

Geographical Overview | **Western Balkans**

Serbia-Kosovo: Six Years after the Unilateral Declaration of Independence of the Republic of Kosovo

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The Agreement on the Normalisation of Relations between Serbia and Kosovo (2013)

1. On 19 April 2013, at the headquarters of the EU's European External Action Service, the Prime Ministers of Serbia (Ivica Dacic) and Kosovo (Hashim Thaçi) signed the *First Agreement of Principles Governing the Normalisation of Relations*, thereby marking the close of six months of negotiations presided over by the EU's High Representative for Foreign Affairs and Security Policy, Catherine Ashton.¹ Its content is clear and specific. Both parties, Serbia and Kosovo, agree to a statute of autonomy for the Serb population of Northern Kosovo, which, since Kosovo's universal declaration of independence (UDI) in 2008, has been self-governed and fully dependent on the Ministry of Kosovo created *in and by* the motherland. According to the Kosovo Office of Statistics, there are some 130,000 people of Serbian origin, accounting for 5.3% of the total population of just over two million people.

The Serb majority municipalities of the north may form an association (which would join the existing Association of Municipalities of Kosovo) with full competences on matters of economic development, education, health and urban and rural planning (points 1 and 4 of the Agreement), as well as such others as may be delegated by the central authorities (point 5). As for the police, the parties agree that

"there shall be one police force in Kosovo" (point 7), and the members of other security structures created by Serbia will have the option of being integrated into the equivalent Kosovo structures (point 8). In exchange, Kosovo agrees that the police commander for the Serb majority municipalities will be a Kosovo Serb, appointed by the Ministry of the Interior of the Republic of Kosovo from a list of candidates provided by the mayors of these municipalities, and that this regional police force will reflect the ethnic composition of the populations of the indicated municipalities (point 9), that is, that it will also have a Serb majority. With regard to the judiciary, the parties agree that all judicial authorities will be integrated within the "Kosovo legal framework," although the Appellate Court in Pristina, the capital of the Republic, will establish a "panel" made up of a majority of Kosovo Serb judges to deal with matters arising in Serb majority municipalities (point 10). This Court will moreover have a permanent "division" in northern Mitrovica that will have a majority of Kosovo Serb judges (point 11).

The conclusion of this Agreement clearly impacts various stakeholders. For **Serbia**, it will have the following important consequences:

A) States cannot go about acting in ways that belie their own actions. If, on 19 April 2013, Serbia recognised that the government of the Republic of Kosovo (which it does not recognise as a state) exercises its authority throughout the territory of the Republic, including in the Serb majority municipalities, and that the entire territory is subject to Kosovo law, how can it then ignore the existence of an independent Kosovo governed by its own laws in the world of international relations? (The thesis

¹ Text in WECKEL, PH. "Observations," cited in DUMOUCHEL, A.C. "Accord Kosovo-Serbie sur la normalisation de leurs relations: quelle portée?" *Sentinelle*, No. 346, 28 April 2013.

that, through its decision, Serbia has granted Kosovo *de facto* recognition is shared by more than a few observers. Indeed, Vojislav Kostunica, leader of the main opposition party in Serbia, even argued it in the debates conducted on the agreement's negotiation process in the Serbian Parliament.)² Likewise, if one considers that the EU has, since December 2012, been demanding that Serbia transfer the judicial and security structures in Northern Kosovo as a condition to starting accession negotiations, Serbia has ultimately given in. In fact, three days after the announcement of the Agreement's signing, the Commission formally recommended that the negotiations be started with Serbia and that a Stabilisation and Association Agreement be negotiated with Kosovo. (The European Council announced the opening of these latter negotiations on 28 June 2013.)³ Indeed, the EU seems to wish to pursue with Kosovo the same path it has already travelled with Serbia: a Stabilisation Agreement as a prior step to accession. (The *Stabilisation and Association Agreement between the European Communities and Their Member States of the One Part, and the Republic of Serbia, of the Other Part* entered into in Luxembourg, on 29 April 2008, came into force on 1 September 2013.)⁴

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B) Under the Agreement of April 2013, both Serbia and Kosovo undertake not to hinder each other's progress on their paths to EU accession (point 14). Serbia will probably achieve accession first. Once it

is a Member State, it will have in its power the means provided to it by the accession process established in the Treaties: namely, to vote "no" on the Council's decision (which must be unanimous) to sign the relevant Accession Agreement and not to ratify it, in application of its national law. By signing this Agreement (2013), Serbia undertakes not to attempt to block the accession of Kosovo to the EU. (It must be remembered that candidates must meet certain requirements, including, among other things, the requirement to be a state.)⁵

C) By accepting the plan to implement the Agreement, Serbia managed to include its position that the agreed plan is "without prejudice to the positions of the two sides on the Kosovo status."⁶ And yet, how can such a statement by Serbia be reconciled with the explicit recognition in the Agreement (2013) that there is a Kosovo government that enforces Kosovo law throughout Kosovo? At times, words alone are not enough.

