

Serbia and Kosovo: The Path to Normalisation

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Executive Summary

The ground shifted underfoot in Kosovo in December 2012. After years of posturing, punctuated by outbursts of violence, Serbia and Kosovo began to implement a landmark agreement on border control, opening joint posts at crossings that had been variously barricaded, circumvented or burned to the ground for much of the past two years. Bigger issues, including the courts, police and municipal structures in Serb-majority northern Kosovo, are now on the agenda of a high-level bilateral dialogue facilitated by the European Union (EU). The leaders of both states seem more ready than ever to compromise, but the northern Kosovo Serbs are staunchly opposed to integration, low-level violence is increasing, Kosovo nationalists are tense, and a spark could set off intercommunal fighting. Belgrade and Pristina should seize this chance to engage in a substantial discussion on the transformation of existing structures in the North and to offer a self-governing region that fits into Kosovo's jurisdiction based on a flexible application of the Ahtisaari plan's features.

Kosovo and Serbia still disagree on much. For Pristina, negotiation aims at winning Serb acceptance of the Ahtisaari plan – the framework devised originally by Martti Ahtisaari, the former UN special envoy – that set in place Kosovo's internal structure and statehood. For Belgrade, the talks concern revision or improvement of agreements that it considers flawed or unacceptable, like the Ahtisaari plan. The gulf between the two expanded during years of little direct contact, ample mistrust and fractious domestic politics. Navigating a sure route through the waters will be hard, but recent developments provide hope, as results in the early stages of the talks have thawed some of the mutual rigidity. Serbia recently crossed a threshold by affirming, at least implicitly, Kosovo's territorial integrity and jurisdiction over the North, though still denying its independence. Both capitals seem to have ruled out the use of force to reach a solution to their political dispute.

This report looks back at the technical dialogue conducted with EU facilitation since March 2011 and forward to the next stages of the high-level political talks that began in October 2012. The sides have resolved some practical issues: trade relations, participation in regional meetings and recognition of one another's diplomas. Others – free movement of persons, personal documents, liaison offices, civil registry and property records – have been difficult, but some results are evident. Talks on telecommunications and energy have not led to agreement, and emotional subjects like missing persons have yet to be broached. The December opening of two jointly-managed border posts is the brightest achievement to date, and potentially an important one; the border regime touches almost every aspect of the Kosovo-Serbia dispute, from mundane practicalities to fundamental status and independence issues. Yet, the sides still have to finalise details, especially on customs controls, and Kosovo and EU police (EULEX) still must be granted full free movement to reach the Serbia border and carry out their duties.

The breakthrough was the first tangible result of talks between the two prime ministers and hosted by Catherine Ashton, the EU foreign policy chief. Until now, those meetings have been mainly about feeling one another out and making decisions on agreements framed earlier by experts. It has been possible to package results ambiguously enough to allow both sides to hold to their principles concerning Kosovo

status. That period is ending, however. It will be more difficult to sustain ambiguity on the next agenda items, which deal with whose law and institutions will govern northern Kosovo.

In December 2012, EU member states set tough conditions closely tied to the gradual normalisation of their bilateral relations for Serbia and Kosovo to progress on their respective EU accession tracks. To begin membership negotiations, Serbia was asked to progressively deliver security and justice structures in northern Kosovo in cooperation with Kosovo. This means making substantial progress in discussions on how the local courts, police and municipalities are to be managed. While these institutions are currently outside Pristina's control, solutions can be found that would affirm the state's unity, while allowing local Serbs to retain their sense of ownership.

The transformation of northern structures into self-governing bodies that fit into Kosovo's jurisdiction could open the way for offering the North a special arrangement as part of the overall solution. Much can be accomplished by flexible application of the Ahtisaari plan with regards to police, courts and regional government. One principle should be that Kosovo's borders remain intact; another should be that the North govern itself as it wishes when it comes to issues of community concern, insofar as this does not damage Kosovo's territorial integrity. Pristina also wants its status as an independent state affirmed, which Belgrade currently firmly rejects. Yet even here, there is room for compromise, with Serbia lifting its block on Kosovo's membership in regional and international organisations and participation in international sporting and cultural events. These are complex, highly emotive issues the details of which can be worked out gradually, in step with Kosovo's and Serbia's EU accession processes.

But the dialogue is now at a decisive point. Belgrade's and Pristina's positions on northern Kosovo have never been closer. If they can finalise agreements on the border and make real progress in talks on governing institutions and the rule of law in the North before the European Council (summit) in June 2013, the EU is ready to reward both. For Kosovo, negotiating a Stabilisation and Association Agreement with the European Union would ground it as firmly as the rest of the region in the accession process. For Serbia, starting formal membership negotiations would give a huge boost to its reform efforts. Coupled with Croatia's EU accession in July, these gains would ripple through the western Balkans. But if talks collapse in the next few months, EU member-state politics would dictate a long pause that the fragile coalitions in Belgrade and Pristina might not survive, and the low-level violence that has racked the region in early 2013 could worsen. Such a promising opportunity may not come again soon, if at all.

Recommendations

To build confidence and strengthen trust in the EU-facilitated bilateral dialogue by consolidating its achievements to date, particularly regarding the border

To the governments of Kosovo and Serbia:

1. Implement fully the agreement on integrated management of border crossing points (IBM); finalise the agreement on collection of customs duty and VAT; and define the modalities of a special fund to collect and disburse these revenues in the North.

To the government of Kosovo:

2. Maintain a soft approach at the two northern Kosovo border gates by:
 - a) allowing local residents to cross with either Serbia- or Kosovo-issued ID cards and licence plates; and
 - b) continuing to issue licence plates without requiring Kosovo licences or identity cards.

To the government of Serbia:

3. Cease issuing Serbian licence plates to residents of Kosovo and instead urge Serbs to apply for Kosovo plates.

To the Northern Kosovo community:

4. Allow Kosovo officials and EULEX free movement to reach the border with Serbia and carry out their duties based on the IBM agreement.

To build confidence and strengthen trust in the EU-facilitated bilateral dialogue by increasing understanding and expanding participation

To the governments of Kosovo and Serbia:

5. Make the dialogue more transparent, in particular by taking measures to explain it more fully to the northern Serbs and inviting them to participate when it addresses issues of local concern; and work closely with the leaders of all parliamentary parties to inform them of issues being discussed and decisions made.

To the Northern Kosovo community:

6. Accept an invitation to participate in the EU-facilitated dialogue when it addresses issues of local concern; and begin to engage with Kosovo government officials.

To advance the EU-facilitated bilateral dialogue by achieving progress on next steps, including rule of law, telecommunications and energy, and other practical matters

To the government of Kosovo:

7. Provide effective security for Serbs and their property, including by forming a special police unit for protection of religious and cultural sites.
8. Increase the operational autonomy of the Kosovo Police (KP) in the North by setting up a northern regional command and encouraging recruitment of local Serbian police (MUP) to fill vacancies.
9. Accept a unique international dialling code suggested by Serbia; and give licences for a Serb mobile firm to operate in the North and a Serb sub-contractor to deal with electricity distribution and bill collection there.

To the government of Serbia:

10. Begin withdrawal of Serbian police and other security services from the North and support Kosovo efforts to recruit former MUP into the Kosovo Police by fully cooperating on candidate background checks and security.
11. Agree to integrate the Serbian court in Zvečan into the Kosovo judiciary and move the court and its judges in North Mitrovica, in return for Pristina offering local authorities a role in the appointment of future judges.
12. Comply with the Energy Community Treaty.

To the governments of Kosovo and Serbia:

13. Strengthen liaison presences hosted in EU offices in Belgrade and Pristina by appointing officers for citizen services, economic cooperation, trade and other issues.

To make progress on self-governance and status issues in the EU-facilitated dialogue

To the governments of Kosovo and Serbia:

14. Engage in a substantial discussion on the transformation of existing structures in the North into self-governing bodies and a region that can fit into Kosovo's jurisdiction with the competencies enumerated in the Ahtisaari plan and any others agreed.

To the government of Serbia:

15. Welcome Kosovo's membership and participation in the Council of Europe and other regional and wider international organisations and events.

*To advance its role as facilitator of the process to normalise
Serbia-Kosovo relations*

To the European Union and its member states:

16. Maintain conditionality with respect to progress on their bilateral relations, and if that progress is achieved, be prepared to take the necessary decisions as early as June 2013 to open negotiations with Serbia on membership and with Kosovo for a Stabilisation and Association Agreement (SAA).

Pristina/Belgrade/Brussels, 19 February 2013

Serbia and Kosovo: The Path to Normalisation

I. Introduction

After years of estrangement due to oppression, war, and Kosovo's declaration of independence in 2008, Serbia and Kosovo started a dialogue in March 2011. They are divided by a fundamental dispute on Kosovo's status: Serbian province or independent state. The expert-level talks began with dry technical issues, facilitated by a representative of Catherine Ashton, the EU high representative for foreign affairs and vice-president of the European Commission (EC). The hope was that solving practical issues would build confidence and familiarity and pave the way toward a more substantial, political rapprochement.¹

Belgrade had wanted to revisit the status issue and was a reluctant player from the start. Talks started with customs and free movement of goods and persons, issues over which Serbia would have to stop obstructing Kosovo.² Belgrade delayed until Pristina's patience ran out in July 2011, and it sent heavily-armed special police units to secure two border posts in its Serb-controlled northern region.³ They were beaten back, and one officer was killed, but KFOR, the NATO peacekeeping force, stepped in to take control.⁴

Only after this did Belgrade open its territory to persons with Kosovo documents and goods with Kosovo customs stamps, which led to an agreement on integrated management of crossing points (IBM) in December 2011.⁵ The two were to "gradually set up the joint, integrated, single and secure posts at all their common crossing points", with EULEX – the EU rule of law mission – present in line with its Kosovo mandate.⁶ IBM was the dialogue's greatest achievement of the year, but until De-

¹ See Crisis Group Europe Reports N°206, *Kosovo and Serbia after the ICJ Opinion*, 26 August 2010, and N°215, *Kosovo and Serbia: A Little Goodwill Could Go a Long Way*, 2 February 2012, for background on the technical dialogue.

² Serbia refused to accept entry or transit of goods bearing Kosovo customs stamps even after the top UN official in the region certified them, and also refused to allow persons with Kosovo documents to enter its territory. Crisis Group Report, *A Little Goodwill*, op. cit.

³ This report uses the terms northern Kosovo and the North interchangeably, without status implication.

⁴ KFOR's mandate includes control of the Kosovo-Serbia boundary, but officially the force has no position on whether it is an international border or an administrative line within Serbia. It protected the EU's rule of law mission (EULEX), which transported Kosovo's customs officials and border police to the two posts, which local Serbs quickly barricaded.

⁵ IBM stands for Integrated Border Management, an EU concept developed mainly to bring together the services (police, customs, phytosanitary inspection, etc.) relevant to border security; it was re-purposed and re-named to suit the specific, disputed nature of the Kosovo-Serbia frontier. The formal name is necessary, since Serbia considers Kosovo's frontiers administrative, while Pristina holds them to be international. See "Guidelines for Integrated Border Management in the Western Balkans", European Commission, updated version, January 2007. and Section III below.

⁶ "EU facilitated dialogue: Agreement on IBM", Council of the European Union press release, Brussels, 2 December 2011.

cember 2012, it remained words on paper; little or nothing was implemented.⁷ Belgrade also agreed to allow Kosovo to participate in regional organisations provided its national name carried a footnote referring to its unresolved status.⁸

The dialogue stalled later in 2012, which was an important year for domestic politics.⁹ Serbia's governing Democratic Party (Demokratska stranka, DS) did badly in parliamentary elections in May, and President Boris Tadić was defeated in his re-election bid by Tomislav Nikolić of the centre-right Serbian Progressive Party (Srpska napredna stranka, SNS). No party won an outright majority, and haggling over a new coalition took months. Ivica Dačić, leader of the Socialist Party of Serbia (Socijalistička partija Srbije, SPS) became prime minister in July, heading a coalition with the SNS and several smaller parties.

