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CONVEGNO SCIENTIFICO INTERNAZIONALE

**FROM NATIONAL SOVEREIGNTY TO
NEGOTIATION SOVEREIGNTY
“Days of Law Rolando Quadri”**

**DALLA SOVRANITÀ NAZIONALE ALLA
SOVRANITÀ NEGOZIALE
“Giorni del Diritto Rolando Quadri”**

Thematic Conference Proceedings of International Significance
Atti di convegni tematici di rilevanza internazionale

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WHAT WAS/IS THE ALTERNATIVE TO THE BRUSSELS AGREEMENT FROM 2013 BETWEEN SERBIA AND KOSOVO**

Abstract

In this paper the author states that neither in the past nor now in the present, the history of the conflict between the Serbs and the Albanians in Kosovo has not been so black or white as both parties-are trying to demonstrate. Instead of the new division on winners and losers, it is necessary to take into consideration the principle of reciprocity. Diametrically opposed position should be reconciled thorough the principle of double sovereignty and high degree of autonomy for the Serbian territorial entity in Kosovo. The representatives of both Serbia and Kosovo should base their agreement on the SC Resolution 1244 and the advisory opinion of the International Court of Justice, taking into consideration factual reality and the opposite positions of both parties regarding the status of Kosovo. The prime objective is to enable functional and peaceful coexistence of all the nations in Kosovo, especially between the Serbs and Albanians. Kosovo would be formally considered as a part of Serbia, but Kosovo institutions would function fully independent. The jurisdictions of the Serbian Entity (SE) would be regulated in the scope of unresolved and disputed Kosovo autonomy. The same should be made thorough Kosovo legal system, with reference to Kosovo independence and integrity.

Both legal systems should provide high degree of autonomy for Kosovo Serbs. Serbia should declared that a separate legal system has been established in Kosovo, according to SC Resolution 1244, and it would imply the acceptance of factual reality and at the same time it would be according to the principle of fundamental autonomy, which was proclaimed by the Resolution. Kosovo Albanians

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* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999.

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thorough its legal system should establish high degree of territorial autonomy for Serbs, that would include legislative, executive and judicial power.

Different mechanisms from the comparative federal system are used-in the process of construction of this new and original „double sovereignty“ concept. In this paper many factors have been taken in to consideration: the diametrically opposed position of the Serbian and Albanian side; the position and geopolitical interests of the most powerful countries (USA, Great Britain, Germany, France support the Kosovo independence while Russia and China side with Serbia); disagreement of international Community about Kosovo status; Kosovo secession from Serbia as international precedent that will serve as a good argument for all territories with similar pretensions; processes of European integration for Serbia and Kosovo.

Keywords: *Kosovo, sovereignty, autonomy, secession, independence, decentralisation.*

ŠTA JE (BILA) ALTERNATIVA BRISELSKOG SPORAZUMA IZ 2013. GODINE IZMEĐU SRBIJE I TZV. KOSOVA

Apstrakt

U ovom radu autor navodi da ni u prošlosti, a ni sada u sadašnjosti istorija sukoba Srba i Albanaca na Kosovu nije bila tako crna ili bela kako obe strane pokušavaju da pokažu. Umesto nove podele na pobednike i poražene, potrebno je voditi računa o principu reciprociteta. Dijametralno suprotnu poziciju treba pomiriti kroz princip dvostrukog suvereniteta i visokog stepena autonomije srpskog teritorijalnog entiteta na Kosovu. Predstavnici i Srbije i tzv. Kosova trebalo bi da svoj dogovor zasnuju na Rezoluciji SB 1244 i savetodavnom mišljenju Međunarodnog suda pravde, uzimajući u obzir činjeničnu realnost i suprotne stavove obe strane u vezi sa statusom Kosova. Osnovni cilj je da se omogući funkcionalan i miran suživot svih naroda na Kosovu, a posebno između Srba i Albanaca. Srbija treba da legalizuje takav sporazum kroz svoje ustavne mehanizme. Kosovo bi se formalno smatralo delom Srbije, ali bi kosovske institucije funkcionisale potpuno nezavisno. Nadležnost srpskog entiteta (SE) bila bi regulisana u okviru nerešene i sporne autonomije Kosova. Isto bi trebalo učiniti i kroz pravni sistem Kosova, s obzirom na nezavisnost i integritet Kosova.

