

WHAT CAN KOSOVO OFFER BELGRADE?

Bilateral Issues in the Negotiations on a Comprehensive Agreement

BODO WEBER & AGRON BAJRAMI

Berlin – Prishtina
June 2020



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1

→ The Original Framework of the Political Dialogue

2

→ How to recognize reality?
The issue of Serbia's recognition of Kosovo

3

→ Kosovo's Path Toward EU and UN Membership

4

→ Collective Ethnic Protection as a Means of (Dis-)Integration:
The Association/ Community of Serb Majority Municipalities

5

→ What Can Kosovo Offer Belgrade? Bilateral Issues in the Negotiations
on a Comprehensive Agreement

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08
PREFACE

09
**EXECUTIVE
SUMMARY**

11
INTRODUCTION

14
**THE LIST OF OPEN
BILATERAL ISSUES**

17
**REGULATION OF
BILATERAL ISSUES
UNDER THE
AHTISAARI PLAN**

19
**BILATERAL ISSUES
WITHIN THE EU-LED
(POLITICAL) DIALOGUE**

25
**BILATERAL
ISSUES WITHIN
THE FINAL
PHASE OF THE
DIALOGUE**

28
**CONCLUSIONS &
RECOMMENDATIONS**

PREFACE

This paper is the fifth and last of a series of policy notes published since 2018 dealing with the so-called “new phase” in the EU-led political dialogue between Kosovo and Serbia. Specifically, the series addresses the negotiations over a final, comprehensive and legally binding agreement on full normalization of relations between the two countries. It covers the most important aspects and elements of a potential future agreement from both a Kosovan and an international perspective as part of a current 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) and the Kosovo Foundation for Open Society (KFOS, Prishtina).

Through a variety of activities, the project strives to facilitate a dialogue process among Kosovo policymakers, Kosovo civil society actors and Western officials on Kosovo’s position in the ongoing negotiations. Rather than offering ready-made recommendations on Kosovo’s negotiating position, the policy notes intend to serve as a catalyst for intense and productive debate and dialogue. Using this approach, the authors and the organizers of the overall project aim to help overcome structural constraints relating to the negotiations on a comprehensive final agreement. The 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, thereby creating important preconditions for the sustainable democratic transformation of both Kosovo and Serbia, and lasting peace in the region.

EXECUTIVE SUMMARY

In July 2017, the chief negotiators in the EU-led political dialogue between Kosovo and Serbia, then High Representative for Foreign Affairs and Security Policy Federica Mogherini and Presidents Hashim Thaçi and Aleksandar Vučić, announced the beginning of a “new phase” in the dialogue process - negotiations on a final, comprehensive and legally binding agreement. Such an agreement ideally would not only encompass a sustainable end to the decades-long status dispute, but also provide a framework to address the full list of open bilateral issues between the two countries - something previous international efforts and initiatives were unable to accomplish.

UN mediator Marri Ahtisaari’s 2007 *Comprehensive Proposal for the Kosovo Status Settlement* dealt with key bilateral issues. But Serbia rejected the proposal, and thus Kosovo implemented many of its provisions without the participation of its Western Balkan neighbor. However, without Serbia’s support and without a settlement of the status dispute, implementation was fragmentary. The EU-led technical dialogue approach, initiated in 2011, aimed to reach progress on bilateral issues by temporarily circumventing the status dispute. But this method yielded little. As a consequence, in 2012 the EU returned to a focus on the status dispute as a precondition to normalize bilateral relations. The aims and principles of the original political dialogue framework explicitly linked Serbia’s EU membership aspirations with acceptance of an independent, territorially integral Kosovo. This incremental approach would have seen gradual progress on the status dispute, on full integra-



To solve the long list of open bilateral issues and fully implement all agreements signed within the dialogue framework since 2011, the EU, if possible with US support, needs to lead a fundamental reset of negotiations to arrive at a final, comprehensive and legally binding agreement, based on a return to the original dialogue framework

tion of Kosovo Serbs into the Kosovo state and on all bilateral issues.

Indeed, some progress was achieved on bilateral issues. However, Belgrade chose not to acknowledge the value of this approach. Instead, it played

the system and took advantage of the EU's increasing policy incoherence. Over time, this incremental approach proved untenable, moving from delayed implementation to an almost complete halt by 2015-16. Jumping to the endpoint of the political dialogue, which meant negotiating a final, comprehensive agreement covering both the status dispute and all open bilateral issues, was the only viable option left to save the dialogue. Those negotiations, however, quickly veered in an entirely different direction. From the outset, Belgrade engaged in a massive political spin operation aimed at unilaterally and covertly redefining negotiations as the search for a "compromise" with a focus on the value added for Serbia. By blurring the boundaries between bilateral issues and the status issue, Belgrade made its case for territory — *What to give Serbia?* Serbian President Vučić, with the support of his EU and Kosovan counterparts in Brussels, managed to steer negotiations towards talk of a dangerous, ostensible quick fix deal on a land swap or ethno-territorial division of Kosovo. This dynamic left no room for serious discussion on bilateral issues.

To solve the long list of open bilateral issues and fully implement all agreements signed within the dialogue framework since 2011, the EU, if possible with US support, needs to lead a fundamental reset of negotiations to arrive at a final, comprehensive and legally binding agreement, based on a return to the original dialogue framework. Clarity on the status of Kosovo as an independent state within its existing borders will make solving some bilateral issues much easier, while it presents a precondition for others. Once the EU has established the basic negotiation framework, some methodological principles could guide resolution of the bilateral issues in a comprehensive way.

First, bilateral issues should be identified and negotiated separately from primarily status-related issues.

