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# *Neutrality of the EU, additional obstacle in the Kosovo EU integration process*

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## **Abstract**

Engagement of EU institutions has been different in various aspects in Kosovo compared to engagement these institutions had in the other states of the Balkans. The role of EU institutions has been very important during the first phases of construction and reconstruction of Kosovo after the settlement of international civil administration when the EU had one of the most important pillars of international administration. However, in the process of integrations according to the Stabilization and Association Process, there were created mechanisms which put Kosovo in a different position compared to Macedonia, Serbia, Montenegro, etc. After the Declaration of Kosovo Independence, five EU member states did not (and still do not) recognize Kosovo independence whereas EU institutions continue to keep the neutral position regarding Kosovo status. These are issues which have slowed down and made it difficult the process of integration of Kosovo, whereas Kosovo is the last state that entered into the contractual relations with the EU institutions. In addition, to Kosovo, there were given additional conditions which were not applied to other Balkan countries. Paper using the combined methodology makes an analysis of intervention of the EU institutions through various phases, including the phase of dissolution of the former Yugoslav federation up to the declaration of Kosovo Independence.

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Kosovo is the newest state and the last one created from the process of the dissolution of former Federation of Yugoslavia. Yugoslavia was dissolute among the others, also due to the two main orientations its subjects aspired: a majority that aspired decentralization and national freedom and independence against hegemony in one side and minority (Serbia) that requested hegemony and domination, on the other side. Unfortunately, the process of dissolution of the federation was followed by wars, terror and with consequences which were not seen in Europe since the World War the Second. Since these consequences and the terror threatened to spread outside of the territories of the former federation, International Community engaged in various forms and with various instruments, if for nothing else, at least to localize the conflict. And this engagement was not the same by the content and by the intensity in all units of the former federation as the wars did not erupt with the same size and with the same duration in these territories. The war in Slovenia has lasted only a few days and it took a small number of victims, whereas wars in Croatia, in Bosnia and Herzegovina and in Kosovo were wars that caused crimes against humanity and genocide and due to this, determined persons were punished from an International Court. Situated in Hague, Holland, the court held responsible for over 160 persons. Accused by tribunal includes the head of state, the prime minister, military commandants, interior ministers and many other high, mid and low level political, military, police leaders from different parties (sides) in the Yugoslav conflict. Accusations include crimes committed since 1991 until 2001 against members of ethnic groups in Croatia, in Bosnia and Herzegovina, in Serbia, in Kosovo and in the former

Yugoslav Republic of Macedonia (International Court Tribunal for the former Yugoslavia - <http://www.icty.org/en/about>).

Kosovo Parliament on February 17, 2008, adopted the Declaration of Independence by which Kosovo was declared as an independent and sovereign state. Since that date, the process of recognition of the state of Kosovo begun, and up to date, Kosovo has been recognized by 116 states of the world. Kosovo has been recognized also by the states of the EU-Kosovo is recognized by 22 out of 27<sup>1</sup> states that composed EU as a supranational and regional European organization.

### *EU engagement during the process of dissolution of Yugoslavia*

International Community engagement regarding the solution of conflicts in the early phase of the dissolution of former Yugoslavia was not of the same intensity for all federal units and it didn't give the same solutions to them. Indeed, attitudes of the international community in the early phase of dissolution of former Yugoslavia were those of saving the territorial integrity of Yugoslavia and these attitudes didn't support the separation of federal units from Yugoslavia. Regarding EU<sup>2</sup> engagement, which during the early phase of dissolution was known as the European Community, was as stated above different from the intensity and different from the content. Indeed, the process of dissolution of the federation starts at a time when the shape of Europe changed dramatically with the fall of the Berlin Wall in 1989. This led to the reunion

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<sup>1</sup> Greece, Romania, Cyprus, Spain and Slovakia.

<sup>2</sup> European Union today is a political and economic union which is composed of 27 states with an estimated population of over 500 million inhabitants. As a such organization it was created with the Treaty of Maastricht (1993). The number 27 is given because Great Britain is in the process of exit for EU.

of Germany in October 1990 and to the spread of democracy in the Central and Eastern Europe that was going out of the Soviet control. The Soviet Union ceased to exist in December 1991 (Fontaine, 2017-13). In reality, member states at the same time were negotiating a new treaty which was approved by the heads or premiers of states in Maastricht in December 1991. By increasing intergovernmental cooperation (in the fields as foreign politics, the judiciary, and internal affairs) the community existing system created the European Union (EU). This treaty entered into force on November 01, 1993 (Fontaine, 2017, p. 13).

