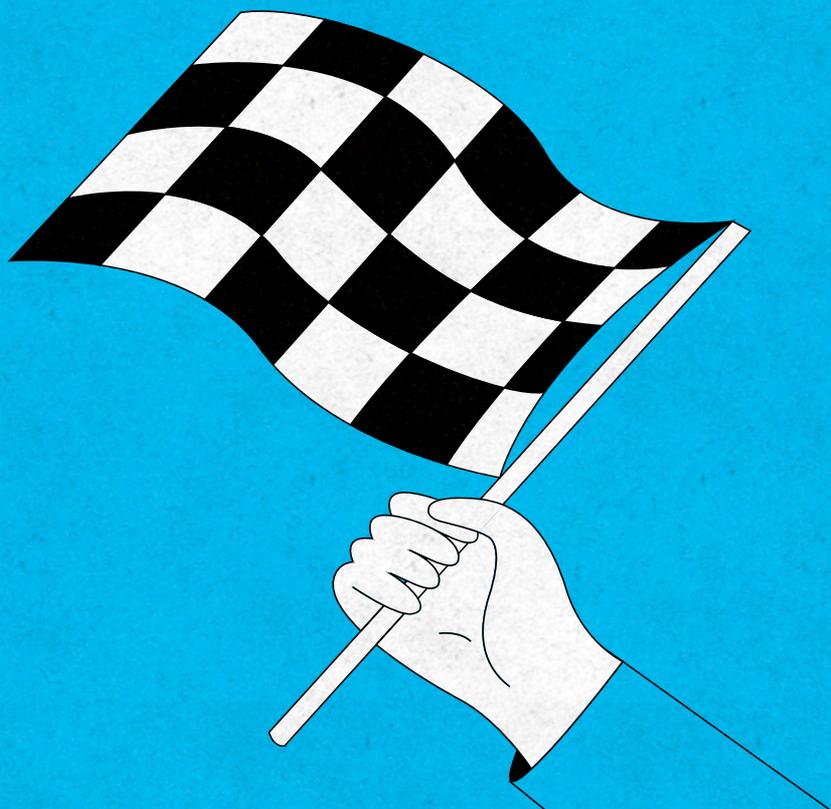


THE ORIGINAL FRAMEWORK OF THE POLITICAL DIALOGUE

BODO WEBER & AGRON BAJRAMI

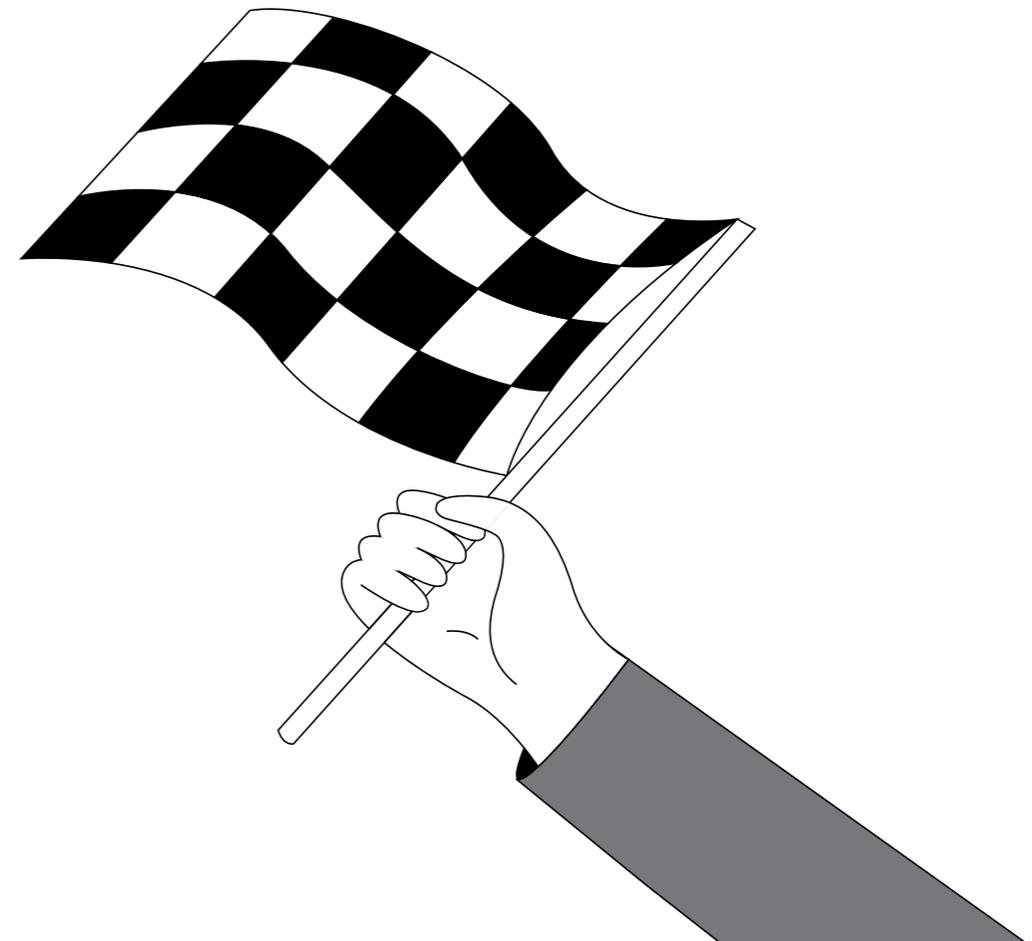
Berlin-Prishtina
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PREFACE

This paper is the first of a series of policy notes that will be published over the course of this year, dealing with the so-called “new phase” in the EU-led political dialogue between Kosovo and Serbia. Specifically, the series will address the negotiations over a final, comprehensive, and legally binding agreement on full normalization of relations between the two countries. It will cover the most important aspects and elements of a potential future agreement from both a Kosovan and international perspective, as part of a wider dialogue and advocacy project entitled “Strengthening the Kosovo Perspective - Negotiations on a Final Comprehensive Agreement Between Kosovo and Serbia” organized by the Democratization Policy Council (DPC, Berlin), the Kosovo Foundation for Open Society (KFOS) and the Group for Legal and Political Studies (GLPS; both based in Prishtina).