Second, the list of open bilateral issues should be reviewed from the perspective of turning the Belgrade-centered question of *What to give Serbia?* into the Kosovo-centered question of *What Can Kosovo offer Belgrade?* That means identifying those bilateral issues that could help Belgrade sell a final deal to Serbia's citizens that formalizes recognition of an independent Kosovo. Those issues should further be divided into the following categories:

- 1 Bilateral issues with a high national symbolic value in Serbia;
- 2 Bilateral issues, such as property claims, where there is both opportunity and a need for real bargaining-type negotiations.

Finally, it may not be possible to solve certain complex issues in their entirety within the timeframe of a comprehensive agreement. For such issues, provisions for follow-up negotiations in a format such as expert commissions and potential binding international arbitration should be agreed on, with details on format and principles to be defined as part of the final agreement.

INTRODUCTION

In July 2017, the chief negotiators of the EU-led political dialogue between Kosovo and Serbia, then High Representative for Foreign Affairs and Security Policy Federica Mogherini and Presidents Hashim Thaçi and Aleksandar Vučić, announced the beginning of a “new phase” in the negotiation process. From that point, negotiations would aim to achieve a final, comprehensive and legally binding agreement to end the decades-long status dispute (recognition of Kosovo by Serbia) and related issues (Kosovo membership in international organizations including the EU and UN), and lead to full normalization of relations between the two Western Balkan states, and, at the same time, solve more traditional existing bilateral, open issues. However, over the course of 2018 discussions gradually degenerated into proposals for 1990s-style ethno-territorial “solutions” and a potential land swap deal which led to political tensions and the breakdown of the Brussels talks by the end of that year.

From the time that Kosovo emerged from the 1999 war as a de facto independent entity separate from Serbia, international negotiations aimed at solving the status dispute also dealt with unresolved bilateral issues to some extent. UN mediator Martti Ahtisaari’s 2007 Comprehensive Proposal for the Kosovo Status Settlement (the Ahtisaari Plan),¹ later integrated into the constitution of the independent Republic of Kosovo, dealt with both the status of Kosovo and key bilateral issues. In contrast, the EU-led technical dialogue initiated in 2011 focused



UN mediator Martti Ahtisaari’s 2007 Comprehensive Proposal for the Kosovo Status Settlement (the Ahtisaari Plan), later integrated into the constitution of the independent Republic of Kosovo, dealt with both the status of Kosovo and key bilateral issues.

exclusively on regulating basic bilateral relations between Kosovo and Serbia. It excluded the status dispute from both negotiations and concluded agreements.

The lesson learned from the limited success of that approach shaped the scope of the political di-

1 Comprehensive Proposal for the Kosovo Status Settlement; available at <https://www.refworld.org/docid/4a54bc360.html>.



This paper analyzes potential pathways towards resolving the long list of the open bilateral issues remaining between Kosovo and Serbia. These are presented within the context of a proposed - and much needed - reset of the negotiations over a final, comprehensive agreement based on the principles, terms and ultimate aims underpinning the original dialogue deal that enabled the initial progress towards fully normalizing relations between the two Western Balkan countries.

dialogue initiated in 2012, returning the focus to the status dispute as a precondition to normalization of bilateral relations, while also aiming to unblock

implementation of the technical dialogue agreements. The original political dialogue framework led to the signing of the landmark April 2013 Agreement in which the terms of the original dialogue deal between the EU, Belgrade and Prishtina were explicitly based on acceptance of an independent, territorially integral Kosovo as a condition of Serbia's EU membership perspective. This implied the future recognition of Kosovo by Serbia in some form and the unblocking of Kosovo's membership in the EU and UN, but this was not spelled out. This initial dialogue pathway was designed to create conditions for solving the remaining bilateral disputes at a later stage in the process.

Over the years, the EU, i.e., the chief negotiator and leading member states, allowed the political dialogue with its incremental approach gradually to slip into near irrelevance. The 2017 shift to negotiations on a final, comprehensive agreement designed to put the dialogue process back on track led instead to a further, not-inconsequential deviation. Encouraged by a perceived political weakness of the West, starting with the EU's chief negotiator Federica Mogherini, the Belgrade authorities engaged in a concerted effort to recast the dialogue as being aimed at achieving a "compromise" agreement and focused on the question of What to give Serbia? Serbian President Aleksandar Vučić's approach aimed to reopen the status dispute issue rather than offer practical solutions to recognize the reality of an independent Kosovo as originally agreed to within the political dialogue and led to a land swap proposal. Throughout 2018 those messages and ideas gained traction with some Western actors (Mogherini, the Trump administration, French President Emmanuel Macron) and with Vučić's Prishtina counterpart Hashim Thaçi. This dynamic complicated the negotiating process and marginalized the discussion of bilateral issues.

This paper analyzes potential pathways towards resolving the long list of the open bilateral issues remaining between Kosovo and Serbia. These are presented within the context of a proposed - and much needed - reset of the negotiations over a final, comprehensive agreement based on the principles, terms and ultimate aims underpinning the original dialogue deal that enabled the initial progress towards fully normalizing relations between the two Western Balkan countries.

Section one presents a list of the principal bilateral issues to be addressed in a final agreement. Section two examines the manner in which the Ahtisaari Plan, i.e., the Kosovo constitution, deals with bilateral issues. Section three analyzes the role bilateral issues played in the political (and previous technical) dialogue process and progress achieved on implementation. Section four offers observations on how bilateral issues have figured in the “new phase” of the political dialogue and in the heightened discussion on a final agreement. The final section offers initial recommendations on how to meaningfully address bilateral issues within the framework of a negotiation reset.

