Mogherini's Chance for True Rapprochement between Serbia and Kosovo

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Summary

Although it will be very difficult to match the public hype of her predecessor's mediation, it is crucial for the new EU High Representative Federica Mogherini to revive the momentum to obtain meaningful progress in the Serbia-Kosovo dialogue. This policy paper[1] lays out several specific options for the EU to nudge the sides towards cooperation and true rapprochement. Given energetic mediation and smart use of EU's leverage, Mogherini's five-year term could realistically resolve most of the issues that poison relations between Serbia and Kosovo. In the next stage of dialogue, we recommend a three-pronged approach: (1) A formal channel of communication between Prishtina and the northern municipalities; (2) A technical dialogue between Prishtina and Belgrade focusing on the implementation, and (3) A political dialogue between Prishtina and Belgrade broaching new topics.

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Introduction

Contrary to the high expectations created by the first agreement of April 2013, normalization of Serbia-Kosovo relations is far from being a done deal. Even if all that had been agreed upon was implemented, it still falls well short of what normalisation ought to mean. Judging by the considerable problems in its implementation, the new EU High Representative (HR) Federica Mogherini has inherited a challenging but a potentially rewarding task – to pick up the pieces of what was labelled a historic breakthrough. The first agreement was a game changer in the sense that it "made it normal to meet up and talk at the highest political level", but it has also allowed for widely divergent interpretations. The very vagueness that brought former enemies together has hobbled the implementation.

The outgoing HR, Lady Ashton, brought together the two prime ministers on almost two dozen occasions, which lead to an overly optimistic sense that the difficult part is behind us. Regional cooperation will not happen without EU involvement/without nudging from the EU. Ms. Mogherini is familiar with the Western Balkans, and will also have at her disposal a more established European External Action Service (EEAS), so assiduously built by her predecessor.[2]

[1]This is the third (and the last) in a series of research papers published within the project "Visegrad Support for Dialogue between Serbia and Kosovo" supported by the International Visegrad Fund (www.visegradfund.org). Its authors are grateful to Vladimir Bartovic (Europeum, Prague), Tomasz Żornaczuk (PISM, Warsaw), Branislav Nešović (Aktiv, Mitrovica), and Aaron Fishbone for their feedback on an earlier version of this paper, and to CEPI's Marián Majer and Andrej Chovan for their project management support.

[2]Foreign Affairs. 4 September 2014. "High Representative, High Expectations." http://www.foreignaffairs.com/articles/141958/jeremy-shapiro-and-riccardo-alcaro/high-representative-high-expectations

[3]Vesti Online. 28 August 2014. "Đurić: Prioritet formiranje zajednice srpskih opština." http://www.vesti-online.com/Vesti/Srbija/429258/Duric-Prioritet-formiranje-zajednice-srpskih-opstina

Further progress in resolving this problem serves at least five EU foreign policy priorities: (a) the pacification of South-East Europe's countries most recently hit by an armed conflict, and the creation of better pre-conditions for regional cooperation, stability and foreign investment; (b) the democratization of the two countries, the increase of the demand for better governance, and the preparation of these states for eventual EU accession; (c) boosting EU's soft power and its global standing; (d) reducing future migratory pressures; and (e) curbing the influence of Russia as the EU's geopolitical competitor in the Western Balkans.

Our previous paper warned that with a series of key elections on the horizon in 2014 – in Serbia (16 March), the EU (25 May), and Kosovo (8 June) – the implementation process would have a time-out and northern Kosovo might remain in a legal limbo. The paper also predicted that continued confusion over appropriate regulations would hinder the northern municipalities' integration into Kosovo's legal system and stand as a blockage in the improvement of Serbia-Kosovo relations. Last of all, the paper highlighted that both negotiating parties were unlikely to reach substantial agreement on the statute of ASM soon. An election-rife year was inauspicious to engage in further dialogue to design the modalities of the association. While not urgent, short of adding detail to the Association, the status quo will not contribute to cooperation in two aspects: 1) the continued existence of some of the so-called parallel structures of Kosovo Serbs (which is the violation of what has been agreed between the negotiating parties); and 2) the unfinished institutional transition of northern municipalities and their inclusion into Kosovo's institutional framework.

The EU's ability to deliver a more ambitious goal is hamstrung by its reduced leverage over Belgrade and Prishtina. Serbian officials have been drawn closer to the EU, and in the long-run EU's leverage has improved. The start of EU accession talks came to be understood chiefly as an award for the breakthrough in the Serbia-Kosovo dialogue. While the leverage has improved in the long-run, it has reduced in the short-to-medium term. The incentive for Serbia's decision-makers to make major compromises is lower – Serbia has already received the main prize, the start of negotiations. Opening and closing of chapters is seen as a significantly lower incentive for the political elites and unlikely to motivate the government to embark in major conciliatory moves in the next five years.