Oba pravna sistema treba da obezbede visok stepen autonomije za kosovske Srbe. Srbija treba da proglasi da je na Kosovu uspostavljen poseban pravni sistem, prema Rezoluciji SB 1244, koji bi podrazumevao prihvatanje faktičke realnosti, a istovremeno bi bio po principu fundamentalne autonomije koji je proklamovala Rezolucija. Kosovski Albanci bi kroz svoj pravni sistem trebalo da uspostave visok stepen teritorijalne autonomije za Srbe, koja bi uključivala zakonodavnu, izvršnu i sudsku vlast.

Koriste se različiti mehanizmi iz uporednog federalnog sistema – u procesu izgradnje ovog novog i originalnog koncepta „dvostrukog suvereniteta“. U ovom radu uzeti su u obzir mnogi faktori: dijametralno suprotan stav srpske i albanske strane: položaj i geopolitički interesi najmoćnijih država (SAD, Velika Britanija, Nemačka, Francuska podržavaju nezavisnost Kosova, a Rusija i Kina su uz Srbiju); neslaganje međunarodne zajednice oko statusa Kosova; Otcepljenje Kosova od Srbije kao međunarodni presedan koji će poslužiti kao dobar argument za sve teritorije sa sličnim pretenzijama; procesa evropskih integracija Srbije i Kosova.

Ključne reči: *Kosovo, suverenitet, autonomija, secesija, nezavisnost, decentralizacija.*

1. Introduction

The main goal of this paper¹ is to review the Brussels Agreement of 2013 in the triangle of the EU, Serbia and the so-called Kosovo (further: Kosovo).²

The Kosovo problem at the international level is the opening of the issue of sovereignty, which is the broader theme of this conference. The question of Serbia's sovereignty over Kosovo was opened according to the UN charter by the NATO aggression against the then Federal Republic of Yugoslavia. The negotiations that were conducted later and are still being conducted are actually the search for a solution within the theme of this conference "From national sovereignty to negotiation sovereignty."

The Kosovo issue implies many different factors, but the crucial problem is certainly the diametrically opposed position of the Serbian and Albanian side. According to the Serbian Constitution and official positions of the leading political parties, Kosovo is part of Serbia. For Kosovo Albanians, on the other side, Kosovo is an independent and sovereign state.

Other important factors are: the position and geopolitical interests of the most powerful countries (USA, Great Britain, Germany, France support the Kosovo independence while Russia and China side with Serbia); disagreement of international Community about Kosovo status;³ Kosovo secession from Serbia as international precedent that will serve as a good argument for all territories with similar pretensions; processes of European integration for Serbia and Kosovo.

The purpose of this paper is to propose solution that will considers both positions and find functional and implementable framework for peaceful coexistence of Serbian and Albanian.

Other factors mentioned above do not have equal legitimacy as the basic purpose of this paper, but they are also considered in formulation of adequate proposals. Some of them are compatible with basic purposes, while the others (like European integrations) could be useful tool for solution for the Kosovo issue.

¹ The main theses and considerations presented in this paper are discussed in my work titled "Kosovo: a solution to the problem – double sovereignty and high level of autonomy for the Serbian entity" (2013), which was selected among the top five papers at the postgraduate course Federalism, Decentralization, and Conflict Resolution at the Institute of Federalism, University of Fribourg, Switzerland.

² In the paper, the term Kosovo is used for the so-called Kosovo, since it is an entity that is not a member of the United Nations, as well as a territory whose independence and sovereignty is not recognised by the Republic of Serbia, as well as by a large number of other countries. The basis of these considerations are theses from the paper from the postgraduate studies of the author of this paper in Switzerland that have not been published so far. And the work itself was awarded as one of the five best works in the entire generation.

³ J. Vidmar, "International Legal Responses to Kosovo's Declaration of Independence", *Vanderbilt Journal of Transnational Law*, 779/2009, 782.

2. Brief history of Kosovo problem

Kosovo is historically very important for Serbian national spirit. A lot of monasteries and churches were built in this area, and the Kosovo battle from 1389 between Serbian and Ottoman Empire has mythical significance for Serbian people.

Historical monuments and available data from this period testifies that Serbs were the highly dominant nation, but after Kosovo battle led to reduction of influence and final destruction of middle ages Serbian state.⁴ Kosovo in addition to the other parts of Serbian state were felt under the rule of Ottoman Empire. Demographic picture of Kosovo and have been changed with time, and Albanian people, mostly Muslims, started to dominate in this area.

After the First Balkan War, Serbia regained control over Kosovo and people from the other parts of Serbia were purposely relocated to Kosovo. During the II World War Kosovo was annexed to Big Albania, having in mind that Axis Powers occupied Yugoslavia. After the II World War Kosovo was "returned" to Communist Yugoslavia, but the Law that prohibited expelled Serbs to return to this territory was passed. By the Yugoslav Constitution from 1974, Kosovo got high degree of autonomy, similar to this that enjoy the federal states.

