

**KOSOVO AND SERBIA: A LITTLE GOODWILL  
COULD GO A LONG WAY**

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## **KOSOVO AND SERBIA: A LITTLE GOODWILL COULD GO A LONG WAY**

### **EXECUTIVE SUMMARY AND RECOMMENDATIONS**

A violent standoff in northern Kosovo risks halting Kosovo's and Serbia's fragile dialogue and threatens Kosovo's internal stability and Serbia's EU candidacy process. Pristina's push to control the whole territory of the young state, especially its borders with Serbia, and northern Kosovo Serbs' determination to resist could produce more casualties. Belgrade has lost control and trust of the northern Kosovo Serb community, which now looks to homegrown leaders. The international community, especially the EU and U.S., should encourage Belgrade to accept the government in Pristina as an equal, even if without formal recognition, but not expect it can force local compliance in northern Kosovo. All sides should seek ways to minimise the risk of further conflict, while focusing on implementing what has been agreed in the bilateral technical dialogue. They should build confidence and lay the groundwork for the political talks needed to guide a gradual transformation in northern Kosovo and eventually lead to normal relations between Kosovo and Serbia.

The current flare-up of tensions began on 25 July 2011, when Pristina sent police to two customs gates along the border with Serbia. Local Serbs surrounded the police and forced them to retreat; one officer was killed in an ambush, and a border post was burned. On 16 September, EULEX, the EU rule of law mission, started to airlift Kosovo officials to the border. All roads leading to the customs points were barricaded by Kosovo Serbs intent on obstructing deployment of Kosovo officials. While the roadblocks have generally been peaceful, violence ensued on at least three occasions during the last months of the year, when NATO's peace enforcement mission (KFOR) attempted to dismantle the barricades, and Kosovo Serbs pushed back. It is perhaps some testament to the general commitment to limiting casualties that while there have been many injuries, only two persons have died.

The dispute over customs is only a symptom of Serbia's and Kosovo's disagreement over sovereignty, especially with respect to the North. Belgrade is loath to take steps that could be interpreted as recognition of its southern neighbour, making normalisation extremely difficult. Pristina feels Serbia has increased its influence over the North

since Kosovo's 2008 declaration of independence, despite a 2010 opinion of the International Court of Justice (ICJ) that the declaration did not violate international law; it consequently believes it needs to demonstrate now that it controls its borders, lest partition take root. Northern Kosovo Serbs do not want to live under Pristina's authority and see the deployment of customs officials and police as the first step toward dismantling their institutions and way of life.

The EU expects Serbia to treat Kosovo like a normal country and reach agreements with it, even if it has not formally recognised it. In the approach to the December 2011 European Council, Serbia made important concessions, especially in the context of EU-facilitated technical talks with Kosovo, in a bid to secure EU candidate status. President Tadić called for dismantling of barricades in northern Kosovo, at least three were taken down, and his negotiators signed an agreement for Kosovo and Serbia to jointly manage the border crossing posts. But this did not convince all member states; on 9 December, the EU summit gave Serbia three new conditions for obtaining candidate status in March 2012. These will be difficult to meet in their entirety, and if Serbia cannot do so, that will be postponed to at least December and perhaps well beyond 2013, when Croatia joins. A less EU-oriented government may well be elected in 2012, at the same time as the Eurozone crisis drains support for enlargement in key member states, thereby weakening the EU's strongest tool for conflict resolution in the western Balkans. If positions in Pristina and Belgrade then harden, compromise would be out of reach.

Serbia should be proactive in implementing the agreements made in the technical dialogue and in demonstrating strong political will to meet the additional EU conditions. It should work closely with the Kosovo Serbs to encourage them to lift their blockades and join talks with Pristina on reducing tensions in the North. At the same time, EU member states like Germany should not push overly ambitious demands, such as quick dismantling of parallel institutions, that neither Belgrade nor Pristina can deliver

peacefully at present. EULEX and KFOR should likewise act with special prudence in this sensitive period.

After months demonstrating against EULEX and Kosovo officials, northern Kosovo Serbs are tired and frustrated but undeterred. They no longer trust Belgrade to fully protect their interests. Tensions can still spill over if Kosovo or KFOR try to coerce them to dismantle their roadblocks, or due to mishaps as the two new Serbia-Kosovo technical agreements on freedom of movement and management of crossing points are implemented. Serbia's parliamentary elections (planned for May) are another flashpoint. In 2008 they were organised also in parts of Kosovo with significant Serb presence, leading to parallel municipal governments in southern Kosovo and to the Serbian municipalities that currently govern the North. Pristina may attempt to block a repeat in 2012 by impounding ballots, arresting organisers and closing the polling places it can reach.

