

# Who sets the agenda?

Preliminary remarks on the idea of border revision and territorial exchange between Kosovo and Serbia

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# WHO SETS THE AGENDA? PRELIMINARY REMARKS ON BORDER REVISION AND TERRITORIAL EXCHANGE BETWEEN KOSOVO AND SERBIA

## Introduction

Recent suggestion for border correction between Kosovo and Serbia has raised quiet few eyebrows. The sudden institutional introduction of such idea in the public discourse, while it might have induced a collective shell shock, did not come as a subtle surprise. It had almost become a public secret that the ultimate solution to the normalization of the relationship between Kosovo and Serbia might include territorial exchange/division. In part so due to President Thaci's statement after his last meeting with his Serbian counterpart that the dialogue may conclude in "dire compromise"<sup>1</sup>, and partially because the agreement on Association of Serb Municipalities eventually may have constitutional and practical implications in the functionality of Kosovo state. Current border revision idea may mean unification of the valley of Presheva, Medvegja and Bujanovc to Kosovo, it also feeds on the idea of the separation of the north of Mitrovica from Kosovo. Insisting that only the former will happen is immature and dishonest. To that end, the purpose of this policy note is to deconstruct the outcome of this idea in relation to Kosovo's statehood<sup>2</sup>.

## The doctrine of Responsibility to Protect

International military intervention in Kosovo in 1999, and the international administration that followed created a new reality in the

relationship between Kosovo and Serbia. It put the former in an upper hand position destined for independence and left the latter staring down the barrel. International community unshakably insisted that the new reality has no reversibility clause. This inferred that Kosovo possessed the political and diplomatic support of the international community in its pursuit for independence, which was capitalized in February of 2008, when Kosovo, in close coordination with the international community, declared independence. Kosovo was going to be a pioneering success and a sui generis case of one of most significant conceptual development in international law since the promulgation of the United Nations charter, the doctrine of *responsibility to protect*<sup>3</sup>.

Responsibility to Protect - often referred to as R2P- is a doctrine within the international law that ensures that all responsible stakeholders - in this case the international community and the Security Council - are aware of their "roles, obligations and responsibilities when faced with the threat of four specific crimes; genocide, war crimes, ethnic cleansing and crime against humanity"<sup>4</sup>. To that end, R2P rests on the responsibility of the international community to respond in a timely and decisive manner to ensure protection of civilians in accordance with international law, when the state fails to do so<sup>5</sup>. It is upon it that the United States of America and their closest allies argued their

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<sup>1</sup> Koha Net. 2018. Available at <https://www.koha.net/arberi/106309/thaci-as-tregon-cili-eshte-cili-eshte-kompromisi-i-dhimshem-as-nese-ndarja-eshte-ne-agjende/>

<sup>2</sup> Note: the subject of discussion and analysis of this policy note exceeds personal and professional implication of political leaders involved in the

dialogue, and aims to transcend the discussion on an exclusive conceptual level

<sup>3</sup> Power, Peter. 2009. Responsibility to Protect: from Concept to Implementation. *Irish Studies in International Affairs*. Vol. 20, pp. 15-20

<sup>4</sup> Ibid, 15

<sup>5</sup> Ibid

insistence and later decision to intervene in Kosovo without the full approval of the United Nations Security Council, because elements from all four crimes were evident during the late conflict. Serbian state had not only failed to protect its population but itself inflicted such crimes upon civilian population. Likewise, proponents of Kosovo's independent argued that Kosovo was within their right for secession and later declaration of independence and any turning back to situation prior to 1999 is merely unsustainable for Kosovo and region of the Balkans. To that extent, Martti Ahtisaari in his Comprehensive Proposal for the Settlement of the Kosovo Status argues Serbia's loss of effective government over Kosovo as the profound reason why Kosovo must be an independent state of its own<sup>6</sup>. In addition, upon the request of the General Assembly of the United Nations, the International Court of Justice also gave its advisory opinion where it found Kosovo's declaration of independence as legitimate and in no violation with the international law<sup>7</sup>. Therefore, R2P represents the ultimate cornerstone not only of Kosovo's independence international legitimacy, but its statehood as well, to the extent that 114 states that have recognized Kosovo's independence to this day consider such affair as finalized.