For **Kosovo**, the Agreement is a step forward. True, it must agree to a statute of autonomy for the Serb minority, but in exchange it receives Serbia's acceptance of two points: first, political recognition (before the world and the mediator, the EU) of the Kosovo authority, throughout the territory of the Republic, and of its government and law; and second, that Serbia will not impede Kosovo's accession to the EU (in which case, it would be accepting that Kosovo is a state under international law).

The Agreement is a success for the EU, which has helped to achieve a significant step forward in the normalisation of relations between Serbia and its former province and to convince Serbia to accept, politically and publicly, that Kosovo, like Serbia, is likely to become an EU Member State.⁷ The step is important both for regional peace and for the EU to showcase its excellent relations with the UN, given that, in accepting the advisory opinion of the International Court of Justice (2010), the General Assembly welcomed the EU's intervention in the process of dialogue that it has called for between

² www.dw.de, 21 April 2013.

³ EUCO 104/1/13, European Council Conclusion 27-28 June 2013.

⁴ Spanish Official Gazette (BOE) of 21 August 2013, BOE-A-2013-9074.

⁵ Art 49, TEU.

⁶ *Statement by High Representative Catherine Ashton on the implementation plan for the April agreement*, Brussels, 27 May 2013 (A 267/13). It may be interesting to recall that Art. 135.2 of the 2008 Stabilisation and Association Agreement with Serbia essentially provides for the same thing.

⁷ "Serbia and Kosovo: the path to normalisation?", *Europe Report 223*, February 2013 (www.crisisgroup.org/en/regions/europe/balkans/kosovo/223-serbia-and-kosovo-the-path-to-normalisation.aspx).

Serbia and Kosovo.⁸ Both outcomes help the EU in its indefatigable effort to convey to the world the message that it is a global player in international relations.

The signing of the Agreement was good news, then, for Kosovo's "protectors."⁹

The April Agreement between Serbia and Kosovo may encourage "those states that have to date refused to recognise Kosovo" to ask themselves whether they should continue to do so and, if so, for how much longer. In Spain, the government has already been asked to change its policy and recognise the Republic of Kosovo,¹⁰ but, so far, it has not appeared willing to do so. In our view, it has done well in this regard. (Only once Serbia has recognised Kosovo's independence, which has not yet occurred, should Spain begin to consider its recognition, too, along with the statement that would have to accompany such a recognition.)

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3. In any case, for the Agreement to have any actual consequences, it must first be implemented, and that will not be easy. In addition to the hostility it faces from certain sectors in Serbia, it has enemies in Kosovo, too. Not only does a segment of the Kosovo political class believe that it signifies the acceptance of a Serb enclave in their territory,¹¹ but it is also rejected by the portion of the population of Serbian

origin, who have called for (yet another) new state of their own, namely, Northern Kosovo.¹²

The Start of Formal Membership Talks between the EU and Serbia (2014)

4. Things are advancing. On 5 December 2013, the High Representative announced that "decisive progress" had been made on the negotiations between Serbia and Kosovo regarding police issues and on the eventual implementation of the Agreement for the normalisation of relations between them.

As the issue of the judicial structures had not been resolved in the negotiations of 5 December 2013,¹³ the Prime Ministers of the two parties met again, albeit without success, in Brussels on the 13th of that same month.¹⁴

However, on 12 January 2014, the Europa Press agency, citing the High Representative, reported that the Prime Ministers would discuss all relevant points together, as a "package deal," and that the negotiations were expected to be concluded in April.