Through a variety of activities, the project strives to facilitate a dialogue process among Kosovo policymakers, civil society actors, and Western officials on Kosovo’s position in the upcoming negotiations. Rather than offering ready-made recommendations on Kosovo’s negotiating position, the policy notes intend to serve as a catalyst for intense and fruitful debate and dialogue. Using this approach, the authors, as well as the organizers of the overall project, aim to help overcome structural constraints relating to the forthcoming negotiations on a comprehensive final agreement. Their ultimate objective is to contribute to a sustainable solution to the Kosovo-Serbia dispute that will end the status of both countries as unfinished states and create important preconditions for a lasting peace in the region and for the sustainable democratic transformation of both Kosovo and Serbia.

EXECUTIVE SUMMARY

Prompted by violence in northern Kosovo during the summer of 2011, German Chancellor Angela Merkel seized EU leadership on the Kosovo-Serbia dispute. This represented a game changer in the West’s protracted efforts to promote a settlement. A resolution of the status dispute using a classical conflict mediation approach had failed in 2007 with the collapse of the Troika negotiation (the US/EU/Russia led negotiations) and Serbia’s rejection of the Ahtisaari plan. This was due to Belgrade’s decades-long ‘virtual’ Kosovo policy, which was reduced to an insistence on Kosovo’s status as part of Serbia, while not seriously accepting the majority Albanian population as equal citizens. It left the formalization of the fact that Serbia had effectively lost Kosovo through its declaration of independence as the only potentially viable and sustainable solution to the long-term status dispute.

Merkel, strongly supported by the UK and US, explicitly linked Serbia’s recognition of an independent Kosovo to Belgrade’s EU membership aspirations during her August 2011 press conference with then-President Boris Tadić. In so doing, she forced a shift in the EU’s relations with Serbia, which had hitherto been determined by an equally ‘virtual’ Serbian policy of “both the EU and Kosovo,” toward a more pragmatic and realistic policy. This defined the framework and final aims of the upcoming political dialogue: territorial integrity, sovereignty and full exercise of international subjectivity for Kosovo, as well as the development of normal bilateral relations

between Serbia and Kosovo. This framework was reinforced and defined in greater detail by the Schockenhoff group of German MPs’ ‘seven-point plan’ of September 2012, the 2013 April Agreement, and the dialogue-related aspects of the EU’s 2014 accession negotiating framework with Serbia.

The political dialogue did include an inherent concession to Belgrade: its incremental approach was intended to facilitate the domestic adjustment of Serbian government policy and public discourse on Kosovo independence, in order to allow Serbia’s path to EU membership to progress. In 2013, Serbian officials constructively engaged in the dialogue and shifted their discourse on Kosovo to an unprecedented degree. Yet the EU allowed first Serbia, then Kosovo, to continually delay actual implementation of agreed-upon steps. Belgrade thereby squandered the opportunity offered by the process, instead rekindling hope that it could avoid accepting Kosovo’s independence.

Since then, the EU’s incremental approach has been mired in increasingly toxic stasis, with no foreseeable resolution. A “new phase” was announced in July 2017, framing negotiations on a final, comprehensive and legally binding agreement on full normalization between Kosovo and Serbia as the only viable option. However, this phase remains uninitiated nearly a year later, allowing further drift in Belgrade, Brussels and Prishtina. Serbia, in particular, is engaging in intense political and public spin, advocating “solutions”

such as partition or land swaps that fall entirely outside the red lines set by leading EU capitals. The EU's lead negotiators, Frederica Mogherini and her team, seem to lack an understanding that their role is in upholding and defending red lines and not merely in "facilitation." Various media reports have raised questions as to whether Prishtina might be amenable to Belgrade's lobbying for partition.

For a successful outcome to the negotiations on a comprehensive agreement, which would set the stage for a peaceful and democratic future for Kosovo and Serbia, their mutually beneficial and cooperative co-existence, and the future of the wider region, it is essential that the EU (and the US) explicitly reiterate the original framework and aims of the dialogue. It is equally important that Prishtina sticks to the terms under which it originally entered the dialogue.



July 2017, framing negotiations on a final, comprehensive and legally binding agreement on full normalization between Kosovo and Serbia

INTRODUCTION

In July 2017, the parties to the EU-led political dialogue between Kosovo and Serbia announced a "new phase" in the negotiations, aimed at a final, comprehensive and legally binding agreement for full normalization of relations between the two Western Balkan countries. This marked the beginning of an interim period prior to the start of real negotiations that to date (May 2018) has lasted just under one year. As the EU has not yet publicly announced a negotiation framework, nor the red lines it is going to define, and the regional parties, particularly official Belgrade, have engaged in massive political spin, there is deep insecurity and confusion in Kosovo (but also in Serbia and the West) about the ulterior motive behind the desire to jump to the endpoint of the dialogue.