In Kosovo, supervision by the International Civilian Office (ICO), created by the Ahtisaari plan, ended on 10 September.¹⁰ Talks over constitutional amendments designed to introduce a strong, popularly-elected president stalled amid tensions between the governing coalition and opposition parties. Prime Minister Hashim Thaçi struggled with factional conflict within his Democratic Party of Kosovo (Partia demokratike e Kosovës, PDK). On 29 November, his long-time rival, Ramush Haradinaj, returned from final acquittal on a war crimes charge in The Hague. Haradinaj and his Alliance for the Future of Kosovo (Aleanca për Ardhmërinë e Kosovës, AAK) support the dialogue, buttressing Thaçi's position, but Haradinaj has ambitions to become prime minister. The Self-Determination (Vetëvendosje) movement staged several violent demonstrations against the EU-led dialogue.

Amid the changes in the region, it took several months over the summer and early fall for the EU to develop a concept to revive the Kosovo-Serbia discussions. With strong U.S. support, Ashton invited senior leaders to talk. Serbia rejected the initial offer, which reportedly included accords drafted by Brussels for the parties to adopt.¹¹ Ashton set aside the draft and got both sides to commit to high-level talks that would address issues the European Council had first defined in December 2011 and fine-

⁷ Other agreements made in 2011 concerned diplomas, cadastral records and personal registers. Several issues, including telecommunications, energy and missing persons, are unresolved.

⁸ The footnote reads: "this designation is without prejudice to positions on status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence".

⁹ The EU granted Serbia candidate status on 1 March 2012, partly on the strength of concessions made in the dialogue. The government called snap presidential and parliamentary elections for 6 May, and dialogue was suspended during the campaign.

¹⁰ See Crisis Group Europe Report N°218, *Setting Kosovo Free: Remaining Challenges*, 10 September 2012. Ahtisaari's brief "Report of the Special Envoy of the Secretary-General on Kosovo's future status", UN Security Council, S/2007/168, 26 March 2007, recommended international community supervised independence for Kosovo. His much longer "Comprehensive Proposal for the Kosovo Status Settlement" (CSP), S/2007/168/Add.1, contained a detailed design for how Kosovo should be governed internally. The terms "Ahtisaari plan", "the plan" and "the CSP" – used interchangeably in this report – all refer to these two documents taken together, whose provisions govern Kosovo's domestic order and have been incorporated into the constitution.

¹¹ The EU hoped to capitalise during U.S. Secretary of State Hillary Clinton's last months in office on her strong interest in the Balkans to move the parties toward difficult compromises. Ashton described the agenda, with at least eight issues for Serbia to deliver and a smaller number for Kosovo, to President Nikolić and Prime Minister Thaçi at the UN General Assembly in New York in September 2012. Crisis Group interviews, senior Serbian and EU officials, Belgrade, 6 and 25 September 2012.

tuned in December 2012, as key to advance the two countries' EU accession processes.¹² Talks at prime minister level are meant to forge the difficult compromises, the implementation of which is then to be worked out in detail by technical working groups.

The need for political talks at the highest level has long been plain in Belgrade and Pristina.¹³ Both are tempted by their respective desire to start negotiations with the EU – for Belgrade on accession and for Kosovo on a Stabilisation and Association Agreement (SAA). But while many in Belgrade want to reopen Kosovo's status and boundaries, Pristina seeks its neighbour's acceptance of its independence, sovereignty and territorial integrity. The heart of the dispute is over northern Kosovo, made up of four municipalities, including northern Mitrovica, governed by Serbs who remain almost entirely outside Pristina's reach.

On taking office in July 2012, Prime Minister Dačić promised that he would implement all agreements made by the previous government in the technical talks: on IBM, regional representation, freedom of movement, provision of cadastral records and recognition of university degrees, Kosovo's customs documents, and civil registries.¹⁴ Identifying implementation modalities for them is still a challenge, but the real difficulties will arise now, as the talks move into fresh territory, away from border/boundaries issues to the heart of the dispute over the institutions of northern Kosovo and the conditions of the people living there.

The high-level talks have already helped Kosovo and Serbia understand one another a little better, but there remains a risk that they will misread one another after the dialogue's encouraging and somewhat surprising early successes. Pristina may conclude Serbia has finally seen the light and dropped its Quixotic campaign against Kosovo's independence. Belgrade may take Kosovo's patience and willingness temporarily to forgo enforcement of some of its laws as a signal that it accepts Serbian control over the North. On the ground, where both sides are nervous, a spark could ignite inter-ethnic violence.

Attacks increased during the first six weeks of 2013, especially in northern Kosovo.¹⁵ Most involved explosive devices, often thrown at persons seen as associated with Kosovo institutions attempting to operate in the North.¹⁶ Tensions peaked when a hand grenade was thrown into a Serbian house in an ethnically-mixed neighbour-

¹² "Council Conclusions on Enlargement and Stabilisation and Association Process", EU General Affairs Council, 11 December 2012. The European Council (summit) endorsed without further comment these conclusions at its 14-15 December session. "Council Conclusions on Enlargement and Stabilisation and Association Process", EU General Affairs Council, 5 December 2011.

¹³ Crisis Group called for "comprehensive and inclusive political talks between Kosovo and Serbia, with the participation of northern Kosovo community leaders, that can eventually lead to resolution on governance of the North and normalisation and recognition between Serbia and Kosovo". Crisis Group Report, *A Little Goodwill*, op. cit.

¹⁴ The text of the agreements is available on the Serbian government's website (www.srbija.gov.rs) in English and Serbian.

¹⁵ Attacks have included explosive devices thrown at the Kosovo police checkpoint in Mitrovica on 3 February 2013; an explosive device thrown at an agricultural pharmacy in Leposavić on 4 February 2013; an explosive device thrown at the vehicle of the owner of the Hotel 'Saša' in Mitrovica on 18 January 2013; there were also several attacks on the vehicles of employees in the Kosovo government-financed North Mitrovica Administration Office. Several persons were victims of multiple attacks. The shop and car of the owner of a small pastry shop in Mitrovica, for example, were targeted on 10 January and 7 February 2013.

¹⁶ "Česti napadi na radnike kosovske administracije" ["Frequent attacks on Kosovo administration employees"], Pressonline, 3 February 2013. They are demanding more safety guarantees.

hood of North Mitrovica, injuring two small children.¹⁷ Local Serb officials insist that all such incidents are part of a “destabilising” campaign.¹⁸ Some now request arming of the civil defence organisation, a dangerous step.¹⁹ The Kosovo government blames local Serb leaders and criminals for the incidents, who, it says, want to block implementation of dialogue results.²⁰

Tensions also rose in Serbia’s Albanian-majority Preševo Valley in early 2013.²¹ On 20 January, police removed a controversial memorial commemorating fallen Albanian fighters. In solidarity with their kin in Preševo, Kosovars attacked Serbian cemeteries and monuments in several locations in Kosovo. The Pristina government reacted quickly, deploying more police, disciplining officers who failed in their protection duties and offering to fund reconstruction. On 26 January, thousands protested peacefully in Pristina in a Vetëvendosje-led rally under the slogan “Justice for Preševo, no negotiations with Serbia”.²²

¹⁷ “Kosovo: Deca Ranjena u Eksploziji” [“Kosovo: Children injured in an explosion”], B92, 5 February 2013.

¹⁸ “Nedeljković: Cilj incidenata destabilizacija severa Kosova” [“Nedeljković: Aim of attacks is to destabilise the North of Kosovo”], Tanjug, 18 January 2013.

¹⁹ “Pantić: Prekinuti kontakt sa Kforom i Euleksom” [“Pantić: Break contact with KFOR and EU-LEX”], *Telegraf*, 4 February 2013. The civil defence is an unarmed, uniformed Serbian organisation which provides assistance in emergencies and natural disasters.

²⁰ Statement by Prime Minister Hashim Thaçi at televised session of the Kosovo government, 29 January 2013.

²¹ The Preševo Valley contains Serbia’s municipalities of Preševo, Bujanovac and Medvedja; its Albanian population is about 57,600; there are about 25,000 Serbs. Crisis Group Europe Reports N°116, *Peace in Preševo: Quick Fix or Long Term Solution*, 10 August 2001; and N°152, *Southern Serbia’s Fragile Peace*, 9 December 2003.

²² See “Preševo grievances and Kosovo-Serbia talks”, Crisis Group “Balkan Regatta” blog (www.crisisgroupblogs.org), 1 February 2013.

II. The Starting Point

Close to two years after the start of the EU-facilitated dialogue, Serbia and Kosovo still disagree on Kosovo's status and its ability to act on the international stage; on their bilateral relations; and on the Serb community of Kosovo, especially in the northern municipalities. The northern Kosovo Serbs have their own interests and views, often poorly understood and at times sharply different from those of official Belgrade. Outside players, even EU member states, five of which do not recognise Kosovo, have their own preferences.²³

Key terms have one meaning in Belgrade and another in Pristina. For Kosovo officials (and the EU), "normalisation of relations" – a main Brussels goal – connotes recognition in all but name. It implies not only improved bilateral ties, something closely resembling a normal state-to-state relationship, but also Serbian agreement to Kosovo's eventual membership in the UN, the EU, and other international bodies, and cooperation in extending Kosovo institutions to the North. The relationship between East and West Germany between 1972 and 1990 is an oft-cited, though controversial, model.²⁴ For Belgrade, however, "normalisation of relations" means better bilateral ties, the protection of the Serb community in Kosovo, retaining a veto over Kosovo's international memberships and not recognising Kosovo's unilateral declaration of independence.²⁵ Both agree normalisation is the goal, but they point in different directions.

Some of the issues tackled in the EU-facilitated "technical dialogue" (March 2011-February 2012) have not yet been fully resolved, but the experience brought the two sides closer and narrowed the gap between their positions.²⁶ Pristina charged that Serbia routinely failed to implement agreements but still received EU candidate status in March 2012. The complaint has merit. Serbia's implementation has been slow and uneven; even a member of the government described it as "unserious".²⁷ The technical dialogue experience made plain the need to engage at a higher political level.

No amount of progress on practical issues can paper over the gap between Kosovo's and Serbia's agendas. Kosovo leaders believe they are participating in state-to-state negotiations. Their Belgrade counterparts frame the dialogue as one between the Serbian and Albanian peoples and in which they represent the northern Kosovo Serbs.²⁸ Pristina has not included ethnic Serbs from the governing coalition in its

²³ 22 EU member states recognise Kosovo; five – Cyprus, Greece, Romania, Slovakia and Spain – do not.

²⁴ The Grundlagenvertrag (Basic Treaty) of 21 December 1972 regulated relations between the Federal Republic of Germany (FRG) and the German Democratic Republic (GDR) until unification occurred in 1990. The two states did not recognise one another formally, and the FRG government retained its formal claim to represent all of Germany, but they agreed to respect one another's territorial integrity, sovereignty and independence; that neither could represent the other internationally; that the GDR would join the UN and other international organisations; and that they would establish permanent representations (Ständige Vertretungen, essentially embassies in all but name) in each other's capitals.

²⁵ Crisis Group interview, senior Serbian official, Belgrade, 24 December 2012.

²⁶ Crisis Group interviews, Serbian and EU officials, Belgrade and Brussels, September-December 2012.

²⁷ Crisis Group interview, member of former Serbia government, Belgrade, 16 November 2012.