In 1991 Serbia annulled this autonomy, what provoked the revolt of Kosovo Albanians that boycotted Serbian institutions. In 1996 started hostilities among so called KLS (Kosovo Liberation Army) and Serbia. In 1999 NATO bombing Serbia without permission of Security Council. After the war, Serbia lost factual jurisdiction over Kosovo by the Resolution 1244. In 2008 Kosovo proclaimed independence.⁵

Kosovo is territory with long lasting history where both Serbian and Albanian domination have been rotating. Each nation, in recent period, used such domination to change demographic of the territory and populate of its own nations. The Serbian domination had been achieved after the Balkans wars and the First World War as well as after the abolition of autonomy of province of Kosovo and Metohija. During these periods of Serbian domination it was common that institutions were inaccessible for Albanian minority, in addition to various acts of discrimination regarding employment etc. However, Albanian domination was held between 1974 and 1990 when the same acts of discrimination were applied towards Serbs. During the wartime, such discrimination was transform into war crimes (such as killings, ethnical cleansing, devastation of property and belongings etc.) Both sides were conduct such acts during the war in 1999 in addition to acts conducted by Albanians during the occupation in the Second World War.⁶

⁴ Ortodox Serbs preserved all of their holy places and objects in Kosovo and Mecca to the Moslems. B. Mikasinovic, 1994, *Yugoslavia: crisis and disintegration*, Novi Sad, Prometej, 63.

⁵ Kosovo Declaration of independent (2008), <http://www.assembly-kosova.org/?cid=2,128,1635> (27 August 2024).

⁶ For more information, see: M. Vickers, *Between Serb and Albanian: A History of Kosovo*, Columbia New York, Univ Press, 1998; N. Malcolm, *Kosovo: A short history*, New York, University Press, 1998; D. T. Bataković, *Serbia's Kosovo drama, historical perspective*, Čigoja, Beograd, 2013.

The important facts for writing an alternative proposal to the Brussels Agreement were that the Albanians make up the majority on the territory of Kosovo, while the Serbs make up the majority in the north of Kosovo (four Serbian municipalities). At the time of the conclusion of the Brussels Agreement in 2013, the Republic of Serbia did not have effective control over the territory of Kosovo. Likewise, in the North of Kosovo, the institutions of so-called Kosovo also did not have effective control.

3. Legal Framework for Kosovo Issue

The Military Technical Agreement between the *International Security Force* ("KFOR") and the Governments of the *Federal Republic of Yugoslavia*⁷ concluded the war between NATO and FRY on 9 June 1999. *Resolution 1244*⁸ was adopted by UN Security Council on the 10th of June 1999. International protectorate was established by this resolution and Serbia lost a part of *de facto* control over Kosovo. However, Resolution 1244 guaranteed sovereignty and territorial integrity of the Federal Republic of Yugoslavia (Preamble and Annex 2 Article 7). Also, "after withdrawal, an agreed number of Yugoslav and Serbian personnel will be permitted to return to perform the following functions: liaison with the international civil mission and the international security presence; marking/clearing minefields; maintaining a presence at Serb patrimonial sites; maintaining a presence at key border crossings" (Annex 2 Article 6). On the other hand, in the Resolution it is mentioned that "facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords" (Article 11e), i.e. "a political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords⁹ and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region" (Annex 2 Article 8).

At the first sight, it seems that Resolution enables wider Kosovo autonomy in the scope of Serbian jurisdiction, but explicit reference to Rambouillet agreement (Article 11a and 11b, Annex 1 and Annex 2 Article 8) also gives base for different interpretation. In addition to full legislative, executive and judicial autonomy of Kosovo and withdrawal of Serbian military and police forces, Rambouillet agreement also prescribed that Kosovo status will be finally determined in three years,¹⁰ what was the crucial reason

⁷ <https://www.nato.int/kosovo/docu/a990609a.htm> (27 August 2024).

⁸ <https://unmik.unmissions.org/united-nations-resolution-1244> (27 August 2024).

⁹ The Rambouillet Agreement is the proposed peace agreement between the Federal Republic of Yugoslavia and a delegation representing the Albanian majority population of Kosovo. It was drafted by NATO. The significance of the agreement lies in the fact that Yugoslavia refused to accept it, which NATO used as justification to start the 1999 war. (<https://peacemaker.un.org/kosovo-rambouilletagreement99> - 27 August 2024).