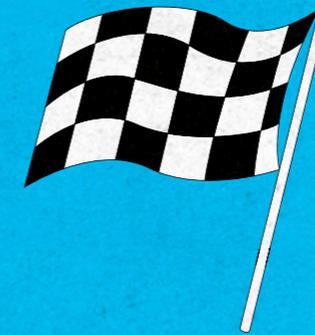
This added to a prevailing uncertainty about what the dialogue's ultimate objectives are. Shifting to a new phase in the dialogue meant the implicit recognition that the previous incremental approach of normalization, through a series of agreements of which the April 2013 Agreement was originally planned to be only the first, had failed. Endless delays in implementing the April Agreement, the closed nature of the Brussels negotiations, as well as the shift in Belgrade's rhetoric all obscured the ultimate aims of the dialogue. Combined with the very limited visible benefits for their country, this led to a steep decline in support for the dialogue among a majority of Kosovo citizens.¹

From the perspective of the main political actors within the EU and the wider West, the underlying conditions and ultimate aims of the political dialogue remain valid, and thus frontloaded and binding upon both Kosovo and Serbia. The original deal emerged following a number of significant developments. In July 2010, the Serbian government's case before the International Court of Justice (ICJ) failed when the ruling did not declare Kosovo's Western-backed 2008 declaration of independence as a violation of international law. Belgrade subsequently pushed for a UN General Assembly resolution condemning Kosovo's independence. The German and the British governments thereafter signaled to Belgrade, openly for the first time, that in order to maintain its EU integration aspirations, it needed to accept the reality of an independent Kosovo. The counter-push resulted in the establishment of the technical dialogue in February 2011. The violent unrest in the north of Kosovo in the summer of 2011 prompted German Chancellor Angela Merkel to seize EU leadership on the Kosovo-Serbia dispute. Taken together, these events marked a watershed in this process. Setting the acceptance of an independent, territorially integral Kosovo as an explicit condition of Serbia's EU membership perspective put an end to Serbia's transpartisan "EU and Kosovo" policy and set the framework for the upcoming political dialogue. The 2013 April Agreement as well as the EU's 2014 Accession

¹ See data on citizens' perceptions on the dialogue in "Kosovo Security Barometer. Special Edition: Public Perceptions Towards Kosovo's Foreign Policy and Dialogue with Serbia," Kosovar Centre for Security Studies, Prishtina, February 2018, available at: http://www.qkss.org/repository/docs/KSB-2017-ForeignPolicy_364397.pdf.

Negotiation Framework for Serbia, i.e., its content and mechanisms related to the dialogue, spelled out this framework in greater detail.

This paper aims to highlight the terms of the original dialogue deal relevant to the upcoming negotiations over a final comprehensive agreement. The first section looks at the development of the original dialogue and the terms under which Kosovo, but also Serbia, entered into the deal. The second section compares those terms to the rhetoric and behavior of the dialogue partners during the current interim period in the new phase of the dialogue. The final section draws conclusions for the upcoming negotiations over a final comprehensive and legally binding agreement between Kosovo and Serbia on full normalization of relations.



THE ORIGINAL FRAMEWORK OF THE POLITICAL DIALOGUE

01 THE EU'S SIDE OF THE DEAL

The leading EU actors had long avoided burdening the relationship with Serbia by confronting its government head-on with their disagreement over Belgrade's views on Kosovo's status. The violent clashes between Kosovo Serbs and first Kosovo Police, then KFOR troops in northern Kosovo in the summer of 2011, convinced the lead EU member states of the need to amend this approach. This set the stage for the political dialogue. Preceding tension in EU-Serbia relations following the aftermath of the July 2010 ICJ-ruling contributed to that policy shift. During his visit to Belgrade in September 2010, then-UK Foreign Secretary William Hague signaled an end to the Serbian government's "EU and Kosovo" policy - which involved lobbying the member states that had not recognized Kosovo - by noting that for Serbia to enter the EU it needed the support of the then-22 recognizers, not just the five non-recognizers.²

But it was the summer 2011 incident that ultimately demonstrated to EU capitals that the policy of maintaining a status quo had become untenable. German Chancellor Merkel and her government's seizing of leadership, strongly supported by the UK and the US, was the game changer. During a famous Belgrade press conference on August 23, 2011 with then-President Boris Tadić, Merkel laid down four markers that defined the framework and final outcome of the future political dialogue. First, she referred to the Cyprus case as a lesson learned in EU integration. Second, she noted the need to tackle the Serbia-Kosovo dispute early on in Serbia's movement towards accession, recognizing that resolution was a long-term process. Third, Merkel twice stressed that "Germany has recognized the Republic of Kosovo" - using Kosovo's official name, which was constitutionally not accepted in Serbia. Finally, she presented a set of three conditions with the "dismantling of

² "It would be good to withdraw resolution," B92, September 3, 2010, available at: https://www.b92.net/eng/insight/tvshows.php?yyyy=2010&mm=09&nav_id=69473.

parallel structures" at its core,³ thus for the first time openly conditioning EU membership with the acceptance of Kosovo's independence and the transformation of Serbia-Kosovo-relations into a bilateral, inter-state relationship. German Foreign Minister Guido Westerwelle, during a tour of Montenegro and Kosovo two weeks ahead of the Chancellor's trip, had already stressed that "Germany won't negotiate on the territorial integrity of the countries in the region" and had indicated that territorial partition of Kosovo was not on the table.⁴

In September 2012, after the new coalition between the Serbian Progressive Party (SNS) and the Serbian Socialist Party (SPS) emerged as the winner of both presidential and parliamentary elections and ahead of the start of the political dialogue in Brussels, the so-called Schockenhoff group - a group of CDU-CSU parliamentarians headed by Andreas Schockenhoff, then co-chair of the conservative parliamentary group and a close ally of Merkel's - published a seven-point plan: a list of conditions for Serbia to achieve before being allowed to begin accession negotiations.⁵ In the same month, the Schockenhoff group visited Belgrade where they met with high-level government officials and laid out their plan to a wider public. At the core of the seven-point plan, which already to some extent set the framework for the April Agreement, were Merkel's three conditions from August. Thus, Schockenhoff's fifth condi-

tion demanded the "start of a steady process of dismantling parallel structures in the security apparatus and public administration in northern Kosovo, and the financing for these structures."⁶ Point seven went beyond the start of accession negotiations, and asked for "a legally binding normalization of relations with Kosovo, with the prospect of Serbia and Kosovo, as full Member States under the EU treaties, being able to exercise their rights and fulfil their responsibilities independently and together"⁷ to be implemented before Serbia finalizes accession negotiations.

