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KOSOVO–SERBIA DIALOGUE:

Windows of Opportunity or a House of Cards?

GROUP FOR LEGAL AND POLITICAL STUDIES

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Kosovo–Serbia Dialogue: Windows of Opportunity or a House of Cards

I. State of Affairs

EUROPEAN UNION-FACILITATED DIALOGUE BETWEEN KOSOVO AND SERBIA was initiated by the UN General Assembly Resolution 64/298, adopted in September, 2010.[1] The resolution, sponsored by Serbia and the 27 EU members, called for a process of dialogue between Belgrade and Prishtina. The initiative came shortly after International Court of Justice issued its opinion, stating that '*the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law*'.[2] Request for the ICJ opinion was initiated by Belgrade itself in an attempt to deny the legality of Kosovo's Declaration of Independence, which Serbia refuses to recognise.[3]

Initially, the EU-mediated Kosovo–Serbia dialogue was labelled as '*technical*' because of insistence on the part of the Kosovo government that there are to be no political discussions with Serbia, and that '*political dialogue is not on the table*' in Prishtina, Brussels and Washington.[4] This position has changed with time, reflecting the content of the dialogue, which, in reality, was entirely political since its inception.[5]

From the outset of the EU-facilitated dialogue, the Kosovo government has also insisted that '*internal state issues*' will not be negotiated and discussed with Serbia; this was especially underlined in relation to the Northern part of Kosovo.[6] This also was proven to be untrue.[7]

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[1] See UN Doc. A/RES/64/298, Resolution adopted by the General Assembly, "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", October 13, 2010,.

[2] See ICJ, Press Release, http://www.icj-cij.org/docket/files/141/16012.pdf, accessed February 27, 2013.

[3] After ICJ Opinion, being defeated by in its legal fight against Kosovo declaration of Independence, Serbia's intent with a resolution initiated at the UN General Assembly was to turn back the Kosovo issue as a political one that can be negotiated, which is what dialogue in fact did.

[4] PM Thaci, Interview for Radio Free Europe, Albanian Language service. http://www.evropaelire.org/content/article/24348764.html, retrieved in February 2013.

[5] In off the record remarks several Western diplomats any sort of interaction between Kosovo and Serbia is political in its nature. In the words of one such diplomat: 'There's nothing that can be technical about Kosovo-Serbia talks. It's all political', Personal Communication December 2012 –February 2013.

[6] For example, Kosovo President Atifete Jahjaga denied that North is being talked about with Serbia, see for more, Press Release, http://www.president-ksgov.net/?page=1,6,2715, accessed January 11, 2013. However, just days before, EU High Representative for Foreign Policy and

Declared aims of '*technical*' dialogue were '*to remove obstacles that have a negative impact on people's daily lives, to improve cooperation, and to achieve progress on the path to Europe*'.[8] The first '*technical*' dialogue meeting took place in March, 2011, with a meeting between Deputy Prime Minister of Kosovo Edita Tahiri and the then-Director of Ministry for Foreign Affairs of Serbia, Borko Stefanovic.[9]

Tahiri and Stefanovic continued to meet as leaders of respective delegations in the talks, which, thus far, has produced several agreements: on the return of civil registries and cadastre records, on the freedom of movement of persons and cars, on the mutual recognition of diplomas, on customs stamps, and on the integrated management of the 'border/boundary'[10] crossings, as well as on Regional Cooperation[11].

Some agreements were severely criticised by the opposition and civil society in Kosovo, and even caused public unrest.[12] This was especially the case with the agreement on Regional Cooperation, under which Kosovo was to be represented in regional forums with an asterisk and a footnote reading, '*This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence*'.[13] Agreement was followed with protests organised by Self-Determination

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Security, Catherine Ashton, said in an interview for Koha Ditore that north will be discussed between Thaci and Dacic on their meeting of January 17, 2013, Koha.net, "Ashton: Më 17 janar në dialog bisedohet për veriun", January 4, 2012, see retrieved from: http://www.kohaditore.com/index.php?page=1,13,129714.

[7] Obviously, the North is being discussed while a range of other issues on the table are 'internal matters' for Kosovo.

[8] EU Press Statement, issued after the first dialogue meeting, March 9, 2011, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/cfsp/119697.pdf, retrieved February 2013

[9] Ms. Edita Tahiri is one of five Deputy Prime Ministers in Government of Kosovo.

[10] Within the dialogue, EU applied dual terminology to reflect the different positions among the parties in discussion, as well as members of EU itself. Hence, the IBM acronym was understood by Kosovo and countries that recognise independence as 'Integrated Border Management', while Serbia and non-recognizing countries
understood this as acronym for 'Integrated Boundary Management'.

[11] See for more, Appendix - Dialogue Chronology.

[12] In recent years, Albin Kurti's Self-Determination Movement held several demonstrations and protests in which Police and protesters clashed. The last such demonstration that turned violent was against the high level political dialogue between Thaci and Dacic, held on October 22, 2012, in Prishtina, and during which Police used force and arrested even some members of Parliament of Kosovo who were participating in protests.

[13] See Press Statement, "EU facilitated dialogue: Agreement on Regional Cooperation and IBM Protocol", retrieved from: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/128138.pdf

Movement,[14] whilst other figures of opposition argued that, by agreeing to be officially represented with a footnote, the Kosovo government has *de facto* undermined Kosovo's Constitution,[15] with such an agreement giving Serbia '*the right of veto over Kosovo*'.[16] Kosovar independent analysts and observers also insisted that 'footnote agreement'—as it came to be known—was a step back for the country.[17] However, these sentiments were not shared by international diplomats and many foreign observers, who hailed the agreement as a constructive step forward with no negative consequences on Kosovo.[18]

The first crisis within dialogue came when Serbia refused what was understood to have already been a reached agreement on customs stamps. Consequently, the dialogue meeting scheduled for July 19, 2011—which was centred on concluding the agreement—was not held.[19] As countermeasure, one day later, on July 20, the Kosovo government imposed 'reciprocity' measures against Serbia, which assured that Kosovo would not recognise Serbian stamps.[20] On July 25, 2011, the Kosovo Prime minister Thaci ordered Kosovo Special Police Units (ROSU) into action to overtake the two northern border crossings with Serbia in order to implement the reciprocity measures. During the action, a Kosovo police officer was killed,[21] whilst Serb radicals began

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[14] 'Lëvizja Vetëvendosje' in Albanian is led by Albin Kurti and is the third biggest party in Kosovo parliament, as well as most active and critical against the government and dialogue with Serbia.

