

Searching for a  
Historic Agreement  
between Serbs &  
Albanians  
on Kosovo  
From Ambiguities to Clarity

by Ambassador (ret.)

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Feb. 2018

WORKING PAPER No 89/2018

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**Working Paper Nr 89/2018**

# **Searching for a Historic Agreement between Serbs & Albanians on Kosovo**

## **From Ambiguities to Clarity**

**Ambassador (ret.) Dimitris A. Moschopoulos, Ph.D.**

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Ambassador (ret.) Moschopoulos was born in Kalamata, Greece, and has studied in Athens, Paris and New York. He holds a degree in Philology/Philosophy from the University of Athens and a doctorate in Philosophy from the University of Paris I, Panthéon–Sorbonne (1979). He was a member of the Greek diplomatic service from 1983 to 2014, and his last assignment was in Pristina, Kosovo, where in addition to serving as diplomatic representative of his country (Head of the Greek Liaison Office) he also acted on behalf of the European Union as facilitator for the protection of the religious and cultural heritage of the Serbian Orthodox Church in Kosovo. After his retirement from the Greek diplomatic service he returned to Pristina and worked as advisor to Kosovo institutions on religious and cultural heritage under a contract with the UNDP financed by the government of Norway, from 2014 to 2016. In June 2017 he received a grant from the UN Mission in Kosovo (UNMIK) for the continuation of his work.

## Summary:

The paper takes as starting point the call by President Vucic of Serbia for a dialogue on the future of Kosovo with a view to reaching a historic agreement between Serbs and Albanians that would help his country deal with the Kosovo issue and would make it possible for it to secure a future in the European Union. The author attempts an assessment of various efforts for settling the dispute between Serbia and Kosovo, including the Ahtisaari Plan of 2007 and the Brussels Dialogue between Belgrade and Pristina currently going on, and tries to clarify some ambiguities and misunderstandings still prevailing about basic parameters of the conflict and of the European integration of the two sides. An analysis of the principles set by Mr. Vucic to guide the debate between Serbs and Albanians, namely that (a) Serbia does not covet what doesn't belong to her and will not relinquish what belongs to her, and (b) the protection of the Serbian religious and cultural heritage in Kosovo is of paramount importance to Serbia, leads to the conclusion that the envisaged agreement should have (a) Serbia recognize that it does not own Kosovo's statehood, which rightfully belongs to Kosovo, and (b) Kosovo accord an exceptionalism status to the Serbian religious and cultural heritage in its territory. The author further argues that the ideal agreement between the two sides turns out to also be a possible one.

## Key Words:

Kosovo, Serbia, EU enlargement, Serbian Orthodox Church, Vucic

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# Searching for a Historic Agreement between Serbs & Albanians on Kosovo From Ambiguities to Clarity

When, in July 2017, President Vucic of Serbia called for an “internal dialogue” within his country on the future status of Kosovo, the majority of the international community (that is, the states of the world, most but not all of which are members of the United Nations) must have felt a kind of bewilderment, considering that for them the status of Kosovo had already been settled, and they had recognized it as an independent state. For the majority of the international community the status was settled on 17 February 2008, the day Kosovo declared its independence, and was further confirmed on 22 July 2010, the day the International Court of Justice issued its advisory opinion affirming that Kosovo's declaration of independence had not violated any applicable rule of international law.

For many countries and individuals who consider the status of Kosovo settled, an instinctive reaction to the initiative of the Serbian President might be to ignore it or even to ridicule it, but of course their reaction would elicit no interest in Serbia; after all, nobody outside Serbia has been invited to participate in the debate.

Although I am personally convinced that the status of Kosovo has been settled and its independence from Serbia is irreversible, I find a lot of reasons to consider the Serbian President's initiative, which he has repeated, expanded and further clarified in many subsequent statements to date, with great respect and support. The first such reason derives from the authority of the initiator and the respect Aleksandar Vucic commands for his personal commitment to reaching an honest and dignified solution of the problems his country has with Kosovo. It is a commitment that I consider to be tantamount to seeking a way for his country to come to terms with the Kosovo reality instead of fighting it.

Another reason relates to the specific circumstances and the importance the current juncture has for the two countries concerned, Serbia and Kosovo, and for the whole of the Western Balkans region. Those circumstances point to the likelihood that the “internal dialogue” might produce results much more meaningful than those indicated by the initial, deliberately ambiguous statements that have accompanied the announcement of the initiative, and by some unambiguous but disheartening statements that followed the announcement, issued by critics of the President's initiative and perceived intentions. Already in subsequent statements the President has added more elements which point to the likelihood that we are about to witness historic developments in the Serb-Albanian relations in Kosovo. And the publication, on 6 February, of the EU's Enlargement Strategy for the Western Balkans adds a sense of both optimism and urgency.

Although my nationality (Greek) would in principle disqualify me from participating in a dialogue that has been branded as exclusively Serbian, I sincerely hope that the remarks and ideas I put forth in this paper will be read by Serbs as well and will be judged on their merits rather than being rejected off hand as coming from an uninvited outsider, from a gatecrasher so to speak. My years of living and working in Pristina, as diplomatic representative of my country and also as EU facilitator for the protection of the Serbian religious and cultural heritage in Kosovo, have allowed me to form what I believe to be a good idea of the essential parameters of the issues facing Kosovo and its citizens, not only those belonging in the Albanian majority, but also those belonging in the non-Albanian communities.

My Kosovo experience has instilled in me a very strong and sincere personal interest in and commitment to the wellbeing of Kosovo and its people. It has also convinced me that it is possible to deal with the issues confronting Albanians and Serbs in Kosovo with what could in good faith be recognized as both uncompromising objectivity and total impartiality. Impartiality is possible, in the sense that solutions that should satisfy both sides in sufficiently equal measure can be found. Once you realize that, you find it all the more frustrating to see people miss enormous opportunities to move forward because of inattention or lack of elementary empathy.

In his public statements on the internal dialogue and his envisaged possible "historic agreement" with Albanians about Kosovo, the Serbian President has stressed the need to call a spade a spade. He himself has repeatedly come agonizingly close to doing exactly that, but has always, maybe wisely at this stage, stopped short of doing it. In this paper, I propose to heed his exhortation and call what I consider a spade a spade. I hope and believe that unprejudiced readers will not question my sincerity, objectivity and impartiality, even if they disagree with some of my views. If a reader feels my judgment is too harsh on one of the parties to the dispute, my response, and advice, is: just keep reading.

The purpose of this paper is to assess some parameters of the Kosovo issue that often appear unclear and ambiguous and to put forth some ideas that I believe could elucidate some core issues that a debate on Kosovo must address. Also, starting from President Vucic's statement of the principles that should guide the internal debate on Kosovo, I will endeavor to point out the fundamental values and realities that should inform the "historic agreement" he envisages between Serbs and Albanians on Kosovo.

This paper is addressed both to people who know the details of the Kosovo issue and to people who have only a general idea about the specific dispute and are interested in getting more information on which to base their own views. It is inevitable that some readers will find in this paper less information than they need in order to make an informed judgment, while others will consider some of the background information provided redundant; I have tried to strike a balance between the two categories of readers. I have included no footnotes or detailed references to sources (they are all readily available, also online), to make for an easier reading.

I must add that the views expressed here are my own, and are not meant to reflect the policies of any government or institution.

## Ambiguity to the Rescue: The Brussels Dialogue

The announced “internal dialogue” in Serbia is the most recent episode in a series of efforts the two parties to the dispute have been deploying, encouraged and guided by the international community, to come to terms with the situation in Kosovo in a manner conducive to strengthening peace and stability in the region and improving the lives of people. It is launched as another dialogue about Kosovo seems to be entering its final phase, after a process that has lasted some six years. That dialogue is conducted in Brussels by representatives of Serbia and Kosovo and is facilitated by the European Union, personally by the High Representative of the EU for Foreign Affairs and Security policy/Deputy President of the European Commission (HR/DP), Federica Mogherini. Its stated purpose is the normalization of relations between the two sides. Before considering the issues of the internal dialogue, some comments on the Brussels dialogue would be useful.