01 THE LIST OF OPEN BILATERAL ISSUES

Passionate disagreement exists in both Prishtina and Belgrade over which bilateral issues to put on the negotiating table in Brussels. Some issues are claimed to already have been resolved or be illegitimate by one side or the other. The list below includes the main disputed issues, along with some of the other main open bilateral issues, that must be addressed to ensure normal bilateral relations between two neighboring and independent countries and to conclude a final and comprehensive agreement.²

Integration of Serbian state institutions in Serb majority municipalities into the Kosovo state

Full integration of Kosovo Serbs into the Republic of Kosovo includes the transfer of certain institutions into the Kosovo state institutional framework. This will necessitate inter-state arrangements and agreements. Among these are Serbian education system institutions (schools, Mitrovica University) which will require maintaining part of the current Serbian curricula and the Serbian pension system. A solution for health insurance for

² The list of bilateral issues is based on interviews with policymakers from Prishtina, Belgrade and key Western capitals. In addition, the Kosovo government in 2014 published a document laying out what it thought should be on the list of open bilateral issues to be addressed in later stages of the political dialogue - see: Brussels Dialogue - Topics for the Next Phase, Kosovo Government, Office of the Deputy Prime Minister Edita Tahiri, Prishtina, March 29, 2014.

Kosovo Serbs must also be found, a problematic issue given that Kosovo still lacks a public health insurance system.

Demarcation of the inter-state border and establishment of a “hard border” in the north

Recognition of Kosovo by Serbia in its existing borders will still require demarcation of the new inter-state border. Serbia must also end the illegal entry of goods from Serbia into Kosovo via illegal routes in the north.

Free movement of all citizens from Kosovo and Serbia in each other’s state

Acceptance of Kosovo passports in Serbia will be required as will mutual acceptance of license plates.

Free movement of goods and services

Full respect of CEFTA (Central European Free Trade Agreement) rules will be required and must include removal of all Serbian non-tariff trade barriers.

Missing persons

According to the International Commission on Missing Persons (ICMP),³ 1,600 persons are still missing as a consequence of the Kosovo war, roughly two-thirds of them Kosovo Albanians



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and one-third Serbs.⁴ Despite good cooperation between the Albanian and Serb Associations of the Families of Missing Persons, the process of revealing and identifying the whereabouts of the remains of the missing has come to a standstill in recent years.⁵

Return of refugees and internally displaced persons

Resolution is necessary on return of Kosovo Serb

³ ICMP’s Stocktaking Report on the Kosovo Conflict, published in March 2019, see: <https://www.icmp.int/wp-content/uploads/2019/03/ICMP-Kosovo-ENG-1.pdf>.

⁴ Most of the Kosovo-Albanian missing persons are reported to have been taken during the 1999 war by Serbian state forces and paramilitary groups that operated within the Serbian Army and Police chain of command. Kosovo Serb missing persons allegedly disappeared at the hands of KLA units, mostly in the immediate aftermath of the war that ended in June 1999.

⁵ Kosovo Albanians, and the government in Prishtina, are convinced that Serbia has war records of the sites of the remains of the missing it has been reluctant to reveal, while on the Albanian side there exists no written records, but sites have been revealed by members of the former Kosovo Albanian security forces, including perpetrators, or witnesses. Interviews with Western diplomats, Prishtina, 2017-18.

refugees, most of whom currently reside in Serbia, to their homes in Kosovo,⁶ and the return of Kosovo Albanians to their homes in majority Serb-inhabited municipalities in the north of Kosovo.

Protection of Serb religious and cultural sites; restitution of property of the Serbian Orthodox Church in Kosovo

Protection of religious and cultural sites has been in general institutionally regulated through the Ahtisaari Plan, but implementation remains inadequate. The issue of property restitution has not been addressed in any agreements to date.

Return of Kosovan cultural heritage items to Kosovo from Serbia

Among the items to be returned are archeological and ethnological exhibits and collections from the Museum of Kosovo and from the Archives of Kosovo; documents from the Kosovo Institute for the Protection of Monuments; and films belonging to the former socialist company Kosovafilm.

Open, controversial property issues and claims

Among the many disputes that need resolution is determination of the status of former state and

socially-owned enterprises after the breakup of socialist Yugoslavia and after the 1999 war - the Trepča⁷ mining company and the lake Gazivode⁸ being two of the most contentious. The disputes involve not only enterprises then located in Kosovo, but also branches of Kosovan companies in Serbia (and vice versa) and Serbian state investments in Kosovan enterprises located in majority Serb areas of Kosovo since the war. Other challenging issues to be resolved concern the Yugoslav succession (financial debts and assets, including former Yugoslav diplomatic missions and military assets); the fate of pre-war pensions of Kosovo citizens and their former bank deposits in Serbian banks; and war reparation claims by Kosovo against Serbia related to the 1999 war - another highly contentious issue.

6 Estimates put the number of Kosovo Serbs seriously interested in returning to their pre-war place of residence in Kosovo at several thousand. Interview with representative of an international organization, Prishtina, 2018.

7 The Mining, Metallurgical and Chemical Combine Trepča, Kosovo's former socialist industrial giant located in the north and a symbol of the former Yugoslav province's struggle for political independence, sits on millions of tons of deposits of lead and zinc as well as on several thousand tons of silver. Due to the ethno-territorial division of the company, with the minor part employing Serb workers and run by Belgrade and the major part under control of Kosovo authorities, production has been substantially reduced in the post-war period, while the company accumulates substantial financial debt. Reinvigorating Trepča would thus also require substantial investment.

8 The dam that created the artificial lake Gazivode was built during the first half of the 1980s. More than two-thirds of its surface is located within Kosovo territory in the northern, majority Serb inhabited municipality of Zubin Potok, and the rest in Serbia, with the source located in Montenegro. Gazivode lake is the main source of drinking water for the north of Kosovo, including Albanian-majority municipalities Mitrovica South and Skenderaj, plus an important source for the Prishtina region. In addition, it is of huge importance for Kosovo's energy production, as it provides cooling water for Kosovo's only (coal-based) power plant Obiliq. The Gazivode hydro power plant itself also contributes roughly 3 percent to the country's energy production. Water from the lake is also used by several big industrial companies as well as by Serb farmers in Kosovo's north. Interview with Gazivode expert Luan Shllaku, February 2020; "Ko će upravljati jezerom Gazivode? - Pitanje bez odgovora," Crno Beli Svet, March 5, 2019. Available at: <http://crnobelisvet.com/ko-ce-upravljati-jezerom-gazivode-pitanje-bez-odgovora/>.