[15] Isa Mustafa: Footnote undermines country's Constitution, Koha.net, "Mustafa konsideron se fusnota cenon Kushtetutën e vendit", February 23, 2012, retrieved from: http://www.koha.net/index.php/player.sw..?page=1,13,88961.

[16] Former Foreign Minister, Skender Hyseni, in an interview acknowledged that "With the concession on the footnote, Serbia is de facto being given the right of veto over every process of Kosovo's membership in international institutions. If the Republic of Serbia joins the EU before Kosovo, with this formula, with this footnote, the Republic of Kosovo can say farewell to EU membership. It will never get it", Koha Ditore daily, published on February 23, 2012.

[17] Veton Surroi: Latest agreements send Kosovo backwards, Koha.net, "Surroi: Marrëveshjet e fundit e kthejnë Kosovën prapa" March 22, 2012, retrieved from: http://koha.net/?page=1,13,92635.

[18] Alber Rohan: Footnote has no consequence, Interview with Albanian section of Radio Free Europe, March 8, 2012, retrieved from http://www.evropaelire.org/content/article/24492147.html.

[19] Meeting was scheduled for July 19, 2011. It was cancelled because Serbian delegation did not show up for the meeting.

[20] Decision was formally taken by Kosovo Ministry of Trade and Industry, see: Ministry of Trade and Industry, Decision No. 01/5422, 20 July 2011, Pristina, retrieved from: http://www.mti-ks.org/repository/docs/Vendimi%20per%20Masat%20%20e%20Reciprocitetit.pdf.

[21] Policeman, Enver Zymberi, was killed on July 26, 2011, in what is said to have been an ambush. Five Serbs are wanted for the killing, and there's international arrest warrant, but so far none has been arrested. According to media reports, the five fugitives wanted for Zymberi's murder are hiding in Serbia.

immediately building barricades on roads leading to north.[22] Ever since this time, there have been many failed attempts made by KFOR and EU to remove the barricades.[23] The barricades still remain.

The process restarted in autumn, with Serbia agreeing to Kosovo's customs stamps as proposed previously, with Kosovo withdrawing its reciprocity measures against Serbia.[24]

Be that as it may, agreements reached needed to be implemented, which has proven to be a much more difficult matter. One good example is the abovementioned Regional Cooperation Agreement, which was reached on February 24, 2012. A number of positives were derived from this agreement, mostly for Serbia, which got the EU candidate status as a reward for the agreement. However, Kosovo did also benefit by becoming a member in several regional organisations, the most recent one being Regional Cooperation Council.[25] However, there are still organisations left in which Kosovo is not allowed as a member, even with the footnote, whilst in too many regional meetings incidents still occur, involving Serbian delegations walking out of a meeting because of the presence of Kosovo representatives or, alternatively, they would condition their participation by asking that Kosovo is not invited.

There are continuous problems in terms of implementing other agreements. The implementation of Integrated Border Management Agreement had to be renegotiated by Prime Ministers Thaci and Dacic, with its application initiated almost a year after the agreement was reached, and still in this process. In other cases, such as in regard to Energy and Telecommunication issues, negotiations started within the *'technical'* dialogue, but are now part of the political negotiations agenda.

Problems with implementation appeared in all other '*technical*' agreements, which, in itself, is not an insurmountable problem, even if it is time- and energy-consuming. Nevertheless, these are extremely worrying signs for what has to be expected when time comes to implement whatever Thaci and Dacic agree. If '*technical*' agreements are so complicated and difficult to

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[22] According to a Serbian source, who spoke on conditions of anonymity, immediately after ROSU intervention, Kosovo Serbs set first barricades in the North, initially at village Zupc, in Zubin Potok municipality, and then at Rudare in Zvecan, and at Bridge over Ibar river, dividing the city of Mitrovica.

[23] Consecutive KFOR commanders have insisted that the peacekeepers can remove the barricades, but without a political solution to the problem in the North, Serbs would build the barricades again.

[24] Agreement on customs stamps was reached on September 2, 2011, and the implementation started on September 16.

[25] On February 28, 2013 Regional Cooperation Council (RCC) amended its statutory document to enable Kosovo's participation in this forum as 'Kosovo*'. See for more: http://www.rcc.int/

implement, the question then arises: what can be expected upon the implementation of more sensitive agreements to come, especially those related to the north? For this reason, the implementation of *'technical'* dialogue agreements merits special attention since it has created a pattern of intentional delays in terms of implementation, mostly on the part of Serbia, which is now being reproduced in political dialogue agreements.

POLITICAL DIALOGUE STARTED ON OCTOBER 19, 2012, when Kosovo Prime Minister Hashim Thaci and Serbia Prime Minister Ivica Dacic met in Brussels. According to diplomats, the first meeting 'was significant not because of its substance but because the two leaders met, and spoke, directly'.[26] Their meeting was arranged and facilitated by the EU's Foreign Policy Chief, Catherine Ashton, who first met the prime ministers separately, and then chaired a joint meeting in her office, 'which was conducted in a good and constructive atmosphere'.[27] After the meeting, in a statement Ashton expressed her belief that '*the dialogue is in the interest of both sides*', and described the objective of the talks being '*to improve the lives of people and help solve problems and, in so doing, bring Serbia and Kosovo closer to the European Union*'.[28] In the meantime, '*technical*' dialogue has continued outside of the spotlight, with meetings taking place in Brussels, although notably without media coverage they used to generate before prime ministers of Kosovo and Serbia began to meet.

