



# Relaunching the Kosovo-Serbia Dialogue

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# Principal Findings

**What's new?** Efforts to resolve the long-running dispute between Kosovo and Serbia over the former's independence have foundered. EU-led talks brokered agreement on technical issues but have struggled to address core political questions. Washington's mid-2020 mediation effort fell apart when Kosovo's president had to step away because of war crimes charges.

**Why does it matter?** The dispute freezes Kosovo out of the UN and many other international bodies, ensures that both countries are barred from EU membership, leaves minority communities at risk and constitutes an impediment to regional security. Resolving the dispute would be a boon for stability in the Western Balkans and Europe.

**What should be done?** All parties should seek agreement on mutual recognition, with EU states signalling that they will support any deal consistent with human rights and international law. Belgrade and Pristina should publicly acknowledge the need for compromise. Kosovo should seek greater political, security and economic integration with its partners pending a deal.

## *Executive Summary*

The Kosovo-Serbia dispute has lingered for decades. More than twenty years after the North Atlantic Treaty Organization (NATO)'s 1999 intervention to end Serbia's brutal treatment of Kosovar Albanians, and more than a decade after Pristina's 2008 declaration of independence, Belgrade and dozens of states, including five European Union (EU) members, still officially consider Kosovo a breakaway province. Until the dispute is resolved, both parties will be barred from the EU, and Kosovo from the UN and NATO as well. Meanwhile, Belgrade exerts unwelcome influence on Kosovo's territory. The price of Serbian recognition is likely to involve an infusion of international aid, greater autonomy for the Kosovo Serbs or a territorial exchange – or perhaps enhanced support in combination with one of the latter two options. Despite legitimate concerns about redrawing borders, the EU should not rule out any resolution that is compatible with human rights and international law. In parallel, the U.S. should coax a viable negotiating position out of Kosovo's disarrayed political elite, and Kosovo's partners should help it foster greater bilateral and multilateral ties pending a deal.

Pristina and Belgrade have been talking, off and on, about how to normalise their relations since at least 2006. They have agreed on many points but disagree on the most significant matter that divides them: Kosovo's independence. Serbia's continuing influence over Serb communities in Kosovo is another contentious issue. Kosovo's Serb-majority areas, especially the four northern municipalities abutting Serbia, remain only partly integrated, and a potential flashpoint for violence. The Serbs elected to Kosovo's parliament and appointed to government posts openly follow orders from Belgrade. The combination of this influence and the consequences of Belgrade's non-recognition are a constant irritant for Kosovars, reminding them that they are not yet fully free from Serbia. Both Belgrade and Pristina would benefit from EU membership, which is foreclosed to them, at least in effect, while the dispute persists.

Starting in 2011, EU-led mediation between the two sides brought halting progress on technical issues but foundered on the questions at the core of the political dispute. In 2018, the two countries' presidents sketched out what seemed to be a potential breakthrough agreement based on a proposal for an exchange of territory, also known as a land swap, but it was scuttled in the face of domestic controversy and opposition from within the EU. EU-led dialogue revived in July 2020, and Washington launched a parallel effort, but the new diplomatic push has suffered major setbacks. Although Serbian President Aleksandar Vučić appears interested in a deal, his Kosovar counterpart, former President Hashim Thaçi, is facing trial for war crimes, leaving Pristina's government in disarray and without a prominent proponent for a negotiated settlement. With Thaçi sidelined, a September summit at the White House proved to be a largely symbolic exercise.

Against this backdrop, the path to a comprehensive agreement that resolves the issue of Kosovo's independence is both murky and narrow. It can be navigated only if Belgrade and Pristina take a very different approach than they have to date. Serbia's constitution requires that any deal granting Kosovo independence be approved by referendum, but its political leadership has done nothing to prepare voters for the compromises needed to get an agreement. Kosovo does not face the same constitu-

tional requirement, but its leaders could decide to put a deal to a vote for the sake of legitimacy, and in any case would need to prepare the Kosovar public for the concessions that will be required. Each side will need to level with its constituents that it will not be able to force a settlement purely on its own terms.

As for what a compromise would look like, there are three main possibilities. One would rely on sweeteners for Serbia – an infusion of donor development support and accelerated EU membership – as the cost of recognition. The second would be to trade Serbian recognition for the creation of new autonomous districts for Kosovo’s Serbs and Serbia’s Albanians. The third would be to return to the land swaps approach that was at the core of the 2018 draft deal.

None of these options is remotely close to ideal. Concerning the first, given internal dynamics it may simply be infeasible for the EU to promise accelerated membership, and material inducements are unlikely to be sufficient to address a core issue of Serbia’s political identity. Between the other two, autonomy would seem the better choice, with a track record of success elsewhere in Europe, and support among EU member states, but it also appears to elicit the strongest negative reaction from the parties themselves. Kosovo’s leaders seem especially opposed, perhaps because they worry it will lead to the kind of sclerotic governance they see in nearby Bosnia and Herzegovina, where most decisions require both entities and all three main ethnic groups to agree. On the other hand, European governments – particularly Germany’s – have legitimate concerns about the destabilising precedent that redrawing borders could have in the Balkans and beyond.

For the time being, Brussels should focus on encouraging a negotiation in which the parties are free to explore any settlement consistent with human rights and international law, with the need to garner public support back home firmly in mind. Both the EU and the U.S. have a role to play in this effort. The EU should assess whether it can change its common position so that it sets a clear goal of achieving a final agreement based on mutual recognition (something that the five non-recognising EU states have resisted to this point) and clarify that its mediators are directed not to squelch discussion of either autonomy or swaps. For its part, the U.S. should work with the Kosovo government to develop a viable negotiating strategy, based on the understanding that recognition is possible but will require concessions.

Finally, and as an immediate step, Kosovo’s external partners should prepare for the possibility that negotiations will continue to drag on without resolution. Under those circumstances, the best strategy may be to look for openings that will allow Kosovo to continue integrating into international institutions that will have it, and developing economic, security and political ties with the rest of the world. They can also shift a greater part of their Balkan investment and aid to Pristina. That would also serve to remind Belgrade that it does not have a permanent veto over Kosovo’s future. These connections will not provide the stability that can only come with a political settlement on its independence, but by helping alleviate frustration and resentment, they may offer some modest opportunities for progress amid a situation that has been allowed to fester for far too long.

**Belgrade/Pristina/Brussels, 25 January 2021**

# Relaunching the Kosovo-Serbia Dialogue

## I. Introduction

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The Kosovo-Serbia dispute was at the heart of Yugoslavia's descent into deadly conflict from 1991 to 1999, launching the career of strongman Serbian leader Slobodan Milošević, hastening the country's breakup and the ensuing wars. Kosovar rebels of Albanian ethnicity started an insurgency seeking independence from the Serbian state in 1997. The latter responded increasingly brutally, leading in 1999 to a North Atlantic Treaty Organization (NATO) intervention and UN Security Council Resolution 1244, which ended Serbian rule. After a period of UN administration and a failed attempt to negotiate an agreement, the U.S. and most of the European Union (EU) shepherded Kosovo to a formal declaration of independence in February 2008. Since then, about 112 states have recognised Kosovo, though about fifteen countries have since recanted, and the pace of new recognitions has slowed. Kosovo has joined a number of international bodies, including the World Bank and International Monetary Fund, but its bids to join Interpol and the UN Educational, Scientific and Cultural Organization (UNESCO) have failed.

In its current form, the long-running dispute between Belgrade and Pristina has two distinct parts: the first concerns Serbia's non-recognition of Kosovo's independence and Kosovo's concomitant refusal to recognise Serbia. The second concerns who will govern the areas of Kosovar territory where Kosovo's Serb population is predominantly located and where Belgrade's influence persists.

The impasse over recognition is costly to both parties and to regional stability. Following Serbia's lead, Russia and China would almost surely stand in the way of Kosovo joining the UN. Likewise, five EU member states (Cyprus, Greece, Romania, Slovakia and Spain) and four NATO members (the former minus Cyprus) do not recognise Kosovo and have frozen it out of membership in those organisations. While its status remains in limbo, Pristina's interactions with non-recognising institutions must go through the vestigial UN Interim Administration Mission in Kosovo (UNMIK), created under Resolution 1244, whose officials serve as chaperones for Kosovo diplomats. Kosovo's Stabilisation and Association Agreement with the EU stands out in that it contains no reference to eventual candidate status or membership.<sup>1</sup> Serbia pays an international price, too, although less severe: the EU has made clear that settling its relations with Kosovo is a necessary (though not sufficient) condition for its membership.

Issues relating to Serbia's influence over parts of Kosovo where Serbs live in substantial numbers are no less fraught and no less stuck. Exact population figures for

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<sup>1</sup> Crisis Group video interview, senior EU official, 12 June 2020. "Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, on the one part, and Kosovo (\*), on the other part", 16 March 2016. All other such agreements are between all EU member states, plus the EU and the European Atomic Energy Community, and the aspiring candidate country. The internal footnote after "Kosovo" refers to disagreements on its status, to UN Security Council Resolution 1244, and to the International Court of Justice opinion on Kosovo's declaration of independence.

Kosovo's Serbs – and for Serbia's Albanians – are unavailable due to census boycotts and difficulties with counting seasonal migrants. Estimates put the Kosovo Serb population at about 145,000 of a total population of 1.8 million. Between 60,000 and 70,000 live in four heavily Serb-majority municipalities in northern Kosovo, on the border with Serbia. Another 50,000 to 60,000 live in six southern Serb-majority municipalities, and the rest in villages in Albanian-majority areas.<sup>2</sup> Serbia's Albanians are the majority in two municipalities in the Preševo Valley (Preševo and Bujanovac) and a minority in a third (Medvedja).<sup>3</sup>

The town of Mitrovica is a sore point. Once a single entity, it was divided mostly along the Ibar River in 1999 and Serbs withdrew (or were expelled) northward after the war. Today, it comprises two municipalities, both inside territorial Kosovo: South Mitrovica (which is loyal to Pristina and has an Albanian population) and North Mitrovica (which is loyal to Belgrade and has a Serb majority and substantial Albanian and Bosniak minorities). The latter is the only true urban area populated by Kosovo Serbs and is home to a large university and medical complex. Tensions between the two persist, notably along the main bridge joining the two sides, periodically blockaded by Serbs and guarded by NATO.

The dispute is exacerbated by the presence in Kosovo of some of the most ancient and important Serbian Orthodox Church sites, notably the Patriarchate complex in Peja/Peć and the great monasteries of Visoki Dečani and Gračanica. These, along with a medieval church in downtown Prizren, are on UNESCO's list of World Heritage sites in danger. Protection for the Church sites is enshrined in existing Kosovo law, but that has not guaranteed their safety. Many sites were badly damaged in anti-Serb violence in 2004.<sup>4</sup> A repeat could do irreparable damage to Albanian-Serb relations and to regional stability.

Belgrade exerts influence in Kosovo through the costly and complicated network of institutions it maintains there and through Serb politicians acting within Kosovo's own institutions. From 2008 to about 2014, Serbia employed plainclothes police and operated municipal governments and courts in Serb-majority areas; it has since mostly closed them down. Belgrade still runs virtually all the schools, including a university, as well as health services used by Serbs in Kosovo; employs tens of thousands in various jobs; and pays welfare and other social benefits to thousands more. Many, perhaps most, Kosovo Serbs depend in one way or another on these Serbian institutions for salaries and benefits.<sup>5</sup> Weaning them fully from Belgrade would cost far more than Pristina has been willing to pay.

