

# EU-mediated Kosovo-Serbia dialogue: A new attempt or resumption with the old approach?

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# INTRODUCTION

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On 17 February 2008, Kosovo was declared an independent and sovereign state. Several years of efforts, led by former Finnish President Martti Ahtisaari, for an agreement accepted by Kosovo and Serbia failed due to the Serbian side's refusal to accept the plan that took the name of the current Finnish diplomat. Similarly, Troika's efforts failed<sup>1</sup>, which only highlighted the opposite attitude of the parties towards the declaration of independence of Kosovo. The reality created in Kosovo since the end of the conflict and the deployment of the UNMIK mission required the resolution of its status, which had no alternative to declaration of independence. This would mean the need to further define the new state's relations with Serbia, which was soon confirmed.

With the declaration of independence on February 17, 2008, it was expected that Kosovo would be able to exercise its functions as a state equal to other states. In reality, the journey to full functioning of its statesmanship remains unfinished. The presence of Serbia, UNMIK and the EU continued to remain the same, creating a network of institutions with overlapping jurisdictions. The functioning of some of them was related to supervised independence, while the parallel institutions funded by Serbia were and remain a violation of the exercise of internal sovereignty, creating parallel realities of political, legal and social functioning within the state of Kosovo.<sup>2</sup> The warning of Russia and China that they would use their veto power prevented Kosovo from joining the UN, pushing the new state and its international friends towards lobbying campaigns for individual recognition from various countries of the world as a way towards its international consolidation. It became evident in a new UN Resolution (September

2010), assigning EU as mediator, that the remaining open issues between Kosovo and Serbia should be resolved through another dialogue process. This process marked its successes and failures by traveling through the complexity of decision-making within the EU, under the ambiguity of the objectives of this process or its expected outcome.

This paper aims to analyze the process of mediation of the dialogue between Kosovo and Serbia by the EU, through the common foreign and security policy, highlighting the advantages and limitations of the approach used by the EU High Representatives. First of all, understanding the competencies of the High Representative, according to the Lisbon Treaty on which the legacy analysis of the two mandates of the EU 'foreign ministers' in the various stages of this process is built, the limits of mediation approach from the EU, where the role of the member states is addressed, especially the role of Germany and France. The paper also addresses EU cooperation with the US as part of the process, highlighting recent developments around the US approach. Based on the analysis, the paper provides a series of recommendations for the current stage when the EU has already appointed a special envoy for the Kosovo-Serbia dialogue and other Western Balkan issues, underlining the need for greater support for this process by the member states, the clearer positioning of the EU within the process that goes beyond the neutral role and the provider of the 'goodwill table' but that in reality connects the process with the provision of Kosovo's European perspective. All this under the enhanced role of the US and the need for the coordination of the international factor for the further progress of the process.

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1 Frank Wisner representative of the United States of America, Alexandar Botsan-Kharchenko representative of Russia and Wolfgang Ischinger representative of the EU.

2 Krasniqi, G. & Musaj, M. (2014). *The EU's 'limited sovereignty-strong control' approach in the process of Member State building in Kosovo*. London: Routledge. p. 140-162

# Designing the Kosovo-Serbia dialogue

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Serbia's attempts to sabotage the state of Kosovo did not stop with the declaration of its independence. Although official Belgrade, under the leadership of Boris Tadic, had begun to orient its policy towards the EU, Serbian Foreign Minister Vuk Jeremic remained committed to undermining Kosovo's international consolidation.<sup>3</sup> Serbia managed to push forward to the UN General Assembly a request for an ICJ advisory opinion on the legality of Kosovo's declaration of independence. In 2010, the ICJ made public its advisory opinion, concluding that the act of declaring Kosovo's independence had not violated international norms and was in line with Resolution 1244. Although hailed as a victory by the Kosovan side, the move nevertheless brought about a new process of dialogue.

On the day the ICJ issued its opinion, the High Representative for Foreign Affairs and Security Policy, Baroness Catherine Ashton, welcomed the judgment in a statement which stated, inter alia: *"The ICJ advisory opinion opens a new phase. Serbia's future is in the EU. Kosovo's future is in the EU. Good neighborly relations, regional cooperation and dialogue are the foundations on which the EU is built. [...] The European Union is ready to mediate a dialogue process between Pristina and Belgrade"*, not mentioning the five non-recognizers.<sup>4</sup> But that statement was ignored by Serbia, which on July 28 submitted another draft resolution to the UN calling for new negotiations on Kosovo's status.<sup>5</sup> With the direct insistence of Great Britain and Germany to change

the draft resolution<sup>6</sup>, as well as the involvement of EU High Representative Catherine Ashton, a common compromise was reached on a new text of this resolution. The new resolution, which provided for the start of the EU-mediated Kosovo-Serbia dialogue process, was adopted by the UN General Assembly on 9 September 2010.<sup>7</sup>

Robert Cooper, the former negotiator of the Kosovo-Serbia technical dialogue, in his 2015 opinion sheds some light on the behind the scenes of discussions on the United Nations Resolution. He hints that this phrase was the product of compromises in the two meetings of the EU Security and Policy Commission<sup>8</sup>, where as he puts it: *"most ambitious ideas went down the drain considering the fact that Kosovo is not recognized by five EU countries"*.<sup>9</sup>

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3 Van der Borgh, Ch. & Le Roy, P. & Zweerink, F. (2018), *"EU peacebuilding capabilities in Kosovo after 2008: an analysis of EULEX and the EU-facilitated Belgrade-Pristina Dialogue"*, Center for Conflict Studies, Utrecht University, P.41

4 Statement by the High Representative for Foreign Affairs and Security Policy, on behalf of the European Union on the Advisory Opinion of the ICJ (22 July 2010). Available at: [https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/115902.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/115902.pdf)

5 Economides, S. & Ker-Lindsay, J. (2015). 'Pre-Accession Europeanization': The Case of Serbia and Kosovo. *JCMS: Journal of Common Market Studies*. 53. P.41

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6 German Foreign Minister Guido Westerwelle and FCO William Hague visited Belgrade to discuss changing the text of the resolution.

7 Serbia's compromise was translated into reward by the EU, where the Council asked the Commission to give its opinion on Serbia's application for membership. The latter concluded that the Council should offer candidate status and open negotiations with Serbia regarding the latter's commitment to the normalization process with Kosovo.

8 Composed of EU diplomats, representatives of the European Commission and the High Representative for Foreign Affairs and Security Policy, Ms. Catherine Ashton.

9 Cooper, R. (2015). Opinion – *"The Philosophy of the Belgrade-Pristina Dialogue"*. Available at: <https://europeanwesternbalkans.com/2015/07/16/sir-robert-cooper-the-philosophy-of-the-belgrade-pristina-dialogue/>



The **ICJ** advisory opinion opens a new phase. **Serbia's** future is in the **EU**. **Kosovo's** future is in the **EU**. Good neighborly relations, regional cooperation and dialogue are the foundations on which the **EU** is built. [...] The European Union is ready to mediate a dialogue process between **Pristina** and **Belgrade**

However, the Resolution in its terminology does not point out the changes in the EU relations with these two countries, describing them as parties, as it does not provide sufficient clarification on the goals of this process or expected outcome. But the very fact that this Resolution was sponsored by the 28 EU member states and Serbia, not by Kosovo - a non-member of the UN, highlighted the essence of the problem between Kosovo and Serbia - their opposing positions regarding statesmanship of Kosovo.

The resolution gave the EU a new role in peacekeeping in the Western Balkans, linking the process to the European perspective of the parties, mutual cooperation and improving the lives of citizens.<sup>10</sup> But while the EU took over this role, at the next meeting of the European Council, as the highest decision-making mechanism of the EU, the issue of the EU mediating role or the decision of the ICJ did not become part of the conclusions.<sup>11</sup>

10 Doli D. (2019). *Brussels Agreement: Between Statehood and 1244 Status*. In: *The International Element, Statehood and Democratic Nation-building*. Cham, Springer. p. 159-179.