Exactly at this time of big changes, the European Community was being reorganized and it was taking the form of political and economic union. Whereas (among the other) in order to prepare a legal basis for recognizing the new states, European Community on December 16, 1991, issued a statement titled: "Guidelines for recognizing new states in Eastern Europe and the Soviet Union" by which the process of recognition of new states was adopted. It was made known that recognition requires:

- *Respect for provisions of The Charter of UN and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, especially with the regard to the rule of law, democracy, and human rights;*
- *Guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the Framework of CSCE;*
- *Respect for the inviolability of all frontiers which can only be changed by peaceful means and by common agreement;*
- *Acceptance of all relevant commitments with regard to disarmament and nuclear non-proliferation as well as to security and regional stability;*

- *Commitment to settle by agreement, including where appropriate by recourse to arbitration, all questions concerning State succession and regional disputes (Shaw, 2003, p. 374-375).*

At the same day, the European Community has issued a Declaration on Yugoslavia by which the community and the member states agree to recognize Yugoslav republics but when they fulfill some determined conditions. These conditions were to be fulfilled if republics wanted to be independent: they had to commit themselves to accept obligations determined by the guidelines; that they will accept disposals of the draft-convention of the Conference on Yugoslavia specifically, they had to accept human rights, national rights and the rights of ethnic groups; and they had to give a support to the efforts of UN Security Council and the conference on Yugoslavia as well. Community and its members required that the specific Yugoslav republics which ask recognition they should commit themselves before the recognition to ensure constitutional and political guarantee by which they would ensure that there would not be territorial requests against any neighbor state (Shaw, 2003, p. 374-375).

The armed conflict which started in Slovenia and which continued in the other part of Yugoslavia did not get the equal treatment by the European Community. Somewhere there was a bigger engagement and somewhere the engagement was slower. Dramatic events were developed quickly in the field, whereas mediation and the engagements of the European Community or the EU in most cases were behind the events and behind horrors. However, engagement and diplomatic intervention was a necessity. And under this context, we find all forms of intervention: international mediation, the offer of good services, arbitrage but European Community/EU had no means of military intervention whereas the principle "stick and carrot" was mentioned in the meantime. Forms of intervention

were through troikas, through ensuring the communication, there were sometimes cases of overcoming the authorization and there were cases of intervention in the capacities with the behavior of democracy professors from EU. But according to an author, there was also something else. It is a special interest of a determined country to interfere according to its point of view or according to its own interest. This was seen especially during 1990-1995 years. For Germany, it was the voter seduction of Croatian origin, for Austria benefits from the wealth and manly allegiances with the neighbor Slovenia, for the Vatican the support of catholic community big in number (Dufour, 2010, p. 115). European Union intervenes through observing missions, which were considered to be the eyes and ears of the European Community. Their duty was supervision and reporting, but not rarely there has been no harmonization among the monitoring missions. All this then was like putting the ice cream in the sun (Miškulin, 2013). Ice cream in the sun because figuratively they melted the ice cream as it melts in the sun. Being that the conflict had taken destructive dimensions, European Community was focused more in Croatia (which was recognized as sovereign state together with Slovenia, firstly from Germany) and in Bosnia and Herzegovina, whereas Kosovo had to stay enjoying diplomatic declarations of various international organs and institutions. Kosovo was not even given the opportunity to take part in the Lord Carrington Peace Conference and Kosovo was not given the opportunity to be part of the Dayton Conference, as well. Ivica Miškulin has underlined these shortcomings: lack of knowledge on the situation brought delays on the events, the lack of joint political attitudes, the lack of flexibility, the use of inadequate means, opposition (non-accordance) between the interests of states, the nonexistence of the armed forces, mining the process itself from mediators (Miškulin, 2013). Leaving aside frozen conflict (in

Kosovo) and engagement through declarations and resolutions, however, led to the explosion of the armed war, a war which fortunately thanks to the NATO intervention was made shorter. Initial contacts had to do: with sensibilization of Kosovo issue; with the requests for the equal treatment with the other composers of former Yugoslavia; with ensuring of support in various fields of life and other requests of this nature. Whereas Europeans themselves had decided in 1991 that “the right of separation from the former federation had republics only, and not the provinces (Kosovo and Vojvodina). European countries under the dictate of France recognized Serbia after the Dayton (1996) with the old name Yugoslavia and gave Serbia and Montenegro the right to inherit the older ruined federation (Bytyçi, 2012, 386).