As discussed further below, Serbia has fully consolidated its control over almost all Kosovo Serb politicians. During the years before and immediately after the declaration of independence in 2008, Kosovo Serbs backed a variety of political parties, including branches of various Serbia-based parties and homegrown ones. That changed in 2013-2014, when the EU pressured Serbia to shut down its parallel municipal

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<sup>2</sup> "Serb Integration in Kosovo after the Brussels Agreement", Balkans Policy Research Group (BPRG), 19 March 2015.

<sup>3</sup> "(Non)Implementation of the Agreement of the Governments Relating to the South of Serbia", Council for Human Rights – Bujanovac, May 2016.

<sup>4</sup> Crisis Group Europe Report N°155, *Collapse in Kosovo*, 22 April 2004.

<sup>5</sup> "Serb Integration in Kosovo after the Brussels Agreement", op. cit.

governments and ensure Serbs instead turned out to vote in Kosovo elections, which they had been boycotting. Belgrade complied by setting up a new party, the Serbian List (Srpska Lista). The List, which now enjoys a near monopoly on Serb votes, remains openly loyal to Belgrade, and benefits from the constitutional requirement that Serbs hold at least one ministerial post and ten Assembly seats. It is effectively a foreign-controlled presence within the Kosovo government.

Kosovar leaders tend to sideline these Serb politicians. They are excluded from decision-making and, at times, are not even invited to cabinet meetings.<sup>6</sup> Government neglect extends to the local level, too. When in early 2020 parliamentary speaker Vjosa Osmani visited northern Kosovo, an overwhelmingly Serb area, she stopped only in ethnically Albanian villages.<sup>7</sup> Serbian is technically an official language of Kosovo but attempts to use it in government offices can result in harassment or delays as translators are sought.<sup>8</sup> During the pandemic, Pristina issued public health orders only in Albanian (though Serbian is the second official language) until Serbs complained.<sup>9</sup>

Left to fester, the impasse in resolving the Kosovo-Serbia dispute distorts politics and stirs up resentment in both countries, deprives Kosovo (and, as concerns the EU, Serbia) of access to international institutions, and entails a low but persistent risk of returning to deadly conflict. Against this backdrop, the challenge for Pristina, Belgrade and the international actors who would help them is to speed up the search for an agreement that can finally put the core unresolved issues between them to rest and, in the meantime, to manage tensions during what may be the many years in which there is no deal.

This report is about how Pristina, Belgrade and their international partners in Europe and the U.S. might seek to meet these challenges. It is based on fieldwork in the region dating back to 2009. Given pandemic conditions, all recent interviews were carried out by telephone or video. These interviews were with current and former leaders of Kosovo and Serbia, opposition politicians, civil society members, international diplomats and regional experts. Building on previous Crisis Group work, the report maps the contours of the Kosovo-Serbia problem and the possible solutions, before laying out some recommendations. As the dispute affects neighbouring states in the Western Balkans, a forthcoming report will survey the conflict risks in this wider region.<sup>10</sup>

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<sup>6</sup> Crisis Group video interview, European External Action Service officials, 12 May 2020.

<sup>7</sup> Video of visit in tweet by Vjosa Osmani, @VjosaOsmaniMP, 9:58 am, 16 May 2020.

<sup>8</sup> Crisis Group interview, Kosovo civil society leader, September 2020.

<sup>9</sup> Crisis Group video interview, Kosovo NGO director, 19 May 2020.

<sup>10</sup> See Crisis Group Europe Reports N°s 223, *Serbia and Kosovo: The Path to Normalisation*, 19 February 2013; 218, *Setting Kosovo Free: Remaining Challenges*, 10 September 2012; 215, *Kosovo and Serbia: A Little Good Will Could Go a Long Way*, 2 February 2012; 206, *Kosovo and Serbia after the ICJ Opinion*, 26 August 2010; 188, *Kosovo Countdown: A Blueprint for Transition*, 6 December 2007; 182, *Kosovo: No Good Alternatives to the Ahtisaari Plan*, 14 May 2007; and 177, *Kosovo Status: Delay is Risky*, 10 November 2006. See also Crisis Group Europe Briefing N°47, *Kosovo's First Month*, 18 March 2008.



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## II. The EU's Role: Getting Past Technical Talks

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Negotiations between Kosovo and Serbia, begun in 2006, have resolved many of the bilateral issues that mattered most to the everyday lives of Kosovo's Serbian population and others affected by its split from Serbia, from the provision of internationally recognised licence plates and personal documents to the facilitation of cross-border trade. Nevertheless, European and U.S. mediators are little closer to bringing the parties to a political settlement.

The first round of negotiation mandated by UN Security Council Resolution 1244 (1999), which set out the framework for stabilising and administering post-conflict Kosovo, broke down over Belgrade's unwillingness to recognise Kosovo's independence, leading to Pristina's unilateral declaration in 2008.<sup>11</sup> Kosovo's independence, backed by the U.S. and most EU member states, came through a bargain struck by UN Special Envoy Martti Ahtisaari, which sought to balance competing Kosovar and Serb interests.<sup>12</sup> It was accompanied by a number of painful concessions for Kosovo, including a period of internationally supervised independence; the creation of several new Serb-majority municipalities carved out of existing Albanian-majority ones; extra powers for those Serb areas, notably over education; protections for Serbian Orthodox Church sites; parliamentary seats set aside for Serbs and other "non-majority" peoples, with a veto over legislation of vital interest; permission for Serbia to extend financial and technical help to Serb-majority municipalities; and a security force limited to 2,500 lightly armed soldiers.<sup>13</sup>

Dialogue between Belgrade and Pristina paused after Kosovo's declaration of independence, as Serbia sought a legal remedy. In an attempt to roll back international recognition of Kosovo's independence, Serbia asked the UN General Assembly to request an advisory opinion from the International Court of Justice on the legality of Kosovo's 2008 declaration, which it did.<sup>14</sup> The court found that Kosovo had not violated international law, and the General Assembly did not call for a new dialogue on status, as Belgrade had hoped. Instead, it welcomed talks focused on practical issues to improve the lives of those affected by the dispute.<sup>15</sup>

Those talks, begun in 2011 under EU auspices, were designed to lock Serbia into gradually accepting the Kosovo government's authority over its full territory, without raising the status issue explicitly.<sup>16</sup> The sides agreed on mutual recognition of licence

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<sup>11</sup> See Crisis Group Report, *Kosovo Status: Delay is Risky*, op. cit. Resolution 1244, para. 11 (e), mandated the international civilian presence in Kosovo to "facilitate a political process designed to determine Kosovo's future status". See also Marc Weller, "The Vienna Negotiations on the Final Status for Kosovo", *International Affairs*, vol. 84, no. 4 (2008), pp. 659-681.

<sup>12</sup> Martti Ahtisaari, a former chairman of Crisis Group, won the Nobel Peace Prize in 2008.

<sup>13</sup> See Crisis Group Report, *Kosovo Countdown: A Blueprint for Transition*, op. cit.; and Crisis Group Briefing, *Kosovo's First Month*, op. cit. "Comprehensive Proposal for the Kosovo Status Settlement," 2 February 2007. See also Crisis Group Report, *Kosovo: No Good Alternatives to the Ahtisaari Plan*, op. cit.

<sup>14</sup> Crisis Group Report, *Kosovo and Serbia after the ICJ Opinion*, op. cit.

<sup>15</sup> UN A/RES/64/298, 9 September 2010.

<sup>16</sup> See Crisis Group Report, *Serbia and Kosovo: The Path to Normalisation*, op. cit.; "Scenarios for the 'Grand Finale' between Kosovo and Serbia", Research Institute of Development and European Affairs/BPRG, April 2018; "Serb Integration in Kosovo after the Brussels Agreement", op. cit.

plates, diplomas, civil registry and cadastral records.<sup>17</sup> Implementation was (and still is) uneven but there was real progress toward better cooperation.<sup>18</sup> Travel between the two countries, once a complicated ordeal, is now mostly unremarkable. European mediators noted the experience of working out practical issues built a “history of working together, solving problems” that extends beyond the people involved to the broader political class.<sup>19</sup>

In the next phase of discussions in 2012 and early 2013, Catherine Ashton, then the EU’s foreign policy chief, mediated talks at the prime ministers’ level. Having addressed practical issues in the first round, this phase moved on to the more sensitive topic of integrating Kosovo Serbs into the Pristina government and dismantling Serbia’s parallel government institutions. Because of the parties’ distance on these issues, however, the mediators tacked away from trying to reach substantive agreement on key sticking points. Instead, they introduced what they considered to be constructive ambiguity by using deliberately vague language. For example, the agreement included a provision for “IBM”, which typically refers to Integrated Border Management, but which Serbia was free to interpret instead as “integrated boundary management” in order to maintain its position that the line separating it from Kosovo is an internal demarcation rather than an international frontier.<sup>20</sup> Whatever its name, it functioned as a normal border between two states.

This second phase of talks culminated in the first Brussels Agreement on Normalisation of Relations, dated 19 April 2013, but what this document meant by “normalisation” was itself ambiguous. For Pristina (and much of the EU), the term meant recognition of Kosovo in substance if not yet in form, while for Serbia it meant merely a set of pragmatic arrangements.<sup>21</sup>

The agreement did not address Kosovo’s status at all. Instead, its centrepiece was an arrangement intended to facilitate integration of Serb-majority areas of Kosovo and to enhance their autonomy. In key respects, it has failed to do so. What was to be an ostensibly new grouping of Serb-majority municipalities was so vaguely defined as to sport a dual name: “Community” for Serbs, “Association” for Kosovars. Belgrade marketed this entity as autonomous, much like Bosnia’s Republika Srpska, with the slogan: “Today we vote for Srpska [ie, the Serbian List], tomorrow we build [Republika] Srpska”. Kosovo more realistically viewed it as little more than a repackaging of its existing arrangements for local self-government but even so, for symbolic and other reasons, has resisted acting on it.<sup>22</sup> The problems caused by incomplete implementation have compounded with time and remain at the forefront of negotiations between Belgrade and Pristina.

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<sup>17</sup> Donika Emini and Isidora Stakic, “Belgrade and Pristina: Lost in Normalization?”, European Union Institute for Security Studies, April 2018, p. 4.

<sup>18</sup> “Perspectives on the Technical Dialogue between Kosovo and Serbia”, Kosovo-Serbia Policy Advisory Group, 27 February 2020.

<sup>19</sup> Crisis Group video interview, European officials, 12 May 2020.

<sup>20</sup> “Integrated Boundary Management of the Administrative Crossing Points”, n.d.

<sup>21</sup> Argyro Kartsonaki, “Playing with Fire: An Assessment of the EU’s Approach of Constructive Ambiguity on Kosovo’s Blended Conflict”, *Journal of Balkan and Near Eastern Studies*, vol. 22, no. 1 (2020), pp. 103-120.

<sup>22</sup> For more on the Community/Association, see “Serb Integration in Kosovo after the Brussels Agreement”, op. cit. See also Section IV.B. below.