²⁸ "The red line is simple: whatever is unacceptable to the Northerners is unacceptable to us. We are more willing to accept something that is against Serbia in abstract terms than what is against

negotiating team but has reached out to predominantly Albanian opposition parties. Belgrade also considers the talks part of its dialogue with the Quint, the group of influential countries that take a special interest in Kosovo matters.²⁹

A. *Kosovo*

For Kosovo, the dialogue is about finishing the process its leaders set in motion when they agreed to the proposal for supervised independence put forward by the UN special envoy and former president of Finland Martti Ahtisaari.³⁰ Membership in the UN is the final goal; with recognition from an increasing number of states the interim one.³¹ Its other priority is integration of northern Kosovo and its border with Serbia into its legal order.

Under international pressure, Pristina accepted links between Serbian municipalities in Kosovo and Belgrade (“vertical links”), but rejected an institution joining those municipalities (“horizontal links”) that could create a separate Serb entity.³² It was categorically against the creation of any Serb autonomy in Kosovo.³³ The four northern municipalities would have the same powers as the six southern Serb-majority ones, and Mitrovica would have additional competence for higher education and secondary health care.³⁴ Over the past year, some in government have begun to speak of a “stretched” version of the Plan that would not require constitutional

[the interests of] the Serbs in the North”. Crisis Group interview, member of Serbian parliamentary committee on Kosovo, Belgrade, 20 September 2012.

²⁹ Crisis Group interviews, senior Serbian officials, Belgrade, 2011-2012. The Quint comprises France, Germany, Italy, the UK and the U.S.

³⁰ Many in Pristina believe the Ahtisaari proposal created a contract between Kosovo and the international community. In this view, Kosovo’s leaders have done their part by implementing the Ahtisaari-drafted portions of its constitution, and it is now up to the international community to guarantee Kosovo’s full independence and sovereignty. Crisis Group interviews, Kosovo government and opposition leaders, Pristina, 2012.

³¹ Kosovo seeks membership in UN specialised agencies such as the UN Educational, Scientific and Cultural Organisation (UNESCO) and the International Telecommunications Union (ITU). Some of these are open to non-UN member states; non-UN members may join the ITU with the consent of two thirds of its membership (ITU Constitution, Article 2c). Membership in them constitutes recognition of statehood for the purpose of signing treaties deposited with the UN Secretary-General. Kosovo also seeks membership in the Council of Europe and other international organisations, as well as participation in international sporting events. Crisis Group interview, Kosovo government official, Pristina, 29 October 2012. The number of states that recognise Kosovo is between 94 and 98. In late 2012, Kosovo became a member of the European Bank for Reconstruction and Developments (EBRD).

³² The Kosovo leadership has feared the corrosive effects of a Serbian entity within its borders especially since the 2005-2006 talks that led to the Ahtisaari plan; see Crisis Group Europe Report N°182, *Kosovo: No Good Alternatives to the Ahtisaari Plan*, 14 May 2007. Many old Balkan hands shared the widespread belief that horizontal links between the North and Serbia would create an entity like Bosnia’s Republika Srpska (RS) and cripple the new state. See the U.S. Vienna embassy cable (unclassified), 23 March 2006, made public by WikiLeaks: Martti Ahtisaari “stressed to the Serbian delegation, however, that there could be no separate Serb entity and that any ‘vertical links’ with Belgrade needed to be issue-oriented, transparent, and in conformity with Kosovo’s legal system and structure”.

³³ Already in 2007, a Kosovo official said, “our red lines were no Serb entity, no third layer of administration, and Ahtisaari supported us”. Crisis Group interview, member of Kosovo’s negotiating team, Pristina, 9 February 2007, quoted in Crisis Group Report, *Kosovo: No Good Alternatives to the Ahtisaari Plan*, op. cit., p. 25.

³⁴ CSP, op. cit., Annex III, Article 4.

change but would allow the northern municipalities to delegate powers to an indirectly elected regional body.³⁵

Many Kosovar leaders argue that revision of one part of the Ahtisaari plan would mean reopening the whole thing: “If the plan is changed, we will start again from scratch”.³⁶ They warn that if Serbs in the North get more through the talks, it will be necessary to take away some of the rights given to Serbs living in the South.³⁷ Yet, this view is selective: truly reopening Ahtisaari’s plan would mean putting independence in question, a step no Kosovo leader contemplates. Adopting it in full was the price tag of independence, which Pristina paid with knowledge that full international recognition was not guaranteed.³⁸

Senior Kosovo officials talk increasingly about reciprocity between rights given to Albanians and Serbs. They argue that if Pristina is to consider any new rights for its Serbs, Serbia should first give similar benefits to its Preševo Albanians.³⁹ An opposition member of parliament explained: “If Belgrade wants more for the North, we need to see [more also] on the ground in Preševo. Those standards of human and minority rights that Serbia applies in Preševo we will apply in the North”.⁴⁰ Others complain that Kosovo gives more rights to the Serb community than those provided to the much larger Albanian minority in Macedonia by the 2001 Ohrid Accord. A senior Albanian politician in Macedonia said that if northern Kosovo gains a special status, Albanian municipalities in Macedonia would seek the same.⁴¹

Serbia’s controversial removal of a Preševo monument to fallen soldiers of the valley’s 2001 independence struggle on 20 January 2013 strengthened these calls for “reciprocity”.⁴² The Pristina government refused a request by Serbian President Nikolić that he be allowed to visit the Serb majority town of Gračanica in central Kosovo that month, saying that Belgrade must first allow a trip by a Kosovo official

³⁵ The CSP allows municipalities to form “partnerships” headed by a “decision-making body comprised of representatives appointed by the assemblies of the participating municipalities” and through which they can exercise many of their powers; *ibid*, Annex II, Article 9.1. Pristina rejects an elected legislature for such a body. Crisis Group interview, Kosovo officials, Pristina, October 2012. On 14 January 2013, the Kosovo government issued guidelines and objectives for the dialogue, reiterating these points and noting that “we understand that Serbia cannot recognise Kosovo’s independence at the end of this process, therefore it is essential Kosovo is guaranteed membership in the UN, in order to open up a secure path toward membership of NATO and the EU”.

³⁶ Crisis Group interviews, senior government adviser, PDK vice president, AAK member of the assembly, Pristina, November 2012-February 2013.

³⁷ Comments made at roundtable organised by Project on Ethnic Relations (PER) Kosovo and Democracy for Development Institute (D4D), Pristina, 14-15 April 2012.

³⁸ There is much frustration in Kosovo over the fact that even though the Ahtisaari plan was incorporated into law, it was not endorsed by the UN Security Council, and northern Kosovo remains outside Pristina’s control. In summer 2012, the Kosovo Assembly narrowly passed laws on Prizren and Velika Hoča cultural heritage that were part of the Ahtisaari plan; civil society organisations gathered petitions and staged protests against the laws.

³⁹ Crisis Group interviews, members of the Kosovo government, Pristina, 25 September 2012; members of PDK and Democratic League of Kosovo (Lidhja demokratike e Kosovës, LDK) party presidencies, October-November 2012; remarks made at Council for Inclusive Governance (CIG) roundtable, Pristina 10 December 2012.

⁴⁰ Crisis Group interview, member of parliament, Pristina, November 2012.

⁴¹ Crisis Group interview, minister in government of Macedonia, Skopje, 22 January 2012. For Ohrid, see Crisis Group Report N°212, *Macedonia: Ten Years after the Conflict*, 11 August 2011.

⁴² “Preševo’s grievances and the Kosovo-Serbia talks”, *op. cit.* In the aftermath, Kosovars destroyed a Second World War monument in Viti and damaged other Serbian sites.

to Preševo.⁴³ Greater access to education and textbooks in Albanian, recognition of diplomas and full freedom of movement across the border are some of the demands of Albanians from Preševo.⁴⁴

Many Kosovar leaders are categorically opposed to reopening the Ahtisaari plan or the constitution that incorporates many of its provisions, because, they say, they would never get the two thirds needed in parliament to pass the necessary amendments.⁴⁵ But they also assert that the current constitution is the embodiment of the political values Kosovo needs to thrive as a modern state. These include due consideration of minority rights, but also that minorities must act within a common political system rather than through separate, autonomous institutions. Crucially, it also includes the mechanisms of checks and balances necessary for a democratic state founded on the rule of law. Its revision or abandonment under Belgrade's pressure, many fear, would throw Kosovo back onto the martial values of the Kosovo Liberation Army and the rule of strongmen.⁴⁶

B. *Serbia*

While it was initially assumed that the new nationalist and socialist government in Serbia would be more conservative with regard to Kosovo than the former one, led by the Democratic Party (DS), it is proving to be just as committed to make progress so as to advance its European perspective. For President Tomislav Nikolić, "the goal is to get the start date for the accession talks with the EU, but not having to humiliate ourselves to get it, or humiliate the people, or give up on our sovereignty".⁴⁷

In mid-January 2013 the Serbian government adopted and the parliament endorsed a platform for talks with Pristina.⁴⁸ It departed radically from past thinking, accepting Kosovo's territorial integrity and jurisdiction over the North.⁴⁹ The platform calls for the creation of an "Autonomous Community of Serbian Municipalities", comprising the North and the six Serb-majority municipalities elsewhere in Kosovo.⁵⁰ The Community would have broad self-governing powers but be integrat-

⁴³ Tweet by Vlora Çitaku, @vloracitaku, European integration minister, 4 January 2013.

⁴⁴ "Preševo's grievances and the Kosovo-Serbia talks", *op. cit.*

⁴⁵ Crisis Group interviews, PDK, LDK and AAK members of the assembly, November 2012-January 2013.

⁴⁶ Crisis Group interview, member of Kosovo government, Pristina, May 2012.

⁴⁷ "Parallel Institutions to be Replaced by New Ones", B92, 15 February 2013.

⁴⁸ Parliament adopted the resolution, which endorses the government's platform, on 13 January after an extraordinary all-day debate; the platform is undated but was finalised shortly before the resolution. The government circulated an earlier draft, prepared in President Nikolić's office, in December; a copy was made available on the Peacefare blog (www.peacefare.net). The government dropped several controversial points from it, including a demand that "nothing is agreed until everything is agreed upon" and a proposal to demilitarise Kosovo and invite the armed forces of Albania, Serbia and a "Eurocorps" jointly to guarantee its security.

⁴⁹ A representative of Serbia's Hungarian minority noted that "things have changed radically in the past six months", and this was "the beginning of the end of the dogma, both Kosovo and the EU". Balint Pastor, transcript of Serbian parliament session, 12 January 2013. "Both Serbia and the EU", was the policy of former President Boris Tadić, who argued Serbia could join the EU without surrendering its claims to Kosovo.

⁵⁰ These are Gračanica, Klokot, Novo Brdo, Parteš, Ranilug and Štrpce. All but Štrpce were created by the Kosovo government, implementing the Ahtisaari Plan, out of territory previously belonging to Albanian-majority municipalities. It also seeks a lesser "special status" for Serbian enclaves in Albanian-majority regions and a "special contractual relationship" between the Serbian Orthodox

ed into the Kosovo legal system and apply Kosovo law. Yet, the platform and the parliament's resolution repeat Serbia's traditional rejection of Kosovo's independence, treating the entity as Serbia's autonomous province, governed by "provisional institutions of self-government".⁵¹ In effect, Serbia's government is attempting to accept and work with the de facto reality of a sovereign Kosovo, while setting aside de jure recognition of independence.

