



A LEGITIMACY QUESTION IN THE EUROPEAN UNION: THE KOSOVO NON-RECOGNITION QUAGMIRE

AVRUPA BİRLİĞİ'NDE BİR MEŞRUIYET SORUNU: KOSOVA'NIN TANINMAMA ÇIKMAZI

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ABSTRACT

Kosovo, the latest breakaway territory in the Balkan region, declared its independence from Serbia on February 17, 2008 despite the international community's split over this decision. The European Union noted Kosovo's declaration of independence on 18 February and allowed the member states to decide whether to recognise Kosovo. However, there is intransigence among European Union countries in that five member states – Cyprus (the Greek Cypriot Administration of Southern Cyprus), Greece, Romania, Slovakia, and Spain – refused to recognise Kosovo's independence for various reasons. Due to this quagmire in the European Union, Kosovo is far away from its membership perspective. This situation has prevented Kosovo from having positive relations with the European Union and has been endangering the possibility of accession.

In this study, the role of the European Union in the process leading to the independence of Kosovo and in the post-independence period is discussed, and the main arguments of the European Union countries that do not recognize Kosovo after the declaration of independence are discussed. The first part of the study

ÖZET

Uluslararası toplum bağımsızlığının tanınması noktasında kararsız olmasına rağmen, Kosova, 17 Şubat 2008 tarihinde bağımsızlığını ilan etmiş ve Sırbistan'dan ayrılmıştır.

Avrupa Birliği ise 18 Şubat tarihinde Kosova'nın bağımsızlık bildiğini not etmiş ve üye ülkeleri Kosova'yı tanıyıp tanınamama konusunda serbest bırakmıştır. Ancak Güney Kıbrıs Rum Yönetimi, Yunanistan, Romanya, Slovakya ve İspanya gibi beş Avrupa Birliği ülkesi muhtelif nedenlerle Kosova'nın bağımsızlığını tanımayarak Avrupa Birliği içerisinde bir kördüğümüne sebebiyet vermişlerdir. Avrupa Birliği'ndeki bu kördüğüm yüzünden Kosova, üyelik perspektifinden uzaktır. Bu durum Kosova'nın Avrupa Birliği ile iyi ilişkiler geliştirmesine engel olmakta, Kosova'nın Birliğe muhtemel katılım sürecini tehlikeye atmaktadır.

Bu çalışmada Kosova'nın bağımsızlığına giden süreçte ve bağımsızlık sonrası dönemde Avrupa Birliği'nin rolü ele alınmakta, bağımsızlık ilanından sonra Kosova'yı tanımayan Avrupa Birliği ülkelerinin temel argümanları tartışılmaktadır. Çalışmanın ilk kısmında Kosova'nın bağımsızlığı sürecinde Avrupa Birliği'nin rolü ele alınmıştır. İkinci kısımda, 2008 yılından son-

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sheds light on the role of the European Union in the process of Kosovo's independence. In the second part, Kosovo-European Union relations after 2008, and in the last part, the reasons of these five Union countries not recognizing Kosovo are discussed.

The article concludes that the fact that Kosovo was not recognised by all European Union countries indicates that unity of action has not been established within the Union, which could jeopardize Kosovo's possible accession process, and recommends that the European Union should play a more active role in Kosovo's recognition.

Keywords: Kosovo, European Union, EULEX, UNSCR 1244, Recognition

ra Kosova-Avrupa Birliđi iliřkileri, son kısımda ise bu beř Birlik ülkesinin Kosova'yı tanımama sebepleri üzerinde durulmuřtur.

Makalede, Kosova'nın tüm Avrupa Birliđi ülkeleri tarafından tanınmamıř olmasının Birlik iđerisinde eylem birliđinin tesis edilmediđine iřaret ettiđi ve Kosova'nın muhtemel üyelik sürecine zarar verebileceđi sonucuna ulařılmıř, Avrupa Birliđi'nin Kosova'nın bađımsızlıđının tanınması sürecinde daha aktif rol oynaması gerektiđi tavsiye edilmiřtir.

Anahtar Kelimeler: Kosova, Avrupa Birliđi, EULEX, UNSCR 1244, Tanınma

1. Introduction

Following the disintegration of socialist Yugoslavia¹ in 1991, four separate wars arose in the region at different times. The Slovenian War of Independence in 1991 was followed by conflict in Croatia (1991-1995), Bosnia (1992-1995), and Kosovo (1998-1999), all of which occurred even though the international community had been engaged in the region for more than a decade. These wars were sparked by dilemmas regarding how to respond to the legitimate desires of the Serbs and Albanians, whose ethnic borders spanned political borders, and the status of Kosovo, where the history and politics of these two ethnic groups had intersected violently.²

Since NATO's bombing of Yugoslavia in 1999, which ended Serbian rule over Kosovo, the latter has been the aim of an internationally-led state building project. The United Nations Interim Administration Mission in Kosovo (UNMIK) intervened in and contributed to the establishment and institutional operation of Kosovo's state infrastructure. UNMIK then multiplied its state-building activities and promoted bilateral and multilateral relations with regional and international organisations such as the Organisation for Security and Cooperation in Europe (OSCE) and the European Union (EU).³ The EU has become the most important actor involved in reconstruction efforts in Kosovo since the United Nations Security Council's 1244 resolution in 2000. Afterwards, Kosovo was turned into a protectorate under the United Nations (UN), NATO, and the EU. The EU took control over Kosovo when the European Union Rule of Law Mission in Kosovo (EULEX) replaced the UNMIK in 2008.⁴

International involvement in peace-making efforts between Kosovo Albanians and Serbs failed to satisfy either group, as Kosovo Albanians wanted immediate independence, and Serbs wanted the return of Kosovo's territory to Serbia.⁵ Kosovo is thought to have a significant place in the EU's foreign and security policy and the international community due to its function as a testing ground,

1 Yugoslavia consisted of Bosnia, Croatia, Macedonia, Montenegro, Serbia, and Slovenia. Former Yugoslavia refers to state under various names from 1918 to 1991. Serbia and Montenegro comprised the latest Yugoslav Federal State, which was formed in 1992 by Slobodan Milošević. In this article, "former Yugoslavia" refers to the entity of the state between 1918 and 1991.

2 Louis Sell, "The Key to Balkan Stability", *Problems of Post-Communism*, 49:1, (2002), pp. 12-17.

3 Katarina Tadić and Arolda Elbasani, "State-Building and Patronage Networks: How Political Parties Embezzled the Bureaucracy in Post-War Kosovo", *Southeast European and Black Sea Studies*, 18:2, (2020), pp. 185-202

4 Igor Štiks, "The European Union and citizenship regimes in the Western Balkans", ed. Jacques Rupnik, *The Western Balkans and the EU: The Hour of Europe*, Paris, Institute for Security Studies, (2011), pp. 123-134.

5 Gezim Visoka and John Doyle, "Neo-Functional Peace: The European Union Way of Resolving Conflicts", *Journal of Common Market Studies*, Volume 54/4, (2016), pp. 862-877.

connoting whether the lessons of the wars in Croatia and Bosnia had been learnt.⁶ The EU aimed to show its interest by serving a pivotal function in Kosovo, particularly after UNMIK had turned over responsibilities in the police, the customs authority, and the judiciary areas to EULEX in 2008.⁷ Then, the EU invested in Kosovo to build up state capacity and resolve the conflict between Kosovo's government and Serbian authorities via political, legal, and economic means.⁸ Later on, the EU represented its will to contribute to the economic and political development of Kosovo via a European perspective, launching the visa liberalisation dialogue and the Stabilisation and Association Agreement (SAA).

Before independence, Kosovo was included in the Stabilisation and Association Process (SAP) in 2006 and offered a European perspective on the condition that it met the European criteria. Kosovo's declaration of independence from Serbia was enacted on February, 17 2008. While the newly independent Republic of Kosovo was quickly recognised by the United States (US), Turkey, Canada, Japan, and other key Western states, it was strongly rejected by Russia and China.⁹ The International Monetary Fund (IMF) and the World Bank also recognised Kosovo as an independent state. As of 1 January 2020, 97 out of 193 United Nations Member States and 26 out of 30 NATO Member States had recognised Kosovo's sovereignty. In the EU, five countries – Cyprus¹⁰, Greece, Romania, Slovakia and Spain – have not recognised Kosovo since 2008 even though the International Court of Justice¹¹ (ICJ) has declared the legitimacy of the independence process and the EU has established institutional ties since the declaration. Kosovo was provided the opportunity to adopt its national laws and regulations in accordance with the EU and opened a diplomatic agency in Brussels since then.¹²

6 Simon Duke, Hans-Georg Ehrhart and Karadi, Matthias, "The major European allies: France, Germany, and the United Kingdom", ed. Albrecht Schnabel and Ramesh Thakur, *Kosovo and the challenge of humanitarian intervention: Selective indignation, collective action, and international citizenship*, New York, United Nations University, 2000, pp. 128-148.