Meantime, even partial integration of Serb-majority municipalities (under which Serbia maintained parallel governments in Serb-majority areas) came at a steep price to Kosovo, especially in the north. Pristina relied on the EU to pressure Serbia to push the local Serbs to integrate – to accept Kosovo documents, vote in its elections and work in its institutions.<sup>23</sup> Belgrade, which was the only actor that, as a political matter, could deliver the Kosovo Serbs, did so by assuming full control over their leadership, which had previously been largely independent. The new Kosovo Serb politicians, all loyal to Serbia, took up posts earmarked for them in Pristina and in the mayor's offices. The Serbian List quickly co-opted almost all other parties and is today the only parliamentary party representing ethnic Serbians. It is in effect a subsidiary of the Serbian Progressive Party, the ruling party in Serbia proper.<sup>24</sup>

As a Kosovo Serb civil society activist complained: "There is not even the pretence of democracy".<sup>25</sup> The head of Serbia's Office for Kosovo and Metohija said: "Only the Serbian List represents the interests of Serbs", while the other Serb parties "are directly financed by Pristina".<sup>26</sup>

In at least partially honouring its bargain, Belgrade also dissolved its parallel municipalities even as it retained "crisis staffs" and other bodies that replicated some of their functions; to this day, some Serbian List officials hold offices in both the Kosovo system and these parallel Serbian organs.<sup>27</sup> It removed police officers from its payroll and pressed them to take posts with the Kosovo police. It closed its courts and prosecutors' offices on Kosovo territory. Serbs turned out to vote in Kosovo elections. Most took Kosovo documents (such as drivers' licences) and switched their car registrations from Serbia to Kosovo.<sup>28</sup> Yet a degree of parallelism remains. Many municipal officials are dual-hatted and hold posts in the Serbian crisis staffs; as a recent example, some of these applied Serbian rather than Kosovo orders in the pandemic, leading to confusion.<sup>29</sup>

In 2014-2015, the new EU high representative for foreign affairs and security policy, Federica Mogherini, convened a second round of prime-ministerial talks that sought in part to remedy Pristina's lack of progress toward establishing the Community/Association, which Belgrade had promoted to Kosovo's Serbs as justification for other compromises under the 2013 Brussels Agreement.<sup>30</sup> The new round of talks

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<sup>23</sup> Crisis Group observations, northern Kosovo, 2012.

<sup>24</sup> In the October 2019 parliamentary elections, the Serbian List won 53,861 votes and all ten Serb seats; the next largest Serb party, the Independent Liberal Party, won 1,859, and two smaller parties won fewer than 1,000 votes each.

<sup>25</sup> Crisis Group video interview, Kosovo NGO director, 19 May 2020. Until about 2014, Kosovo Serbs were represented by a range of parties, including the pro-integration Independent Liberals; the nationalist Democratic Party of Serbia; the moderate Serbia, Democracy and Justice party; and the ultra-nationalist Serbian Radical Party.

<sup>26</sup> "Vučić i kandidati 'Srpske liste'", [Vučić and the candidates of the Serbian List], Radio KiM, 21 May 2017.

<sup>27</sup> "Slavko Simić appointed as the new chief of Mitrovica county", Kossev, 2 December 2019. For background, see "Serb Integration in Kosovo after the Brussels Agreement", op. cit., pp. 18-21.

<sup>28</sup> "Big Deal: Split Asunder", Balkan Investigative Reporting Network (BIRN), December 2015.

<sup>29</sup> Crisis Group video interview, Kosovo NGO director, 19 May 2020. See also "The north of Kosovo under quarantine from tonight, 9 pm to 5 am curfew introduced", Kossev, 7 July 2020.

<sup>30</sup> Federica Mogherini is a Trustee of Crisis Group.

added deals on energy, telecommunications and a bridge joining North and South Mitrovica. Kosovo got its own international dialling code; Kosovo Serbs' mobile telephony would now be handled by a subsidiary of Serbia's Telekom registered in Kosovo. Likewise, Kosovo Serb energy was to come through a subsidiary of Serbian companies registered locally.<sup>31</sup>

Implementation of these deals has been mixed, and the Community/Association remains essentially an idea on paper, more than seven years after the agreement to create it. Kosovo's government promises to establish the Community, but has taken no steps in that direction; Serbia's view is that Kosovo must honour its agreement, if necessary by amending its constitution and laws.<sup>32</sup> Kosovar politicians have cited a December 2015 judgment by its Constitutional Court that found parts of the 2013 deal creating the Serbian entity may have been unconstitutional as an argument for delaying its establishment, ignoring the court's order to create it nonetheless in accordance with guidelines set out in the ruling.<sup>33</sup> The dispute aside, it is unclear what real difference such an entity would make, and whether it would materially improve the lives of Kosovo Serbs.

In the latest round of EU-led talks convened by then-High Representative Mogherini, EU officials sought substantive talks on Kosovo's independence, as the parties had reached the limits of what they could agree on without addressing this issue.<sup>34</sup> The negotiations were secret, and details have yet to be made public, but they included a land swap widely assumed to involve trading part or all of the four, predominantly Serb northern Kosovo municipalities for parts of Serbia's Preševo Valley, which are predominantly Kosovar. The discussions culminated in a 2018 draft agreement meant to be put before the UN Security Council.<sup>35</sup> Russia and the U.S. had been briefed and were quietly supportive.<sup>36</sup> Their acquiescence proved insufficient, however. Although the EU led the talks, some of its member states objected to the draft agreement's substance.<sup>37</sup>

Amid growing controversy and rumours, Kosovo President Hashim Thaçi and his Serbian counterpart Aleksandar Vučić described the contours of their ideas publicly at the Alpbach Forum, an international conference in Austria, in late August 2018.<sup>38</sup>

<sup>31</sup> The telephony agreement is provisional and relies on the improvised solution of placing two numbers on Kosovo Serbs' SIM cards, with the result that their mobile telephones do not have service outside Serb-majority areas of Kosovo (but do have it in Serbia proper). Crisis Group video interview, Kosovo Serb civil society leader, 19 May 2020.

<sup>32</sup> "Hoti zotohet ta themelohë Asociacionin e komunave me shumicë serbe" [Hoti vows to establish the Association of Serb-majority municipalities], Koha Ditore, 10 June 2020; "Djurić: Hoti neće pobeći od stvaranja Zajednice srpskih opština" [Djurić: Hoti won't escape forming the Community of Serb municipalities], press release, Office for Kosovo and Metohija, 28 September 2020.

<sup>33</sup> Case KO 130/15, Judgment, 23 December 2015. See also Bodo Weber, "Big Deal: Awkward Juggling, Constitutional Insecurity, Political Instability and the Rule of Law at Risk in the Kosovo-Serbia Dialogue", BIRN, n.d.

<sup>34</sup> Crisis Group telephone interview, former senior EU official, 1 July 2020.

<sup>35</sup> Crisis Group video interview, Serbian civil society leader, 2 June 2020.

<sup>36</sup> U.S. support began during the Obama administration and continued under the Trump administration. Crisis Group telephone interview, person familiar with the talks, July 2020.

<sup>37</sup> Crisis Group video interview, former senior Kosovo official, 13 May 2020.

<sup>38</sup> Andrew Grey and Ryan Heath, "Serbia, Kosovo presidents broach border changes for historic deal", *Politico*, 25 August 2018.

Thaçi argued that others “in the region should not be afraid of possible agreement ... even if it includes border change”, while Vučić noted that “nobody asked Serbs and Albanians about the [current] borders”.<sup>39</sup>

Once it became public, the idea of adjusting borders immediately aroused fierce opposition. A number of EU member states, led by Germany, protested strongly enough to halt the talks.<sup>40</sup> Berlin objected in part because other Balkan countries, notably Bosnia and North Macedonia, were opposed, and in part because its diplomats felt out of the loop.<sup>41</sup> Thaçi ran into criticism at home, too, where Prime Minister Ramush Haradinaj sought to poison the well for talks by imposing a 100 per cent tariff on goods imported from Serbia.<sup>42</sup> The tariff measure was popular. Kosovars understandably chafe at Serbia’s advantages as a universally recognised state, and from time to time, Pristina seeks to level the playing field as best it can. The tariffs’ supporters explained them as a response to alleged Serbian trade abuses and Serbia’s successful lobbying against Kosovo’s bid to join Interpol.<sup>43</sup> Yet they also had the intended effect of scuttling dialogue.

In 2019, Thaçi and Vučić approached the Trump administration with a proposal to restart talks under U.S. auspices.<sup>44</sup> Washington welcomed the approach, and successfully pressured Pristina to lift its tariffs. As before, the deal under discussion – originally developed the previous year in EU-led talks – reportedly included recognition and a border adjustment.<sup>45</sup>

This initiative again attracted intense opposition from several European governments.<sup>46</sup> According to some European diplomats, European antipathy toward Washington’s growing role stems at least in part from the feeling that “this is our turf”.<sup>47</sup> Europeans felt that they were kept in the dark, a situation they particularly resented given the higher stakes for them in resolution of a dispute in their own backyard. The EU intervened, inviting the parties to a hastily arranged meeting in Brussels in late June 2020, and dispatching Miroslav Lajčák, its own special representative for the Belgrade-Pristina dialogue, to the region in mid-June.<sup>48</sup> What finally prevented the Washington talks from getting off the ground, however, was word of the pending

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<sup>39</sup> “Alpbach 2018 Forum: Thaçi and Vučić discuss border correction with panel”, European Western Balkans, 25 August 2018.

<sup>40</sup> Nenad Kreizer and Darko Janjevic, “A Cold War solution for Serbia and Kosovo?”, Deutsche Welle, 29 April 2019.

<sup>41</sup> Crisis Group telephone interview, German official, 28 October 2020.

<sup>42</sup> “Prime Minister Haradinaj: Measure of 100 per cent toward Serbia, the reason of the blockade of the country to exercise the rights of CEFTA”, press release, Kosovo Prime Minister’s Office, 21 November 2018.

<sup>43</sup> “Kosovo slaps 100 percent tariff on Serbian goods after Interpol bid failure”, Deutsche Welle, 21 November 2018.

<sup>44</sup> Bojan Pancevski, Laurence Norman and Gordon Lubold, “White House to host Balkan peace talks”, *The Wall Street Journal*, 15 June 2020.

<sup>45</sup> Ivan Angelovski, “Trump ex-adviser Bolton laments lost opportunity on Kosovo”, *Balkan Insight* 15 July 2020.

<sup>46</sup> Crisis Group interviews and text message correspondence, former and current Kosovo officials, UN officials, May-July 2020.

<sup>47</sup> Crisis Group telephone interview, former EU member state minister of foreign affairs, 1 July 2020.

<sup>48</sup> Xhorxhina Bami, “Serbia, Kosovo leaders expected in Brussels before Washington meeting”, *Balkan Insight*, 23 June 2020.

war crimes indictment of Thaçi issued by an EU-administered court in The Hague three days before discussions were scheduled to begin.<sup>49</sup> Thaçi pulled out, as it was impossible for a leader facing indictment for war crimes to head his country's delegation in sensitive peace talks.

In place of the substantive negotiations that had been planned with Thaçi, Vučić met Kosovo's prime minister, Avdullah Hoti, at a Washington summit on 4 September 2020 that produced an Oval Office photo opportunity and a pair of unusual documents, one signed by each leader.<sup>50</sup> Both comprised a repackaging of earlier commitments, with a number of promises to honour U.S. foreign policy goals unrelated to the Balkans, and very few items of bilateral importance. Among the more meaningful provisions was a year-long diplomatic "ceasefire" in which Kosovo foreswore attempts to join international organisations and Serbia promised to halt its de-recognition campaign. Another was a "feasibility study" on sharing the waters of the strategically vital Gazivode lake, discussed further below. Finally, the arrangements concluded in Washington provided for Israel to agree to recognise Kosovo, while Belgrade and Pristina agreed to open embassies in Jerusalem.