5. Optimism seems to abound; the EU has already begun formal membership talks with Serbia. On 21 January 2014, the relevant intergovernmental conference was convened. The first chapters to be negotiated will be justice and fundamental rights. The Serbian Prime Minister has repeatedly stated that his country has not recognised Kosovo nor has it been asked to.¹⁵

The Unilateral Independence of Kosovo: Gaining Ground

6. Time, that incomparable ally... The more time goes by, the more *petits pas* that are taken (and the EU is an expert on *petits pas*, given its own philosophical origins in the *petit pas* of the 1950 Schu-

⁸ A/RES/64/298, 9 September 2010, paragraph 2, Resolution adopted by UN General Assembly on the request for an advisory opinion of the ICJ on whether the unilateral declaration of independence of Kosovo is in accordance with international law.

⁹ GUTIÉRREZ ESPADA, C. "De 'protectorado internacional' a 'Estado protegido' [¿Es Kosovo un Estado?]" in M^o.C. BARRANCO, O. CELADOR, F. VACAS (Coords): *Perspectivas actuales de los sujetos de Derecho*, Madrid: Dykinson, 2012, 193-245.

¹⁰ TORREBLANCA, J.I. "El precedente kosovar," *El País*, 26 April 2013.

¹¹ www.dw.de, 21 April 2013.

¹² PRELEC, M. "The Kosovo-Serbia Agreement: why less is more," *International Crisis Group*, 7 May 2013.

¹³ www.europapress.com.

¹⁴ EFE. "Encalla la reforma judicial en la última ronda de diálogo," www.lasprovincias.com.

¹⁵ www.europapress.es, 21 January 2014.

man Declaration), the more the situation arising from the illegal origin – in this case, the unilateral declaration of independence of the Republic of Kosovo – will become a reality on the ground.

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7. An initial *petit pas*: the aforementioned normalisation and stabilisation agreement with Serbia. Another: the April 2013 agreement on the normalisation of relations between Serbia and Kosovo. And a third: the opening, on 28 October 2013, of formal negotiations of the Stabilisation and Association Agreement between the EU and Kosovo in Pristina, with the Commissioner for Enlargement, Stefan Füle, presiding over the first session, negotiations that are expected to be concluded in spring of 2014.¹⁶ The Spanish government accepted the negotiation of this Agreement after receiving guarantees that it would not entail the recognition of Kosovo, as announced by the Secretary of State for the EU, Íñigo Méndez de Vigo. Secretary Méndez de Vigo explained that Spain had “negotiated” this issue with the Commission. The government moreover stated that it had not opposed the opening of these negotiations with Kosovo because its demand that the agreement “deal only with EU competences” and

“not mixed competences” had been accepted, such that it “would not have to be ratified by the Spanish Parliament.”¹⁷

How Many Yardsticks Do States Have? From Kosovo to Crimea...

8. In February 2008, Kosovo made its UDI from Serbia. The Crimean Parliament passed its declaration of independence from Ukraine on Tuesday, 11 March 2014.¹⁸ The vast majority of the EU's 28 Member States, with the exception of only Greece, Spain, Cyprus, the Slovak Republic and Romania, have recognised the Republic of Kosovo as a new state, as has the United States (which has described the Crimean declaration as contrary to the Ukraine constitution).¹⁹ In contrast, Russia, which fiercely criticised Kosovo's declaration of independence, obviously did not follow suit with Crimea's (which the Russian Foreign Affairs Minister described as “perfectly legal”).²⁰ Are Kosovo and the Crimea really so different and distant? The essence is the same: two peoples who do not wish to live in the state that they are a part of...

9. Would it not perhaps be suitable for international law to clearly state whether or not a people's “right to decide” should trump the territorial integrity of the state to which they belong? This is what Serbia (and so many others) was hoping the ICJ would clarify in its 2010 advisory opinion on Kosovo. It failed to do so.²¹

¹⁶ EFE: www.abc.es

¹⁷ Europa Press, 25 June 2013, www.lavanguardia.com

¹⁸ www.sp.ria.ru

¹⁹ <http://spanish.ruvr.ru/>

²⁰ www.larazon.es, 11 March 2014.

²¹ GUTIÉRREZ ESPADA, C. and BERMEJO GARCÍA, R.: *De la opinión consultiva de la CIJ, de 22 de julio de 2010, sobre Kosovo*, Working Paper 35/2010, p. 1-13, www.realinstitutoelcano.org; and, more broadly: “La declaración unilateral de independencia de Kosovo a la luz de la Opinión consultiva de la CIJ, de 22 de julio de 2010 y de las declaraciones, opiniones individuales y disidentes a la misma,” *Anuario Español de Derecho Internacional*, Vol. 26, p. 7-59, 2010.