7 EULEX, "About Eulex", 03.12.2009, <https://www.eulex-kosovo.eu/?id=2>, Accessed: 9.05.2020

8 Fatma Aslı Kelkitli, "An Assessment of the European Union's Impact on Resolution of the Kosovo Impasse", *Ankara Avrupa Çalışmaları Dergisi*, 17/1, (2018), pp. 33-59

9 James Ker-Lindsay and Ioannis Armakolas, "Kosovo, EU Member States and the Recognition-Engagement Nexus", ed. Ioannis Armakolas and James Ker-Lindsay, *The Politics and Engagement, New Perspectives on South-East Europe*, (2020), pp. 1-18.

10 The Republic of Cyprus is a de facto Greek Cypriot Administration in the southern part of Cyprus. Thus, the name the Greek Cypriot Administration of Southern Cyprus (GCASC) is used in the study.

11 International Court of Justice, Advisory Opinion of 22 July 2010 on Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, No: 141.

12 Bülent Sarper Ağır, Murat Necip Arman and Ekrem Yaşar Akçay, "The Peace-Building Efforts of the European Union in the Western Balkans: The Case of Macedonia and Kosovo", *Sosyal Bilimler Enstitüsü Dergisi*, 21:2, (2019), pp. 517-531.

A good number of countries has recognised Kosovo's independence; however, some other countries – led by Serbia, Russia, and China and EU countries GCASC, Greece, Romania, Slovakia, and Spain – have not yet recognised the independence of Kosovo for several reasons. In the EU, GCASC and Romania reacted harshly to Kosovo's independence. Slovakia, Greece, and Spain were uncomfortable with Kosovo's independence. A negative attitude exists among these countries towards Kosovo's declaration of independence as Southern Cyprus believes that the case of Kosovo could set a precedent for the Turkish Republic of Northern Cyprus (TRNC)¹³, Greece believes that it could be an example for both the Albanian minority in its country and for TRNC, Spain believes that it might pave the way for the independence of the Catalonia and Basque regions, and Romania and Slovakia could face a threat of independence in regions of their countries where Hungarians constitute the majority. The EU, as a supranational entity, refers to Kosovo with a footnote containing a text approved by the Belgrade-Pristina negotiations which are designated without prejudice to the United Nations Security Council Resolution 1244 (1999) and the International Court of Justice Opinion on Kosovo's Declaration of Independence.

Non-recognition of Kosovo by these five EU countries caused the development of a unidimensional relationship between Pristina and Brussels and prevented the effective exercise of relations with European countries. However, as stated by the European Commission, the situation regarding the status of Kosovo could not prevent the EU as an entity from developing a relationship with Kosovo. This is why the SAA between the EU and Kosovo was signed on October 27, 2015, letting the EU avoid the veto of the five opposed EU states.¹⁴

In the last twenty years, Kosovo has been a significant issue for scholars engaged in research activities on topics such as the Balkans, post-communism, humanitarian interventions, and state recognition. Concordantly, various books and articles analysing humanitarian interventions in Kosovo, state-building efforts, and the role of the UN in Kosovo's independence have been produced; however, much less attention has been devoted to the non-recognition of Kosovo within the EU context. This study enables us to discover the EU's position in the independence process of Kosovo and elaborate on the question of Kosovo's legitimacy due to its non-recognition by five EU member states. The article is organized in three sections. The first section explains Kosovo's independence and the EU's role

13 The Turkish Republic of Northern Cyprus (TRNC) is a de facto state located on the north side of Cyprus island. The TRNC has declared its independence from the Republic of Cyprus in 1983. Only Turkey has recognised the TRNC so far.

14 Ibid.

in the process. The second section explores EU-Kosovo relations in the post-independence period. The third section discusses Kosovo's legitimacy problem and probes the causes for non-recognition by numerous member states. This study aims to elaborate on the problem of non-recognition of Kosovo within the EU and categorises non-recogniser EU states as *hard* and *soft* non-recognisers since considerable differences exist among these states.

2. Kosovo's Independence and the Role of the European Union

Kosovo obtained autonomous status in 1963. As a result of demonstrations and riots started by Albanians in Kosovo in 1968, they acquired various rights, such as education in their own language and opening their own universities within Kosovo's borders. With the Yugoslav Constitution of 1974, which gave Kosovo special status, these rights improved even more, and Kosovo was entitled to establish cultural relations with Albania, hoist its flag next to the flag of the Federation, veto decisions taken by Serbia about Kosovo, and be represented in the Council of Presidency with expanded rights.¹⁵

From World War II to death of Josip Broz Tito, who was the president of Yugoslavia, Yugoslavia adopted a decentralised structure by granting broad rights to six autonomous regions and two autonomous regions within Serbia (Kosovo and Vojvodina). However, instead of creating a Yugoslav Union, this restructuring became one of the reasons for the disintegration of Yugoslavia by causing each Republic to establish its own nation-state.¹⁶ Albanians' enjoyment of political autonomy under Tito's leadership after World War II was followed by the revocation of autonomy in 1989¹⁷. The dissolution of Yugoslavia caused drastic political changes and an increase of ethnic nationalism in Serbia.¹⁸ There was a group of Serbs, the largest ethnic group in the Yugoslav Federation, who intended to make Yugoslavia an instrument for Serbian hegemony. After Tito's death, this group accelerated their endeavours and prepared the SANU Memorandum¹⁹ in 1985. The Memorandum, which is the product of a nationalist Serbian perspective, criticised Tito's Federal Yugoslavia, enunciating that since 1945, "all federal governments have implemented economic policies in favour of Croatia and Slovenia and have committed economic discrimination against Serbia" and "great injustice

15 Zeynel Levent, "Tarihi Süreçte Kosova", *Ankara Üniversitesi Türk İnkılâp Tarihi Enstitüsü Atatürk Yolu Dergisi*, Volume 52, (2013), p. 858.

16 İlhan Uzgel, "Balkanlarla İlişkiler", ed. Baskın Oran, *Türk Dış Politikası*, C.II, 12. Baskı, İstanbul, İletişim Yayınları, 2010, p. 482.

17 Henry H. Perritt, *The Road to Independence for Kosovo*, New York, Cambridge University Press, 2010, p. 6

18 Bekim Baliqi, "Contested war remembrance and ethno-political identities in Kosovo", *The Journal of Nationalism and Ethnicity*, 46:3, (2018), pp. 471-483.

19 The Memorandum of the Serbian Academy of Sciences and Arts (SANU)

against Serbia by dividing the country constituting the Kosovo and Vojvodina autonomous regions”, and Albanian separatists began implementing systematic anti-Serbian policy in Kosovo with the support of the non-Serbian Republics. As a matter of fact, these criticisms formed the theoretical basis of the policies carried out by Milošević, and the first application of Milošević’s nationalist policy occurred in Kosovo.²⁰ Milošević revoked Kosovo’s and Vojvodina’s autonomy, attached the administration of Montenegro to himself, and exerted his authority in the Yugoslav system in 1989.

Kosovo’s independence was declared in 1991 after the model of Slovenia and Croatia, following an informal referendum. However, unlike the other former Yugoslav republics, there was no formal recognition or acceptance and, accordingly, it created a problem of legitimacy.²¹ The Kosovo question was based upon the desire of Albanians, who are ethnically and culturally distinct from Serbs, to become a nation-state apart from Milošević’s hegemony.²² Milošević’s policies comprised beating civilians, random arrests, and prison sentences for Albanians resulting in de facto apartheid and massacres between 1998 and 1999. It is estimated that nearly 400,000 Albanians fled from Kosovo and 12,000 Albanians were massacred by Serbian forces between 1998 and 1999.²³ In response to Serbia, the Republic of Kosovo was declared in 1991, and a referendum was held. In this referendum, in which 87% of the populace participated²⁴, almost all Kosovars voted in favour of independence and initiatives to establish a state independent of Serbia were launched in Kosovo later on. However, only the People’s Assembly of the Republic of Albania recognised the Kosovo Republic as an independent state.²⁵

As a result of the unconstitutional annihilation of Kosovo’s autonomy and the failure to find a solution with Serbia in a democratic way despite declaring independence, the Kosovo Liberation Army (KLA) started an armed struggle; in response to this, Serbs led by Milošević launched an ethnic cleansing operation against the Albanians. The KLA organised its first attack against a Serbian patrol in February 1996 and intensified its operations within a couple of years, mostly against Serbian police and refugees who settled in the region. In 1998, conflict

20 L. Doğan Tılıç, *Milliyetçiliğin Pençesindeki Kartal: Kosova*, Ümit Yayıncılık, Ankara, 1999, p. 103-104

21 Florian Bieber, “The Serbia-Kosovo Agreements: An EU Success Story”, *Review of Central and East European Law*, 40, 2015, pp. 285-319.

