

## Examining Old Dialogue, Assessing New Negotiations

Serbia and Kosovo returned to the negotiating table in Brussels this summer after a two-year pause to resume the resolution of the dispute. The new process has the renewed blessing of the EU and its key member states. EU's special representative Miroslav Lajcak facilitates the negotiations. 'Nothing is agreed until everything is agreed' is the main principle of the negotiations aiming for a package deal. The Brussels dialogue is a model suitable for conflicts that have the luxury of time, mostly in post-conflict situations such as Kosovo and Serbia, but not for those with active hostilities. Unlike the Rambouillet and Vienna negotiations, this model relies less on international pressure and more on the willingness of the parties in the conflict. The model aims to find a solution that satisfies both sides. Unlike the previous processes that relied on imposed solutions, the Brussels dialogue engages the sides directly in an open-ended negotiation, without the pressure of time. This is certainly a more parties-oriented process, but also less effective. Even the already signed agreements are being renegotiated again and again and take forever to be implemented.

To analyze the Brussels dialogue and the ongoing parallel US initiative and to discuss and forecast their trajectories, the Council for Inclusive Governance (CIG) convened on September 18-20, 2020 in Kopaonik, Serbia, a group of experts from Kosovo and Serbia. The workshop participants defined the main challenges that faced the old dialogue and seem to be in the way of the new one too, assessed the new EU and US initiatives, and forecasted the negotiation's trajectory.

This report is based on the workshop discussions held under the Chatham House Rule. The workshop is part of a project on the Kosovo-Serbia relations supported by the Swiss Federal Department of Foreign Affairs (FDFA) with additional support from the Friedrich Ebert Foundation (FES) Office in Belgrade. CIG's representative in Serbia Igor Novakovic prepared the report. The report does not necessarily reflect the views of individual participants, CIG, FDFA, or FES.

### Avoid repeating old mistakes

The old Brussels dialogue produced a number of positive results, though it did not "eliminate the conflict." It transformed a status quo into a working relationship, making it easier to address the future challenges. The dialogue's breakthrough was the 2013 Brussels Agreement initialed by both Serbia's and Kosovo's prime ministers. But not all of what had been agreed has been implemented. The 'partition discussions' and the Kosovo customs tariff brought the dialogue to a halt. The objective of the workshop's participants was to scan the old dialogue and highlight its shortcoming. Some of these shortcomings could serve as lessons learned and are to be avoided in the new process.

- Constructive ambiguity and sporadic ethnic tensions negatively affected the course of the dialogue. The EU should have paid more attention to preserving stable relations on the ground while conducting the negotiations. Constructive ambiguity was beneficial at the beginning, as

it helped with the conclusion of the agreements. But it proved to be challenging for the implementation of the agreements, as the sides interpreted them in conflicting ways. Constructive ambiguity as a standard was necessary, but it was overused.

- The EU ran out too fast of attractive carrots and painful sticks. The EU integration prospects became even more distant during the negotiations and became increasingly less important for Kosovo and Serbia negotiators. Serbia realized that a Kosovo compromise is not enough for membership, that it should meet also the rule of law criteria. Denied visa liberalization and offered an unusual Stabilization and Association Agreement, Kosovo realized that a compromise with Serbia would not help develop a path to membership.
- The dialogue's goal to 'normalize relations' but not to 'conclude the conflict' was not ambitious enough. One can normalize relations between two societies, but between two governments the goal should be to resolve the conflict.
- The ruling elites in Pristina and Belgrade instrumentalized the process so as to safeguard their own personal interests. Both sides engaged in a game of face-saving at home and personal political promotion abroad. Normalization and resolution of the dispute became peripheral objectives, thus further undermining an already non-popular dialogue in Serbia and Kosovo. The leaders spent more time on using the dialogue results for their personal benefit than on implementing the agreements.
- The dialogue lacked an implementation mechanism, leaving the agreement implementation solely dependent on the will of the sides. Consequently, the 'voluntary' implementation deadlines were violated over and over again. There were no penalties for non-compliance, though the EU did slow Serbia's integration process and denied visa liberalization to Kosovo. These penalties, however, did not target the leaders' personal interests. Despite the absence of such a mechanism, about 60 percent of the agreements have been fully implemented, about 20 percent mostly and partly implemented, and about 20 percent—including establishing the Association/Community of Serb-Majority Municipalities—have not been implemented at all. The Association/Community became an issue of the Brussels's new dialogue.
- Serbs in Kosovo were left out of the process, even though their integration into Kosovo's system was a key element of the dialogue. Though some rather 'forced integration' of the Serbs in the north took place, it is not sustainable because it lacks the commitment of the population. The existing 'fragile integration' is a result of Belgrade's pressure. If Belgrade's pressure stops, so will the integration. Currently, the integration is halfway, and the north remains a *de facto corpus separatum* in Kosovo.
- The EU mediator did not always represent the entire union due to different positions of the member states on Kosovo. For example, Germany's tougher position and conditioning suffered from Spain's rather opposite view. The mediator's success was affected by conflicting intentions and messages of the EU member states. Given these internal disagreements within the union, an incremental process focusing on resolving practical issues was in effect a compromise between member states that recognize Kosovo's independence and those that do not.

