



Kosovo-Serbia Normalization: Lessons From the 1972 German Basic Treaty

On April 14, 2024, in Belgrade, the Council for Inclusive Governance (CIG) gathered a group of experts for a workshop to discuss the Kosovo-Serbia normalization process and lessons learned from the 1972 German Basic Treaty. As there is an apparent similarity between the 1972 German Basic Treaty and the 2023 Brussels Agreement, CIG deemed it essential to discuss parallels, differences, and historical experience. The debate was not narrowed to these two treaties but also focused on other examples that could be useful for the process of Serbia-Kosovo normalization. The report's elements and conclusions are not necessarily based on a consensus but reflect the most critical elements of the discussion. The meeting was held under the Chatham House Rule, and none of the stated content and conclusions could be assigned directly to any of the participants. The meeting is part of a project jointly supported by the Federal Foreign Ministry of Switzerland and the Friedrich Ebert Foundation Office in Belgrade. Igor Novakovic, CIG's Senior Associate, prepared the report, and CIG takes sole responsibility for its content.

The 1972 German-German Treaty: Lessons for Serbia and Kosovo

The 1972 German Basic Treaty did not come suddenly, but it resulted from coinciding interests and a need to achieve stability and predictability during the Cold War. It was impossible to reach it without the gradual improvement of the climate between the West and the East at that moment. The time before the agreement was immensely challenging, culminating in 1961 when the Berlin Wall was constructed and in 1968 when the Soviet Union invaded Czechoslovakia and put an end to all hopes that there could be a peaceful change.

The agreement was an outcome of tough negotiations, especially since the Federal Republic of Germany (West Germany) government was under immense pressure in the Parliament. Then, the opposition Christian Democratic Union (CDU) even proclaimed the signing of the treaty to be “a high treason” as West Germany gave up its historical rights, according to them. In that regard, the decision of the Constitutional Court of West Germany was important, as it came up with the decision that the Treaty did not violate the Constitution, as there was no reference in the text that West Germany gave up from the goal of unification. However, in both West and East Germany, the idea of “unification during our lifetime has been scrapped,” as one of the participants pointed out. The Treaty has cemented the separation between the two.

East Germany also had an interest in repairing its international image. The situation in Berlin with the Wall and shootings of the citizens who wanted to escape to the West have constantly undermined their efforts to present themselves as a normal state. On the other hand, West Germany finally stopped investing in the “regime change” and even later looked at democratic attempts of

the other states in the Soviet camp as potentially detrimental to the German-German Treaty's success.

Like in the case of Serbia and Kosovo, the Treaty has been followed by a lot of “constructive ambiguity,” especially by the politicians, but according to several participants, the general atmosphere was that all were aware that the Treaty meant separation and did not represent a path towards unification. The Treaty resulted in the recognition that there were two separate legal systems, as the only thing that remained was citizenship – East Germans could still automatically gain the citizenship and passports of West Germany (of course, after relinquishing their East German one).

Regarding the agreement's implementation, East and West Germany had huge economic interests in seeing that it was a success. The critical point was that no customs existed between the two, so an intense economic cooperation existed. West German companies got a chance to invest in the East and to profit from the cheaper labor force. East Germany gain an indirect access to the European Community market, which boosted its economic performance. In addition, West Germany funded the rehabilitation of the infrastructure, particularly roads and railroads. In essence, one could look at the 1972 Treaty as a business deal, where both sides focused on the practical elements while they stopped talking about the past as it was “bad for business.”

Differences and parallels between the agreements

The participants then tried to draw parallels and differences between the two agreements and formulate conclusions that could be useful for the Serbia-Kosovo case. Despite the two texts being very similar and, to an extent, even identical, the actual context makes their impact different.

A participant stressed that the two cases – German-German and Serbia-Kosovo – are different in many respects, and several others supported this view by pointing to the differences. First, the 2023 Brussels agreement is the final step of the long process of negotiations aimed at normalization between the two sides, and this document is trying to integrate all previous agreements and provide the setting for establishing a new reality in their relations. This fact is creating a lot of difficulties and complexities, as there are not just two sides, but there are also Kosovo Serbs who have specific interests that do not necessarily coincide with the ones of Belgrade.