Owing to the perceived sensitivity of two old foes meeting for the first time,[29] journalists were kept at a distance: there was no joint press conference after the meeting, and the only photo made available was the official one taken and distributed by the EU High Representative office. This practice of controlling the public displays of Thaci–Dacic meetings has been installed as a rule ever since.[30]

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[26] See Toby Vogel, "Dačić, Thaçi meet in Brussels", European Voice, 19 October 2012, accessed February 27, 2013, http://www.europeanvoice.com/article/2012/october/dacic-Thaci-meet-in-brussels/75452.aspx.

[27] See Press Release, "Statement by High Representative Catherine Ashton on the continuation of the EU-facilitated dialogue" A 462/12, Brussels, 19 October 2012, accessed January 10, 2013, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/133036.pdf,.

[28] Ibid

[29] Because of his role in Kosovo Liberation Army, Thaci still has an arrest warrant in Serbia, while Ivica Dacic is despised among Albanians in Kosovo for his role as Slobodan Milosevic spokesperson during the Serbian reprisals, and crimes committed during the 1998-1999 war.

[30] According to a European diplomat who spoke on background, the Ashton team has been very restrictive in sharing information even with EU member countries, and some have complained that they have no in depth knowledge of the process, while they are expected to support it.

Because the high-level political dialogue was (and is) seen with great suspicions amongst the Kosovo public, there was the need to ensure wider support for the talks, which came from western diplomats - especially from the US administration[31] - through public displays of support for the process dialogue itself, as well as for the government and prime minister as participants of the dialogue.[32] Support for dialogue was sought and received from two of the three largest Kosovo Albanian opposition parties. The biggest opposition party, Democratic League of Kosovo (LDK), supported the high-level political dialogue through a parliamentary resolution that mandated Prime Minister Thaci to meet and start discussions with Serbian PM Dacic.[33] The other opposition party, Alliance for the Future of Kosovo (AAK), besides voting in favour of dialogue, also became part of the negotiating team. AAK vice president, Blerim Shala, was appointed by the Kosovo President Atifete Jahjaga as 'political coordinator' in the dialogue with Serbia. Mr Shala, who is an opposition member of parliament, is now also part of Mr Thaci's dialogue team, and travels to meetings in Brussels with the prime minister. However, the role as 'coordinator' remains unclear.[34] Nevertheless, this appointment was a public embrace of the dialogue by AAK and its leader, Ramush Haradinaj.[35] With AAK in the dialogue team and LDK supporting it through parliament, the only real opposition to talks with Serbia remained the third biggest party in the parliament, Albin Kurti's Self Determination Movement.[36]

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[31] Even though Kosovo's primary strategic goal is EU membership, US influence is un-measurably stronger than that of EU and most of European countries. This also because of the US role in 1999 war to liberate Kosovo, but also because of European Union's 'status neutral' policy that is distasted hugely by majority in Kosovo.

[32] US Secretary of State, Hillary Clinton, visited Kosovo together with EU High Representative Catherine Ashton, on October 31, 2012, in what was public call for Kosovo politicians to rally behind government in support of dialogue that was 'essential for the peace in region'.

[33] Kosovo Parliament voted two resolutions in support of dialogue with Serbia so far. The first, voted on March 10, 2011, was in support of dialogue 'on practical issues'. The second, voted on October 18, 2012, was the one giving Thaci mandate to enter into talks with Dacic. For more see: http://www.kuvendikosoves.org/?cid=2,100.

[34] President Jahjaga appointed Mr Shala as 'Political Coordinator' for the Dialogue on November 22, 2012. The duties and responsibilities of 'political coordinator' were never explained to the public.

[35] Mr. Ramush Haradinaj, who was acquitted by the war crimes Tribunal in Hague on November 29, 2012, held extensive talks with Mr. Thaci and his ruling PDK regarding a possible inclusion in the government. Talks failed since Haradinaj demanded Prime Ministers seat, while Thaci was not ready to give that away.

[36] Lëvizja Vetëvendosje is second biggest opposition party in the Parliament, and is the most active against the government, not only regarding the dialogue with Serbia, but also in economy and social issues. It is also the only big party advocating openly unification with Albania.

THE PROCESS OF POLITICAL TALKS first led to agreement on the implementation of Integrated Border Management, which was reached at the Thaci–Dacic meeting on December 4, 2012, with the implementation started immediately in December.[37] By the end of 2012, the four border crossings between Kosovo and Serbia were operating in line with the agreement.[38] Further agreements are said to have been made at meetings in January and February, although no EU conclusions were issued following the meeting and, despite the contradicting public statements,[39] there was no confirmation on what has or has not been agreed. At the fifth meeting, which took place in Brussels on February 20–21, 2013,[40] no agreement had been reached. However, in the days following the meeting, surfacing information made it clear that there are at least some agreements in principle.[41] The sixth round of Thaci–Dacic talks, held on March 4, 2013, produced no agreement, although the intention was stated to finally wrap-up a deal on dismantling the illegal security structures in the North, and agreed on establishing the Association of Serbian Municipalities.

The February and March meetings were conducted under increased diplomatic pressure. Especially difficult was the seventh round of meeting, held on March 20, 2013, because expectations were high for a deal to be reached. However, even after 12 hours of talks, Thaci and Dacic failed to reach an agreement, and Ashton warned that the next meeting, to be held on April 2nd, will be the last chance for them to agree on a deal.[42]

EU diplomats have continuously and explicitly asked for concrete agreements to be reached by end of March or beginning of April, 2013, the latest. Part of the drive to push for an agreement by April was also EU High

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[37] Agreement on Integrated Border Management was reached through technical dialogue, but its implementation was failing. The issue was then tackled at the prime minister level of talks.

[38] See, Press Release, "Statement by the spokesperson of High Representative Catherine Ashton on the results of IBM working group meeting", A 582/12, Brussels, 19 December 2012, available at: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/134456.pdf.