11 Viceré, A. G. M. (2016). The roles of the President of the European Council and the High Representative in leading EU foreign policy on Kosovo. *Journal of European Integration*, 38:5. p. 562.

# Common EU Foreign and Security Policy Treaty of Lisbon

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Since the late 1990s, the EU has begun to design its ambitions in the international arena, aiming to institutionalize a common foreign and security policy. It also aimed to opening a new chapter of engagement with the Western Balkans. In fact, the EU had been active in the region before, especially during the period of disintegration of the former Yugoslavia, where it was argued that it had failed to be successful, among other things, due to lack of experience, internal unity and lack of instruments available to operate with.<sup>12</sup>

The Treaty of Lisbon<sup>13</sup> shapes the common foreign and security policy of the European Union, marking a strengthening of the role of intergovernmental forums for joint policy coordination and decision-making. The treaty stipulated that the European Council is “*The leading source in the field of foreign and security policy*”, which also has the mandate to oversee and monitor other intergovernmental forums, such as the Council on Foreign Affairs. As the then President of the European Council, Van Rompuy, stated: “*The main messages are managed by the Council of Europe. They must be prepared and implemented by the Commission and the High Representative for Foreign Affairs and Security Policy*”.<sup>14</sup> At the same time, the Treaty establishes the position of High Representative for Foreign Affairs and Security Policy (High Representative) on the role of drafting proposals for common foreign and security policy as well as

implementing decisions and courses of policies set by the European Council and the Council.<sup>15</sup> The High Representative attends European Council meetings, serves as Vice-President of the European Commission, and chairs the Foreign Affairs Council (FAC) for a five-year term.<sup>1617</sup> But the Treaty clearly states that, when Member States do not have a common position or have reached a compromise on a policy, the High Representative cannot take a position on the matter.<sup>18</sup>

The treaty gives legal personality to the EU but not the latter's right to recognize states, a competence which remains with member states.<sup>19</sup> Due to the institutional character, the position of High Representative is considered to be at the crossroads between the supranational and intergovernmental sphere of the EU<sup>20</sup>, a role which cannot go beyond the Council' decision-making. Through the Treaty we also see the formation of the European External

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12 Bieber, F. (2015). *The Serbia-Kosovo Agreements*. *Review of Central and East European Law*, 40. p. 291.

13 The Common Foreign and Security Policy (CFSP) of the European Union was regulated by the Maastricht Treaty in 1992, later by the Amsterdam Treaty in 1997 establishing the Office of the High Representative for the CFSP, whose role has been to coordinate EU foreign policy and issues related to the rotating Presidency; to speak on behalf of the EU on certain foreign policy issues.

14 Conclusions of the Council of Europe, 2010. Available at: <https://www.consilium.europa.eu/media/21369/qc3010507enc.pdf>

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15 Viceré, A. G. M. (2016). The roles of the President of the European Council and the High Representative in leading EU foreign policy on Kosovo. *Journal of European Integration*, 38:5. p. 559.

16 The FAC has legislative and executive functions in the field of CFSP and CSDP as the operational instrument of foreign and security policy with the right to decide on 'joint actions' and 'common positions'.

17 The High Representative for Foreign Affairs and Security Policy within his/her mandate also serves as a bridge between the Commission and the Council for Foreign Policy aiming to coordinate policies and build consistency between the Commission and the FAC.

18 Viceré, A. G. M. (2018). *The High Representative and EU Foreign Policy Integration – A Comparative Study of Kosovo and Ukraine*. Cham: Palgrave Macmillan. p. 83.

19 Dessus, Z., Rexha, A., Merja, A. & Stratulat C. (2017). *Discussion Paper – “Kosovo's EU candidate status: a goal within reach?”*. European Policy Center & Group for Legal and Political Studies. p. 5.

20 Viceré, A. G. M. (2018). *The High Representative and EU Foreign Policy Integration – A Comparative Study of Kosovo and Ukraine*. Cham: Palgrave Macmillan. p. 10.



The establishment of the Office of the High Representative for Foreign Affairs and Security Policy and Foreign Services does not affect the responsibilities of **EU** countries in the formulation and exercise of foreign policy or their representation in third countries and international organizations

Action Service (EEAS)<sup>21</sup>, a 'quasi-foreign ministry and diplomatic corps', a hybrid body between member states and other EU institutions<sup>22</sup>, whose mission is to provide support to the High Representative in implementing his/her role.<sup>23</sup>

The common EU foreign and security policy, according to Wessel and den Hertog (2012), is also considered as a *sui generis competence*, while Blanke and Mangjameli 2012<sup>24</sup> consider it a political desire of the states to prevent the 'communitarianization' of the governance of the common foreign and security policy, as well as the common security and defense policy, as it is clearly stated in the Lisbon Treaty:

*"[...] The establishment of the Office of the High Representative for Foreign Affairs and Security Policy and Foreign Services does not affect the responsibilities of EU countries in the formulation and exercise of foreign policy or their representation in third countries and international organizations".<sup>25</sup>*

21 EEAS consists of professional staff seconded by the Council, Member States and the European Commission. Its purpose is to strengthen the commitment of EU member states to greater EU integration in the field of foreign policy.

22 Ćuković, K. (2019). Europe's diplomacy on public display: The EU and the Belgrade-Pristina dialogue – Event analysis. *Contemporary Southeastern Europe*, 6 (1). p. 3.

23 For more information, see Article 27 of the Treaty on European Union, also known as the Lisbon Treaty. Available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:b-140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:b-140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF)

24 Viceré, A. G. M. (2018). *The High Representative and EU Foreign Policy Integration – A Comparative Study of Kosovo and Ukraine*. Cham: Palgrave Macmillan. p. 87.

25 Ibid, p. 83

# Designing the role of the EU as a mediator in the Kosovo-Serbia dialogue

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With the Lisbon Treaty, the Western Balkans is already part of the Council of Europe's regular agenda<sup>26</sup> in which the EU sees the transformation of this region in the light of the transformation instruments of the enlargement agenda. This commitment came as a need for geopolitical orientation as well as a result of internal and external pressures, such as those from the US, which already considered the Western Balkans as the responsibility of the EU.<sup>27</sup> The latter materializes in the role of mediator of conflicts, in the context of the Kosovo-Serbia dialogue, which was considered a test of EU diplomacy and its ability to resolve regional conflicts.<sup>28</sup> Knowing that five EU member states do not recognize Kosovo's independence, it was considered that the EU managed to operate in an integrated manner.

Overcoming the differences, the EU managed to agree to mediate the Kosovo-Serbia dialogue process and link the European path of the parties to the normalization process as a common platform for them. This EU policy portfolio was seen as an example of the relation of the common intergovernmental policy on foreign and security policy, as well as supranational enlargement policies.<sup>29</sup> The latter would mean that the President of the European Council, together with the High Representative for Foreign Affairs and Security Policy, in the exercise of their functions should maintain the consistency of EU bilateral diplomacy in relations with the governments of the Western Balkans countries.<sup>30</sup> In the case of Kosovo, it would be read in the form that the EU has a neutral stance towards the state of Kosovo, a position which was intended to be maintained throughout the Kosovo-Serbia negotiation process.

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26 For more information, see European Council in Action Guidelines for the European Parliament. Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/615678/EPRS\\_BRI\(2018\)615678\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/615678/EPRS_BRI(2018)615678_EN.pdf)

27 Viceré, A. G. M. (2018). *The High Representative and EU Foreign Policy Integration – A Comparative Study of Kosovo and Ukraine*. Cham: Palgrave Macmillan. p. 108

28 Krasniqi, G. & Musaj, M. (2014). *The EU's 'limited sovereignty'-strong control/approach in the process of Member State building in Kosovo*. London: Routledge. p. 140-162

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29 Viceré, A. G. M. (2016). The roles of the President of the European Council and the High Representative in leading EU foreign policy on Kosovo. *Journal of European Integration*, 38:5. p. 558.

30 *Ibid*, p. 562.