22 Levent, “Tarihi Süreçte Kosova”, p. 860.

23 Sabrina P. Ramet, *Thinking about Yugoslavia*, New York, Cambridge University Press, 2005, p. 162.

24 Kosovo, Jugoslawien, 30.09.1991, <https://www.sudd.ch/event.php?lang=de&id=ks011991>, Accessed 15.01.2021.

25 Heike Krieger, *The Kosovo Conflict and International Law: An Analytical Documentation 1974-1999*, Cambridge, Cambridge University Press, 2001, p. 14.

between the KLA and the Serbs escalated notably: the KLA expanded the zones it controlled and increased its attacks, which caused it to be described as a terrorist organisation by the US special envoy for the Balkans, Robert Gelbard. Following attacks by Serbian security forces on presumed KLA strongholds which killed more than 25 people, including women and children, the possibility of this ethnic conflict spreading to neighbouring regions and Macedonia emerged. This conflict prompted the international community to take concrete actions in order to halt these perilous actions. The informal six-nation Contact Group, including four of the five permanent members of the United Nations Security Council – the US, the United Kingdom, France, Germany, Italy, and Russia – demanded multilateral negotiations. Then, the United Nations Security Council (UNSC) passed Resolution 1160 condemning Serbia's attacks against civilians and the KLA and calling that talks be based on autonomy.²⁶

Following the Resolution, the US launched peace talks between the two sides, which were short-lived due to the Serbian security forces' attacks against the KLA. The never-ending attacks and crises vexed the West,²⁷ and the calamitous developments in the region made the UN and the NATO become involved. Following the decade-long conflict and dissolution and repeated US and NATO efforts to reach a diplomatic settlement to stop Serbia's siege on of Kosovar Albanians, NATO launched an air and missile strike against Yugoslavia in March 1999 to pave the way for negotiations in the Kosovo crisis.²⁸ NATO's humanitarian war was the first use of force in its half-century of existence and was undertaken without the authorisation of the UN Security Council.²⁹ One of the biggest bombing campaigns in history, it lasted about 78 days, and provoked a response of anti-aircraft fire from Yugoslav forces. The message of the intervention was that NATO had the skills, tools, and will to handle regional conflicts with deterrent force.³⁰ Once the NATO-led intervention was terminated, the EU realised that the region was impoverished and needed aid.³¹ In late May 1999, Finnish President Martti Ahtisaari (on behalf of the EU), US Deputy Secretary of State Strobe Talbott, and Russian Premier Viktor Chernomyrdin met several times to discuss ways to end the conflict. However, these negotiations were most-

26 James Ker-Lindsay, *Kosovo-The Path to contested Statehood in the Balkans*, New York, I.B. Tauris, 2009, p. 11-12.

27 Ibid, pp. 14-15.

28 Bruce R. Nardulli, Walter L. Perry, Bruce Pirnie, John Gordon and John G. MicGinn, *Disjoint War Military Operations in Kosovo 1999*, Pittsburgh, RAND, 2002, pp. 2-43.

29 P.H. Liotta, "After Kosovo: Terminal Ambiguity", *Problems of Post-Communism*, 49:3, (2002), pp. 23-32.

30 Sergei Medledev, "Kosovo: a European fin de siecle", ed. Peter van Ham and Sergei Medledev, *Mapping European security after Kosovo*, New York, Manchester University Press, 2002, pp. 15-31.

31 Branislav Radeljic, "European Union Approaches to Human Rights Violations in Kosovo Before and After Independence", *Journal of Contemporary Central and Eastern Europe*, 24:2, (2016), pp. 131-148.

ly conducted between the US and Russia, as Milošević wanted Russia to occupy the northern part of the country, and NATO, led by the US, wanted to deploy forces in Kosovo³².

The G8 countries met in Germany on 9 May 1999 and prepared a set of principles for Kosovo's settlement. The principles proposed autonomy-based solutions and provided the establishment of an interim political framework. A set of principles was finalised after the negotiations with Russia, which had to agree to end the air attacks. It was non-negotiable and submitted to Milošević.³³ Also, during the end of the Kosovo aerial campaign, the European Council drafted a plan to consolidate a European policy at a summit in Cologne (3-4 June 1999), declaring that the EU must have the capacity for authorised action backed up by credible military forces, the means to decide to use them, and readiness to do so in order to respond to international crises without prejudice to actions by NATO.³⁴ Milošević had to accept the principles. The Yugoslav parliament ratified the decision and the process of withdrawing Yugoslav forces from the territory and the deployment of UN civil mission and security forces started.³⁵

The UN Security Council passed Resolution 1244 on 10 June 1999. Through Resolution 1244, the United Nations Mission in Kosovo (UNMIK) was established to govern Kosovo ad interim. The Resolution also entitled NATO to establish a peacekeeping force named the Kosovo Force (KFOR), which was deployed two days after the resolution. Serbian forces had to recede when KFOR moved into Kosovo and was welcomed as a liberating force by Kosovar Albanians,³⁶ as the joint military action by KFOR aimed to prevent aggression and human-right violations³⁷ against them.

Resolution 1244 only defined a legal framework and failed to provide Kosovo the independence Albanians wanted. The resolution removed Serbia's control over Kosovo's territory and provided for it to be governed by UNMIK.³⁸ UNMIK acted more in regards to peace-building and political stability rather than reconciliation, which indicates that the international community had limited influence

32 Nardulli and et al, *Disjoint War Military Operations in Kosovo 1999*, pp.2-43.

33 James Ker-Lindsay, *Kosovo-The Path to Contested Statehood in the Balkans*, p. 15.

34 Heinz Gärtner, Adrian G. V. Hyde-Price and Erich Reiter, *Europe's New Security Challenges*, London, Lynne Rienner Publishers, 2001, p. 135.

35 James Ker-Lindsay, *Kosovo-The Path to Contested Statehood in the Balkans*, p. 15.

36 Henry H. Perritt, *The Road to Independence for Kosovo*, pp. 6-7

37 Alberto R. Coll, "Kosovo and the Moral Burdens of Power", ed. Andrew J. Bacevich and Eliot A. Cohen, *War Over Kosovo*, New York, Columbia University Press, 2001, pp. 124-154.

38 Denisa Kostovicova, *Kosovo-The Politics of Identity and Space*, New York, Routledge, 2005, p. 203.

in relation to the past conflicts.³⁹ Based on Resolution 1244, four missions were established. The UN took responsibility for justice and civil administration, the Organisation for Security and Cooperation took responsibility for democratisation and institutionalism, the EU led economic development, and KFOR, under NATO, was designated as the Kosovar Army.

The primary responsibility of UNMIK and KFOR was to provide security, and the EU would eventually take the leading role internationally and assume responsibility for Kosovo. The Contact Group showed interest in resolving the Kosovo issue and was linked to the draft constitution to guarantee Kosovo's future status.⁴⁰ Even though the Contact Group was divided into different opinions, it acted as a controlling body over the negotiations. Much had happened under the Group's leadership, notwithstanding Russia's blocking manoeuvres through the Security Council. While Russia was on the side of Belgrade and against these opinions, Western European governments and the U.S. propounded independence for Kosovo. The Contact Group prepared a package to define the status of Kosovo, including guiding principles regarding compliance with human rights, democratic values, and integration with Euro-Atlantic principles such as political participation for all ethnic and minority groups, protection of cultural and religious heritage, economic development, and regional stability.⁴¹

UNMIK was appointed to establish conditions for the people of Kosovo to live in autonomy within the Federal Republic of Yugoslavia (FRY). Thanks to the efforts of UNMIK and KFOR, many Albanians returned to their homeland in Kosovo; however, hopes that Serbs and Albanians could live together vanished. In October 2000, Milošević was forced from power by pro-Western opposition parties. Following the governmental changes in Serbia, almost no discussion was made on autonomy. In May 2001, UNMIK revealed the constitutional framework establishing a provisional self-government in Kosovo recognising it as an integral part of FRY and took no steps regarding Kosovo's final status. Kosovar Albanians expected independence with the intervention of NATO and the UN, but it was not on the agenda, which caused a serious dispute between the UN and Kosovar Albanians. In October 2003, Belgrade and Pristina discussed technical issues in Vienna, and the Contact Group announced that a review of the standards would be realised in the middle of 2005. If sufficient progress was observed, a process determining the final status of Kosovo could begin. It was understood

39 Bekim Baliqi, "Contested War Remembrance and Ethnopolitical Identities in Kosovo", *The Journal of Nationalism and Ethnicity*, 46:3, (2018), pp. 471-483.