The different parts of the arrangement were less than perfectly coordinated and began to fray almost immediately, with Serbia reneging on the Jerusalem embassy move after learning of Israel's recognition of Pristina.<sup>51</sup>

Over the same period, Brussels mediated talks on missing persons, returnees and the economy.<sup>52</sup> The Community/Association proved too controversial even to place on the agenda.<sup>53</sup> The dialogue has continued, without agreement, since then. There has been no visible progress toward resolving core issues that will have to be addressed for the two states to enjoy a normal relationship.

If future rounds, whether the dialogue in Brussels or a revived U.S. initiative, are to accomplish more, they will need to move past their focus on modest pragmatic gains and reliance on constructive ambiguity to confront the most contentious issues. The parties have reached the point where the main issue at stake is precisely what previous ambiguity was designed to obscure, which is recognition of Kosovo's independence. In earlier rounds, talks on practical issues at least had the merit of preparing the ground for a final deal. But now, that dynamic appears to be reversed; today, disagreement on Kosovo's status slows progress on every other topic. Neither Belgrade nor Pristina has much appetite for a long, open-ended process and neither sees much to be gained from further technical talks.<sup>54</sup> An experienced European official noted:

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<sup>49</sup> Valerie Hopkins and Michael Peel, "Balkans war crime charges offer EU fresh chance to hold talks", *Financial Times*, 28 June 2020.

<sup>50</sup> For the text of both documents, see "Kosovo and Serbia signed separate pledges, not an agreement", *Exit News* 4 September 2020.

<sup>51</sup> Lahav Harkov, "Serbia won't move embassy if Israel recognizes Kosovo", *The Jerusalem Post*, 9 September 2020.

<sup>52</sup> "Belgrade-Pristina Dialogue: Remarks by the EU Special Representative", press release, EU External Action Service, 16 July 2020; tweet by Miroslav Lajčák, EU special representative, @MiroslavLajcak, 8:29am, 24 September 2020.

<sup>53</sup> "Lajčák: Belgrade-Pristina dialogue on Monday, CSM not on agenda", *European Western Balkans*, 25 September 2020.

<sup>54</sup> Crisis Group telephone and video interviews, European and Kosovo officials and opposition figures, May to July 2020.

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“There is no more potential for purely technical talks. Everyone involved now knows that they’ve been talking about the final agreement with big political issues, and every technical question will inevitably be seen in relation to the endgame”.<sup>55</sup>

But while it is time for talks to push past the limits that have hindered earlier phases of the Belgrade-Pristina dialogue, the EU in its mediator role is in some ways hampered by ambiguities and technicalities of its own. For one thing, the EU has been unable thus far to adopt a common position stating that recognition is a goal of the dialogue, given that five member states do not recognise Kosovo’s independence. For another, the special representative’s mandate – which authorises him to seek “a legally binding agreement that addresses all outstanding issues” and to work toward a deal that encourages “regional stability” – has been read by some to preclude discussion of land swaps, which remain an option of potential interest to the parties. Even though a formal change in the EU common position may be beyond reach given political realities in the five non-recognising states, there are a number of potentially useful steps the EU Council could take to clarify both its objectives and the special representative’s mandate. These are discussed in Section V.

The EU and its member states will also likely need to enlist U.S. cooperation. Brussels’ credibility has been badly eroded by the EU’s inability to extend visa-free travel to Kosovo citizens more than five years after the European Commission recommended it and confirmed that Pristina has met all the requirements.<sup>56</sup> By contrast, Kosovo’s political class tends to trust Washington given the key role it played in rescuing them from Serbia and ensuring their independence; many Kosovars believe that without U.S. leadership, Europe would not have intervened on their behalf.<sup>57</sup> As discussed below, Washington’s help may be especially important given political upheaval in Pristina and the need for Kosovo’s political elite to coalesce around a set of realistic negotiating positions if talks are to have any prospect of success.

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<sup>55</sup> Crisis Group video interview, European officials, 12 May 2020.

<sup>56</sup> “European Commission Proposes Visa-free Travel for the People of Kosovo”, press release, European Commission, 4 May 2016; Alec Mally, “Kosovo: EU visa liberalization issue resurfaces”, *New Europe*, 24 June 2020; speaker at Balkan Dialogues event, 1 July 2020. Crisis Group video interviews, European officials, 12 May 2020; former senior Kosovo government official, 13 May 2020. Member states opposing visa-free travel, notably France and the Netherlands, ought to change their position but are unlikely to do so while migration remains such a potent and polarising issue in their domestic politics. Viola von Cramon, the European Parliament rapporteur for Kosovo, noted that “member states can be quite critical, not because they do not want Kosovo, but because of domestic opinion” and that “some right-wing parties in countries such as the Netherlands or France are using the issue of visa liberalisation for their own domestic needs”. Sandra Cvetković, “Von Cramon: Gykata Speciale është në Hagë për arsye të mira” [Von Cramon: The Special Court in the The Hague for good reasons], Radio Free Europe, 24 July 2020.

<sup>57</sup> Crisis Group interview, Kosovo civil society leader, January 2021.

### III. The View from Pristina and Belgrade

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While some Serbian and Kosovar leaders appear to know that a political settlement to their dispute is necessary for the sake of both states' development, and that compromises are likewise unavoidable, it will require more to reach a deal. Belgrade has one big concession to make – recognition – which is also Pristina's main goal, as it would give Kosovo an entry ticket into international bodies and institutions. Yet Kosovo has not explained what it is prepared to offer in exchange and Serbia's aims are nebulous; Vučić typically says his country must get "something" in return for recognition but offers no details.<sup>58</sup>

#### A. *The Situation in Pristina*

Kosovar leaders have done little to prepare the public for the kinds of compromise necessary for a deal. A Kosovo opposition politician noted that his country's leaders have mostly been signalling that "agreement with Serbia won't involve any concessions", thus "raising expectations in a dangerous way".<sup>59</sup> Consistent with this posture, some policymakers in Pristina question the premise of negotiations with Belgrade and expect recognition to come in due course purely through international pressure. Indeed, most across the political spectrum take the position that Kosovo gave up all it could during the talks leading up to its declaration of independence, by agreeing to a measure of decentralisation and to community rights for Serbs and other minorities. An influential media magnate summed up:

I do not see what could be a greater concession than [what is already in our constitution]. ... The Kosovo Serbs' autonomy was expanded so much as to take the functionality of the state to the brink. ... In the Kosovo constitution, national minorities have greater rights than any other minorities in Europe.<sup>60</sup>

Kosovo's ambition for a deal on its terms would thus mean Belgrade recognising its independence without any further concessions on Pristina's part. Moreover, many Kosovars demand more from Serbia – some form of reparations, or at least an apology, for past wrongs.<sup>61</sup> It is easy to see why. Serbia's well-documented mistreatment of Kosovars, especially in the 1980s and 1990s, was egregious.<sup>62</sup> Former Prime Minister Ramush Haradinaj's statement that "forgiveness would be the best that Kosovo could have agreed" has wide purchase.<sup>63</sup> Yet securing such a deal would require a

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<sup>58</sup> "Serbia's Vučić says no recognition of Kosovo unless Belgrade gets something, too", RFE/RL, 5 March 2019.

<sup>59</sup> Crisis Group video interview, Kosovo opposition politician, 14 May 2020; Milica Stojanovic, "Kosovo-Serbia talks in Paris close without results", *Balkan Insight*, 10 July 2020.

<sup>60</sup> "Šta će Vučić tražiti u zamenu za priznanje Kosova?" [What will Vučić ask in exchange for recognizing Kosovo?], Radio Free Europe, 9 August 2020.

<sup>61</sup> Valon Fana, "Kurti urges for discussion on reparations in Kosovo-Serbia dialogue", *Pristina Insight*, 28 October 2019.

<sup>62</sup> Judgment, Prosecutor v. Milan Milutinović et al., IT-05-87, International Criminal Tribunal for the former Yugoslavia, 26 February 2009.

<sup>63</sup> "Prime Minister Haradinaj: A Pact of Peace, Forgiveness Would Be the Best That Kosovo Could Have Agreed", press release, Kosovo Prime Minister's Office, 3 May 2018.



revolution in Serbian popular opinion that shows no signs of occurring.<sup>64</sup> Even Kosovo's friends in Washington say: "That's not how negotiations work".<sup>65</sup>

Developing broad support for compromise could be further complicated by political turmoil in Kosovo, where early elections are routine, and no government has served a full term since independence in 2008. Hashim Thaçi, who with his Democratic Party of Kosovo (Partia demokratike e Kosovës, or PDK) has been the driving force in Kosovo affairs for two decades and the most invested in dialogue with Belgrade, resigned the presidency on 5 November 2020 after his indictment on war crimes charges became public. As the speaker of Kosovo's legislative assembly, Vjosa Osmani took over as acting president and cannot serve past 6 April 2021. The country is due to hold fresh general elections on 14 February 2021, after Kosovo's highest court ruled on 21 December that the election of Prime Minister Avdullah Hoti's government was invalid because it depended on the vote of a lawmaker who had been convicted of fraud. The challenge was brought by a former prime minister, Albin Kurti, who as discussed below was dismissed from office in a no-confidence vote.

Overlapping presidential and parliamentary elections will complicate coalition formation and could drag on into the middle of 2021. Kosovo's Constitutional Court has ruled that 80 delegates must be present to elect the president, which means 41 delegates can in effect exercise a veto by not showing up.<sup>66</sup> Without a president, there is no way to name a prime minister, and without the latter, the country could lurch to yet another election.<sup>67</sup>

Whoever emerges from the next month's political struggle will likely be disinclined to prioritise dialogue with Belgrade. New elections may reinstall Kurti, who takes a harder line than Thaçi toward Belgrade.<sup>68</sup> Kurti, who became prime minister after his Self-Determination Movement won the October 2019 parliamentary elections, refused Washington's invitation to high-level talks with Belgrade outright, while all other parties favoured attending. His government, a coalition with the Democratic League of Kosovo, collapsed for related reasons and because of his failure to build alliances outside his party.<sup>69</sup> In the past, he also criticised the Ahtisaari Plan itself, arguing that it violates Kosovars' right to self-determination.<sup>70</sup>

Nor is Kurti alone among Kosovo's political leadership. Hoti and Haradinaj are also less disposed to dialogue than Thaçi, whose decision in 2018 to negotiate alone with Vučić left the remaining contenders for national leadership united in irritation

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<sup>64</sup> "Normalization of Relations between Belgrade and Pristina from Citizens' Perspective: What We Know and What We Feel?", Center for Social Dialogue and Regional Initiatives, October 2019.

<sup>65</sup> Crisis Group telephone interview, U.S. official, 20 May 2020.

<sup>66</sup> Case KO 29/11, Constitutional Court of Kosovo, 30 March 2011.

<sup>67</sup> "Constitutional Court Referral and New Elections: A Legal Analysis and Possible Scenarios", BPRG, forthcoming.

<sup>68</sup> Crisis Group video interviews, Kosovo politicians, 13-14 May 2020.

<sup>69</sup> Crisis Group video interview, former senior Kosovo government official, 13 May 2020.