## The era of Ashton

In 2011, under the auspices of the EU, the first phase of the dialogue began, which was labeled as a technical process. Until May 2012, as long as this phase lasted, the parties held nine meetings and reached seven agreements which were described as technical but which in essence had in fact political impact between the two countries.<sup>31</sup> The limits of this phase were highlighted very quickly, considering the positions of the parties themselves towards the status of Kosovo at a time when relations between them continued to remain strained, making it more than evident that the dialogue had to take place at the political level.

In 2012, the second phase of the dialogue began, which was recognized as a political dialogue that took place at the level of the Prime Ministers and under the direct mediation of the High Representative, Catherine Ashton. The latter believed that the parties had somehow managed to build trust between them and could discuss issues that were more sensitive. Although Ashton shared a plan for talks with the parties, it was not accepted or made public. While, it was not uncommon for reports to state that issues related to northern Kosovo must be discussed if the parties want to make progress,<sup>32</sup> despite statements by Kosovo leaders who publicly insisted that Kosovo's internal affairs would not be part of these discussions.

After ten meetings, on April 19, 2013, the parties reached the First Agreement on the Normalization of Relations, with the mediation of the High Representative and with the assistance of EEAS, an agreement which in large part addresses internal issues of Kosovo.

With this agreement, the EU marked the first victory of its diplomacy by offering added value to the EEAS as the new actor of EU foreign policy.<sup>33</sup> In EU reports, the signing of this agreement was considered one of the most important achievements of the EU in foreign relations.<sup>34</sup> Welcoming and encouraging messages for the parties were also formulated by the President of the Council of Europe, Van Rompuy, who expressed gratitude to Ashton's role in this process and the courage of the two leaders involved. Stefan Lehne, a former senior EU official, wrote four days later that: *"The agreement between Kosovo and Serbia proves that wise diplomacy together with the power that carries the prospect of European enlargement, can still bring/produce significant results"*.<sup>35</sup>

31 At this stage, the Kosovan side was represented by Deputy Prime Minister Edita Tahiri, and Serbian side by Borko Stefanović, political director at the Serbian Ministry of Foreign Affairs, while the process was mediated by Robert Cooper under the supervision of the High Representative.

32 Bergmann, J. (2020). *The European Union as International Mediator Brokering Stability and Peace in the Neighbourhood*. Cham: Palgrave Macmillan. p. 126.

33 Blockmans, S. (2013). Opinion – "Kosovo-Serbia deal shows value of EU diplomatic service". Available at: <https://euobserver.com/opinion/119903>

34 Doli D. (2019). *Brussels Agreement: Between Statehood and 1244 Status*. In: *The International Element, Statehood and Democratic Nation-building*. Cham: Springer. p. 159.

35 Lehne, S. (2013). Article – "Serbia-Kosovo Deal Should Boost the EU's Western Balkans Policy". Available at: <https://carnegieeurope.eu/2013/04/23/serbia-kosovo-agreement-should-reenergize-eu-s-western-balkans-policy/g0q8#>



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The agreement between **Kosovo** and **Serbia** proves that wise diplomacy together with the power that carries the prospect of **European** enlargement, can still bring/produce significant results

The parties announced the victories of their camps, where Thaçi stated that Serbia had *de facto* recognized the state of Kosovo, while Dacic the opposite, highlighting the essence of the dispute between them that was not overcome with this agreement. The April agreement was also considered “an arrangement for the division of power in northern Kosovo between the authorities which is acceptable to both parties.”<sup>36</sup> In the same spirit, Cooper’s own statement can be read, stating that the purpose of the dialogue was not to change the situation on the ground, but to turn this reality into a legal system. Lehne argued that at the center of the talks was a balance between the demands of both sides calling them legitimate demands, where on the one hand, Kosovo Serbs would make sure they would continue to live their lifestyle and to continue the connection with Serbia, while Kosovo needed Serbia to accept that the north is and will remain part of Kosovo.<sup>37</sup>

Indeed, the agreement managed to provide only partial solutions to some of the issues between the parties which are still pending. It marked a political turning point in relations between the parties, positioning the EU as a key player in promoting peace and security in the Western Balkans.

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36 Ibid.  
37 Ibid.

## Ashton Legacy

After reaching the April Agreement, parties held a number of other meetings which focused on the implementation of the agreements. Transparency in the form of organization of meetings or persons involved in this process does not constitute its strongest point. The EU insisted that its role was only to facilitate the process, where EEAS and European Commission officials had been part of these meetings leading the same at the technical level depending on the topics of discussion. But there were also cases when EU officials proposed solutions and drafted agreements, as was the case with the telecommunications agreement or other arrangements.<sup>38</sup> Despite the pro and con voices, Ashton's role in this process was important, as she set the agenda of the meetings. The strategy used by Ashton included combining informal meetings with formal ones to enhance trust and confidence between the parties, align their positions leading towards an eventual agreement.<sup>39</sup> The process revealed elements of a 'manipulation and formulation strategy' which was made possible through the notion of constructive ambiguity which became evident even with the mediator's intentions to "simplify the agenda by dropping, limiting or combining issues".<sup>40</sup>

In 2014, Catherine Ashton's term came to an end, carrying an important victory under her wing. Her legacy in the case of Kosovo was seen as constructing the practice of exercising the role of High Representative, between intergovernmental and supranational factors, where Ashton managed to play an important role 'as a policy driver and implementer' due to the consensus that prevailed in the Council and in the FAC. The same consensus made it possible to link the enlargement agenda to that of the EU's common foreign and security policy

in her policy as Vice-Chair of the Commission.<sup>41</sup> Encouraging an increased role of the European Commission in this process both in the case of the positive recommendation of the European Commission to Serbia for the granting of the status of candidate country for EU membership, and in the case of the Commission recommendation for the opening of negotiations with Kosovo for SAA.<sup>42</sup> In his capacity as President of Kosovo, Hashim Thaçi on February 17, 2017, awarded Baroness Ashton with Presidential Medal of Merit for her contribution in the dialogue and approximation with the EU.<sup>43</sup>

The United States was involved in the Kosovo-Serbia dialogue, supporting this process and the EU's mediation. As stated in the statement in support of the UN Resolution, "It is time for the region to move forward and for Kosovo and Serbia to move forward towards new relations and a future towards the EU".<sup>44</sup> In the first steps, Philip Reeker, Deputy Secretary of State for European and Eurasian Affairs, was directly involved in holding meetings with representatives of both parties and pushing the parties towards finding common solutions. Although over time, US involvement moved behind the scenes, their role and the support to the process remained extremely important.

38 Bergmann, J. (2020). *The European Union as International Mediator Brokering Stability and Peace in the Neighbourhood*. Cham: Palgrave Macmillan. p. 133.

39 Ibid, p. 132 et al.

40 Ibid, p. 63-64 et al.

41 Viceré, A. G. M. (2016). The roles of the President of the European Council and the High Representative in leading EU foreign policy on Kosovo. *Journal of European Integration*, 38:5. p. 566.

42 Ibid, p. 563-565.

43 For more information, see: *President Thaçi awards Baroness Ashton for her contribution in the dialogue and approximation with the EU* Available at: <https://bit.ly/2CglVjt>

44 Phillips, D. *Implementation Review of the Kosovo-Serbia Dialogue*. New York: Columbia University's Institute for the study of human rights. p. 15, E qasshme në: : <https://www.helsinki.org.rs/doc/Implementation%20Review%20of%20the%20Kosovo%20-%20Serbia%20Dialogue.pdf>

# Limits of Ashton's mediation method as High Representative of the EU

The EU accession limits, which brought a number of technical agreements and the April Agreement, were proven in the mandate of the next High Representative who inherited the role of mediator of this process. As Cooper stated, the path to normalization was through the 'European method' based on the philosophy of the Coal and Steel Community, where by discussing technical issues the aim was to build trust and gradually move towards the more sensitive issues of the process. The 2012 report of the European Commission, sent to the Parliament and the Council, showed that the EU High Representative had made it clear that *"this was a process that would be built step by step starting from the easiest issues to the most difficult ones and would not be open-ended"*<sup>45</sup> where, among other things, it was also stated that 'the gradual normalization of relations between the two parties was aimed at, without prejudice to their position on the status of Kosovo'.<sup>46</sup> The position of the member states on this process has never been formally articulated by the Council, the institution responsible for taking such decisions on behalf of the EU. Likewise, it was never defined what was meant by normalization of relations by actually making this process open-ended and the normalization of relations itself under this limited scope.