40 Ray Murphy, *UN Peacekeeping in Lebanon, Somalia and Kosovo*, New York, Cambridge University Press, 2007, p. 307.

41 Marc Weller, *Negotiating the Final Status of Kosovo*, Paris, Institute for Security Studies, 2008, p. 25.

that Kosovo's future status would not be indefinite and UNMIK was not capable of administering Kosovo's affairs.⁴² The challenges the international community faced in Kosovo, such as its status, the demands of Kosovar Albanians, economic problems, the unemployment rate, and Serbs' demands to be more fully included required a more comprehensive, integrated, and strategic approach. This caused UNMIK to consider ways to reduce its presence and hand over these increasing responsibilities to the EU, as UNMIK would not be able to mobilise its strengths to implement these responsibilities on its own.⁴³

In 2005, Finnish President Marri Ahtisaari prepared a plan by meeting with both parties on behalf of the UN. According to the plan, Kosovo's independence was envisaged in 2007. During a 120-day transition period, the UN, OSCE, and the EU would hand over all authority to the Kosovo administration. However, Serbs viewed this plan negatively and required it to be adopted by the UN Security Council for decisions to be taken on Kosovo. The plan was not implemented and remained on the table. In order to avoid clogging the negotiation processes, a triple negotiation group (Troika) was established. The group, consisting of representatives from the US, the EU, and Russia was supposed to submit a report to the UN in 2007. However, the process was sabotaged by Russia. The US and the EU argued that the Ahtisaari Plan should be implemented in the absence of a mediator in the negotiation process. After the negotiation process, no results were achieved, and the Ahtisaari plan was implemented unilaterally by Kosovo⁴⁴ as Belgrade and Pristina could not come to an agreement on the political status of Kosovo in spite of rounds of talks and negotiation efforts by Ahtisaari. Due to the deadlock, Ahtisaari submitted the Comprehensive Proposal for the Kosovo Status Settlement in March 2007. The proposal contained internationally supervised independence for Kosovo together with a protection mechanism for the Serbian community in Kosovo. However, the proposal was accepted by Pristina and refused by Belgrade. As a result of indications of veto votes from Russia and China, efforts to implement the proposal by the UN Security Council failed in July 2007. The last attempt was to found a Troika consisting of representatives of the US, the EU, and Russia, which was once again reported as a failure in December 2007.⁴⁵ Finally, noting that Kosovo was a special case arising from Yugoslavia's non-consensual split, the Kosovo Assembly declared its independence on

42 James Ker-Lindsay, *Kosovo-The Path to Contested Statehood in the Balkans*, pp. 13-22.

43 Kai Eide, "Kosovo: The Way Forward", Winter 2004, <https://www.nato.int/docu/review/2004/issue4/english/opinion.html>, Accessed 09.04.2020.

44 Nedim Emin, *Kosova Siyasetini Anlama Kılavuzu*, İstanbul, SETA, 2014, pp. 34-36.

45 Robert Muharremi, "The European Union Rule of Law Mission in Kosovo (EULEX) from the Perspective of Kosovo Constitutional Law", *Zađrn*, 70, (2010), pp. 357-379.

February 17, 2008. The Assembly affirmed that Kosovo would act consistently with principles of international law and UNSC resolutions, including Resolution 1244. Kosovo was declared as a democratic, guided by the principles of non-discrimination and equal protection under the law. It would promote the rights of all citizens in Kosovo. The Declaration was unanimously adopted by 109 out of 120 members of Assembly.⁴⁶

The 1933 Montevideo Convention on the Rights and Duties of States defines a state under international law and stipulates that a states can be granted sovereignty on the condition that it has a permanent population, defined territorial boundaries, an independent government, and relations with other states.⁴⁷ According to the statehood criteria defined in the Montevideo Convention, Kosovo has a permanent population, defined territory, and the ability to establish relations with other states; however, the status of the government in Kosovo is complicated, as it cannot conduct independent elections and is assisted by UNMIK in administrative issues.⁴⁸ Nevertheless, Kosovo is a de facto state due to its declaration of independence and fulfilling the criteria; the reason why the international community has not shown its will to grant de jure status to Kosovo is not pertinent to its administrative status.

Considering the post-conflict period in Kosovo, the end of ethnic violence was evidence of success, and policies designing a multi-ethnic state (drafted in Kosovo's 2008 constitution) ensured plurality, tolerance, and the participation of minorities. This was represented on Kosovo's flag, modelled on the flag of the EU with six stars symbolising Kosovo's major ethnic groups,⁴⁹ and its national anthem, named 'Europa', contains no lyrics to prevent concerns about language politics.⁵⁰ Kosovo should be in the centre of Europe's interests, which can be understood from the EU's support. The EU had no desire to leave this new state to be embraced by the US or Russia. It could be understood from the discourse of Olli Rehn, who was EU Commissioner for enlargement at the time. Rehn expressed that "the future of Serbia and Kosovo is in the European Union. Kosovo will not be the 51st state of the USA, and Serbia has no vocation to join the

46 Marc Weller, *Negotiating the Final Status of Kosovo*, p. 70.

47 Britannica, "Montevideo Convention", <https://www.britannica.com/event/Montevideo-Convention> , Accessed 10.10.2020.

48 Sandesha Perera, "Recognition of Kosovo with Regard to International Law" *International Journal of Advanced Research*, 6:5, (2018), pp. 1212-1220.

49 Albanians, Serbs, Bosnians, Turks, Romani and Gorani.

50 Aidan Hehir, "Introduction: Kosovo's Symbolic Importance", *Journal of Intervention and Statebuilding*, 13:5, (2019), pp. 539-544.

Russian Federation! This must be a strong reason for encouraging the two to work together towards finding a negotiated and European solution.”⁵¹

3. Kosovo-European Union Relations After Independence

Even after the installation of the international protectorate in 1999, the status of Kosovo was still in doubt with no consensus on the recognition among EU member states, and the international community was still divided. The lack of clarity of the situation caused complexity among international powers and institutions. However, Kosovo’s state-building process advanced significantly under the auspices of the EU after independence.⁵² Even before independence, The EU had been by far the largest donor of humanitarian and reconstruction aid to Kosovo, providing \$3 billion for development programs in 1999 and 2000, compared to \$900 million from the US in the same period.⁵³ The EU undertook chief responsibility for economic development and reconstruction, even though it was criticised for failing to contribute to the economic development of Kosovo in the post-war period. In particular, the EU contributed to monitoring and co-ordination processes in Kosovo’s customs services, privatisation programme, and regulation of the banking sector.⁵⁴

Following Kosovo’s declaration of independence, the Council of the European Union adopted a resolution declaring that Kosovo was independent and noted that Kosovo would be committed to the principles of democracy, equality, and the protection of Serbs and other minorities. The Council also noted that member states would decide on their relations with Kosovo according to national practice and international law. The Council recalled the EU’s commitment to the Western Balkans’ stability and reiterated its readiness to play a leading role in strengthening stability in the region. The Council recalled the agreement to establish a Police and Rule of Law mission, to appoint a special representative to Kosovo and stressed that the EU would continue to cooperate with the UN, KFOR, and other international actors for the stability of the region. Additionally, the Resolution asked the European Commission to use instruments to promote Kosovo’s economic and political developments.⁵⁵

51 European Commission, “Press Corner”, 04.10.2007, https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_07_594, Accessed 03.05.2020

52 David Chandler, “Kosovo: Statebuilding Utopia and Reality”, *Journal of Intervention and Statebuilding*, 13:5, (2019), p. 545-555.

53 Ivo H. Daalder, “The United States, Europe, and the Balkans”, *Problems of Post-Communism*, 49:1, (2002), pp. 3-11.

54 Nikolaos Tzifakis, “The European Union in Kosovo”, *Problems of Communism*, 60:1, (2013), pp. 43-54.

55 Council of the European Union, Council Conclusions on Kosovo, 2851st External Relations Council Meeting, Brussels, 18.02.2008.

Because of the failure of the UN Security Council's endorsement of the Ahtisaari Plan following Kosovo's declaration of independence without termination of the UN's authority, two legal authorities with different purposes existed in Kosovo. The EU did not avoid deploying EULEX, which had been in preparation since 2006⁵⁶ and it was established according to applicable law in 2008.⁵⁷

a) EULEX

EULEX was established under the EU's Common Security and Defence Policy (CSDP) based on the Ahtisaari Plan. This plan had envisaged EULEX to be headed by a person appointed by the Council of the European Union and operated under the direction of the EU Special Representative in Kosovo, who is an international civilian representative. The establishment of EULEX transferred UNMIK's responsibilities to the EU. The main mission was a smooth transition of selected tasks of UNMIK to EU crisis management operation in the area of rule of law. Even though the EU had not recognised Kosovo, it could take action under the EU CSDP referring to any individual EU member state which recognised Kosovo. The joint action of the EU which established EULEX defined the organs, institutions, and authorities of Kosovo on the basis of Resolution 1244, not under the Constitution of the Republic of Kosovo, which legitimised EULEX under the UN resolution. Thus, EULEX officials operated under the legal system of the Republic of Kosovo and interacted with the officials of these institutions even though none of these institutions and officials were recognised under the Resolution 1244.⁵⁸ EULEX ensured that Kosovo was put under the supervision of the EU, aiming to fulfil the obligations of the Ahtisaari Plan and prevent Kosovo from being captured by local political elites.⁵⁹

The EU's engagement was supposed to be minimal and aimed at supporting local authorities rather than replacing and transforming them. However, EULEX was given a robust mandate and could not initiate its duties due to division among the member states. For a long time, EULEX could not take over the assets and staff of the UN and distinguish itself from its predecessor. However, thanks

56 Robert Muharremi, "The European Union Rule of Law Mission in Kosovo (EULEX) from the Perspective of Kosovo Constitutional Law", pp. 357-379.

