



Resolution of Bilateral Disputes in the Western Balkans: Role of the European Union and Berlin Process

By Adnan Ćerimagić and Zoran Nechev

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When does the EU have impact?

The European Union (EU) can have impact, inspire reforms and transform the politics in countries aspiring to become members when politicians and societies believe that the EU is offering them something they want. In the 1990s, EU's offer of a more prosperous future inspired politicians such as Czech President Vaclav Havel to bring together citizens, public administration and fellow politicians to fulfil EU conditions. It helped defeat politicians who blocked or slowed down the path towards more prosperous future such as Slovak Prime Minister Vladimir Mečiar. Over the last fifteen years, impact that EU had with its offer resulted with transformation and full membership of thirteen countries from the Baltic Sea to the Mediterranean.

At the Thessaloniki Summit in 2003, the EU decided to extend this offer to Albania and all countries that emerged from the break-up of Yugoslavia. This is why the EU managed, despite very strong opposition, to encourage various governments in the

region to hand over indicted war criminals. In 2001 it prevented Macedonia from going into war. In 2006, it successfully managed the dissolution of the Union of Serbia and Montenegro. In 2008 political representatives of Serbs joined Croatia's government for the first time. Recently, in 2017, it was the offer of opening of accession talks that inspired the new government in Skopje to resolve disputes with its immediate neighbours, Bulgaria and Greece, and improve minority rights.

Over the years EU has repeatedly stated that it wants Western Balkans to resolve bilateral disputes. In return, political leaders in the Western Balkans repeatedly stated that they would do exactly that. Following the first meeting within the Berlin Process, in August 2014, the Final Declaration by the Chair noted that the Process would be used to "make additional real progress ... in resolving outstanding bilateral ... issues, and in achieving reconciliation within and between the societies in the region."¹ ▶

¹ Federal Government of Germany, "Final Declaration by the Chair of the Conference on the Western Balkans," August 28, 2014, <https://archiv.bundesregierung.de/archiv-de/meta/startseite/final-declaration-by-the-chair-of-the-conference-on-the-western-balkans-754634>

- ▶ The Declaration emphasized two specific bilateral disputes: one between Pristina and Belgrade and the name dispute between Skopje and Athens.²

Back then, EU's impact on a breakthrough in normalisation of relations between Belgrade and Pristina seemed more realistic than on the name dispute. Four months earlier, in April 2014, the centre-right party of Nikola Gruevski won the fourth consecutive parliamentary elections with an overwhelming majority, whereas in Greece, Prime Minister Antonis Samaras was in the second year of his mandate.

In 2019, however, the new government in Skopje managed to resolve the name dispute. Nowadays, the path towards normalisation of relations between Pristina and Belgrade seems to be as far or even further away than five years ago.

This paper looks at the time when the EU had impact on Belgrade and Pristina relations in the past, in order to draw lessons for today and tomorrow.

Impact on resolution of bilateral disputes

On 17 February 2008 Kosovo declared independence.³ Key Western states, including the US, France, the UK and Germany recognised it. This provoked outcry in Serbia. Four days later, on 21 February, tens of thousands of people gathered in Belgrade. The Prime Minister of Serbia at that time, Vojislav Kostunica, warned the crowd that "world powers want citizens of Serbia to give up on their Serbdom, origin, Kosovo and ancestors. If we recognise that we are not Serbs they promise we will live better."⁴ Kostunica's answer to those demands was clear:

"We tell them that as long as Serbia exists as a state, we will never recognise something that was established against the principles of civilised world. In this we are not alone and Serbs will never forget the support that the Russian President Vladimir Putin gave to Serbia and its citizens."⁵

² Ibid

³ "Kosovo Declaration of Independence," February 17, 2008, https://www.assembly-kosova.org/common/docs/Dek_Pav_e.pdf

⁴ Otvoreni Studio, Protest "Kosovo Je Srbija," 2008, <https://www.youtube.com/watch?v=PqvvczTRJEY>

⁵ Ibid

Leader of the strongest opposition party, the Radicals, Tomislav Nikolic, also spoke at the event. He promised “not to stop until Kosovo is under control of Serbia.”⁶ Following these speeches, part of the crowd went on to set the US Embassy on fire. Other embassies were attacked as well. Three months later, in May 2008, parliamentary elections were held. A coalition “For a European Serbia” dominated by the Democratic Party of President Boris Tadic won most votes. Tadic went into a coalition with Ivica Dacic’s Socialist Party. The new government also fought against Kosovo’s independence.