¹⁰ According to Article I, Paragraph 3: "Three years after the entry into force of this Agreement, an international meeting shall be convened to determine a mechanism for a final settlement for Kosovo, on the basis of the will of the people, opinions of relevant authorities, each Party's efforts regarding the

for refusal of Serbian delegation to sign this agreement. Therefore, Resolution 1244 on one side guaranteed sovereignty and integrity of Serbia (FYR) but on the other side it also implies unsigned agreement with secession clause. Having in mind that guaranties of sovereignty and integrity were made with explicit provision, while reference to Rambouillet agreement was general, implementation of legal principle *lex specialis derogate legi generalis*, gives base for interpretation that Serbian sovereignty was guaranteed, while Rambouillet agreement should be implemented regarding formulation of “substantial autonomy”.

But, the question is why Resolution mentioned “*full account* of the Rambouillet accords“!? In my opinion, and taking into consideration future happenings, this collision was purposely put in Resolution in order to “open the door” for different interpretation by the leading political players.

Comprehensive Proposal for the Kosovo Status Settlement (The Ahtisaari Plan)¹¹ recommended a supervision of the independence by the international community. Serbia rejected the Ahtisaari Plan and Russia made it clear that it would put the veto on this proposal within the Security Council. EU and the US had decided to implement the Ahtisaari Plan without SC resolution.¹²

In advisory opinion from 22 July 2010 International Court of Justice, by a vote of 10 to 4, declared that “the declaration of independence of the 17 February 2008 did not violate general international law because international law contains no ‘prohibition on declarations of independence’”. The question was: “Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?” ICJ missed a chance to establish complete doctrine about secession issue. Although ICJ did not fully legalise Kosovo independence, its opinion certainly was contributed to the position of the Albanian side.

On 19 April 2013 Serbia and Kosovo signed the *First agreement on principles about normalization of relations (Brussels agreement)*.¹³ Although Serbian representatives promised that they will request high degree of autonomy for Kosovo Serbs and fighting for Serbian institutions in north Kosovo,¹⁴ after this agreement it was clear that Serbian institutions in north Kosovo, as the last remaining of Serbian sovereignty in Kosovo, were repelled, while Kosovo Serbs were put under Kosovo law.

The Serbian Community does not possess it her legislative nor judicial autonomy, however it does accepted Kosovo law. (“The judicial authorities will be integrated and

implementation of this Agreement, and the Helsinki Final Act, and to undertake a comprehensive assessment of the implementation of this Agreement and to consider proposals by any Party for additional measures.“

¹¹ <https://web.archive.org/web/20070606223647/http://www.unosek.org/unosek/en/statusproposal.html> (27 August 2024).

¹² J. Vidmar, 804.

¹³ <https://www.srbija.gov.rs/specijal/en/120394> (27 August 2024).

¹⁴ S. Lehne, *Kosovo and Serbia: toward a Normal Relationship*, https://policy.nl.go.kr/cmmn/FileDownload;jsessionid=xE1Ruy11WArFOvV287FaHX0NgUPK2RpICfpyTSa7OaDxeXrd0oWEv16aLxibKyZB.sl-extwas_servlet_engine5?atchFileId=115122&fileSn=9981 (27 august 2024), 12.

operate within the Kosovo legal framework.”- Paragraph 10). The same is with executive branch: “The Police of Serbs region shall be a Kosovo Serb nominated by the Ministry of Internal Affairs from a list provided by the fourth Serbian the biggest municipalities (Paragraph 9).

Brussels agreement, guaranteed only local autonomy for Serbs. It constituted „Association/Community of Serbian municipalities in Kosovo“, but it is clear that such Association of local municipalities has only local competences (Sic!). „In accordance with the competences given by the European Charter and Kosovo law participating municipalities shall be entitled to cooperate in exercising their powers through the Community/Association collectively“ (Paragraph 4). Also, the structures of the Association/community will be established on the same basis as the existing statute of the Association of Kosovo municipalities” (Paragraph 3).

4. Double Sovereignty and High Degree of Autonomy – *Pro et Contra*

In this paper we proposed as a solution concept of double sovereignty and high degree of territorial autonomy for Serbian Entity (SE).

Pro-Albanian arguments that stands out are that Serbia lost legitimate jurisdiction over Kosovo, due to the crimes committed by the regime of Slobodan Milošević towards the Albanians, and that was the reason why NATO bombed FRY; that Albanians people have right of self-determination; that it is pragmatic to harmonise factual situation, with *de iure* status, that¹⁵ Albanians are majority and they want independence, that After 1999 Serbia do not have factual competence over Kosovo territory.

