agreement, consists of the right of Kosovo high officials to visit Serbia. The agreement *de facto* recognizes the sovereign right of the parties to exercise jurisdiction over their territory by deciding, in this case,

whether representatives of the other party will be granted or rejected to visit their territory.

AGREEMENT ON THE FREEDOM OF MOVEMENT

The Agreement on the Freedom of Movement was reached in 2011 (Balkans Policy Research Group, 2013), enabling citizens to travel freely within or through the territory of the other party. The most important part of the agreement are the clauses that enable citizens to cross the border with an ID card and recognize each-others' driving licenses. Practically, it means that Kosovars can go to Serbia with their Republic of Kosovo IDs. Prior to this agreement, respectively from 2008, Kosovo citizens were not allowed to travel to/through Serbia unless they had a Serbian or UNMIK ID/passport. They could neither enter Serbian territory with RKS vehicle plates. Instead, were required to buy three-day provisional plates and 15-days vehicle insurance.¹⁸

CONCLUSION

The research piece finds that, within the framework of the Brussels agreements, Serbia has *de facto* reconciled with a much more independent status for Kosovo than Belgrade recognizes it *de jure*, by still considering the youngest European democracy a “southern Serbian province”. A series of sovereign powers over Kosovo have been granted to Pristina which by international law belong and can only be enjoyed by governments that are sovereign on the entirety of the territory they declare as their own. Based on the current mainstream of the Brussels negotiations between Kosovo and Serbia and the content of the agreements reached so far between them, the conclusion of the research conducted for this piece also reached a positive answer to the question whether is it possible to project what the talks on the future status of Kosovo could lead to. The research confirmed the hypothesis that the output of the negotiations largely fits into the reality established by Kosovo's declaration of independence, since Serbia has so far agreed that Kosovo: take an independent path of integration within the EU and independently cooperate with the Union, which is

18 A dispute over national license plates recognition between Serbia and Kosovo has escalated into a troubling situation involving border protests and military presence in September 2021, when Kosovo decided to establish a reciprocity in recognizing Serbian license plates. According to a provisional agreement a temporary measure (until a permanent solution is found) consists of introducing stickers that will be placed over each country's insignia on number plates at border crossings in order to cover them up.

a right that only European states enjoy; independently participate and sign agreements at regional conferences; establish sovereignty over at times secessionist Serb majority in North Kosovo; achieves telecommunications sovereignty by obtaining its own international area code; withdraws from Serbia's electricity distribution network; establish six border crossings along the entire border line with Serbia which indicate the exact position of the boundary between the two sides not unlike a true demarcation; use its own customs stamps; accredit official representatives in Belgrade with the highest diplomatic privileges identical to those recognized by the Vienna Convention on Diplomatic Relations (UN, 1961, pp.1-21); as well as the ability to grant and reject visits by Belgrade officials to Kosovo. Also, citizens of Kosovo can travel to Serbia or through its territory with the IDs issued by the Republic of Kosovo.

The research also established that the agreements empowered Kosovo to govern all essential issues that have, until now, been brought up on the agenda of the Brussels negotiations. These issues mostly concern exclusively sovereign topics. They already have, and will have, such great legal implications for future relations between the two parties that it can be concluded that for the past eleven years, topic-by-topic, Serbia has been extending a discretionary recognition of Kosovo, reaching as of now a stage that can be qualified for the most part as *de facto* recognition of Kosovo, or as Baty (1922, p.483) says as "*de facto* entrance into relations".

Any entry into relations with the new state, as a governing authority, implies recognition of its statehood. The same, *mutatis mutandis*, is true of the new government of an old state. (ibid., p.469)

Seeking an answer to the research question, the author confirmed that the prevailing course of negotiations between Kosovo and Serbia and the agreements on resolving specific problems, for the most part, have been marked by the recognition of the reality in Kosovo launched by the independence declaration. It leads to a conclusion that both the prevailing trend in the negotiations so far as well as the outline of the future status of Kosovo can be projected on the basis of agreements adopted between the two sides in Brussels up until now and before the end of negotiations. Consequently, this leads to a grounded confirmation of the second hypothesis, which argues that Serbia tacitly validates Kosovo's own international path, agreeing with its regional and EU integrations as an independent entity.

There is no major issue or dispute that has not been resolved in Brussels in favor of Kosovo. The most important one that remains to be solved is finding a common ground on its status. With each new agreement, Serbia has moved a step further away from treating Kosovo as its constituent part, and, in parallel, a step more towards recognizing Kosovo's political uniqueness. The most impressive testimony to the silent evolution in Belgrade towards the tacit recognition of the factual situation in Kosovo is the First Agreement. As Belgrade's biggest stride in the recognition of its negotiating partner in Brussels, it acknowledged and granted Pristina a clear legal and political authority over the entire territory of Kosovo, affecting the domestic legal orders in both Kosovo and Serbia.

Even some scholars close to Serbia's state ideology admit that within the scope of the Brussels negotiations Serbia does exactly what it resolutely publicly rejects back home, ie that there is a discrepancy between the daily churn of rhetoric towards Kosovo and the fundamental concessions made at the negotiating table in Brussels. Denunciating the First Agreement, Serbian international law expert, Smilja Avramov (2013) asked how it is possible that "the government from Belgrade reaches an agreement with a part of its own territory". "I think that the agreement is indirectly the recognition of Kosovo," (ibid.). The similar assessment came from Russian academic Elena Guskova, who said that "the agreement between Belgrade and Pristina is not only formally an agreement, but it is an agreement on the recognition of Kosovo's independence, because they have a border, Serbian municipalities are completely subordinated to the Constitution of Kosovo..." (ibid., p.2).

The sovereign competencies over Kosovo that were acknowledged so far during the Brussels negotiations are so conclusive, that Serbia will never again be legally in a position to call for *Restitutio ad integrum* even if negotiations, in the worst case scenario, fail and Serbia never recognizes Kosovo. Simply put, the Brussels agreements has launched the snowball of Serbia's recognition of Kosovo, and the snowball grows bigger with each new tacit coming to terms with the reality of its independent existence. Prelec (2013) says that even only with the First Agreement it will be easier for Serbia one day to give up Kosovo:

This is the first high level agreement between the two states, and shows that Serbia can deal with Kosovo as an equal. It is a kind of de facto recognition of Kosovo and that may be its greatest long-term significance.

Whatever else happens, it is easier today to imagine that Serbia may one day formally recognize the independence of its former province.

Elaborating on the division within the EU over its recognition policies and using the example of Kosovo, Coppieters (2018, p.343) says that, in this case, the Union managed to overcome this division “by engaging actively with the contested entity.”

Such a policy—where the EU is divided on the question of recognition but united on the question of engagement—may be defined as a ‘policy of engagement without recognition’. (ibid.)

Settling exclusively sovereign matters involving Kosovo through implicit or explicit acts, therefore, anticipating the status of an independent entity for its negotiating rival on the other side in a step-by-step manner, Serbia applies the same “engagement without recognition policy”. This policy of agreement-by-agreement adopts micro-recognitions of Kosovo, laying the ground for final and macro-diplomatic recognition of Kosovo, if and when the day for it comes. This does not mean that *de jure* recognition will come soon. Those among the political elite in Belgrade who will dare to take this step nowadays will certainly risk to commit a political suicide. Since it is realistic to expect that Serbia will continue to refuse to recognize Kosovo in the long run, the parties should focus on making another stride by the end of the Brussels talks, like Serbian commitment not to lobby against universal international recognition of Kosovo despite its refusal to do so itself, which would enable peaceful coexistence and cooperation between the two Balkan neighbors.

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