The Brussels dialogue is an egregious example of the uses and the abuses of ambiguity, of its constructive potential and its inherent limitations as a method in political discourse and in international relations. Of course the value of ambiguity in political discourse is well documented and widely appreciated, and nowhere more so than in the Balkans. Indeed, in the Balkans ambiguity has become an indispensable ingredient of political discourse, and consequently of political practice. I would consider it fairly safe to affirm that no official statement of some importance concerning the European perspectives of Serbia and Kosovo and the normalization of relations between the two is free of ambiguity.

In addition to its inevitable ambiguity, from the beginning the Brussels dialogue faced a number of problems and difficulties, the main among which were the manifest lack of commitment on the part of the two interlocutors to seeking the same objectives. The officially stated objective, “normalization of relations” was – and still is – perceived differently by the two participants.

That the two sides came to the negotiating table disagreeing on most issues is not surprising, after all the very *raison d'être* of a dialogue is the existence of a disagreement and the need to resolve it. But the standard practice is that the parties to a dialogue agree on some premises and seek common, or at least compatible, objectives. The interlocutors in the Brussels dialogue did not do that. They came to the negotiating table with conflicting premises, professing a different understanding of the concept of “normalization of relations”, and seeking different and often contradictory objectives.

So the dialogue seemed from the beginning to ignore the most fundamental rule of a reasonable and reasoned dialogue, namely that, for a debate to be successful, the participants must agree on the premises of the endeavor, in other words, they must proceed from a common starting point. That is the rule formulated by the Scholastic philosophers as “*contra negantes principia non disputandum est*” (you cannot have a rational debate, *disputatio*, with people who do not start from the same principles or premises, *principia*).

The biggest and most irreconcilable difference between the two participants is of an existential, or ontological, nature as it has to do with the way they perceive and define themselves: what are the two negotiating sides? Are they two neighboring states, as Kosovo assumes, or a state and its runaway province, as Serbia claims? It is obvious that the two different cases require different treatments, follow different processes and produce different results. Normalization of relations is different when applied between two countries and different when it concerns a country and its province.

The main, and possibly only, incentive the two parties had to engage in such a process was that the process was supported, indeed organized, by the EU and was presented by it from the beginning as an indispensable first step on the path leading the two parties to membership of the EU. It should also be noted that high ranking EU officials repeatedly stated at the time of launching the dialogue that the purpose of it was to help Serbia come to terms with, and eventually recognize, the new reality in Kosovo. That it was also strongly endorsed by the US made it even more acceptable to both sides.

In light of the above, introducing a large amount of ambiguity into the process of the Brussels dialogue was inevitable and advisable, as the most urgent issue was to get the two sides to talk to each other. The attraction of EU membership was enough to counterbalance the obvious differences between the two and made possible the launching of the dialogue. The lack of common assumptions, or common starting points, between the two sides was substituted for by the only common objective they both shared: EU membership.

There can be no doubt that the Brussels dialogue was, and remains, the right thing to do, and the way it was initiated was the best possible under the circumstances. Nor is it surprising that the method adopted was one based on the resource most readily available at the time: ambiguity.

The big advantage of ambiguity is that it can start a process. That is its irresistible charm. Its biggest drawback manifests itself when the time comes to conclude the process; that is the point where its universally praised constructiveness can turn to unmanageable destructiveness. The challenge therefore for the participants, that is, in the case of the Brussels dialogue the two interlocutors and the facilitators, is how to steer the process in the direction of producing meaningful and constructive results, it being also understood that the surrounding circumstances will have a bearing on at least the pace of the progress achieved.

As at the beginning of the dialogue so also during its unfolding a certain degree of ambiguity will certainly be needed to move things forward, as well as some deviation from the established rules of rational dialogue. So long as the dialogue revolves around principles and intentions, ambiguity is fine. When the dialogue must center on drafting specific agreements, ambiguity is usually a problem. The participants in the Brussels dialogue did their best to strike agreements that could stand with a good level of ambiguity, but at some point even the best efforts cannot work. When you agree to do something, it is difficult (but not impossible) not to spell out what you will do.

A case in point is the most important agreement reached in the dialogue, on 19 April 2013, titled "First Agreement of Principles Governing the Normalization of Relations" (note that the parties

whose relations are to be normalized are not named, the reason being of course the conflicting views held on the identity of the parties: state-state or state-province). The text of the agreement consists of 15 brief points, only one of which can be properly called a principle (number 14), and prescribes some important administrative measures to be taken in Kosovo, measures that, if implemented, should improve the lives of its citizens.

The biggest part of the Agreement deals with the establishment of a legal body in Kosovo consisting of the Serb-majority municipalities. As the two parties could not agree on the exact prerogatives of the body the text uses two different terms to name it: Association/Community. The first term is the one preferred by Kosovo, the second is Serbia's favorite. Throughout the text both terms are used in steadily and predictably alternating order, A/C and C/A. The dispute centers on whether the body will have executive powers and function independently from the central government of Kosovo, as a kind of Republika Srpska, or it will be an association with no executive power, something like an NGO.

That the double-named body has not yet been established testifies to the fact that ambiguity is better at starting a process than at concluding it. The controversy between the two parties on this specific issue still persists. The Association/Community agreement is one of the many reached in the context of the Brussels dialogue that have not been implemented to date.

The way the Brussels dialogue has unfolded so far is the one that was realistically to be expected. The main concern of the parties consisted in sticking to their mutually exclusive initial assumptions and making sure they could sell the agreements to their domestic audiences. So whenever an agreement was struck, each side promptly and publicly interpreted it in a way that suited their positions. Statements made outside the negotiating room after each meeting took on a triumphalist tone, akin to bragging after a football match. In fact, at least once, the head of one of the negotiating teams did not hesitate to announce to his country's media after the conclusion of a negotiating session that his team had won over the other side by a score of 5-0(!).

It is not surprising that today each side claims that it has implemented most of the obligations incumbent upon it by the agreements reached in the dialogue and that its few remaining obligations have not been met because their implementation depends on the other side's implementation of their obligations.

The Brussels dialogue so far can be assessed as a qualified success. A lot of difficulties still persist, disagreements are still to be reconciled; with regard to procedure, one can say that more firmness was expected from the EU as facilitator of the dialogue, as well as some kind of refereeing between the two sides. But the progress achieved in it is undeniable, and agreements have been reached that improve the lives of people. Politically too, it has served as a catalyst to move a considerable number of issues in the right direction. Without the Brussels dialogue Serbia would not now be in the process of EU accession negotiations, and Kosovo would not have signed an SAA with the EU. And the two would not be receiving reassurances today that an EU future is open to both of them depending on their progress toward it.

But it now seems to be reaching its limits, in the sense that it has achieved all that could be achieved within the parameters and the restrictions imposed by the ambiguity and the ambivalence that have been its constant characteristics. The task now is to try and produce tangible results by reducing the use of ambiguity, to the point of extinction, and redoubling the efforts to seek clarity.

That is why the Serbian President's call for an honest internal dialogue on Kosovo is timely, and his declared determination to call a spade a spade came at the best possible juncture, as subsequent developments are now confirming. From now on the Brussels dialogue will be intertwined with the Serbian internal dialogue.

## Turning from Ambiguity to Clarity: Dispel ambiguities on the road to the EU

The fact that the Serbian President explicitly set the launching of the internal dialogue in Serbia and the prospect of a historic Serbian-Albanian agreement on Kosovo in the context of European integration would call for some remarks aimed at clearing certain ambiguities and misunderstandings that still persist about the impact the EU integration has on the relations among the countries involved.