During the group's Belgrade press conference, Schockenhoff further stated that "the issue of the EU's external border must be solved at the moment Serbia enters the Union."⁸ As a member of the Schockenhoff group explained, during their official meetings in Belgrade and on a subsequent visit to Prishtina in February 2013, the CDU-CSU MPs clearly expressed what they expected the final outcome of the dialogue to be: full territorial integrity and sovereignty of Kosovo, full exercise of its international subjectivity, and full normalization of relations between Serbia and Kosovo, as bilateral relations.⁹

While the 2013 April Agreement avoided making the dialogue's framework and aims explicit, not least because the "creative ambiguity" approach of the EEAS left the legal character of the document undefined, it followed the previously set

³ The other two conditions, alongside with the start of the dismantling of Serbian state institutions on Kosovo soil, were progress in the technical dialogue, in particular related to border management, and access for EULEX to the North. Merkel presented fulfillment of those conditions as necessary for Serbia to be granted candidate status. See transcript of Tadić-Merkel press conference at: <https://www.bundeskanzlerin.de/Content-Archiv/DE/Archiv17/Mitschrift/Pressekonferenzen/2011/08/2011-08-23-pk-merkel-tadic.html>.

⁴ "Nemačka: Nema pregovora o granicama," B92, August 9, 2011, available at: https://www.b92.net/info/vesti/index.php?yyyy=2011&mm=08&dd=09&nav_id=530869; "Merkel stellt Serbien Bedingungen," FAZ, August 23, 2011, available at: <http://www.faz.net/aktuell/politik/europaeische-union/eu-kandidatenstatus-merkel-stellt-serbien-bedingungen-11108819.html>.

⁵ The Germany Bundestag needs to approve each step in EU integration.

⁶ Andreas Schockenhoff, "Expectations concerning Serbia with regard to the start of accession negotiations," September 13, 2012.

⁷ Ibid.

⁸ Schockenhoff, "Pressestatement: Erwartungen an Serbien für eine Aufnahme von EU-Beitrittsverhandlungen," Pressekonferenz, 13. September 2012, Belgrad.

⁹ Interview with former Schockenhoff group member, Berlin, May 2018.

markers. Thus, police in northern Kosovo were to be “integrated into the Kosovo Police framework,” the judiciary into the “Kosovo legal framework” and municipalities were to be established “in accordance with Kosovo law.” At the same time, Serbia pledged not to block Kosovo’s EU path, with the EU only accepting independent states as their members.¹⁰

The EU’s accession negotiating framework with Serbia in January 2014 established the underlying conditions and the final aims of the political dialogue to a greater extent than the April Agreement. The framework defined the Kosovo issue as one of the key preconditions for accession, equal to the relevance of the rule of law, describing the primary objective as “the comprehensive normalization of relations between Serbia and Kosovo, in the form of a legally binding agreement... with the prospect of both being able to fully exercise their rights and fulfil their responsibilities.” This was to be secured by turning an additional accession negotiation chapter (Chapter 35) into the Kosovo chapter. The dialogue-related parts of the framework bore the hallmarks of the German and UK governments who had clarified their position during the EU-internal negotiations over the final version of the document in a joint non-paper in autumn 2013.

In addition to Chapter 35, Berlin and London stated:

“conditionality on normalization must be hardwired through each Chapter negotiation... This would ensure that normalisation is addressed in all chapters where there is Kosovo-relevance.”

Article 38 of the negotiating framework entirely reflected that point:

“In all areas of the acquis, Serbia must ensure that its position on the status of Kosovo does not create any obstacle nor interfere with Serbia’s implementation of the acquis. As part of its efforts to align with the EU acquis, Serbia shall in particular ensure that adopted legislation, including its geographical scope, does not run counter to the comprehensive normalisation of relations with Kosovo.”¹¹

What this meant in practice was that Serbia, through adjusting its legislation to the EU acquis in the areas covered by the first 34 chapters of the accession negotiations, was **obliged** to exclude the territory of Kosovo from its state institutions and legislation.

¹⁰ “First agreement of principles governing the normalization of relations,” Brussels, April 19, 2013, available at: <http://www.rts.rs/upload/story-BoxFileData/2013/04/20/3224318/Originalni%20tekst%20Predloga%20sporazuma.pdf>.

¹¹ Negotiating Framework. GENERAL EU POSITION. Ministerial meeting opening the Intergovernmental Conference on the Accession, January 9, 2014, available at: <http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=AD%201%202014%20INIT> of Serbia to the European Union (Brussels, 21 January 2014).