Kosovo had support and beautiful promises, for example...in April 1989 European Parliament expressed a protest against repressive measures...in 1993 it adopted a resolution considered as constructive in Kosovo by encouraging solders to desert from the army...resolution foresaw their acceptance from the states of the EU... in September 1992 CSCE requested an immediate prevention action in Kosovo...CSCE made pressure on the Belgrade authorities in order to start a serious dialogue with the Kosovo representatives with the presence of the third party... on December 12, 1992, President Bush promised that the USA will not allow Kosovo to become the second Bosnia...threatened Serbia with the air strikes...on February 02, 1993 in Geneva while presenting “Peace Plan for Kosovo”, UN Commission on Human Rights voted a resolution that condemned the violation of human rights ...especially in Kosovo...the other resolution was voted in August 20, which requested the continuation of CSCE mandate mission...on May 1993 in Washington DC foreign ministers: American, Russian, British, French and Spain expressed their decisiveness according to what Kosovo should enjoy a broad autonomy...they did not precise if they could take in the

consideration Kosovo independence if the maltreatment of Albanians continues...on February 03, Ibrahim Rugova met with President Clinton and Mr. Al Gore...they encourage Albanians to continue following the peaceful politics...on November 02, 1994 Co-chairs of the International Conference on former Yugoslavia Lord David Owen and Thorwald Stoltenberg, met Ibrahim Rugova...they expressed their favor for the peaceful politics...on December 23, 1994, UN The General Assemble...denounces harshly measures and discrimination practices as well as the violation of human rights of Kosovar Albanians...condemns the very big pressure practiced from police and military forces of Yugoslav Federation...requires resolutely from Yugoslav Federation to allow long term missions of Conference for Security and Cooperation in Europe to come back to Kosovo immediately...(Dufour, 2010, p. 78-80).

However, unfortunately very many people were killed, a lot are missing, a lot suffered tremendous material and spiritual damages, whereas the war ended with the NATO intervention against Serbian military targets and previously a Treaty of Maastricht was agreed. And there were also in 1993 issued new criteria about the membership. Thus, for states of Eastern and Central Europe that aspired the EU accession, European Council had put some criteria known as Copenhagen Criteria. Based on these, candidate states would be judged in order to be admitted in the EU based also in the as following determined:

- *sustainability of institutions guaranteeing democracy, rule of law, human rights and respecting and protecting minorities;*
- *the existence of a market functional economy capable to respond competitive pressure and market forces of EU;*
- *ability to undertake membership obligations, including and following the implementation of political, economic and monetary goals of the union (Dinan, n.d., p. 188).*

But to Kosovo, in addition, there will be put other conditions, even conditions that were not applied to any other country aspiring integrations.

### *EU engagement in the time after the dissolution of former Yugoslavia*

It could not be said that Kosovo would establish its own independent state and got liberated itself during the war in the last years of XX Century without the engagement of the international community and without the EU engagement. For sure the biggest role and merit in Kosovo liberation has played the USA engagement and NATO attacks against Serbia military targets, but this specific engagement is not the object of this paper.

After the end of the war and after the peace settlement in Kosovo, EU will play the main role in the construction and the reconstruction of the country. It is the EU that would take the IV UNMIK Pillar which had to deal with construction and reconstruction of the country. It is also OSCE that would lead Pillar III, which dealt with democratization and with the building of democratic institutions, etc. Of course, besides thus a huge contribution has been made in Kosovo from the EU countries also in the aspect of security, within peaceful forces – KFOR. All of this can be discussed but cannot be questioned. It could be discussed because Kosova after the war, despite clear declarations which came out from the decision making mechanisms in Europe, was not treated equally with the other states of the region. Regarding Kosovo, attitudes were even formally but also materially different.

On June 10, 1999, in Köln by the EU initiative it was adopted the Stability Pact for Eastern Europe (<http://www.emins.org>). This was one of the biggest undertakings of EU (Bytyçi, 2012, p.

399.) where more than 40 partner countries and organizations committed to strengthening Eastern European countries in their efforts to feed peace, democracy, respect for human rights and the economic prosperity which would be achieved in the entire region.

All countries were given promises of Euro-Atlantic integration. The Pact was re-affirmed in the Sarajevo Summit on June 30, 1999 (<http://www.emins.org>). Even though it was said that it is being worked on a scenario on including all countries of the Western Balkans<sup>3</sup>, nonetheless for Kosovo, there were not created equal opportunities with the other countries of the Balkans. Moreover, now due to the reason of no recognition of the Kosovo statehood by Serbia and by Bosnia and Herzegovina, Kosovo faces difficulties that hinder participation in the Council of Regional Cooperation [successor of the Stability Pact] (Forum 2015 - 2013, 7). Kosovo at that time was internationally administered and based on the fact that its status was not defined, it was left aside at a time when other countries from the Balkans were getting prepared to sign the Stabilization and Association Agreements. Some had even signed those. In the aspect of reconstruction of Kosovo, EU had underlined the need of determination to take the leading role ([http://www.europarl.europa.eu/summits/kol2\\_de.htm](http://www.europarl.europa.eu/summits/kol2_de.htm)). Later on, Kosovo would benefit in this regard from the funds for pre-accession that differently are known as IPA funds (Pre-Accession Instrument).