The European perspective of the Western Balkans has made it mandatory for the countries aspiring to membership to resolve their pending issues with one another, as the EU is determined not to import instability and, smarting from unpleasant past experiences, has made it clear that it will not accept as new members countries with unresolved problems with their neighbors, including in particular problems about their borders. That need is naturally greater for Serbia, as the frontrunner among the candidate countries.

### **Is recognition of Kosovo a *de facto* prerequisite for Serbia's EU accession?**

As Serbia is getting closer to the EU, the need for it to recognize the Kosovo reality becomes clearer. As long as current rules and procedures governing EU accessions remain in force, and consequently the EU retains its current character, recognition is *de facto* a precondition for Serbia's final EU accession. Nobody, least of all Serbian politicians, could have entertained any doubts, from the beginning of Serbia's steps on the path to EU membership, that recognition of Kosovo would be necessary before attaining membership. What is new now is that the time is approaching that Serbian leaders will have to admit that necessity publicly, to break the news to their people and convince them that it is in their interest to recognize the Kosovo reality.

It is unfortunate that many Serbian politicians have made things more difficult for themselves, and for their country, by constantly and consistently claiming over many years that they would under no circumstances recognize Kosovo; even more importantly, they have been assuring their audiences that recognition would not be a prerequisite for EU membership; and that, at any rate, if

presented with a choice between the EU without Kosovo, on one hand, and Kosovo without the EU, on the other, they would opt for the second. (By the way, nobody has presented them, or will present them in the future, with such a dilemma. EU membership for Serbia without Kosovo is an option, the reverse is not: nobody can “offer”, or pretend to “offer”, Kosovo to Serbia, with or without EU membership!)

Admittedly, not all Serbian politicians have said the above all the time, but it is a fact that the above claims have been made by all main actors of the Serbian political class. Only recently, a prominent member of the current government was widely quoted in the media as saying that those in the West who believe that Serbia will recognize Kosovo believe in a fairytale.

A few remarks would be in order here in support of the idea that those who believe that Serbia can join the EU without coming to terms with the Kosovo reality are indeed those who are prone to believe in fairytales. As a matter of procedure, a new member's accession treaty must be ratified by all EU member states, in accordance with their respective national constitutional requirements. Unanimity is the rule on this. As things stand now, with 22 out of 27 EU member states (UK not counted) having recognized Kosovo, is it realistic to expect that all those 22 member states will ratify a treaty with a country which claims as part of its own territory an area that they have already formally recognized as an independent state?

Is it conceivable that Serbia could overcome that hurdle by simply amending its constitution and eliminating the provision that Kosovo and Metohija is an integral part of Serbia's territory? That would possibly overcome the strictly legal problem for the short term, but it would still be a fact that Serbia would be a country with an unresolved border problem with a neighbor.

Could the case of the two German states co-existing in the UN without mutual recognition provide some technical/procedural guidance for dealing with the problem? I'm afraid, not much! When it comes to the UN, a universal organization, Kosovo could conceivably get membership without Serbia's recognizing it; all that would take would be for Serbia to nod to Russia and China (and possibly to other, non-permanent, members of the UNSC) to not block the procedure. After that, it could totally ignore the new member, and certainly Serbia and Kosovo would not be the only pair in the UN without mutual recognitions and bilateral relations. As a universal organization the UN has room for practically every state, and its members do not have to cooperate with one another.

However, the EU is not a universal organization, it's a union of states joined together not only by geography, but also – and most importantly – by shared principles and values, and by a common will to achieve an ever closer union, to such an extent that they become practically provinces of the same state. I consider it highly unrealistic to expect that Serbia's begrudging acceptance of Kosovo's UN membership on hostile terms would be accepted by the EU as a model of inter-state relations applicable to its own member states. To sum up: in the UN, Serbia and Kosovo can co-exist without mutual recognition; in the EU, in its current legal and institutional setup, they cannot co-exist without mutual recognition.

Here may also be the place for some clarifications on the situation of the **five EU member states that have not recognized Kosovo** (Cyprus, Greece, Romania, Slovakia, Spain) and address the argument made often, especially by Serbian politicians, that the EU has no right to set Kosovo's recognition as a precondition for Serbia's accession considering that some of its own members have not done so either.

The first remark I would make is that, for as long as the EU's current legal and institutional setup remains valid, the five non-recognizers should be expected to recognize Kosovo. The reason for that is this: those five have constantly subscribed to EU statements to the effect that all six Western Balkan countries (WB6) have a European future, that is, they are expected to join the EU once they have fulfilled the membership criteria. Some of the five have explicitly used the same terminology, that is, the same clear promise, in their own national statements on the issue. Therefore, the promise of an EU future has been given to Kosovo (one of the WB6) by all EU member states, recognizers and non-recognizers, albeit with various degrees of clarity.

I would submit all EU member states take their promises seriously, and I would also submit that they all realize that they cannot admit as a new member an entity that they do not recognize as a state. Therefore, recognition of Kosovo prior to its EU accession is implicit in all promises of EU membership given to it. Unless, of course, one chooses to argue that the promise of EU membership for Kosovo, when made by an EU non-recognizer, means that Kosovo will enter the EU as a Serbian province. That would be a highly unlikely scenario, recent developments in the context of the EU Western Balkans enlargement strategy notwithstanding. I will be coming back to this in light of recent developments.

One could also argue that EU member states will have no problem going back on their word. Here, I'm afraid one could not be sure such assessment has no foundation in reality. What is at stake is not the credibility of the EU as such, but the credibility of each individual member state; and the record on this is clearly not bright. We'll have to return to this issue in the concluding remarks of this paper.

Another remark that would be useful here is that the EU is always very careful in its public statements, and with regard to Kosovo it never goes beyond positions accepted by all member states, recognizers and non-recognizers. Therefore, yes indeed, given that five of its own members have not recognized Kosovo, the EU cannot directly ask a third country to do so (if you see a courtesy aspect to this, the courtesy is not toward the third country, but toward its own members). But, as noted above, in light of unfortunate past experiences, the EU is determined not to accept new members with unresolved issues with their neighbors, especially issues concerning borders. That's why the message of the EU to the Serbian President, as he himself reported it in the media, on 23.01.2018, was that "the EU will not allow us to join without having resolved border issues. How we solve it, that's another issue".

The statement is clear: the EU sets as a precondition for Serbia's EU membership the resolution of the country's border issues with its neighbors, in particular the issue of its border with Kosovo (what

Serbian political correctness insists on calling an “administrative border”). But it does not tell Serbia how to do it.

Is there any doubt that all this talk about settling border issues with neighbors is but a euphemism for recognizing Kosovo? The Serbian President leaves no doubt that he has deciphered the euphemism (given his manifest determination to address the issue, I would think he himself could very well be the author of the euphemism in order to make the precondition more palatable to the people).

Another ambiguity that needs to be cleared is the fact that EU officials and leaders of EU member states are often quoted as publicly reassuring Serb politicians that Kosovo recognition is not a precondition for Serbia's rapprochement to the EU. Serb politicians mention such statements to placate their citizens and taunt Kosovars (and, bizarrely enough, they even taunt EU officials, as evidenced by the statement on fairytales mentioned above). Careful listeners and careful readers must have not missed that this talk relates to the “rapprochement”, or “approximation”, “approach”, “start of, or conducting, accession negotiations”, or whatever other similar terminology is used. When it comes to acceding, or joining, things are certainly different. To put it bluntly: taking the road to the EU gate does not necessitate, nor does it presuppose, recognition; opening the gate and entering, does.