No one involved wants armed conflict; yet, the stakes and tensions are high, and deadly violence remains a risk. All parties should focus on building the confidence and trust needed to open comprehensive and inclusive political talks between Kosovo and Serbia, with the participation of northern Kosovo community leaders, that can eventually lead to resolution on governance of the North and normalisation and recognition between Serbia and Kosovo. Many Serbs in Serbia and in Kosovo refuse to accept that the North should eventually fit within Kosovo's constitutional order, yet Belgrade appears increasingly to realise its EU membership ambition can be met in no other way. For integration to be peaceful, however, it will have to be gradual and the result of political compromises and agreement. The forceful and unilateral methods applied at times in 2011 may appear expedient, but they create tensions and dangers that should be avoided in a still fragile region.

## **RECOMMENDATIONS**

### **To the governments of Kosovo and Serbia:**

1. Agree on Kosovo's full and equal participation and signature rights in regional meetings without a UN Mission (UNMIK) chaperone and identified with a formulation that includes either
  - a) a simple disclaimer that participation is without prejudice to member states' position on status; or
  - b) a reference to UN Security Council Resolution 1244, together with a reference to the 2010 advisory opinion of the International Court of Justice, and UN General Assembly Resolution 64/248.
2. Agree on a mutually acceptable process to ensure that persons elected as northern Kosovo officials are viewed as legitimate by all parties.

3. Complete technical preparations, gradually implement the agreement on integrated management of border crossing points (IBM) with EU support and normalise traffic through customs gates 1 and 31.

### **To the government of Kosovo:**

4. Abstain from operations to assert authority over the North in the current environment and without preliminary agreement of all concerned.
5. Engage with all elected representatives of the northern Kosovo Serb community without preconditions and without derogatory rhetoric against local leaders.

### **To the government of Serbia:**

6. Ensure roads to crossing points with Kosovo are free of barriers.
7. Continue to call on Kosovo Serbs to dismantle barricades, allow freedom of movement to EULEX and KFOR and discuss security and other issues with the international agencies and Pristina.
8. Agree unilaterally to a unique telephone country code for Kosovo, allow aircraft going to Kosovo to use Serbian airspace and take other pragmatic steps to assist the people of Kosovo without damaging Serbian interests.

### **To the northern Kosovo community:**

9. Engage with the government in Pristina without preconditions.
10. Take part in the EU-mediated dialogue between Kosovo and Serbia and in a political dialogue to follow; accept and implement the results.
11. Remove all barricades and allow EULEX and KFOR free movement.

### **To the governments of Germany, the Netherlands and the UK:**

12. Support the granting of EU candidate status to Serbia in March 2012, provided it has met the conditions in recommendations 1, 3 and 6 above.

### **To the government of Greece, Romania, Slovakia, Spain and, especially, Cyprus:**

13. Approve EU contractual relations with Kosovo on the same terms outlined in recommendation 1 above.

**To the International Community entities working  
in Kosovo:**

14. Do not in the current environment and while Kosovo and Serbia are talking remove barricades or attempt to change the reality on the ground in northern Kosovo by force.
15. Fully staff EULEX's special police units.

**Pristina/Belgrade/Brussels, 2 February 2012**

## KOSOVO AND SERBIA: A LITTLE GOODWILL COULD GO A LONG WAY

### I. INTRODUCTION

Northern Kosovo has been tense since Kosovo police tried to reach two customs posts on the border with Serbia in July 2011.<sup>1</sup> Standoffs between NATO's peace enforcement mission (KFOR), the EU's rule of law mission (EULEX), and local Serbs are likely to keep it unstable for some time. Kosovo considers the presence of its officials at the border essential to reestablish the rule of law and freedom of movement and improve the lives of all citizens, while securing sovereignty over its whole territory. Northern Serbs reject the Kosovo customs officials and border police and block EULEX, fearing the deployment is the beginning of the end to their way of life and very existence in the North.<sup>2</sup>

The current troubles began on 25 July 2011, when Pristina sent police specially trained for rapid reaction (Operational Support Units, OSU) to the North; one unit reached Jarinje (customs gate 1), while a second was stopped by Serbian roadblocks before it reached Brnjak (gate 31). During a poorly planned retreat the next day, an OSU unit was ambushed near Donje Varage, Zubin Potok municipality.<sup>3</sup> One Albanian police officer was shot and killed. Masked men believed to have organised crime links arrived at Jarinje, blew up and burned the border post and forced EULEX to flee to Serbia. U.S. KFOR troops moved in, declaring the border zone a closed military area. The KFOR commander, General Erhard Bühler, mediated an interim agreement between the Serbian negotiator, Borislav Ste-

fanović, and the Kosovo government on 16 August allowing all "non-commercial" traffic – defined generously in practice – to pass.<sup>4</sup>