REGULATION OF BILATERAL ISSUES UNDER THE AHTISAARI PLAN

In February 2007, UN Special Envoy Martti Ahtisaari, mediator in the status talks between Kosovo and Serbia that had started the previous year, presented his *Comprehensive Proposal for the Kosovo Status Settlement (CSP)* to the UN Security Council for adoption.⁹ Ahtisaari's plan proposed supervised independence for Kosovo, aimed at both ending the status dispute between Prishtina and Belgrade and establishing normal bilateral relations. It consequently covered a majority of the most important open bilateral issues. Serbia, supported by UNSC permanent member Russia, ultimately rejected the proposal, preventing its adoption. The Ahtisaari Plan subsequently was implemented through Kosovo's 2008 declaration of independence, with the support of a wide coalition of willing, mostly Western, states and became part of the constitutional structure of the

new state. By virtue of this action, many open bilateral issues addressed by the Ahtisaari Plan were unilaterally implemented by the Kosovan side, providing an existing basis for negotiations on a final, comprehensive agreement to go forward.

The Ahtisaari Plan, grafted onto independent Kosovo's constitutional order, regulated a number of open bilateral issues. Article 4 affirmed the right of all refugees and internally displaced persons to return to their pre-war place of residence and to claim their property and personal possessions. Article 5 demanded that Kosovo and Serbia undertake all measures to find and identify the remains of all missing persons from the 1999 Kosovo war, including by strengthening institutional capacities and continuing existing cooperation. Annex III defined the right of majority Serbian inhabit-

⁹ <https://www.refworld.org/docid/4a54bc360.html>.

ed municipalities in Kosovo to engage with state and municipal institutions and to receive financial support from Serbia, providing an institutional framework for such engagement. The Ahtisaari Plan also provided detailed provisions to ensure the autonomy and protection of religious denominations and their sites in Kosovo, particularly of the Serbian Orthodox Church (SOC) (Art. 7 & Annex V). This included legal protection of several dozen sites established as protective zones that were originally physically protected by KFOR, a task later handed over to the Kosovo Police. Other provisions were aimed at the economic self-sustainability of the SOC and guaranteed certain privileges such as tax and customs' exemptions.

Finally, the settlement proposal dealt with a range of property issues (Art. 8 & Annexes VI & VII). It determined that all property of the Federal Republic of Yugoslavia and the Republic of Serbia located within Kosovo would become property of the independent state of Kosovo, whereas publicly-owned enterprises would become property of the state or in the case of local or regional service delivery companies, of municipalities. For all socially-owned enterprises (SOEs) - including Gazivode and Trepça/Trepča - it decreed the continuation of the privatization process commenced by UNMIK under a successor agency, as well as an adjudication process for property claims, both to be dealt with under international supervision (Annex VII). In addition, the plan provided for Kosovo to agree, together with Serbia, to assume its share of the Republic of Serbia's international debt (Annex VI).

The Ahtisaari Plan, with its many painful political compromises, had to be unilaterally implemented by the Kosovan side without the reward of international and Serbian recognition or the establishment of inter-state relations with Serbia. That, together with the limited cooperation of Kosovo Serbs, negatively impacted implementation of provisions concerning bilateral issues. For example, some regulations, particularly those related to minority rights of Kosovo Serbs, were not fully implemented¹⁰ and thus some arrangements, such as those on protective zones, remain not fully respected. Additionally, the absence of established relations with Serbia and limited participation of Serb counterparts hampered regulation of specific other bilateral issues such as refugee return,¹¹ while it left the privatization of many SOEs open to dispute by Serbia. Those critical issues and others ultimately will be raised again in negotiations on a final, comprehensive agreement. But the attitude of many Kosovo politicians who consider the Ahtisaari Plan the final compromise will make finding solutions challenging.

¹⁰ Interviews with former international officials, Prishtina, 2012.

¹¹ Because the integration of Kosovo Serbs and the dismantling of Serbian state institutions located in majority Serb-inhabited municipalities has been partial, the Ahtisaari Plan's provisions regulating support to those municipalities from Serbia have remained unimplemented.

BILATERAL ISSUES WITHIN THE EU-LED (POLITICAL) DIALOGUE

In February 2011, the European Union initiated the so-called technical dialogue with Kosovo and Serbia, which marked the beginning of the EU-led dialogue process. It came about as a result of the escalating tensions between Serbia and the EU which followed the International Court of Justice's 2010 ruling in favor of Kosovo's declaration of independence. This led key EU member states, in particular Germany and the UK (with US support), to seize leadership of the dispute between the two Western Balkan countries, employing the leverage of Serbia's EU membership aspirations. Between March 2011 and February 2012, the technical dialogue circumvented the status dispute

and focused on bilateral issues, producing the following six agreements:¹²

- Return of Kosovo records: Two agreements regulated the return to Kosovo of civil registry books (copies) and Kosovo Cadastral Records taken by Serbia in 1999. Included was a mechanism to determine the accuracy of the cadastral records.
- Freedom of movement of people: The agreement guaranteed to citizens of Kosovo and Serbia freedom to travel to each other's country with ID cards, and also regulated travel by

¹² In addition, the exchange between Kosovo and Serbia of so-called "liaison officers" - something akin to diplomatic representatives in the absence of mutual recognition - plus a mode for Kosovo to participate in regional fora and organizations that circumvented the status dispute were agreed. See: The Analysis of the Implementation of the Technical Agreements Between Kosovo and Serbia, KIPRED, Prishtina, June 2013; available at: <http://www.kipred.org/en/news/THE-ANALYSIS-OF-THE-IMPLEMENTATION-OF-THE-TECHNICAL-AGREEMENTS-BETWEEN-KOSOVO-AND-SERBIA-206>. Most of the agreements can be found on the Serbian government's Kosovo office website: <http://www.kim.gov.rs/lat/pregovaracki-proces.php>.

car with respect to license plates and car insurance. The Serbia-issued license plates used by Kosovo Serbs in the north of Kosovo would become invalid and require reregistration with Kosovo authorities.