They went to the UN General Assembly, and lobbied for the support of a majority to request an opinion of the International Court of Justice (ICJ) on whether the declaration of independence of Kosovo was contrary to international law. On 8 October 2008, with 77 votes in favour, 6

against and 74 abstentions, the question was asked.⁷

EU found itself in a strange situation because five member states did not recognise Kosovo’s independence. The question many asked at that time was if the EU could ever have a joint policy on Kosovo and Serbia and have any influence over developments there.

When in July 2010 the ICJ delivered its answer to the question Serbia had pushed so hard to pose, developments took a surprising turn. To Serbia’s shock, the ICJ concluded that the adoption of the “declaration did not violate any applicable rule of international law.”⁸ Two months later, on 9 September 2010, the UN General Assembly adopted another Resolution, *proposed by Serbia and backed by all EU member states*.⁹ Now the UN General Assembly, all EU member states and Serbia, acknowledged:

⁶ Ibid

⁷ United Nations General Assembly, “Request for an Advisory Opinion of the International Court of Justice on Whether the Unilateral Declaration of Independence of Kosovo Is in Accordance with International Law,” October 8, 2008, <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kos%20A%20RES63%203.pdf>

⁸ Ibid.

⁹ United Nations General Assembly, “Adopting Consensus Resolution, General Assembly Acknowledges World Court Opinion on Kosovo, Welcomes European Union Readiness to Facilitate Process of Dialogue,” September 9, 2010, <https://www.un.org/press/en/2010/ga10980.doc.htm>

“the content of the advisory opinion of the International Court of Justice on the Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, rendered in response to the request of the General Assembly.”

And both welcomed:

“the readiness of the European Union to facilitate a process of dialogue between the parties; the process of dialogue in itself would be a factor for peace, security and stability in the region, and that dialogue would be to promote cooperation, achieve progress on the path to the European Union and improve the lives of the people.”¹⁰

It was a remarkable and surprising step for Serbia, because it acknowledged the content of ICJ’s opinion. It accepted a dialogue with Kosovo to “promote cooperation.” It accepted that this dialogue would have the primary goal of “improving the lives” of people in Kosovo

and in Serbia. And it committed itself to the path of joining the European Union, something that was now linked to a successful dialogue with Kosovo. The EU policy towards Serbia and Kosovo became clearer: if Serbia wants to join the EU, it would need to make progress in improving relations with Kosovo. How did this happen?

To begin to answer this question, it is important to go back to December 2009. In that month the EU decided to unfreeze the Trade Agreement with Serbia and to grant Serbian citizens visa free regime to the Schengen area. There was a sense that when Serbia delivers EU responds. It was also the month when Serbia applied for EU membership. Over the months that followed, however, the EU did not respond to Serbia’s membership application and it gave no signals it would any time soon.

At the same time Serbia’s neighbours were making progress towards EU membership. Croatia, the Western neighbour, began EU accession talks in 2005. Romania and Bulgaria, Serbia’s Eastern neighbours,

¹⁰ Ibid.

joined the EU in January 2007. Southern neighbour Montenegro signed the Stabilisation and Association Agreement with the EU in October 2007 and applied for EU membership in December 2008. In April 2009, member states asked the Commission for an opinion. That same month Albania applied for EU membership, while both Croatia and Albania became members of the NATO. In November 2009, EU member states asked the Commission for an opinion on Albania's membership application. Serbia was falling behind all of its neighbours except Kosovo. Even Bosnia at one moment had the Trade Agreement in force while Serbia's was put on hold.

Boris Tadic and his coalition "For a European Serbia" were faced with the real prospect of isolation. They campaigned on the idea of joining the EU, but had fallen behind every country except Kosovo, which independence had by then been recognised by more than 100 UN members. The opinion of the ICJ enabled those EU member states that did not recognise Kosovo's independence to rally behind the idea of EU taking over the

facilitation of dialogue between Belgrade and Pristina. This gave the EU leverage.