A final point by way of clearing ambiguities has to do with some aspects of the **relations between the EU and Kosovo**, aspects that should be clear, but seem to cause misunderstandings and confusion even today. It is to be recalled that in February 2008 the EU did not recognize Kosovo's newly declared independence, the reason being simply that recognition was, and is, a matter of individual states and not of the EU as an institution. However, it issued a statement clarifying that the case of Kosovo was unique, *sui generis*, and could not create a precedent, meaning that, in the eyes of the EU, the case of Kosovo could not be invoked to justify other secessionist/separatist moves.

It is interesting to note that voices criticizing that statement (sometimes in disparaging terms) came from countries opposing Kosovo's independence, countries that claimed that all secessions are illegal and no exception to that rule should be allowed. That some critics of the statement subsequently supported, or engineered, secessions elsewhere is not the point I am trying to make here. The point is simply that the EU has displayed admirable consistency in sticking to its position on the uniqueness of the Kosovo case whenever that position was put to the test. Some, who had chosen to see in the EU's position a case of duplicity, were shocked to see that the EU was serious about its position and acted in full compliance with it in **the case of Catalonia**. That some in the Serbian government openly accused the EU of using double standards by not recognizing (!) the independence of Catalonia is astonishing, as is also what they presented as the motivation for the use of double standards, namely that Spain is in the EU, whereas Serbia is not (!).

The point to retain here is that the handling of the Catalonia case by the EU must reassure the governments of Spain and of other non-recognizers who refuse to recognize Kosovo out of fear that if they did so they would somehow be obliged to condone potential separatist movements in

their own territories. The Catalonia case marks the demise of the argument of non-recognition of Kosovo out of that fear. Kosovo's independence remains *sui generis* and does not constitute a precedent in the eyes of the EU. It is high time governments fearing domestic separatist movements stopped using Kosovo as a kind of voodoo doll that they can prick and torture in the hope that they would thus harm their own separatists.

Continued invocation of the Catalonia issue by the government of Spain as the reason for not recognizing Kosovo and for objecting to Kosovo's EU membership is, in light of the EU's treatment of the two issues (Kosovo and Catalonia), a position that defies logic.

## Attempts at Clarity: Vucic calls a spade a spade

President Vucic deserves respect and admiration for having demonstrated the courage expected from a real leader when, in his messages to the Serbian people, he talked of the prospect of reaching a "historic agreement" with Albanians, which could go so far as to include a seat at the UN for Kosovo. He has on various occasions been adding more elements to his proposal, elements that seem to confirm that his initiative may well constitute the best chance to reach an understanding with his citizens and also with the Kosovo government and the international community to put an end to the uncertainties and peculiarities that keep bedeviling the state of Kosovo. Let's face it: that the Kosovo status has been settled does not mean that there are no pending issues that need to be fixed in order for Kosovo to become a normal state, a state like all other states, something that would greatly contribute to peace and stability in the region and to improving the lives of all people in the region

It is to be hoped that the President's courage and determination will be embraced by the Serbian people and matched by the leadership and the people of Kosovo. So far, it is unfortunately not surprising that his ideas have been met with scorn and denunciations on the part of the most nationalistic and conservative parts of the Serbian society. As for the Kosovo side, some reactions of Kosovo politicians in social media have been surprisingly negative and even rude, as if the President's constructive gesture had somehow spoiled their preconceived myths about Serbia's aggressivity. Let us hope they will see things more clearly.

I think one could do no better justice to President Vucic's recent statements about the dialogue on Kosovo than by reproducing some excerpts verbatim and without further comments, as published in Serbian media:

"If someone thinks that they can get everything, while the other side gets nothing - I think that's the wrong way and that will never lead to any solution." -- "Somebody has to show good will, understand that compromise means more than just expecting a format where you get everything." -- "It is up to us to try to talk and to reach a compromise, so I told Albanians: if you are saying it every day, and if some others in the world expect us to give everything, and in return get nothing, and that you get everything, and in return give nothing back - thank you and goodbye." -- "If you

are capable of doing that, we are ready to talk. If you say, 'Serbia must recognize Kosovo and that's that' - then thanks, goodbye." -- "This means not losing what we must not lose, and if you want to define it in this way, to lose only what we have to. I think that is something that is normal, rational." -- "I am a fan of not escaping solution and not keeping frozen conflicts. I want us not to have problems and not to inherit problems to our children. I know that no one wants to hear this, but this means looking towards the future with a responsible approach."

In his initial call for an internal dialogue, President Vucic spelled out what he called the fundamental principles that will guide the internal dialogue and determine the objectives sought by his country:

- (1) Serbia does not want to take from others whatever does not belong to her and it does not want to relinquish to others what belongs to her. A more recent variant of the same idea is that the Serbs should keep what they must keep and lose only what they have to.
- (2) It is of paramount importance that the Serbian religious and cultural heritage in Kosovo as well as the rights of the Serbian Orthodox Church and of the Serbian people in Kosovo, including in particular property rights, be fully protected and respected.

There can be no doubt that those principles are fair and conducive to a constructive outcome not only of the internal Serbian dialogue, but also of the Brussels dialogue. And they should form the basis of a historic agreement between Serbs and Albanians in Kosovo. They certainly deserve a serious and objective/ impartial analysis.

## **What belongs to Serbia – What belongs to Kosovo**

Starting with the first principle, I propose we leave aside the inevitable propaganda aspect of President Vucic's statement (it is axiomatic that when you – an individual or a state – want to take something that is in the hands of others, you present it as something that belonged to you in the first place and taken away from you) and treat it with the seriousness necessitated by the gravity of the issue. I propose to consider seriously and in good faith what belongs to Serbia and what belongs to Kosovo.

### **a. Kosovo's Statehood**

It is obvious that the dispute between the two sides centers on Kosovo's statehood. The most important "property" claimed by Kosovo and disputed by Serbia is statehood.

One should bear in mind that, in civil law, ownership of a commodity or property does not rest solely on the word, or the subjective belief, of the individual claimant. The latter must produce the necessary documentation and testimonies, such as transaction documents, contracts and the like, to support one's claim. And the last word belongs of course to a court of law, which will be called upon to determine the issue with a binding ruling.

The procedure followed to determine ownership in civil law is applicable *mutatis mutandis* in international law, in which the subjects are not individual persons, but state entities. Whether such an entity "owns" something – whatever that may be – does not depend on its own claim alone, but on the documentation such an entity produces to support its claim. The documentation in this case consists in transaction contracts with other state entities. And the last word belongs, as in the case of a civil-law dispute, to a court of law, which in the case of international law is none other than the International Court of Justice (ICJ), the highest judicial authority in the world, whose rulings command universal respect.

In the case of Kosovo, the reality we are faced with is that its claim to statehood is supported by a sizable "documentation", in the form of recognitions by a majority of states – a majority which certainly cannot be called "vast", but which is indisputable and, significantly, includes most of the members of a union of states that both Serbia and Kosovo aspire to become members of. In addition to the "documentation" supporting its statehood, Kosovo is also in possession of the second ownership requirement, that is, the ruling of a court of law. I refer of course to the advisory opinion issued by the ICJ on 22.07.2010 concerning the legality of Kosovo's declaration of independence, in which it was stated that the declaration of independence did not violate any applicable rule of international law.

**The ICJ advisory opinion on Kosovo's declaration of independence** is of such importance and constitutes such a determining factor of the issue that it should not surprise that a lot of efforts have been deployed by opponents of Kosovo's independence to downplay its importance or even to denigrate it. Some brief remarks are therefore in order at this point to address some of the criticisms and objections formulated against it.

Some people claim that the Court expressed just an opinion, it did not issue a decision or a verdict. An opinion is nothing more than what the word expresses, and is therefore of limited value. Well, an "advisory opinion" in the case of the ICJ is a technical term to describe its finding in response to a question addressed to it by a body authorized to do so, in this case the UN General Assembly. Calling it an "advisory opinion" does not reduce its value or validity. It is a final and conclusive decision.