57 The EU Council, "Council Joint Action on the European Union Rule of Law Mission in Kosovo", 04.02.2008, http://www.eulex-kosovo.eu/en/info/docs/JointActionEULEX_EN.pdf, Accessed 19.05.2020.

58 Muharremi, "The European Union Rule of Law Mission in Kosovo (EULEX) from the Perspective of Kosovo Constitutional Law", pp. 357-379.

59 Adem Beha and Arben Hajrullahu, "Soft Competitive Authoritarianism and Negative Stability in Kosovo: statebuilding from UNMIK to EULEX and beyond", *Southeast European and Black Sea Studies*, 20:1, (2020), pp. 103-122.

to the strong involvement and engagement of Javier Solana, EULEX was able to take the lead and contributed to the state-building process and improved the quality of the local authorities. These developments were not sufficient, however. Especially in the area of customs and the judiciary, numerous challenges exist due to the quagmire of non-recognition among EU member states.⁶⁰

The EULEX has contributed to conflict prevention and the peace-building process in Kosovo and helped to build sustainable peace thanks to rule of law reforms under European oversight. The mission has been an important part of improving the rule of law and stability in Kosovo, which has not witnessed inter-ethnic conflict since the deployment. EULEX has held bilateral meetings between Serbian and Kosovar police, aiming at providing cooperation in certain aspects and integrating Serbian forces into Kosovar police and EU engagement in ethnicity-related cases.⁶¹

Via EULEX, the EU provides technical support in order to normalise relations between Belgrade and Pristina, monitors Kosovo's justice system, and functions in the executive system. EULEX works with Kosovo institutions and is dedicated to the inclusion of human and gender rights. There are two EU bodies in Kosovo: EULEX and the European Special Representative in Kosovo. Thanks to these two bodies, which ensure permanent technical and political dialogue with Brussels institutions, the EU has played an important role in promoting Kosovo's ties to the EU.⁶²

b) Stabilisation and Association Process

The Stabilisation and Association Process (SAP) is the object of independent Kosovo's relationship with the EU. SAP is essentially the EU's political framework defining relationships between the EU and the Western Balkans, which also provides eventual accession to the EU. It aims to promote regional stabilisation and cooperation, the transition to a market economy, and preparations for EU accession. SAP aims to guide the development and promotion of peace, freedom, stability, security, justice, and prosperity. In this context, authorities from both sides held regular meetings as part of the SAP dialogue with the "carrot and stick" approach. The SAA between the EU and Kosovo entered into force on 1 April 2016. Following the agreement, technical discussions between both sides

60 Hylke Dijkstra, "The Planning and Implementation of the Rule of Law Mission of the European Union in Kosovo", *Journal of Intervention and Statebuilding*, 5:2, (2011), pp. 193-210.

61 Rok Zupančič, Nina Pejič, Blaž Grilj and Annemarie Peen Rodt, "The European Union Rule of Law Mission in Kosovo: An Efficient Conflict Prevention and Peace-Building Mission?", *Journal of Balkan and Near Eastern Studies*, 20:6, (2017), pp. 599-617.

62 EULEX, "The EU in Kosovo", <https://www.eulex-kosovo.eu/?page=2,19>, Accessed 22.05.2020.

on specific areas such as justice, freedom, innovation, social policy, internal market, industry, environment, economy, and energy were held, and annual country reports regarding Kosovo's readiness were prepared with the aim of moving the Western Balkan countries closer to the EU.⁶³ SAP and SAA were founded with the aim of providing EU membership for the Western Balkan countries. In this respect, it can be inferred that the EU aims to provide European oversight in Kosovo.

SAA is the first rung of the ladder leading to EU accession, no matter the legal status of Kosovo. The expectation is to establish political and economic foundations which are needed to start the process leading to eventual membership. In this regard, the EU has aimed to have an actuator role in Kosovo's state-building process regardless of whether or not each member state recognises it openly. The status of Kosovo has not prevented the EU from pursuing engagement with the new state, which has been included in various EU programmes. However, more serious problems are likely to appear when more formal relationships between Kosovo and the EU are established.⁶⁴

As the largest donor providing aid to Kosovo, the EU has been playing a key role in Kosovo's reconstruction and development. The first funds from the EU focused on emergency relief actions and reconstruction, but now funds and aid concentrate on promoting institutions and economic development in Kosovo. With the Council of the EU's request to promote economic and political development in Kosovo, the European Commission organised a donors' conference in 2008, and €1.2 billion was pledged to Kosovo. Additionally, financial aid under the Instrument for Pre-Accession Assistance (IPA) was granted to Kosovo. In the IPA I Term (2007-2013)⁶⁵, the allocated budget for Kosovo was € 671.1 million, and in the IPA II Term (2014-2020), € 602.1 million was allocated for capacity building projects in democracy, the rule of law, competitiveness, and growth.⁶⁶ The EU has provided the highest levels of per-capita assistance ever given to any state, delivering much of the aid in the form of technical assistance.⁶⁷ Following, in July 2010, the European Parliament adopted a resolution encouraging all member states to recognise the independence of Kosovo with the objective of ac-

63 European Union Office in Kosovo, "Kosovo and the EU", 12.05.2016, https://eeas.europa.eu/delegations/kosovo/1387/kosovo-and-eu_en, Accessed 15.05.2020.

64 James Ker-Lindsay and Spyros Economides, "Standards before status before Accession: Kosovo's EU Perspective", *Journal of Balkan and Near Eastern Studies*, (2012), pp. 77-92.

65 European Union Office in Kosovo, "Kosovo and the EU", 12.05.2016 https://eeas.europa.eu/delegations/kosovo/1387/kosovo-and-eu_en, Accessed 15.06.2020.

66 European Commission, European Neighbourhood Policy and Enlargement Negotiations, https://ec.europa.eu/neighbourhood-enlargement/instruments/funding-by-country/kosovo_en, Accessed 29.05.2020.

67 Nikolaos Tzifakis, "The European Union in Kosovo", *Problems of Communism*, 60:1, (2013), pp.43-54.

cession and stressing that Kosovo was recognised by most of its neighbour countries, the World Bank, and the International Monetary Fund.⁶⁸

c) The Brussels Agreement and the Western Balkans Strategy

The path to the Brussels Dialogue was opened by the advisory opinion of the ICJ on Kosovo's declaration of independence, which brought forward the fact that the declaration did not violate international law. The UN Resolution attributing the EU's responsibility to facilitate a dialogue aims to develop cooperation between Pristina and Belgrade. The decision of the UN conducted toward the Brussels Dialogue, which would change the game regarding relations and progress to an agreement for normalisation of relations.⁶⁹

The Brussels Agreement, a landmark of the Kosovo-Serbia deal brokered and led by the EU,⁷⁰ was signed between Kosovo and Serbia on April 19, 2013 to facilitate the normalisation of bilateral relations. The substantial acquisition of the Agreement is that both sides pledge not to act to block each other's EU bids⁷¹.

This agreement was signed following political dialogue which included more than ten rounds of negotiations for a comprehensive political deal at the prime minister level enabled by the EU's High Representative of the Union for Foreign and Security Policy. The Agreement included 15 provisions defining the details and scope of Serb majority municipalities in Kosovo, the administrative structure of the north of Kosovo, police representation and organisation of the judicial body in the north of Kosovo, and the path to EU integration. The Agreement declared that Kosovo's unitary legal system was the single legal authority in the country and the Kosovo Police was the only legitimate authority in North Kosovo; however, the commander of the regional police could be from the Serbian community. The agreement also provided freedom of movement for both sides so that citizens would cross the border with ID cards and written documents, and a customs stamp under the name 'Kosovo Customs' was recognised by Serbia, which had initially refused to accept a stamp referencing a republic. The Agreement, the nature of which was in favour of Kosovo's sovereignty, aimed to reduce politicisation between the two sides and provided Kosovo with access to regional initiatives and organisations with a footnote referring to UNSC Resolution 1244

68 European Parliament, European Parliament resolution of 8 July 2010 on the European integration process of Kosovo, 08.06.2010, https://www.europarl.europa.eu/doceo/document/TA-7-2010-0281_EN.html, Accessed 29.01.2021.