After the June parliamentary elections, Kosovo plunged into its biggest political crisis since independence. There was still no government and working Parliament in Prishtina when this paper was finalized. Unexpectedly, the latest development has had a positive and unintended consequence on how Kosovars see the dialogue. The only party opposing the dialogue has been drawn into a political coalition with the rest of the opposition in their drive to remove Thaçi from the Prime Minister's seat. Vetëvendosje's bid to become more acceptable to the international community and other parties has led to a gradual moderation of its anti-dialogue rhetoric. Vetëvendosje's leaders have highlighted the importance of dialogue with northern Serbs and showed willingness to lead dialogue. They have even argued that they would engage in honest dialogue for true resolution of issues and not in the one that, in their view, the current Kosovo government led only to please the international community.

In the meantime, the political gridlock in Kosovo has reduced the dialogue to meetings of technical working groups.[4] The absence of a government in Prishtina has allowed Serbian negotiators to assume a rather comfortable position, for the pressure for opening new topics has subsided.[5] While all sorts of technical agreements, such as the latest ones on Integrated Border Management (IBM),[6] free movement for Kosovan citizens transiting Serbia, and energy are certainly very commendable,[7] it is crucial for Belgrade and Prishtina to be compelled towards faster implementation and more ambitious goals in the near future. Instead of moving towards a path of cooperation, for many the dialogue is a continuous zero-sum struggle with peaceful means.

[4] Gazeta Express. 15 September 2014. "Kosovar Thaci Aims for Third Term as Stalemate Threatens Economy." http://www.gazetaexpress.com/en/economy-of-kosovo/kosovar-thaci-aims-for-third-term-as-stalemate-threatens-economy-42755/

[5] Balkan Insight. 4 September 2014. "Kosovo Negotiators Hobbled by Strife at Home." http://www.balkaninsight.com/en/article/kosovo-negotiators-hobbled-by-strife-at-home

[6] Vesti Online. 4 September 2014. "Dogovor Beograda i Prištine u vezi prelaza." http://www.vesti-online.com/Vesti/Srbija/431135/Dogovor-Beograda-i-Pristine-u-vezi-prelaza

[7] Gazeta Express. 17 September 2014. "Edita Tahiri: The agreement for energy is reached." http://www.gazetaexpress.com/en/news/tahiri-eshte-arritur-marreveshja-per-energjine-43249/

[8] European Commission. 8 October 2014. "Serbia 2014 Progress Report," pp. 5-6. http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf

[9] "EU Opening Statement for Accession Negotiations, adopted on 9 January 2014 http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&f=AD%201%202014%20INIT, p.10

[10] For further details see: Filip Ejdus, "The Brussels Agreement and Serbia's National Interest: A Positive Balance Sheet", Belgrade: KAS, 25 April 2014. Available at: http://www.kas.de/wf/doc/kas_12788-1442-1-30.pdf?140428121637

[11] Ibid.

It is crucial for the new EU High Representative Federica Mogherini to infuse new momentum into the Serbia-Kosovo dialogue. In its next stage, it should lay firm ground for full normalisation of bilateral relations in the next three-to-four years, which is the period most probably without national elections either in Serbia, Kosovo, or the EU. She should clearlydefine what normalisation is in order to have a benchmark toward which to move.

Lessons Learned

The Brussels Agreement of April 2013 was often termed a major historical breakthrough. We see it as a major change in communication between both sides. If the two parties manage come to an overall solution, we can refer to the first agreement as the start of a historical process. The EU should certainly take pride in its diplomatic victory, but its importance will only be justified if it leads to a breakthrough in the future.

Retrospectively, it is clear that signing the agreement does not necessarily amount to accord on burning issues. The vague text of the Agreement hides serious disagreements that represent the main reason for the lack of implementation. The provision on the Kosovo Serb Association has narrowed down the choices but the dual labelling (Association and Community) enables both sides to nurture very different visions how they see this new institution unfolding in reality.