Some people point out that the ICJ did not clearly say that Kosovo is a state. Yes, indeed, that is the case, because the prerogative of determining whether an entity claiming statehood is indeed a state belongs exclusively to states, which decide in their sovereign capacity whether to recognize an entity as a state or not. It should also be recalled that the ICJ was not asked to give an opinion on that issue (the question to the ICJ was drafted by Serbia).

Some people point out that the ICJ did not clearly say that the declaration of independence by Kosovo was legal; it only said that it was not illegal or, to quote the exact wording of the Court, "did not violate any applicable rule of international law". That is true, and the reason for that is that the ICJ could not formulate its finding in a way that would say that a declaration of independence is legal, as that would imply that the declaration complied with certain rules. But such rules do not exist, there are no rules governing declarations of independence. The only way to determine the legality of a declaration of independence is to examine the context in which it happened and see whether some specific rules or principles of international law were violated by it. If that is found to be the case, then you can say the declaration was illegal.

Of the few examples of illegal declarations of independence (illegal in the sense explained above) quoted by the Court in its Advisory Opinion) I will mention by way of illustration only two, which are readily understandable: (a) the Rhodesia unilateral declaration of independence (UDI) in 1965 violated international law in that it aimed to perpetuate the apartheid regime, which had been declared illegal under international law; (b) the UDI of the occupied northern part of Cyprus in 1983 violated international law in that it went counter to UN Security Council resolutions prescribing specific elements to be part of a settlement of the Cyprus problem, such as retaining a single international personality for the divided island. In the case of Kosovo, the most important document adopted by the UN, which is Security Council resolution 1244 (1999) does not prescribe the form, or elements thereof, the final settlement should take, therefore a declaration of independence was not excluded as a final settlement.

Note also that in both those cases of illegal UDIs (Rhodesia and northern Cyprus) the UNSC reacted immediately by declaring them illegal, and therefore null and void, something that – significantly – it did not do in the case of Kosovo's declaration. In conclusion, the question put to the Court was whether the declaration of independence by Kosovo was in conformity with international law, and the answer was that Kosovo's act did not violate international law, which does not contain rules governing declarations of independence.

When those who denounce the ICJ finding that Kosovo's declaration of independence "did not violate any applicable rule of international law" as biased and as politically motivated are asked to name any rule that in their opinion was violated by the declaration, their most frequent answer is: the rule of inviolability of the territorial integrity of states. Well, the ICJ addressed this question, it quoted the explicit prohibition of "the threat or use of force against the territorial integrity or political independence of any state" contained in the UN Charter and other relevant documents, and pointed out that the principle of territorial integrity is confined to the sphere of relations between states. To put it in layman terms, international law does not prohibit the disintegration of states, it prohibits the use, or the threat of use, of force by a state against the territorial integrity of another state.

**A note on UDI:** Some people persist in attaching to the declaration of independence of Kosovo the adjective "unilateral". It should be kept in mind that the term UDI harks back to the decolonization era, in which it properly belongs, and is meaningless, or misleading, when used in the case of Kosovo. Decolonization is practically over, as testified also by the practical demise of the UNGA

Decolonization Committee. I am aware there are people in Kosovo who like to portray the presence of Serbia in the territory that is today Kosovo as a case of colonization. There is no basis in history for such a narrative.

Today the term UDI is often used as a disparaging epithet to characterize Kosovo's independence, by people opposed to it. It is ironic that UDI is a term most favored in Serbian nationalistic rhetoric, that is, in circles which are for their own reasons the staunchest opponents of the Serbia-as-colonizer-of-Kosovo theory, a theory that is standard staple among the most extreme nationalistic Kosovo Albanian groups (Franz Fanon's iconic *The Wretched of the Earth* of 1961 is de rigeur reading material for Vetevendosije members).

Calling Kosovo's declaration of independence "unilateral" is also inaccurate in that it came at the end of a long process initiated by the UN with the close involvement of the international community, whose majority supported the declaration as the best possible way to settle the Kosovo problem.

Needless to say, using or not the term UDI should have nothing to do with accepting or rejecting Kosovo's independence. Countries that declare that they will not recognize Kosovo unless Serbia does so make a valid political statement, as they are absolutely entitled to do, and in no case could they be accused of considering Serbia to have colonized Kosovo, something that would constitute a major departure from historical reality.

In light of the above, the case for Kosovo's statehood can be considered thoroughly solid from a legal point of view, that is, from the point of view of international law. Kosovo's statehood can be safely included on the list of items that Serbia cannot claim in good faith, and in practical terms, to belong to her.

Having established that, one must not lose sight of the fact that each state gains its independence and its statehood in specific conditions, with the accompanying peculiarities and limitations. In addition, in today's interdependent world no state can claim full sovereignty and full independence from the surrounding world. That state of things applies even more in an environment of ever closer integration of states in larger alliances and political/economic unions of states. A prerequisite to becoming members of such unions is that states agree to relinquish part of their sovereignty, which they are willing to do in the knowledge that in return they gain security and prosperity for their people. The form of each state, including the size and shape of its territory as well as the conditions and limitations attached to their independence constitute the personality of the state.

Many of Kosovo's peculiarities stem from the fact that as a state it is the product of a secession from Serbia. Secessions of territories cannot be surgical operations that cut off all links, human, physical, geographical ones, between territories and countries. Just as Kosovo Albanians used to be a minority in the Serbian state, so today Kosovo Serbs constitute a minority in the Kosovar state.

## **b. Serbian Religious and Cultural Heritage (RCH) in Kosovo**

The most important peculiarity of Kosovo is that a very important part of its reality today consists in a cultural heritage that is as absolutely and as indisputably Serbian in character as can be. If it would be absurd to try and conceive of Kosovo without its ethnic Albanian citizens (today they constitute some 90% of its population), it would be equally absurd to try and conceive of it without accounting for, and paying tribute to, its Serbian population, the role the Serbs have played for centuries in shaping Kosovo's history and landscape, and the role Kosovo has played in shaping the Serbian national identity. The Serbs have had an indelible presence in Kosovo for centuries starting in early Middle Ages, they are today an indispensable part of the Kosovo reality, and they must be assured that their continued presence in the land of Kosovo is not questioned, let alone threatened.

Kosovo is rightfully a state. But at the same time it is the cradle of Serbian civilization, it is the ancestral home of the two ingredients, the national and the religious one, which together form the notion of Serbdom. That is a fact that cannot be altered and cannot be ignored. When it comes to Kosovo's statehood, one could argue in favor or against, and I for one would argue in favor. When it comes to the importance Kosovo has had in forging the Serbian national and religious identity, there can be no arguing. One can only take note of it. Some might express regret at the Serbian presence in Kosovo (a feeling that would be certainly a sign of a serious case of insecurity, to say the least, on the part of those expressing it), but nobody can deny it. Nor can anybody explain it in a way that would be tantamount to denying it.

These remarks lead us to the second principle the Serbian President has stated as part of the internal dialogue and the dialogue with Albanians, namely the need for protection of the Serbian religious and cultural heritage in Kosovo, the protection of the rights of the Serbian Orthodox Church and of the ethnic Serbs living in Kosovo, including in particular the property rights of the Church and of the Serbian citizens of Kosovo.

The international community that deployed efforts for the protection of Kosovo Albanians from the aggression of the Milosevic regime and subsequently for the consolidation of peace and stability in the territory took it upon itself to seek a settlement of the Kosovo problem, in consultation with all stakeholders, including in particular the Albanian and Serbian inhabitants of the land. The efforts of the international community resulted in a proposal, called a **"Comprehensive Proposal for the Kosovo Status Settlement" (CSP)**, also known as the **Ahtisaari Plan** from the name of the former President of Finland, who prepared it as Special Envoy of the UNSG. The CSP is a solid testimony to the importance the international community attaches to the protection of the Serbian religious and cultural heritage in Kosovo and of the rights of all non-Albanian communities, including those of the ethnic Serbian citizens of the new country.