Belgrade has concluded its Kosovo policy is "sterile and ineffective and does not lead to a solution"; instead of fighting "battles that we will lose" over status, Serbia should "wage battles we will win" over the rights of Serbs in Kosovo.⁵² The new strategy is also an effort to put Pristina on the defensive, by emphasising issues such as refugee returns, minority rights and property claims. But the platform was largely rejected by Pristina and EU member states, which disliked comparisons made between the North and Catalonia (Spain) and description of Kosovo as an autonomous province within Serbia.⁵³

The heart of the new strategy is an attempt to create a set of institutions governing as many Serb-inhabited areas as possible, formally part of the Kosovo system but with little contact with Pristina.⁵⁴ "The goal is the establishment of governing institutions [in Kosovo] that would be recognised by all sides involved in the process".⁵⁵

Belgrade wants the Kosovo Serbs to create an autonomous entity that Pristina can accept and incorporate into its legal system.⁵⁶ The "Autonomous Community" it proposes would include all Serb-majority areas, not only those in the North. Separating the status of northern and southern Serb regions was until now a cornerstone of Serbian policy.⁵⁷ Making the southern Serb-majority municipalities, now integrated into the Kosovo system, autonomous would be a step backward from Pristina's per-

Church and Pristina. The platform makes no reference to the Ahtisaari plan, but the powers it seeks for the enclaves match what it offered Serb-majority municipalities, with an additional role in selecting judges at local courts. See Crisis Group Reports, *Kosovo and Serbia after the ICJ*, op. cit. and *Setting Kosovo Free*, op. cit.

⁵¹ The UN's Kosovo mission (UNMIK) coined the term to cover the governing institutions it created in Pristina. The draft platform makes no explicit reference to UNMIK, its mandate, or Security Council Resolution 1244, previously all key Serbian talking points. It notes that Serbia had already extended "limited legal and international subjectivity and legitimacy" to Pristina institutions.

⁵² Ivica Dačić, prime minister of Serbia, transcript of Serbian parliament session, 12 January 2013. "While we debate resolutions and declarations, the process of entrenching Kosovo's independence has been going on for many years, since 1999 Serbian sovereignty is all but gone from Kosovo". Ibid.

⁵³ Crisis Group interviews, EU member state ambassadors, Brussels, 8 and 12 February 2013.

⁵⁴ Crisis Group interview, senior Serbian official, Belgrade, 24 December 2012.

⁵⁵ "Politička platforma za razgovore sa predstavnicima privremenih institucija samouprave u Prištini" ["Political platform for talks with representatives of the provisional institutions of self-government in Pristina"], government of Serbia, January 2013.

⁵⁶ Dačić noted Serbia had wrongly thought it could maintain its municipal, regional and security services in Kosovo's Serb-inhabited areas indefinitely, in the face of international opposition. "Serbian institutions are being expelled... and the Serbs have not made their own autonomous institutions", and "Belgrade did not behave rightly toward them and did not advise them to make their own institutions. That is the essence of the whole thing". Transcript of Serbian parliament session, 12 January 2013.

⁵⁷ Crisis Group interviews, current and former Serbian government officials, Belgrade, Mitrovica, 2012.

spective.⁵⁸ The Community would not be territorially contiguous and could not easily break away from Kosovo. But bundling the southern Serbs with their northern kin would pull them away from Pristina and weaken the Independent Liberal Party (Samostalna liberalna stranka, SLS), the only significant Serb party in Kosovo that fully accepts Kosovo's independence.

Until recently, the preferred option of most of Belgrade's leadership's was an international conference leading to a comprehensive deal that would include an exchange of territories (northern Kosovo for the Preševo Valley) and mutual recognition; some, including Prime Minister Dačić, still favour this.⁵⁹ The international response has been uniformly negative, due to concerns about the impact border changes might have in Macedonia and Bosnia.⁶⁰ In rejecting a territorial swap, international officials downplay the importance of Serbia's non-recognition, urge Belgrade to cooperate with Kosovo institutions in practical ways and note that more Serbs live south of the Ibar than in the North.

The parliamentary resolution sticks to the old formula against accepting "unilaterally proclaimed independence" that implicitly leaves open the possibility of recognising Kosovo once a deal is reached.⁶¹ A senior official said, "we are not blaming Kosovo for declaring independence; we are blaming them for doing it without agreement [with us]; ... now we both have problems: we with the EU, they with the UN". Yet, Serbia is hardening its opposition to recognition as it accommodates to international pressure on cooperation. Even the most moderate parliamentarians now promise Serbia will never recognise Kosovo's independence, under any circumstances.⁶²

C. *The North*

While the north's 55,000-65,000 Serbs do not officially participate in the EU-facilitated talks, they are the main group affected. In his November 2012 report, the Special Representative of the UN Secretary-General, Farid Zarif, "stressed the importance of providing [northern Kosovo Serbs] with full information in order to reassure them that their legitimate interests were taken fully into account during the efforts to achieve political progress".⁶³ The EU, too, is calling on both sides to respect "the particular needs of the local population" living in the North.⁶⁴ The European Commission (EC) said in October 2012, "addressing the problems in northern Kosovo, while

⁵⁸ Belgrade continues to fund schools, medical centres, pensions and other services in these regions through its own, parallel municipal "governments"; see Crisis Group Report, *Setting Kosovo Free*, op. cit.

⁵⁹ Crisis Group interview, Belgrade, 16 November 2012. The previous Serbian government favoured a swap privately but would not push for it openly; Dačić and others in the current government have argued publicly for an exchange of territories. See also Crisis Group Europe Report N°206, *Kosovo and Serbia after the ICJ Opinion*, 26 August 2010, pp. 12-17 for discussion of a swap's implications.

⁶⁰ Crisis Group interviews, German, UK and U.S. officials, Belgrade, Brussels, Washington, 2012.

⁶¹ "Rezolucija narodne skupštine Republike Srbije o osnovnim principima za političke razgovore sa privremenim institucijama samouprave na Kosovu i Metohiji" ["Resolution of the national assembly of the Republic of Serbia on the basic principles for political talks with the provisional institutions of self-government in Kosovo and Metohija"].

⁶² Aleksandar Jugović, member of the Serbian Renewal Movement (one of very few to call openly for implementation of all non-status parts of the Ahtisaari plan), transcript of Serbian parliamentary session, 12 January 2013.

⁶³ 6872nd meeting, UN Security Council, S/PV.6872, 27 November 2012.

⁶⁴ General Affairs Council conclusions, op. cit.

respecting the territorial integrity of Kosovo and the particular needs of the local population” should be “an essential element” of a necessary “improvement in relations” between Kosovo and Serbia.⁶⁵

Local opinion, however, is solidly against the dialogue, as there is a sense that life has become more precarious and difficult, and less predictable, since its inception.⁶⁶ Some international observers agree that: “If the dialogue gets better, things will get worse on the ground”, before they improve, and “KFOR will be needed even more” to deal with possible unrest and violent resistance.⁶⁷

Often northern leaders feel that they are being lied to with fanciful euphemisms that disguise compromises they reject. They perceive talk of normalisation; improving the rule of law by introducing Kosovo police and courts; or of freedom of movement for international missions, as against their interests. Any successful approach to the northern Kosovo dispute requires buy-in from the local population, which in turn means a more honest communication strategy by all concerned, especially Belgrade.

Though northern Kosovo Serbs would prefer their municipalities to emerge from the dialogue as part of Serbia, their trust in Belgrade’s leadership has frayed, because they consider it is giving in too much.⁶⁸ Their leadership often cites three main red lines: no border and no payment of customs duties for goods consumed locally; no Kosovo licence plates; and all Serbian institutions must remain.⁶⁹ They claim popular legitimacy, as a 14-15 February 2012 local vote overwhelmingly rejected the institutions of the “so-called Republic of Kosovo”.⁷⁰

The previous and current Serbian governments have instructed northern Kosovo Serbs to eschew violence, and they have internalised the message.⁷¹ A large, new KFOR base at Jagnjenica, site of a protracted and violent standoff with local Serbs in late 2011, deters further attempts to set up barricades.⁷² Instead, there are signs northern Serbs are trying to re-take the political initiative after years of reflexive deference to Belgrade. Some are contemplating a declaration of independence from Kosovo, modelled on Kosovo’s own 2008 declaration.⁷³ They claim to find support in the 2010 International Court of Justice (ICJ) advisory opinion that concluded Kosovo’s declaration did not breach international law or violate UN Security Council Resolution 1244.⁷⁴

⁶⁵ “Enlargement Strategy and Main Challenges 2012-2013”, European Commission, 10 October 2012. In other arenas, enlargement commissioner Štefan Füle has been much more forward leaning and spoken of looking forward to Kosovo’s “membership of the European Union”. Štefan Füle, “Kosovo’s European Future”, speech marking end of Kosovo’s supervised independence, Pristina, 10 September 2012.

⁶⁶ Crisis Group interviews, local officials, Leposavić, Mitrovica, Zubin Potok and Zvečan, 2012-2013.

⁶⁷ Crisis Group interview, NATO member state ambassador, Brussels, 7 December 2012.

⁶⁸ See Crisis Group Report, *A Little Goodwill*, op. cit., pp. 1-2, 6-7.

⁶⁹ Crisis Group interview, municipal officials, Leposavić, 29 August 2012.

⁷⁰ Crisis Group observed voting at several stations throughout the North; among other things, the exercise showed a capacity to organise polls without Belgrade’s help or approval. Turnout was claimed to be about 75 per cent, with over 99 per cent voting “no” to Kosovo institutions.

⁷¹ Crisis Group interviews, Serbian, international officials, Belgrade, northern Kosovo, 2011-2012.

⁷² There are three roads leading to Zubin Potok town, two controlled by KFOR bases (Jagnjenica and the Serbian border at Brnjak) and one through southern Mitrovica. KFOR can thus close off access to Zubin Potok at will.

⁷³ Crisis Group interview, northern Kosovo politicians, Belgrade, 14 November 2012.

⁷⁴ The ICJ found that “the authors of [Kosovo’s] declaration did not act ... in the capacity of an institution created by and empowered to act within [the legal order of UNMIK and resolution 1244] but, rather, set out to adopt a measure the significance and effects of which would lie outside that or-

D. *The EU*

EU facilitation between Serbia and Kosovo – that have each been offered a membership perspective – aims to use the leverage of the enlargement process to achieve a solution to the bilateral conflict.⁷⁵ The EU approach in the dialogue is to shore up Kosovo’s territorial integrity, while remaining formally neutral on its independence and sovereignty. Its facilitation initially sought to “promote cooperation, achieve progress on the path to the European Union and improve the lives of the people” through technical talks on issues of common concern.⁷⁶

Increasingly, however, the dialogue has focused on the normalisation of bilateral relations. For some influential member states, especially Germany, normalisation should lead to Kosovo’s early UN membership: “We cannot wait ten or fifteen years” for this.⁷⁷ Non-recognisers support measures that improve life for Kosovars without lending international legitimacy to Kosovo’s statehood.⁷⁸

BEU member states did not agree to a definition of normalisation until December 2012. Now it is defined as Kosovo and Serbia “mak[ing] irreversible progress toward delivering structures in northern Kosovo which meet the security and justice needs of the local population ... in a way that ensures the functionality of a single institutional and administrative set up within Kosovo, respecting the particular needs of the local population”.⁷⁹ These are mid-term goals; additional steps are to be defined “in the context of the framework for the conduct of future accession negotiations with Serbia” and “the next steps on Kosovo’s European path”. Member states also requested that Serbia cooperate with the Kosovo police and provide support to the Mitrovica court, while Pristina should develop an outreach plan for northern Kosovo.⁸⁰

der”, in the capacity of “democratically-elected leaders of our people”. “Accordance with international law of the unilateral declaration of independence in respect of Kosovo”, ICJ Advisory Opinion, 22 July 2010, paragraphs 105, 107. UN Security Council Resolution 1244 ended the war in Kosovo, assigned security duties to NATO and created an interim administrative mission (UNMIK) to govern Kosovo pending resolution of its status.