SERBIA'S SIDE OF THE DEAL

In Serbia, Chancellor Merkel’s watershed announcement in August 2011 of the Kosovo-related conditions for the country’s EU integration left no room for confusion. Tomislav Nikolić, president at that time of the biggest opposition party, SNS, made a public statement regarding the EU’s use of Serbia’s recognition of Kosovo’s independence as a condition for accession. In response, Deputy Prime Minister Ivica Dačić said:

“it of course won’t condition [membership with recognition of Kosovo]. But it will demand removal of our institutions in the North, recognition of customs points as borders and so on... and what is that?”¹²

A year later, following the SNS’ election victory, the new party president (and Defense Minister) Aleksandar Vučić declared that the SNS-led government

would lead with a policy of “not recognizing Kosovo.” At the same time he stressed that his party intended to implement the existing agreements of the Serbia-Kosovo dialogue.¹³

Despite this, setting a historical precedent, the new Prime Minister, Ivica Dačić, met with his Kosovan counterpart, Hashim Thaçi, in October 2012 for the formal opening of the political dialogue in Brussels. The Serbian government’s draft platform for the negotiations on an agreement with Prishtina, dated December 2012, represented a last attempt to maintain the traditional nationalist position on Kosovo as a Serbian province, while simultaneously adhering to the EU’s demand of the “dismantling of parallel structures.” Thus the platform insisted that the starting point for negotiations with Prishtina be that “the Republic of Serbia does not recognize and will never recognize the unilateral declaration of the

¹² According to: Beta, September 2, 2011.

¹³ “Vučić: Naš posao je da ne priznamo Kosovo,” Deutsche Welle, July 1, 2012, available at: <http://www.dw.com/sr/vu%C4%8Di%C4%87-na%C5%A1-posao-je-da-ne-priznamo-kosovo/a-16063744>.

‘independence’ of Kosovo.” At the same time, the paper proposed that the Serbian Army, along with the Albanian Army and EU troops, serve as “guarantors for safety and the demilitarized status of the Autonomous Province of Kosovo and Metohija.”¹⁴

Despite officials’ continues insistence on Serbia’s policy of non-recognition of Kosovo, after only a few weeks the government shifted its position on Kosovo almost entirely, signing an Agreement in April 2013 that effectively started the integration of the north of Kosovo into the Republic of Kosovo. The shift was assessed by some Serbian law experts as a de facto recognition of Kosovo’s independence, if not an explicitly de jure recognition. Simultaneously, government officials shifted the public discourse towards an acceptance of the unpleasant truth regarding the loss of Kosovo. In a landmark article for the weekly NIN published in March 2013, Prime Minister Dačić revealed that Kosovo had been a taboo for a decade, admitting:

“We were lying to ourselves that Kosovo is ours and even made this lie official in the form of the constitution. Today this very same constitution is of no help. The president of Serbia cannot travel to Kosovo, nor the prime minister, nor the ministers, nor the police, nor the army.”¹⁵

In the run-up and aftermath of the signing of the April Agreement, Dačić and other high-level government officials stated that only the Serbian Army could bring Kosovo back under Serbia’s rule, that there was no popular will for such action and that the Serbian policy should thus focus on “safeguard-

ing a normal, safe life and a clear future” for Serbs in Kosovo.¹⁶ Reacting to a statement by his Prishtina counterpart Thaçi that the aim of the dialogue was a UN seat for Kosovo, Dačić indicated there were no more taboos, noting:

“If we agree, everything is possible. We are not running away from that and we seek comprehensive agreement, but for him to get that he also has to give something. That compromise has to satisfy both sides.”¹⁷

The opening of Serbia’s accession negotiations presented the next crucial step in Serbian officials’ acceptance of the reality. Though the Serbian Government had unsuccessfully lobbied against the geographical scope clause pushed by Germany and Great Britain, they nevertheless abided by it. During the bilateral screening of the accession chapters at the beginning of the accession negotiations, for example, Serbian officials presented a list of wines originating in Serbia within the Chapter on agriculture. The list also included one wine from Kosovo. Belgrade was asked by the European Commission to remove the wine from the list and complied with the demand without issue.¹⁸ In contrast, during this period there were increasing delays in the implementation of the April Agreement which were further accompanied by government officials’ attempts to shift the Kosovo dialogue narrative away from its original framework. The Serbian government thus hid the geographical scope clause from its public discourse and increasingly insisted the April Agreement was “status neutral” - a statement unheard in the immediate aftermath of its signing.

14 Serbian government non-paper, December 2012.

15 Ivica Dačić, „Đinđić je priča o Srbiji“, NIN, March 07, 2013.

16 Ibid.

17 “Dačić: Ne nudimo Kosovu mesto u UN,” Mondo.rs, January 15, 2018, available at: <http://mondo.rs/a274935/Info/Srbija/Dacic-Ne-nudimo-Kosovu-mesto-u-UN.html>.

18 Interview with EU officials, Brussels 2015.

KOSOVO'S SIDE OF THE DEAL

Chancellor Merkel’s August 2011 statements from Belgrade were received in Kosovo as direct support for the country’s sovereignty and territorial integrity. German insistence that Serbia had to dismantle its parallel structures in northern Kosovo and that partition was not acceptable was perceived as a signal of Berlin clarifying the goal of the (then still only technical) dialogue, which by that time was already in crisis.¹⁹

Merkel’s statements were also consistent with what Kosovo officials had heard earlier from then-German Foreign Minister, Guido Westerwelle.²⁰ It was Westerwelle himself who, one year earlier, made it

clear for Kosovo that Berlin considered the issue of border changes closed.²¹

Another point that made German involvement critical was the fact that, at that time, KFOR was led by German General Erhard Buhler, whose troops were caught in the middle of the July 2011 crisis in northern Kosovo. According to General Buhler, the important questions for Kosovo were: “Who controls northern Kosovo? Who governs the borders and customs?” Consequently, General Buhler called for the EU to intervene and solve the crisis, stating: “Only (the) European Union can lead these negotiations.”²²

19 A month earlier, as a consequence of failure to reach an agreement with Serbia over customs stamps, Kosovo government sent its Special Police Units to northern Kosovo, with orders to take control over two border points with Serbia. This precipitated a crisis that raised tensions in the north, and stopped the dialogue process.

20 On August 11, 2011, German FM Westerwelle visited Kosovo, as part of his regional tour that saw him go to Croatia and Montenegro as well.