- Free movement of goods: There were two agreements, one on the mutual acceptance of customs stamps (with the Kosovan side using the neutral denomination “Government of Kosovo”) and the other on a system of “Integrated Border/Boundary Management” (IBM) based on the establishment of 6 border posts.
- Mutual recognition of university diplomas.

The approach of focusing on bilateral, ostensibly technical, issues quickly proved unworkable. Negotiations on a border regime to enable the free movement of goods immediately triggered tensions between Kosovo authorities and Serbs in the north of the country and led to an outbreak of violence in the summer of 2011. This initially involved the Kosovo police, but then swiftly also KFOR. The subsequent political intervention by German Chancellor Angela Merkel in August that year paved the way for the autumn 2012 move away from a technical dialogue in favor of a political dialogue.¹³ Most of the technical agreements were reached only *after* Merkel’s intervention. Actual implementation of virtually all the agreements was achieved only after the start of the political dialogue.

The shift from a technical dialogue to political dialogue meant a shift in attention away from such bilateral issues, recognizing the centrality of sta-



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tus. The policy behind the shift - conditioning Serbia’s EU membership aspirations on acceptance of the reality of an independent Kosovo and its territorial integrity, sovereignty and international subjectivity - defined the principles and aims, both explicit and implicit, of the political dialogue framework. The focus of agreements thus shifted to the integration of Kosovo Serbs into the Kosovo state with the removal of remaining Serbian

¹³ Merkel’s intervention and shift of EU policy was symbolized by her August 2011 state visit to Belgrade. It marked a political break in the German and EU policy towards Serbian President Boris Tadić and his Democratic Party-led government that contributed to the change in power during 2012 parliamentary and presidential elections to the Serbian Progressive Party (SNS) and its future leader, Aleksandar Vučić.

state institutions on Kosovan soil. The dialogue's approach was an incremental one, leading to the signing of the historic April 2013 Agreement (the "1st agreement") which provided for the integration of police, judiciary and municipal institutions in the four majority Serb-inhabited municipalities into the Kosovo state. This approach should have eventually led to "full normalization of relations between Serbia and Kosovo," as was stated in the agreement.¹⁴ That meant full normalization of relations as *bilateral* relations, with remaining open bilateral issues to be solved at a later stage in the dialogue, between two sovereign states, facilitated by Belgrade's general acceptance of the reality of an independent Kosovo. The EU negotiating team considered other topics - such as integration of education and health care institutions into the Kosovo state framework - for a future "2nd agreement," indicating a likely stronger focus in that follow-on phase on outstanding bilateral aspects.¹⁵ Meanwhile, against the backdrop of the April Agreement, implementation of the technical dialogue agreements continued. The new spirit of cooperation between the highest state officials of Serbia and Kosovo enabled the EU to strike two additional bilateral agreements in September 2013, supplemented and updated in August 2015:

- **Telecommunications:** The agreement regulated, with support from Belgrade, the allocation to Kosovo of its own country dial code by the International Telecommunication Union (ITU) and the migration of the three codes in use -

the codes of Slovenia and Monaco used by the Kosovo state and the Serbia country code used in majority Serb municipalities. Registration of a Serb company for mobile service under Kosovo law was also part of the agreement.¹⁶

- **Energy:** The agreement aimed to end the continued international control of the Serbian state's power supply company over the distribution network on Kosovo territory, to regulate the relationship between Serbia's and Kosovo's Transit System Operators (TSOs) EMS (Elektromreža Srbije) and KOSTT (Operator Sistemi, Transmisioni dhe Tregu) as well as EMS' supply and distribution in the north of Kosovo to Kosovo Serbs, by way of Serbia supporting KOSTT's membership in the European Network of Transmission System Operators for Electricity (ENTSO-E) and registering two Serb companies for supply and distribution under Kosovo law.¹⁷

The political dialogue, with its incremental approach, gradually fell apart. Several factors contributed to this outcome. On the EU side, in 2015 Federica Mogherini succeeded the more experienced Catherine Ashton as the EU's chief negotiator. As political attention of key EU capitals was diverted to other hot spots, no long-term strategy was developed. Meanwhile, Belgrade and Prishtina, through then Prime Ministers and later Presidents Vučić and Thaçi, exploited the situation by endlessly delaying implementation and Serbia

14 Bodo Weber & Agron Bajrami, The Original Framework of the Political Dialogue, DCP-KFOS Policy note, May 2018; available at: http://www.democratizationpolicy.org/wp-content/uploads/2020/05/1_The-Original-Dialogue-Framework_English.pdf.

15 These being, among others, the partial integration of Serbian state curricula in Serbian language primary and secondary education institutions and in the university in Mitrovica North into the Kosovan institutional framework, or the fate of Serbian health insurance for Kosovo Serbs. Interviews with EEAS dialogue negotiation team members, Brussels, 2014-16.

16 Arrangements regarding telecommunications; Telecoms action plan (2015), available at: <https://kryeministri-ks.net/en/documents-en/>.

