

# Agreement in None, Including Its Name

**Kicking the Can Will Not Bring the  
Sides Closer Around the  
Association/Community**



Democracy for Development  
Demokraci për zhvillim  
Demokratija za razvoj



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Pristina, November 2013

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## Table of Contents

The Bright Side of Disagreement, 6  
Implementation, 8  
Competences, 9  
Reversing Decentralisation, 11  
Association Composition, 13  
    *North-South Dynamics, 13*  
    *Dividing and Reuniting Kosovo Serbs, 14*  
Shared Sovereignty, 16  
Centripetal vs. Centrifugal Forces, 18  
Scenarios & Recommendations, 20

Much of the talks between Prishtina and Belgrade have focused around the Association of Serb Municipalities. Belgrade has referred to this new institution as Community and Prishtina has gradually come to assent to this vocabulary as well.

The Community is the very embodiment of the level of protection (autonomy) that Kosovo Serbs are supposed to get. In an opinion piece for the New York Times, Ashton said that both parties found a common language for a level of autonomy for the Serbs in Kosovo.<sup>1</sup>

Prishtina has long accepted vertical links between Serbian municipalities in Kosovo and Belgrade, but rejected the creation of an institution that would join those municipalities horizontally, as it saw them as a precursor to a separate Serb entity.<sup>2</sup> It is not surprising then that it raised eye-brows in Kosovo that the Serbian leadership has primarily focused on the Association.

The Serbian Prime Minister said in early February that “The discussion focused solely on the Association of Serb municipalities, and all other issues are less important compared to that,<sup>3</sup> but the Association was also prioritised ahead of all other points agreed upon.

The negotiations produced a basic compromise to establish a supra-municipal body (primarily in the north) called Association of Serb municipalities. The following are excerpts of the agreement relevant for the association:

- (1) There will be an Association/Community of Serb majority municipalities in Kosovo. Membership will be open to any other municipality provided the members are in agreement.
- (2) The Community/Association will be created by statute. Its dissolution shall only take place by a decision of the participating municipalities. Legal guarantees will be

provided by applicable law and constitutional law (including the 2/3 majority rule).

(3) The structures of the Association/Community will be established on the same basis as the existing statute of the Association of Kosovo municipalities e.g. President, vice President, Assembly, Council.

(4) In accordance with the competences given by the European Charter of Local Self Government and Kosovo law the participating municipalities shall be entitled to cooperate in exercising their powers through the Community/Association collectively. The Association/Community will have full overview of the areas of economic development, education, health, urban and rural planning.

(5) The Association/Community will exercise other additional competences as may be delegated by the central authorities.

(6) The Community/Association shall have a representative role to the central authorities and will have a seat in the communities' consultative council for this purpose. In the pursuit of this role a monitoring function is envisaged.

The points above reflect the shallow level of consensus among the sides, and the two sides continue to disagree about everything else, including the interpretation of the text above.

## The Bright Side of Disagreement

The dualistic name of the new institution reflects a deep disagreement about its role, for one side sees a very different role for the Association compared to what the other side sees for the Community. While the rest is not agreed upon, there is an understanding about the overall direction as there are fears about potential derailment.

The Prime Minister of Kosovo has warranted that the future association is to “be based on the conception of an NGO without any executive role”,<sup>4</sup> which was supported by some in the opposition.<sup>5</sup> Until early January 2013, the Kosovo authorities refuted Serbia’s request for the Status of Autonomous Municipalities which was termed unacceptable and would not even be allowed for discussion.<sup>6</sup> At the same time, Serbia’s Prime Minister declared that,

The community will be based in north Mitrovica, it will have its property, bank account, assembly, president, deputy president and the council, just like a type of a government. It will have full supervision and executive authority when it comes to education, health, culture and spatial planning.<sup>7</sup>

The Association is to have a president, statute, council, and board. Since its membership is delegated through elected municipal mayors and assemblies, the association is both appointed (as Kosovo assented to) and elected (as Serbia insisted upon). Councilors drawn from municipal assemblies are to constitute the composition of the association.<sup>8</sup> The parallel with the Association of Municipalities was designed in order to allay the public opinion. But the comparison with this existing body pertained to the organizational structure and statute.