It would not be inaccurate to describe the CSP as containing two parts of unequal length but equal weight, one part containing a single provision: independence for Kosovo; and another part containing dozens of provisions aimed at guaranteeing the rights and interests of all ethnic communities. Most importantly, the CSP spells out specific rights and privileges accorded to the

Serbian Orthodox Church and a series of concrete measures aimed to protect the Serbian religious and cultural heritage (RCH) in Kosovo.

The reason for the special treatment reserved for the Serbian RCH in the Ahtisaari Plan is manifold: it is, first, the recognition of the exceptional beauty and universal value of the Serbian RCH in Kosovo (four monuments of which are included on the UNESCO World Heritage List). Furthermore, it's the realization of the vulnerability of the heritage, especially in light of the massive destruction inflicted upon Serbian religious sites during the March 2004 anti-Serb riots in Kosovo. Also, the fact that it is Serbia's most important asset in Kosovo, its holy land and its "Jerusalem", as Serbs themselves say, makes it inevitable that it should be treated with all the reverence shown to religious sites; especially considering that in this case the sites in question are not museum relics, but living places of worship, inhabited by religious communities celebrating religious services on a daily basis and attracting great numbers of visitors from all over the world.

A most important element in the protection regime prescribed by the CSP and enshrined in Kosovo legislation is the establishment of **special protective zones (SPZ)** around a select number of Serbian Orthodox Church monasteries, churches, other religious sites, as well as historical and cultural sites of special significance for the Kosovo Serbs. The SPZs are aimed at safeguarding the sites under protection from any development or activity which could damage their historical, cultural, architectural or archeological context, natural environment or aesthetic visual setting. In practical terms this arrangement gives the Church the authority to manage areas beyond the legal perimeters of its properties.

To ensure implementation of the SPZ provisions a body was prescribed by the CSP and subsequently established by the Kosovo government called the **Implementation and Monitoring Council (IMC)**. In its current configuration, decreed in February 2013, the IMC is comprised of five members, including the Serbian Orthodox Church, two Kosovo government ministers and two members of the international community, that is, the EU Special Representative and the Head of the OSCE Mission in Kosovo. For about a year after its inception it worked very well, but subsequently it slowed down, especially at the time of Kosovo's UNESCO candidature, in the second half of 2015, after which it held one meeting and has now remained inactive for almost two years. The IMC is the single most important instrument for ensuring the Church's life in Kosovo. The fact that it is now inoperative is a telling reflection of the current state of the relations between the two sides.

It should become clear from the above that, when it comes to protecting the Serbian RCH in Kosovo, which President Vucic considers as the most important objective, along with the protection of Serbian citizens of Kosovo, to be included in a historic agreement with the Albanians, he can count on the universal and unequivocal support of the international community, which has already been the moving force for the recognition of a special status of the SOC and its heritage in the Kosovo legal framework.

In addition to the international support, the Kosovo state itself should be expected to readily embrace the Serbian objective, since it already has solemnly pledged to the international

community to do so. Indeed, at the most important and solemn moment of its history, the moment of the declaration of its independence, on 17.02.2008, Kosovo made a solemn pledge to the world that it would abide by the CSP provisions and fully implement them. Therefore, the commitment of the Kosovo state to respect and protect the Serbian RCH in Kosovo is one of its founding principles.

A brief assessment of the implementation of that solemn pledge, some 10 years later, would recognize some positive steps taken during the first few years as well as mounting difficulties, and growing concerns on the part of the Church, in more recent years.

Immediately after the declaration of independence, the CSP came into force under the supervision of countries which had recognized Kosovo's independence, and during that time the framework for the implementation of its provisions was set in place.

At the end of direct supervision of Kosovo's independence by the international community, in September 2012, the bulk of the CSP provisions were transposed into the legal framework of the state of Kosovo. Unfortunately, some crucial provisions concerning the rights of the Serbian Orthodox Church, including in particular the right of the Church to exercise full discretion in the management of its properties, were omitted in the transfer. Since then, the government of Kosovo has repeatedly promised to correct the omissions and to incorporate all CSP provisions concerning the SOC in new legislation. As of now, that promise remains to be fulfilled.

Over the last three to four years the situation of the Church within the Kosovo society took a turn for the worse. Its rights have been curtailed, not only those pertaining to its special status, accorded to it by the CSP, but even those rights protected in every rule-of-law state; it has repeatedly received threats which have not been investigated by the authorities; and has even been harassed by low- and middle-level authorities, which have gone unpunished. At the same time, the highest levels of government profess their support to the Church and their intentions to work in good faith for the solution of the problems and difficulties faced by it. In many instances the support given to the Church by the highest levels of the government is clearly sincere, but apparently unable to prevail in a social and political environment that is outright hostile to the Church. In other cases, the verbal support at the highest levels cannot be considered sincere.

A typical current example of the treatment the Church is subjected to is the continued refusal of the cadastral office in the town of Decan to implement a Constitutional Court decision recognizing ownership by the Church of 23 hectares of land around the Visoki Decani monastery, the Church's most important medieval site. That final and binding decision was issued in May 2016 after 16 years of litigation. The sigh of relief breathed by the friends of Kosovo and of the Serbian Orthodox Church upon the announcement of the Constitutional Court decision, seen as a clear sign that the rule of law and justice were at long last prevailing in Kosovo, was followed in rapid succession by the realization that a new protracted period of petty-minded harassment of the Church by the local authorities of Decan was just beginning. For almost two years now, the local cadastral officers have been refusing to introduce the necessary change into the records. Needless to say, respecting and implementing a final decision of the highest judicial authority is a rudimentary element of any rule-of-law state.

If the most prominent Serbian Orthodox institution in Kosovo is treated like that in a real-estate case, one can only imagine what individual ethnic Serbian citizens of Kosovo are up against, when it comes to safeguarding their properties. Especially those who left the country during the war and now attempt to return to their abandoned homes – as they are encouraged to do by the government of Kosovo itself at the highest level, as well as by the international community – only to be met by the active hostility of their local neighbors, who are misappropriating their houses and fields.

One of the most insidious assaults against the SOC takes the form of propaganda aiming at denying **the Serbian identity of the sites owned and used by the Church** since medieval times. Such nationalistic propaganda claims that the churches and monasteries were built by Albanians and were later usurped by Serbs (a simple visit to the sites and a simple look at all the art and the numerous inscriptions should suffice to lay to rest such “theories”). Of course, no shred of evidence has ever been produced.

Another variation of the same propaganda consists in the claim that the churches and monasteries were erected, in the Late Middle Ages, on top of ruins of older monuments that were Albanian, or “proto-Christian” (a term used in this context to imply the same thing with a touch of sophistication). Again, no evidence is produced, although, even if that were the case, it would alter neither the value nor the ethnic identity of the monuments we now have in Kosovo. That attitude is widespread even in intellectual circles and within the Kosovo government. Most ministers and civil servants refuse to mention “Serbian Orthodox Church” and use instead the name “Orthodox, or Christian Orthodox, Church”. A high level expert at the Ministry of Culture felt it would be politically correct in a recent public interview to mention “the Christian Orthodox facilities that Serbs say belong to them”.

An account of the relations between the Church and Kosovo Albanians would remain incomplete if no mention were made of the damage caused to those relations by the attitude the Church adopted toward the Kosovo bid for UNESCO membership, a bid that failed in a November 2015 vote of the international body's General Conference. The Church chose not to see Kosovo's aspiration as an opportunity for it to present its concerns and seek to safeguard its interests in the event of Kosovo's membership, but joined in full force the Serbian government's fierce campaign against Kosovo's candidature, a campaign that had all the signs of a vindictive attack against its former province which had dared to declare independence. What hurt the most for all Kosovo Albanians, especially the most moderate and most open-minded ones, was the repeated assertion that voting for Kosovo was tantamount to voting for ISIS jihadists.