When the interim agreement expired on 16 September, EULEX helicopters deployed Kosovo customs officials to the northern gates. EULEX, which had refused to escort Kosovo officials northward two months earlier, was ordered to do so by Catherine Ashton, the EU's foreign policy chief.<sup>5</sup> Brussels explained the action as implementation of the customs agreement reached in EU-facilitated Serbia-Kosovo technical talks on 2 September. Belgrade claimed it had been tricked, and the northern Kosovo Serbs felt betrayed.<sup>6</sup> Serbs quickly set up barricades throughout northern Kosovo to block KFOR and EULEX from escorting Kosovo officials to the two northern gates. Most of these and accompanying "sit-ins" have been peaceful, but the standoff causes much stress and tension and in several instances has turned violent.

On 26 September, KFOR removed a barricade near gate 1, and within half an hour about 200 Serbs began erecting a replacement a few metres away. Fighting broke out the next morning, when the crowd grew to over 1,000. The Serbs threw rocks at KFOR, which responded with pepper spray and rubber bullets. The Serbs confronted KFOR with a truck, shot live rounds and threw a grenade (which

<sup>1</sup> Northern Kosovo includes three predominantly Serb municipalities north of the Ibar River – Zubin Potok, Leposavić and Zvečan – and the northern part of Mitrovica. Population estimates vary; Crisis Group's is between 55,000 and 65,000. See Crisis Group Europe Report N°211, *North Kosovo: Dual Sovereignty in Practice*, 14 March 2011.

<sup>2</sup> EULEX is being supported by KFOR, which is helping transport officials.

<sup>3</sup> Early on 26 July, KFOR and Serb negotiator Borislav Stefanović agreed on evacuation of the beleaguered OSU (still called Regional Operational Support Units, ROSU by Serbs) by air, but the accord collapsed almost immediately, as locals believed a rumour that a KFOR helicopter was bringing in more customs and border police and fired on it, forcing it to abort the mission.

<sup>4</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, covering the period 16 July-31 October. EULEX has issued six INTERPOL warrants for the killing; many local Serbs believe the officer died from friendly fire. The interim deal provided for the two gates to remain under KFOR control for one month, with all traffic above 3.5 tons redirected to other gates. Crisis Group interviews, Northern Kosovo political figures, Mitrovica/Zubin Potok, August 2011.

<sup>5</sup> Crisis Group interview, senior EULEX official, Pristina, 17 November 2011.

<sup>6</sup> On 2 September, the parties agreed on the design of Kosovo's customs stamps and accompanying documentation, with the status-neutral term "Customs of Kosovo" and no reference to the Republic of Kosovo. Serb officials say the 2 September agreement covered only customs stamps and accompanying documentation, not the presence of Kosovo customs officials at the two northern gates; Crisis Group interviews, Serbian officials, Belgrade, October-November 2011.

failed to explode). KFOR responded with warning shots. The Serbs fled but returned, throwing improvised pipe bombs and causing light injuries; KFOR shot several Serbs with live ammunition, including a man who attacked and disarmed a U.S. soldier. In total, there were nine “light to superficial” KFOR injuries, while seven “Serbs were treated for gunshot wounds at the Mitrovica hospital, nineteen for injuries from rubber bullets”.<sup>7</sup> The following day, 28 September, Serbs attacked a multi-ethnic group of civilians working in Mitrovica, though without causing serious injury.

Periodic clashes occurred thereafter; when KFOR moved against the barricades, locals often resisted, leading to light injuries and use of pepper spray and tear gas.<sup>8</sup> Sometimes removal of barricades was peaceful, particularly in remote areas.<sup>9</sup> However, in settled areas it proved difficult – at Dudin Krš near Zvečan on 23 November, a large group of Serbs resisted, resulting in dozens of Serb and 21 KFOR casualties.<sup>10</sup> The most serious incident occurred on 28 November in the hamlet of Jagnjenica, on the only Serb-held road connecting Zubin Potok with Mitrovica. KFOR pushed through a barricade, and a clash followed involving tear gas, water cannons, pepper spray, rubber bullets and live ammunition. Unknown Serbs, apparently hiding in the nearby woods, shot and wounded two soldiers, and KFOR responded with live fire. Ultimately, more than 100 Serbs reported injuries ranging from gunshot wounds to pepper spray irritation.<sup>11</sup> The local KFOR commander and the mayor of Zubin Potok agreed on 5 December to replace the barricades and the KFOR fortifications with a checkpoint manned jointly by KFOR and local Serb Kosovo police.<sup>12</sup>