If an NGO-like Association is the lowest point in the expected range, the highest point resembles a powerful entity similar to the Republika Srpska. Despite assurances,



the unfolding of events, talks, and our prediction indicate that Association is to have limited executive and legislative powers as the rest of the paper indicates.

## Implementation

Much of the tone for the medium-term is set in the first weeks and months of its implementation. As per the implementation plan of 23 May<sup>9</sup>, Kosovo and Serbia created a management team in order to establish the Community, including drafting of the draft-statute. The names of the group's members have been decided, consisting of four representatives of northern municipalities, overseen by the Steering Committee. Serbian media have reported that

Kosovo officials had no say on who will take part in the group as the list of names was prepared by the Government of Serbia.<sup>10</sup>

Until the official formation of the Association, this management team is to discharge duties of points 4 and 6. According to the implementation plan, the management team should be ready to establish the Association by mid-December upon the certification of election results. This preparatory team is to be dismantled once the Association is formed.<sup>11</sup> The four officials have since worked closely with the Serbian Government and the draft-statute that they will soon put forward for discussion in Brussels is the one that Belgrade has produced.

It remains unclear who 'establishes' the association. The association has not been enacted with a formal act of the Parliament. Who are then the sovereign founders: the two governments or the four officials tasked to draft the statute or the original member municipalities?

## Competences

Much of the negotiations focused around the executive competences of the Association. The agreement provides that “the Association/Community will have “full overview” of economic development, education, health, urban and rural planning,” almost directly emanating from Serbia’s Platform for Kosovo, but not inconsistent with those outlined in Annex III of the Ahtisaari Plan.<sup>12</sup>

The key challenge is to interpret (or continue to negotiate) what does ‘full overview’ (point 4) means. The answer to this quandary will delineate the Association’s portfolio. Full overview is more likely to mean central-level ministry-like competences.

A number of issues may indeed be easier and would make sense to be tackled by Serb-municipalities jointly. Issues related to the Serbian culture, education, theatre, are the issues that the Association would contribute most to. Urban planning is a municipal authority but it may benefit from joint action if municipalities lack the necessary expertise. Unfortunately, the statements of its proponents spent little time with any of them.

**Full overview is likely to mean  
ministry-like competences.**

They rather focused on central-level competences, intending to transfer them to this new body, likely to lead with segregation, from sports to most walks of life. The best guide as to which list of competences has been foreseen by its proponents is Serbia’s platform.

Tendencies will persist to have the Association discharge other competencies such as “uniform register of companies,

socio-political organisations and religious communities”<sup>13</sup>. Despite the assurance that criteria for land-use<sup>14</sup> should follow the central legislation, the Association may introduce additional rules and structures, with the particular risk of ethnic zoning.

Competences must be harmonized with those of the central government with the risk that they may clash as well as be in contradiction with the applicable legislation and national policy. Prishtina is likely to reject many but some of them may find their way into the statute, or the Association may de facto exercise them, using legal vacuum and political pressure. Others may be found on the dialogue plate in latter stages.

While Prishtina insists this is not possible, the point 5 of this agreement clearly foresaw the transfer of additional powers from the central government to the Association. This point has not raised alarms until now, but years of further dialogue await Prishtina and Belgrade. Prishtina will need further concessions from Belgrade in exchange for further normalisation (e.g. international insurance, international sports events, UN membership). In exchange, Prishtina will need to make further concessions to Belgrade and the international community. Point 5 will serve as an entry point to delegate further powers from Prishtina to the Association, gradually consolidating the latter’s autonomy.

## Reversing Decentralisation

Much of the competences that the platform seeks to concentrate in the Association<sup>15</sup> had already been decentralised to municipalities, including cooperation with Serbia. While the Association will bring Serbia closer to them, it will bring heavy political weight subjugating municipality to its will. While Serb-majority municipalities enjoy decentralisation vis-à-vis the Kosovo government, they are likely to enjoy less protection from the Community.

The initial agreement was that the Association was to acquire a coordination role among Serb-municipalities, as a manner to amplify their voice through joint action. The assumption is that Serb-majority municipalities will delegate some of their competences to the Association.<sup>16</sup> This thin layer designed to enhance the power of the Serb community vis-à-vis a potentially negligent central government has since fallen into oblivion.