In the period December 2009 to December 2013, in 26 meetings held between EU leaders<sup>47</sup>, the issue of the Kosovo-Serbia dialogue had been part of these discussions only once. The conclusions of this meeting stated: "The EU ... welcomes the re-engagement of Serbia in the Belgrade-Pristina dialogue process", the

expression of good will to implement the agreements reached, the cooperation shown by Serbia to enable EULEX and KFOR will be able to fulfill their mandates in Kosovo, as part of the assessment of granting of candidate country status for Serbia.<sup>48</sup> But the issue of Kosovo's status was not part of these conclusions.

On the other hand, the promise of the parties' progress towards the EU under whose tutelage this process takes place managed to translate into an impetus for the parties to reach a compromise, but which gradually began to weaken its power. Kosovo's European path remained unclear. The same could not be fully addressed even with the last point of the April Agreement where the parties were expected not to obstruct the respective individual journeys towards the EU. Although it resonated as a hopeful message, this clause did not assign Serbia with obligation to remove barriers against Kosovo on its European path. The EU also did not take any action in this regard, leaving it to Kosovo to resolve this issue bilaterally with the five non-recognizing states.<sup>49</sup> This became evident in the signing of the SAA in 2016, which was an agreement only with the EU, which explicitly stated that it did not prejudice the latter's position on the status of Kosovo, not offering a clear perspective for Kosovo's EU membership unlike the content of the SAA which was signed by Serbia.<sup>50</sup> On the other hand, visa liberalization became a myth highlighting the difficulties in the EU decision-making structure and the prioritization of domestic policies by member states.

45 For more information, see: *Joint Report of the European Parliament and the Council on Kosovo's\* progress in addressing issues set out in the Council Conclusions of December 2012 in view of a possible decision on the opening of negotiations on the Stabilisation and Association Agreement*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013JC0008&from=en>

46 Ibid.

47 Viceré, A. G. M. (2018). *The High Representative and EU Foreign Policy Integration – A Comparative Study of Kosovo and Ukraine*. Cham: Palgrave Macmillan. p. 149.

48 Conclusions of the Council of Europe, dated 9 December 2011. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/DOC\\_11\\_8](https://ec.europa.eu/commission/presscorner/detail/en/DOC_11_8)

49 Doli D. (2019). *Brussels Agreement: Between Statehood and 1244 Status*. In: *The International Element, Statehood and Democratic Nation-building*. Cham, Springer. p. 174.

50 Bergmann, J. (2020). *The European Union as International Mediator Brokering Stability and Peace in the Neighbourhood*. Cham: Palgrave Macmillan. p. 130

## From success to criticism: High Representative Mrs. Mogherini

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2014 was an election year in Kosovo, Serbia and the EU. Former Italian Foreign Minister Federica Mogherini has been appointed the High Representative for Foreign Affairs and Security Policy. An appointment that did not go unnoticed due to her lack of long experience in diplomacy, considering that she served in this position only for a period of several months, it was considered that it could affect the performance of her position as the 'EU Foreign Minister'.<sup>51</sup> But from another point of view, the absence of her prior stance or positioning on certain topics was also seen as an asset in the EU's consensual foreign policy. The latter is Mogherini's own goal, which in its elaboration before the European Parliament stated that her primary goal in the next five years was: "[...] *shaping common policies, vision and strategy*" of the EU.<sup>52</sup> In this presentation of the High Representative, the Balkans were mentioned together with Turkey in the framework of the enlargement policy. However, the general expectations towards Mogherini revealed confidence that she could resolve the remaining issues between the parties within the Kosovo-Serbia dialogue process, expectations which ultimately failed to materialize.

On February 9, 2015, after a 10-month break, the first meeting of the Prime Ministers of the two countries was held under the mediation of the High Representative. The announced focus of this meeting was the progress made and the way forward towards normalization.<sup>53</sup> The parties first agreed on a justice deal, and in August of that year agreed on a package of four agreements that would enable the implementation of the April Agreement. Unlike what had happened in the past, now the EEAS published these agreements<sup>54</sup>, while Mogherini stated that the agreements reached represented important steps in the normalization process.

However, the 'splendor' of EU diplomacy achieved during Baroness Ashton's leadership began to fade despite attempts made in 2015. Relations between the parties continue to be strained under the whirlwind of a series of incidents and events that continued throughout Mogherini's tenure, affecting the dialogue process itself.<sup>55</sup> On the other hand, the delays in the process itself, the non-implementation of agreements, lack of transparency, including and internal criticism, especially in Kosovo, culminating in mass protests against the Principles

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51 Shapiro, J. & Alcaro, R. (2014). Article – "High Representative, High Expectations: What to Expect from the EU's New Foreign Policy Chief". Available at: <https://www.foreignaffairs.com/articles/western-europe/2014-09-04/high-representative-high-expectations?fbclid=IwAR2ytNE50ArK5mOlyJzic-n5ABULw7O9wET1zviFMIUJkzeAKxQ1Z6zdpRE8>

52 Federica Mogherini's introductory speech at the European Parliament's hearing on October 7, 2014. Available at: <https://europa.ba/?p=11581>

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53 Statement by EEAS, available at: [https://eeas.europa.eu/headquarters/headquarters-homepage/5987/high-level-dialogue-between-belgrade-and-pristina-resuming-9-february\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/5987/high-level-dialogue-between-belgrade-and-pristina-resuming-9-february_en)

54 But not including the plan to implement the justice agreement, which is still not public.

55 Among other things, Serbia's international campaign against Kosovo's membership in international organizations, the recognition withdrawal campaign, the construction of the dividing wall on the North Mitrovica side, the train from Serbia to Kosovo with the inscription Kosovo is Serbia, the assassination of Serbian politician Oliver Ivanovic, the arrest of Marko Djuric in Kosovo, as well as the imposition of a 100% tariff on Serbian products. These were just some of the political developments within and between the two countries that directly influenced the dialogue process.



The latter is **Mogherini's** own goal, which in its elaboration before the **European Parliament** stated that her primary goal in the next five years was: “[...] shaping common policies, vision and strategy” of the **EU**

of the Association of Serb-majority municipalities<sup>56</sup>, highlight the limits of incremental access, lack of political will of the parties and the absence of an EU driving force to push the parties towards the implementation of the agreements.

Despite EU attempts to emphasize the effects the agreements had on the ground, the process seemed to be moving towards a ‘procrastination’ approach. But it also highlighted the willingness of the parties to move towards a durable solution and a comprehensive agreement. As argued by James Hooper, a former US State Department official, the form of partial agreements was failing to meet its ends and that this approach already needed to be changed.

This led to the start of the third phase of the dialogue in July 2017, which was labeled as the final phase of this process, within which a comprehensive and legally binding final agreement was expected to be reached. The announcement of this process was made in an informal meeting of the Presidents of the two countries, where EEAS, in addition to announcing their readiness to move to this stage, did not offer any additional elements of what the same and what was expected from the parties in this process.

As Bajrami and Weber argue, the new approach could be seen as *“implicit acknowledgment that the*

*previous dialogue using the so-called ‘incremental approach’ had failed”*<sup>57</sup>, questioning the method used by the EU to achieve normalization of relations. On the other hand, the fact that the EU had not made public the negotiating framework and the red lines, added the uncertainty about the ‘motives to move towards the last point of this dialogue’, or its final objectives.<sup>58</sup> Already the articulation that the parties were expected to reach a legally binding comprehensive agreement became part of the jargon about dialogue. While the fact that despite the delays of the process, under the mediation of Mogherini, intention was to conclude this process, that showed commitment to push the process forward. A commitment that proved that the final agreement goes beyond the decision-making and driving force of the EU High Representative.