[39] While Kosovar officials claimed that Government of Serbia has agreed to dissolve parallel security structures in Northern Kosovo, Belgrade officials denied there's been such an agreement reached. Also, both parties confirmed there was an agreement in principle on formation of Association of Serbian Municipalities in Kosovo, but while Serbian officials claim further talks will determine the legislative and executive powers of such association, Kosovar prime minister insists this organization will be similar to an NGO and will not have any powers.

[40] See Appendix -Dialogue Chronology.

[41] After the fifth round of talks both sides have said there is an agreement in principle on creation of Association of Serb municipalities, and that the discussions will now focus on the powers of this association.

[42] After the meeting, Ashton, Thaci and Dacic held a joint press conference at which both prime ministers said they could not confirm they are 'close or far' from reaching a solution, but insisted they are 'on the right path'.

Representative Ashton's latest meetings with Serbia and Kosovo leaders, in Brussels, Prishtina and Belgrade.[43] Without specific progress in regard to dialogue, Serbia cannot hope to get the date to start the accession talks with Brussels. Moreover, there are diplomats that maintain that all that Belgrade has done until now was actually only what was expected to be done before getting the EU candidate status, which means that 'Serbia is actually doing what it should have done last year'.[44]

A lack of progress would also mean that European Commission could not hope it would get mandate to start Stabilisation-association Agreement talks with Kosovo. 'The deadline for substantial agreement is two months. If it's not reached, there will be no SAA for Kosovo, and no date for Serbia', said a senior diplomat from an EU member country.[45]

Diplomats also gave a description of the possible agreement on the North they were expecting. Most referred to this as 'Ahtisaari plus',[46] which basically was the definition under which the Kosovo government agrees to give Serbs in the North more autonomy than foreseen by Ahtisaari proposal, whilst Serbia agrees to let the North be within the Kosovo legal and political framework.[47]

II. Windows of Opportunity…

IF THE PROCESS PROGRESSES AS EXPECTED AND HOPED BY THE EU, it should enable further advances in regard to European integration for both Prishtina and Belgrade; in other words, if by April Thaci and Dacic reach a comprehensive agreement effectively ending Serbia's control over the northern part of Kosovo, and immediately begin its implementation, Serbia will then be on the path to getting the date for the start of EU membership negotiations in June. Also,

[43] Ashton met with Nikolic, Dacic and Vucic in Brussels, on March 11, then held talks with Kosovo leaders in Prishtina, on March 14, and again continued the talks in Belgrade the same day, afternoon.

[44] EU Diplomat, who choose to remain anonymous, Personal Communication (informal briefing), December 2012-February 2013.

[45] Senior Diplomat from an EU Member State, who choose to remain anonymous, Personal Communication (background briefing), February 2013.

[46] According to an EU Member State Senior Diplomat, who choose to remain anonymous, the aim is to have 'Ahtisaari plus, with the plus being not so big', Personal Communication, February 2013.

[47] Senior Diplomat from an EU Member State, who choose to remain anonymous, Personal Communication, February 2013.

Kosovo will be expected to start negotiating the Stabilisation-association Agreement with the EU.[48]

An agreement making this possible is expected to include:[49]

- Serbia agreeing to dismantle its illegal security structures in the North and throughout Kosovo;[50]
- Serbia and Kosovo agreeing on establishment of Association of Serbian Municipalities in Kosovo, its structure and level of powers;[51]
- Serbia and Kosovo agreeing on holding local elections in northern Serb-dominated municipalities according to Kosovo legislation, with possible international mission overseeing the process;[52]
- Serbia and Kosovo agreeing on a process of integrating in Kosovo system the so called 'soft' Serbian parallel structures;[53]
- Kosovo proclaiming general amnesty for population in northern part of country, apart from capital crimes and terrorism;[54]
- Some level of implementation has to be reached by end of June, when European Council meets.[55]

If by April the issues of illegal security structures and Association of Serbian Municipalities are agreed, Kosovo and Serbia will probably have to open the debate regarding the energy and telecommunication, with the former being particularly complicated and also dependant on possible agreement for the North. The circulated circulating idea is for Serbia to comply with the Energy

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[48] EU Diplomat, who choose to remain anonymous, Personal Communication, December 2012-February 2013.

[49] The list is a result of information gathered through informal and background talks with various European diplomats.

[50] On August 23, 2011, German Chancellor Angela Merkel, publicly mentioned abolishment of parallel structures as a firm condition for Serbia.

[51] This is currently the biggest issue between the two sides. While Dacic demands that Association have executive and legislative powers, Thaci refuses, citing that Association can be established only in accordance with Kosovo Constitution and Ahtisaari Plan.

[52] OSCE High-ranked Officer, who choose to remain anonymous, acknowledged that OSCE mission in Kosovo is being mentioned as possible facilitator of local elections in northern Kosovo, although nobody has officially approached OSCE regarding this, Personal Communication, February 2013.

[53] The term '*soft parallel structures*' is used here to describe to Serb run structures in health, education, local administration, services, culture, etc. It is, however, not official term. For Kosovo, these are 'illegal structures', for Serbia they are 'state structures', while for Western missions, they are ' a reality on the ground that has to be reckoned with' even if most are in violation of UN SC Resolution 1244.

[54] There are already signals that Prime Minister Thaci has agreed to this.

[55] At European Council summit, to be held on June 27–28, EU leaders will decide on Serbia's EU negotiations date, and European Commission's mandate to start SAA negotiations with Kosovo.

Community Treaty,[56] whilst Kosovo is expected to agree to license an independent electricity provider for Serb Municipalities that will be registered according to Kosovo legislation but which will be run and managed by Serbs themselves, independently of current Kosovo Energy Corporation.[57] If agreed, this energy provider could end up being managed by Association of Serb Municipalities since the Kosovo law on Inter-municipal Cooperation—which is the legal basis for establishment of any kind of Association of Serb Municipalities—allows for a group of Kosovo municipalities to join and together establish administrative bodies, public institutions and enterprises, and joint public-private partnerships.[58] Aside from the provider, energy deals will need to address the issue of millions of Euros Serbia owes to Kosovo for the use of the transmission lines in northern Kosovo to move electricity to Serbia and adjacent countries.