It is worrisome that the Association not only acquires competences from the central level but it also effectively takes powers from municipalities. Effectively, the agreement will almost certainly reverse much of the decentralisation, running against the very principle of subsidiarity emphasized the European Charter of Local Self Government (and espoused by the agreement). Subsidiarity foresees that whenever there is lack of clarity over a particular competences, or an issue is not related, it should be exercised by institutions closer to the people (lower level).

An Association of significant competences is being designed with the intention to gain significant competences from Prishtina and from the municipalities. As the Association is seen as a key political actor, the battle will be fought to scrape off as many competences from all levels of governance and to widen its scope and power of action. Practically, the emergence of the Association will also bring

a dose of recentralization for the Serb municipalities, effectively creating a second capital for the Serb community.

The table below makes an initial Comparison of current arrangements, based on the Ahtisaari proposal, with two ways the likely competences of the future association. The last two columns indicate the possible competences of the association and at whose expense they are likely to emerge.

Competences	Current / Ahtisaari Arrangements		Negotiated & Interpreted 19 Apr Autonomy	
	Foreign Policy, etc. Police, courts Health & education Culture & joint municipal action Coordination & advocacy role	Central	Central	Central
	Joint body		Association	Community
	Serb-majority municipalities			
Municipal own	Alb-majority municipalities		Serb-majority municipalities	Serb-majority municipalities

## Association Composition

### *North-South Dynamics*

According to the agreement, up to ten Serb-majority municipalities – *initially* four in Serb-run northern Kosovo and *possibly* six from the rest of Kosovo - should acquire membership and transfer their responsibilities to the Association. As per the current list of demands, Serbia's demands for broad autonomy to be offered to all Serb-populated areas in Kosovo are considered to have been met.<sup>17</sup> But this is not certain yet for there are already hints of additional requests, for example to include the Municipality of Dragash/Gora in the Association too.

The Association is clearly designed to promote the interests of the north primarily. The final wording on the composition of the Association by default includes only the four northern municipalities. The other six eligible municipalities will have to formally accede subsequently, and the procedures for joining or leaving the association are yet to be defined.

The north has clearly been favoured during the dialogue. This advantage may have been to encourage them additionally to join the process but it may also turn into a long-term leverage to marginalise the Serbs in the south. While insignificant, it is symbolic that the north as a region is to acquire a separate seat at the Communities Consultative Council.

The first favour for the north was that the four northern municipalities form the core of the Association. The preparatory team, which is drawing the statute and discharge its duties until the Association's formation, is composed of northern officials only. Such a misbalance towards the south (where just under two-thirds of Kosovo Serbs live) already treats them as second-tier members. Even the little opposing power to the Srpska List that may

survive after elections may disappear entirely once part of the Association is formed.

**The Association may have indeed been created for the north, and the offer was extended to the south temporarily to allay the Kosovars' fears of impending territorial autonomy.**

Municipalities are unlikely to delegate everything that is expected of them. If the transfer of competences upwards remains voluntary as foreseen, few municipalities (especially southern ones) are likely to devolve some of the more lucrative competences such as: land management, housing. This is an additional reason for a north-south split, further disassociating the south.

After all, perhaps the Association was indeed created for the north, and the offer was extended to the south only to allay the Kosovars' fears of impending territorial autonomy. At least temporarily, the association may be a Kosovo-wide structure,<sup>18</sup> but if it chooses to remain an institution for the north only, it can, and will likely do so.

The north's balance vis-à-vis the south may not be motivated both in terms of geo-politics as well as by intra-Serb party politics. Whether the north is treated differently will ultimately depend on the composition of the Association and the balance of forces there.

### *Dividing and Reuniting Kosovo Serbs*

The previous DS-led government in Belgrade had divided Serbs into patriots and traitors, this Government has divided them even more, as described in a recent analysis.<sup>19</sup> Belgrade aims to weaken Serbs outside its control at the expense of those loyal to the current Kosovo government coalition. Southern Serbs are currently confused and likely



to lose to the Srpska List.