That the process would not address its shortcomings, which describes the earlier phases mentioned above, and that its centralization under Mogherini’s mediation would continue, was implied by Enlargement Commissioner Hahn, who stated that the dialogue structure would not change, in order to avoid complications to the process. He underlined Mogherini’s commitment to speed up the process, while acknowledging the establishment of dialogue at the level of Presidents.<sup>59</sup>

56 President of the Republic of Kosovo - Mrs. Atifete Jahjaga sent the General Principles of the Association/Community of Serb-majority Municipalities in Kosovo to the Constitutional Court, which in its judgment ruled that the Principles are not in line with the Constitution in its 23 points. For more information, see: [https://gjk-ks.org/wp-content/uploads/vendimet/gjk\\_ko\\_130\\_15\\_shq.pdf](https://gjk-ks.org/wp-content/uploads/vendimet/gjk_ko_130_15_shq.pdf)

57 Weber, B. & Bajrami, A. (2018). *Policy Note Paper Series – The Original Framework of the Political Dialogue*. Democratization Policy Council, Kosovo Foundation for Open Society & Group for Legal and Political Studies: Berlin-Prishtina. p. 1

58 Ibid.

59 For more information, see: <https://europeanwesternbalkans.com/2017/09/15/hahn-structure-belgrade-pristina-dialogue-will-not-change/>

Although the process continued to be closed, with a pronounced lack of transparency, the Presidents engaged in their communications with citizens in various formats to obtain 'approval' for the potential agreement. Vucic started an internal dialogue that the accepted scenario for a solution with Kosovo would emerge, which was never formally concluded and did not produce a public document. On the other hand, Thaçi called for the formation of a unity team while making public the notion of 'border correction' as the way to reach an agreement between the parties. The terminology of this period which was heard on both sides of the border was the need for a painful compromise, emphasizing that the process would be difficult, but that in its conclusion both sides would be victorious – *win-win situation*.

The enthusiasm of the EU representatives, including the Enlargement Commissioner Johannes Hahn under the Austrian Presidency of the Council within the Albach Forum, sent messages of confidence from which the expression "we are not problematic guys" articulated by Kosovo President Hashim Thaçi created the impression that the parties were closer than ever to a mutual compromise. But, in fact, this was only a fragment of a larger picture of the complex relations between the parties over the years, especially in the context of a process where the EU High Representative failed to secure the full support of the member states to advance the proposed solution which contained the thesis of 'border correction'. In technical level discussions, the process began to be described as clinically dead even by the parties involved.<sup>60</sup> While very soon, even the top-level process began to be considered dangerous considering the consequences that the agreement on the basis of border correction could bring, becoming a precedent for other countries in the region and beyond.

It seems that President Thaçi's tour in the countries of the region in which he embarked to assure the leaders of these countries that the border correction between Kosovo and Serbia would not bring domino effects,<sup>61</sup> failed to find the support of Germany, which came out openly against this option. At the same time, Thaçi failed to get the support of Kosovo's domestic political spectrum, which proved the duplication of the country's domestic politics. In September 2018, the last high-level meeting was held in Brussels, organized under the mediation of the High Representative, under the shadow of Vucic's opposition to meet with Thaci, because his request to visit Kosovo was rejected by the Kosovo Ministry of Foreign Affairs, to be accepted later.

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60 For more information, see: [https://www.b92.net/eng/news/politics.php?yyyy=2018&mm=08&dd=1&nav\\_id=104856](https://www.b92.net/eng/news/politics.php?yyyy=2018&mm=08&dd=1&nav_id=104856)

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61 For more information, see the editorial of President Hashim Thaçi regarding the peaceful border correction between Kosovo and Serbia, dated September 17, 2018. Available at: <https://president-ksgov.net/en/oped/peaceful-border-correction-between-kosovo-and-serbia>

# Mogherini's Legacy

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Shapiro argues that in cases of no agreement of EU member states on the course of joint action, it is the responsibility of the High Representative to *"aim at building a political course that is acceptable to member states and then give political weight to the whole of the EU"*.<sup>62</sup> The way Mogherini mediated this process seemed to fail to fulfill this responsibility when part of the discussions about the final agreement was the issue of border correction, for which he failed to secure the support of the EU member states, especially of Germany. Mogherini beyond her efforts, failed to push the process forward. Holding this process within the close circle of the High Representative and her team was seen as a method of overcoming differences in the stances of member states, which could have functioned in the past and needed maneuver space for the EU in order to push the parties towards agreements, did not bring the expected results. However, Mogherini's mandate proved that the unity of the member states and their support to the High Representative who described the first stages of the dialogue was lacking in its final phase, highlighting the divisions within the EU about this process, which during this period began to take on a transatlantic character.

The stance of Spain against the Kosovo intensified despite the fact that the EU was facilitating a process of normalization between the parties which became evident in some cases, including the influence that this country in (not)granting the European perspective to Kosovo in the Commission's Enlargement Strategy, published in February 2019. While for Germany, a country that from the very beginning supported the dialogue process, its outcome and Serbia's EU membership, the goal was the recognition of the state of Kosovo.

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62 Shapiro, J. & Alcaro, R. (2014). Article - *"High Representative, High Expectations: What to Expect from the EU's New Foreign Policy Chief"*. Available at: <https://www.foreignaffairs.com/articles/western-europe/2014-09-04/high-representative-high-expectations?fbclid=IwAR2ytNE50ArK5mOlyJzic-n5ABULw7O9wET1zviFMIUJkzeAKxO1Z6zdpRE8>

The navigation of the role of the High Representative, between the intergovernmental and supranational factors, was not fully met by Mogherini even in the absence of the 'carrots' that the High Representative had at his disposal, especially towards Kosovo. Its promises for visa liberalization, after the vote on the border demarcation agreement with Montenegro in the Assembly of Kosovo, were not backed up by the EU member states. Whereas, the claim that it was up to the parties to decide on the solution accepted between them<sup>63</sup>, did not turn to the common position of the EU, further weakening the role of the High Representative in the field of foreign policy and emphasizing the EU member states' supremacy in decision-making.

In her address before the UN Security Council, speaking about the EU's contribution within the multilateral system, Mrs. Mogherini said that the EU did not own the dialogue process, but the parties themselves, and it was up to them to find an acceptable and suitable solution for them. But in reality, this formula was not supported by official Berlin which strongly opposed any discussion that could involve territorial rearrangements. In the same address, she stressed that the agreement should be in line with international law and should have the support of the Security Council.<sup>64</sup>

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63 This phrase is still part of the discourse of the current High Representative of the EU, Mr. Joseph Borrell.

64 For more information, see the speech of the EU High Representative at the meeting of the United Nations Security Council, dated 12 March 2019. Available at: [https://eeas.europa.eu/headquarters/headquarters-homepage/59506/speech-high-representativevice-president-federica-mogherini-united-nations%E2%80%99-security-council\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/59506/speech-high-representativevice-president-federica-mogherini-united-nations%E2%80%99-security-council_en)



**Shapiro** argues that in cases of no agreement of **EU** member states on the course of joint action, it is the responsibility of the High Representative to “aim at building a political course that is acceptable to member states and then give political weight to the whole of the **EU**”

The transfer of ambiguities from the previous process to the current one, the centralization of talks entirely by the two Presidents under the mediation of Mogherini on the one hand, the lack of transparency towards the EU member states on the other hand, influenced the High Representative's reports with local political representatives, which, in the case of Kosovo, culminated in the request of the then Prime Minister of Kosovo Ramush Haradinaj to remove Mogherini from this process, but also with the articulated criticism towards it by EU member states.<sup>65</sup>

The ambiguous nature of the agreements, insisting on the role of mediator and not guaranteeing the implementation of the agreements, created maneuver room for the parties to reach agreements, but which did not translate into normalization of relations between them, concluding Mogherini's mandate under the shadow of Serbia's international campaign against the state of Kosovo and Kosovo's 100% tariff on products from Serbia and Bosnia and Herzegovina. Above all, under the enhanced role of the US in the process and the activation of Germany and France.

