



ANALYSIS

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The Brussels Agreement and Serbia's National Interests: A Positive Balance Sheet?

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INTRODUCTION

When the Brussels Agreement was signed on 19 April 2013, many called it "historic". Serbia's Prime Minister Ivica Dačić boasted that it was "the best offer Serbia received so far"¹ whereas the First Deputy Prime Minister Aleksandar Vučić characterized it as "the maximum we could get for our people in Kosovo."² Both claimed that the Brussels Agreement didn't entail Belgrade's recognition of Kosovo independence but – on the contrary – protected Serbia's national interests. The first anniversary of the Brussels Agreement is an excellent opportunity to take stock and assess whether it has served Serbia's national interests.

My approach will be analytical, not normative. In other words, I will not engage in an otherwise valid discussion about what should or should not be the national interests of Serbia. Instead, I will try to understand how decision makers themselves are interpreting Serbia's national interests with regards to Kosovo, and then evaluate the success of their policies on their own terms. Only in the conclusion will I spell out a several recommendations on how to move ahead in the future.

In this paper I argue that the balance sheet has been very positive from the point of view of Serbia's national interests. In particular, I argue that Belgrade has succeeded in defending at least three of its national interests. The first one is the improved international standing and the acceleration of Serbia's EU integration. The second is the creation of an environment for better protection of Kosovo Serbs. Last but not least, Belgrade managed to muddle through the conclusion and implementation of the Brussels Agreement without the explicit recognition of Kosovo. However, whereas the first two national interests are defensible in the long term, the third one is a temporary mirage that will soon prove to be very difficult to defend. The next normalization phase, due to begin in late Autumn 2014, can be expected to bring significant challenges for Serbia, especially for its non-recognition policy, and the Government in Belgrade doesn't seem to be adequately prepared for it.

The paper proceeds in the following order. The first section provides a brief overview of the Belgrade/Priština normalization, which unfolded in two phases: technical (March 2011- May 2012) and political (October 2012- March 2014). The second section demonstrates why the second pha-

¹ <http://www.slobodnaevropa.org/content/reakcije-u-srbiji-na-briselski-sporazum-zatvara-se-teska-epoha/24962982.html>

² <http://www.e-novine.com/region/region-tema/82781-Kosovo-Srbija-Postignut-sporazum.html>

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se of the dialogue can be regarded as very successful from Serbia's point of view and spells out the key challenges ahead.

BELGRADE/PRIŠTINA NORMALIZATION: A BRIEF OVERVIEW

When Kosovo declared independence in February 2008 Serbia vowed never to recognize Kosovo's independence, regardless of the price. The government of Serbia, led by Vojislav Koštunica, was offering Kosovo an autonomous status within Serbia. Alternatively, Belgrade's second best option was to indefinitely freeze the conflict until more favorable geopolitical circumstances arise. In order to achieve these goals of non-recognition and counter-secession Koštunica was ready to use all available legal, economic and diplomatic means, short of military force. Other national interests, including the future EU membership, were construed to be of secondary importance. Koštunica's vision of national interests, defined as territorial integrity above all other objectives, was defeated in parliamentary elections held in May 2008. The new government led by Mirko Cvetković adopted a more pro-European orientation but nevertheless continued the hard-line counter-secessionist policy.

In July 2010 the ICJ issued an advisory opinion that Kosovo's declaration of independence was not in violation of international law. The turning point in Serbia's Kosovo policy occurred on 9 September 2010 when Serbia withdrew its initial resolution at the UN General Assembly, which was fiercely rejecting the ICJ opinion. Under strong pressure from the EU, Belgrade tabled a new resolution co-sponsored by the EU and acknowledging the ICJ advisory opinion. Most importantly, the resolution called for EU-backed dialogue between Belgrade and Priština, This was a game changer, since Serbia accepted to move the issue from the level of the UN, where it had a strong backing from Russia, China and other non-recognizers, to the level of the EU where 22 out of 27 members states had already recognized Kosovo. From this moment onwards, Serbia started to redefine its Kosovo policy under the gravitational pull and transformative power of EU enlargement policy. While keeping the old mantra that "Kosovo is Serbia" and that "Serbia will never recognize the illegal and unilateral secession of Kosovo", Belgrade started to gradually relinquish its claim to empirical sovereignty over the territory of Kosovo.