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<sup>7</sup> KFOR action reports, 26-27 September 2011, shown to Crisis Group. KFOR denied, then admitted using live ammunition. Report of the Secretary-General, op. cit. A conspiracy theory blossomed quickly, alleging that KFOR cleared the scene and confiscated shell casings to cover up its “attack” on the Serbs. Crisis Group interview, Jarinje barricade watchers, 4 October 2011.

<sup>8</sup> These moves included the removal of barricades on both sides of gate 31 at Brnjak as well as one of the biggest clashes with Serb protestors at Jagnjenica on 20 October, which led to dozens of light injuries from pepper spray.

<sup>9</sup> Barricades protecting some alternative roads around Jarinje were taken over in October and November; the Serbs retreated to new positions without major scuffles.

<sup>10</sup> “Dudin krš: U uklanjanju barikade povređeni i Srbi i pripadnici KFOR-a/Dudin krš” [Barricade removal attempt sees Serbs and KFOR soldiers injured], *Večernje Novosti*, 24 November 2011.

<sup>11</sup> Crisis Group interview, COMKFOR Draws, 6 December 2011. “Povređeno sto Srba u Jagnjenici” [One Hundred Serbs injured in Jagnjenica], B92, 28 November 2011 (online).

<sup>12</sup> UNMIK established the Kosovo Police Service (KPS), renamed Kosovo Police (KP), after the declaration of independ-

Tension and violence spread beyond the barricades. The second fatality occurred in the ethnically mixed Kroji Vitakut/Brdjani neighbourhood of Mitrovica. A robbery attempt on 10 November led to an hour-long standoff between angry crowds of Albanian and Serb locals; after an (ethnic Serb) Kosovo Police patrol arrived, a local Albanian fired on the crowd injuring one of the officers and two other Serbs, one of whom died soon after. Hundreds of Mitrovica Serbs gathered on the scene and at the hospital around midnight, raising fears of a large attack on Albanian neighbourhoods. No EULEX or KFOR officials came during or after the incident, and local community leaders were left to keep the crowd under control. The investigation has yet to identify a suspect, despite numerous eyewitnesses.

KFOR has learned that it can clear any barricade if it accepts some risk of casualties, but it lacks the capacity to keep the roads open. Local Serbs quickly respond to KFOR breakthroughs by erecting new roadblocks. Nor can it force traffic to use the two authorised gates; its attempts to close alternative routes have led locals to open many impromptu bypasses. Several months of KFOR and EULEX pressure in northern Kosovo have had little direct effect beyond straining intercommunal relations and undermining locals’ trust in the international forces.

In December, President Tadić and several other Serbian officials called for dismantling the barricades, and by the end of the month three (including Jagnjenica) had gone, two in the Leposavić municipality run by a mayor from Tadić’s Democratic Party (Demokratska stranka, DS). The others, including two in the no-man’s land between Serbia and Kosovo at gates 1 and 31, were taken down but quickly replaced. Large barricades in Rudare and Dudin Krš, both on the main highway connecting the south with gate 1, and in Mitrovica remain. These areas are controlled by mayors from opposition parties, who disregard Serbian government policy.<sup>13</sup> Alternative routes across the border allow traffic to continue to Serbia. KFOR carried out several operations in December to close these, especially in Jarinje where it set up a checkpoint. But the Brnjak and Jarinje custom gates remained unusable.

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ence; Serbs still use the old acronym. Many KP officers in Zubin Potok are also employed by Serbia’s internal affairs ministry (MUP) and trusted by the local population.

<sup>13</sup> Rudare and Dudin Krš, Zvečan municipality, have Democratic Party of Serbia (Demokratska stranka Srbije, DSS) mayors; Mitrovica’s Serbian Progressive Party (Srpska napredna stranka, SNS) mayor heads a coalition that includes the DSS.

## II. THE VIEWS OF THE SIDES

The current conflict is so difficult to resolve and likely to be drawn out because it is not a technical dispute about customs; it is over sovereignty, with customs only the field on which it is fought. The sides (Kosovo, Kosovo Serbs, Serbia and members of the international community) have fundamentally opposing interpretations of Kosovo's status, the status of northern Kosovo and the boundary between Kosovo and Serbia.