69 Miruna Troncotă, "The Association that Dissociates: Narratives of Local Political Resistance in Kosovo and the Delayed Implementation of the Brussels Agreement", *Southeast European and Black Sea Studies*, 18:2, (2018), pp. 219-238.

70 BBC News, 02.09.2014, <https://www.bbc.com/news/world-europe-11283616>, Accessed 15.05.2020.

71 IBID MBBC News, 02.09.2014, <https://www.bbc.com/news/world-europe-11283616>, Accessed 15.05.2020.

and the ICJ advisory opinion⁷² on Kosovo's declaration of independence. Thanks to the Brussels Agreement, the EU promoted normalisation and positive developments between the two sides and supported peacebuilding practices.⁷³ As a mediator, the EU motivates both sides with European integration opportunities. Also, developments in bilateral relations justify the opening accession talks with Serbia by the European Council thanks to its continued commitment to normalisation of the relationship with Kosovo, which is mentioned in the EU progress report.⁷⁴

The European Commission adopted "a strategy for a credible enlargement perspective and enhanced EU engagement with the Western Balkans" on February 6, 2018, confirming that the future of the Western Balkans would be in the EU and that a strong and united Europe was based on common values. The strategy addressed challenges that the Western Balkans faced, particularly in the area of fundamental reforms and good neighbourly relations.⁷⁵ In addition, the strategy underlined lasting stability based on the comprehensive and effective normalisation of Belgrade-Pristina relations through EU-facilitated dialogue. The normalisation agreement is crucial to advancement on the path to European membership for both Kosovo and Serbia. The strategy provides a credible enlargement perspective for the Western Balkans and demand utmost priority for the rule of law, justice, and fundamental rights.⁷⁶

The EU included Kosovo in the Western Balkans integration process and aimed to support Kosovo and assist the authorities in establishing a stable, viable, and peaceful society with good neighbourly relations and cooperation with the countries in the region. However, because of the disagreements between member states on the recognition of Kosovo, the EU was not able to define an official policy on its status.⁷⁷

72 The International Court of Justice declared that Kosovo's independence did not violate the United Nations Security Council's resolution 1244 and the constitutional framework in accordance with the general principles of international law, with the decision taken in the nature of a recommendation in July 2010, and legitimized Kosovo's independence. Kosovo became a member of the IMF and the World Bank after this decision.

73 Gezim Visoka and John Doyle, "Neo-Functional Peace: The European Union Way of Resolving Conflicts", p. 862-877.

74 European Commission, Serbia Progress Report, 2014, p. 1.

75 European Commission, European Neighbourhood Policy and Enlargement Negotiations, https://ec.europa.eu/neighbourhood-enlargement/node_en, Accessed 29.05.2020

76 European Commission, Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions, 6 February 2018, https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf, Accessed 29.05.2020

77 Jelena Obradović-Wochnik and Alexander Wochnik, "Europeansing the 'Kosovo Question': Serbia's Policies in the Context of EU integration", *West European Politics*, 35:5, (2012), pp. 1158-1181.

4. Kosovo's Recognition Problem in the European Union

Since 1998, the engagement level of the EU in Kosovo has been very high, particularly through the activation of the Contact Group⁷⁸ founded to integrate European diplomacy into the crisis managed by great powers like the US and Russia because of the lessons learnt from failures in Bosnia.⁷⁹ The EU's engagement in Kosovo has been multi-faceted and long-term compared to other countries; however, careful balance is needed as the political stance of Brussels institutions and individual members to the recognition of Kosovo is quite complicated.⁸⁰

After the independence declaration, Kosovo authorities launched a process of institutionalisation and aimed to strengthen its international position and recognition. Right after declaring independence, Kosovo founded foreign policy institutions and diplomatic services to boost lobbying activities for international recognition. The Ministry of Foreign Affairs was established on April 3, 2008, and ambassadors were appointed to the major recognising countries, particularly Western partners like the USA and the UK. By the end of 2008, Kosovo was recognised by 53 states, 22 of which were EU member states, and other important states. Eleven more states, including neighbouring ones like Macedonia and Montenegro, recognised Kosovo in 2009, and 8 states recognised Kosovo in 2010, when the ICJ issued its advisory opinion regarding Kosovo's independence declaration. This decision yielded expectations concerning Kosovo's international recognition.⁸¹

Recognition of a country is such that when the conditions stated in international law for statehood are complied with, the expectation from existing states is to grant recognition. As, in the absence of a central authority assessing legal identity in international law, states are to act on behalf of the international community and international law. As international law has no clear norms, recognition consists of various forms, such as *de facto* and *de jure*. *De facto* recognition is a temporary and hesitant assessment of the situation. In *de facto* recognition, there are “the wait and see policy” and “unsustainable relations” with the new state. *De jure* recognition, on the other hand, is considered as a complete recognition

78 Informal group of countries with interests in the Balkans. Members are composed of France, Germany, Italy, Russia, the United Kingdom and the US.

79 Marc Weller, *Negotiating the final status of Kosovo*, p. 80.

80 Marko Klasnja, “The EU and Kosovo: Time to Rethink the Enlargement and Integration Policy?”, *Problems of Post-Communism*, 54:4, (2007), pp. 15-32.

81 James Ker-Lindsay and Ioannis Armakolas, *Lack of Engagement?*, Pristina, Kosovo Foundation for Open Society, 2017, pp. 55-56.

expressing a formal act and in a legal sense.⁸² The process of Kosovo's recognition was complicated, as international opinion on Kosovo's declaration of independence was sharply divided. While the US recognised the declaration, Russia strongly criticised it. There were also differences of opinion within the EU. While the UK, Germany, France, and Italy recognised Kosovo, Spain insisted that any reference which recognised Kosovo as an independent state not be placed in the draft statement and demanded that a separate clause noting that the Kosovo issue should be in accordance with international law should be added.⁸³ Following the objections, the EU issued a statement noting that member states would decide on their relations with Kosovo according to their national practice and international law.⁸⁴

The EU, as an entity, was neutral and did not take a side in Kosovo's independence dispute but allowed member countries to act freely in regard to the Kosovo issue, which is called 'status neutral' in EU parlance. By the end of 2008, following suit, 22 of the 27-member states of the EU recognised Kosovo.⁸⁵ However, due to various concerns, five EU members refused to accept Kosovo's independence declaration: GCASC, Greece, Romania, Slovakia, and Spain.⁸⁶ The case of Kosovo aids understanding of how the EU's external policy is designed and operationalised in cases where different opinions exist between member states. The EU implements its policies by consensus in the context of the Common Foreign and Security Policy. Thus, the EU is sometimes unable to act since each member state has a right to veto decisions. The foreign policy of each individual member state is crucial; correspondingly, the divisions over Kosovo have been significant among member states, as the Western Balkans are considered the Union's backyard.⁸⁷ With this pragmatic approach, the EU avoided dispute and separation in the Union but would not be able to establish a common stance on the Kosovo issue.⁸⁸

82 Bashkim Rrahmani, "Recognition of New States: Kosovo Case", *Journal of Liberty and International Affairs*, Vol.4, No.2, (2018), pp. 68-79.

83 James Ker-Lindsay and Spyros Economides, "Standards Before Status Before Accession: Kosovo's EU Perspective", pp.77-92.

84 Council of the European Union, General Affairs and External Relations, Press Release, 6496/08, Brussels, 18.02.2008.

85 The order of recognition: France, the UK, Latvia, Germany, Estonia, Italy, Denmark, Luxembourg, Belgium, Poland, Austria, Ireland, Sweden, The Netherlands, Slovenia, Finland, Hungary, Bulgaria, Lithuania, Czech Republic, Malta, and Portugal.

86 James Ker-Lindsay and Spyros Economides, "Standards Before Status Before Accession: Kosovo's EU Perspective", pp.77-92.

