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## The European Union and Kosovo Secession

At present, when the US and some EU Member States are making a decision about an illegal and forcible solution to the Kosovo-Metohija issue, there is a major on-going political debate in Serbia about the future of its relations with the Union. This debate could not have been avoided, as some EU Member States and the Union itself have long been deeply involved in the process of resolving Kosovo's status. For years, the UK has been closely following US support for Kosovo's independence as the only possible solution. It was around this axis that some other EU Member States gathered, more or less closely, with the remaining three big EU Member States - France, Italy, and Germany - finally joining the US-UK axis during the last weeks of 2007.

The entrenchment of this international axis of Kosovo secession pleaders was decisive in determining the EU's attitude towards the future status of Serbia's Autonomous Province. Although cautiously formulated, this attitude is sufficiently clear to allow the view that the Union has crossed the Rubicon by its Presidency Conclusions of the Brussels European Council (14 December 2007).

It is quite understandable that such developments caused additional alarm to political factors and the political public in Serbia. Complex and, I would say specific, relations between Serbia and the EU could not be prevented from causing serious political disputes, not only amongst the broad political public.

Before presenting the problem, it would be worth looking back to the disputes that have occurred in the country concerning this issue. The phenomenon of defending the EU and even Europe as a sort of general idea from those anti-European attitudes and tendencies that allegedly exist within the Serbian ruling coalition is something that attracts attention in the first place. This alleged defence is accompanied by an unusually emotional flame. It is argued, for example, that the refusal to accept a European Mission in Kosovo, or to sign the Stabilisation and Association Agreement (SAA) in the particular circumstances, would be an insult for the EU that would not be forgiven; that it would be equal to the suicide of the country with catastrophic effects, and the like.

With all of this in mind, it is extremely important for public political thinking and acting to start from the facts, analyse them and derive practical conclusions.

Serbia's national strategy towards the EU is clearly defined in the state's fundamental documents. A "commitment to European principles and values" is found in Article 1 of the *Constitution of the Republic of Serbia*, which defines Serbia as a state. Serbia's *National Strategy for Accession to the European Union* was adopted three years ago, and afterwards a series of documents stemming from Serbia's

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*European Partnership* with the EU. The harmonisation of Serbian legislation with EU Law is commonplace in the legislative process in Serbia. Finally, the *Stabilisation and Association Agreement* (SAA) was initialled in November 2007, after a number of difficulties and delays caused by only one condition – the so-called Hague condition.

All the while, the EU did not take a common position - without which its common foreign and security policy towards Kosovo is almost impossible - although the EU was very present and involved in the process throughout the entire period of negotiations (from 2005 to 2007). It is quite clear that a common position was not taken for a very simple reason – the Member States could not reach a consensus on a common political position concerning the Kosovo issue. Moreover, besides the relevant international acts, the EU is also obliged to respect the sovereignty and territorial integrity of Serbia by *its own* constitutive documents. Article 11, Paragraph 3 of the Treaty of European Union explicitly stipulates that one of the EU's Common Foreign and Security Policy objectives is “to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, *including those on external borders*” (author's emphasis).

The wording of the SAA between the EU and Serbia is consistent with the provisions of the EU's founding documents, as well as with the general rules of contracting in international relations. One of the main provisions of the SAA's Preamble begins with the words: “Considering the commitment of the Parties to the full implementation of all principles and provisions of the UN Charter, of the OSCE, notably those of the Final Act of the Conference on Security and Cooperation in Europe – the Helsinki Final Act...”

The legal link between these general contractual and legal obligations and the particular case of Kosovo-Metohija is UN Security Council Resolution 1244, officially accepted by the Union. This is also confirmed in the SAA, especially in Article 135, Paragraph 1, where it is explicitly stated that this Agreement shall be applied to the territory of the Union (i.e., of its Member States) on the one hand, and to the *territory of Serbia*, on the other. It is only in the second paragraph of this Article that an exception is determined, according to which the SAA “shall not apply in Kosovo which is at present under international administration pursuant to United Nations Security Council Resolution 1244 of 10 June 1999.” Kosovo is not mentioned as ‘Kosovo territory’, as it was done in the previous paragraph for Serbia. This is because in the first paragraph of this Article the term ‘territory’ is used in its strict international law meaning and, in this particular case, relates only to Serbia and the EU Member States as the future SAA signatories. Finally, one must remember that in UN SC Resolution 1244 the sovereignty and territorial integrity of the Federal Republic of Yugoslavia (today Serbia) is repeatedly guaranteed three times.

Therefore, the EU's legal and then political obligation towards Serbia should be clear when it comes to determining the future status of Kosovo-Metohija. Another explicit legal obligation of the EU, related to its conclusion of an association agreement with a country, is worth mentioning. Article 310 of the Treaty establishing the European Community provides that this type of agreement, “involves reciprocal rights and obligations, common actions and special procedure.” In the concrete



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context of the SAA with Serbia, the paragraph about *reciprocal rights and obligations* is of key importance. A standard, textbook-like interpretation of that paragraph indicates the international contractual principle of bilateralism, meaning that neither a state shall interfere in the internal laws of the Community, nor the Community in the sovereign rights of a state.