What followed was the first phase of normalization of the relationship or, as it was called, "the technical dialogue" which lasted from March 2011 to May 2012. Senior British diplomat Robert Cooper mediated on behalf of the EU the technical dialogue between Serbia and Kosovo, represented by Borko Stefanović and Edita Tahiri respectively. During the first phase of normalization, Belgrade and Priština agreed on a number of technical issues such as freedom of movement, civil registry, cadastral books, customs, integrated border management, higher education degrees and regional representation of Kosovo.³ Arguably, the technical dialogue was more beneficial for Priština than for Belgrade. This is so because the technical agreements were only marginally addressing the key concerns of Serbia related to

³ Leon Malazogu and Florian Bieber. "The Future of Interaction between Prishtina and Belgrade." *Südosteuropa Mitteilungen* 05-06 (2012): 26-43. All the agreements are available here: <http://www.helsinki.org.rs/doc/all%20agreed%20conclusions%20%282011-2012%29.pdf>

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the North and Kosovo Serbs. Opening up of these issues required political negotiations at the highest level, a nut too hard to crack for the lame duck government in Belgrade.

Days before the elections that were held in May 2012, the EU awarded candidate status to Serbia, thus boosting the chances of the president Boris Tadić and his Democratic Party. In spite of this, the Serbian Progressive Party won both the presidential and parliamentary elections, marking the end of the first phase of normalization. The new government formed in June 2013 was composed of former nationalist parties and leaders who occupied key positions during the Milošević era. Consequently, many expected a slowdown in European integration, complication of relations with Priština and potential u-turn towards Russia. However, the new political elites found themselves in the driver's seat of a state much different from the rogue pariah they left behind in 2000. Serbia was now an EU candidate state and a consolidating democracy. They were thus obliged not only by commitments and narratives laid down by their predecessors; they also had a lot to gain in terms of Serbia's continued European perspective and nothing to lose domestically from pursuing even more vigorously the policy of *détente vis-à-vis* Kosovo. Moreover, the freshly formed government led by Prime Minister Ivica Dačić was at the beginning of its mandate, whereas the parliamentary opposition to the dialogue with Priština was narrowed to only one small party – the DSS. In effect, all obstacles for the Belgrade-Priština normalization to be moved into the second phase were eliminated. As a result, the political dialogue between two Prime Ministers of Serbia and Kosovo under the supervision of the Union's High Representative started in October 2012.

The political dialogue, or the second phase of normalization, culminated with the conclusion of the "First Agreement of Principles Governing the Normalisation of Relations" signed in Brussels on 19 April 2013. The agreement has only 15 points and entails the establishment of the Association/Community of Serb municipalities, integration of Serb justice and security structures into the system of Kosovo, and municipal elections. Belgrade and Priština agreed that neither side "will block, or encourage others to block, the other side's progress in their respective EU path".⁴ Although the brevity of the text helped its successful conclusion, it created plenty of ambiguities and thus turned into an obstacle during the implementation. The process was further complicated by very ambitious timelines that were divorced from the reality on the ground. In March 2014 Serbia went to the ballots, thus putting an end to the second phase of normalization. This is a good opportunity to reflect on whether the second phase of normalization and especially the Brussels Agreement as its most important result have been beneficial from the point of view of Serbia's national interests.

SERBIA'S NATIONAL INTERESTS AND THE BRUSSELS AGREEMENT

In order to answer this question, one first needs to investigate how Serbia defines its national interests *vis-à-vis* Kosovo. As it is well known, the Constitution of Serbia adopted in 2006 treats Kosovo as one of the two autonomous provinces and invites all state bodies to

⁴ Full text of the agreement is available here:
<http://www.europeanvoice.com/page/3609.aspx?&blogitemid=1723>

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“uphold and protect the state interests of Serbia in Kosovo and Metohija”.⁵ Moreover, the National Security Strategy of Serbia from 2009 clearly states: “The fundamental security threat is an attempt to secede the territory of the Autonomous Province of Kosovo”.⁶ Following the latest parliamentary and presidential elections, two additional documents were adopted defining current Serbia’s national interests in Kosovo: the Platform and the Resolution.