87 James Ker-Lindsay and Ioannis Armakolas, "Kosovo, EU Member States and the Recognition-Engagement Nexus", pp. 1-18.

88 Marc Weller, *Negotiating the final status of Kosovo*, p. 70.

The EU has been split by two poles, strong recognisers and hard non-recognisers, and examples of weak recognisers and soft non-recognisers can also be seen. In the recognising group, there are countries that accepted Kosovo's independence but either have not developed official relations or have developed relations in a limited capacity. For instance, the Czech Republic recognised Kosovo and established diplomatic ties but has not appointed an ambassador to Pristina. Poland, also, recognised Kosovo but has not established diplomatic ties with Pristina. Slovakia, Romania, and Greece have cordial bilateral relations with Pristina even though they have not established formal relations with Pristina. Spain and the GCASC, on the other hand, have no intent to establish even unofficial contact with Pristina.⁸⁹

Table 1. Categorisation of EU member state relations with Kosovo

Policies towards Kosovo (country cases)	Recognition	Non-recognition
Engaged	'Strong recognisers' Germany The UK	'Soft non-recognisers' Greece Slovakia Romania
Not Engaged	'Weak recognisers' Czech Republic Poland	'Hard non-recognisers' GCASC Spain

Source: James Ker-Lindsay and Ioannis Armakolas, "Kosovo, EU Member States and the Recognition-Engagement Nexus", Ioannis Armakolas and James Ker-Lindsay (eds), *The Politics and Engagement, New Perspectives on South-East Europe*, (2020), p. 5.

a) Romania

Romania is one of the five EU countries not recognising Kosovo and maintains interaction with the country at a minimum level. Moreover, non-recognition of Kosovo is supported by all political parties except for the Democratic Alliance of Hungarians in Romania. For a long time, political parties in Romania clearly refused to recognise Kosovo's unilateral independence declaration. On 18 February 2008, 27 members of the Romanian Parliament voted in favour of

⁸⁹ James Ker-Lindsay and Ioannis Armakolas, "Kosovo, EU Member States and the Recognition-Engagement Nexus", p. 5.

recognition while 357 voted against the recognition, accusing Kosovo of breaching international law.⁹⁰

The idea that recognising Kosovo's independence may be a precedent for the Hungarian minority, which has been seeking autonomy for the Transylvania region, was the principal cause of Romania's stance against Kosovo's independence.⁹¹ Official 2002 census data reveal that around 1.5 million citizens, which is 6.6 per cent of the total population in Romania, consider themselves Hungarian, the majority of whom live in the Transylvanian region.⁹²

In addition, Romania does not wish to harm its relations with Serbia, to which it exports amounting approximately \$1 billion⁹³ annually, for Kosovo, with which it has not even officially established economic relations. However, despite strong bilateral economic relations, political relations are not consistently ideal. Romania, as an EU member state, threatened to block Serbia's EU accession negotiation (Chapter 23) if the rights of the Romanian minority in Serbia were not guaranteed. It is believed that the non-recognition of Kosovo is manipulated by the Romanian government and used as an argument for more rights for the Romanian community in Serbia.⁹⁴ In addition to them, even though there is no Romanian liaison office at the ambassadorial level in Kosovo, Kosovar passport holders can be issued a visa in the Romanian embassy in North Macedonia.⁹⁵

b) Spain

Even though Spain has been in favour of sharing a common view in foreign policy issues with the EU, it announced that it would not recognise Kosovo's unilateral independence, noting that there was neither a legal agreement between the parties nor a UN Security Council resolution.⁹⁶ In fact, the independence of Kosovo coincided with a difficult time for Spain. Domestic issues are important

90 Alexandru Damian, The Kosovo Question in Romanian Politics, 11 June 2019, <https://blog.politics.ox.ac.uk/the-kosovo-question-in-romanian-politics/>, Accessed 19.01.2021.

91 Eraldin Fazliu, Recognition Denied: Romania, 07.11.2016, <https://kosovotwopointzero.com/en/recognition-denied-romania/>, Accessed 17.01.2021.

92 Nandor Magyari, Letitia Mark, Hajnalka Harbula and Eniko Magyari-Vincze, *Country Report on Ethnic Relations: Romania*, Budapest, Central European University, 2008, p. 5.

93 WITS, World Integrated Trade Solutions, Romania Product Export to Serbia, 2018, <https://wits.worldbank.org/CountryProfile/en/Country/ROM/Year/2018/TradeFlow/Export/Partner/SER/Product/all-groups>, Accessed 16.01.2021.

94 Eraldin Fazliu, Recognition Denied: Romania.

95 Kosovo- The Ministry of Foreign Affairs and Diaspora, Visas for Kosovo citizens, http://www.mfa-ks.net/en/sherbimet_konsulllore/500/vizat-pr-shtetasit-e-kosovs/500, Accessed 16.01.2021

96 Reuters, Spain says won't recognise Kosovo independence, 18.02.2008, <https://www.reuters.com/article/us-kosovo-serbia-eu-spain/spain-says-wont-recognize-kosovo-independence-idUSL1864522720080218?virtualBrandChannel=10005>, Accessed 02.06.2020.

to understand in relation to the position of the Spanish government regarding Kosovo: the economic crisis, high unemployment figures, and, most importantly, the Catalanian situation led to Spain's refusal of recognition.⁹⁷

Similar to other EU member states, the main reason why Kosovo has not been recognised by Spain is fear of the impact on the campaigns for autonomy of Catalonia and the Basque Country. The Spanish government makes an analogy between the two cases, though this has been disputed by various Spanish administrations. Spain's response regarding the non-recognition of Kosovo was motivated by pressure from Catalan separatists supporting Kosovo's statehood. Kosovo's path to self-determination has actually played an important role in Catalonia's attitude, as its support for Kosovo's independence has been high, as indicated by its political statements and motions. Based on inference from the ICJ decision in 2010, Catalan separatists regard Kosovo's independence as a historical precedent complying with international law.⁹⁸ Madrid, on the other hand, does not want to hear any precedents that could be used by its regions.⁹⁹ In this regard, despite the vast differences, Madrid is criticised for failing to make distinctions between Kosovo, where more than 10,000 Albanians were killed and half of the population were expelled, and Catalonia which attracts international sympathy.¹⁰⁰

Spain's refusal to recognise Kosovo presents various obstacles in Kosovo's representation in international events. For instance, during the Karate World Championships in Madrid in 2018, the anthem and flag of Kosovo were banned. Even though Kosovar athletes took part in the competitions, the scoreboards displayed the 'World Karate Federation' instead of Kosovo's official name.¹⁰¹

Madrid has not shown any kind of a détente policy, even symbolically, when it comes to Kosovo, and it is doubtful that Madrid will recognise Kosovo unless a formal agreement between Belgrade and Pristina is made. Spain is very reluctant to accept Kosovo unless its independence is in accordance with international law and the process is compatible with the terms of UN Security Council Resolution 1244. This is public face of Madrid's position against recognition; however, the core reason is to protect its multi-ethnic and pluri-religious state. Ultimately,

97 Ruth Ferrero-Turrión, "The Consequences of State Non-recognition: The Cases of Spain and Kosovo", *European Politics and Society*, 2020, pp. 1-12.

98 Pol Vila Sarrià and Agon Demjaha, "Kosovo-Spain Relations and the Dilemmas on the Problem of Non-Recognition", *South East European University Review*, Volume 14, Issue 1, (2019), pp. 69-90.

99 Vecernje Novosti, Spain says Kosovo can only join EU as region of Serbia, 01.02.2018, https://www.b92.net/eng/news/politics.php?yyyy=2018&mm=02&dd=01&nav_id=103395, Accessed 02.06.2020.

100 Fredrik Wesslau, Spain's Kosovo-Catalonia conundrum, 24.11.2017, https://www.ecfr.eu/article/commentary_spains_kosovo_catalonia_conundrum_7240, Accessed 02.06.2020.

101 RTE, Refusal to recognise Kosovo an obstacle to major sporting events in Spain, 13.11.2018, <https://www.rte.ie/news/world/2018/11/13/1010706-spain-kosovo/>, Accessed 02.06.2020.

Madrid's position has been shaped by domestic concerns because of fears of the impact of Kosovo on its internal unity, particularly the cases concerning Catalonia and the Basque region.¹⁰²

c) Slovakia

Similar to the other countries, the essence of Slovakia's non-recognition stems from internal affairs. Basically, two domestic factors lie behind Slovakia's policy on Kosovo. The first is the Hungarian minority issue, which played an important role in Slovakia's position and prevented re-consideration of its view.¹⁰³

The second reason that influenced Slovakia's decision is not about Kosovo's declaration of independence but about how and in what circumstances it was declared. Slovakia's approach to Kosovo's independence has long been discussed among politicians, diplomats, and officials, and party politics underestimating Europeanisation and aiming to regain domestic political power affected the policy direction and became a determinant of Slovakia's approach.¹⁰⁴

Between 2006 and 2007, Slovakia was a non-permanent member of the United Nations Security Council, and Kosovo was high on the UNSC agenda. Slovakia's political position was a contrast to the position adopted by the four other EU members (the UK, France, Italy, and Belgium) which are in favour of independence. Traditionally positive Slovak-Serbian relations contributed to Slovakia's position as well. Slovakian officials believed that Kosovo's independence could destabilise the region and raise security concerns.¹⁰⁵ Slovak non-governmental organizations, on the other hand, have been directly engaged in Kosovo and in contributing to the development of the civil society sector in the country. Slovak NGOs and media may have an impact on public opinion regarding the recognition of Kosovo in the future; however, Slovakia has not shown any signs of recognising Kosovo's independence.¹⁰⁶

102 Ruth Ferrero-Turrion, "Spain: Kosovo's Strongest Opponent in Europe", ed. James Ker-Lindsay and Ioannis Armakolas, *The Politics of Recognition and Engagement, New Perspectives on South-East Europe*, (2020), pp. 215-236.