Up until now, the legal facts of the EU-Serbia relationship have been discussed. The political facts of this relationship, however, are rather contradictory. Pressed by the inexorable requirements of the US, the EU was unwillingly sliding towards an unwritten (unannounced) position on the so-called supervised independence for Kosovo. Indeed, one can hardly talk here of an EU common policy since, as we said, a common position as an obligatory EU document has never been reached. It is rather about the pressure and influence of large Member States on smaller ones, but also on European institutions, to make them accept supervised independence for Kosovo.

One cannot talk about any sort of unity within the EU on this issue, as there has always been more Member States whom are unambiguously against Kosovo independence than of those unambiguously for. Between the two groups, there is the largest number of Member States that by inertia adjust to the position of the larger and more powerful ones. In such a situation, a common position could never be formulated and adopted (the EU Council of Ministers has to adopt it by a unanimous vote) to serve as a reliable roadmap for the EU in formulating and implementing its Kosovo policy. For the reason of imposing the EU Mission in Serbia's Autonomous Province, that currently lacks an international legal basis for its implementation, a *joint action* is being prepared. It is a kind of operational document, which can be adopted by a qualified majority vote in the Council of Ministers, but without a common position, lacking the required political legitimacy within the Union itself.

Pressed by the US and following the second phase of *intentionally* unsuccessful negotiations on the future status of Kosovo-Metohija, the European Council made its Conclusions on 14 December 2007, where (points 65-70) it advocates the near-term future of Kosovo as an independent quasi-state and defines its special role in the matter. As Kosovo independence is not explicitly mentioned in any of the points of the Conclusions, the paragraphs that clearly show the political direction of the Union in this issue ought to be mentioned.

The Union is therefore ready to take over "a leading role in strengthening stability in the region and in implementing a settlement defining Kosovo's future status." What possible 'settlement' could define the future status of Kosovo? Could it not, possibly, be the one whose author is President Marti Ahtisaari and which was rejected by the UN Security Council because it advocated Kosovo's supervised independence in violation of international law? To avoid any dilemma, these Conclusions, right after the cited paragraph, define that the Union would implement both its mission of stabilising the region and the 'settlement' by deploying its Mission exactly according to the Ahtisaari Plan (Annex 10 to the Plan). Finally, these conclusions define the Kosovo under the legal fog of a *sui generis* case, which, allegedly, would not set a precedent of any kind.



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This clearly shows that the EU's policy towards Serbia, especially after the adoption of the 14 December 2007 Conclusions, is in large controversial or, better said, in contradiction to the overall legal context: the UN Charter, the Helsinki Final Act, the UN Security Council Resolution 1244, but also with the founding treaties of the EU and the EC, and with the finally initialled SAA.

What followed in terms of the EU's daily politics towards Serbia after 14 December 2007 is more an expression of a political style that really ensues from the logic of legal violation. The political operation that followed is aimed at successfully accomplishing an impossible mission: to the future Contracting Party (partner), Serbia, the 'solution' of Kosovo's secession should be imposed; and to have that partner, due to its strategic commitment to European integration, silently accept both legal and political violence against itself. This operation would be accomplished by the SAA and it is therefore unexpectedly brought into the game. For a larger political stake, and that is recognition of Kosovo's independence, the previously impassable 'Hague Condition' is withdrawn and the signing of the SAA initially indicated for 28 January 2008 and then postponed for until after the Serbian presidential elections.

In brief, it is more than clear that, after the pivotal decision about active support to the illegal secession of Kosovo from Serbia, the Union decided to put all that it had at its political disposal to function in favour of Kosovo's independence. It is primarily the SAA which, all of a sudden, from being a strategic document based on principles and of great importance for both Serbia and the Union, turned into a big stake in this unique political campaign.

What are the consequences of this EU policy towards Serbia in Serbia itself? An obvious general consequence is the start a big political dispute, as mentioned at the beginning of this text. The dispute is slowly turning into public opinion polarisation of the population.

Assessment of this dispute can be made only by starting from the aforementioned facts. There are obvious differences in the treatment of the facts. Some actors in Serbia define their political priorities starting from the facts. In such a context, they give priority to keeping Kosovo-Metohija within Serbia over the signing of an SAA at this moment in time. Others accept a rushed signing of the SAA, although the EU official position regarding the issue of Kosovo's secession significantly changed on 14 December. The problem with this position is that, in the meantime, the SAA has really become the means of separating Kosovo from Serbia.

Above all, Serbia should care more about the political and legal facts than about the opportunism of others, even if they are EU politicians. This is confirmed by all the Serbian Parliamentary Resolutions on Kosovo-Metohija adopted in recent years, especially by the latest one of 26 December 2007 which gives clear political guidelines for the state's future actions. It can therefore be concluded that Serbia is remaining on its European course only if this Resolution is implemented and only if, accordingly, Serbia thanks the Union for its indecent offer – until the SAA regains its original meaning.