<sup>70</sup> Robert Marquand, "In Kosovo, a critic who just won't quit", *Christian Science Monitor*, 10 December 2007.

at being excluded.<sup>71</sup> Kurti, Hoti and Hardinaj are also united in agreeing that Kosovo should make no further substantial concessions to Serbia under any circumstances.<sup>72</sup>

This background suggests that whatever strategy emerges from Kosovo's political leaders in the coming months, it will likely be risk-averse and suspicious of all but the most anodyne compromise proposals. Their inclination in this direction can only be reinforced by the expectation that whichever parties wind up in opposition may seek to use the dialogue process to hasten their rise to power, by sniping at any government agreement or concession.<sup>73</sup> Perhaps Pristina's political elite can be coaxed toward a more constructive position. But, as noted, it will likely take a push by Washington, acting in coordination with Brussels, to move it in that direction.

### B. *The Situation in Belgrade*

By contrast to his counterparts in Kosovo, President Vučić is playing an exceptionally strong political hand in Serbia. He came out of the 21 June 2020 elections somewhat tarnished by an opposition boycott and low turnout, but with an ironclad parliamentary majority of 171 seats out of 240. Moreover, allied parties fill most of the remaining seats, with only a few small parties representing ethnic minorities in opposition. Although Belgrade saw violent protests on 7 July after the government announced COVID-19 lockdown measures, the unrest did not pose a meaningful challenge to Vučić's power.<sup>74</sup> For the present, Vučić is very much on top of his country's political scene and he appears to see a deal with Kosovo as a legacy worth fighting for.<sup>75</sup>

Although his dominant position gives him room to manoeuvre, the way forward is hardly a glide path. First, as set out above, Vučić may not find an opposite number who also wants to reach a deal and has the political strength to do so. In Taçi, Vučić had a counterpart who appeared to be equally committed to finding a solution, but whose domestic support was badly eroded. Secondly, the concession he will be required to make – recognition – is final, irreversible and emotionally taxing. Although many Serbs understand on some level that Kosovo, on whose territory stood the core of the medieval Serbian kingdom, is now an independent country, formally accepting that reality remains painful.<sup>76</sup> For many Serbs, it would be tantamount to treason.<sup>77</sup> Serbian Orthodox Church leaders in particular are notable in their vocal opposition to any such move.<sup>78</sup>

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<sup>71</sup> Crisis Group telephone interview, U.S. official, 20 May 2020. See also Valerie Hopkins, "Kosovo president ready to resign if war crime charges confirmed", *Financial Times*, 29 June 2020.

<sup>72</sup> Emirjeta Vllahiu, "Hoti presents platform for the Kosovo-Serbia dialogue", *Prishtina Insight*, 11 June 2020.

<sup>73</sup> Crisis Group video interviews, Kosovo opposition politicians, May 2020.

<sup>74</sup> B. Cvejić, "Vučić: 'Verovatno neće biti policijskog sata, ali sam ja protiv toga'" [Vučić: "There probably will be no curfew, I am against that"], *Danas*, 8 July 2020.

<sup>75</sup> Crisis Group video interview, source close to the talks, July 2020.

<sup>76</sup> See Noel Malcolm, *Kosovo: A Short History* (New York, 1998), pp. 44ff.

<sup>77</sup> "Normalization of Relations between Belgrade and Pristina from Citizens' Perspective", op. cit., p. 16.

<sup>78</sup> "Irinej: SPC će prihvatiti samo dogovor u kojem je Kosovo u sastavu Srbije" [Patriarch Irinej: The Serbian Orthodox Church will accept only an agreement in which Kosovo is part of Serbia], *Vijesti*, 8 September 2020.

Thus, if Vučić is committed to progress in the dialogue, he will need to do two essential things. The first is to come to grips with the terms on which he would be prepared to agree to recognition for Kosovo, likely drawing from the options set forth in the following section. The second is to share these terms with the public. He should not underestimate the importance of acclimating the Serbian public to the particulars of a putative deal. Under Serbia's constitution, recognition of Kosovo's independence requires a referendum.<sup>79</sup> Belgrade so far has given little sense of what an agreement might entail, instead referring to unspecified "compromises".<sup>80</sup> For all of Vučić's political strength, that kind of very vague preparation may not suffice to ensure a successful outcome in a referendum. He will need a strategy for building public support, which will almost certainly have to include a higher level of communication and perhaps the expenditure of some of his substantial political capital.

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<sup>79</sup> Article 203 of the constitution requires a referendum for amendments to a number of its provisions, including one which defines Kosovo as "an integral part of the territory of Serbia".

<sup>80</sup> Crisis Group video interview, Serbian civil society leader, 2 June 2020. "Vučić: Razgovori oko Kosova kao igra šaha, spremni smo na kompromis" [Vučić: Talks on Kosovo are like a chess game, we are ready for compromise], RTS, 18 June 2020.

#### IV. Three Policy Options and a Default

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As the parties explore the potential for a deal, the three options set forth below will likely be at the forefront of their thinking. In all variants, a key issue that needs to be addressed is how to persuade Serbia to recognise Kosovo without agreeing to steps that would harm Pristina – and, optimally, while taking some that would benefit it. The starting point should be the Ahtisaari Plan, which set out the key provisions of Kosovo’s constitution, endorsed its independence and appeared broadly fair to both sides.<sup>81</sup> Pristina accepted the plan, but Belgrade rejected it. Without a significant gain for Serbia beyond what is provided under that plan, Belgrade is unlikely to be able to persuade voters to approve a deal, yet as noted above there are real limits to what Pristina can agree to. Should the parties fail to reach a breakthrough for this or other reasons, the default will be to continue muddling through under the present arrangements. This outcome has its risks, however, and the parties (as well as Brussels and Washington) will need to keep these in view and take steps where possible to mitigate them.

##### A. *First Option: Trading Development for Recognition*

Some hope that a combination of pressure, billions in development assistance and investment for Serbia, coupled with assurance of rapid EU membership, could move it toward recognising Kosovo without significant concessions from Pristina.<sup>82</sup> Many in Pristina understandably cling to this hope, as the EU and U.S. would need to take steps but Kosovo’s leaders would not. Although Vučić is reportedly keen to strike a deal featuring inducements along these lines, it would almost certainly not be in exchange for formal recognition.<sup>83</sup> Vučić has said an arrangement that involves a form of de facto recognition (eg, involving the resumption of diplomatic relations) would be “much easier for Serbia” than de jure recognition.<sup>84</sup> But while there is precedent for this arrangement in the 1972 German Basic Treaty, under which East and West Germany established formal diplomatic ties without formally recognising each other, it is not clear how such an agreement would give Kosovo the standing with and entrée into international organisations that it seeks.<sup>85</sup>

There are other obstacles, too, including the question of how reliably Brussels can guarantee fast-tracked EU accession. Any single European state can hold up accession, but all 27 EU members must act together to accelerate it, and many in Europe believe Serbia is not yet a suitable candidate given its political shortcomings. Freedom House noted “steadily eroded political rights and civil liberties ... pressure on

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<sup>81</sup> At the time, Crisis Group called the Ahtisaari Plan “a compromise” that offers “the best recipe for the creation of a multi-ethnic democratic and decentralised society”. See Crisis Group Report, *Kosovo: No Good Alternatives to the Ahtisaari Plan*, op. cit., p. i.

<sup>82</sup> Crisis Group telephone interview, member of European parliament, 21 July 2020.

<sup>83</sup> Crisis Group video interviews, journalists and civil society, May 2020.

<sup>84</sup> “Vučić: ‘Nicht sehr wahrscheinlich, dass wir den Kosovo anerkennen’” [Vučić: “Not very likely we will recognize Kosovo”], *Der Standard*, 21 October 2019.

<sup>85</sup> One veteran European leader noted that the German model would have the benefit of avoiding Serbia’s referendum requirement, which would apply should Belgrade take the step of recognising Kosovo. Crisis Group video interview, former EU member state foreign minister, October 2020.

independent media, the political opposition and civil society” in downgrading Serbia to “partly free”.<sup>86</sup> A senior European politician, casting doubt on Belgrade’s prospects for membership, said: “With the UK out and Serbia in, we would have a different Europe”.<sup>87</sup> More broadly, accession criteria have been growing more stringent with each new member, making Serbia’s membership prospects more distant.<sup>88</sup>

This scenario also raises the question (potentially relevant under the other options as well) of what would happen if Serbia became an EU member before Kosovo. Because any of the EU member states can block an applicant’s accession, should Serbia join first, it would be in position to pull up the ladder before Pristina could follow suit. This scenario would seem to militate against putting Serbia on an accelerated track and in favour of bringing the parties into the EU at the same time (even if Belgrade achieves the requirements for accession first and has to wait), barring development of a track record of cooperation and mutual trust between the parties that does not exist at present.

Finally, it is not clear that this approach will be sufficient to garner the public support that would be required in Serbia. Particularly if (given the uncertainty surrounding EU accession) the incentives are primarily material, they may not suffice to extract political concessions on an issue of such deep national pride.

If they cannot bear the whole weight of agreement, however, economic incentives might still work as a sweetener. For example, Serbia may not be willing to go all the way in return for autonomy, as discussed below, but might do so for autonomy plus a generous offer from the EU.<sup>89</sup>

## B. *Second Option: Autonomy*

A second compromise option would be modelled after other European countries’ approach to addressing minorities’ grievances by granting them self-government in autonomous territories. The continent is a laboratory of decentralisation; some of its autonomous entities – notably Italy’s Bolzano (South Tyrol) – are among their home countries’ most prosperous areas. The approach is not foreign to the Balkans: Kosovo leaders agreed to grant the Serb minority their own democratically elected institutions during the 1999 Rambouillet talks.<sup>90</sup> Crisis Group has recommended enhanced autonomy for Kosovo’s Serbs and Preševo Albanians in the past, and it could still work if Belgrade and Pristina embrace it.<sup>91</sup>

To qualify as a big enough concession to Serbia to warrant recognition of Kosovo in return, however, autonomy would have to entail more than what Pristina provides for in its constitution and is included in the Brussels Agreement, while steering clear

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<sup>86</sup> “Freedom in the World 2020”, Freedom House, n.d. See also “Serbia 2020 Report”, European Commission, 6 October 2020, pp. 4-5.

<sup>87</sup> Crisis Group telephone interview, former EU member state foreign minister, 1 July 2020.

<sup>88</sup> See, for example, Srdjan Cvijic and Adnan Cerimagic, “Rebuilding Our House of Cards with More Glue”, Institute for Democracy – Societas Civilis Skopje, November 2020.

<sup>89</sup> Crisis Group telephone interview, former EU member state foreign minister, 23 October 2020.

<sup>90</sup> “Rambouillet Accords: Interim Agreement for Peace and Self-Government in Kosovo”, 7 June 1999.

<sup>91</sup> See Crisis Group Report, *Kosovo and Serbia after the ICJ Opinion*, op. cit., pp. 11-12.

of measures that have caused trouble elsewhere in the region.<sup>92</sup> Thus, under this option, an autonomous Serb district comprising the ten Serb-majority municipalities would have its own basic law, assembly, police force, court and source of financing. Pristina would handle only defence, foreign affairs, monetary policy and some law enforcement. The Preševo Valley would receive the same, or a similar, set of autonomous rights. In both countries, the autonomous district could also play a role in relations with the other state, with the Serb entity receiving financial support from Serbia and the Albanian one from Kosovo.