To no surprise, less than two months after the UN General Assembly adopted the resolution and Serbia accepted EU's facilitation, on 25 October 2010, EU member states accepted Serbia's application and asked the Commission for an opinion. In March 2011, a technical dialogue between Serbia and Kosovo started in Brussels. It produced first technical agreements. This allowed the Commission to recommend granting Serbia an official candidate status in November 2011 "on the understanding that Serbia reengages in the dialogue with Kosovo and is moving swiftly to the implementation in good faith of agreements reached to date."¹¹ In March 2012, EU member states granted Serbia a candidate status.

In May 2012, Serbian voters elected Tomislav Nikolic, former Radical turned into pro-EU politician, as new president. In July 2012, Nikolic's now pro-EU party, the Progressives, formed new government as ►

¹¹ European Commission, "Commission Opinion on Serbia's application for membership of the European Union," October 12, 2011, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2011/package/sr_rapport_2011_en.pdf

- ▶ strongest party in the Parliament.

Three months later, on 12 October 2012, the dialogue between Serbia and Kosovo was upgraded to the level of the two prime ministers – Ivica Dacic and Hashim Thaci – who met for the first time. On 19 April 2013, Dacic and Thaci signed the “First Agreement of Principles Governing the Normalisation of Relations” or “Brussels Agreement.” On 22 April 2013, the Commission recommended opening of accession talks with Serbia. In May 2013, Serbia and Kosovo agreed on the Implementation Plan for the First Brussels Agreement.¹² In June 2013 EU member states decided to open talks with Serbia in January 2014. In December 2013, all EU member states agreed on their joint general positions on accession talks with Serbia:

“This process shall ensure that both can continue on their respective

European paths, while avoiding that either can block the other in these efforts and should gradually lead to the comprehensive normalisation of relations between Serbia and Kosovo, in the form of a legally binding agreement by the end of Serbia’s accession negotiations, with the prospect of both being able to fully exercise their rights and fulfil their responsibilities.”¹³

So in January 2014 accession talks began. During these first talks the Serbian government accepted to:

“Fully understand that the EU accession process and normalisation process should run parallel and support one another, Serbia will remain entirely committed to the continuation of the normalisation process and its dialogue with Pristina”¹⁴

¹² Ministry of Foreign Affairs of the Republic of Serbia, “Chronology of Relations between the Republic of Serbia and the European Union,” 2014, <http://www.mfa.gov.rs/en/foreign-policy/eu/political-relations-between-the-republic-of-serbia-and-the-european-union/12452-chronology-of-relations-between-the-republic-of-serbia-and-the-european-union>.

¹³ Conference on accession to the European Union, “Ministerial Meeting Opening the Intergovernmental Conference on the Accession of Serbia to the European Union,” December 2013, http://www.mei.gov.rs/upload/documents/pristupni_pregovori/neg_frame.PDF.

¹⁴ Conference on accession to the European Union, “Chapter 35,” November 30, 2015, 35, http://www.mei.gov.rs/upload/documents/pristupni_pregovori/pregovaracke_pozicije/ch35_common_position_eu.pdf

In March 2014, Serbia went to new parliamentary elections and the Progressives, now led by Aleksandar Vucic, doubled their support, winning the majority of seats. During this time Kosovo as well made steps forward on its EU path, towards the Stabilisation and Association Agreement and visa liberalisation.

Therefore, it comes as no surprise that seven months after Serbia started accession talks, in August 2014, when the first meeting of the Berlin Process took place, the likelihood of normalisation of relations between Kosovo and Serbia seemed higher than a breakthrough in the name dispute between Skopje and Athens. Five years later, however, things took yet another dramatic shift.

When impact is gone

The European Union had three moments of strong influence over Serbia: 1) the decision to accept its membership application, 2) the decision to grant it official candidate status, and 3) the decision to open accession talks. For each step the EU demanded concrete steps on Kosovo. By the end of this process, in early 2014, the EU had a coherent policy, which all of its members backed. EU demanded increased interaction (dialogue and cooperation) between Kosovo and Serbia at all levels aimed at improvement of lives of the people. EU demanded Serbian help to Kosovo setting up functional institutions on all of its territory. And it set out the requirement of a legally binding agreement before the closing of EU accession talks.

Serbia, under three different governments, accepted this. Four years later, in February 2018, there was still some hope for a happy end. The European Commission published a strategic document on the Western Balkans suggesting explicitly that ►

► Montenegro and Serbia “could potentially be ready for membership in a 2025 perspective.”¹⁵ The Commission mentioned normalisation of relations with Kosovo as a major and decisive condition for this to happen.