## Assessing new initiatives

The two-year negotiation stalemate and chaotic relations ended when the US and the EU launched two new uncoordinated initiatives. US President Donald Trump's envoy led an initiative on 'economic normalization,' while EU's envoy Lajcak focused on 'political normalization' aiming to reach a 'comprehensive agreement.' There are many overlaps between the two initiatives, but little cooperation and coordination between the two actors. Pristina and Belgrade are trying to please both sides, though clearly prioritizing their relations with US at the moment.

The workshop participants offered an assessment of the EU and US initiatives.

- The EU-declared goal of concluding the Kosovo-Serbia conflict with a final deal “within a year” is rather ambitious. There are two explanations: either EU’s Lajcak is an irreparable optimist or something is really happening and EU’s major members do have a plan. It is clear that Germany and France strongly support the process. What is not clear is how far these two major EU states are willing to go to compel Pristina and Belgrade to accept a compromise.
- The EU mediator commenced the new process without a thorough evaluation of the old dialogue to understand what worked and what did not work, so as to avoid repeating old mistakes. The mediator is applying some of the old standards—such as open-ended discussions, a weak and small team, no direct inclusion of Germany and France—that were the last dialogue’s weaknesses.
- ‘Nothing is agreed until everything is agreed,’ the main guiding principle, has both its strengths and weaknesses. It does put more pressure on the sides to reach a comprehensive agreement, but it also risks derailing the process if the sides do not agree on a single issue or intentionally disagree on one issue just to avoid a final agreement.
- Dialogue fatigue seems to affect all three sides. A ten-year long process with no conclusion in sight has led to the parties losing trust in the process and consequently decreases their commitment to the negotiations. There is only slight difference from EU’s old process: the political rhetoric in Belgrade and Pristina is more positive and conciliatory.
- It is unlikely that a comprehensive agreement will be reached within a short timeframe. To get to a breakthrough, Pristina and Belgrade need to prepare their populations and they are not doing it, an indication that perhaps they do not intend to agree on a compromise. However, the Serbian and Kosovo leaders, as well as EU authorities, could surprise us. Solid progress is possible on the EU integration process and the regional cooperation, the former depending also on the willingness of the EU to offer some compromises on the criteria fulfillment.
- It is clear that a comprehensive normalization agreement at this stage will most likely not include Serbia’s recognition of Kosovo. The recognition might come only when Serbia has the date for EU membership. It seems the resolution of the status dispute and the EU integration go hand in hand. Progress on the rule of law in Serbia and Kosovo is not only important for the EU integration but also for reaching a comprehensive agreement. Pristina and Belgrade should begin to promote more conciliatory narratives, recognizing the past but not make it the foundation of their future relations. They can start a ‘new beginning’ in their relations.
- The EU dialogue has reportedly achieved progress on the missing persons and property claims. However, the biggest challenges remain ahead, especially issues of the rights of Serbs in Kosovo and the status of the Serbian religious and cultural heritage. Belgrade insists on some form of autonomy for the Serbs in the north and a status for the churches that goes beyond the Ahtisaari Plan.
- The negotiation process is not inclusive enough, focusing only on the top level. In parallel with the Brussels dialogue, there should also be also dialogue between Kosovo Serbs and the Kosovo institutions.
- The dialogue should address the transitional justice. Kosovo’s Specialist Chambers are expected to address this issue. Serbia’s justice system, despite some progress at the beginning, has been increasingly ignoring the issue.
- The US initiative is even less clear than EU’s. Many believe that it was a foreign policy stunt to strengthen President Trump’s foreign policy credentials to help him in his reelection campaign. The ‘Washington Agreement’ includes a large number of points that are not related to the Kosovo-Serbia conflict. It is more of a ‘global hodgepodge.’