Serbian arguments are that International law guarantees sovereignty of Serbia state (Resolution 1244); and that NATO committed aggression over Serbia in 1999, having in mind that bombing was without authorization of Security Council and contrary to Chapter VII.

What is the reason for proposed double sovereignty concept?

The first reason is lack of international consensus about this issue. Legalization of Kosovo self-proclaimed independence will create international precedent that will “serve” to many secessionist movement all over the world. In spite of the attempts that this shows as a “*sui generis*” case,¹⁶ it is clear that every secessionist group can allude Kosovo case.¹⁷ It has already done by secession of Abkhazia and South Osetia from Russia, and automatically in the Balkan region could open the same question Authors

¹⁵ J. Crawford, *The creations of States in International Law*, Oxford, Oxford University Press, 2006, 3.

¹⁶ „My country’s recognition of Kosovo’s independent is based upon the specific circumstances in which Kosovo now find itself. We have not, do not and will not accept the Kosovo example as a precedent for any other conflict dispute“ (Representatives of the US, Security Council Meeting on 18 February 2008, according, J. Vidmar, 836.

¹⁷ E. P. Joseph, 2013, *Kosovo’s independence and secessionist movements: Dire consequences or benign impact?*, https://minio.la.utexas.edu/webeditor-files/european_studies/pdf/secession20paper20joseph.pdf (27 August 2024).

such as K. Kaikobad and C. Warbrick,¹⁸ as well as Solveig Richter and Uwe Halbach,¹⁹ have clearly indicated that the Kosovo precedent would be used in the post-Soviet space. It also could be expected that Kosovo self-proclaimed independence will open again Pandora's box in the Balkan, especially in the Bosnia and Herzegovina among Bosnian Serbs in Srpska Republic. Or, as P. Joseph points out: "If the Kosovo precedent were ever to animate a secessionist movement, surely it would be in the nearby Republic of Srpska"²⁰

We stated all this argumentation identically like this in our basic paper from 2013. After 11 years, these arguments have more than gained weight with the war in Ukraine, which has completely divided the whole world and caused the world's biggest political crisis since the end of the cold war, and the danger of nuclear war can be considered the greatest since the Cuban Missile Crisis in 1962.

Second, Argumentation that Serbia lost the legitimacy at the Kosovo after the crimes and ethnical cleansing committed during Milošević regime, could be put under question. Serbia was bombed without the resolution of Security Council, and the concept of "humanitarian intervention" remained very dubious in international law.²¹ Humanitarian character of such intervention is also challenged. Noam Chomsky states that activities of Kosovo Liberation Army (that was firstly marked as terroristic organization) and NATO were made with the purpose to provoke Serbian reaction.²² It's also very problematic thesis that Milošević regime lose legitimacy, having in mind that International Community, in Milošević "era" guaranteed Serbian sovereignty over Kosovo (Resolution 1244) and more than seven years after "democracy transformation" in Serbia, they supported independence (*sic!*).

After Dick Marty Report²³ it's clear that in wars a conflicts, situation can't be black or white. On 14 December 2010, Marty passed Report to the Council of Europe alleging

¹⁸ K. H. Kaikobad, C. Warbrick, "Another Frozen Conflict: Kosovo's Unilateral Declaration of Independence and International Law," u *Kosovo: A Precedent?*, ur. James Summers (Leiden: Martinus Nijhoff Publishers, 2011), 49-76.

¹⁹ S. Richter, U. Halbach, "A Dangerous Precedent? The Political Implications of Kosovo's Independence on Ethnic Conflicts in South-Eastern Europe and the CIS," u *Kosovo: A Precedent?*, ur. James Summers (Leiden: Martinus Nijhoff Publishers, 2011), 299-317

²⁰ E. P. Joseph, 8.

²¹ F. R. Teson, "The liberal Case for Humanitarian Intervention," *Public Law and legal theory*, Working Paper No. 39, 2011; T. Nardin, "The moral Basis of Humanitarian Intervention", *Ethics & International Affairs* 16/2002, No. 2; A. J. Kuperman, The Moral Hazard of Humanitarian Intercession: Lessons from the Balkans, *International Studies Quarterly* 52, 2002; R. Goodman, R. Goodman, Humanitarian intervention and Pretexts for war, *American Journal of International Law*, Volume 100, 1/2006, 107 - 141.

²² N. Chomsky, *The New Military Humanism: Lessons from Kosovo*, London, Pluto Press, 1999, 25.