## The Outcome of the Idea for Border Revision in Relation to Each State

In the wake of the resumption of what was publicly referred to as the "technical dialogue" in 2011 between the two states<sup>8</sup>, Kosovo failed to recognize that entering into a dialogue initiated by Serbia that was yet – and still firmly is- to recognize Kosovo's

independence where internal affairs may be part of the discussions as a way to an agreed settlement means drifting away from the R2P that grounded legitimacy of independence and statehood.

Insisting that an agreement between the two states that among others may include the very idea of the border revision as the means to an end would then pave the way to a complete international recognition of the Kosovo's statehood is very risky for the statehood of Kosovo and premature. First, it may indulge Kosovo into the riddle game of *secession with consent of the parent state*. This would constitute a major step back for Kosovo's statehood. Secession with consent of the parent state would enable Serbia for the first time since 1999 to have the upper hand in relation to the statehood of Kosovo. Further integration of Kosovo in international organizations, United Nations and European Union would then become pending on Serbia's willingness to provide the consent for secession by de jure recognizing the independence of Kosovo. Second, any other form besides factual recognition of independence does not by default warrant a formal recognition from that of the five left EU members that are yet to do so - essential for Kosovo's EU integration agenda-, and Russia's and China's recognition - pivotal for Kosovo's UN membership aspiration. We are all aware that the decision of these countries to not recognize Kosovo's independence in most of the cases extends mere good diplomatic relationships with Serbia. Their actual political decision not to formally recognize Kosovo's independence is either inherited in their plausible concerns that a

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<sup>6</sup> KIPRED 2018. Options for a 'Legally Binding Normalization Agreement' between Kosovo and Serbia. Discussion Paper. Available at [http://www.kipred.org/repository/docs/Options\\_for\\_a\\_Legally\\_Binding\\_Agreement\\_RM\\_260848.pdf](http://www.kipred.org/repository/docs/Options_for_a_Legally_Binding_Agreement_RM_260848.pdf)

<sup>7</sup> International Court of Justice Advisory Opinion available at <http://www.icj-cij.org/files/case-related/141/16012.pdf>

<sup>8</sup> "Edita Tahiri: Dialogu eshte teknik dhe mbetet i tille". *Telegrafi*. Available at <https://telegrafi.com/dialogu-eshte-teknik-dhe-mbetet-i-tille/>

decision to do so could have detrimental implication in their internal affairs, such is the case of Spain with Catalonia, Greece with northern Cyprus, Romania with the Hungarian minority<sup>9</sup>, or their decision is restricted to a good extent by their international geopolitical stance as super powers such is the case of Russia and China.

On the other hand, Serbia's aspirations to become part of the European Union are also closely, if not strictly, tied to an ultimate settlement with Kosovo which optimally may come in the form of recognition of Kosovo's independence. Serbia has become subject of constant external political pressure from European Union leading member states to conclude the normalization process with Kosovo as one of main conditions for a successful candidacy for the European Integration process<sup>10</sup>. Moreover, impatience within domestic public opinion and internal pressure to accelerate Serbia's progress towards European Integration is rapidly growing. It infers that now it is in Serbia's best interest to reach out for ultimate settlement that could help them in for their European integration candidacy. It is why Serbian high end officials seem accepting of having the idea of border revision on the dialogue table. This does not mean that they are willing to pursue this idea right away though. Certainly Serbia understands that it has effectively lost Kosovo, but it also understands that it certainly possesses instruments to stress influence in Kosovo through Kosovar Serbs. We have already witnessed the embodiment of such influence through the Kosovar Serbs political party 'Lista Srpska' which publicly follows instructions directly from the Serbian Government, and is much keener to uphold

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<sup>9</sup> CIBOD and CRPE, 2012. Regaining Agency: How to Help Serbia and Kosovo Move Towards the EU? A strategic review of non-recognition of Kosovo.

<sup>10</sup> In its Western Balkans Enlargement Strategy of 2018, the EU states that: 'without effective and comprehensive normalization of Belgrade-Pristina relations through the EU-facilitated Dialogue there cannot be lasting stability in the region. A comprehensive, legally binding normalization agreement is urgent and crucial so that Serbia and