EU funds for reconstruction and development, but also in other fields of life in Kosovo are a great contribution, but nonetheless, political engagement of the EU in order to advance and to solve the final status of Kosovo was not at the level of needs and it could not be compared to USA engagement. For a

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<sup>3</sup> When the Western Balkans is mentioned it is thought of countries that derived from the former Yugoslavia and for Albania- Slovenia is excluded.

long period of time, there were noted hesitations about engagement towards Kosovo and for Kosovo. These hesitations continued also after the end of the war in Kosovo and continue in various forms after the Declaration of Independence. Even though it was clear that Kosovo would not go back to whatever Serb-Montenegro creature, from EU in some determined moments this could have been seen. Even when it was quite clear that the coexistence between Serbia and Montenegro was impossible, the EU sends the General Secretary of the Council for Foreign Policy and Security in Belgrade to exercise its impact... with only one justification: until Yugoslavia survives, even if with only one new label, pretends of Albanians of Kosovo for independence would have no chance for success (Spasovska, 2004). But community Serbia and Montenegro did not last longer, because Montenegro would leave this community which was standing as the last tendency to be taken as an argument to be used in arguing that the Federal Republic of Yugoslavia is existing. Regardless of all, Kosovo even though with no defined status could not be left aside, forever. Under the context of the Stability Pact for Kosovo, a specific mechanism was created which was known as Stabilization and Association Tracking Mechanism. This created mechanism by the EU has entered into force in March 2003 in order to serve as the main mechanism in the dialogue between Kosovo and the European Commission within the process of Stabilization and Association. This mechanism had functioned on two levels: in the form of political dialogue by holding plenary meetings, co-headed by highest government Kosovo representatives and the European Commission. Here there are developed discussions about the achievements in fulfilling European Partnership and the accordance for the next period of time is achieved. Then also in the form of technical dialogue, we have development in six sectors: good governance, economy, internal market,

innovation and social cohesion, infrastructure and agriculture and fisheries/fishing. Tracking Mechanism of Stability and Association shows the different treatment of Kosovo compared to the other states created from the territories of former Yugoslavia, e.g. Macedonia. Kosovo quite late entered into the contractual relations with the EU. Kosovo entered into these relations with the EU by signing the Stabilization and Association Agreement. This document is under the file: 2016/0095 (NLE), dated February 02, 2015. The Stabilization and Association Agreement has entered into force on April 01, 2016 between the following parties:

The Stabilization and Association Agreement between EU and European Community for Energy and Atom as one party and Kosovo\*, as the other party (\*this determination is with no prejudice on the attitudes on the status and is on line with the UN Security Council Resolution 1244 and with the Opinion of the International Court of Justice regarding Kosovo Declaration of Independence). As seen from here the symbol asterisk (\*) shows the EU institutions hold the neutral position regarding the Kosovo status. This itself shows quite a different position of EU institutions that was not held as such for the other states in the process of integrations. Not any state from the territories of former Yugoslavia was put under the asterisk or marked with the footnote explanation. Demarcation of the border with neighbors was not a condition for none of the states, except Kosovo. EU institutions did not hold a neutral position for any of the states from the territories of former Yugoslavia regarding their status, except Kosovo. There is no state of the territories of former Yugoslavia that is not recognized by EU member states. A condition that was put only for Kosovo (demarcation of the border with Montenegro) destabilized Kosovo and created extraordinary tensions. Due to this, a government was overthrown just because it did not manage to ratify the border

agreement. This type of condition was not set (as it was said above) even to Serbia, which obviously has not defined borders with its neighbors. And the demarcation of the border was a very important condition in the process of visa liberalization in the Schengen zone for Kosovo citizens. Whereas Serbia citizens enjoy the visa liberalization process long ago.

Since the Declaration of Independence (2008) the EU integration of Kosovo has been the main objective of the foreign policy. The Majority of citizens are also supporters of the BE where 93% of the population is in favor of Kosovo to become a member of the EU (Prishtina Institute of Political Studies 2016). The bellow description of the article 49 of the EU treaty leads us towards a fact that the Kosovo integration is more of a political problem rather than a legal one. This article specifies that: Any European state which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national parliaments shall be notified of this application. The applicant state shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members” (European Policy Center and Group for Legal and Political Studies, 2017).