103 Katarína Lezová, *The Influence of Domestic Political Factors on Foreign Policy Formation in an EU Member State: The Case of Slovakia and the Kosovo Status Process*, PhD Thesis, University of London, pp. 215-218.

104 Ibid.

105 Katarína Lezová, "Slovak Parliament's Involvement in the EU Agenda: Kosovo's Independence and the Policy of Non-Recognition", Tom Hashimoto and Michael Rhimes (eds), *Reviewing European Union Accession: Unexpected Results, Spillover Effects and Externalities*, Martinus Nijhoff Publishers, 2017, pp. 259-276.

106 Bashkim Rrahmani, "Kosova Request for Recognition and Slovakia", *Academic Journal of Justice and Law*, 2015, pp. 1-14.

d) The Greek Cypriot Administration of Southern Cyprus

Similar to the case of Kosovo, the Republic of Cyprus, which was accepted for EU membership, has been one of the most controversial issues in the EU enlargement process. The Greek Administration located in the southern part of Cyprus, which is referred to as the Republic of Cyprus by the EU, has positioned itself as hard non-recogniser of Kosovo's independence, as recognising Kosovo may set a precedent for the Turkish Republic of Northern Cyprus (TRNC) to become a de jure state. Ignoring Turkish Cypriots' self-determination rights and independence declaration, the GCASC claims that the whole island must be considered in its territorial integrity and that the TRNC's independence declaration is illegal. Stating that no room exists for a claim to self-determination in the situation of Kosovo¹⁰⁷, GCASC believes that it represents the whole island, ignoring the Turkish community in the north of the island and the entity of the state of Turkish Cypriots, particularly after attaining EU membership in 2004, and aims to prevent recognition of the TRNC through not recognising Kosovo.

In 2009, the GCASC government submitted a statement to ICJ on the Kosovo situation, arguing that Kosovo's institutions did not have the competence to declare independence and that the declaration was inconsistent with international law. GCASC also took a hard-line position on the EU's visa policy towards Kosovar passport holders, just as it opposed recognition of TRNC passport holders. On the other hand, Kosovars with a Schengen visa can enter GCASC. Additionally GCASC vetoed Kosovo's membership in UNESCO. Another factor affecting Cyprus's position on the Kosovo issue is its bilateral ties with Serbia. Since the ultimate dissolution of the Federal Republic of Yugoslavia, GCASC has been a strong supporter of the Serbian cause despite its adherence to UN-imposed sanctions. It also relates to Serbia through the religious lens of the Christian Orthodox faith.¹⁰⁸ Following Kosovo's declaration of independence, Greek Cypriot President Tassos Papadopoulos declared that "Cyprus will not recognise Kosovo even if Serbia does". Greek Cypriot diplomats have gone further and expressed that Athens is poisoned as it considers recognising Kosovo. Therefore, it seems that Athens will not easily change its policy.¹⁰⁹ As a result, Kosovo will remain a question for the Greek administration in Cyprus until the separation issue on the island is solved.

107 Republic of Cyprus, Law Office of the Republic, A.G. File No. 36/1969/Y.4/17, 08.07.2009.

108 James Ker-Lindsay and Ioannis Armakolas, *Lack of Engagement?*, pp. 47-49.

109 James Ker-Lindsay, LSE Blogs, 03.11.2013, <https://blogs.lse.ac.uk/euoppblog/2013/10/03/there-is-a-good-case-to-be-made-for-cyprus-pressing-ahead-with-full-recognition-of-kosovos-independence/>, Accessed 15.01.2021.

e) Greece

Greece is soft non-recogniser of Kosovo. Greece has a Liaison Office at the ambassadorial level in Pristina and voted in favour of Kosovo's application to join the European Bank for Reconstruction and Development (EBRD); however, it has not recognised the independence of Kosovo.¹¹⁰ The case of Greece on the Kosovo question is distinct from other non-recognisers. Greece has political and economic interests in the Western Balkans and historical ties with both the Albanians and the Serbians, and connections with Serbia and Albania. Following the 1999 war, Athens did not block Western policies even though it opposed them. Greece had a diplomatic presence in the region, included Kosovo in its initiatives in the 2003 Greek EU Presidency, and proposed solutions to Kosovo's status problem. However, Greece has consistently opposed Kosovo's independence.¹¹¹

Greece's opposition policy is mainly due to its possible long-term repercussions for the Cyprus problem, as it may be a precedent for the Turkish Republic of Northern Cyprus. Another factor is that Greece considers its strong relations with Serbia, a key player in the region. However, Greece maintains building social and economic relations with Kosovo, actively uses its liaison office in Pristina, supports some of Kosovo's applications for membership in international organisations, and accepted the opening of Kosovo's trade office in Greece without diplomatic status.¹¹² Considering diplomatic ties, among the Western Balkan countries, Kosovo is the only country whose citizens require a visa to travel to the Schengen zone. Not being recognised by all EU countries creates ambiguity for Kosovars as well. Kosovar passport holders can acquire a Schengen visa; however, the conditions exclude travel to non-recognising member states.¹¹³ Therefore, Kosovar passport holders cannot enter Greece, Slovakia, and Spain, which are Schengen countries.

The 2020 Kosovo Progress Report underlines the European Commission's confirmation that Kosovo fulfilled all visa liberalisation benchmarks, and the Commission continues assessing it. EULEX has been assisting Kosovo authorities for sustainability and independent rule of law institutions, and it was granted a one-year extension to July 2021 during the coronavirus pandemic. According to the Progress Report, 114 countries, including 23 EU member states, had

110 Hellenic Republic Ministry of Foreign Affairs, Kosovo, <https://www.mfa.gr/en/blog/greece-bilateral-relations/pristina/>, Accessed 16.01.2021.

111 Ioannis Armakolas, "Greece: Kosovo's Most Engaged Non-Recogniser", ed. James Ker-Lindsay and Ioannis Armakolas, "The Politics of Recognition and Engagement", *New Perspectives on South-East Europe*, (2020), pp. 123-146.

112 Ibid.

113 Veton Surroi, "The Unfinished State(s) in the Balkans and the EU: The Next Wave", ed. Jacques Rupnik, *The Western Balkans and the EU: The Hour of Europe*, Paris, Institute for Security Studies, (2011), pp. 111-120.

recognised Kosovo so far, and EU-facilitated dialogue with Kosovo would be encouraged.¹¹⁴

5. Conclusion

The EU's engagement in Kosovo makes it the most influential international player in the region. However, this issue is in a stalemate within the Union, as no common perspective has been developed on the status of Kosovo. Since 1998, the engagement level of the EU in Kosovo has been very high, particularly through the activation of the Contact Group founded to integrate European diplomacy into the crisis. Thanks to the achievements of the international community (NATO and the UN in particular and the EU later on) in the former Yugoslavia, conflict ended, infrastructure was reconstructed, and refugees were able to return to their homelands.

As the EU did not wish to see an unresolved problem in the region, it primarily sought a compromise between the US and Russia on the Kosovo issue. However, when a solution could not be found, the EU had to undertake a more functional role. The EU gradually took a greater role in the Kosovo crisis, contributing to the normalisation of its relations with neighbouring states, particularly with Belgrade, reducing its international dependence, and strengthening its international relations. Following the transfer of responsibilities in the areas of police, customs and judiciary administration to EULEX, the EU took a significant and operational role in the Balkan region. The Brussels Agreement and normalisation process contributed considerably to the peacebuilding process in Kosovo; however, the EU was not able to resolve Kosovo's recognition problem.

Though Kosovo managed to gain recognition from most Western countries, the quagmire of the repercussions of the Kosovo crisis in the EU still remains unclear, as its sovereignty and independence intersect with various EU countries' internal policy agendas. Moreover, none of the five non-recognising EU member states have shown signs of softening concerning Kosovo's recognition so far.

These five member states remain firm in their opposition to recognition and clearly fear the possibility of contagion in terms of their domestic unity and demands of ethnic minorities. In this sense, the European perspective on Kosovo appears to be at stake because of a lack of clearly and universally accepted status. Considering these developments, Kosovo can be considered an incomplete policy of the EU, and a more problematic issue is likely to emerge when more formal relations with Kosovo are established. Therefore, the EU as an entity should pursue

114 European Commission, *Commission Staff Working Document*, Brussels, Kosovo 2020 Report, 06.10.2020.

a more pro-active and effective approach towards the Kosovo quagmire and consider it in the EU integration process, which is thought to contribute to finding a definitive solution in order to end the stagnation Kosovo faces.

Kosovo, on the other hand, must be more pro-active in developing cooperation in the region and joint actions with other countries and consider all possible means to establish relations with the states that do not recognise it if it is to project a European perspective in the future.

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