POSSIBLE AGREEMENT OVER THE NORTH will most definitely break the existing status quo, although it is prudent to expect resistance from more radical Serbs on the ground. This will inevitably open up the possibility for Prishtina and Brussels to move toward a new process of integrating the North with the rest of the Kosovo, especially in fields of rule of law and security, which are within the EU's Rule of Law Mission in Kosovo, EULEX[59]. This will be most important also for the NATO-run peacekeeping force, KFOR, which is keen on continuing with downsizing the level of troops in Kosovo—a process halted by instability in the North.[60]

This possibility was hinted at by the EU Special Representative in Kosovo, Samuel Žbogar, who said that there are three different dialogues that will need to happen, one being the Thaci–Dacic dialogue and the remaining two being a

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[56] The Energy Community Treaty, which sets out EU energy law, has been signed by most European countries, 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.

[57] Belgrade wants this provider to be a subsidiary of Electric Power Company, EPS, which is the Serbia's state energy company. Prishtina on the other hand wants the energy assets be under Kosovo control.

[58] Law on Inter-Municipal Cooperation, No.04/L –010, adopted by Kosovo Parliament on July 21, 2011, available at: http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20intermunicipal%20cooperation.pdf.

[59] For more on EULEX mandate, legal basis and scope of its mission, see: http://www.eulex-kosovo.eu/en/info/whatisEulex.php.

[60] Personal Communication, Senior NATO Official, who choose to remain anonymous, January 2013.

dialogue between Prishtina and the Serbs in the North, and a dialogue between Serbs in the North and Serbs in the South.[61]

However, an agreement over the North might provide a level progress that has been lacking ever since the 1999 war ended:

Integration of the North: The Northern part of Kosovo has been left as no man's land ever since the end of the war, in June, 1999. The UN mission with Kosovo, together with NATO-led peacekeeping force, never managed to integrate northern Kosovo into the system it was administering under UN SC Resolution 1244. The government of Kosovo was not able to exercise its authority in the North since declaring independence, and the EU rule of law mission, EULEX, had never been able to establish its authority beyond the bridge over Ibër river. Serbia had continuously denied Prishtina institutions as well as internationally mandated missions to act in the northern part of Kosovo, keeping the option of partition open. An agreed process to integrate the North in Kosovo's legal and political system would break this yearlong deadlock.

Dismantling the parallel structures: The northern part of Kosovo was held outside of Kosovo's administrative and political system through a network of illegal security structures, some of which were part of Serbian state apparatus, as well as some other locally created structures that received assistance from Serbia but which were also funded by illegal activity.[62]

Completion of Ahtisaari plan: In September, 2012, part of the international community that recognises independent Kosovo declared that the level of implementation of the Comprehensive Proposal for the Kosovo Status Settlement—better known as Ahtisaari Plan—was 'substantial', which was good enough to end the international supervision of the state.[63] However, the departure of the International Civilian Office supervising implementation of

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[61] Mr. Zbogar, in a public debate in Media Center Caglavica elaborated the issue of 'three dialogues' that are necessary for a long term solution for the North, October 23, 2012, for more see the transcript: http://www.medijacentar.info/mc-debate/izvetaji/444-pristup-vlade-severu-kosova-i-mogui-scenariji-u-procesu-pregovora-za-sever-kosovaq-23102012.

[62] Several reports in the past elaborated on links between the illegal security structures in the north and Serbian state institutions, as well as links with criminal groups and activity. For more see OSCE, 'Parallel Structures in Kosovo' Report 2006/2007, available at: http://www.osce.org/kosovo/24618, and Kosovo Government Coordinator's Office for the Strategy of North 201, 'Report on Parallel Institutions in North of Kosovo',available at: http://www.kohaditore.com/repository/docs/Raporti_per_Veri_-_Anglisht_-_2011.pdf.

[63] International Steering Group ended supervised independence of Kosovo on September 10, 2012. For more see http://www.ico-kos.org/?id=8.

Ahtisaari Plan left several issues opened, northern Kosovo being the most obvious one. Closing such issues would help move forward with the state-building process in Kosovo, with many other issues begging for more attention, including democracy, the economy, and fighting corruption.

Change of Belgrade attitude: This far, the process has already caused a certain change of public opinion in Serbia regarding Kosovo. Whilst there is still refusal to recognise Kosovo's independence, both politicians and the public seem to understand the reality of the independence. The highest officials have been quite direct in stating that 'Kosovo has been lost, and the dialogue is about to rescue what can be rescued',[64] whilst, according to an opinion poll realised in February, 2013, 63 percent of Serbs today regard Kosovo as independent.[65] An agreement on the North might, in the long-run, assist in making such a change more positive, bolder and permanent, which would help in terms of getting Belgrade closer to fully accepting the reality of independent Kosovo.

III. …or a House of Cards!

IT IS UNCLEAR HOW LONG the current dialogue will last:[66] if there is no agreement on the North in time for the European Council summit in June, the dialogue will lose its momentum and the EU would be less willing to invest more energy and credibility into the process. On the other hand, however, if an agreement is made on the North, even if is ambiguous, talks will then continue for some time at least in order to get the implementation started, and to continue work on some other issues that were put on the table but never discussed.[67]

However, whatever the outcome of further Thaci–Dacic meetings, it is more than clear that there are several shortcomings of the process of dialogue that will inevitably affect the process itself, as well as the situation on the ground. In addition, whilst there are no plans in terms of how to deal with them, the risk is

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[64] Serbia's Prime Minister stated in several occasions that Belgrade is fighting to get what it can, while also Deputy Prime Minister Aleksandar Vucic recently warned that Serbia will have to make 'painful decisions' regarding Kosovo.

[65] B92, "Ipsos Strategic Marketing poll", see http://www.b92.net/eng/news/comments.php?nav_id=84999.