Kosovo and its international partners see the line between Serbia and North Kosovo as an international border, Serbs as an administrative boundary within Serbia. Legally the line marks the end of Serbia's administrative reach, separating the Serbian customs area from Kosovo's.<sup>14</sup> Yet, it has never felt like a true border; since 2008, Serbs could cross it with a smile and a wave from indolent, ethnic Kosovo Serb border police (or from EULEX).<sup>15</sup> In effect, it was where Serbs in Kosovo uniforms allowed other Serbs to cross at will, reinforcing their belief they were residents of Serbia.

### A. KOSOVO

Kosovo is adamant it will not pull back its custom officials from the northern gates and will move to restore full control over northern Kosovo. It argues that when it declared independence, it agreed to grant substantial rights and guarantees to its Serb population, north and south of the Ibar River, as defined in the Ahtisaari plan, which was also incorporated in its constitution.<sup>16</sup> It claims to need

full control of the North to combat corruption and smuggling effectively and ensure the rule of law. Yet, since the 2008 declaration of independence, a de facto partition has been entrenched along the Ibar because of Serbia's support for parallel institutions and the lack of a strong international reaction.

Pristina says that Serb communities south of the Ibar are integrating, and the northerners can too. Few thought it likely southern Serbs would ever agree to cooperate with Pristina and forswear loyalty to Belgrade,<sup>17</sup> but significant numbers voted in Kosovo elections in November 2009. Serb parties sit in the Kosovo parliament; the governing coalition depends on them for its majority; and Kosovo municipal governments took over smoothly from their Serbian rivals. If we did what seemed impossible in the south, Pristina's reasoning goes, we can do it again in the North. It blames criminals and Belgrade for maintaining an environment of fear in the North and pressuring any Serb willing to cooperate.<sup>18</sup>

The Ahtisaari plan is in effect gradually being implemented in the south, but it is rejected in the North, where Serbs rarely bother to acquaint themselves with provisions that offer them self-government, a number of official links to Serbia and robust rights protections and are significantly more generous than the settlement accepted by Macedonia's Albanians in 2001. Information campaigns about the plan by international organisations and Pristina may help, and Belgrade should not resist them.<sup>19</sup> However, northern Serbs mainly reject it as an endorsement of Kosovo independence. They do not consider Kosovo a real state; the plan offers them autonomy in an entity they fear and des-

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<sup>14</sup> UN Security Council Resolution 1244 (10 June 1999) required Serbia to withdraw its "military, police and paramilitary forces" from Kosovo and transferred civil government to the UN interim administrative mission in Kosovo (UNMIK). In August 1999 UNMIK established a separate customs service for Kosovo, which it passed to the government in December 2008. These and other administrative measures grounded in the UN's authority apply regardless of positions on Kosovo's independence.

<sup>15</sup> Before the declaration of independence, UNMIK police and customs officers and later KPS officers manned the gates, which functioned much like Kosovo's other crossing points with Serbia. Local mayors refused permission to build a customs terminal in the North, and south-bound trucks were directed to the southern Mitrovica terminal instead. Crisis Group observations, gates 1 and 31, 2005-2008; see also Crisis Group Europe Briefing N°47, *Kosovo's First Month*, 18 March 2008.

<sup>16</sup> The terms "plan" and "Ahtisaari plan" refer to the scheme contained in the Report and Comprehensive Proposal for the Kosovo Status Settlement and intended to regulate Kosovo's supervised independence, while providing substantial self-rule to Serb-majority municipalities and additional competences for the North in education and health care. UN Special Envoy and

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former president of Finland Martti Ahtisaari submitted it to the Secretary-General in March 2007, who forwarded it to the Security Council with his full approval; the Council did not adopt it. Nevertheless, Kosovo included the essence of it in its constitution as part of the price paid for obtaining substantial international support for its declaration of independence. See Crisis Group Europe Report N°182, *Kosovo: No Good Alternatives to the Ahtisaari plan*, 14 May 2007, and subsequent reporting.

<sup>17</sup> The number of Serbs in Kosovo is unknown, since most boycotted Kosovo's census in 2011 and Serbia did not conduct its own census on Kosovo territory. Crisis Group estimates the Serb population of the North at between 55,000 and 65,000 with a possibly slightly larger number elsewhere in Kosovo. See Crisis Group Europe Reports N°200, *Serb Integration in Kosovo: Taking the Plunge*, 12 May 2009 and N°211, *North Kosovo: Dual Sovereignty in Practice*, 14 March 2011.