## Clarity: Elements of a historic agreement

The above analysis of the two main themes set by President Vucic as the guiding principles of the internal dialogue and obviously as the main objectives of the envisaged “historic agreement” between Serbs and Albanians leads to the following conclusions:

In the first theme, that is, the position that Serbia does not want to take from others what does not belong to her, and also does not want to surrender to others what belongs to her, the point of contention is clearly Kosovo's claim to statehood. Through the preceding analysis I am led to the conclusion that there is no reasonable doubt that Kosovo's claim is solid. Kosovo's statehood is a property that does not belong to Serbia, therefore the latter should, in accordance to the principle set by the President, concede it to its neighbor.

But if Kosovo's statehood is both *de jure* and *de facto* solid and irreversible, it still remains incomplete since the country is still excluded from the UN and from numerous international organizations, and still lacks the recognition of a big number of countries. Statehood will remain a property of limited use for Kosovo for as long as it is not a full-fledged state. For Kosovo to come out of this deadlock, Serbia's cooperation is indispensable. In this respect, Serbia has something that Kosovo definitely needs.

With regard to the second theme, there is no doubt that the Serbian religious and cultural heritage in Kosovo should be recognized as what it is, the unquestionable property of the Serbian Orthodox Church. In terms of President Vucic's scheme, this is the property par excellence that the Serbs cannot relinquish to others.

But, just as statehood belongs to Kosovo, yet remains incomplete without the cooperation of Serbia, so also does Serbian religious and cultural heritage in Kosovo remain vulnerable without Kosovo's unshakable commitment to respect and protect it. Kosovo too has something Serbia needs.

So, now we have the two main elements that would constitute each side's *quid pro quo* in an honest and historic agreement between Serbs and Albanians concerning Kosovo: Serbia recognizes Kosovo's statehood and accepts all obligations incumbent on it on account of such recognition, now and in the future. Kosovo recognizes that the Serbian religious and cultural heritage in its territory belongs to the Serbian Orthodox Church, acknowledges and enshrines in its legal framework and constitutional order the exceptionality of such heritage and offers ironclad guarantees that it will live by its obligations in this respect.

Of course this is only an outline of the agreement, the myriad specific details of which will have to be worked out by the parties and the international facilitators, that is, the European Union. Without going into details here, I would only like to elucidate some aspects of the proposal:

Concerning the Serbian heritage, the agreement should provide its full protection, defined in clear and unambiguous terms, and the Kosovo state must convince the other side and the international community of its unconditional acceptance of the **exceptionalism of the Serbian heritage** within its legal framework. Also, the experience gained in this field in the ten years since independence should be used to remedy deficiencies in current legislation, including deficiencies in the CSP itself. The Serbian Orthodox Church should be made to feel comfortable that its rights are respected and its presence in Kosovo is seen as something natural, not as a burden that is constantly resented and resisted by the authorities and the people.

Also it would be important to make clear that my proposal should in no way be construed as implying any kind of extraterritorial status for the Serbian sites in Kosovo. The current protection regime based on special protective zones around Serbian sites provides better protection to the sites and fully respects the sovereignty of the Kosovo state. Extraterritoriality would undeniably be detrimental to both sides; it was rightly ruled out as an idea during the Vienna negotiations that led to the CSP, and should be excluded from the debate now as well.

In the field of cultural heritage we should recall that the CSP also spells out the obligation of Serbia to return the archeological and ethnological exhibits which were taken on loan from the Museum of Kosovo for temporary exhibition in Belgrade in 1998-1999, provision that is usually – and unfairly – lost in the debates on protection of cultural heritage, much to the justified dismay of Kosovo Albanians. The envisaged agreement should resolve this issue.

Also, with reference to President Vucic's second theme of the dialogue, I only discussed the religious and cultural heritage aspect of Serbia's current presence in Kosovo and left out the need for protection of Serbian citizens of Kosovo. The reason for that is the obvious one: the safety and protection of all its citizens, regardless of ethnicity, religion or other characteristics, is a fundamental and self-evident obligation of every rule-of-law state, therefore no special mention is needed here. The CSP provisions and agreements reached in the Brussels dialogue should cover the issue, striking a balance among the unity of society, the functionality of the state and respect for individual rights.

Being fully aware of the deeply felt emotions, the prejudices and the irrationality with which people on both sides approach each other, I think it would be appropriate here to try and appeal to reason, addressing – with good will, in spite of terms that would sound harsh – those people on each side who have been resisting the inherent value of mutual respect and the obvious benefits of an agreement based on such respect.

**Questions to Serbs:** If what makes Kosovo so important to you is the presence of some of your most valuable religious and cultural sites within its borders, as is widely accepted to be the case, then, if

you could keep them fully and with ironclad legal guarantees, why would you not let go of a territory which you already do not have anyway? Can you discern any profound meaning in statements addressed to Kosovo Albanians to the effect that they should keep in mind that, no matter what, the land on which they live, the land they cultivate and extract a living from, is in fact a Serbian land? I would add that to a layman like myself, the otherworldly beauty of the Serbian religious and cultural heritage in Kosovo is more readily associated with the idea of heavenly kingdom, whereas the land outside the Serbian sites points more easily to what could be described as the earthly kingdom. The Serbian prince who was immortalized by the battle of Kosovo chose the former over the latter.

To some Serbian politicians: what profit do you expect from mounting expensive campaigns aiming to humiliate Kosovo Albanians, to prevent them from joining international organizations, to engineer revocations of recognitions of their independence? Do you expect to cause the collapse of the state of Kosovo? And do you think that a collapse would be conducive to peace and stability in the region, and would also be good for Serbia? Do you expect that the day will come when Kosovo Albanians would renounce their independence and seek acceptance and forgiveness in Serbia? What would be your reaction to that? What is your strategy, your ultimate objective in all this campaign? Is there something to it more than a childish display of *inat*? Such bizarre behavior is in sharp contrast with the dignified and responsible stance of the President of Serbia.

**Questions to Kosovars:** If you can secure and guarantee your most important property, your statehood, why would you want to claim ownership of something that the rest of the world and all serious scholars know well does not belong to you and you never owned; something whose rightful owners have been using for centuries and wish to continue using and taking care of without burdening you and your statehood? Furthermore, the above proposal does not ask you to assume additional obligations or to give the other side something new, since you have already pledged to respect and protect the Serbian Orthodox heritage. So, all that is required of you is to keep your word. For a nation that has given its neighbors the word *besa*, that should not be an unreasonable demand, or an impossible task.

The "shared humanitarian values" that President Thaci invoked in a recent editorial as the enablers of Kosovo's statehood now demand of the state which is their "product" (President Thaci's word) to respect and protect the Serbian religious and cultural heritage as well as the rights of the non-majority communities in it. It's an obligation the state of Kosovo owes to its enablers, especially considering that the Serbian cultural heritage has itself greatly contributed to the formation of those universally shared humanitarian values (*teste* UNESCO's World Heritage List).

To those Kosovo Albanian officials and academics who insist on denying the Serbian identity of the Serbian Orthodox churches and sites and try to misappropriate them as Albanian possessions, the question is: what do you expect to gain beyond the scorn and ridicule of international academia? What kind of pleasure would you derive from putting yourselves in a position of deciding, say, the color to be applied on the walls of a medieval church in a remote Serbian monastery you barely see and never use? Do you find it objectionable that such decisions should be made by the

Serbian Orthodox monastic community that has owned the monasteries for centuries, still owns them and is using them today on a daily basis, and certainly has the necessary expertise?