Belgrade's agenda in relation to Kosovo than to actually represent the interest of Kosovar Serbs living in Kosovo<sup>11</sup>. As of the latest national elections, due to domestic political configuration Lista Srpska has played the role of the *King Maker* in the past creation of the government of Kosovo. Even if the political configuration alters substantially, and Lista Srpska is no longer needed for the creation of the government, it can still exercise constitutional provisions to block certain developments that may be in misalignment with Serbia's national interest such is the transformation of Kosovo's Army<sup>12</sup>. Hence, Serbia already has a direct influence in Kosovo and such influence is expected to enhance if and when the agreement of the Association of Serbs Municipalities is implemented. A revision of border line, or a territorial swap, would strip Serbia from this influence. It would also be considered a stab in the back for the rest of Kosovar Serbs living across the territory of Kosovo. Moreover, if it is also accompanied with a formal recognition of Kosovo or any other form of agreement that does not meet the appetite of the domestic public opinion, it would also risk the future of the current political elite in Serbia that is immensely dependent on their position towards Kosovo. So border revision may not be optimal as an end, but talks about it certainly serve as a mean to further contest the legitimacy of the state of Kosovo.

## Conclusion

The president may have implicitly confirmed that he recognizes that the revision of borders may include the separation of north, despite his best efforts to convince the public otherwise. In a recent interview on

Kosovo can advance on their respective European paths'.

<sup>11</sup> KIPRED 2018. Options for a 'Legally Binding Normalization Agreement' between Kosovo and Serbia. *Discussion Paper*. Available at [http://www.kipred.org/repository/docs/Options\\_for\\_a\\_Legally\\_Binding\\_Agreement\\_RM\\_260848.pdf](http://www.kipred.org/repository/docs/Options_for_a_Legally_Binding_Agreement_RM_260848.pdf)

<sup>12</sup> Ibid

national television, the president of the Republic of Kosovo for the first time showed signs of concern that Kosovo may be exposed to the immediate threat of 'Bosnianization', a term this exclusively used by the opposition parties when referring the danger that the agreement on Association of the Serbs Municipalities may pose to the constitutional order – an agreement this signed and purported as historical by the president himself. In his interview, President Thaci clearly states that “a border revision eliminates 'bosnianization' of Kosovo and the creation of a 'Republika Srpska' within the Republic of Kosovo”. This may very well be the generating source of his proposal – a way to avoid a legal monster the President himself agreed to create by locking it outside Kosovo jurisdiction- but also could as well be a late bargaining chip in relationship to Serbia and the EU.

All things being considered border revision in itself puts Kosovo's statehood at stake, and Kosovo as a result must not contribute to this agenda. It means that Kosovo publicly admits that it has failed to attain one the main elements of effective statehood, that of stressing its complete sovereignty across all its territory. In addition, opting for a border revision based solely on ethnic lines goes against the very sui generis identity that granted Kosovo the statehood, support, and current international legitimacy. Furthermore, openly discussing constitutional premises, such is the territorial integrity with a political adversary is only grist to Serbia's mill and their political quest to challenge Kosovo in the international area. Kosovo must treat Serbia's intentions towards Kosovo as if its ultimate goal is a dysfunctional state of Kosovo that is internationally disputed. That being established, Kosovo must take caution on

the extent to what is willing to negotiation for the price of a normalization of relationships with Serbia. This is not a level playing field for the parties involved because for one Kosovo and Serbia are not represented as two independent states in the dialogue. Second, the stakes are not the same. Admittedly, both states' European Integration agenda is correlated to a mutually accepted agreement, but Kosovo's stakes are higher. Unlike Serbia, Kosovo's international legitimacy is still on a limb and ideas such as border revision go against international consolidated statehood.

Besides, any border revision agreement in the Balkans requires also the green light of international main actors due to incalculable implication for the entire region and the fear of chain reaction events. This decision may call for a multilateral conference where the most influential states may be present, and once again, ten years after the declaration of independence, Kosovo's statehood may become an open dispute in the international area.

Conclusively, President's nonchalant interpretation that an agreement between Serbia and Kosovo on border revision is realistic, and both parties must embrace the values of dialogue inherited in the European Union by following the example of Belgium and the Netherlands<sup>13</sup> is ill advised. Instead, he must ensure that the dialogue serves as a platform were Kosovo pursues topics of significant national interest such as war crimes, war reparations, properties outside of Kosovo in the former Yugoslav republics, pension funds, return of cultural and historical artifacts, and missing persons from the late war, that are yet to be brought up on the dialogue table.

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<sup>13</sup> Belgium and Netherlands swap land in the New Year. *Deutsche Welle*. Available at <https://www.dw.com/en/belgium-and->

[netherlands-swap-land-in-the-new-year/a-41988494](https://www.dw.com/en/belgium-and-netherlands-swap-land-in-the-new-year/a-41988494)

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