17 Arrangements regarding energy, Conclusions of the EU facilitator on the implementation of the 2013 Energy Agreement; available at: <https://kryeministri-ks.net/en/documents-en/>.

returned to questioning Kosovo's status. As a result, implementation of the bilateral agreements slowed down over time and eventually came to a complete halt. In the end, only two agreements - on the return of civil registry books and on telecommunications - were fully implemented, but only after years of delay. The remainder were either only partially implemented or not implemented at all:¹⁸

- Cadastral records: Serbia returned some, but not all records, to Kosovo.
- Freedom of movement of people: Mutual travel each way across the border with IDs and cars was enabled, but Serbia still does not permit third-country nationals to travel from Kosovo to Serbia, nor did the re-reregistration of Serbian license plates in the north take place.
- Free movement of goods: Serbia continued to have its so-called customs offices relocated from Kosovo¹⁹ issue customs documents with their stamps. Joint border management was successful, but Belgrade did not establish permanent crossing points as agreed.
- Mutual recognition of university diplomas: This agreement was not implemented, launching a mutual blame game ensued between Prishtina and Belgrade.
- Energy: Neither the original 2013 April Agreement nor the 2015 update were ever implemented, due to Belgrade blocking KOSTT's

ENTSO-E membership and not properly applying for business registration of the two Serb power companies in Prishtina.

Kosovo was partly responsible for delaying implementation of bilateral agreements due primarily to internal political turmoil that regularly led to the fall of governments and early elections. But primary responsibility for the blockage was Serbia's. The lack of a formal resolution to the status issue was exacerbated by Belgrade's continued questioning of Kosovo's independence. This deviation from Belgrade's original acceptance of the dialogue framework was encouraged by the EU's weakening performance. Some issues such as energy²⁰ proved impossible to solve separately from the entirety of open issues between Kosovo and Serbia, which require a more comprehensive negotiating context for resolution.

18 RIDEA Institute, Background Note/Study on The Substance and Status of Implementation of Kosovo-Serbia Dialogue Agreements, October 2019, available at: http://www.ridea-ks.org/Articles/3/Images/29-01-2019/591118_The_Substance_and_Status_of_Implementation_of_Kosovo-Serbia_Dialogue%27_Agreements.pdf.

19 Serbian state customs offices in Kosovo were "relocated" to Central Serbia following Serbia's loss of control over Kosovo after 1999.

20 Interview with EU representative, April 2020.

BILATERAL ISSUES WITHIN THE FINAL PHASE OF THE DIALOGUE

In July 2017, during a dialogue meeting with Kosovan and Serbian presidents Hashim Thaçi and Aleksandar Vučić, Mogherini initiated the so-called new phase in the dialogue - negotiations on a final, comprehensive and legally binding agreement. Jumping to the endpoint was the only option left to save the dialogue after the original incremental approach failed because the EU had allowed the parties to game the system. The idea for a comprehensive settlement originally had been conceived as a framework within which to solve all outstanding bilateral issues between the two countries. However, negotiations among the three main actors swiftly veered in an entirely different direction, away from the original conceptual framework and towards a territorial division (“land swap”) based on retrograde ethno-territorial concepts. Mogherini and her team embraced the idea of a land swap without any mandate from

the EU member states, and that position in 2018 gained some traction with the Trump administration and temporarily also with Paris. Berlin openly rejected the idea, while most EU member states agreed with Germany, but restrained from being vocal. The sudden detour completely sidelined bilateral issues.

From the outset of the new negotiating phase and into early 2018, Belgrade engaged in heavy political spin both with its own public through a carefully orchestrated “internal dialogue” and with Western officials with the aim to redefine the dialogue on its own terms.

Thus, President Vučić complained to EU member states diplomats that Serbia had only „given, given, but got nothing in return,“ referring to blockage of the implementation of a cornerstone of



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the April Agreement - establishment of the Association/Community of Serb-majority inhabited Municipalities.²¹ Later, at an international event on stage with his Kosovan counterpart Thaçi, Vučić repeated his claim that „we have fulfilled all our obligations and no one in this room, including Hashim, can say that there’s something we haven’t implemented. And there’s been only one obligation on the Kosovo or Prishtina side - to establish the Community of Serb municipalities. That hasn’t happened.“²² Vučić’s insistence that Serbia had implemented everything agreed to within the dialogue framework was clearly not

true. Even the EEAS’s latest bi-annual non-paper, which assessed Serbia’s progress towards accession with respect to Chapter 35²³ and was filed prior to the start of the new dialogue phase, stated that most bilateral issues agreed to within the technical and political dialogue processes had not been (fully) implemented. In most cases, it identified Serbia as the negotiating party responsible for non-implementation.²⁴ Significantly, Mogherini and her team never corrected the record following Vučić’s falsehoods.

Based on Serbia’s unfounded, but uncontested complaints of unequal treatment in the dialogue, Vučić set out to unilaterally and covertly redefine negotiations on a final agreement as the search for a „compromise,” with a focus on the benefit to Belgrade. In meetings with Western diplomats, the Serbian President continuously sent signals that Serbia might be willing to agree to some sort of recognition of Kosovo “only if there’s something given (by Kosovo) in return.”²⁵ As a European diplomat stationed in Belgrade noted, that key thesis clearly was aimed at steering the EU at the start of negotiations towards an approach focused on „the question of *What to give Serbia?*”²⁶ During the first few months of this new phase of the dialogue, Vučić insisted that Serbia needed to get “something” out of the negotiations on a final agreement but did not clarify what that meant. He vaguely hinted at a few issues such as autonomy for the Kosovo Serbs and bilateral issues of symbolic national value important to selling a deal in Serbia. Among the latter were protection of the Serbian

21 Interviews with Western diplomats, Belgrade, November 2017.

22 “Vučić i Taçi u polemici: Ko je isporučio sve, a ko nije?,” *Kossev*, June 8, 2019; available at: <https://kossev.info/vucic-i-taci-u-polemici-ko-je-isporucio-sve-a-ko-nije>.

23 Chapter 35 was added to Serbia’s accession checklist once it became an EU candidate, necessitating the normalization with Kosovo before entry.

24 Non Paper of the EEAS and European Commission Services On The State Of Play Regarding Chapter 35, Brussels, December 2016.