⁷⁵ The EU has a distinct advantage as a facilitator, because both negotiating parties aspire to membership; neither can afford to alienate Brussels or key member states. Belgrade and Pristina both see the international community – especially the EU and the U.S. – as more sympathetic to Kosovo, but the five EU non-recognisers are considered supportive of Belgrade’s position.

⁷⁶ “Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law”, UN General Assembly, A/64/L.65/Rev.1, 8 September 2010.

⁷⁷ Crisis Group interview, EU member-state diplomat, Pristina, 21 November 2012; also interview, German ambassador to Serbia, at www.tanjug.rs/news/74456/kim-un-seat-only-as-part-of-comprehensive-solution.htm.

⁷⁸ Crisis Group interviews, representatives, non-recognising member states, Brussels, April 2012.

⁷⁹ This last condition is seen as part of the gradual normalisation of relations between Serbia and Kosovo. It is expected to be partially tackled before Serbia opens accession negotiations and then further addressed in “the framework for the conduct of future accession negotiations”. General Affairs Council conclusions, *op. cit.* The immediate measures to be taken with regard to structures in the North have not been defined, but Germany and other member states expect Serbia to take concrete steps toward pulling out its security and justice officials and cooperate in setting up security and justice institutions compatible with the Kosovo framework before June 2013. Crisis Group interviews, European officials, Brussels and Pristina, February 2013.

⁸⁰ General Affairs Council conclusions, *op. cit.*

In the shorter term, the EU has set out conditions that are in effect the bulk of the dialogue agenda for Serbia to start accession talks and Kosovo to begin negotiations on an SAA. Ideally they need by June 2013 to:⁸¹

- implement in good faith what has been agreed in the earlier technical dialogue. This includes setting up joint posts at the border crossings; customs cooperation; facilitation of freedom of movement and several other issues;⁸²
- allow Kosovo to participate in regional organisations under agreements wherein it is identified with a footnote referring to UN Security Council Resolution 1244 and the ICJ advisory opinion;
- abide by the provisions of the Energy Community Treaty and address “as a matter of urgency” the issue referred to in the Reasoned Opinion of the Energy Community Secretariat;⁸³
- resolve their dispute over telecommunications, including mobile operators and an international dialling code for Kosovo; and
- cooperate fully with EULEX and its Special Investigative Task Force, to ensure that it is unhindered in execution of its renewed mandate.

In addition Serbia has to actively cooperate with the EU rule of law mission (EULEX).⁸⁴ Kosovo is also asked to improve the protection of mainly Serb religious and cultural heritage by creating a special dedicated Kosovo Police unit.⁸⁵

While the dialogue includes clear carrots and sticks for both Serbia and Kosovo, this is much less apparent for the Serbs of northern Kosovo. While specific EU issues barely register there, some locals fear that integration into Kosovo could mean their lengthy exclusion from the EU after Serbia has joined, as Kosovo’s accession is likely to take more time. The dialogue functions as a top down political process with limited effects on reconciliation on the ground. This leads some officials to worry about its isolation and how to ensure popular buy-in of its results.⁸⁶

⁸¹ Both sides’ progress will most likely be assessed in March 2013 in two European Commission reports that will be submitted for review to the Council. The June European Council (summit) is expected to take the final decision. Also, under German law, the Bundestag must approve opening membership talks with each prospective EU member state. Germany will hold federal elections in September, and deputies are unlikely to vote on controversial issues such as any relating to EU enlargement later than early summer.

⁸² Other matters include acceptance by Serbia of Kosovo university diplomas and agreements on cadastral and civil registries. Several of these agreements are being challenged in Serbia’s Constitutional Court.

⁸³ “Serbia 2012 Progress Report”, European Commission, Brussels, 10 October 2012. See Section IV.C, “Telecommunication and Energy”, below, for more on the issues.

⁸⁴ EULEX has yet to define benchmarks for “full cooperation”, though it has been preparing these for some time. Crisis Group interviews, senior EULEX officials, Pristina, 17 November 2011, 20 September 2012.

⁸⁵ Kosovo is also expected to sign, perhaps in early summer 2013, a framework agreement on participation in EU programs without prejudice to member states’ position on status, following an October 2012 EU Council Decision. Crisis Group telephone interviews, EU officials, Kosovo government official, Pristina, 15 February 2013.

⁸⁶ Crisis Group interview, Kosovo official, Brussels, 30 November 2012.

III. The Border

The biggest breakthrough so far in the dialogue was the December 2011 agreement on “integrated management of crossing points” (IBM) and the start of its implementation in December 2012 at two crossing points, including one in northern Kosovo.⁸⁷ Throughout 2011-2012, talks focused on issues related to the border: customs, freedom of movement and managing border posts. Other elements of the bilateral relationship have also started improving as a consequence of the dialogue: Kosovars make frequent use of the newfound ability to drive through Serbia to third countries, civil registry books are being copied, and some Kosovo diplomas are recognised.⁸⁸ However, the border is especially important for Pristina to mark its territorial integrity and sovereignty, raise revenue through customs and control smuggling and trafficking.

A. *Integrated Management of Crossing Points*

Transforming the checkpoints – especially at the two official crossing points in northern Kosovo – into proper, full service border posts could help establish a state-to-state relationship and drive home to local Serbs that they are under Pristina’s jurisdiction.⁸⁹ The border regime touches on many aspects of life in the North and could open the way to full integration with Pristina. That is Pristina’s hope, and the EU’s. Yet even after two years of discussions, many IBM implementation modalities remain ambiguous, to be clarified in future talks.

IBM was originally a Serbian proposal made to deflect pressure to accept Kosovo customs officials at the northern gates by bundling them into an “integrated” presence including EULEX and Serbian officials.⁹⁰ Northern Kosovo Serbs were told by Belgrade that there would be a single border post at which “the Serbs and EULEX would do the work, while the Kosovars make coffee for us”.⁹¹ They did not believe this, and neither did Pristina, which accepted the model with U.S. encouragement as a way to get its officers on the border.⁹² Faced with barricades set up in opposition by northern Serbs and put off by Kosovo and the EU’s growing enthusiasm, Serbia delayed implementation until December 2012.

Some Serbian officials in Belgrade and the North were sceptical about the possibility of visible Kosovo Police (KP) and customs at the northern gates until shortly

⁸⁷ The timing was not coincidental. EU member states met at their summit (European Council) in December, including to discuss Kosovo and Serbia membership perspectives.

⁸⁸ EULEX has copied and handed over 1,756 of the 12,036 civil registry books removed from Kosovo by Serbian forces in 1999, and EU officials expect all registry books to be copied by the end of 2013; a similar project for cadastral records is moving more slowly. “Copies of Glogoc/Glogovac registry books handed over”, press release, EULEX, 6 February 2013. Serbia has approved at least 72 Kosovo-issued diplomas. Crisis Group interview, EU official, Brussels, 7 December 2012. Kosovo officials complain Serbia requires persons with approved diplomas to undergo a second, costly and time-consuming procedure if they want to use them to obtain employment. Crisis Group interview, Kosovo dialogue team member, Pristina, 17 September 2012.

⁸⁹ Crisis Group interview, senior Serbian government official, Belgrade, 31 October 2011.

⁹⁰ Crisis Group interview, member of Serbian technical dialogue team, Belgrade, 4 September 2012. For background on the customs crisis and ensuing violence, see Crisis Group Report, *A Little Goodwill*, op. cit.

⁹¹ Crisis Group interviews, Serbian officials, Mitrovica, December 2011-March 2012, Belgrade, March-September 2012.

⁹² Crisis Group interview, EU official, Belgrade, October 2011.

before it happened.⁹³ Nevertheless, the early days of the new border regime went so smoothly that it was hard to remember what all the fuss was about.

Much has changed. While Serbia had checkpoints that looked and felt like border posts at all its crossing points with Kosovo, none were in sight of Kosovo's posts, and some were several kilometres away.⁹⁴ Now they are adjacent. Each side operates independently and implements its own legislation. EULEX is the public face of the Kosovo posts at the two northern gates, though with growing KP participation, predominantly Serb officers but also some Albanians.⁹⁵ Kosovo custom officials deal with commercial traffic but do not collect money in the North and direct trucks to the customs terminal in South Mitrovica.⁹⁶

Yet, there is also still local opposition. EULEX had to ferry Kosovo officials to the gates by helicopter (starting in fall 2011), until IBM implementation began. A customs deal announced on 17 January 2013 sparked renewed roadblocks, and EULEX resumed its airlifts when Kosovo officials could not reach the gates.⁹⁷ Northerners say they will stop their obstruction when all the details of the customs regime are agreed and remain adamant that they should be free to use the IBM gates without being subject to arrest, harassment or pressure to accept Pristina's authority. A leading Serbian official who supports IBM and is familiar with Kosovo warned: "Can you imagine an Albanian officer tearing up a Serbian document [at the border]? It would be war".⁹⁸

For now, the Kosovo government is taking a soft approach. Serbs can still drive through with the Serbia-issued licence plates and personal documents that Pristina considers illegal. Kosovo officials are not charging persons bringing in foodstuffs in their private cars, even in quantities that can supply the small shops that comprise Mitrovica's retail scene.⁹⁹

Serbs unhappy with the IBM arrangements can also still use the large number of alternative routes that have developed from northern Kosovo to Serbia over the past two years. Serbia mans permanent checkpoints on the most common of these, and KFOR occasionally monitors them. There has been much talk of closing them, and

⁹³ Crisis Group interview, Serbian officials, Belgrade and Mitrovica, September-October 2012.

⁹⁴ An incidental effect of the separation was to facilitate smuggling by making it possible to record an export from Serbia but evade paying to import to Kosovo. With the posts next to one another, this is no longer possible. Crisis Group interview, Kosovo Customs official, Pristina, 11 December 2012.

⁹⁵ At Jarinje, the first northern gate to implement IBM, the Kosovo plan specifies there will initially be six EULEX and eight KP officers (all Serbs); from January 2013, there were to be two Albanian and six Serb KP officers. There will always be one EULEX and one KP officer working together in the police cabin. There are also three Kosovo and two EULEX customs officers. Crisis Group interviews, Kosovo internal affairs ministry and customs service officials, December 2012.

⁹⁶ There are several ways of enforcing payment: sealing the truck and informing the customs terminal immediately; requiring a deposit, to be returned on proof of payment; or holding the driver's or vehicle's documents at the gate. In particularly suspicious cases, police can escort the truck to the southern Mitrovica customs terminal. Crisis Group interview, Kosovo internal affairs ministry official, Pristina, 7 December 2012.

⁹⁷ Crisis Group observations, Jarinje gate, 30 January 2013. At the 17 January meeting of the prime ministers, Dačić apparently agreed on freedom of movement for Kosovo officials.

⁹⁸ Crisis Group interview, Serbia parliament member, Belgrade, 14 November 2012. Northerners used to tolerate ethnic Serbs in KP uniform as local and loyal to the community (and to Belgrade, which pays a second salary). Pristina mistrusts them for the same reason.

⁹⁹ Officials observed a car with 200 litres of milk. Crisis Group interview, Kosovo Customs official, 11 December 2012.

Kosovo expects the EU to pressure Serbia to do so from its side of the border.¹⁰⁰ EU member states are unlikely to be satisfied with IBM implementation as long as unofficial crossings remain in wide use.¹⁰¹ But for the time being, as Serbian officials argued in December, the EU can choose “IBM or [closing the] alternative routes, but can’t have both”.¹⁰²

Closing the alternative routes at this point would unnecessarily exacerbate tensions on the ground; it is better to wait until Pristina and Belgrade have agreed on other points related to freedom of movement and customs. Serbia should ensure full freedom of movement for Kosovo police and custom officials to the official crossings.