<sup>65</sup> For more information, see: [https://www.euractiv.com/section/enlargement/news/kosovos-haradinaj-wants-mogherini-out-of-dialogue-with-belgrade/?fbclid=IwAR1ikPIIjRUdu-FuOUfHA\\_KVR5KNE51mbr7BWGYTQqbXWKvCjKe3BqASS\\_84](https://www.euractiv.com/section/enlargement/news/kosovos-haradinaj-wants-mogherini-out-of-dialogue-with-belgrade/?fbclid=IwAR1ikPIIjRUdu-FuOUfHA_KVR5KNE51mbr7BWGYTQqbXWKvCjKe3BqASS_84)

# High Representative and European External Action Service in a secondary role?

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Attempts to restore the EU peacekeeping model were revived in 2019, but now not within the Office of the High Representative, but at the level of Germany and France, two countries which also laid the foundations of Coal and Steel Community.

This seemed like an attempt to save what little could be left of a process that completely derailed from European tracks when at the goodwill table - as the mediation table is known - the topic of border correction was discussed, which did not have the support of EU states. This mediation from Germany and France came at a time when the dialogue was suspended due to the 100% tariff imposed by Kosovo on products from Serbia and Bosnia and Herzegovina and after their demands for lifting the measure fell on deaf ears. Above all, the process was attempted to be pushed forward and under the shadow of rivalry with the United States, which already become active actor in the process of reaching a peace agreement between the parties with the direct involvement of the White House through the US Ambassador Richard Grenell as Special Envoy of President Trump to Germany and Matthew Palmer as Special Representative for the Western Balkans appointed by the US Department of State.

On April 29, 2019, German Chancellor Angela Merkel, French President Emmanuel Macron, as well as EU High Representative Federica Mogherini invited the parties to a meeting in Berlin to discuss finding a solution to the dialogue at a Western Balkans Summit which was expected to discuss the European aspirations of the region. The organization of this Summit by Merkel and Macron overshadowed official Brussels and the format under which the

mediation process had taken place.<sup>66</sup> However, the Summit failed to bring the parties closer, highlighting the great divisions between Paris, Berlin, EU member states and the EU's foreign policy apparatus.<sup>67</sup>

Germany was clearly against the idea of border correction considering it a dangerous idea, while France was more open to it under the articulation that there should be no imposition of themes and taboo topics. The Kosovan political representatives, respectively President Thaçi and the then Prime Minister Haradinaj appeared divided in their positions, while in the public discussions that followed this meeting it was announced that the request for abolition of the tariff for a six-month period, in exchange for visa free regime, had been an articulated proposal to the Kosovan side.

In absence of a solution to the stalemate in dialogue, in the face of the concentered parties in their positions, the Paris Summit scheduled to take place after that of Berlin was postponed for the second time. Meanwhile, the Berlin Summit concluded with an official general statement announcing that the parties agreed to work constructively to normalize relations, but without any concrete results. The European Parliament elections brought a new composition to the European Commission, which brought new mediators to the EU dialogue process. Expectations were already clear: there was a need to clarify the role of the EU in this process vis-a-vis the US, while Kosovo's domestic political scene began to see a dichotomy between the parties, namely the President and the Prime Minister, behind the options offered by the US and the EU respectively.

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66 Karnitschnig, M. (2019). Article – "Macron's Balkan Break-down". Politico. Available at: <https://www.politico.eu/article/merkel-macron-balkans-serbia-kosovo/>

67 Ibid.

## Old mantra by new officials “diversity around recognition, but unity in commitment”<sup>68</sup>

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### The Spaniard, Borrell, High Representative of the Union for Foreign Affairs and Security Policy

Former Spanish Foreign Minister Joseph Borrell has been appointed head of the EU’s foreign and security policy. His appointment was received with skepticism given the non-recognizing and objecting attitude of this state towards the state of Kosovo, and of Borrell himself. The diplomat, of Catalan origin, had strongly objected the declaration of independence of Kosovo and taking this mandate, which would mean the mediation of the Kosovo-Serbia dialogue, raised many questions about the position he would hold within this process.<sup>69</sup>

In his presentation before the Committee on Foreign Affairs of the European Parliament, he stated that EU member states can behave as they wish towards Kosovo’s statesmanship, but that he represents the EU foreign policy which is framed in terms of the need to reach an agreement between the parties in the framework of the European journey. However, he added that Kosovo could not behave as a state until there is recognition by countries like India and China<sup>70</sup> - statements which in public had not previously been articulated by EU officials.

Borrell’s appointment came at a time when the White House had already appointed a special envoy for the Kosovo-Serbia peace negotiations, Ambassador Richard Grenell, and the US State Department

appointed Matthew Palmer as Western Balkans envoy. At a time when the roundtable discussion for the parties already seemed to have been transferred under official Washington, which had articulated clearly and publicly that the outcome of the process should be mutual recognition. That it was not up to the EU to recognize Kosovo was a repeated stance of the EU High Representative during his visit to Kosovo, and furthermore, adding that this issue belonged to the UN Security Council. It was said that the EU was the mediator of this process, that there was no competition with the US and that the European Union was not complete without the Western Balkans. Discussions about the possibility of appointing a special envoy by the European Council on the issue of the Kosovo-Serbia dialogue began to be articulated very quickly, considering the fact that the US already had one and that the agenda of the EU High Representative for Foreign Policy and Security was condensed.

After numerous discussions and the circulation of potential names, not excluding discussions that the Special Representative would have to come from a powerful EU state that recognizes Kosovo to create a balance with Borrell but also to prove the EU’s commitment to the process, former Slovak Foreign Minister Miroslav Lajčák, turned out to be the EU’s preferred candidate for the post. But already the position of the EU within this process was no longer the same.

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68 Bergmann, J. (2020). *The European Union as International Mediator Brokering Stability and Peace in the Neighbourhood*. Cham: Palgrave Macmillan. p. 130

69 For more information, see: <https://www.evropaelire.org/a/emerimi-i-borrellit-ne-be/30034838.html>

70 For more information, see: [https://www.b92.net/eng/news/politics.php?yyyy=2019&mm=10&dd=07&nav\\_id=107349](https://www.b92.net/eng/news/politics.php?yyyy=2019&mm=10&dd=07&nav_id=107349)



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Discussions about the possibility of appointing a special envoy by the **European Council** on the issue of the **Kosovo-Serbia** dialogue began to be articulated very quickly, considering the fact that the **US** already had one and that the agenda of the **EU** High Representative for Foreign Policy and Security was condensed.

The US managed to push the parties to sign a series of good faith agreements without the presence of Europeans at the table in Berlin despite the fact that the tariff was still in place and to pursue their own EU-independent journey with the parties within of the process by confirming the different stance with the EU. The latter became evident with the decision taken by the newly formed Government of Kosovo to abolish the 100% tariff and impose reciprocity measures on Serbia. While the EU member states and their representatives welcomed this step, the US considered it unacceptable by demanding the removal of all tariff and non-tariff barriers by the

Government of Kosovo against Serbia, affecting the US relations with Kosovo. This also affected the longevity of the Government, which at the time of facing the COVID-19 pandemic, only 52 days after its formation, respectively on March 25, was dismissed with a motion of no-confidence. At the same time, the credibility of the EU joint decision-making was attacked by the Presidents of the two countries who stressed the lack of a unified position of the EU states while treading two separate processes, one mediated by the EU and the other by the US, was highlighted even more.

## Appointing Lajcak

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Under Article 33 of the Lisbon Treaty, on the proposal of the High Representative, the Council may appoint a Special Representative with a specific mandate for a particular matter under his/her authority.<sup>71</sup> On April 3 this year, the Council announced the appointment of Miroslav Lajcak as the EU Special Representative for the Kosovo-Serbia dialogue and other regional issues in the Western Balkans. In his overall job description, according to the Council, Lajcak is expected to engage in achieving comprehensive normalization of relations between Kosovo and Serbia, improving good neighborly relations and reconciliation between partners in the Western Balkan.<sup>72</sup>

In his first interview as Special Representative for the local media in Kosovo, Lajcak underlined the same goals of the UN Resolution, emphasizing that it was the responsibility of the parties to decide the agenda and set the deadline for completion of this process, without offering the impression that the EU approach would make any difference. As was the case during Mogherini's time, there was no new Council-backed document that would clearly define the mandate of the Special Representative in the dialogue process, the EU's common position beyond the broad notion of normalization, the negotiating principles of this process or its red lines. On the other hand, the actions that the EU and its member states would take in the framework of this process to offer a European perspective to Kosovo were not articulated either, knowing that it cannot be tangible until recognition by all EU member states. At a time when Serbia continued with the opening of new negotiation chapters, where so far it opened 18 out

of 35 and expect to open more in the fall of 2020.