## Final Remarks and Caveats

The adoption on 6 February 2018 of the EU Enlargement Strategy in the Western Balkans is the most important recent development in the region, as it comes to end years of uncertainty for the WB6 by opening for them “a historic window of opportunity to firmly and unequivocally bind their future to the European Union”.

Without attempting to fully analyze the text of the Strategy, I think it would be useful to briefly point out two elements in it which are directly relevant to the issues I have tried to investigate in this paper. Those elements confirm, I believe, the main ideas put forth here and add a sense of urgency for the parties involved to make the necessary moves to benefit from the opportunity open to them, and also sound the alarm about more difficulties and pitfalls to be expected on Kosovo's – and therefore also Serbia's – path to the EU.

The key message of the EU Strategy to Serbia and to Kosovo is this: “Without effective and comprehensive normalization of Belgrade-Pristina relations through the EU-facilitated Dialogue there cannot be lasting stability in the region. **A comprehensive, legally binding normalization agreement is urgent and crucial so that Serbia and Kosovo can advance on their respective European paths.**” This carefully worded paragraph sums up the current situation of Serbia and Kosovo both in relation to each other and in relation to the EU. Constructive ambiguity and encouraging glimpses of clarity ahead are admirably balanced here.

Some brief remarks: The formula “Belgrade-Pristina” is retained so as to appease Serbia's supporters in the EU. The word “recognition” is absent of course, but the words used as its substitute could not be clearer: the normalization of relations must be “effective” and “comprehensive” consummated by a “legally binding agreement”. And of course, without that agreement Serbia and Kosovo cannot advance “on their respective European paths” (the ambiguity of this phrase relates only to Kosovo. When it comes to Serbia, there is no need for ambiguity: we are talking of EU membership).

The question is: what is going to be in the legally binding agreement? and, directly linked with it: who will decide the content of the agreement? A first answer was given by Commissioner Hahn in Belgrade on 8 February, when he stated that “The paper [of the agreement] is completely empty” and that the EU “has no solution prepared in advance” but, instead, “everything depends on the outcome of the (Belgrade-Pristina) dialogue.” When asked at the same press conference whether the agreement demanded by the EU would mean “recognition,” he answered that “there are many possibilities for a solution and it is too early to speak about a concrete one.”

If we were to translate these statements out of their ambiguity, we could say that the contents of the agreement will have to be agreed by the two participants in the dialogue, Serbia and (significantly) Kosovo. Without the two agreeing on a legally binding document, neither can

advance toward the EU. The question is: will Kosovo accept to sign an agreement that would not satisfy its most important desideratum, recognition of its statehood? The obvious answer to that question points to the fact that the EU paths of the two countries are inextricably intertwined. Serbia's road to the EU passes through Pristina no less than Kosovo's road does through Belgrade.

President Vucic's sober reflections on the Strategy make it clear that he has taken in the full measure of the tasks in front of his country. Some excerpts from his statements at a joint press conference with commissioner Hahn in Belgrade on 7 February, as reported in the media, are particularly telling: While pointing out that "the EU strategy opens up a window of hope and chances" he added that "mountains of obstacles stand in front of Serbia in negotiations with the European Union - this is primarily the issue of Kosovo, but also of the borders with Bosnia-Herzegovina and Croatia." "Are these easy obstacles for us? They are not, they are like the Himalayas, but we would not be the first to have climbed Mount Everest," he said, adding that "as a society, we can let time pass or try to solve the problems and, after that, have Serbia really join the EU in 2025." Any comment on my part, at this stage, would be superfluous.

The circumstances surrounding the preparation of the EU WB6 Strategy should sound the alarm about the distinct possibility of additional hurdles ahead, which could not only have an adverse impact on the prospects of the targeted country, Kosovo, but also affect the process of the region as a whole. I am referring to the reports in the media according to which Spain insisted (sadly supported by another non-recognizing member state) that Kosovo should not be considered as a state and could only be admitted in the EU as part of Serbia.

The compromise adopted in light of Spain's position was the phrase we see repeated in the text of the Strategy like an awkward mantra: "Kosovo has an opportunity for sustainable progress through implementation of the Stabilisation and Association Agreement and to advance on its European path once objective circumstances allow. Kosovo will also benefit considerably from a definitive normalisation agreement with Serbia". That is practically all there is in the Strategy with regard to Kosovo. The government and the media in Pristina complained of course that the Strategy gives Kosovo too little, certainly much less than to other states in the region, but the fact remains the Strategy position on Kosovo is a realistic one. At the same time, it is not as bad as it was perceived in Pristina, if the above interpretation of the requirement that Serbia and Kosovo must both decide the content of their legally binding agreement is correct.

That should not distract us though from the real and worrisome problem created by the Spanish position on Kosovo, a position that I described earlier in this paper as defying logic. Indeed, using Kosovo as a voodoo doll which is tormented in order for Catalan separatists to be harmed, which amounts to introducing black-magic tactics into international relations, is absurd (and did not work in this case, since the Catalan separatists did go ahead with their plans, and their efforts were blocked by, among other factors, the EU's pragmatic, as opposed to magical, position). Equally absurd is the apparent upending of the roles in playing the argument-from-precedent game. The rule is that the argument from precedent is usually invoked by the "perpetrator" (others did it, why couldn't we do it? – an argument used in, among other cases, the annexation of Crimea). Seeing now the same argument invoked by an intended but rescued

“victim” marks an upending of roles and makes for a rather bizarre sight. Especially, when the argument is invoked against the interests of those who played a decisive role in protecting the intended victim

The Spanish incident is peculiar in that it was largely unexpected from a country outside our immediate region. We were more likely to expect such attitudes in the Balkans, where recent developments have come to add to experience accumulated over the years which points to the fact that the extremely poor credibility of governments and politicians within countries has now spilled over to inter-state relations as well. Incidents of countries refusing to ratify or to abide by agreements with neighbors once they have pocketed the benefits deriving from such agreements, or of efforts to abrogate laws adopted in implementation of international obligations, etc, are both numerous and familiar enough in the region to need further elaboration here. They are simply a fact of life that one can ignore at one's peril.

Keeping that fundamental truth in mind is particularly topical, and crucial, now as we talk about historical agreements and deals among counties in the region, under the auspices of the EU. The latter must exercise utmost caution, as it will be called upon to clear the mess of agreements falling apart. It is reassuring to see that the EU appears to have learnt the lessons of past oversights, as evidenced by the solemn message in the WB6 enlargement Strategy that “it cannot and will not import bilateral disputes” and that its enlargement policy must continue to export stability.

Concerning in particular the Serbia-Kosovo dialogue and the historic agreement that will hopefully ensue, my humble but insistent advice to both sides and to the EU is that they strictly follow the trust-but-verify principle every step of the way. Every agreement should be written down in minute detail. All i's should be dotted and all t's crossed in the final deal, before it is signed. And its implementation should be meticulously verified before the next step is taken. No country without exception can be absolutely trusted to live by its most formal and legally binding obligations.

One detail that in my humble opinion requires particular attention is this: If current indicators of each candidate state's proximity to EU accession are borne out in the future, the current “frontrunner”, Serbia, stands a good chance of being the first one to join the EU, whereas Kosovo will probably be last. Therefore, the challenge for the EU will soon be to find a way to ensure with absolute certainty that Serbia will not be in a position to block Kosovo's accession once the latter is deemed ready for it. My bringing this up now should only be seen as a case of strict compliance with the trust-but-verify principle, which I have just advocated, and should not be construed as my passing judgment on anybody's trustworthiness. It is also a reflection of the fact that, as experience – older but also recent – has shown, the moment a country becomes a member of the EU, it undergoes a profound transformation, as the carrot of EU membership has been consumed and in practical terms the EU has lost most of the means at its disposal to force a country to keep its promises and act like a state embracing all the values and principles that define the EU.