In previously supporting this option, Crisis Group has noted that it represents a “middle ground” that can “respect Pristina’s red lines, while allowing the North [of Kosovo] to govern itself (as it does now) without interference and with extensive involvement by Serbia”.<sup>93</sup>

The idea remains deeply unpopular, however, especially in Kosovo.<sup>94</sup> European policymakers are occasionally baffled by the intensity of Kosovar antipathy to what has worked well elsewhere in Europe.<sup>95</sup> Yet opposition to what they call a “third layer of government” between central and municipal authorities dates back to the Ahtisaari talks.<sup>96</sup> The reason could lie in the region’s history – namely, the fact that autonomy within the former Yugoslavia laid the groundwork for regions to gain independence. As many in Kosovo see it, granting the northern municipalities autonomy could likewise be a prelude to their breaking away.<sup>97</sup> Kosovo itself, after all, once enjoyed autonomy within Serbia. Kosovars also frequently cite the experience of Bosnia and Herzegovina as a cautionary tale, in which significant autonomy for its constitutive parts helped produce a failing, or (in the view of some Kosovars) failed, state.<sup>98</sup> To some extent, this view reflects a current of international thinking about what went wrong in Bosnia, and Kosovo officials say U.S. and EU officials warn them to avoid its mistakes.<sup>99</sup>

Another concern is that the Pristina government has a spotty record of fulfilling its past commitments related to autonomy and minority rights. As noted, Kosovo has yet to carry out the modest provisions of the Brussels Agreements on creating a Community/Association of Serb municipalities, originally signed in 2013 and renewed in

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<sup>92</sup> Two such measures – ethnic veto rights, which allow a majority of representatives of an ethnic group to block national legislation, and set-aside seats earmarked for particular ethnicities – have worked poorly in Bosnia, leading to frequent institutional paralysis and exacerbating intercommunal tensions. Crisis Group Europe Report N°232, *Bosnia’s Future*, 10 July 2014.

<sup>93</sup> Crisis Group Report, *Kosovo and Serbia after the ICJ Opinion*, op. cit., p. 12.

<sup>94</sup> Fully 85 per cent of Kosovars “strongly disagree” with a proposal granting broader executive powers to the Association/Community, even in return for de facto recognition by Serbia. “Vox Populi on the ‘Grand Finale’ between Kosovo and Serbia”, Research Institute for Development and European Affairs, March 2020.

<sup>95</sup> Crisis Group telephone and video interviews, European officials, May–November 2020.

<sup>96</sup> “Kosovo: Readout of March 17 talks on decentralization in Vienna”, U.S. Embassy in Vienna cable, 23 March 2006, as made public by WikiLeaks.

<sup>97</sup> “Scenarios for the ‘Grand Finale’ between Kosovo and Serbia”, op. cit.

<sup>98</sup> Crisis Group interviews, senior Kosovo officials, 2013; Kosovo diplomat, May 2020.

<sup>99</sup> See, for example, Kurt Bassuener, “The Dayton Legacy and the Future of Bosnia and the Western Balkans,” U.S. House Foreign Affairs Committee hearing, 18 April 2018.

2015.<sup>100</sup> Pristina's resistance to allowing even those parts of the Community/Association that are already provided for in its laws, much less enacting amendments foreseen in the Brussels Agreements, raises doubts about its willingness to honour autonomy commitments. The municipality of Deçan has for more than four years refused to implement a final Constitutional Court judgment granting land to the Serbian Orthodox monastery there, also defying U.S. appeals.<sup>101</sup> Serbia likewise has only partially fulfilled its more modest promises to residents of the Preševo Valley.<sup>102</sup> These include hiring more Albanians in state institutions, especially in the judiciary, and allowing use of the Albanian language in local offices.

Still, this option benefits from a track record elsewhere in Europe that the others do not enjoy, and merits continued consideration. The parties ought to take a close look at the European experience of establishing autonomous districts, in which states devolved extremely broad powers without shaking either their effectiveness or their stability.

### C. *Third Option: Border Modification*

The third option for reaching a political settlement between Pristina and Belgrade entails mutual border modifications, otherwise known as land swaps. Despite strong opposition from within the EU, proponents have for years argued that a territorial exchange could be the key to unlocking the Kosovo-Serbia dispute.<sup>103</sup> A workable deal, they say, would integrate border changes into a comprehensive accord including mutual recognition, paving the way for Kosovo's UN membership, and potentially opening the door to NATO and EU membership for Pristina, as well as Belgrade's EU membership. Serbia privately floated a similar idea in 2010, and as noted Thaçi and Vučić revisited it in 2018.<sup>104</sup>

Perhaps of greatest potential appeal to both parties, an exchange would allow each to claim victory. Belgrade could say it had forced the international community – including large, powerful states such as the U.S. and Germany – to make a deal on its terms. Moreover, the state of Kosovo that would emerge from the deal would be ever so slightly different from the one that broke away in 2008, meaning that Belgrade would not be put in the awkward position of ratifying that unilateral action. That could help draw the sting out of recognition. The idea holds appeal in Kosovo, too, where polls suggest it may be the least unpopular option among Kosovars, in part because it might bring additional, Albanian-inhabited lands into their country.<sup>105</sup>

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<sup>100</sup> "The Association of Serb Municipalities: Understanding Conflicting Views of Albanians and Serbs", BPRG, January 2017. Serbs call it a "community", connoting greater powers than the "association" preferred by Kosovars; the EU-mediated agreement uses both terms.

<sup>101</sup> Tweet by Philip S. Kosnett, U.S. ambassador to Kosovo, @USAmbKosovo, 2:46pm, 19 May 2020.

<sup>102</sup> "(Non)Implementation of the Agreement", op. cit.

<sup>103</sup> Crisis Group Report, *Kosovo and Serbia after the ICJ Opinion*, op. cit. Guy Delauney, "Kosovo-Serbia talks: Why land swap could bridge divide", BBC, 6 September 2018; Beáta Huszka, "A high-risk, high-reward gamble: What are the benefits of a Kosovo-Serbia land swap?", London School of Economics European Institute blog, 14 November 2018.

<sup>104</sup> Crisis Group interviews, persons involved in the talks, 2010-2011 and 2020.

<sup>105</sup> According to one poll, 29.2 per cent support it, compared to 10.9 per cent supporting autonomy in exchange for de facto recognition and 16.4 per cent favouring the status quo. "Vox Populi on the 'Grand Finale' between Kosovo and Serbia", op. cit.

The sovereign act of exchanging territory also would show Kosovo as Serbia's equal, a position cemented by formal recognition.

Kosovo Serbs are divided on the prospect of border changes. It is popular in the northern areas most likely to be exchanged under this option.<sup>106</sup> But many southern Kosovo Serbs oppose a land swap, partly because it includes recognition, which they oppose, and partly because they would remain in Kosovo and fear being left as a smaller minority in a potentially resentful Albanian-majority state.<sup>107</sup> Preševo Albanians by contrast appear to favour a swap as long as it involves most of their settlements, as opposed to only a few border villages.<sup>108</sup>

Within the EU, opposition to border change is intense but neither uniform nor absolute. Germany and other countries opposed to the idea so far have successfully blocked it.<sup>109</sup> Criticism focuses on the risk of a destabilising contagion: if borders can change here, the argument goes, why not in Bosnia, North Macedonia or farther afield?<sup>110</sup> As a result, some insist that the EU's mediator decline even to discuss the idea, deeming it contrary to his mandate to promote "good neighbourly relations and reconciliation".<sup>111</sup> Others argue that it could provoke persecution of remaining minorities, such as Albanians in northern Kosovo and Serbs in the south, and perhaps "lead to the exodus of minorities from their existing communities".<sup>112</sup>

The most serious danger arguably is the domino effect a land swap could have in terms of breaking up Bosnia and Herzegovina. Bosnia's smaller, Serb-majority entity – Republika Srpska – makes no secret of its desire for independence; its leader, Milorad Dodik, has floated the idea of Republika Srpska and the four northern Kosovo municipalities joining Serbia.<sup>113</sup> They would likely invoke a Belgrade-Pristina deal entailing territorial exchanges to stir up separatism, just as their predecessors used a variety of Kosovo developments in the past to do so.<sup>114</sup> Three of the former high rep-

<sup>106</sup> Overall, 40 per cent of Kosovo Serbs support the proposal, 39 per cent oppose it and the rest are undecided. Ibid.

<sup>107</sup> See "Territorial Exchange between Serbia and Kosovo and Its Potential Impact on Serbian Communities South of the Ibar", NGO Aktiv, 26 October 2018.

<sup>108</sup> Crisis Group interview, Kosovo civil society leader, 21 October 2020.

<sup>109</sup> Kreizer and Janovic, "A Cold War solution for Serbia and Kosovo?", op. cit.

<sup>110</sup> Crisis Group interviews, European leaders, June 2020.

<sup>111</sup> EU Council Decision 2020/489, 2 April 2020; comments by Miroslav Lajčák made at Columbia University's conference on "The Future of Transatlantic Cooperation in the Kosovo-Serbia Dialogue", 14 July 2020. See also "No Partition: Why Kosovo and Serbia Must Not Discuss Territory", European Stability Initiative, n.d.

<sup>112</sup> Carl Bildt, Paddy Ashdown and Christian Schwarz-Schilling, "An Open Letter to Federica Mogherini and the Foreign Ministers of EU Member States on the Correction of Borders Between Serbia and Kosovo", 29 August 2018. Carl Bildt is a Trustee of Crisis Group, and Paddy Ashdown and Christian Schwarz-Schilling are former Trustees.

<sup>113</sup> "Dodik: north of Kosovo to remain in Serbia with Republika Srpska joining Serbia as well", *Kossev*, 21 September 2019.

<sup>114</sup> On 5 October 1998, Dragan Čavić, then vice president of the Republika Srpska National Assembly, warned that NATO intervention in Kosovo "could cause unforeseeable consequences in the implementation of the Dayton Agreement", which led the Office of the High Representative to remove him. "Decision removing Dragan Cavic from his position as a member of the newly elected RS National Assembly", Office of the High Representative, 8 October 1998; and OHR SRT News Summary, 6 October 1998. NATO airstrikes over the Kosovo crisis in March 1999 "instantly radicalized the atmosphere in Banja Luka" and the Republika Srpska information minister noted "the situation



representatives responsible for implementing the Dayton peace accords have warned that a land swap would “give comfort and support to those who would break up [Bosnia], who are already calling for a return to the status quo ante in Dayton, unravelling all we and our Bosnian partners have worked for over more than two decades”.<sup>115</sup>

These risks are significant, but they will need to be weighed against the risks of increasing regional instability if the status quo endures. Rising ethnic tension in Kosovo and Serbia could also feed separatist grievances in neighbouring Bosnia and North Macedonia. Should Kosovo-Serbia talks head in the direction of territorial exchange, both the parties and mediators will need to take into account the abovementioned concerns, and work together to mitigate risks in neighbouring Bosnia and North Macedonia. Under this scenario, Bosnia ought to join Serbia in recognising Kosovo, and Belgrade ought to reaffirm its Dayton commitment to Bosnia’s territorial integrity. Pristina and Tirana should likewise affirm their unequivocal support for North Macedonia’s territorial integrity. If the region’s governments all recognise each other as legitimate, it may help defuse some of the resentment that has fuelled separatist sentiment, or at least avoid stoking more of it.