The appointment of Lajcak, who during his tenure as Foreign Minister of Slovakia voted against Kosovo's membership in UNESCO, was particularly objected by the President of Kosovo. The division within Kosovo's domestic politics about the role that the EU and the US should play in this process was confirmed by the public stance of President Thaçi, who stated that he would refuse to participate in a meeting mediated by the EU special envoy for the Kosovo-Serbia dialogue, Miroslav Lajcak, but would attend summits invited by Macron or Merkel.<sup>73</sup> This also led to the reaction of the EU High Representative, Joseph Borrell, who stated that the EU-mediated dialogue has no alternative to the European journey of the parties. This did not prevent Lajcak from paying his visit to Pristina, where he met with all political representatives, including President Thaçi. Lajcak reaffirmed the EU's neutral stance, insisting on the EU mandate taken from the UN Resolution, to normalize relations, leaving it to the parties in the process to determine should be achieved during this process. While emphasizing the need to focus on the content of the agreements and not on the speed of reaching it, which can be read as a contradiction to the US approach which seemed to aim at reaching an agreement between the parties in a short-term, related to the presidential elections expected to be held in November 2020. However, a deadline was mentioned by Lajcak who said that he expects the agreement to be reached by next year. This period coincides with his one-year mandate granted by the Council.

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71 Viceré, A. G. M. (2018). *The High Representative and EU Foreign Policy Integration – A Comparative Study of Kosovo and Ukraine*. Cham: Palgrave Macmillan. p. 80.

72 For more information, see the Council of Europe press release of 3 April 2020. Available at: <https://www.councilium.europa.eu/en/press/press-releases/2020/04/03/belgrade-pristina-dialogue-eu-appoints-a-new-special-representative/>

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73 For more information, see: [https://europeanwesternbalkans.com/2020/05/27/thaci-not-willing-to-negotiate-in-a-dialogue-facilitated-by-lajcak/?fbclid=IéAR2IDSHQFAMzgRQPY-bHCl\\_svnI2cmKal69FNGhfjatrj1RxQyuvpbF1aCtk](https://europeanwesternbalkans.com/2020/05/27/thaci-not-willing-to-negotiate-in-a-dialogue-facilitated-by-lajcak/?fbclid=IéAR2IDSHQFAMzgRQPY-bHCl_svnI2cmKal69FNGhfjatrj1RxQyuvpbF1aCtk)



The division within **Kosovo's** domestic politics about the role that the **EU** and the **US** should play in this process was confirmed by the public stance of **President Thaçi**, who stated that he would refuse to participate in a meeting mediated by the **EU** special envoy for the **Kosovo-Serbia** dialogue, **Miroslav Lajcak**, but would attend summits invited by **Macron** or **Merke**

That it remains extremely important to have a common position of the 27 EU member states, became more than clear in the statements made by Borrell, who in an interview with journalists in the region in question regarding the border correction he said that "it is not up to us to tell Kosovans and Serbs what they should agree on. Our role will be to facilitate the process. And we cannot preach to the choir. If they agree on something, we should study that agreement".<sup>74</sup>

This statement in fact brought a lot of reactions if the thesis of border correction was still an accepted thesis that brought and Lajcak's statement which he found necessary to clarify that the issue of border correction was not an acceptable solution. These messages created the impression of a lack of a unified stance, as was repeatedly emphasized by President Thaçi, who questioned the decision-making power of the EU, stating that: "The European Union ... has neither the ability, nor the unity, nor the power, nor the knowledge, nor the vision, nor the leadership to push this process forward".<sup>75</sup>

A more active role of Germany and France demonstrated during the last period of the last term of the High Representative, formulated and in support of the Special Appointed gave positive signals. But these signals must be translated into a clear and unified articulation of the EU member states themselves towards this process, which must overcome the paradigm of ambiguity and neutrality but which proves the clear objectives of the common EU policy and its vision in relation to the Western Balkans.

Concrete actions that should start with visa liberalization for the citizens of Kosovo and assuming the responsibility for providing a European route for Kosovo which is achieved with the first step - the recognition of the state of Kosovo by the five non-recognizers. So, the member states must see their role through the EU, allegedly transformative and integrative for the countries of the Western Balkans. But this can hardly be achieved without clearly supporting this vision.

74 For more information, see: <https://www.koha.net/ar-beri/220523/borrell-nuk-eshte-kunder-ndryshimit-te-kufije-te-kosoves/>

75 For more information, see: [https://zeri.info/aktuale/330996/thaci-be-na-ndeshkoi-me-viza-nuk-ka-unitet-e-as-afte-si-per-ta-shtyre-dialogun-me-serbine/?fbclid=IwAR2pzTqN-fMbVFyHg\\_Ms3yRy\\_83bB\\_kOdyBdTdfGqDqxCU2zkuabdG-8Md0mM](https://zeri.info/aktuale/330996/thaci-be-na-ndeshkoi-me-viza-nuk-ka-unitet-e-as-afte-si-per-ta-shtyre-dialogun-me-serbine/?fbclid=IwAR2pzTqN-fMbVFyHg_Ms3yRy_83bB_kOdyBdTdfGqDqxCU2zkuabdG-8Md0mM)

## Dichotomy of the role of the EU and the US

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That the EU-mediated Kosovo-Serbia dialogue process had US support, and how important that was, became clear with Ashton and Clinton's joint visit to Pristina and Belgrade in October 2013. In fact, this visit seemed like a 'handover' of this issue from the US to the EU, which through its enlargement agenda, should push the parties towards a normalization of relations. US support was noted in cases of delays in reaching certain agreements, such as representation or footnotes, when it was reported that after Thaçi's visit to the US, an agreement was reached to make the compromise.<sup>76</sup> Meanwhile, the positions articulated by the US administration stressed that the issue of borders was a closed issue. Although the role of the US was not so active in public, it was essential in reaching the April Agreement mediated by Baroness Ashton. Ongoing public statements in support of the process as well as ongoing meetings of Kosovo delegations with US diplomatic representatives and senior state officials regarding this process, above all the role of the US in declaring Kosovo a state, make it a key actor to push this process forward.

A more active approach expressed under the administration of President Trump, confirmed by the letters that the latter sent to the Presidents of Kosovo and Serbia, brought about the increasing role of the United States. A time when the EU's role was fading due to a lack of internal unity regarding a potential solution between the parties, amid growing skepticism about the enlargement agenda, a lack of willingness to provide visa liberalization and close to a new election cycle. Also in the absence of the High Representative's force to push the parties back to the negotiating table an increased US role was seen. First, with the engagement of Matthew Palmer as

US State Department special envoy and then with the White House special envoy, US Ambassador to Germany Richard Grenell.

Kosovo's internal spectrum had consistently sought a more active US role, but now two separate approaches, one by the EU and the other under the mediation of Ambassador Grenell, also reflected on domestic political developments in Kosovo. But also in a rivalry between these two international partners that added uncertainty about the process itself in general. Ambassador Grenell's engagement resulted in the signing of three letters of goodwill between the parties focusing on issues of economic cooperation. The signing of these letters took place in Berlin without the participation of Europeans and at a time when the tariff was still in force.