B. *Customs*

The customs regime has been in dispute – and disarray – for much of the last decade. In essence, smugglers took advantage of lax controls at the northern gates to bring in untaxed goods for use throughout Kosovo, or for simple fraud.¹⁰³ Very little traffic into the North stayed there; the local market is tiny, and most goods headed south across the Ibar River.¹⁰⁴ Local opposition to any manifestations of Kosovo sovereignty made it easy to mobilise demonstrators against attempts to regulate imports; protesters were angry at the prospect of paying into Pristina’s coffers, but the bigger beneficiaries were the smuggling clans.

The two sides have now narrowed their differences. Serbia and the North accept that goods entering Kosovo below the Ibar are subject to tax, and that Kosovo customs documents are valid for exports to Serbia and beyond.¹⁰⁵ But Northern Serbs refuse to pay customs for goods they bring in for personal use. They protest that Kosovo imposes excise tax on an unduly broad array of imports to get around free trade rules and believe the aim of customs enforcement at the border is sovereignty and status, not finance and legality.¹⁰⁶ Some smuggling still goes on, largely of low-quality heating fuel sold as diesel, and certain medications, but at a much lower rate.¹⁰⁷

Businesses in the North that export to other parts of Kosovo register with Kosovo customs, yet complain of harassment and obstruction. The Trepča mine, once the economic powerhouse of the Mitrovica region, still makes a profit exporting lead concentrate to EU member states and China, and thrives without Serbian subsidies. Its ownership is disputed, and its trucks are often held up at the border by Kosovo customs until international pressure effects their release.¹⁰⁸ Smaller businesses are

¹⁰⁰ Crisis Group interview, Kosovo government official, Pristina, November 2012.

¹⁰¹ Crisis Group interview, EU member state ambassador, Belgrade, 5 November 2012.

¹⁰² Crisis Group interviews, Serbian and EU officials, 16-17 October 2012.

¹⁰³ See Crisis Group Europe Report N°165, *Bridging Kosovo’s Mitrovica Divide*, 13 September 2005. Until September 2011, Serbia refunded VAT on goods headed for Kosovo, which fed two kinds of crime: joint Serb-Albanian gangs evaded Kosovo tax and sold large quantities of Serbian imports in Kosovo, and Serb gangs falsified documents on tax-free goods that returned to or never left Serbia.

¹⁰⁴ Crisis Group interviews, senior Kosovo Customs officials, Pristina, May 2008, December 2012.

¹⁰⁵ Crisis Group interview, Leposavić municipal official, Leposavić, 5 October 2012. Serbia accepted goods with Kosovo Customs stamps after agreement in the technical dialogue, but with restrictions that it only lifted in December 2012. Crisis Group interview, Naim Huruglica, director, Kosovo Customs, 11 December 2012.

¹⁰⁶ Crisis Group interviews, Leposavić municipal officials, 29 August, 14 November 2012.

¹⁰⁷ Crisis Group interview, Kosovo Customs official, 11 December 2012.

¹⁰⁸ Crisis Group interview, Ljubo Marić, deputy director, Trepča mine, Mitrovica, 5 October 2012.

registering, too, though not without trouble: Crisis Group observed Kosovo customs officials delaying, apparently deliberately, paperwork for Serbs from the North who had come to Pristina to register.¹⁰⁹ Even some parallel (Serbian) institutions operating in southern Kosovo report their cash transfers to Kosovo customs.¹¹⁰

During talks on 17 January, Prime Ministers Dačić and Thaçi reached a “provisional understanding” on the collection of customs duties, levies and VAT.¹¹¹ According to this, customs, duties and taxes for Serbian goods staying in the North will be collected at the two northern gates and paid into a special fund to be used for northern Kosovo development.¹¹² The fund, which could collect up to €10 million a year, is to be administered by a three-person committee.¹¹³

Disagreements remain, especially over control of the fund, who can receive the money and whether it is a part of the Kosovo budget, independent of it, or “touches” the budget.¹¹⁴ Pristina would like the fund to eventually turn into a much larger northern Kosovo development instrument, including all revenues raised from imports through the North, Belgrade’s current direct budget support to the local municipalities, Pristina’s allocations and any donor money for the area. Southern Mitrovica and surrounding villages might also be potential beneficiaries.¹¹⁵ Belgrade, however, categorically rejects this concept.¹¹⁶

The provisional understanding still needs to be solidified into an agreement, but the principle that funds raised through customs in the North will go to projects in the North and that a special jointly-controlled fund is to be set up for this purpose is a good starting point. When they meet in February, Dačić and Thaçi are likely to consider options developed in working groups on how to establish and manage the fund.

C. *Freedom of Movement*

Under a July 2011 agreement on “freedom of movement”, all Kosovo residents were to choose between two styles of motor vehicle licence plate, both issued by the Kosovo government: the regular (RKS prefix) and the old UN Mission in Kosovo (UNMIK) type (KS prefix) models.¹¹⁷ The KM-prefix plates Serbia issues in the North, and which virtually all its residents still use, are no longer valid. The agreement allows Kosovars to drive into and through Serbia, but they can only enter it through three border

¹⁰⁹ Crisis Group observations, Pristina, 24 September 2012.

¹¹⁰ Comments at Council for Inclusive Governance forum, Budva, Montenegro, 5-7 October 2012.

¹¹¹ “Statement by the EU High Representative Catherine Ashton after the fourth meeting in the framework of the EU-facilitated dialogue”, EU, Brussels, 17 January 2013.

¹¹² Trucks continuing further south will most likely continue paying customs at south Mitrovica’s terminal.

¹¹³ One Kosovo official, one northern Kosovo Serb and one EU official. Crisis Group interviews, internal affairs ministry and customs officials, Pristina, February 2013.

¹¹⁴ Belgrade fears the Kosovo and EU members of the three-person control committee could outvote and marginalise the Serb member, so prefers consensus decisions. It is unclear if the fund will give money to northern municipalities, public companies, NGOs or a combination of beneficiaries. Kosovo and the U.S. insist the fund must “touch” the Kosovo budget: all money from the fund should go into the budget in bulk and come out in bulk. Crisis Group interview, U.S. official, Belgrade, 5 February 2013. The Serbian side is against this. Crisis Group interview, Serb governmental official, Belgrade, 1 February 2012.

¹¹⁵ Crisis Group interview, Kosovo government official, Pristina, December 2012.

¹¹⁶ Crisis Group interviews, Serb government official, Belgrade, 1 February 2012; EU official, Belgrade, January 2012.

¹¹⁷ The KS plates are for a five-year period, after which only RKS plates will be available.

posts and leave it at two others if they have KS plates. RSK plates must be swapped for temporary and costly Serbian ones at the same posts.

Yet, this agreement has not been implemented in northern Kosovo, where outside Mitrovica town, RKS and KS plates mark a car and its occupants as outsiders and can attract unwelcome attention, including from the nominally Kosovo police.¹¹⁸ Most cars have KM plates and for the time being can freely enter/exit Serbia at the two official crossing points. Crossing the Ibar onto Kosovo-administered territory, however, is impossible with KM plates; they are confiscated on sight. Those whose business takes them outside the North have several different sets of licence plates, swapping them at the river and the formal crossing points; driving without plates also remains common in the North.

The July 2011 agreement provided for KS plates as a status-neutral option for Kosovo Serbs. But since September 2012, Pristina has begun requiring KS plate applicants to present Kosovo-issued identity cards that refer to the Republic of Kosovo and thus are not status neutral. Northern Serbs cite this to justify their refusal to take the KS plates, and Belgrade supports them.¹¹⁹ Serbia continues to issue KM plates in violation of the agreement and has no plans to stop.¹²⁰

The new customs posts offer an opportunity for Kosovo Police (KP) and EULEX to check, fine and possibly block Serbs using the gates without Kosovo-issued personal documents and licence plates.¹²¹ Serb businessmen fear this as the thin end of a wedge, to be followed by requiring Pristina-issued paperwork to import and export, which in turn would require registration and acceptance of Kosovo court jurisdiction for disputes.¹²² To keep tensions at a minimum, Pristina and the EU should go slow on these issues, waiting for agreements to be hammered out in the EU-facilitated dialogue. In the meantime, Kosovo should make obtaining KS plates as easy as possible and not require drivers to obtain Kosovo documents such as licences or ID cards.¹²³ Serbia should stop issuing new licence plates to Kosovo residents and urge Serbs to switch to the KS plates.

Belgrade could also do much more to free movement by opening up additional border crossings to Kosovo vehicles, allowing Pristina-bound air traffic to use its airspace and restoring the rail connections severed after independence.¹²⁴

¹¹⁸ Kosovo Police who stopped a Crisis Group vehicle with KS plates in Zubin Potok, 27 November 2012, explained they were municipal police who “only have to wear these uniforms when we are outside doing things” and stopped the car because it was clearly not from the area.

¹¹⁹ Crisis Group interviews, municipal and regional officials, Leposavić, Mitrovica and Belgrade; Serbian officials, Belgrade; international official, Belgrade, September–November 2012.

¹²⁰ There has been some discussion of adding Kosovo to a region of Serbia with a different prefix and giving northern Serbs its plates, but so far this seems too difficult to implement under Serbian law, as it would require changes of administrative borders, etc.

¹²¹ Crisis Group interviews, technical dialogue team official, Pristina, October 2012; northern Serb officials and businesspeople, Leposavic and Mitrovica, 17–19 December 2012.

¹²² Crisis Group interview, Leposavić official, Belgrade, 14 November 2012.

¹²³ Kosovo authorities have allowed drivers to register their cars with KS plates by presenting their Serbia-issued drivers' licences; Crisis Group interview, internal affairs ministry official, Pristina, 14 February 2013.

¹²⁴ Kosovo-registered vehicles can only exit Serbia at two checkpoints, one to Croatia and one to Hungary; they cannot access Bosnia, Bulgaria, Macedonia or Romania.

IV. The Next Steps

As described above, EU member states in December 2012 called on Serbia to make “irreversible progress towards delivering structures in northern Kosovo ... in a way that ensures the functionality of a single institutional and administrative set up within Kosovo”. On 6 February 2013, after a first meeting between Serbian President Nikolić and Kosovo President Jahjaga, Catherine Ashton noted “we are now tackling the issue of northern Kosovo”.¹²⁵ This means discussing the four local municipalities, police and courts currently supported by Belgrade and their counterparts within the Kosovo system.¹²⁶

A. Governing Institutions

Pristina considers that the northern municipalities should look much like the Serb-majority ones south of the Ibar, with enhanced competencies in areas such as education, health care and cultural affairs provided to them in the constitution. Decentralisation is taking root throughout southern Kosovo, though many problems remain, especially around revenue collection.¹²⁷ The government refuses to offer territorial autonomy to the North: “Two thirds of the Serbs live in the south, and we cannot offer an asymmetric solution for the one third living in the North”.¹²⁸ The Ahtisaari plan allows Belgrade to cooperate with and provide financial and technical assistance to Serb-majority municipalities provided notice is given to Kosovo’s local government administration ministry (MLGA) and financial aid goes through banks certified by Kosovo’s central banking authority and is reported to the treasury.¹²⁹ Taçi said he will ensure the Serb community maintains all its links with Serbia in an open and transparent manner.¹³⁰

Serbia wants to continue to fund northern institutions directly. Currently transfers are scattered, if not hidden, through many nooks and crannies of the state budget, making the total almost impossible to discover. Some in Serbia have begun criticising the allocations as wasteful or riddled with corruption. Belgrade has agreed to make its spending transparent, by grouping it together and reporting it to the EU.¹³¹ Kosovo is not too concerned about the direct financing of Serb schools, medical centres and other social services in the North (that also happens south of the Ibar), but wants to monitor all revenue going specifically to the municipalities.