A number of other issues have remained challenging in this respect, providing a reality check in various spheres of practical life. The most recent Serbia 2014 Progress Report by the European Commission (EC) listed recognition of diplomas, illegal border crossing-points, representation and participation of Kosovo in regional forums, as well as the ASM and the slow integration of Serbian Ministry of Interior and civil protection personnel in northern Kosovo as the key outstanding issues.[8]

Therefore, it is advisable for the EU to address the current problems in the implementation and learn a lesson for the future. According to EU's negotiating framework for Serbia's accession, the normalisation is expected to lead to a "legally binding agreement by the end of Serbia's accession negotiations, with the prospect of both being able to fully exercise their rights and fulfil their responsibilities".[9]

The legally binding agreement does not constitute de jure recognition but would be considered as yet another step towards Serbia's de facto recognition of Kosovo. However, as the EU's negotiating framework does not specify what will be the content, let alone the wording of the legally binding agreement, the EU will have to work hard to mediate a solution acceptable for both sides.[10]

Ambiguity may have served a purpose (using the lack of clarity to get an agreement as mildly effective as it was), but next agreements will need to effectively bring the two sides closer substantially, hence clarity will be very important. In addition, Kosovo's northern municipalities will have to be brought fully on board, and to integrate into Kosovo's political life in a way that addresses their fears and concerns.

The EU conditionality has been instrumental in making the talks between Belgrade and Prishtina happen.[11] If the EU as a whole has internal differences, individual states may need to continue with the policy of conditionality, chiefly modelled after the previous instance when Great Britain and Germany introduced adequate mechanisms which have taken form in Chapter 35. While every acceding country had a chapter devoted to "other issues", it may be novel that such a chapter, in Serbia's case chapter 35, may become the most important one. Chapter 35 may be the first to open and the last to close. In this respect, it may be argued that although the EU has expended its main prize, it retains a workable instrument to ensure Belgrade's delivery of results on the ground.

[4]Gazeta Express. 15 September 2014. "Kosovar Thaci Aims for Third Term as Stalemate Threatens Economy." http://www.gazetaexpress.com/en/economy-of-kosovo/kosovar-thaci-aims-for-third-term-as-stalemate-threatens-economy-42755/

[5]Balkan Insight. 4 September 2014. "Kosovo Negotiators Hobbled by Strife at Home." http://www.balkaninsight.com/en/article/kosovo-negotiators-hobbled-by-strife-at-home

[6]Vesti Online. 4 September 2014. "Dogovor Beograda i Prištine u vezi prelaza." http://www.vesti-online.com/Vesti/Srbija/431135/Dogovor-Beograda-i-Pristine-u-vezi-prelaza

[7]Gazeta Express. 17 September 2014. "Edita Tahiri: The agreement for energy is reached." http://www.gazetaexpress.com/en/news/tahiri-eshte-arritur-marreveshja-per-energjine-43249/

[8]European Commission. 8 October 2014. "Serbia 2014 Progress Report," pp. 5-6. http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf

[9]"EU Opening Statement for Accession Negotiations, adopted on 9 January 2014 http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&f=AD%201%202014%20INIT, p.10

[10]For further details see: Filip Ejdus, "The Brussels Agreement and Serbia's National Interest: A Positive Balance Sheet", Belgrade: KAS, 25 April 2014. Available at: http://www.kas.de/wf/doc/kas_12788-1442-1-30.pdf?140428121637

[11]Ibid.

For Prishtina, resolution of all outstanding issues with Serbia represents a necessity primarily for the purpose of consolidating its sovereignty, and less for its accession process. Kosovo is additionally bound to treat the integration of the Kosovo Serb community as a priority, including a careful approach to the sensitive and politically charged process of integrating the north. In previous years, the EU Progress Reports praised Kosovo's progress on inter-ethnic issues and dialogue, and criticized everything else. A similar picture also emerged this year. This indicates that the limited capacities of the fledgling states are generally invested in the dialogue with Serbia, often at the expense of other agendas. In the long run, Kosovo, as one of the poorest countries in Europe, needs rapid development to improves its socio-economic.

The EU's leverage on Kosovo is hobbled primarily by the lack of recognition of Kosovo by five of its members. The attractiveness of the EU as an ultimate destination depends on how realistic the integration path is, and the non-recognition makes it difficult to see the EU membership as credible. For example, progress on the SAA for Kosovo is considered too little to motivate Kosovo's politicians to view it as the highest priority. Unlike Serbia, the EU membership for Kosovo is too distant to matter seriously, and the expectation is that any of the five countries could veto Prishtina's progress later on – given the numerous junctures where Kosovo's membership can be blocked.