According to the Kosovo Platform proposed by President Tomislav Nikolić and adopted by the Serbian Government on 13 January 2013 “every solution in the Belgrade/Priština dialogue needs to be in accordance with the Constitution and the Resolution 1244, and with the fact that Serbia is not recognizing independence of Kosovo”.⁷ Moreover, Serbia’s policy should aim to “overcome institutional parallelism” in Kosovo and “establish authorities in the Province recognized by all stakeholders [...]”. Finally, the Platform calls for the establishment of a Community of Serbian municipalities in Kosovo with wide competences akin to territorial autonomy.⁸ Finally, the document insists that all the agreements to be signed with Priština will have to be made in accordance with Serbia’s constitution and legislation.

On the same day as the Platform, the Government of Serbia also adopted the Resolution on Kosovo “with a desire to realize the long-term national goals of territorial integrity, sovereignty, economic development, protection of political, economic and security interests in Kosovo, better quality of life because of EU accession and demographic revival”.⁹ The Resolution states that due to the central role that Kosovo plays in national politics, security and identity, Serbia cannot recognize illegal and unilateral recognition of Kosovo and will never do so. In the Resolution, the goal set for the political dialogue is to create conditions for security and the protection of human rights of Serbs (and others) in Kosovo. All the competences that Belgrade intends to “transfer” to Priština’s authorities are to be legalized within Serbia’s constitutional and legal system. Finally, the only important novelty contained in the Resolution (in contrast to the Platform) is the emphasis on the desired goal of accelerating the EU accession. I argue that in light of thus defined national interests, one year after the conclusion of the Brussels Agreement Serbia has at least three important reasons to be content.

First, Serbia successfully used the political dialogue to *improve its international standing and accelerate EU integration*. On a symbolic level, Serbia significantly improved its image by signing the Agreement. Before April 2013, Serbia was largely seen, at least within the Western international community, as part of the problem when it comes to Kosovo. It is now viewed as part of the solution. Moreover, after years of reactive diplomacy, Serbia for the first time managed to throw the ball into Priština’s court. Serbia also had to deliver, as

⁵ Republic of Serbia, Constitution, 2006, preamble Articles 114 and 182.

⁶ Republic of Serbia, *National Security Strategy*, 2009, p.6

⁷ The full text of the Platform is available here (in Serbian):

<http://www.novosti.rs/vesti/naslovnopolitika/aktuelno.289.html:414563-Platforma-o-Kosovu-Dijalog-u-skladu-sa-Ustavom-i-rezolucijom-1244>

⁸ These competences are education, health, sport, culture, information, environment, urban planning, agriculture, forestry, water management, hunting and fishing, justice, internal affairs, mining, energy, telecommunication, trade, finances, etc.

⁹ The full text of the Resolution is available here (in Serbian):

<http://www.vreme.com/cms/view.php?id=1092790>

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part of implementation of the Agreement, but its to-do list has been shorter than Priština's. Most importantly, Serbia managed to unblock its European perspective. As early as June 2013, the European Council endorsed the opening of membership negotiations with Serbia, which eventually took place on 21 January 2014. Prime Minister Dačić called the date "historic" and the "most important event after the Second World War".¹⁰

According to the EU's Negotiation Framework, the normalization of the relationship between Belgrade and Priština will be part and parcel of future membership negotiations.¹¹ Under normalization of the relationship with Priština, the EU expects from Serbia to implement in good faith all the agreements reached with Priština, allow Kosovo to participate in regional cooperation schemes, be committed to dialogue and cooperate with EULEX. Serbia will be able to meet all these requirements without further compromising its territorial integrity. However, the Negotiation Framework also contains the request that Serbia's legislation "including its geographical scope, does not run counter to the comprehensive normalization of relations with Kosovo". Moreover, Serbia will have to conclude a legally binding deal with Kosovo at the end of accession negotiations.¹² Both requests are clearly challenging Serbia's national interests as currently defined by the decision makers.