21 See FM Westerwelle speech at Kosovo Parliament, on August 27, 2010, available at: <https://www.auswaertiges-amt.de/en/Newsroom/100827-bm-pristina/232704>.

22 See General Buhler interview for Der Spiegel, published on August 22, 2011: <http://www.spiegel.de/international/europe/peacekeeping-in-kosovo-the-situation-is-still-tense-a-781613.html>.

But in July and August of 2011, after just four months of talks, the Brussels Dialogue appeared to be in deep crisis. Due to this, a return to the dialogue was one of three demands Merkel made to Tadić during a meeting in Belgrade. According to one former member of the Kosovo dialogue team, the reality then was that EU-mediated talks “were collapsing” and it was only the German Chancellor’s intervention that “brought things back on track.”²³

Conversely, Kosovo was experiencing not only support but pressure and criticism as well. In a statement issued on July 26, 2011, the U.S. State Department said it regretted that the Kosovar attempt “to take control of customs border crossings in northern Kosovo was not coordinated with the international community.”²⁴ The EU also reacted, stating the action was “not helpful.” Maja Kočijančić, a spokesperson for then-EU foreign policy chief Catherine Ashton, said that “(w)e believe that the operation carried out last night by the Kosovo authorities was not helpful. It was not done in consultation with the international community, and the EU does not agree with it.”²⁵

In Kosovo, actions in the north were put under scrutiny by ambassadors of the Quint states,²⁶ who demanded Kosovo PM Thaçi coordinate future actions with EULEX, to both de-escalate tensions and to re-commit to the Brussels dialogue.²⁷



“Now Serbia will not be able to encourage others to block [Kosovo] attempts for membership in international organizations.

HASHIM THAČI, PRIMEMINISTER OF KOSOVO

As a result, Kosovo’s leadership was pushed to re-focus on the dialogue process with clearly defined goals, which meant that the talks had to continue but with assurances that Kosovo’s territorial integrity would not be put into question. This reality was reflected in public statements from Kosovo representatives, who insisted the dialogue had no alternative, and that Prishtina was against “opening of the Ahtisaari package.”²⁸

The 2013 April Agreement was met with mixed reactions in Kosovo. In Brussels, shortly after the signing of the agreement, then-PM Hashim Thaçi hailed it as “de jure recognition of Kosovo from Serbia.”²⁹ After returning to Prishtina, Thaçi held a press conference hailing the agreement as a document that confirmed “Kosovo as an independent

23 Assessment by a former member of Kosovo dialogue team, May 2018.

24 State Department August 26, 2011 press release: <https://2009-2017.state.gov/r/pa/prs/ps/2011/07/169107.htm>.

25 Kočijančić Statement for Radio Free Europe: <https://www.rferl.org/a/kosovo/24277093.html>.

26 An informal grouping of the Western members of the Contact Group: US, UK, Germany, France, and Italy.

27 Quint statement from July 2011 as reported in: “Thaçi listens to Quint - accepts their recommendations,” Koha Ditore, August 31, 2011.

28 Kosovo’s then Foreign Minister Enver Hoxhaj reaction to proposal that the North could gain status similar to Catalonia in Spain, made by then ICO head Pieter Feith in an interview with EUObserver: https://www.denederlandsegrondwet.nl/id/vislc9nge1zn/nieuws/rol_voor_eu_diplomatie_na_moord_in?ctx=vhsidnw5uoik&tab=1&start_tab0=360.

29 Thaçi statement to the media made in Brussels after the signing of the agreement, on April 19, 2013.

state, and Serbia as an independent state.”³⁰ Thereafter, the agreement was quickly sent to the Parliament for discussion and endorsement. During the parliamentary debate, PM Thaçi said the deal “officially ends the parallel structures” in Kosovo, would ensure that Serbs in the north would be integrated into Kosovo institutions, “will work under Kosovo constitutional law and order, and will be part only of [Kosovo] chain of command.” He also insisted that the agreement ensured that Kosovo’s membership bids in all international organizations would be met without further obstructions from Serbia, stating:

“Now Serbia will not be able to encourage others to block [Kosovo] attempts for membership in international organizations. Every attempt to obstruct membership in international organizations is in violation of this agreement.”³¹

The Agreement was quickly ratified by the Kosovo Parliament, despite some concerns voiced over the Association of Serb-majority Municipalities - the most important feature of the deal.³² There was a general reluctance toward the April Agreement, but most parties and MPs decided to support the process because of Western involvement. LDK representatives in parliament went as far as saying that they supported the agreement in principle because it had “guarantees and support of the USA and EU.” This sentiment demonstrated that the agreement was essentially voted in not because it was considered of great value, but because it was deemed as necessary for continuous Western support.³³

The only party that fully and publicly opposed the agreement was Vetëvendosje (“Self-determination”) under its leader, Albin Kurti. At a press conference the day after the agreement was signed, Kurti stated that the deal was “destroying state-building in Kosovo,” accused PM Thaçi of “legitimizing Serbia’s presence in Kosovo” and warned that his party would fight against the agreement “inside and outside of the parliament.”³⁴

In conclusion, the time between Chancellor Merkel’s 2011 intervention and just prior to the 2013 April Agreement was perceived in Kosovo as a period of increased clarity in the dialogue process. While there were those who opposed and criticized the talks, most were confident the dialogue was on right track, and they saw it as a focused process with the clear aim of bringing about Kosovo-Serbia normalization without re-opening the issue of Kosovo’s status or questioning the country’s territorial integrity.

This view was reinforced by the start of the process of gradual integration of northern Kosovo into the Kosovo state system. Yet the April Agreement itself also disturbed some of this clarity, especially with the Association of Serb-majority Municipalities: it endangered (and continues to do so) Kosovo’s functionality and integrity and turned its sovereignty once again into a matter of debate, rather than a mutually accepted, established (if officially unrecognized) fact.