[66] In a background briefing, a Western diplomat noted that the process of normalisation of relations between Kosovo and Serbia will continue beyond this dialogue. Personal Communication, Western Diplomat, who choose to remain anonymous, February 2013.

[67] According to an EU Diplomat, there is going to be plenty of opportunities to pressurise Serbia even it gets the negotiations date in June. Personal Communication, EU Diplomat, who choose to remain anonymous, February 2013.

high that the process might create a new kind of status quo in Kosovo, which may prove more damaging for the under-construction state than the current one.

Amongst the risks, there are some that need particular attention given the impact they might have:

Possible dialogue failure: If the process fails to deliver at this stage, it will add to the tensions already apparent, and will increase political instability in and around Kosovo, especially with the regular local elections due for autumn, 2013, and parliamentary elections shortly after.[68]

Tensions in the North: If the situation in the northern part of Kosovo deteriorated during the *'technical'* dialogue, it is more than prudent to assume it will get worse as a result of any agreement that makes Serbia hand over control and practically agree to have the North integrated into the Kosovo system. It seems highly unlikely that Belgrade will be able to deliver the North to Prishtina and Brussels. Undoubtedly, further tensions should be expected.[69]

Greater Autonomy: Granting Serbs in Kosovo with what is being described as 'Ahtisaari plus' is silently becoming a territorial autonomy, which might inadvertently ruin the delicate balance created by the Ahtisaari plan's idea of positive discrimination in exchange for functionality. On the other hand, the much discussed creation of Association of Serb Municipalities – or whatever the name of the entity might be[70] – could very well serve Belgrade to transfer any responsibility for future developments to the new entity, which will become the prime address for negotiating implementation of agreements in the ground.

Risks with implementation: Having no plan on the table regarding international/EU mechanisms that will guarantee any agreement and oversee its full implementation can mean two things:

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[68] Local elections are due for September or October, although there's no decision on that yet. The parliamentary elections are due next year – maybe as early as spring 2014. The electoral reform is underway, and once it is agreed among parliamentary parties, Kosovo might have parliamentary elections soon after.

[69] Situation is already tensed in northern Kosovo. According to media reports, since last December there were more than 30 attacks registered there, most of them being explosive devices. Police has not solved any of the cases yet.

[70] Belgrade-based 'Blic' newspaper reported that solution might be reached through creation of 'European Region of Northern Kosovo', see for more: Koha.net, "Draft-marrëveshja Prishtinë-Beograd: Rajon evropian e jo asociacion!", March 17 , 2013, available at: http://koha.net/?page=1,15,138983.

a. the implementation of agreements reached within high-level political dialogue between Kosovo and Serbia will become the subject of a new, extended process of negotiations, which of course means further concessions; or
b. agreements will not be implemented fully, creating a new status quo that will inevitably cost.

Also, if agreements differ depending on language, there is a risk that Kosovo might encounter in implementation because both Albanian and Serbian are official languages.[71]

Normalisation: While the process of dialogue began as one that will lead to the normalisation of relations between Kosovo and Serbia, the aim has now been reduced significantly.[72] Essentially, the key objective now is to get Kosovo and Serbia to agree to some solution for the North, which will be seen as satisfactory progress for EU countries that are to decide to give Belgrade a starting date for EU accession talks, and Prishtina an opening of SAA negotiations.[73] The normalisation of relations between the two countries is not being seen as achievable within the scope of current dialogue. The further long-term process of normalisation is already being mentioned, which would also mean that Kosovo will be left a hostage of Serbia's refusal to recognise independence. This long-term process is also seen by some countries as the way towards Serbia's *de facto* recognition of Kosovo's independence, with the hope that, at some point, recognition could become 'contractual' in some way.

European Union: With diplomats being confident that the process of Serbia's membership negotiations with EU provides enough leverage to keep Belgrade tied to the process with Kosovo, there is a lack of clear understanding concerning the role the EU should be playing in terms of the implementation of all agreements, especially those related to northern Kosovo. In the past, consensus within the EU was achieved at the cost of Kosovo's statehood[74]. Until there are guarantees that this will not be the case in the future, the trust towards Brussels will be limited in Prishtina.

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[71] It is logical to conclude that Serbs in the north will be using the Serbian language version of any agreement, while Kosovo institutions will be using Albanian language version. In case of contradictions, it will be a legal problem for Kosovo, as well as political one.
[72] Personal Communication, Western Diplomat, who choose to remain anonymous, December 2012 – February 2013.
[73] It has to be noted that progress in dialogue will not be enough for Serbia and Kosovo to progress their European agenda if other conditions set by EU are not met.
[74] Because of five non-recognizing states the EU as a whole has to maintain a 'status neutral' position towards Kosovo.

Furthermore there is also a lack of planning for the EU's role in implementing agreements that will be reached. Whatever Thaci and Dacic agree, it will be more than difficult to implement in the North, with the EU's commitment and active role essential for any level of success. This commitment and role have to be planned in great detail and with unequivocal support from all EU members. Such commitment has to be part of any Kosovo–Serbia deal, otherwise there will be no deal, just empty agreements from leaders under pressure to agree, who will be tempted to rebel against their signatures as soon as they enter into election campaigns, or when they are relegated to opposition.

Never-ending negotiations: The perspective of a long-term negotiating process with Serbia will have a hugely negative effect on Kosovo's internal situation, where populism and nationalism have already gained grounds against what is perceived as a corrupt, criminalised and compromised governing elite that is seen to be making too many concessions to Belgrade and the Serbs. Any long-term process has to have clearly defined goals, and has to be linked up with the other priorities Kosovo has, from economy and social affairs through to the quality of democracy and governance.

On the other hand, the normalisation of relations, as part of the greater effort of reaching reconciliation between peoples of Kosovo and Serbia, cannot come at the expense of justice.[75]

Last but not least, the idea of having another process of talks with Belgrade that might last for years, lacking a clear and guaranteed path of EU integration, is difficult to be sold twice to the Kosovar public. Thus far, the EU has not fulfilled any of the promises made to Kosovo: Kosovar public was led to believe that the award for participation in *'technical'* dialogue with Serbia would be free travel for Kosovars to Schengen countries, whilst the award for entering into political dialogue was to be SAA negotiations with EU. So far, none of these have happened. A confidential EU source stated that the problem is Catherine Ashton's office, which commonly makes promises it has no mandate to deliver.[76] However, this can hardly be accepted by the Kosovar public as explanation.