The Ahtisaari plan and the Kosovo constitution hand municipalities so many competencies and powers that Belgrade was hard-pressed to find new ones to demand. Some listed in the platform are hard to imagine being delegated to communities of 10,000 or 15,000: mining, energy and telecommunication policies are more sensibly

¹²⁵ “Statement by EU High Representative Catherine Ashton following the meetings with President Nikolić and President Jahjaga”, 6 February 2013.

¹²⁶ In May 2012, the municipalities of Zubin Potok and Zvečan organised local elections in defiance of instructions from Belgrade. The Serbian government nonetheless tacitly accepted the results, as it is paying newly elected officials’ salaries.

¹²⁷ Municipalities in Kosovo have greater powers than those in most western Balkans states; see Crisis Group Report, *Setting Kosovo Free*, op. cit.

¹²⁸ Crisis Group interview, Prime Minister Hashim Taçi, Pristina, 14 February 2013.

¹²⁹ CSP, op. cit., Annex III, Article 11.

¹³⁰ Crisis Group interview, Prime Minister Hashim Taçi, Pristina, 14 February 2013.

¹³¹ Crisis Group interview, senior Serbian official, Belgrade, 24 December 2012.

handled at state level. Competencies for others – above all policing and justice – could plausibly be shared, with a greater role given to the local community to assist in selecting officials.

Municipalities under the Ahtisaari plan may also form partnerships and associations. They can delegate most of their wide array of powers to these and can establish a decision-making executive body appointed by their municipal assemblies.¹³² Partnerships may liaise with institutions of Serbia, “to the extent necessary to implement practical activities”.¹³³

The Kosovo government hopes IBM implementation will ease the introduction of new governing institutions in the North. How this would happen is unclear but may involve several parts: the border itself and Serbia’s cooperation with Kosovo officials at the gates may have a psychological effect. Agreement on a customs fund would make it more difficult to disburse at least these funds to authorities that are not acceptable to all parties.

Any modification of the institutional make-up is likely to produce fear and anger among local Serbs, who believe that where Serbian institutions vanish, so does the Serbian population. They argue that Serbia’s municipalities and courts are “the only guarantee we have of not having Kosovo institutions installed against our will”.¹³⁴ But Serbia has adopted a new tactic and begun to recommend to northern officials that they consider transforming the existing municipalities into their own autonomous self-governing institutions, no longer part of Serbia’s government but also not entirely Kosovo’s.¹³⁵ For President Nikolić, this means:

... the creation of new Kosovo institutions, but also segments of institutions that would be run by the Serbs If they say that Serbia has regulated education, health care, and if they say we have a court in Kosovska Mitrovica and have a police force in northern Kosovska Mitrovica, suddenly this proposal of ours – which has to be resolved through the Kosovo Constitution, but, do not forget, through the Serbian Constitution as well – the Serbian institutions become Kosovo institutions and they are run by the Serbs.¹³⁶

Once Belgrade and Pristina agree, the leaders of municipal bodies could be elected in a process organised or supervised by the Organisation for Security and Cooperation in Europe (OSCE), as was done throughout Kosovo during Serbian parliamentary and presidential elections in 2012.¹³⁷ Some suggest the OSCE operate outside the Kosovo framework to elect temporary bodies, with the clear understanding that the next polls would be fully under Kosovo authority.¹³⁸

¹³² CSP, *op. cit.*, Annex III, Article 9. They may not delegate “fundamental” powers, eg, election or appointment of municipal officials, budget setting or imposing regulations on citizens.

¹³³ *Ibid.*, Annex III, Article 10.5.

¹³⁴ Crisis Group interview, Leposavić municipal officials, 29 August 2012.

¹³⁵ Ivica Dačić, prime minister of Serbia, transcript of Serbian parliament session, 12 January 2013.

¹³⁶ “Parallel Institutions to be Replaced by New Ones,” B92, 15 February 2013

¹³⁷ Crisis Group interview, Western diplomats, Pristina, November-December 2012. However, Serbs from North Mitrovica in 2001 defied calls from Belgrade to participate in Kosovo elections. Belgrade opposed both the February 2012 referendum and May 2012 elections in the North.

¹³⁸ Remarks made at Council on Inclusive Governance roundtable, Istanbul, 15-17 December 2012.

B. *Rule of Law*

An early priority for Pristina and many EU member states is to remove Serbia's police, intelligence service and court personnel from northern Kosovo.¹³⁹ Pristina estimates between 500 and 620 Serb police (MUP) and intelligence agents (BIA) are present.¹⁴⁰ Pristina understandably considers their presence a serious threat to its security. It claims that those structures, through threats and bombs, are keeping the local population hostage, intimidating it against cooperating with Pristina and aiming to create a new political reality in that part of Kosovo.¹⁴¹ Pulling them out would be hard, and hard to show; many are local residents who serve out of uniform and if dismissed would remain in place, looking for work and available to the local underworld. Serbia could easily infiltrate or recruit new operatives; however, it should instead start a process of withdrawal by offering redeployment or early retirement.

A better solution than yanking out all truly local-based MUP and BIA would be to integrate some of them into the Kosovo Police (KP), a force already functioning in the North with about 280 Serb officers. Most of these draw a second salary from Serbia, and many are loyal primarily to their local communities. Some MUP officers were brought into the KP as far back as 2001. The process stopped but should be revived, with MUP again able to join the KP. It would require Serbia's close cooperation to assist with security and background checks. If the capacities are missing in the North, Kosovo could also explore allowing police officers from Serbia to serve on its territory through secondment to the KP.¹⁴²

Northern Kosovo badly needs an effective police service that enjoys the population's trust and support and can operate within the Kosovo legal framework. None of the overlapping security services fulfil those requirements.¹⁴³ Belgrade and Pristina should use the dialogue to fill this gap. The solution must involve the Kosovo Police, which is already tolerated but not respected in the North. The northern KP's ability to command local respect and trust depends largely on its operational independence from headquarters in Pristina and the support of local political leadership.

To increase local trust, a northern regional KP command should be set up that is additional to the KP's current six regional centres. Serb leaders have proposed this for many years and were last turned down by Pristina headquarters in 2008. The situation has improved since, and reporting from the north to HQ is now less of a concern. A northern regional KP command could fit within the KP's command and reporting structure, while retaining a local sense of ownership and trust, if it was headed by a commander appointed with the support of local municipalities or of any new regional council or assembly agreed within the context of the Serbia-Kosovo dialogue.¹⁴⁴

Clearly there are many instances in which MUP and KP should cooperate. Most recently, on 31 October 2012, unknown persons widely believed to be working for Serbia's internal affairs ministry arrested Slavoljub Jović a.k.a. Pagi in downtown

¹³⁹ Crisis Group interview, EU member-state ambassador, Pristina, 21 November 2012.

¹⁴⁰ Crisis Group telephone interview, government adviser, Pristina, 8 February 2012.

¹⁴¹ Remarks made by Ahemti Isuffi, Assembly Security Oversight Committee, Pristina, 29 January 2013.

¹⁴² Republic of Ireland police can be seconded to the Northern Ireland police, for example.

¹⁴³ For more on the police in the North, including the low level of community trust, see Crisis Group Report N°211, *North Kosovo: Dual Sovereignty in Practice*, 14 March 2011, pp. 16-19.

¹⁴⁴ In Serb-majority municipalities, assemblies have a strong role in appointment of local police commanders; if Kosovo establishes a northern police district, it should give the northern partnership of municipalities a similar role in naming the district chief. CSP, op. cit., Annex VIII, Article 2.

Mitrovica, bundled him into a van and took him across the border to central Serbia. He was arraigned at the Kraljevo district court on charges stemming from an attack on German KFOR troops in June. This most flagrant Serbian violation of Resolution 1244 in years passed without international condemnation, perhaps because Germany had long wanted the accused detained.¹⁴⁵ Some believe the arrest was also a Belgrade warning that any Serb in the North who used violence against international forces would be punished.¹⁴⁶ Yet, prosecution may flounder on a technicality: the Kraljevo court lacks jurisdiction in Kosovo, and the Zvečan court that covers the area was not involved.¹⁴⁷ The case demonstrates that closer cooperation and information exchange would not only reduce security challenges but also improve the ability to bring accused persons to trial.

Kosovo and Serbia maintain parallel courts in the North, but neither operates effectively. The North Mitrovica court in the Kosovo system has EULEX judges only; all attempts at naming Serb judges have failed, and bringing in Albanian judges in their absence would be incendiary. Because of lack of staff and capacity, the court hears only a few cases, in practice only the most serious criminal matters.¹⁴⁸ Serbia's court sits in an apartment block in Zvečan and handles civil and less grave criminal cases. Belgrade shows no signs of preparing to remove it, having just renewed staff contracts for three-year terms. The court is hampered by its inability to cooperate with the KP. To enforce its orders, it relies on the fact that most northerners travel to Serbia regularly, where they are subject to arrest by MUP. Pragmatism has led to subterranean cooperation between the two courts, through defence counsels and the occasional KP officer facilitating sharing of records and documents.¹⁴⁹

The new Belgrade platform includes a significant concession in its call for the autonomous region to have first instance and appeal courts, with judges named by Pristina who would apply Kosovo law, and further appeals to be heard by the Kosovo Supreme Court. This suggests that as a transitional step, the judges of the Zvečan court, for example, could be re-appointed by Kosovo to the North Mitrovica Court-house.¹⁵⁰ Many details would need to be worked out, with some flexibility possible in the determination of what law should be applied in what cases.¹⁵¹ Pristina could further offer local or regional authorities a role in the appointment of future judges and possibly a seat on the Kosovo Judicial Council.

C. *Telecommunications and Energy*

The EU since December 2011 has made full respect for the provisions of the Energy Community Treaty and telecommunications cooperation with Kosovo conditions for opening accession negotiations with Serbia.¹⁵² However, in 2012 neither telecommu-

¹⁴⁵ Crisis Group interviews, international officials, Belgrade and Pristina, November 2012.

¹⁴⁶ Crisis Group interview, international official, Belgrade, 14 November 2012.

¹⁴⁷ Crisis Group interview, Zvečan court official, Mitrovica, TK.

¹⁴⁸ For more on the judiciary in the North, including the low level of community trust, see Crisis Group Report, *Dual Sovereignty in Practice*, op. cit., pp. 19-20.

¹⁴⁹ Crisis Group interview, Zvečan court official, Mitrovica, November 2012.

¹⁵⁰ Before a 2009 review of the court system in Serbia, there were municipal courts in Zubin Potok, Leposavic, Zvečan and Northern Mitrovica.

¹⁵¹ Kosovo courts must apply Kosovo law, but provision could perhaps be made for the Serbian code now in effect to be used in civil cases involving northern litigants. Crisis Group interview, international official, February 2013.