But already in April 2018, French President Emmanuel Macron, while speaking at the European Parliament, sounded an alarm by saying he was “in favour of the Western Balkan countries having a reinforced strategic dialogue”.¹⁶ In May 2018, during the Sofia Summit where the EU and Western Balkan leaders met, Macron went even further. He expressed doubts not only about whether the EU should enlarge in the future but also whether previous enlargement rounds were good for the EU:

“What we’ve seen over the past 15 years is a path that has weakened Europe every time we think of enlarging it. And I don’t think we do

a service to the candidate countries or ourselves by having a mechanism that in a way no longer has rules and keeps moving toward more enlargement.”¹⁷

Politico Europe reported about Macron’s statement as pouring of “cold water on Balkan EU membership hopes.”¹⁸ As the perspective of joining the EU in 2025 faded away, Serbian President Aleksandar Vucic, in September 2018, went on to make it clear what he expected from the EU: “if we ever reach an agreement (with Kosovo), Serbia would need to get clear guarantees that it would become an EU member state in 2025.”¹⁹ There was no public reaction from the EU, so in October 2018, at the Belgrade Security Forum, Vucic concluded:

“Do you really think when we speak about Serbia that if you are going to say ‘Now we are going to open two chapters, or three chapters,’

¹⁵ European Commission, “A Credible Enlargement Perspective for and Enhanced EU Engagement with the Western Balkans,” February 6, 2018, https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf

¹⁶ Ibid.

¹⁷ Andrew Gray, “Macron Pours Cold Water on Balkan EU Membership Hopes – POLITICO,” May 17, 2018, <https://www.politico.eu/article/emmanuel-macron-pours-cold-water-balkans-eu-membership-enlargement/>

¹⁸ Ibid.

¹⁹ Djordje Kojadinovic, “Serbia Seeks EU Membership Guarantees in Any Kosovo Deal - Vucic,” Reuters, September 13, 2018, <https://uk.reuters.com/article/uk-eu-balkans-serbia-idUKKCN1LT2FY>.

look, even my ministers in the room are laughing but it is not funny, do you really think that someone cares about it? Do you really think it is going to be news for people here? No, it is not. It is because nobody knows what will happen after that. We need something tangible.”²⁰

On 29 April 2019, following months of tensions in relations between Kosovo and Serbia, fuelled by the floating of a dangerous idea of changing borders between Kosovo and Serbia along ethnic lines, German Chancellor Angela Merkel, and French President Emmanuel Macron, invited all leaders of the Western Balkan states, Croatia and Slovenia to come to Berlin. Main topic of the meeting was dialogue between Kosovo and Serbia. Moments before the meeting Vucic told media that Serbia would not be pressured to agree on anything related to Kosovo and “if they think we will jump to accept the offer to get three instead of two chapters

they should know we are not interested.”²¹

President Macron made it very clear that he was “not in favour of moving toward enlargement before ... having made a real reform to allow deepening and better functioning of the EU.”²² With the current political landscape in the EU, therefore, full EU membership in the foreseeable future for any of the Western Balkan states is off the table.

Therefore, if the EU is unwilling to offer what (some) Western Balkan politicians want – certain guarantees for membership in 2025 – if Western Balkan politicians are not motivated by what the EU can offer – in the case of Serbia opening of negotiating chapters – then how can the EU have any impact on the Western Balkans and on resolution of bilateral disputes? For a start, the EU should learn lessons from Kosovo and Serbia dispute and work out what it could offer to the region.

²⁰ Belgrade Security Forum, *Belgrade Security Forum 2018: Grand Opening and Panel Western Balkans and the EU, 2018*, <https://www.youtube.com/watch?v=3Xx2g7E1q98>.

²¹ Blic, “Doveli su nas u poziciju ugla, nećemo politički cirkus,” Blic.rs, April 29, 2019, <https://www.blic.rs/vesti/politika/berlin-kosovo-merkel-vucic-makron-hasim-taci-haradinaj/4k53k34>.

²² Gray, “Macron Pours Cold Water on Balkan EU Membership Hopes – POLITICO.”

When does the EU have impact?

EU is successful in the Western Balkans when politicians and societies believe that what they are asked to do will bring them a step closer to a more prosperous society. EU is successful when it is clear on what it expects from the Western Balkans and when the reward is straightforward, tangible and achievable. It is then that the EU inspires politicians and societies in the Western Balkans to conduct reforms or to meet EU conditions, no matter how difficult or controversial these might be.