<sup>18</sup> Pressure includes verbal threats, property damage and Molotov cocktails and grenades thrown at houses of people suspected of dealing with Pristina. For more details, see *North Kosovo*, op. cit.

<sup>19</sup> Many Serbs complain integration would force them to give up Serbian education and health care, which the Ahtisaari plan would allow them to retain; Crisis Group interviews, northern Kosovo, 2010-2011.



pise.<sup>20</sup> The few attempts by Kosovo to engage the northerners politically have failed: mobile voting stations for the 2010 municipal elections attracted only two Serb voters; the one local politician willing to stand for office was intimidated into withdrawing; several others resigned from posts in local government (Municipal Preparatory Teams).<sup>21</sup>

There are many differences between North and south, but two are decisive: southern Serbs are cut off from Serbia by Kosovo government-controlled, Albanian-populated territory and understand viscerally they have no choice but to reach an accommodation with their stronger, more numerous neighbours. Further, Belgrade has been committed to retain sovereignty over the North, while it has largely written off the rest of Kosovo. The North can only become more like the south when a Kosovo government presence effectively separates northern Kosovo from Serbia, and Serbia gives up on its partition plans and signals this to the northern Serbs.

For years, much of the international community told Pristina to focus on the south, “be patient, and leave the North to us”.<sup>22</sup> Serbia has been allowed to undermine Kosovo’s sovereignty not only externally, by delaying recognition, but also internally, in the North, a minister said.<sup>23</sup> “Had we known the EU would not deliver”, mused a senior adviser to Prime Minister Hashim Thaçi, “we would have taken steps since February 2008 to deal” with the North, because this is “Syria in Lebanon”.<sup>24</sup> EULEX was a particular disappointment, because it failed to control the northern border with Serbia, did not prevent smuggling, was ineffective in fighting crime in Mitrovica and implemented only what Belgrade permitted. In the first part of 2011, its chief, referring to the Mitrovica court, told the Kosovo govern-

ment that he “expects Pristina and Belgrade to agree” before the mission would act.<sup>25</sup>

Before the favourable opinion of the International Court of Justice (ICJ) on its declaration of independence in July 2010, Kosovo felt vulnerable.<sup>26</sup> Pristina would eventually have offered the North a regional legislature and possibly an executive, “anything short of Republika Srpska”, for recognition by Serbia.<sup>27</sup> On the disputed northern gates, it reportedly would have agreed to delegate customs authority to EULEX and agree on a share of customs revenues to go directly to the North.<sup>28</sup> Officials also contemplated a land swap, exchanging the North for the heavily ethnic Albanian Preševo Valley in Serbia.<sup>29</sup> But the ICJ’s finding that Kosovo’s declaration of independence did not violate international law made the country much more confident about its sovereignty.

The December 2010 elections showed there was a large nationalist constituency and weakened Thaçi’s governing Democratic Party of Kosovo (Partia Demokratike e Kosovës, PDK). Competing for the first time, the Vetëvendosje (Self-determination) movement gained fourteen seats in the Kosovo assembly, campaigning against the coalition parties’ corruption and advocating union with Albania.<sup>30</sup>

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<sup>20</sup> Several said they expect Kosovo to soon merge with Albania. Crisis Group interviews, fall 2011.

<sup>21</sup> Northerners refused to vote even in UNMIK elections despite calls to do so by distinguished Serbian leaders. Local elections in 2000 saw the northern municipalities classified as “Not Recommended to Certify” by the Organisation for Security and Cooperation in Europe (OSCE), while parliamentary elections in 2001, despite the above-mentioned calls from state and church leaderships, had a turnout of only 760 in northern Mitrovica. Turnout was higher in the other three municipalities but nowhere near the levels of Serbs south of the Ibar. President Tadić’s call for participation in the 2004 Kosovo elections was not supported by other major actors in Serbia, and most Serbs boycotted.

<sup>22</sup> Crisis Group interviews, EU and U.S. diplomats, Pristina, 2007-2011; see also Crisis Group Europe Report N°161, *Kosovo: Toward Final Status*, 24 January 2005.

<sup>23</sup> Crisis Group interview, minister, Pristina, October 2011.

<sup>24</sup> Crisis Group interview, senior adviser, Pristina, September 2011.

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<sup>25</sup> Crisis Group interviews, government and EULEX officials, Pristina, August 2011. The latter comment concerned returning Serb and Albanian prosecutors and judges to the Mitrovica court, a major point of contention, but was taken as a general principle. See Crisis Group Europe Report N°204, *The Rule of Law in Independent Kosovo*, 19 May 2010 for background on the court.