Second, both sides in the German-German case treated the Basic Treaty as final agreement, and in the Serbia-Kosovo case, it is clear that that is not the case. The 2023 Brussels Agreement is just providing a path to it, and as parties and politicians do not have a clear vision of what the results will be, it is easy for them to find or create obstacles.

Third, the 1972 agreement was reached in a radically different situation – basically, cooperation between the two Germanies was non-existent, there were rigid boundaries, and no movement was allowed. Serbia and Kosovo, despite the frequent crises that occur, still have cooperation, and citizens can more or less move freely, so the impact of the 2023 Agreement is mainly on the political level. In that regard, agreements reached in 2011-2022 were much more critical, as their purpose was normalizing the situation on the ground and integrating the Serb community in

Kosovo. Hence, the people from both sides do not consider the 2023 Brussels agreement desirable or substantial.

Fourth, as one participant outlined, the text of the 1972 Treaty suggests a radically different atmosphere, particularly the preamble of the Treaty. According to her, the 1972 text is much more sensitive to the context and to the actual needs of the people. On the other hand, the 2023 Brussels Treaty has been imposed (“take it or leave it”), but the sides do not see it as something that is necessarily in their interest, and hence the agreement(s) “are not doing their job.”

Fifth, the nature of the agreements is different. The 1972 Agreement was transactional as the sides decided to accept the reality and sugarcoat it to fulfill the practical interests. The Serbia-Kosovo agreement was contractual, and it was imposed as a reflection of the current geopolitical and geostrategic situation caused by the Russian invasion of Ukraine.

There was ideological context in the case of two Germanies, but there was no ethnic hatred. And this is integral in the Serbia-Kosovo situation. In other words, the Kosovo-Serbia situation resembles Northern Ireland and even Palestine much more than the German-German case. Also, one of the main issues in the Serbia-Kosovo case is identity, which was not prevalent in the previous case.

Participants also pointed out that other treaties could be relevant for Serbia and Kosovo, particularly the 1998 Good Friday Agreement and the US-Columbia Agreement over Panama. They recommended that inspiration should also be drawn from them in the upcoming process.

Conclusions and recommendations

The following conclusions stemmed from the meeting:

- Stability and peace should not be overburdened with the comprehensive approach. Having too much “on the plate” could backfire and make the situation on the ground even less stable.
- The Treaty should create a situation in which the parties also want a solution and see practical benefits.
- When treaties are imposed, often the consequence is that there is no local ownership. Then, the primary responsibility lies on the power mediator that can offer something to the sides and carry out sanctions if needed. Imposed solutions often ended wars but have not settled peace.
- Sides should be drawn to see “the price tag” of the *status quo*, hence to develop a vested interest in a change.
- Nationalists have the power to influence the discourse – but they do not necessarily reach agreements, as many historical examples have shown, including the German-German one.
- Agreements should be legally binding.
- Normalization without a parent state recognition is possible but only if this is compensated by international recognition (two Germanies did not recognize each other but the UN membership happened for both).
- Implementation requires time (UN membership for both Germanies took ten months).
- Benefits should be at the same time, no sequencing (both Germanies became UN members on the same day).

- No agreement (good or bad) will likely have a national consensus.
- Good agreements address needs of the people and make life easier.
- Courts would have to become more flexible with government policy so as not to spoil the process, as Kosovo's constitutional court spoiled the Brussels agreement.
- The German case shows that negotiations were kept as closed as possible (the opposition was not involved in the 1972 Treaty negotiation and it took the case to court and campaigned against it).
- Each side needs to analyze the other well searching for entry points and internal divisions on the other side.
- Strong leadership willing to expose itself to vulnerabilities is necessary (West Germany's governing party, (Social Democratic Party) SPD, took sole responsibility).
- Sides should internally position themselves to navigate the internal situation towards compromise. In Germany, snap elections were held one month before the signing, and the SPD won the largest majority since the 1930s. Hence, it had four years to deal with potential electoral consequences.

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