Recommendations

A number of practical steps can contribute to a more effective EU role in leading Serbia-Kosovo dialogue to the next stage. Success in the implementation will contribute to an improved clout of the EU when it desperately needs to present a tougher posture on its Eastern flanks, as well as serve as a general probe for Serbia's and Kosovo's desire to show their European values and join the EU after 2019. To our belief, the objectives above can be possible given progress on a number of recommendations:

1. **Generate new momentum and use conditionality effectively.** The new High Representative Mogherini should step up diplomatic efforts, include the two governments in various efforts and regional forums, ultimately generate new momentum towards full implementation of all agreed issues, and then move on to open the next chapter of outstanding issues. HR Mogherini should stream-line the EU integration and conditionality approach to push for major progress.
2. **Insist on full implementation, including the ASM.** The issue of the Association of Serbian Municipalities, and the remaining parallel structures are the key left-overs from the April 2013 package, and should be given priority. The statute of the Association, its implementation in practice, as well as meaningful implementation of other points will influence how the Kosovo Serbs fit into Kosovo's institutional life and politics. Short of adequate implementation, there may be resistance to broaching new topics for further normalisation.
3. **Ensure an ever-broadening scope of regular Serbia-Kosovo talks.** Building future ties is dependent on an ever-broadening scope of regular Serbia-Kosovo talks that the EU should continue to insist on. This requires broadening the scope of Serbia - Kosovo negotiations. The next stage should tackle remaining bilateral disputes (e.g. railway transport, Kosovo's participation in international sports, allowing planes flying to Kosovo to use Serbia's air space, addressing of pre-war bank and pension savings, border/boundary demarcation, Kosovo's internet domain name, etc.), decouple them from the issue of recognition, and address them all one by one. There may
4. **Introduce greater clarity and aim for real approximation of positions.** The main change of discourse should be the aim for clarity and detail. Leaving space for various interpretations and vagueness has proved to be useful in short-term but it could only have been done once. Concluding additional agreements that are vague will be counterproductive at this point.) More clarity will provide a greater degree of approximation of positions – a much more ambitious goal thanwas sufficient for the previous HR to proclaim success. The key is to induce the sides to significantly shift how they frame the other side in their definition of self-interest.

[12]The Wall Street Journal blog. 24 September 2014. "2014 Tougher for the Balkans- So Far." http://blogs.wsj.com/brussels/2014/09/24/2014-tougher-for-the-balkans-so-far/
[13]European Commission. 8 October 2014. Kosovo* 2014 Progress Report. http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-kosovo-progress-report_en.pdf

5. **Contribute to a confident elite among Kosovo Serbs.** It is essential for the Kosovo Serb community to nurture its own elite which will maintainrelationswith Belgrade and Prishtina and fully engage with all staholders and serve as an independent interlocutor, to faithfully represent the interests of the KosovoSerb community.
6. **Advance a three-track approach.** The vehicle to deliver the recommendations above is a three track dialogue: (a) Prishtina - northern municipalities; (b) Belgrade - Prishtina talks on technical level so as to continue implementing what has been agreed upon; and (c) Belgrade - Prishtina talks on opening new issues in their bilateral relations. The EEAS should continue to be involved in the last two, while the first can be supported by the EU Mission in Prishtina.

The Prishtina-north municipalities dialogue would tackle modalities how to translate dialogue into specific local solutions. The Kosovo Serb community needs to be brought fully on board, in order to improve the implementation and to lower the tensions in northern Kosovo. The northern municipalities need to maintain working communication with the authorities in Prishtina to address mutual fears and perceptions about each other. It will also help the two sides to communicate directly, address practical issues build a degree of trust, and lead to emotional de-escalation.

The technical track would continue to focus on clear deadlines and milestones with regard to the implementation of all that is agreed upon between Kosovo and Serbia. The high-level political track is key to advance the agenda by introducing additional topics into the negotiations, until it reaches the milestone of "everything except recognition". Although most pending issues are often seen as related to status, numerous previous issues have already been decoupled from status and addressed. Full normalisation of relations between Serbia and Kosovo will be highly dependent on EU's role as a strong mediator, strong conditionality, the clarity of the agreements to come, mutual dialogue, and progress of relations between the two countries. Given vigorous mediation and confident use of EU's power of attraction (while it is still there), the next five years of Mogherini's term could realistically bring resolution of almost all outstanding disputes between Serbia and Kosovo, short of Serbian recognition of Kosovo. Assuming that the EU will continue with accession process of the Balkan countries, and that further enlargement is still in the cards after 2019, it is crucial for both Serbia and Kosovo to resolve most of their differences by the end of the current EU institutional cycle. After the historic pretence that served a purpose, the new HR Mogherini should boldly use all diplomatic tools she has available to push for true rapprochement between Kosovo and Serbia.

[14] - Europa. 26 August 2014. "Western Balkans Conference in Berlin on 28 August 2014 – President Barroso, Vice President Oettinger and Commissioner Füle to attend." http://europa.eu/rapid/press-release_MEX-14-0826_en.htm

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