²³ The Dick Marty report is a document prepared by Swiss senator Dick Marty as part of an investigation conducted by the Council of Europe into allegations of organ trafficking in Kosovo during and after the conflict in the late 1990s. The report, published in December 2010, brought forth serious accusations against members of the former Kosovo Liberation Army (KLA), including high-ranking political figures among Kosovo Albanians.

https://assembly.coe.int/committeedocs/2010/20101218_ajdoc462010provamended.pdf (27 August 2024).

inhuman treatment of people and killing of prisoners with the purpose of removal and illicit trafficking in human organs in Kosovo, involving Hashim Thaçi, the Kosovo prime minister and former Kosovo Liberation Army political leader.

One more factor that should be taken into consideration is that after 1999 Serbia hosted about 210.000 refugees or internally displaced persons from Kosovo.²⁴ In 17 March 2004 Albanians attacked Serbs in Kosovo, what resulted in 19 dead and nearly 900 injured persons. It is also estimated that around 4,000 Serbs, Roma, and other non-Albanians were forced to leave their homes. Approximately 800 Serbian houses were destroyed or damaged, as well as 35 Orthodox churches and monasteries.²⁵

Having in mind that international supervision was established in order to “secure environment in which refugees and displaced persons can return safety” (Resolution 1244, Paragraph 9a), it could be concluded that violation over one nation (Albanians) was replaced with violation over another nation (Serbs). If Serbia has lost legitimacy to administer over Kosovo due to the breach of Albanian minority’s rights, would not be logical that institutions of the Republic of Kosovo lose their legitimacy to rule over Serbian minority for the same reason.

Three, According to Ahtisaari Plan: “Pretending otherwise and denying or delaying resolution of Kosovo’s status risks challenging not only its own stability but the peace and stability of the region whole.“ It is pointless to award one side if it is obvious that this side is not able to provide rule of law. Independence should not be accepted before Kosovo provide safety conditions for regular life of Serbian community.

It is objective to say that factual situation and constellation of international power clearly implies that clear and significant preference was given to Albanian side. In spite of fact that Serbia principally refuse any idea of acceptance of Kosovo as an independent state, the fact is that Serbian politicians give in to pressure of European integration, and give more and more concessions to Kosovo side. For example, Serbia accepted EULEX role over Kosovo, even if this meant implementation of Ahtisaary plan in practice; they established border between Serbia and North Kosovo, even Kosovo Serbs gave strong resistance to that; they signed Brussels agreement that extinguished Serbian institutions and put Kosovo Serbs under the Kosovo law. The crucial reason for this “compromises” was strong European pressure and Serbian wish to follow European integration. Therefore, it is reasonable to make one more question: Whether is rational to make even stronger pressure on Serbia and finally resolved Kosovo issue?

As a first, unilateral solution of internationally complex question can’t be peaceful nor long standing solution. “Loosing” party will only wait for the changes in international politics in order to open again this issue, what could provoke a new bloody war.

Second, such problems cannot be resolved by pressuring the political elite to sign agreements that do not establish a framework for sustainable coexistence, as it is the ordinary people who must have the institutional conditions for a real and safe life. Majority of leading political parties based their electoral campaign on

²⁴ <https://www.unhcr.org/sites/default/files/legacy-pdf/4cd971e59.pdf> (27 August 2024).

²⁵ Human Rights Watch, *Failure to Protect: Anti-Minority Violence in Kosovo, March 2004*, 2004, 17-19.

statements that Kosovo must stay a part of Serbia, what helped them to get a votes from Kosovo Serbs, that are now the biggest opponents of Brussels agreement.

Third, use of different political tools like “European integration” in order to forced only one side to give in its position, do not have longstanding perspective. European Union starts to be uninterested for new enlargement, having in mind that it is also faced with the consequences of economic crises. Serbian Prime Minister Ivica Dačić stated that “Serbia is cheated if EU do not give as the date for the beginning of negotiations”.²⁶ Therefore, the question is whether the Kosovo issue will be re-opened if EU decides against further enlargement and acceptance of new members. Longstanding solution and peace and co-existence of Serbian and Albanian people is not possible without respect of the interests of the both sides.

Some of the reasons were already mentioned above. Pogrom of 17 March, a lot of refugees, unresolved issue of Serbian property in Kosovo are the first legitimate reasons for high degree of autonomy. The same reasons were crucial for achievement of the current Kosovo status, so the same standard should be applied on the other side as well. In the all past proposals as only possible option was high degree of autonomy for Albanians in Kosovo.