<sup>26</sup> Serbia hoped the ICJ would state that Kosovo’s declaration violated international law; its next step would have been to seek a UN General Assembly resolution endorsing new status talks. Kosovo’s drive to secure international recognition would then likely have stalled. The ICJ found Kosovo’s declaration violated neither law nor UN Security Council resolutions. *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, ICJ, 22 July 2010. See also Crisis Group Europe Report N°206, *Kosovo and Serbia after the ICJ Opinion*, 26 August 2010.

<sup>27</sup> Crisis Group interviews, senior government official and Western diplomat, Pristina, April-June 2010. But Pristina soon concluded Serbia was not willing to recognise its independence or normalise relations.

<sup>28</sup> The U.S. Pristina embassy believed Kosovo and Serbia could agree to EULEX officials implementing customs based on Kosovo law at the northern gates, but not on where the funds collected would go. U.S. Pristina embassy cable, 13 October 2009, as made public by WikiLeaks.

<sup>29</sup> Crisis Group Report, *Kosovo and Serbia after the ICJ Opinion*, op. cit. Reports of Belgrade’s interest in a land swap lost credibility when no Serbian officials endorsed them publicly.

<sup>30</sup> Now the third largest party and Kosovo’s only major pan-Albanian one, it rejects negotiations with Serbia, the Ahtisaari plan and international supervision. PDK leaders worry that “despite all [our] achievements, this government can be remem-

Overall the opposition criticised Thaçi for engaging in the dialogue with Serbia without preparation and political consensus and said he had no legitimacy to negotiate. The assembly adopted a resolution defining the framework under which the government could conduct such a negotiation.<sup>31</sup> Soon after, members of Thaçi's own party joined criticism of the early agreements on freedom of movement and the civil registry. Opposition LDK leader Isa Mustafa said the arrangements were not in Kosovo's interest, and he would annul them if he came to power and they were not ratified in parliament as international agreements.<sup>32</sup>

By early 2011, Kosovo's political consensus had become less flexible, rejecting any further concessions on the northern municipalities; at most, the Ahtisaari plan's components could be "repackaged" under a new name to make them more palatable to Serbs.<sup>33</sup> With the U.S. and several EU member states encouraging Kosovo to insist on the North's integration,<sup>34</sup> Thaçi and his closest ministers and advisers lost patience with what they saw as hardening partition in the North and decided to act.

Slighting behaviour toward Kosovo on trade and free movement issues cost Belgrade international support and frustrated Pristina.<sup>35</sup> But Kosovo's separate customs sta-

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bered only for the North" and warned that they cannot allow "Vetëvendosje to be more nationalist than the PDK". Crisis Group interview, minister, Pristina, January 2011.

<sup>31</sup> Thaçi's government, formed three months after the elections, in late February 2011, with a slender parliamentary majority, includes ethnic-minority parties and the New Kosovo Alliance (AKR) of business mogul Behgjet Pacolli. The resolution charges it to negotiate technical issues not affecting sovereignty, territorial integrity or internal legal structure.

<sup>32</sup> Mustafa interview with Rubikon, KTV, Pristina, December 2011. Speaker of the Parliament Jakup Krasniqi stated that the arrangements undermine Kosovo statehood and are unconstitutional. Krasniqi is also general secretary of the PDK and enjoys strong support within the party. Crisis Group interview, 6 July 2011.

<sup>33</sup> Crisis Group interviews, government advisers, Pristina, October and November 2011.

<sup>34</sup> The U.S. embassy in Pristina believed the EU accepted its position that customs procedures at the northern gates should be approached through "plans for full integration of the northern municipalities". Embassy cable, 26 January 2010, made public by WikiLeaks. On 28 July 2011, three days after the attempt to deploy the OSU to the border, an assembly resolution supported the government's efforts to establish full control over the North and the border gates and called for customs reciprocity with Serbia.

<sup>35</sup> Since the declaration of independence, Serbia has refused to import goods from Kosovo, allow repatriation of foreign equipment from it and admit individuals with Kosovo identity documents. Contrary to Security Council Resolution 1244, Serbia does not recognise UNMIK marriage or birth certificates. No civilian flights to or from Kosovo are allowed in Serbian air

tus was the key that overcame international neutrality. In July, several ministers in the new government successfully pressured Thaçi to demand reciprocity with Serbia, meaning Kosovo should impose the same conditions on Serbian goods and persons that Serbia used on those from Kosovo. Pristina pressed EULEX to implement reciprocal measures at the northern gates; the EU mission refused.<sup>36</sup> It then asked EULEX to provide security for Kosovo officers on their way to the border and was again turned down; shortly thereafter, on 25 July, Pristina – without informing EULEX – sent the OSU into the North.