Both parties will also have to take additional steps to demonstrate that the contemplated swaps will be carried out in a manner consistent with international norms. Making clearer that the border adjustments reflect the will of the people will help avoid creating a precedent for strongmen elsewhere to carve up territory arbitrarily; Serbia’s referendum will help in this regard, and Kosovo (though not constitutionally required to do so) may wish to follow its example. But grounding the swaps in popular sovereignty will not be sufficient to protect the rights of minorities.

To allay concerns about whether minorities will be sufficiently protected, both Pristina and Belgrade might also seek human rights-related technical advice assistance from the EU and other donors with a view to identifying risks to vulnerable populations that might be provoked by border adjustments, and taking legal, security and other measures to address them. One concern, for example, is that opponents of a deal, incensed by territorial loss, might take out their anger on the vulnerable minority populations that would remain, notably the large Serb population in southern Kosovo. They could also target the medieval Serbian Orthodox churches and monasteries. Either act could inflame nationalist feeling and prompt calls for reprisals in Serbia. Pristina, and the Serb minority, may need help from external partners in managing these risks.

Beyond these considerations, the parties would need to overcome several potential stumbling blocks of a more concrete nature. Any deal involving territorial exchange

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was getting out of control and warned of possible attempts by radical forces to make RS secede”. Crisis Group Europe Report N°62, *Republika Srpska – Poplasen, Breko and Kosovo*, 6 April 1999. In 2000, the moderate Serb leader Mladen Ivanić raised the possibility of linking Republika Srpska’s status with Kosovo’s. Crisis Group Europe Report N°214, *Bosnia: What Does Republika Srpska Want?*, 6 October 2011, pp. 4, 13. “Bosnia – the RS and Kosovo independence: Expect rhetorical fireworks (at least)”, U.S. Embassy Sarajevo cable, 25 January 2008, as made public by WikiLeaks.<sup>115</sup> Bildt et al, “An Open Letter to Federica Mogherini and the Foreign Ministers of EU Member States”, op. cit. The “status quo ante in Dayton” refers to calls by Bosnia and Herzegovina’s Presidency member Milorad Dodik and others to roll back most or all of the state-building reforms imposed by past high representatives. See “Dodik: Dayton Peace Agreement promotes new political system”, *The Srpska Times*, 19 November 2020.

would need to take account of Pristina's interest in three areas in northern Kosovo. First, it will insist on continued access to the Gazivode Lake, a reservoir straddling Serbian and Kosovo territory and fed by the Ibar River.<sup>116</sup> As noted above, the parties have commissioned an assessment that may offer insights into how this demand could be addressed. The second issue relates to ownership of the once lucrative but largely mothballed Trepça mines, 9km north east of Mitrovica; here, joint ownership is a possible compromise, modelled after the Krško nuclear plant co-owned by Croatia and Slovenia.

The hardest and most painful issue is North Mitrovica town. It is the only real Serb-majority town in Kosovo, home to a university and large medical centre; it also has the largest Albanian and other non-Serb population in the northern area and was the scene of ethnic cleansing by Serbs in 1999. Drawing a border through Mitrovica, whether between neighbourhoods in the north or between north and south, would be difficult to achieve without unrest and possible violence. If this option is pursued, Pristina and Belgrade will have to work closely with local leaders and civil society to mitigate these dangers.

#### D. *Living with the Status Quo*

Of course, it is possible that the parties do not elect any of these options for at least the foreseeable future. Indeed, the most likely outcome may well be the status quo's indefinite continuation given both sides' conviction that a better deal will be available in the future, and a sense among many, though not all, political leaders on both sides that they stand to lose more than they will gain from compromise.<sup>117</sup> This sentiment has a strong political foundation. All the concessions Kosovo might need to make are unpopular.<sup>118</sup> Likewise, most Serbs oppose giving up Kosovo no matter what.<sup>119</sup>

Moreover, in terms of its regional implications, some in Serbia see the non-recognition policy as "low risk, high gain".<sup>120</sup> From their perspective, Belgrade is chipping away at Kosovo's international recognition and – working with Russia – blocking its attempts at further memberships, at little or no cost. About fifteen states have withdrawn their recognition, presumably under pressure from Belgrade and its backers, with Sierra Leone the most recent, while Kosovo's bids to join Interpol and UNESCO both failed.<sup>121</sup> While Belgrade is unable to close many negotiating chapters with Brussels on EU membership for Kosovo-related reasons, this problem is not widely understood among Serbs; the slowdown in the EU accession process is instead widely

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<sup>116</sup> Crisis Group interviews, Kosovo officials and opposition leaders, May-June 2020. See "Lake of Gazivode a bed of nails", Ljubisa Mijacic blog, 31 July 2018.

<sup>117</sup> A policy paper by a leading European think-tank anticipates no breakthroughs and no recognition until 2030. "The Hypnotist: Aleksandar Vucic, John Bolton and the Return of the Past", European Stability Initiative, 25 April 2019.

<sup>118</sup> Crisis Group video interview, European External Action Service officials, 12 May 2020.

<sup>119</sup> 68.5 per cent agreed (and 15.3 per cent disagreed) that "Kosovo is the heart of Serbia", and 68.2 per cent agreed (versus 14.8 per cent) that "Serbia should never recognize Kosovo as it would mean shame and humiliation". "Normalization of Relations between Belgrade and Pristina", op. cit., p. 16.

<sup>120</sup> Crisis Group video interview, Serbian civil society leader, 2 June 2020.

<sup>121</sup> "Serbia claims Sierra Leone is latest country to rescind Kosovo recognition", RFE/RL, 3 March 2020.

attributed to Europe's enlargement fatigue insofar as it has equally affected others in the region.<sup>122</sup>

Conversely, some in Kosovo believe they are in an advantageous position because without recognition, Serbia will not be able to join the EU. Pristina expects EU and U.S. pressure to eventually force Serbia to recognise Kosovo without Kosovo having to make any significant concession; many expect recognition to occur on the eve of Serbia's EU accession, as its final condition.<sup>123</sup> Kurti has described his basic approach as "strategic patience": wait, agree to nothing and eventually Serbia will conclude it must make a deal on Pristina's terms if it wishes to join the EU. He has often spoken approvingly of Bosnian Serb leader Milorad Dodik's maxim: "We Serbs will get tired last", implying that the Kosovars should adopt it as their own.<sup>124</sup>

Still, living with the status quo comes with risks. From Pristina's perspective, a best-case scenario would entail gradual integration of its Serb minority by weaning them off their dependence on Belgrade's money and services. But that outcome is not necessarily the likeliest. At least as likely is that perpetuation of the current situation could instead see Belgrade and Pristina try to expand their influence on the ground where they still can. Belgrade might, for example, seek to further loosen Pristina's control over its northern municipalities and perhaps over the northern frontier itself. During past crises, Kosovo Serbs burned down the two northern border posts and opened illegal crossings; little would prevent them from doing it again should Serbia offer them even tacit encouragement.<sup>125</sup> In response, Pristina might attempt to forcibly integrate these areas, drive out Serbia's remaining institutions, question the status and security of Serbian Orthodox Church monuments, or encourage separatism in the Preševo Valley.

Kosovo's Serbs also should have reason to fear a lack of resolution. They could once more become targets of violence and persecution at the hands of the nation's Albanian population. The divided city of Mitrovica could become a flashpoint, given how close different ethnic communities are living to one another. Conversely, should southern Kosovo Serbs come under attack, Mitrovica Serbs could mount revenge attacks on the Albanian and Bosnian neighbourhoods in its northern half. If fighting were to break out in Kosovo, it could spread to the Preševo Valley, as occurred in 1999-2000.<sup>126</sup>

Absent a deal, there is a limit to how far the parties and their external partners can go in managing these risks, but they can at least take certain steps to lessen the frustrations and missed opportunities created by the stagnant status quo, and in that way perhaps alleviate the resentment that might otherwise build between the parties. Suggestions for what steps to take are included in the following section.

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<sup>122</sup> Crisis Group video interview, senior European Commission official, 12 June 2020. "Hamster in the Wheel: Credibility and EU Balkan Policy", European Stability Initiative, 15 January 2020.

<sup>123</sup> Crisis Group interview, Kosovo civil society leader, 16 October 2020.

<sup>124</sup> Crisis Group video interview, Kosovo opposition politician, 14 May 2020.

<sup>125</sup> Crisis Group Report, *Serbia and Kosovo: The Path to Normalisation*, op. cit.

<sup>126</sup> See Crisis Group Europe Report N°186, *Serbia: Maintaining Peace in the Presevo Valley*, 16 October 2007.

## V. A Way Forward?

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More than two decades after the armed struggle that led to Kosovo's assertion of independence from Serbia, the two neighbours remain locked in a dispute that serves neither's interests, but that cannot be resolved without mutual concessions that to date neither has been prepared to make. The status quo is certainly better than lethal conflict, but it is still uneasy, stunting the horizons of both (especially Kosovo), fostering frustration and resentment in their citizenries, and leaving an open and potentially dangerous wound right in the heart of the western Balkans. The parties and the mediators in Brussels and Washington who seek to bring them together still have some hope of patching things up. But doing so will require a somewhat different approach to talks than they have taken in the past.

First, they will need to leave definitively behind the crutches of prior talks – resort to technical issues and reliance on ambiguity – and be clear that the objective is to resolve the recognition issue once and for all. The EU, which as noted has been hindered by the five non-recognising states from adopting a common position that recognition is its goal, should consider persuading the non-recognisers to alter their stance; given its prominent role in pushing for a deal, Germany could probe whether these five states might be willing to soften their resistance. Alternatively, the EU should come up with a different way to make clear its objective. At the very least, all member states that recognise Kosovo should affirm they read Special Representative Lajčák's mandate to address "all outstanding issues" as referring to a settlement that includes Serbia's *de jure* recognition of Kosovo. They should likewise aver that they will not agree to Belgrade joining the EU without recognising Pristina. Those that do not recognise Kosovo ought to make clear that they are prepared to do so once Serbia does.

Secondly, although each of the three options discussed in Section IV has its pitfalls, none is so flawed that it should be disqualified from discussion. Even the controversial possibility of land swaps could be on the table, as the EU and its member states should clarify, so long as it is framed in a manner that is consistent with international law and human rights. They could likewise make clear that the EU special representative's mandate to work toward a deal that advances "regional stability" would allow him to facilitate talks that look at a border change option along these lines insofar as it could resolve the main outstanding dispute in the region and remove an obstacle to the parties' inclusion in institutions that promote minority rights. Some countries that are strongly against border changes nonetheless say their opposition is not necessarily permanent. A German official recently noted of the border change option: "We don't say 'never'".<sup>127</sup>

Thirdly, if Belgrade is ready to deal, Pristina, too, must be in a position to negotiate effectively. That is not the case today. While Kosovo's leaders are used to engaging in high-stakes talks, as discussed above, neither the governing coalition nor the opposition is ready to engage in meaningful dialogue. Thus, preliminary internal negotiations within the Pristina elite are a prerequisite. The U.S., which as noted has greater influence than the EU within these circles, should facilitate such discussions.

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<sup>127</sup> Crisis Group telephone interview, German official, 23 October 2020.

Through these negotiations, the governing coalition will need to settle on a common platform that sets out its goals, red lines and potential concessions. Likewise, the country's political leaders ought to reach a de facto political ceasefire when it comes to the issue of relations with Serbia, so that no party uses a concession to score points against a rival contemplating it. Washington should try to help Kosovo politicians reach that understanding as well.