On the other side, such solution could be a introduction for further separation of Kosovo, and logical question is why Albanians would allowed that. Every drawing of borders means re-opening of territorial status. Istvan Bibo calls this phenomena “pathological absence of continuity in territorial status”²⁷, George Scelle „obsession du territoires”²⁸. However, position of Simone Florio seems reasonable. He stated that: “Whatever Serbs aim at obtaining by claiming Albanian inhabited areas of Kosovo as an integral part of their state, the same will have to accepted for Serbian inhabited Northern Kosovo municipalities; vice versa, whatever Albanians are ready to offer to Northern Kosovo Serbs, they would have a right to except from Belgrade authority”²⁹.

It is also legitimate position of Albanian side that high degree of autonomy could lead to complicated, non-functional “creation” like Bosnia and Hercegovina.³⁰ Therefore, the crucial question is whether is possible to create Serbian territorial entity that will reconcile this opposite position?

²⁶ <https://www.rts.rs/lat/vesti/politika/1339642/dacic-prevareni-smo-ako-ne-dobijemo-datum.html> (27 August 2027).

²⁷ According: M. A. Jovanović, *Territorial Autonomy in Eastern Europe – Legacies of the Past*, https://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2002/nr4/Focus4-2002_Jovanovic_Kymlicka.pdf, 3 (27 August 2024).

²⁸ G. Scelle, *Obsession du Territoire*, 1958, 347. According: M. A. Jovanović, 3.

²⁹ S. Florio, *Serbia vs. Kosovo (International law and Politics of Secession)*, https://www.academia.edu/698759/Serbia_Vs_Kosovo_International_Law_and_Politics_of_Secession (27 August 2024).

³⁰ S. Woehrel, *Kosovo: Current Issues and US Policy*, <https://sgp.fas.org/crs/row/RS21721.pdf> (27 August 2024).

5. Construction of the new solution

5.1. The question of double sovereignty

Kosovo and Serbia representatives should make political agreement based on Resolution 1244 and Opinion of the International Court of Justice, that takes into consideration factual reality and opposite position regarding Kosovo status, but with the most importunate priority to enable functional and peaceful co-existence of all nations in Kosovo, especially Serbs and Albanians.

Kosovo would be formally considered as a part of Serbia, but Kosovo institutions would function totally independent. Jurisdictions of SE would be regulated in the scope of unresolved and disputable Kosovo autonomy. The same should be made thorough Kosovo legal system, with reference to Kosovo independence and integrity.

Both legal systems should provide high degree of autonomy for Kosovo Serbs. In Serbia should be clearly stated that in Kosovo was established separated legal system, according to Resolution 1244, what would imply acceptance of factual reality and at the same time it would be according to idea of fundamental autonomy, that was proclaimed by Resolution. Kosovo Albanians would thorough its legal system established high degree of territorial autonomy for Serbs, that would include legislative, executive and judicial power. SE would be established according to Constitution that would referred to political agreement between Kosovo and Serbian representatives, and that would be neutral regarding the issue of Kosovo status.

Such solution would means three parallel legal systems- of Kosovo, Serbia and SE. Kosovo would consider SE as its own territory that have a high degree of autonomy, Serbia would consider Kosovo as its own territory which final status is unresolved, while SE would be autonomous part of Kosovo.

5.2. Territory of Serbian entity

This territory should include north Kosovo, to the homogenous population which mainly consist of Serbs. The question which could be posed is whether this territory could included other Serbian entities scattered all over the Kosovo. The Serbian interest is to protect the rights of Serb. Contrary, by enabling such dispersed territorial autonomy to the Serbian communities, Albanians would make separation of north Kosovo beside the purpose, having in mind that majority of Serbs (who live south of Ibar river) would stay under Albanian rule in Kosovo support of Republic of Serbia and without SE that would express political unity of Kosovo Serbs.

5.3. Legislative power

Kosovo would transfer legislative power to SE. Our proposal is that should implement Serbian Law, but this is very sensitive issue for Albanian side. Similar system already exists in China in Special Administrative Regions Hong-Kong. This is the

principle “one country two legal systems”. SE Parliament would pass the laws necessary for implementation of constitutional provisions (organization and structure of the Courts, autonomous organs of SE, etc.).

This is pragmatically sustainable solution, that would respect Serbian wish not to live under the law of the country they do not recognize, and it would be prevent SE that block implementation of European standards by passing certain laws.

5.4. Executive power

Executive power would also be transferred in the biggest part to SE, except the issues that always remains within the competence of sovereign state: diplomacy, defense, monetary politics etc. It is acceptable for the both sides, having in mind that for Albanians this competences are under Kosovo state, while for Serbia, the same competences are under Serbian government. The biggest problem could be the issues that would prevent performance of the duties of certain organs, police above all. In such situation should anticipate over-entities jurisdiction of certain international powers (EULEX or UMNIC).