The Association will thus weaken municipalities which may find it difficult to confront Belgrade and the Association in order to retain some the hard-won privileges. A combination of several factors (electoral results, the simplistic division into patriots and traitors, the continuation of the dialogue, and the strengthening of the Association) is likely to homogenise all Serbs.<sup>20</sup> Instead of plurality of opinion, all political groupings will join their radical brethren and follow Belgrade's cue closely. Through the implementation of the agreement, southern Serbs will find ways to join Serbs from the north.<sup>21</sup>

## Shared Sovereignty

Through its state platform and subsequent resolution of its Parliament, Serbia is to regulate the Association within its own legal framework, granting it similar to provincial powers. The agreement refers to a constitutional law (point 2) which only exists in Serbia's legal framework. Serbia is additionally preparing to change its constitution to transfer Kosovo's 'provincial' competences to the Association. Kosovo rightfully worries about potential ramifications, for de facto this body will account to Belgrade more so than it does to Kosovo.

Inventiveness also extends to the legal fiction that enables the Association to maintain legal status in both countries. The former Italian Ambassador to Kosovo rationalised this ingenuity saying that "the Serb association will not function in violation of Kosovo's laws and Constitution, but will enjoy some type of legitimacy from Belgrade too".<sup>22</sup>

**Belgrade openly states its intention to fund the Association and exercise effective control of it. Belgrade demands exactly what Kosovo fears most, that the Association becomes Belgrade's hand-brake over Kosovo's functionality.**

Serbia intends to see a strong Association which effectively controls the police in the north, is horizontally (not vertically) connected to MIA in Prishtina, controls the finances directly and to have its President.<sup>23</sup> This list would not be as worrisome if was intended for some dose of self-governance for the Serb community. But Belgrade openly states its intention to fund the Association and exercise effective control of it.

The fact that the Association is not directly elected may give

Belgrade an easier route to be the main source of the Association's political (and financial) clout. Statements made by Serbia's Minister for Kosovo issues, Aleksandar Vulin, do not even hide that Belgrade demands exactly what Kosovo fears most, that the Association becomes Belgrade's hand-brake over Kosovo's functionality.

Practically, the municipalities which are elected by Kosovo's law, and in elections organised by Kosovo are then turned to supervision and guidance by an institution funded and controlled by Belgrade. As with other unclear points, hopes are placed with the EU to resolve as disputes arise.

Leaving such a major issue unaddressed clearly is the main opportunity missed and leads to the conclusion that little of importance was actually agreed upon, unless a body of dualistic sovereignty was the very aim of the agreement. Short of clarity on this essential matter, nudging it along beckons for more pulling-and-tugging in the years to come, which may pull the Association either closer or further away from Prishtina.

## Centripetal vs. Centrifugal Forces

A positive outlook sees the Association as a major compromise which increases the Serb lobby in Kosovo in exchange for reducing its centrifugal potential. Serbia's opposite calculation was summarised by a Belgrade analyst

Maximum that we can get in this unfortunate situation is that we keep options open for the Association of Serbian municipalities and for the best and for the worst case scenario. Association of Serbian Municipalities may be provisional for integration in Kosovo, but also for the partitioning of Kosovo.<sup>24</sup>

Unable to resist Belgrade, Prishtina has assented to a powerful Association, placing its hopes on Brussels<sup>25</sup> and the six southern municipalities to provide critical gravitational force for the Association.

The partition scenario may become more conceivable if the north is effectively treated differently from the rest of Serb-majority areas. The two-tier membership discussed above leaves this option open. But if this is avoided, the alternative is not much of a consolation.

**Segregation will be pursued widely, forfeiting much of the progress of inter-ethnic integration that southern Serbs have already accomplished.**

The probable inclusion of southern Serbs in the association may have a positive dampening effect. While there may be a critical mass to refute partition, the competition with Srpska will likely induce all southern Serbs to adopt an aggressive attitude as well. At that point, segregation will be the main policy to be introduced widely, forfeiting much of the progress of inter-ethnic integration that southern Serbs have already accomplished.

A membership of ten versus four, and the non-contiguous nature of the Association provide some assurance that the north cannot easily break away from Kosovo. Subsequent elections are likely to increase the patriotic competition among Kosovo Serbs. Already in the elections in 2013, formerly constructive forces had to step up their nationalistic fervour in order to compete with the Srpska List.