Fourthly, the parties should be clearer with each other. Pristina needs to hear Serbia's leadership say under what terms and conditions they are prepared to offer formal recognition and, if Belgrade wishes to explore interim steps short of recognition (for example Serbia dropping its objection to Kosovo's membership in the UN, or an exchange of diplomatic representatives), what the terms would be. Conversely, Belgrade needs to hear what Kosovo is prepared to offer in return for recognition. If the parties are not prepared to pronounce formal positions on these subjects, the EU should facilitate informal channels of communication where they can speak frankly without fear of leaks and in the presence of trusted interlocutors.

Leaders on both sides also need to be clearer with their constituents. The search for a final agreement has long been hampered by pervasive misinformation for which Belgrade and Pristina are largely to blame. For many years, both have encouraged citizens to believe that strategic victory was possible without meaningful compromise and that certain lines would never be crossed. Having repeatedly been told they can get something for nothing, Serbs and Kosovars are understandably reluctant to support compromises that are at least symbolically painful. They are also poorly positioned to make an informed choice between the status quo and its alternatives. European and other actors have perhaps unwittingly contributed to this situation, by implying an ability to deliver a win for either party by exerting irresistible pressure on its counterpart or by offering it inducements. The EU special representative should start making clear that European carrots and sticks are not by themselves likely to resolve the dispute: the only way to a political settlement is through compromise between the parties.

Finally, recognising that under the best of circumstances a deal will take time to reach, Kosovo's political leadership should consider how to work with external partners to take some of the sting out of its immediate predicament.

One way to improve the situation would be to gain membership in other international organisations that admit new members by majority vote.<sup>128</sup> For example, Kosovo could seek membership in two organisations to which Serbia already belongs – the Council of Europe and the International Court of Justice. Besides international standing, admission to these bodies could provide an additional channel of dispute resolution. The Council of Europe requires a two-thirds majority of its members to approve a candidate, and more than that number already recognise Kosovo.<sup>129</sup> Joining the Council would extend the European Court of Human Rights' jurisdiction to Kosovo, which would allow minorities (and others) to appeal to a respected, interna-

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<sup>128</sup> Even in some of these bodies, outvoted opponents raise frequent objections to Kosovo's presence in meetings, to the point of "holding the whole organisation hostage". Crisis Group telephone interview, U.S. official, 20 May 2020.

<sup>129</sup> Kushtrim Istrefi, "Kosovo's Quest for Council of Europe Membership", *Review of Central and East European Law*, vol. 43, no. 3 (2018), pp. 255-273.

tional body. Kosovo could also try to join the International Criminal Court (ICC), if it first wins observer status at the UN General Assembly – as Palestine has done, for instance.<sup>130</sup>

On the security front, some analysts argue that the U.S. and its European allies should smooth the way for Kosovo (which relies for its defence on NATO's KFOR mission, with just over 3,000 troops on the ground, and its own lightly armed force) to receive NATO membership.<sup>131</sup> Joining the alliance, one commentator writes, “has long been the stepping stone to fulfilment of the lengthier process of joining the EU” and can, unlike the UN, be done without the consent of China and Russia.<sup>132</sup> Still, member states Greece, Romania, Slovakia and Spain have prevented Kosovo from joining NATO's Partnership for Peace and, given the organisation's consensus-based approach to decision-making, they would be able to keep it out of the alliance altogether.<sup>133</sup>

In the meantime, however, Pristina could explore concluding a defence pact with one or more NATO members such as the U.S., which might use this engagement to encourage (and support) some or all of the governance reforms and capacity building that normally accompany NATO accession.

As for expanding economic integration with the EU, Kosovo has few alternatives to full-fledged EU membership. Its 2016 Stabilisation and Association Agreement with the EU gives it limited free-trade access to the bloc and funds to encourage reforms and development.<sup>134</sup> It would take a paradigm shift in the region for Kosovars to search for alternatives to joining the bloc, but if EU accession comes to seem permanently blocked, Pristina may seek another path. If that happens, access to the Union's single market is possible without EU membership; indeed, Iceland, Norway, Liechtenstein and Switzerland enjoy this access as the four member states of the European Free Trade Association, a bloc set up in 1960 to promote free trade.<sup>135</sup> Full integration in the European single market, whether through EU membership or some other means, calls for a robust market economy that will take years to develop.

Still, even if these strategies do not prove viable in the short or medium term, the EU and its member states, and other interested states like the U.S., are free to tailor their development aid and investment as they like. Such assistance could prove a particularly important lifeline for Kosovo. A former U.S. policymaker with a long history

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<sup>130</sup> The UN General Assembly admits non-member states as “permanent observers”; currently, there are two, the Holy See and the State of Palestine. The latter has acceded to the ICC, partly on the strength of the Assembly's recognition that it is a “state”. See “Palestine”, Coalition for the International Criminal Court, n.d. See also Maher Abukhater, “Palestinians joining International Criminal Court; U.S., Israel object”, *Los Angeles Times*, 31 December 2014.

<sup>131</sup> Edward P. Joseph, “Trump has a fix for Kosovo. He's ignoring it”, *Foreign Policy*, 3 September 2020. The four non-recognising states are Greece, Romania, Slovakia and Spain.

<sup>132</sup> Ibid. See also Blerim Shala, “Uslov svih uslova za sporazum Kosova i Srbije” [The condition of all conditions for a Kosovo-Serbia agreement], *Kossev*, 7 December 2020.

<sup>133</sup> “España rechaza que la OTAN entrene al ejército kosovar” [Spain rejects NATO training the Kosovo army], *Europa Press*, 14 December 2018.

<sup>134</sup> The two are also part of two regional trade areas: the Central European Free Trade Agreement, set up to help ex-communist states harmonise their economic and legal systems with EU demands, and the Regional Economic Area, to ease inter-regional trade.

<sup>135</sup> See Gent Salihu, “It's not you, it's me: EU's breakup with the western Balkans”, *European Leadership Network*, 12 December 2019; and “Coup de grâce – Delors and squaring the circle – Norway in the Balkans”, *European Stability Initiative newsletter*, 26 October 2019.

of work on the dispute suggested that outside investment in infrastructure development could be especially helpful in lessening landlocked Kosovo's dependence on Serbia and helping its economy grow in spite of the impasse.<sup>136</sup> Pristina can also seek closer economic ties with Albania, North Macedonia and other countries in the region.

Perhaps most important, measures of this nature might at least help curb the potential growth of frustration with the status quo, especially among Kosovars, that over time risks being destabilising. That would hardly be a substitute for reaching the political settlement that both countries, and the region, very much need. But until the day when one is possible, it may at least help keep this wound in the heart of the western Balkans from growing more painful for all concerned.

**Belgrade/Pristina/Brussels, 25 January 2021**

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<sup>136</sup> Crisis Group email communication, former U.S. official, 12 November 2020.

Appendix A: Map of Kosovo





## Appendix B: About the International Crisis Group

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The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 120 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries or regions at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international, regional and national decision-takers. Crisis Group also publishes *CrisisWatch*, a monthly early-warning bulletin, providing a succinct regular update on the state of play in up to 80 situations of conflict or potential conflict around the world.

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

The Crisis Group Board of Trustees – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policymakers around the world. Crisis Group is co-chaired by President & CEO of the Fiore Group and Founder of the Radcliffe Foundation, Frank Giustra, as well as by former UN Deputy Secretary-General and Administrator of the United Nations Development Programme (UNDP), Lord (Mark) Malloch-Brown.

Crisis Group's President & CEO, Robert Malley, took up the post on 1 January 2018. Malley was formerly Crisis Group's Middle East and North Africa Program Director and most recently was a Special Assistant to former U.S. President Barack Obama as well as Senior Adviser to the President for the Counter-ISIL Campaign, and White House Coordinator for the Middle East, North Africa and the Gulf region. Previously, he served as President Bill Clinton's Special Assistant for Israeli-Palestinian Affairs.

Crisis Group's international headquarters is in Brussels, and the organisation has offices in seven other locations: Bogotá, Dakar, Istanbul, Nairobi, London, New York, and Washington, DC. It has presences in the following locations: Abuja, Addis Ababa, Bahrain, Baku, Bangkok, Beirut, Caracas, Gaza City, Guatemala City, Jerusalem, Johannesburg, Juba, Kabul, Kiev, Manila, Mexico City, Moscow, Seoul, Tbilisi, Toronto, Tripoli, Tunis, and Yangon.

Crisis Group receives financial support from a wide range of governments, foundations, and private sources. Currently Crisis Group holds relationships with the following governmental departments and agencies: Australian Department of Foreign Affairs and Trade, Austrian Development Agency, Danish Ministry of Foreign Affairs, Dutch Ministry of Foreign Affairs, European Union Emergency Trust Fund for Africa, European Union Instrument contributing to Stability and Peace, Finnish Ministry of Foreign Affairs, French Development Agency, French Ministry of Europe and Foreign Affairs, Global Affairs Canada, Iceland Ministry for Foreign Affairs, Department of Foreign Affairs and Trade of Ireland, Japan International Cooperation Agency, the Principality of Liechtenstein Ministry of Foreign Affairs, Luxembourg Ministry of Foreign and European Affairs, Norwegian Ministry of Foreign Affairs, Qatar Ministry of Foreign Affairs, Swedish Ministry of Foreign Affairs, Swiss Federal Department of Foreign Affairs, United Nations Development Programme, UK Foreign, Commonwealth and Development Office, and the World Bank.

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**January 2021**

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## Appendix C: Reports and Briefings on Europe and Central Asia since 2018

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### Special Reports and Briefings

*Council of Despair? The Fragmentation of UN Diplomacy*, Special Briefing N°1, 30 April 2019.

*Seven Opportunities for the UN in 2019-2020*, Special Briefing N°2, 12 September 2019.

*Seven Priorities for the New EU High Representative*, Special Briefing N°3, 12 December 2019.

*COVID-19 and Conflict: Seven Trends to Watch*, Special Briefing N°4, 24 March 2020 (also available in French and Spanish).

*A Course Correction for the Women, Peace and Security Agenda*, Special Briefing N°5, 9 December 2020.

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### Russia/North Caucasus

*Patriotic Mobilisation in Russia*, Europe Report N°251, 4 July 2018.

*The COVID-19 Challenge in Post-Soviet Breakaway Statelets*, Europe Briefing N°89, 7 May 2020.

### South Caucasus

*Abkhazia and South Ossetia: Time to Talk Trade*, Europe Report N°249, 24 May 2018 (also available in Russian).

*Digging out of Deadlock in Nagorno-Karabakh*, Europe Report N°255, 20 December 2019 (also available in Russian).

*Preventing a Bloody Harvest on the Armenia-Azerbaijan State Border*, Europe Report N°259, 24 July 2020.

*Georgia and Russia: Why and How to Save Normalisation*, Europe Briefing N°90, 27 October 2020 (also available in Russian).

*Improving Prospects for Peace after the Nagorno-Karabakh War*, Europe Briefing N°91, 22 December 2020 (also available in Russian).

### Ukraine

*"Nobody Wants Us": The Alienated Civilians of Eastern Ukraine*, Europe Report N°252, 1 October 2018 (also available in Ukrainian).

*Rebels without a Cause: Russia's Proxies in Eastern Ukraine*, Europe Report N°254, 16 July 2019 (also available in Ukrainian and Russian).

*Peace in Ukraine I: A European War*, Europe Report N°256, 28 April 2020 (also available in Russian and Ukrainian).

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