The division of the Kosovan internal spectrum over the clear demands articulated by the EU and especially the US demanding the removal of all measures that could be considered as barriers to the resumption of dialogue affected the fall of two successive governments in Kosovo. In the first place, the fall of the Haradinaj Government which refused to remove or suspend the tariff. Then the Kurti Government, which abolished the tariff but imposed reciprocity measures on Serbia. Although the role of the US in this process requires an extensive analysis, the need for clarification of EU and US-mediated processes remains vital. But it can undoubtedly be concluded that the greater involvement of the US which from the outset clearly and publicly articulated the expected outcome of the agreement between the parties - mutual recognition, should serve as a call to the EU and member states to clarifying their position and taking on added responsibilities in a process that goes beyond the classical mediation of a negotiation process.

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76 Van der Borgh, Ch. & Le Roy, P. & Zweerink, F. (2018), "EU peacebuilding capabilities in Kosovo after 2008: an analysis of EULEX and the EU-facilitated Belgrade-Pristina Dialogue", *Center for Conflict Studies, Utrecht University*, P. 52

# Conclusions

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The transformation of the Western Balkans was aimed at the most effective instrument available to the European Union - the instrument of enlargement. Through EU integration, it was considered that regional stability and the protection of Western geopolitical interests could be guaranteed in the Western Balkans. At the same time, there were at least those who believed that by aligning the relations of the countries of the region with the EU, either through the official accession path or other forms including the Stabilization and Association Agreement (SAA), necessary reforms needed to guarantee the rule of law would be undertaken. While the European values of democracy would become the values of these countries.

A similar mindset had prevailed in the big bang of 2004 with the accession of 10 Central European countries, which proved the limits of the EU transformative force especially after their membership in the European family. This also diminished the EU's interest in pushing forward the enlargement agenda, known as 'enlargement fatigue', which inevitably affected the EU's relations with the Western Balkan countries. Nevertheless, the EU remained committed to the Western Balkans, where part of its commitment was to undertake the resolution of open issues in the region as part of EU foreign policy by linking it to the enlargement agenda as well as the enlargement process, such as the Kosovo-Serbia dialogue. This also led to criticism of the approach taken by the EU where the goal of stability was prioritized at the expense of good governance and rule of law policies.<sup>77</sup>

Through the UN Resolution which gave the mandate to the EU to mediate the Kosovo-Serbia dialogue leading the parties towards the European path and aiming at improving the lives of citizens, the common foreign policy of the European Union was put to the test. As argued throughout this paper, the early stages of this process, that of the technical and then political process which took place under the supervision of or directly by the High Representative for Foreign Affairs and Security Policy, Baroness Catherine Ashton, beyond their limits managed to bring results. The agreements reached were considered as important steps towards resolving the problems between the parties, at a time when Ashton herself managed to mobilize the support of member states around this process. But that this approach had its limits and could not be expected to bring the same results or sustainable results in the later stages became evident during the term of the High Representative Federica Mogherini.

Each of the 33 agreements reached essentially carries constructive ambiguity - a method that allows Kosovo and Serbia to maintain their opposing positions on Kosovo's declaration of independence and the parties to return to the table. At the same time, it offered the EU, in the specific case to the High Representative for Foreign Affairs and Security Policy, room for maneuver and the maintenance of a neutral stance towards Kosovo, considering that the EU has a divided stance as a result of non-recognition of Kosovo by 5 member states. This notion left the question unanswered for a long time now, what does the normalization of relations between Kosovo and Serbia mean?

This method coupled with the 'incremental approach' of agreements, where through reaching agreements on certain topics was aimed at the normalization of relations between the parties, highlighted the limits of the method applied in this process. Moreover, the third element of this process, that of closure at the level of the elites and over time and only in the

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<sup>77</sup> Florian Bieber called this notion of stability, for more see: <https://biepag.eu/what-is-a-stabilitocracy/>

inner circle of the Office of the High Representative, proved the complexity of this process and the need for its support by the member states through a clear vision and common stance beyond the narrative of neutrality.

It seems that Henry Kissinger's request when you want to talk to the European Union about who to call can be said to have not yet been fully answered. At a time when the European Council is the top authority for collective decision-making of EU member states, which aims at decision-making through consensual policy coordination and intergovernmental integration. These policies can be articulated and pushed forward by the High Representative for Foreign Affairs and Security Policy on behalf of the EU only when the Member States agree.

Operating within the complex foreign policy architecture of the European Union, and at certain moments aiming at the neglect of its limits, High Representative Federica Mogherini tried to push the process towards its conclusion by abandoning the 'incremental approach'. Under the ambiguity of the intent of the process, in the close circle of her office and that of both Presidents Thaçi and Vucic, topics such as 'border adjustment' became part of the discussion which was strongly objected by EU member states, such as Germany, and from the inner political spectrum in Kosovo.

Mogherini's legacy within this process was considered weak<sup>78</sup>, but brought an important lesson. A comprehensive agreement within which mutual recognition must be achieved between the parties, unblocking Kosovo's European perspective with recognition by the five non-recognizing states, is an objective that exceeds the powers and authority of the High Representative or in this case concrete of the Special Envoy. Mogherini's mandate reaffirmed the need for clear support for the process by member states of this process, which in itself contains not only the project of the EU 'soft' power in foreign policy but linking it to the enlargement agenda requires

overcoming neutrality and articulation of common position.

During Mogherini's term, the direct involvement of two member states, namely Germany and France, was marked, which aimed at taking under their umbrella this process by organizing Summits in their capitals. One was held without the expected results while the other is expected to be organized soon. The impetus was on the one hand the discussion of the issue of 'border adjustment' under the mediation of Mogherini, but on the other hand the increased role of the US in mediating the process that seemed to overshadow the EU itself.

The continued support of the US within the process had been key since the beginning of the process. But the transatlantic 'rift' over the potential choice between the parties and their role in the process, brought about a series of ambiguities and a dichotomy of the process itself. This led to the need to clarify the role that the US has and will continue to play in this process and the role of the EU, which in itself is divided into that of its member states and of the High Representative and the Special Envoy Lajcak.

On the other hand, relations between Kosovo and Serbia continue to be strained under the vortex of a series of incidents and events. While the political developments within Kosovo which culminated and finally with the publication of the indictment proposal by the Specialized Chambers for the President of Kosovo Hashim Thaçi and the chairman of the Democratic Party of Kosovo Kadri Veseli for war crimes and crimes against humanity, and other developments can be expected to have an impact on the dialogue process.

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78 For more information, see: <https://dgap.org/en/research/publications/mogherinis-legacy>

# Recommendations

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- The German Presidency of the Council of the EU should address the issue of visa liberalization by including it as part of its agenda during the mandate and making all the effort necessary to provide the citizens of Kosovo the opportunity for free travel. This to prove the goodwill of the EU in fulfilling the promise given to Kosovo and its citizens.
- In the same spirit, the European Union must define its role within the Kosovo-Serbia dialogue process in its top intergovernmental decision-making body, the European Council, which must go beyond the neutral role of facilitator of the process. On the one hand, entrusting the High Representative for Foreign Affairs and Security Policy and the Special Envoy with the responsibilities necessary to push this process beyond technical issues. On the other hand, expressing the commitment of the EU member states to support a normalization process which has a clear and well-defined goal, pushing the parties towards mutual recognition and a European perspective. This as a direct link between the common foreign policy and the enlargement agenda.
- EU member states must undertake to provide Kosovo with a clear European perspective by guaranteeing recognition by the five non-recognizing states and postponing the process of Kosovo's international consolidation in the international arena, with its membership in the UN.
- There should be clarification of the processes mediated by official Brussels and the role of the member states, in this case of Germany and France, whose support should be present throughout the process.
- The EU should aim to coordinate with the US in this process, as an ally that has supported dialogue since its inception.
- Discussions about the final phase of the dialogue should strictly avoid the inclusion of ambiguous notions or the very approach already known as constructive ambiguity. The agreement should be clear in the terminology used by clearly defining the obligations of the parties, the timelines for implementation, as well as the guarantees provided by the EU for the implementation of the agreements. The progress of the European path of the parties must be linked to the implementation of the agreements, where the non-implementing parties must be punished.
- The process should be transparent to the citizens of both sides aiming at the normalization of relations not only through the 'top-down' approach at the elite level but also the 'bottom-up' approach at the citizen level.



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