25 Discussion with a senior EU member country diplomat, Prishtina, February, 2018.

26 Interviews with Western diplomats, Belgrade, November 2017.

Orthodox Church and Serbian cultural heritage, missing persons and property claims.²⁷

Yet he promptly exposed this “something” to be territorial aspirations. As Vučić began to lay out maps on territorial divisions and/or land swaps in closed meetings with his counterparts in key EU member states capitals in spring 2018, the Mogherini team began to redefine its role as “not our job to defend any red lines.” This was completely converse to the original principles and aims of the political dialogue.

The shift from negotiating a complex, comprehensive and sustainable agreement to a quick fix, any-deal-is-a-good-deal agreement left no space for serious discussion on the previously agreed set of open bilateral issues. Nevertheless, policy-makers in both Prishtina and Belgrade occasionally touched upon them in various proposals in line with each of their negotiating positions. In Serbia, President Vučić had announced that the internal dialogue (which ended in spring 2018) would produce a negotiation position paper. But no such document was produced. In a rare statement in early 2018, Marko Đurić, director of the Serbian government’s Office for Kosovo and Metohija, stated Belgrade’s position regarding property claims.²⁸ Đurić insisted that much of the funds deposited with the Central Bank of Kosovo to compensate former owners of companies in Kosovo privatized after independence should go to Serbian companies that had lost Kosovo branches in the



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process. At the same time, he announced Belgrade would seek revision of the privatization process and return of property, insisting 58% of land in Kosovo belongs to Serbia/Serbs.²⁹

In December 2018, Kosovan Prime Minister Ramush Haradinaj unexpectedly published a “Draft Comprehensive Agreement between the Republic of Kosovo and the Republic of Serbia.”³⁰ The 30-page document included a comprehensive list of

27 Interviews with Western diplomats, Belgrade, November 2017.

28 Đurić made the statement on the background of an expert study on demographic and socio-economic aspects of a potential agreement, see: Economic, Demographic And Social Effects Of Potential Scenarios Of Normalization Of Relations Between Belgrade And Pristina, Open Society Foundation, Serbia, Belgrade, April 2018; available at: http://www.fosserbia.org/sr/assets/uploads/ekonomiska-studija/economic_demografic_social_effects_summary.pdf.

29 „Privatizacija i restitucija,” Euractiv.rs, May 7, 2018; available at: <http://www.euractiv.rs/srbija-i-eu/12615-privatizacija-i-restitucija>.

30 The draft proposal served as a tactical maneuver by Haradinaj to reign in a parliamentary initiative by the opposition Social Democratic Party of Kosovo (PSD) for a resolution on a state platform for the dialogue negotiations. It was alleged that the draft, published in English, was compiled by Haradinaj’s long-time foreign legal adviser Michael O’Reilly. Interviews with Kosovo policymakers, 2018-19.



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bilateral issues including existing related dialogue agreements. Two chapters dealt with property and financial claims, containing a long list of demands to Serbia - including reparations for war damage and compensation for victims of war crimes. Regarding Kosovo's obligations, the document recognized only that Kosovo shared responsibility

for former Yugoslavia's (Serbia's) foreign debt. A cross-party state delegation was established later that same month with the opposition Social Democratic Party (PSD) joining the ruling coalition members. The parties adopted a joint negotiating platform in February 2019.³¹ A two-page section of the 10-page document entitled "War Crimes, Missing Persons, Victims of Wartime Sexual Crimes, and Reparations"³² briefly lists core bilateral issues - most of them property compensation claims. The only real novelty was a request for a "special tribunal" to prosecute "war crimes committed by Serbia during the war in Kosovo in 1998 and 1999" equivalent to the Hague-based Kosovo specialist court,³³ which deals with Albanian war crimes. In the context of German Chancellor Angela Merkel and French President Emmanuel Macron's initiative to revive the negotiating process with a joint Western Balkans mini-summit in April 2019 in Berlin, the office of Prime Minister Haradinaj prepared a set of "Preliminary Position Statements" that it shared with both European leaders' cabinets in May that year.³⁴ Several of the papers dealt with bilateral issues. Regarding property issues, the papers contained well-known Kosovo positions on financial, property and war reparation claims. In addition to the establishment of joint Serbian-Kosovan expert committees, the papers proposed creation of a binding international dispute settlement mechanism. As for the opposition, a short 2017 Democratic League of Kosovo (LDK) non-paper offered nothing more than a well-known list of status and bilateral issues and

31 PLATFORM FOR DIALOGUE ON A FINAL, COMPREHENSIVE AND LEGALLY BINDING AGREEMENT ON NORMALIZATION OF RELATIONS BETWEEN THE REPUBLIC OF KOSOVO AND THE REPUBLIC OF SERBIA, State Delegation of the Republic of Kosovo, February 14, 2019; available at: <https://www.peacefare.net/wp-content/uploads/2019/02/Kosovos-platform.pdf>. The main opposition parties Vetëvendosje and LDK rejected participation in the delegation and platform drafting.

32 pp. 7-8.

33 Kosovo Specialist Chambers and Specialist Prosecutor's Office, <https://www.scp-ks.org/en>.

34 Preliminary Position Statements (Strictly Confidential), Prishtina, March-May 2019.

Kosovo positions, plus a detailed list of property claims and war reparations.³⁵ Then-opposition Self-Determination Movement (Vetëvendosje) insisted on a comprehensive review of all existing agreements, including those dealing with bilateral issues, and reasons for non-implementation.³⁶

Serious negotiations on the open bilateral issues and disputes within the context of a comprehensive framework were never initiated. Instead, political tensions between the governments of Kosovo and Serbia emerged from the push by the three negotiators – Mogherini, Vučić and Thaçi – for a land swap deal and led to the use of bilateral issues as weapons in the political struggle that ensued. In November 2018, the Kosovo government, supported by all ethnic Albanian parliamentary parties, introduced 100% tariffs on all imported goods and services from Serbia. The measure was in retaliation for Serbia successfully lobbying against Kosovo’s membership application in Interpol that same month and for the Serbian Foreign Ministry’s derecognition campaign, which had by then resulted in roughly a dozen states revoking recognition of Kosovo. It also served to halt the land swap negotiations in Brussels, as President Vučić conditioned Serbia’s return to the negotiating table with the lifting of tariffs.