It is crystal clear that as Serbia comes closer to EU membership it will have to take steps away from its claims over Kosovo. In any case, it will demand a lot of discursive work on the part of the Serbian government, as virtually every political party has already rejected the trade off of Kosovo for EU as unacceptable in the past, while the polls show that the Serbian public is equally unenthusiastic about it.¹³ When the Brussels Agreement was signed, almost 43% of people in Serbia breathed a sigh of relief.¹⁴ Nonetheless, in spite of a wide consensus among the parties that the Agreement was good for Serbia, and despite the quasi-monophonic media enthusiasm, more than two thirds of the population was still either unhappy or unsure about it.¹⁵

The progress achieved in normalization will be part of Chapter 35. While in the previous enlargement rounds the Chapter 35 was among the least important ones reserved for "other issues", in the Serbian case it will arguably be the most important chapter, the first to be opened and the last to be closed. The European Commission and the Union's High Representative will monitor Serbia's progress within the Chapter 35. This forebodes a much bigger influence of EU capitals over the accession process than was the case in the previous enlargement rounds when the European Commission had the upper hand. The stronger the influence of the capitals on the accession process, the more likely it is that the decision to green-light Serbia's membership will be driven by strategic interests. This could square well with Belgrade's strategic usage of concessions in the field of high politics in order to bypass

¹⁰ <http://www.vesti-online.com/Vesti/Srbija/368717/Dacic-Nismo-izdali-interese-Srbije>

¹¹

<http://register.consilium.europa.eu/doc/srv?!=EN&t=PDF&qc=true&sc=false&f=AD%201%202014%20IN IT>

¹² Negotiating Framework, p.16.

¹³ Filip Ejdus, "Cognitive dissonance and security policy of Serbia", *Western Balkans Security Observer*, No.20, (2011): 14-30.

¹⁴ Bureau for Social Research, 2013.

¹⁵ After the Agreement, Serbia is: loser (33.8%), gainer (36%), winner (1,8%), cannot tell (28.4%).

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the Copenhagen criteria potentially leading to yet another deplorable case of "strategic accession".¹⁶

Second, Serbia effectively used *political dialogue to the benefit of Kosovo Serbs*. From 2000 to 2013, the vast majority of Kosovo Serbs lived in insecurity, with false hopes, uncertainty and disorder, while only a privileged few benefited from the *status quo*.¹⁷ Serbia can be satisfied with the text of the Brussels Agreement because it promises Kosovo Serbs a more realistic, sustainable and orderly perspective. The most important in that respect are the provisions of the Agreement related to the Association/Community of Serb municipalities. This body will be composed of four northern municipalities and six Serb-majority municipalities from the South.

The Association/Community is a far cry from the maximalist goal of territorial autonomy set by the Platform. However, it still provides for a high level of autonomy with wide competences in the fields of economic development, health, education, urban and rural planning, and others conferred by central authorities in Priština. Once established, in addition to regular funds the Association/Municipality will also have a special fund based on customs on imported goods levied at the border crossings with Serbia. Moreover, the agreement foresees an integration of murky remnants of Serbia's police and judicial "parallel" structures into the Kosovo system. Finally, Serbia's delegation was given guarantees by NATO Secretary General at its HQ in Brussels that Kosovo Security Forces will not be allowed into North Kosovo except in cases of natural disasters and with the explicit consent of the local community.¹⁸

As regards the implementation of the Brussels Agreement, the record is more of a mixed bag. When the Brussels Agreement was signed, most Serbs in the North were strongly opposed to it. During the fourteen years following the NATO troops' movement into Kosovo, the Serb community in the North was united by fear from being violently taken over by Priština and manipulated by the local elite that hugely benefited from the *status quo*. As their representatives were not participating in the political phase of negotiations, the Brussels Agreement came as a shocking surprise for most.

Throughout the summer of 2013 opponents of the Agreement were mobilizing local population for the boycott of the Agreement and the forthcoming elections by playing on "the Masada Complex" and contributing to the collective "siege mentality". Local discourse was saturated with existential concerns about the economic survival, security anxieties and fears from assimilation or "silent exodus". Most importantly, the announced integration of Serbia-financed institutions into the Kosovo legal framework, with significantly lower salaries, raised serious concerns about the potential deterioration of the standard of living for North Kosovo Serbs.

¹⁶ Bernhard Stahl, "Another "strategic accession"? The EU and Serbia (2000–2010)." *Nationalities Papers* 41.3 (2013): 447–468.