**The impending design of the Association is to raise long-lasting invisible walls, which will prevent reconciliation and provide fuel for continuous interethnic friction.**

Time is likely to strengthen the level of autonomy in the north which will have detrimental effects on inter-ethnic relations and interaction with the Kosovo institutions. The Ahtisaari Proposal erected high walls for protective purposes despite the understanding that they prevent interaction in the long-run. They may have been necessary then, but it was explicit that such ‘walls’ need to be lowered (e.g. set-out clause for the reserved seats in the Assembly). Unfortunately, the impending design of the Association is to raise long-lasting invisible walls, which will prevent reconciliation and provide fuel for continuous interethnic friction.

## Scenarios & Recommendations

As the Association is mediated in Brussels in the coming weeks, it is essential to introduce sufficient mechanisms to ensure that centripetal forces will be at least as strong as centrifugal ones for the foreseeable future. This should be minimum an indicator that may pave the way for further success in order to justify the ‘historic’ label.

Brussels should not wash its hands too quickly. Instead of adopting a hands-off, light mediation approach, it will have to talk the formation of the Association.

The second main worry remains its disruptive power and to what degree it is an assurance to the long-term wellbeing of the Kosovo Serb community and to what degree it will serve Belgrade’s daily politics. The concentration of power in the Association is not the main problem but that this power may serve a government for whom this is a foreign policy issue.

A third immediate worry remains the lack of transition of the police and judiciary. It was ostensibly foreseen that the Association is to become functional after the local elections<sup>26</sup> and after the security and justice structures have integrated into Kosovo’s police and justice system.<sup>27</sup> The creation of the Association ahead of their dissolution and integration into the Kosovo system opens the possibility to bargain for their inclusion as institutions of the Association.

Serbia’s control over the police and judiciary was in direct contravention even with the Security Council Resolution 1244, which might just be made possible if the mediators are not sufficiently cautious in this key juncture.

An Association that is hostile to Prishtina and has minimum readiness for compromise is a combustible mix with sufficient fuel for a long-term deadlock and tension. Association’s formal integration into Kosovo’s institutions is clearly to be used to keep an eye for a latter opportunity to

break away. Even more likely, its disruptive power may be used to make Prishtina so desperate, so that it goes back to the original proposal made by the Serbian PM, Dačić.

Almost on regular basis, and virtually against each key junction in talks, the Serbian Prime Minister Dačić always revisits the old idea of territorial exchange. He presents it as his personal opinion, but insists that this would have been more effective, efficient, long-lasting, and overall better idea than the agreement being negotiated in Brussels.

The degree that this pulling-and-tugging evolves into a problematic scenario will depend on details and their interpretation. By the time the agreement is fully detailed out and implemented, the Association may acquire significant powers. If some of the competences have a clear and territorially contiguous jurisdiction, a strong autonomy will take shape in the north.

Depending how some of the uncertainties identified in the paper are settled, or effectively practiced, the Association may gradually acquire more features of autonomy. The label of autonomy should not become a scare-crow for the label is less important than the content – it is the list of competences that will define the potential for trouble in the future. For Kosovo it is essential to exclude some type of assistance and cooperation, make the rest fully transparent, and ensure that any level of protection is intended for Kosovo Serbs. While Belgrade will always sneak through, enabling its influence through the big door has not helped make any steps forward.

Autonomies can be useful to stem additional demands if they address the real needs and concerns of people. But when they serve territorial ambitions of neighbouring countries, they are much more of a springboard for partition. The current nebulous wording of the agreement leaves sufficient room for creative interpretation and leaves

latent fires of conflict unextinguished.

The Kosovo side initially refuted an executive and legislative role for the Association fearing it could create a third tier of government, and thus be in contravention with the Constitution of Kosovo. Considering all of the above, the Association may not only (a) develop into a full-fledged third layer of governance just yet,<sup>28</sup> but it has the potential to (b) create an effective second capital city for the Serb community, and (c) legally accept that Belgrade shares sovereignty on much of Kosovo. It is not easy to identify the ‘common language’ that Lady Ashton spoke about.



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