[75] While it is most important that all crimes of war are fully investigated and tried, there can be no revision of history in order to equalise committed war crimes.
[76] Personal Communication, EU Member State Diplomat, who choose to remain anonymous, February 2013.

IV. Eleven Conclusions

KOSOVO–SERBIA DIALOGUE HAS ENTERED into its most delicate and apparently final phase. On both sides the pressure is overwhelming to produce an agreement that will open the way for European integration for both countries. Simultaneously, dialogue is seeking to address several issues between the two sides, the most important being finding a '*Modus Vivendi*' for the Northern part of Kosovo,[77] where Serbian controlled structures are keeping tensions high in the face of international presence, and even in regard to UNSC Resolution 1244.

Whilst the smart solution would be to frame the dialogue as a path towards recognition of Kosovo by Serbia, it is obvious that the current process has turned into a support tool to aid Belgrade EU aspirations whilst helping Kosovo to deal with the consequences of the international community's failure to fulfil its part of the duty in Kosovo.[78]

Nevertheless, with the dialogue commencing as it does and an agreement already within reach (albeit still hanging in the balance), it is important to bear in mind some natural conclusions that derive from this short analysis as they can help to use the windows of opportunity that this dialogue presents, and to avoid turning the whole process into a house of cards that will break down at the slightest shake:

1. Ahtisaari solution is the compromise. It is not possible to modify it without destabilising Kosovo.

2. The functionality of Kosovo should be a higher priority than Serbia getting a date or Kosovo getting SAA negotiations.

3. It is absurd to negotiate the dismantling of Serbian parallel structures in Kosovo; they are illegal, even according to UNSC resolution 1244, and should have been dismantled years ago. Kosovo should not offer concessions in exchange for Serbia respecting UNSC Resolution 1244. Serbia has to unconditionally cut-off its political, financial and logistical

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[77] In testimony before US Senate Foreign Relations Committee, Ambassador Tracey Ann Jacobson said that 'a solution to the situation in the north and normalisation of relations require a durable *modus vivendi* that respects Kosovo's sovereignty, takes into account the views of the citizens of the north, and allows both Kosovo and Serbia to proceed on their respective Euro-Atlantic paths.' U.S. Senate Committee on Foreign Relations, "Testimony of Tracey Ann Jacobson Ambassador-Designate to Kosovo", March 21, 2012, available at: http://www.foreign.senate.gov/hearings/nomination-3-21-12.

[78] All UN mandated missions in Kosovo – UNMIK, KFOR as well as EULEX – continuously failed to integrate the northern municipalities of Kosovo, as foreseen by UNSC Resolution 1244. Consequence is what we see today beyond Ibër River.

support for illegal security and political structures in the North, including the majors and local assemblies in three northern municipalities of Leposavic, Zubin Potok and Zvecan, which are operating as part of Serbia's political system.

4. The implementation of all agreements was and should remain a condition for the further EU integration progress of Serbia.

5. The European Union should play its part of responsibility in reaching and implementing all agreements, including those related to the North. EULEX should also be more bold and responsible in terms of exercising its own rule of law mandate—especially in the North, but not only.

6. It is time to demand Kosovo membership in the UN and other international organisations. Whilst Western countries, due to specific reasons, might choose not to demand Kosovo recognition from Serbia yet, they should insist that Belgrade stop blocking Kosovo from applying to the UN and other international organisations, especially in Sports. Kosovo should be allowed to play international sporting tournaments.

7. All agreements, whether '*technical*' or otherwise, have to be transparent, made available to the public, and ratified by the Kosovo parliament. Things kept away from the people cannot be considered success and progress.

8. The implementation of agreements will encounter resistance in the North. All involved, such as governments of Kosovo and Serbia, as well as EU and NATO, for example, must be prepared to face it, deal with it, and all consequences. With no ICO to oversee the Ahtisaari plan of implementation in the North,[79] there is the necessity for EU and NATO to undertake the obligation of overseeing the process further.

9. The EU and Kosovar government should not forget that Kosovo has a great deal of problems to deal with besides dialogue, some of which can be viewed as more pressing than a relationship with Serbia or SAA negotiations with Brussels. Keywords: Democracy, economy, corruption, bad governance.

[79] The supervised independence of Kosovo was put to an end in September 10, 2012, when the International Steering Group acknowledged that "Ahtisaari plan was substantially implemented".

10. There has to be more insistence and pressure to deal with sensitive issues such as missing persons.

11. Serbia has to bear in mind that what is being sought for Serbs in Kosovo cannot be denied to Albanians in Preshevo Valley.

Appendix
Expected Developments and the Dialogue Record

Expected Developments

April 2: Next round of Thaci–Dacic talks. EU expects that an agreement on dismantling the parallel security structures in the North will be reached, together with an agreement on the creation and powers of Association of Serbian Municipalities in Kosovo. These agreements are seen as a base for the settlement for the North, which will have to include additional deals and details, such as agreements on issues of energy and telecommunications, local elections, courts, policing, etc. If agreements are reached, there might be talks over the implementation and the EU's role in such a regard.

Mid-April: European Commission and Office of Catherine Ashton are expected to deliver reports for both Serbia and Kosovo, and progress in dialogue. Reports will include an evaluation of other conditions Prishtina and Belgrade had to meet in order to advance their European aspirations. Moreover, even if the reports from Ashton and the Commission are positive, they have to be assessed as such from the European Council before a positive decision on the date for the start of accession talks for Serbia and mandate for SAA for Kosovo can be taken.

June 27/28: European Council summit. EU countries will decide whether Serbia is to get the starting date for membership negotiations with the EU, and if the European Commission is to get the mandate to start the SAA negotiations with Kosovo.