30 Thaçi press conference held in Prishtina on April 20, 2013.

31 Thaçi speech before Kosovo Parliament, April 21, 2013.

32 The Kosovo Assembly adopted the agreement with 89 votes in favor, 5 against, and one abstention. Vetëvendosje MPs tried to prevent the vote, but ultimately failed.

33 Speech of Ismet Beqiri, LDK Parliamentary Group head, at parliamentary session before the vote, on April 21, 2013.

34 Vetëvendosje press conference held on April 20, 2013, as reported in Koha Ditore, April 21, 2013.

COMPREHENSIVE AGREEMENT: THE PRE-NEGOTIATION PHASE

Compared with the clarity of the original underlying conditions of the political dialogue (i.e., its framework and ultimate aims), the behavior of the various negotiating parties has seriously threatened the foundations of the new phase in the dialogue ever since it was announced.

This is particularly true for official Belgrade. Six months prior to the announcement in January 2017, the so-called train incident demonstrated that Serbian officials had made nearly a complete U-turn in their rhetoric on Kosovo compared to the period just after the signing of the April 2013 Agreement - both regarding the government-paid inscription "Kosovo is Serbia" on the train, as well as then-Serbian President Nikolić's threat to send the Serbian Army to Kosovo.³⁵ Since the summer of 2017, Belgrade has consistently spun this line in its internal and external advocacy. This shift best demonstrates official Serbia's attempts to exploit the crisis in the dialogue, renege on the original setting, and test red lines firmly set by the EU (and

the US) in the run-up to the negotiations on a comprehensive agreement.

President Vučić has remained consistently vague about the upcoming negotiations as well as about Belgrade's future negotiating position. Yet, in his public statements as well as in private meetings with Western officials, he has tried to steer the dialogue away from its intended content - Serbia's political recognition of the fact that Kosovo is no longer part of its state - and reframe it as a question to the EU, the US, and Prishtina of what concessions need to be given to Serbia. In addition, he has worked to reframe the comprehensive agreement negotiations between the Kosovo and Serbia as classical negotiations between two equal parties to find a middle-of-the-road compromise between their conflicting starting positions.³⁶ Vučić's explanation following a meeting with Chancellor Merkel in Berlin April 13, 2018, provides a good example:

"There is no good solution for Kosovo and Metohija for us, but compromise implies that both of us [Serbs and Albanians] will be somewhat dissatisfied or somewhat satisfied." 37

"I am trying to propose a long-term solution based on a compromise of historic and ethnic rights, which implies setting the boundaries of what is Serbian, and what is Albanian." 39

The efforts by Vučić and other high-level government officials to move away from the dialogue deal was further reflected in the so-called internal dialogue that was initiated by the Serbian president in July 2017. While the framework and aims of the internal dialogue remain unclear, since autumn 2017 over a dozen roundtables have been organized in Serbia, bringing together representatives of state and other public institutions that were almost exclusively on the government's payroll. Their various proposals for a comprehensive agreement reflected the traditional nationalist thinking on Kosovo, and widely ignored the original setting of the political dialogue.³⁸

At the core of Belgrade's effort to divert the upcoming negotiations away from the established framework, Vučić and other state officials have engaged in intense advocacy for the territorial partition of Kosovo, either in return for political concessions (a UN seat for Prishtina), or as part of a land swap (northern Kosovo for the southern Serbian, majority-Albanian inhabited Preševo region). While the Serbian President has discussed maps in closed meetings with EU officials, Foreign Minister Dačić has been most active in his public spin. During an interview in August 2017, he presented his idea of the demarcation of Serb and Albanian territory in Kosovo as a suggested permanent solution to a centuries-old conflict between Serbs and Albanians, explaining:

Serbian Defense Minister Aleksandar Vulin has also tried to frame the territorial division of Kosovo as part of a broad historical reconciliation between Serbs and Albanians, insisting that "a permanent and secure demarcation of Serbs and Albanians has to be established in Kosovo and Metohija," even suggesting that Tirana should replace Prishtina as Belgrade's negotiating partner.⁴⁰

What has further undermined trust in the new phase of the dialogue and its potential to reach a comprehensive agreement, is the fact that such spin from Belgrade was not met with consistent or assertive resistance from the EU and the US, at least not publicly. In private, several key Western governments sent clear messages to Belgrade that the rejection of any border changes remained a firm, unchanged red line. Conversely, there have been indications that the EU's lead negotiators in the dialogue, Federica Mogherini and her team, don't see their function as setting the red lines that defined the original framework of the political dialogue. Rather, they seem to take their official role as "facilitators" at face value. Greg Delawie, the US Ambassador to Kosovo, provided a rare public statement against any border change.⁴¹ Most notable was outgoing German Foreign Minister Sigmar Gabriel's statement during his Western Balkans trip in February 2018. Following a visit to Belgrade, at a press conference in Prishtina with Prime Minister

35 Speech of Ismet Beqiri, LDK Parliamentary Group head, at parliamentary session before the vote, on April 21, 2013.

36 Interviews with Western officials, 2017-18.

37 "Vučić: Za nas nema dobrog rešenja za Kosmet, Merkel shvata šta za nas znači KiM," Večernje novosti, April 13, 2018, available at: <http://www.novosti.rs/vesti/naslovna/politika/aktuelno.289.html:721924-Vucic-Kancelarka-smatra-vaznim-da-nasa-zemlja-bude-na-samitu-u-Sofiji-Merkel-Srbija-je-kljucna-zemlja-u-regionu-VIDEO>.