¹⁷ For a detailed analysis of wide spread corruption, nepotism and systematic misuse of Serbia's budget funds by the privileged minority within the Serb community in Kosovo see National Assembly, *The Report of the Parliamentary Committee on Kosovo related expenses*, p.6 April 14 2014.

¹⁸ http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=04&dd=19&nav_category=640&nav_id=706694

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Nonetheless, Serbia managed to place the situation in the North under relative control. Municipal elections were held in Kosovo (including the North) on 3 November 2013.¹⁹ Only minor security incidents took place when masked men stormed two polling stations in Kosovska Mitrovica. Interestingly enough, the three polling stations that were stormed were having the record low turnout rate, raising serious suspicions that the incident was actually orchestrated by Belgrade. Elections were repeated on 17 November in three polling stations, in a rather safe climate and with unprecedented security cooperation and presence of EU-LEX, KFOR, as well as Kosovar and Serbian security institutions. The result was a higher turnout, in good part effectuated coercively, and a landslide victory of the Belgrade-backed Srpska list. With this, the local authorities of Kosovo Serbs have come under the strong grip of the authorities in Belgrade. If the Serb List (expectedly) repeats its success in the parliamentary elections scheduled for autumn, Belgrade will have a powerful instrument not only to protect the Kosovo Serb community but also to potentially harm the functionality of Priština's rule.

In spite of initial problems, a progress has also been made regarding the dismantling of Serbian security structures and their integration into the system of Kosovo. Serbia's "police stations" were closed during the early summer, acting regional police Commander was appointed and regional Police Directorate-North established.²⁰ Also, significant progress has been made in the integration of Serbian policemen into the Kosovo Police Service (KPS).²¹

When it comes to the integration of Serb judges and prosecutors, very little if any progress has been made. The two sides still cannot agree whether the Basic Court in Mitrovica will cover only 4 majority Serb municipalities or it will extend its competences to 3 additional majority Albanian municipalities. Until that issue is agreed upon, the integration of Serb judges and prosecutors cannot begin. Least progress has been made in relation to the practical establishment of the Association/Municipality of the Serb communities. So far, the two sides were not able to agree even on the term (Association or Municipality), let alone its competences. Its establishment is now postponed for the period after the parliamentary elections in Kosovo.²²

Third, Serbia *avoided recognizing the independence of Kosovo*. Belgrade has been proudly insisting on innumerable occasions that the Brussels Agreement is "status neutral". Moreover, According to Article 2 of the Agreement, "legal guarantees will be provided by appli-

¹⁹ Filip Ejodus, Leon Malazogu, Milan Nič, "Municipal Elections in Northern Kosovo: Towards a New Balance", Bratislava, Capi, October 2013.

http://www.cepolicy.org/sites/cepolicy.org/files/attachments/municipal_elections_in_northern_kosovo_2.pdf

²⁰ There is still uncertainty whether the KP Regional Command North will include only the four Serbian municipalities in the North, or South Mitrovica and Vučitrn as well. See: http://pasos.org/wp-content/uploads/2014/04/police_integration_nk_web.pdf p.5

²¹ By March 2014, out of 337 former members of the Serbian Police that were supposed to be integrated in the KPS, 285 began the integration process. The process only covered policemen from the North, while all other former Serbia's policemen (app. 800) were retired and excluded from the process. See: http://pasos.org/wp-content/uploads/2014/04/police_integration_nk_web.pdf

²² Leon Malazogu, Filip Ejodus, Milan Nič, Tomasz Zornaczuk, "Integration or Isolation: Northern Kosovo in 2014 Electoral Limbo", March 2014, Bratislava, Capi.

http://www.cepolicy.org/sites/cepolicy.org/files/attachments/cepi_-_integration_or_isolation.pdf

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cable law and constitutional law". Given the fact that Kosovo doesn't have constitutional laws (only Serbia), it is clear that the Brussels Agreement in a way legalized "dual sovereignty", no matter how virtual it may be.²³

However, the Negotiating Framework adopted by the EU cast a dark shadow over this complacent claim. First, the document stipulates that "Serbia shall in particular ensure that adopted legislation, including its geographical scope, does not run counter to the comprehensive normalization of relations with Kosovo".²⁴ In order to comply with this requirement, Serbia will have to change its Constitution and remove its references to Kosovo. The leading party – SNS, hasn't explicitly demonstrated the willingness to make this change. On the contrary, its high functionaries openly opposed this move.²⁵ If the new Government decides to institute this change, it will need 2/3 of the votes in the Parliament, which would undoubtedly result in numerous heated discussions and contestations.