2013

13 janar: Parliament of Serbia adopts the Resolution on Kosovo, mandating the government of Serbia to continue high-level political dialogue with Kosovo.

January 17: Fourth meeting between Thaci and Dacic. 'Northern' issues were opened. Discussions started on dismantling of Serbian parallel security structures. EU HR Ashton stated two prime ministers 'came to a provisional understanding on the collection of customs duties, levies and VAT'.

February 6: Meeting between Kosovo President Atifete Jahjaga and Serbia President Tomislav Nikolic. Facilitated by EU High Representative Catherine Ashton and held in Brussels, it was a symbolic meeting in support of the political dialogue led by two prime ministers.

February 19/20: Fifth meeting between Thaci and Dacic. In a shortest statement so far, Ashton said Thaci and Dacic had 'in-depth discussions' and expressed her pleasure at the 'significant progress' they made.

March 4: Sixth meeting between Thaci and Dacic. Principled agreement to have Association of Serb Municipalities, although no agreement over its powers.
March 11: Ashton meets Serbian leadership in Brussels.
March 13/14: Ashton visits Prishtina, meets Kosovo leaders and selected opposition representatives, then goes to Belgrade and meets Serbia leaders.
March 20: Seventh round of Thaci–Dacic talks.

2012

February 24: Round 10 of *'technical'* dialogue. Agreement reached on the Regional Cooperation and a protocol for the implementation of the IBM agreement.
March 2: Serbia granted EU candidate status.
September 10: International Steering Group declares the end of supervised independence. The International Civilian Office and its head, International Civilian Representative, Pieter Feith, end their mission.
October 18: Parliament of Kosovo adopts Resolution on the normalisation of relations with Serbia.
October 19: First meeting of high-level political dialogue. Thaci meets Dacic. The process starts.
November 7: Second meeting between Thaci and Dacic. Discussions on full the implementation of already achieved agreements, the transparency of funds Serbia is providing to Kosovo Serbs, and an agreement to start a feasibility study for the Pristina-Nis motorway.
December 4: Third meeting between Thaci and Dacic. Confirmation of agreement to begin the IBM implementation on two border points on December 10 (gates 1 and 3) and another two on December 31 (gates 5 and 31), with agreement to appoint liaison officers. Discussions start regarding the transparency of the flow of money from Serbia to Kosovo Serbs, whilst *'technical'* issues of energy and telecommunication were also put on the political level agenda.
December 18: Serbia drafts a platform for dialogue with Kosovo, and presents this to Western diplomats as a non-paper.

2011

March 7/8: Round 1 of *'technical'* dialogue. Discussions on Cadastre, Civil Registry, Custom Stamps, CEFTA.
March 10: Parliament of Kosovo adopts Resolution in support of dialogue with Serbia on 'practical issues'.
March 28: Round 2 of *'technical'* dialogue. Discussions on Energy, Telecommunications, Cadastre, Civil Registry.

April 15: Round 3 of *'technical'* dialogue. Discussions on Freedom of movement, University Diplomas, Energy, Telecommunication, Civil Registry, Cadastres and Customs Stamps.
May 17/18: Round 4 of *'technical'* dialogue. Discussions on Missing persons, Cultural Heritage and University Diplomas.
July 2: Round 5 of *'technical'* dialogue. Agreement on freedom of movement, civil registry, and mutual university diploma recognition.
July 19: Round 6 of *'technical'* dialogue cancelled. Serbia didn't show up for the meeting because of not being ready to recognise Kosovo Customs Stamps.
July 20: Kosovo Government imposes reciprocity measures on Serbian products, resulting with embargo on imports from Serbia.
July 25: Kosovo Police Special Unit (ROSU) action in the North in an attempt to take control of border points Gate 1 and Gate 31.
July 25/26: Immediately after ROSU intervention, Kosovo Serbs set the first barricades in the North, initially at village Zupc, in Zubin Potok municipality, then at Rudare in Zvecan, and at Bridge over Ibar river, dividing the city of Mitrovica. There were many attempts made to remove them by KFOR and EU diplomats; to this day, however, many barricades remain, physically separating the North from the rest of Kosovo.
July 26: Kosovo Special Police Unit member, Enver Zymberi, killed in an ambush during the action in the North.
September 2: Round 6 of *'technical'* dialogue. Agreements reached on Customs Stamps and Cadastres.
September 28: Round 7 of *'technical'* dialogue cancelled. Serbian delegation did not show up for the meeting.
November 21/22: Round 7 of *'technical'* dialogue. Discussions on regional cooperation, telecommunication, and Integrated Border management (IBM).
November 30: Round 8 of *'technical'* dialogue. Discussions on IBM.
December 2: Round 9 of *'technical'* dialogue. Agreement reached on IBM. Discussions continued on regional cooperation, telecommunication and energy.

2010

July 22: International Court of Justice finds that the declaration of independence of Kosovo did not violate international law.
September 9: United Nations General Assembly adopts Resolution 64/298 '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' sanctioning the new process of dialogue between Kosovo and Serbia, mediated by EU.[80]

2008

February 17: Kosovo declares Independence.
June 15: The Constitution of Republic of Kosovo enters into force.

[80] The UN General Assembly Resolution, UN Doc. A/RES/64/298, explicitly states that UN General Assembly "Welcomes the readiness of the European Union to facilitate a process of dialogue between the parties; the process of dialogue in itself would be a factor for peace, security and stability in the region, and that dialogue would be to promote cooperation, achieve progress on the path to the European Union and improve the lives of the people".

Policy Analysis

Policy Analysis in general is a policy advice paper which particularly aims to influence the key means through which policy decisions are made in both local and central levels of government. The purpose of Policy Analysis is to address, more in-depth, a particular problem, to examine the arguments related to a concerned policy, and to analyze the implementation of the policy. Through Policy Analysis, Group for Legal and Political studies seeks to stimulate wider comprehensive debate on the given issue via presenting informed policy-relevant choices and recommendations to the key stakeholders and parties of interest.