38 See the official website of the internal dialogue: <http://unutrasnjidijalog.gov.rs/index.php>.

39 "Razgraničenje trajno rešenje za konflikt Srba i Albanaca," Politika, August 15, 2017, available at: <http://www.politika.rs/sr/clanak/386987/Razgranicenje-trajno-resenje-za-konflikt-Srba-i-Albanaca>.

40 <http://unutrasnjidijalog.gov.rs/v017.php>.

41 <https://xk.usembassy.gov/ambassador-delawies-interview-sporazum/>.

Ramush Haradinaj, Gabriel gave what was the most frank statement on the ultimate aim of the dialogue since its establishment:

“If Serbia wants to move toward the EU, the building of the rule of law is a primary condition. But naturally, so is the acceptance of Kosovo’s independence. That is a central condition to take the path toward.”⁴²

With the West, particularly the EU, sending mixed signals about the validity of the original dialogue setting and its red lines, there were reports that the Kosovo government might be amenable to accepting Belgrade’s lobbying for partition. In January 2018, President Thaçi’s chief of staff, Bekim Çol-laku, reacted to media reports about alleged talks between President Thaçi, Albanian Prime Minister Edi Rama and Greek Foreign Minister Nikolaos Kot-zias about changes of borders, insisting that:

“The position of the President of the Republic of Kosovo remains clear: Kosovo is an independent and sovereign state and its borders are recognized internationally.”



There is no good solution for Kosovo and Metohija for us, but compromise implies that both of us [Serbs and Albanians] will be somewhat dissatisfied or somewhat satisfied.”

ALEKSANDAR VUČIĆ, PRESIDENT OF SERBIA

Somewhat contradictorily, he also added: “We will have to wait for the end of the dialogue. Everything else in this phase is speculation, including the issues that are raised by you.”⁴³

Following media reports a month later that he had met with Rama and Ali Ahmeti, the Albanian political leader from Macedonia, to discuss border change scenarios, Thaçi publicly denied the accounts, stressing that:

“such ideas do not bring peace and stability, they do not come from Kosovo institutions. This [partition] is a dead issue. There were ideas of partition before, but I have been clear: respect of territorial integrity is utterly important.”⁴⁴

⁴² “Sigmar Gabriel tells Serbia it must accept Kosovo’s independence to join EU,” Deutsche Welle, February 15, 2018, available at: <http://www.dw.com/en/sigmar-gabriel-tells-serbia-it-must-accept-kosovos-independence-to-join-eu/a-42593839>.

⁴³ “Zyra e Presidentit Thaçi: Në këtë fazë është vetëm spekulim ideja e shkëmbimit të territoreve,” “Pse po mbahet sekret vendndodhja e Presidentit Thaçi?” Gazeta Express, January 10 and 11, 2018, available at: <http://www.gazetaexpress.com/lajme/presidenca-ne-kete-faze-eshte-ve-tem-spekulim-ideja-e-shkembimit-te-territoreve-497852/>; <http://www.gazetaexpress.com/lajme/pse-po-mbahet-sekret-vendndodhja-e-presidentit-thaci-498286/>.

⁴⁴ “Thaçi publikisht distancohet nga idetë për ndarjen e Kosovës,” Gazeta Express, February 12, 2018, available at: <http://www.gazetaexpress.com/lajme/thaci-publikisht-distancohet-nga-idete-per-ndarjen-e-kosoves-498748/>.

CONCLUSIONS

Serbia’s denial of the political reality on the ground in Kosovo, and its pursuit of a virtual Kosovo policy that did not seriously accept the majority Albanian population as either sovereign in Kosovo or, alternatively, as its citizens, but rather used them for tactical political gains were all at the core of Serbia’s Kosovo policy for many decades. This dishonest and delusional policy prevented any Western initiative from solving the Serbia-Kosovo status dispute in a classical conflict mediation setting, resulting in the failure of the Troika negotiations and Serbia’s rejection of the Ahtisaari plan. It was this last action that convinced the majority of Western states that formalizing the fact that Serbia had effectively lost Kosovo through its declaration of independence in 2008 was the only viable and sustainable solution to the long-term status dispute. This was considered an important precondition for the development of a peaceful and democratic future for the Western Balkans – rather than a violation of international law, as some claimed. In 2008, the entire Serbian political elite was aware that Kosovo was gone, and that there was no one to attribute this development to other than Serbian political actors, their discourse, and their policies and actions. The traditional opportunism of Balkan politics prevented them from admitting this painful truth, or from communicating it to their citizens.

Chancellor Merkel initiated the long overdue turn, followed by other Western political leaders, that allowed for the EU-led political dialogue. By setting the framework, including strict red lines, this enabled Serbian political elites to move towards a reality-based policy and public discourse on Kosovo.

Further it allowed Serbian elites to steer the Kosovo-Serbia dispute towards dialogue on the practical necessity and legitimate priorities of securing a normal life for Kosovo Serbs in the state of Kosovo, the normalization of relationships between Albanians and Serbs in Kosovo, and the bilateral relationship between Kosovo and Serbia. This framework was predicated on the Republic of Kosovo gaining full territorial integrity, sovereignty, and international subjectivity. Ending the limbo in which both Kosovo and Serbia were stuck – as unfinished states – was the basis for Kosovo entering into the original deal. Despite its concerns about the impact of the 2013 April Agreement on the integrity and functionality of the state, Kosovo remained within its terms.

Unfortunately, the dialogue remains in a serious crisis with regard to its original framework, red lines, and aims, a limbo following the announcement of the new phase in the dialogue and the start of negotiations over a final, comprehensive agreement.

For the peaceful and democratic future of Kosovo and Serbia, their mutually beneficial and cooperative co-existence, and the future of the wider region, it is essential that the EU (and the US) explicitly reconfirm the political dialogue’s original framework and aims. It will be equally important that Prishtina continues to stick to the terms under which it originally entered the dialogue.