¹⁵² General Affairs Council Conclusions, 5 December 2011, op. cit., p. 11.

nications nor energy were major issues of discussion. When renewing the conditionality in early 2013, the EU told both sides that talks would resume from where they had left off in 2011 rather than start from scratch, and working groups took up the issue again.¹⁵³

Kosovo does not have an official international dialling code or membership in the International Telecommunication Union (ITU).¹⁵⁴ Serbian operators who function in northern Kosovo are not registered. Belgrade has proposed to grant Kosovo a four-digit dialling code (+3815) and to register Serbian cell phone providers as “virtual operators” within the Kosovo system.¹⁵⁵ Kosovo seeks a three-digit dialling code that is more clearly distinguishable (+383 or 384) from Serbia’s (+381) but should accept Serbia’s offer.¹⁵⁶ It also says that ITU membership is essential, and unregistered Serb mobile operators should leave. Serbia insists it will not go below a four-digit code; international officials say “the issue is not about getting a phone code but having Serbia treat Kosovo as a foreign country”.¹⁵⁷

While telecommunications is rich in symbolism and affects Kosovo’s international standing, the issue of energy is more straightforward and potentially explosive. Serbia was found in violation of provisions of the Energy Community Treaty by the Energy Community Secretariat and in October 2011 given two months to rectify its non-compliance.¹⁵⁸ Northern Serbs fear that any deal on energy would lead to Pristina establishing control over the Valaç power station and the Gazivode hydro-electric dam and lake, which they consider essential to their energy security.¹⁵⁹ Kosovo wants those assets back as part of the Kosovo Energy Corporation (KEK) and is willing to keep the Serb employees on its payroll.¹⁶⁰ Serbia meanwhile seeks a way for its operators to function within Kosovo. It should comply with the energy treaty, and Kosovo should offer a licence to a Serb sub-contractor for electricity distribution and bills collection.

¹⁵³ Crisis Group interview, EU official, Belgrade, January 2013.

¹⁵⁴ ITU membership is open to UN members and to non-members approved by a two-thirds vote of the ITU membership; many fewer than two thirds recognise Kosovo. There are cases of non-UN members receiving dialling codes, for example Hong Kong and Taiwan, with authorisation of ITU member China and under conditions negotiated among themselves; for example, Taiwan is referred to as “Taiwan, China” in the ITU. Short of joining the ITU, Kosovo’s dialling code depends on a deal with Serbia, whether for a four digit sub-code or a separate three-digit code.

¹⁵⁵ This would allow a Serbian provider to offer phone services to customers, but through a Kosovo operator under contract.

¹⁵⁶ Any code would save users money (mobile telephony in Kosovo is now routed through Slovenia and Monaco at considerable cost) and open up investment.

¹⁵⁷ Crisis Group interviews, senior government official, Pristina, October 2012; EU official, Belgrade, January 2013; U.S. embassy official, Belgrade, 4 February 2013.

¹⁵⁸ The Energy Community Treaty, which sets out EU energy law, has been signed by most European states, including non-EU members such as Serbia, as well as UNMIK on behalf of Kosovo; the Community Secretariat has found Serbia in violation of some obligations with respect to non-compensation for energy transit through Kosovo, among other issues. Case ECS-3/08, Reasoned Opinion of 7 October 2011. There have thus far been no consequences of Serbian non-compliance.

¹⁵⁹ Crisis Group interviews, Northern Serb officials, Mitrovica/Zubin Potok/Zvečan, 2011-2012. Local Serbs closely monitor EULEX and KFOR movements around these areas fearing a take-over. Crisis Group telephone interview, Northern Serb official, Leposavić, 8 February 2013

¹⁶⁰ Crisis Group interviews, Kosovo dialogue team, Pristina, October 2012.

V. Regional Self-government for Northern Kosovo

The sides have made progress on issues related to the border and may in the coming months conclude important agreements concerning northern municipalities, rule of law, energy and telecommunications. Nevertheless, much will hinge on the issue that is not formally on the agenda: northern Kosovo's regional government.

A district head appointed by the Serbian government, Radenko Nedeljković, currently makes most local decisions together with the mayors of the four municipalities, and often in consultation with Belgrade. At times, the four municipal assemblies meet together. Much of this could continue within the Kosovo system, though the Belgrade-appointed district chief would have to be replaced by one named by locals. The Kosovo constitution allows Serbia a role, too, including partnerships with local municipalities, provided there is review in Pristina by the MLGA.

The Serbian platform calls for the municipalities in the North (and Serb-majority ones in the South) to be part of an "autonomous community" led by an executive and an elected assembly, in effect a third layer of governance that does not exist elsewhere in Kosovo. This meets with much criticism in Pristina, unless it includes Serb recognition of Kosovo or acceptance of Kosovo UN membership. But Kosovo and Serbia could start discussion on setting up a self-governing region limited to the North that would be similar to the municipal partnership allowed under the Ahtisaari plan. This should include discussion of how regional leadership would be selected: Serbs say it must be elected, Pristina says appointed.

Given the distance Belgrade and Pristina have travelled to reach this point, the dispute over whether a regional body should be appointed or elected may seem trivial. Yet, to the northern Serbs who oppose even milder Belgrade concessions, an elected body might appear as the only guarantee that Pristina would not meddle in their everyday life or even renege on the deal. Kosovo leaders fear an elected regional body would secede, declare a referendum or at least issue secession threats.¹⁶¹ They also argue that ethnic Serbs have substantial veto rights in the Kosovo Assembly, so do not need extra protection at the regional level. This dispute over how to form a regional assembly should not block a solution.¹⁶² Nor should disagreements about paying for this level of government; for example, another fund could be set up that would replicate or be merged with the one that has been accepted for customs revenue raised in the North.

Europe has much experience managing regions with special status. Suitably adapted to local realities, a self-governing Kosovo Serb community with a regional authority, a police chief and judges appointed with strong local input, and municipal officials elected under OSCE supervision, would be the best hope for resolving the Belgrade-Pristina impasse. Yet, it may be dead on arrival, because Serbia has packaged it with rejection of Kosovo's independence. Belgrade views its demands for greater rights for Serbs as balanced by its help in securing their integration into the Kosovo system and calling for no further concessions. Pristina needs an affirmation of its international status and will not offer much without it.

¹⁶¹ Crisis Group interview, member of Kosovo negotiating team, 5 October 2012.

¹⁶² If the municipal assemblies were to constitute it from their own membership, in whole or in part, the regional decision-making body would be both appointed and elected; the assemblies already meet jointly from time to time. Some links with Serbia that could not be integrated into this framework might be transformed into quasi-non-governmental ties.

UN membership – desirable and ultimately necessary – may not be possible at this stage, but Serbia has much else it could offer, even if it starts small. Kosovo's exclusion from international sporting events stings; Serbia should let it play under its own flag. Applications to join important regional organisations such as the Council of Europe would likely succeed with tacit agreement from Belgrade.¹⁶³ Even allowing Kosovo pop music into the Eurovision competition would generate good-will.

Resolving the dispute over northern Kosovo by granting it broad self-governing powers is the right policy. Initially reluctant, both Belgrade and Pristina have warmed to the idea, though they see it differently. The search for precedents and models reaches from Italy's Alto Adige (South Tyrol) to Taiwan and from Northern Ireland to the Vatican. Some suggest that the North needs its own, unique model rather than one devised for different local conditions.¹⁶⁴ There is an example in the immediate neighbourhood, however, that merits careful consideration: Bosnia's smaller entity, Republika Srpska (RS).¹⁶⁵

Discussions of greater autonomy for the North in Brussels and Washington often feature warnings that whatever happens, "we can't have another RS".¹⁶⁶ The fears are understandable but misplaced; whatever solution is found for northern Kosovo will be nothing like RS.¹⁶⁷ The Bosnian experience is important not as a model but for its one central lesson: broad self-governing powers can serve as a bridge between war and integration and generate the local support needed for the survival of a political settlement. For all its faults, the Dayton peace plan is a fairly successful example of integrating a region and population that fiercely opposed the central government.¹⁶⁸ Today, Bosnians enjoy full freedom of movement, common licence plates offering no hint of origin, a common currency, a single VAT, a central election authority, a state judiciary and investigation service and many other common institutions. Even the most nationalist Serbs willingly drive with Bosnian licence plates and travel on Bosnian passports.

To the extent that the RS is problematic, and one of the many causes for Bosnia's ineffective governance, it is due to its veto powers over virtually all state acts. This aspect of Dayton would never be adopted for northern Kosovo; not even Belgrade calls for an autonomy that could block decision-making in Pristina.

¹⁶³ Membership in the Council of Europe would give Kosovo Serbs access to the European Court of Human Rights should they feel Pristina was violating their rights.

¹⁶⁴ Crisis Group interview, EU member-state diplomat, Pristina, 22 November 2012.

¹⁶⁵ See Crisis Group Europe Report N°214, *Bosnia: What Does Republika Srpska Want?*, 6 October 2011.

¹⁶⁶ Crisis Group interviews, European and U.S. officials, Brussels, Washington, Pristina, 2012.

¹⁶⁷ Senior international official, comment at Ditchley Park conference on western Balkans, 7-9 February 2013. With over a million citizens and territory covering almost half Bosnia, RS is very different from northern Kosovo. Giving such a small area as the North a federal role would be inappropriate, and locals show little interest in representation or decision-making in Pristina.

¹⁶⁸ Bosnian and international critics of Dayton argue it solidified division by allowing RS to survive and made secession both more likely and more feasible. But abolition of RS was impossible at Dayton, and the attempt would have meant a longer war with uncertain results.

VI. Conclusion

Scepticism about the ability of Serbia and Kosovo to normalise their relations through EU-facilitated talks starting with technical issues has given way to optimism that by June 2013 they will have implemented a system to manage their common border and begun a vigorous discussion on institutions in northern Kosovo. If so, EU member states should be able to give the green light for Kosovo to begin negotiating a Stabilisation and Association Agreement (SAA) and for Serbia to start its membership talks.

Yet, developments on the ground and problems in communicating results to the people mainly affected show how fragile the process is. Even though Kosovo and Serbia have agreed to the integrated management of border crossing points and entered into a detailed discussion on how to manage customs revenue, Kosovo Police, customs and EULEX were being blocked in January-February 2013 from reaching the gates by local Serbs who have much less interest in compromises that could help move them closer to the EU. To keep the talks on track and ensure that the northerners do not become spoilers, it is essential that Belgrade make dialogue agreements more transparent; Kosovo allow Serbian representatives, including the head of the Office for Kosovo and Metohija, to visit northern Kosovo; and northern Kosovo leaders accept an invitation to participate when the dialogue addresses issues of local concern.

The core of northern Kosovo self-government should be the ability to decide on how to meet local needs locally. Most of this can already be found in the Ahtisaari plan, but key elements – police, court and regional government – are missing and should be agreed within the EU-facilitated dialogue. They are needed if northern Serbs are to buy in to a status that leaves them in Kosovo. Much already exists in practice. The North has self-governing municipalities whose assemblies decide serious issues together, co-existing Kosovo and Serbian courts, and a local police force nominally subordinate to headquarters in Pristina but functionally autonomous.¹⁶⁹ New institutions are not required or wanted. What northern Kosovo needs is to adapt its existing, Serbia-created bodies into autonomous Kosovo institutions based on an agreement that gives Serbs some additional oversight of appointments of local officials.

To have laid the groundwork for a self-governing Serb community in northern Kosovo will be a historic achievement, and Belgrade and Pristina should also aim for a comprehensive settlement that includes Kosovo's international position. The search for that agreement may take years, but it can proceed as both countries move forward on the path to EU membership. Success on the North – meaning an agreement that wins local acceptance and works in practice – would make a comprehensive accord easier. So would Serbia relaxing Kosovo's international isolation, starting with allowing it to take part in international sporting and culture events and enter regional organisations such as the Council of Europe.

Pristina/Belgrade/Brussels, 19 February 2013

¹⁶⁹ Crisis Group Report, *Dual Sovereignty in Practice*, op. cit.

Appendix A: Map of Kosovo



Appendix B: About the International Crisis Group

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 150 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is chaired by former U.S. Undersecretary of State and Ambassador Thomas Pickering. Its President and Chief Executive since July 2009 has been Louise Arbour, former UN High Commissioner for Human Rights and Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

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The Rule of Law in Independent Kosovo, Europe Report N°204, 19 May 2010 (also available in Albanian and Serbian).

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