Furthermore, according to the Negotiating Framework the normalization 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 fulfill their responsibilities".²⁶ The Framework doesn't specify what will be the content of the agreement and whether it will contain explicit recognition. It is important to note that such an agreement in and of itself does not mean *de jure* recognition of Kosovo's independence, as states routinely sign legally binding agreements with non-state actors without automatically being granted sovereignty. For the time being, the EU seems to have adopted the policy of "constructive ambiguity" as the best approach to the recognition issue.²⁷ However, voices calling for an explicit request for Serbia to issue recognition are already gaining resonance within certain policy circles in the EU and will become louder as time passes by.

CONCLUSION

In this paper I investigated whether the second phase of Belgrade/Priština normalization that started in October 2012, culminated in April 2013 and ultimately ended in March 2014, was beneficial or not from the point of view of Serbia's national interests. I argued that from the perspective of its officially declared national interests, Belgrade has so far at least three benefits from the political phase of the dialogue in general and from the Brussels Agreement in particular.

First, the international standing of Serbia has improved, not least due to the "historic" opening of accession negotiations. Second, the Brussels Agreement addresses in a very favor-

²³ International Crisis Group. *North Kosovo: Dual Sovereignty in Practice*. International Crisis Group, 2011.

²⁴ Negotiating Framework, p.16.

²⁵ Recent statements to that effect made by high SNS officials:

http://www.danas.rs/danasrs/politika/naprednjaci_nece_da_izmene_preambulu_o_kosovu.56.html?news_id=276303

<http://www.pressonline.rs/info/politika/265098/drecun-nije-realna-promena-ustava-zbog-kim.html>

²⁶ Negotiating Framework, p.10.

²⁷ *Dejan Guzina and Branka Marijan, A Fine Balance: the EU and the process of Normalizing Kosovo/Serbia Relations, CIGI papers, no.23, January 2014.*

http://www.cigionline.org/sites/default/files/no23_0.pdf

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rable way the concerns of Kosovo Serbs. Third, Belgrade managed to muddle through the negotiations without recognizing Kosovo and even legalizing dual sovereignty over its former province, however virtual it may be. On the one hand, this constructive ambiguity facilitated the conclusion of the Brussels Agreement. On the other hand, it only fed the false hopes in Belgrade that there may be a final solution to Kosovo other than independence, and postponed the most difficult issues for a later stage.

Now that the second phase of normalization is over, the dialogue will most probably linger in some sort of electoral limbo until the end of the year. As soon as the new Government is formed in Belgrade, the EU itself will hold its own elections in May 2014. This will result in the appointment of the new High Representative of the EU for Foreign Affairs and Security Policy. It will take some time, especially given the current situation in Ukraine, before the incoming EU administration becomes ready for the beginning of a new momentum in the Belgrade/Priština dialogue. Then, after the summer, Kosovo will have its own parliamentary elections and only once the new Kosovar government is in place can it be expected that the third phase of normalization will begin (probably in late Autumn 2014).

As the normalization process unfolds, Serbia's interest to protect its territorial integrity will increasingly be put to the test. Currently, it seems that Belgrade is not aware of this, let alone prepared for it. The newly formed government led by Aleksandar Vučić will have all the necessary instruments including both the majority in the parliament and international support to make bold moves and synchronize national interests with the reality in Kosovo. The first steps to be taken in that direction would be to adopt new Negotiations Platform and the Parliamentary Resolution, change the Constitution and initiate discussion about the legally binding agreement. Instead of waiting for others to draft the legally binding agreement it is in Serbia's interest to take the lead and try to shape its content early on. Whether the new government will have the necessary will, vision and courage to go ahead in the right directions remains to be seen.

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The views expressed in the paper are the author's personal points of view and they do not necessarily represent the views of the Konrad-Adenauer-Stiftung.

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