Thus, “Article 49 establishes three explicit criteria that a country must meet in order to be eligible to apply for EU membership.

First, the applicant must be a "European state". Second, the applicant must respect and uphold the values set out in Article 2, namely: respect for human dignity, freedom, democracy, equality and the rule of law; respect for human rights, including the rights of persons belonging to minorities; and respect for a pluralistic society and for non-discrimination,

tolerance, justice, solidarity and equality between women and men. Third, the applicant country must satisfy the EU eligibility conditions, referred to as the Copenhagen criteria. However, these are not explicit in the Treaties and may technically be up to political interpretation and change. (European Policy Center and Group for Legal and Political Studies, 2017).

Analysis of this article in a non-emotional way will show us that the EU institutions and five member states that had not recognized Kosovo are acting totally in accordance with the cited article.

From a superficial analysis of the reports in the Balkans, a term taken from Srdja Popovic [Montenegro academician] ([www.economist.com/news/europe](http://www.economist.com/news/europe)), appears to be supported by all. This term is known as “stabilitocracy” according to which it is supposed that for somebody only silence/peace is needed in the region and that could be ensured by the support to the existing elites, which for various reasons, ensure this silence/peace. And the silence/peace according to this term is ensured by cooperating with the existing political elites which in the region are not distinguished to be free of corruption and misuses of power. This silence, through stabilitocracy, could have short term effects but in no ways, it cannot ensure long term sustainability and stability. Cooperation and acting with stabilitocracy is against the long term goals and it is not in accordance with the promoted values from the important EU documents where the rule of law should be crucial. But could the rule of law be ensured through stabilitocracy-this is an issue which should be solved in the times to come. With the corrupted elites, processes may ensure short term peace, but definitely not sustainable. Montenegro academician, talking about stabilitocracy, he talked about all countries of the Balkan, not excluding any state. The term stabilitocracy remains to be seen and analysed for the Kosovo circumstances. This

especially in the circumstances when Kosovo has to fulfill a specific condition as the precondition for the visa liberalization process to be concluded, after the demarcation with Montenegro. And this specific condition is the fight against corruption and organized crime.

On the other side, if EU institutions continue to hold the neutral position regarding the Kosovo status, this doesn't give a proper contribution for positive developments in the Balkans and in Kosovo. This neutral position could only be further used by states that did not recognize Kosovo as an additional argument to continue with non-recognition. And these countries despite their inner problems by not recognizing the independence of Kosovo state, it is hard to be believed that they act in the sense of EU goals. These states not only should recognize Kosovo-moreover, they should hold back of stating official declarations as it was the declaration of Spain Premier before the planned summit, which would be held these days in Sofia (Republic of Bulgaria). Such declarations are not at all in accordance with the EU treaties and in accordance with the goals of western democracies.

## *Conclusions*

EU engagement and the engagement of international organizations and mechanisms have been important for peace and the stability in the region. This engagement was of the same importance for Kosovo as well. But had it been similar by the intensity and by the content for Kosovo, then the achievements in Kosovo would have been obviously bigger, and there would have been fewer consequences. Delays in acting (not rarely) and hesitations on preventing pressure and violence made the crises bigger and led towards the spread of the conflicts. Exclusion of Kosovo from London and Dayton

Conferences shows among the other that there was not a unified politics regarding conflicts; this shows that there were disagreements between member states themselves as we have today (disagreements) also when five states still hesitate to recognize Kosovo or while we still have EU institutions hold the neutral position related to Kosovo status. Treatment of Kosovo from the neutral position seems has not been successful for EU as well. Non recognition of the state of Kosovo did not contribute in the process of democratization of the Balkans and it did not contribute as needed (as it could) preparation of the Balkans to be an integral part of the EU.

This policy of non-recognition of five states is discriminatory because a state and a population are not being allowed to enjoy the right to recognition of its statehood, which definitely cannot be contested. Kosovo Independence and its statehood is a fact that should be respected among the other because of the fact that Kosovo is a guarantor of peace and the stability in the Balkans. But, on the other side despite the engagement that changed in the intensity and by the content in various phases, it is obvious that Kosovo could not have been liberated and it could not have been created as the independent state. At the current stage, both EU and Kosovo should find a way of better coordination, so there will be no more hesitations on one side and there are no unfulfilled conditions on the other side. Appreciation to both sides for a better future.

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