5.5. Judicial power

SE should also enjoyed full judicial power, like in HongKong or Macao (Special Administrative Regions in China).³¹ Similar autonomy was predicted for Kosovo with Rambouillet agreement. It is seen as the most sensitive issues that will be discussed at the Brussels negotiations.

5.6. Customs system

North Kosovo should be separate custom entity regarding Serbia and Kosovo as well, what would means three separate custom areas. In 2006 Serbia signed CEFTA Agreement and UMNIC done it as well, on behalf of Kosovo. It would means that Kosovo should accept existence of two custom entities at its territory and Serbia three.

5.7. The Placement of SE in Kosovo system

SE would enjoy high degree of autonomy in Kosovo system, like autonomy that enjoys federal states. This autonomy would be established asymmetrically and wouldn't have implication on central Kosovo government. By doing so, the two chamber parliament would have been avoided in addition to possible blockage of the central government by the Serbian Entity. Moreover, objection on establishment of non-functional community would have been annulled. By giving wide authorities, much effective community would have been founded.

³¹ X. Chunying, Y. Ziqiang, Z. Qiang, X. Haiding, *China's Judicial System and its Reform*, Japan, Institute of Developing Economies, 2001, 19.

According to current agreement, Kosovo will keep all employed in Serbian institutions in the north Kosovo. The biggest number all them have been paid by the Serbia³², that wanted to keep the last remains of sovereignty in Kosovo. Why would Albanian tax payers support unnecessary and expensive double administration? But, employments according to "national quotas" in order to settle national hostilities was showed as expensive and inefficient solution that creates inefficient administration. By proposed separation Kosovo Serbs and Kosovo Albanians would be enabled to deal more with economic issues, instead of national issues. It would also prevent north Kosovo to exist as the system out of fundamental legal control of Belgrade and Serbia.

6. Final remarks

It can't be supposed that suggested solutions could be fully accepted. Establishment of piece, efficient system and balanced approach are not always determinant factors. Whether the most powerful countries are truly interested in efficient solution without their supervision? It should not be forgotten that, according to newspaper articles, Wesley Clark and Medlin Albright that were the main promoters of Kosovo independence, were paid for their engagement.³³ Retail of the biggest Serbian oil company and Serbian entry into "South flow" under worse conditions compared to the other countries in the region, are often seen as a "price" for Russian support to Serbia in a "battle" for Kosovo.³⁴ There is no free lunch, not only in economy, but in politics as well!

Having in mind all peculiarities of Kosovo situation, some new suggestions and solutions are offered in this paper. There are numerous advantages to this proposal, of which I will summarise the most important. First, simultaneous respect of Albanian wish for independence and Serbian need of not-recognition of secession. At the same time the other states can freely decide whether to recognise Kosovo as an independent state, what prevent strict division on "winners" and "losers". Secondly, it enables efficient functioning of institutions, without blockades of the system by the Kosovo Serbs. It also enables Kosovo Serbs to fully enjoy their citizens rights, thorough full autonomy. Thirdly, it enables focusing on economic, instead on political issues. Fourthly, it legalises existed factual situation. It is true that Serbia does not have jurisdiction on the Kosovo, but it is also true that Kosovo, without use of power, do not have possibility nor legitimacy to peacefully implement its government in the north Kosovo.

Of course, any proposal that resolves age-old conflicts seems naive and undoubtedly has certain weak points.

First, this proposal undoubtedly has certain elements of lamentable conflict. That is, it does not definitively solve the so-called Kosovo issue, and any frozen conflict can

³² S. Lehne, 6.

³³ http://www.nytimes.com/2012/12/12/world/europe/americans-who-helped-free-kosovo-return-as-entrepreneurs.html?pagewanted=all&_r=0 (27 August 2024).

³⁴ D. Bechev, *Rival Power: Russia in Southeast Europe*, 2017.

escalate into a conflict in sensitive moments. Secondly, it is difficult to enforce proposed solution, having in mind that Albanians already feel as a victor that will not accept further concessions. (Serbians felt the same after annulment of Kosovo autonomy 1991). Thirdly, there is a serious danger that two separate judicial and police systems left a free area for criminals and organised criminal groups that do not know for national differences and distinctions. Certainly a cherished concept that would be an alternative to the proposal from 2013, which has now repented of its weaknesses for a full decade, is certainly not an afterthought, since it is a concept that we wrote in 2023. In addition to internal issues, it is indisputable that the Kosovo precedent should be observed in the context of wider international relations, and especially its use as an excuse in the case of Ukraine.

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