- The ‘Washington Agreement’ includes the Mini-Schengen initiative, which could improve relations and economies in the entire Western Balkans.
- The real question is how much the US will insist on the implementation of issues that are rather loosely defined in the agreement. The implementation depends on how much this initiative is connected with the primary US foreign policy interests, in particular those related to the influences of Russia and China.

## **Forecasting negotiations’ trajectory**

The workshop participants offered their analysis and predictions about the direction of the current dialogue.

- It is not likely that after a decade of negotiations, the mediators will find an easy formula to get the sides agree on the same issues they disagreed for decades. Kosovo will insist on recognition while Serbia will maintain its ‘non-recognizing’ position.
- Lack of transparency and constructive ambiguity will continue to accompany the new process.
- Just like in the old process, it will be easier to agree on agreements than to implement them.
- The US and the EU could organize a conference in Spring 2021 aiming to reach a ‘big bang deal.’ Bold US and EU pressure on Belgrade and Pristina is key to such an outcome.
- Belgrade and Pristina will behave better and make unilateral conciliatory concessions in the new process. Under international pressure, Kosovo removed the customs tariff without anything in return. Belgrade stopped de-recognition campaign in exchange for Pristina’s moratorium on applying for membership in international organizations. Similar gestures will continue during the course of the negotiations.
- A Trump reelection would most likely neglect the issue. Alternatively, a Biden administration would move more toward an incremental approach and aim for a comprehensive agreement rather than ‘letters of intent.’
- The land-swap option will continue to lurk over the negotiations as an alternative solution. Germany will continue to oppose this option. And so will a Biden administration. However, an eventual Trump reelection might push for a ‘quick deal.’
- Serbia and Kosovo will agree to change their constitutions but changes would most likely be cosmetic. Without some land in exchange, Belgrade will resist fundamental constitutional changes that relinquish Serbia’s claim on Kosovo. Similarly, Kosovo will resist fundamental constitutional changes to offer the Kosovo Serbs an ASM with substantial powers.
- If an agreement is reached, at least four of five EU non-recognizers will recognize Kosovo, unlocking Kosovo’s prospects to join NATO and move toward EU membership.
- If no comprehensive agreement is reached, the parties will downgrade the dialogue to deal with practical issues, such as free trade and recognition of documents.
- The new dialogue will most likely lead to upgraded and better relations between Serbia and Kosovo but it will not resolve the status dispute.

# Participants

*English Alphabetical Order*

**Max Braendle**, Friedrich Ebert Stiftung

**Nikola Burazer**, Center for Contemporary Politics

**Shpetim Gashi**, Council for Inclusive Governance

**Violeta Haxholli**, Kosovo Democratic Institute

**Vincent Hug**, Swiss Federal Department of Foreign Affairs

**Ramadan Ilazi**, Kosovar Center for Security Studies; Institute for International Conflict

Resolution and Reconstruction, Dublin City University

**Jovana Jakovljevic**, Institute for Territorial Economic Development

**Igor Novakovic**, Council for Inclusive Governance

**Ivana Racic**, Friedrich Ebert Stiftung

**Jovana Radosavljevic**, New Social Initiative

**Alex Roinishvili Grigorev**, Council for Inclusive Governance (via teleconference)

**Sanja Sovrlic**, N1 Television

**Stefan Surlic**, Faculty of Political Science, University of Belgrade