In early 2020, the newly appointed US special presidential envoy for Kosovo-Serbia negotiations, Ambassador Richard Grenell, weaponized bilateral issues. Following secretive negotiations during January and February with the presidents

of Kosovo and Serbia that circumvented the EU, Grenell managed to convince representatives of both states to sign three bilateral agreements on reestablishment of air, rail and highway traffic between Kosovo and Serbia. However, these so-called “agreements” are no more than letters of intent and cannot be enforced outside the framework of a comprehensive and binding agreement. Yet with that move, Grenell successfully hijacked leadership of negotiations from the EU, fuelling suspicion in Kosovo and the EU that the agreements are merely an instrumental tactic to revive previously blocked land swap deal negotiations.³⁷

Meanwhile, progress has been made during the new phase of the dialogue on just two bilateral agreements – freedom of movement and energy – but completely outside the dialogue framework. On freedom of movement, in 2019 Kosovo authorities started the process of Serbs in the north reregistering cars with Serbian license plates, but there is no indication that Kosovo authorities coordinated this move with Belgrade.³⁸ Regarding energy, on April 20, 2020, Kosovo authorities surprised everyone by announcing that the country became a member of ENTSO-E. That move, part of the bilateral energy agreement, occurred despite permanent Serbian resistance. A “Plan B” policy jointly initiated by the Kosovo government and KOSTT in 2018, enabled them to sidestep Belgrade and led to the signing of a new membership agreement between KOSTT and ENTSO-E in 2019 – once again, entirely outside the dialogue’s energy agreement framework.³⁹

35 LDK non-paper (no title), 2017 (exact date unknown).

36 See 2019 VV government program: <https://www.vetevendosje.org/alternativa/veprimet/>

37 Letters published at: “BIRN secures documents relating to air, road and rail connections with Serbia,” Prishtina Insight, March 4, 2020; available at: <https://prishtinainsight.com/birn-secures-documents-relating-to-air-road-and-rail-connections-with-serbia/>.

38 Interviews with Kosovo Serb interlocutors in the north of Kosovo, April 2020.

39 Interview with EU official, April 2020; Bodo Weber, “Kosovska energetska nezavisnost i (ne)uspeh političkog dijaloga,” RTV KiM, May 22, 2020, available at: <https://www.radiokim.net/vesti/analiza/kosovska-energetska-nezavisnost-i-neuspeh-politickog-dijaloga.html>.

CONCLUSIONS & RECOMMENDATIONS

The history of the EU-led dialogue between Kosovo and Serbia demonstrates that sustainable solutions to the existing bilateral disputes between the two countries are not feasible without solving the status dispute.

This means Serbia needs to accept Kosovo's status as an independent state, something it started to do with the landmark signing and initial implementation of the 2013 April Agreement, which in turn facilitated substantial progress on the various bilateral agreements struck within the framework of the dialogue. The original, incremental approach of the political dialogue of 2013 offered Serbia a viable pathway towards sustainably ending the status dispute. Unfortunately, Belgrade did not take it.

The political dialogue thereafter increasingly slipped into crisis and implementation of bilater-

al agreements basically came to a halt. The failure of the incremental (but goal-anchored) approach in the political dialogue has shown that a new approach is needed. The only remaining possible way to sustainably end the status dispute and at the same time address all open bilateral issues is to hold talks within the scope of the existing format for negotiations on a final, comprehensive agreement on full normalization of bilateral relations. Negotiations conducted since 2017, however, have wholly deviated from such an aim, turning instead to talk of a dangerous, quick-fix deal on a land swap or ethno-territorial division of Kosovo. This negotiation dynamic has left no room for any serious discussion on bilateral issues. Instead, it has enabled Belgrade to blur the boundaries between bilateral issues and the status issue as it made its case for territory or *What to give Serbia?*

To solve the long list of open bilateral issues and fully implement all agreements signed within the dialogue format since 2011, the EU, if possible with US support, needs to lead a fundamental reset of negotiations on a final, comprehensive and legally binding agreement based on a return to the original dialogue framework, i.e., the principles and aims of the early years of the political dialogue. Clarity on the status of Kosovo as an independent state within its existing borders will make solving some bilateral issues much easier, while it presents a precondition for the solution of others.

Once the EU has managed to establish the basic negotiation framework, some methodological principles could guide resolution of the bilateral issues in a comprehensive way.

1 Bilateral issues should be identified and negotiated separately from primarily status-related issues.

2 The list of open bilateral issues should be reviewed from the perspective of turning the Belgrade-centered question of *What to give Serbia?* into the Kosovo-centered question of *What can Kosovo offer Belgrade?* That means identifying those bilateral issues for which solutions could help Belgrade sell a final deal to Serbia's citizens that formalizes recognition of the reality of an independent Kosovo. Those issues should further be divided into the following categories:

- Bilateral issues with a high national symbolic value in Serbia such as the status/protection of the Serbian Orthodox Church and of Serb cultural sites in Kosovo, missing persons, and certain property issues;

- Bilateral issues where there is both opportunity and a need for real bargaining-type negotiations such as property and other financial claims. Both parties make claims that are anathema to the other side, such as most of Serbia's property claims and Kosovo's war reparations claims. A possible solution could be an all-inclusive deal that offsets these mutually unacceptable claims against each other that at the same time recognizes other, mutually acceptable, claims.

3 Finally, it may not be possible to solve certain complex issues such as unresolved property claims in their entirety within the timeframe of a comprehensive agreement. For such issues, follow-up negotiations in a format such as expert commissions and including potentially necessary international arbitration should be planned for, with details on format and principles to be defined as part of the final agreement.