At this moment, a lot in the EU and Western Balkan relations remains unclear. Given the complexity of EU's internal and global challenges, there is little hope that things will significantly improve any time soon. Three things, however, are certain. First, that at this moment there is no consensus among EU member states on offering a clear date for full EU membership of any of the six Western

Balkan countries. Second, that there is no consensus on abandoning the perspective of full EU membership for all Western Balkan countries, at some point in time. And third, that there is readiness on EU side to support all six Western Balkans in bridging the gap that exists between EU and the region.

This is the reality within which EU policy towards the Western Balkans will develop and in which the upcoming Berlin Process Summit is taking place. The Poznan Summit should be used as a platform for an honest exchange of views. The EU should be honest about what it can offer and the Western Balkans should avoid being cynical and falling in a trap of misjudging the moment in which the EU and its enlargement policy find themselves or underestimating the importance that the EU has for the well-being and the future of the Western Balkans, even if at the moment it cannot promise a clear date for full EU membership.

The EU should commit itself to steer the debate in and on the Western Balkans in a direction of how far individual Western

Balkan states are from achieving the EU level. The European Commission does assessment of this in its country reports. But the current narrative about Montenegro and Serbia being frontrunners in approaching EU standards does not reflect the assessment done by the Commission.²³ This needs to change in order to prevent further deterioration of the effectiveness of the policy to produce change and transform Western Balkan societies. The influence of the EU in the Western Balkans is based on EU's attractiveness and trust that it can steer the Western Balkans towards a more prosperous future. Those who conduct reforms and transform should be rewarded and receive support. According to the European Commission's assessment, at the moment this is North Macedonia.

The story about the bilateral dispute between Serbia and Kosovo from 2008 until today should serve as a lesson for policy makers across the EU today. It points to why a decision on opening of accession talks with North Macedonia

should take place this summer, as an important political signal that the EU continues to be serious about having an impact in the Western Balkans. The impact of any other decision can be seen in reactions to statements made by Nathalie Loiseau, the French Minister for European Affairs campaigning for European Parliament elections. They were received with great discouragement beyond North Macedonia and Albania. As soon as a decision on opening talks with North Macedonia is taken, the EU should start an open discussion on what more it can offer to see the Western Balkans genuinely transform in years to come, for the benefit of both the EU and the region.

²⁰ ESI, "How are they doing in 2019? European Commission assessments of Montenegro, North Macedonia, Serbia and Albania (May 2019)", 29 May 2019, [https://www.esiweb.org/pdf/ESI - How are they doing - deciding on merit - May 2019.pdf](https://www.esiweb.org/pdf/ESI-How%20are%20they%20doing%20-%20deciding%20on%20merit%20-%20May%202019.pdf)

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Information about SEE Think Net

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The SEE Think Net Network was established in mid-march 2018 with the generous support of the European Fund for the Balkans as the first regional network composed of civil society organisations that aim to monitor the topics related to the Berlin Process. The Network encompasses think tanks, civil society organisations and individuals from the 6 Western Balkan countries plus Croatia and Slovenia. Besides the Institute for Democracy “Societas Civilis” (IDSCS) which will coordinate the Network, the SEE Think Net Network includes the Network of the European Movement in Serbia (NEMinS), Open Society Foundation for Albania and its affiliate, the EU Policy Hub, Adnan Ćerimagić, Politikon Network from Montenegro, Kosovar Centre for Security Studies, the Institute for Development and International Relations (IRMO) from Croatia and the Centre for European Perspective (CEP) from Slovenia. The goal of the SEE Think Net Network is to produce significant policy inputs and provide policy recommendations on topics that derive from the Berlin Process. As such, its activities are devised in order to closely monitor the Berlin process and the policy areas the process encompasses.

Information about SEE Think Net Coordinator

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Information about EFB

The European Fund for the Balkans is designed to create and support initiatives aimed at strengthening democracy and fostering European integration by enabling inclusive policy making, supporting capacity development and creating a platform for exchange and co-operation in the Western Balkans. The Fund was launched in 2007 by four European private foundations (King Baudouin Foundation, Erste Foundation, Robert Bosch Stiftung and the Compagnia di san Paolo), within the framework of the Network of European Foundations.

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