The government's action largely emancipated Kosovo from international supervision. EULEX's ability to restrain use of the OSUs, which it employed in August 2009, has ended in effect.<sup>37</sup> It also changed EU policy. Brussels had refused Pristina's requests to take control of the border, but after the July operation, it changed course and ordered EULEX to transport Kosovo police and customs officials by helicopter.

The Kosovo government knew it could not hold its ground at the gates for long. Its police forces are too weak (the OSU number about 500), and northern Serbs see them as little more than Kosovo Liberation Army (Ushtria Çlirimtare e Kosovës, UÇK) veterans in new uniforms.<sup>38</sup> EUFOR and KFOR would be needed to control the border, and it was a substantial political and diplomatic victory for Pristina to convince the international forces to escort its officials to the gates after 25 July. However, Kosovo argues that keeping Albanian Kosovo officials on duty at the border posts is essential, because the years since independence was declared have shown that neither EULEX nor ethnic Serb Kosovo police can be trusted to enforce its laws and stop smuggling.

Eventually Pristina would like the Serbs to use only the two official gates, rather than the numerous "alternative" crossing points that have sprouted up. This requires opening the gates; keeping the roads leading to them clear by

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space, requiring long diversions. See Crisis Group Report, *Kosovo and Serbia after the ICJ Opinion*, op. cit.

<sup>36</sup> Crisis Group interview, EULEX official, Pristina, 3 August 2011.

<sup>37</sup> Article 2.3 (f) of Annex 9 to the Ahtisaari plan gave EULEX the power to "reverse or annul operational decisions taken by the competent Kosovo authorities, as necessary to ensure ... public order and security". On 27 August 2009, Prime Minister Thaçi sent an OSU unit to Mitrovica to protect Albanians rebuilding homes in a controversial mixed neighbourhood; EULEX special police blocked all three Mitrovica bridges to keep OSU out, and Thaçi later pulled the unit back. U.S. Pristina embassy cable, 28 August 2009, as made public by WikiLeaks.

<sup>38</sup> Crisis Group interview, DS official, Mitrovica, October 2011. A moderate Mitrovica Serb told Crisis Group that "OSU in the North means war".

preventing fresh barricades; closing all the easily traversable alternative roads; and sustaining all this for months or years. The arrangement is only feasible if Kosovo and Serbia implement the agreement on integrated management of customs points they made in December.

Defending territorial integrity and sovereignty remains a high priority for Kosovo. The government's 25 July action brought rare unity across the political spectrum. *Thaçi* communicated with LDK and AAK but not *Vetëvendosje* leaders. The latter briefly lost ground, but with no further progress on the North, it is again capitalising on growing public dissatisfaction. In the absence of PDK delegates, who boycotted the session, the assembly passed on 7 December a *Vetëvendosje*-sponsored resolution calling for the government to impose full political and economic reciprocity on Serbia and refuse any cooperation until it recognises Kosovo. The government refused to implement it and the parliament passed a new measure in January rescinding its earlier resolution. The stalemate over the North is also undermining Kosovo's commitment to the *Ahtisaari* plan, until recently shared by all parties except *Vetëvendosje*. Parliament has failed to pass *Ahtisaari* laws on protecting *Prizren*'s cultural heritage and *Velika Hoča/Hoçë e Madhe*.<sup>39</sup>

## B. THE NORTHERN KOSOVO SERBS

The 25 July operation was *Pristina*'s first major move to demonstrate control over the North: locals reacted with surprise, confusion and fear. A mixture of plainclothes local internal affairs ministry (*Ministarstvo unutrašnjih poslova*, MUP) officers and municipal officials, failed to prevent OSU units from reaching gate 1 and had to concentrate that night on preventing a local mob from starting a gunfight. Many *Mitrovica* residents sent their families to central Serbia for protection.<sup>40</sup>

Northern Kosovo Serbs see the line between Serbia and North Kosovo as an administrative boundary within Serbia. From the outset, they have treated the dispute as a decisive struggle to preserve their way of life. Many consider Kosovo's government, legal system and services inferior, and they are determined not to submit. They see customs and border controls as the first steps to dismantling Serbian institutions and replacing them with Kosovo's, a process they consider would end in their emigration to Serbia.<sup>41</sup> They would prefer partition or a land swap, which the U.S. and most EU member states say cannot be options; even most EU states that do not recognise Kosovo independence have domestic objections. A few international officials who were privately interested now say nothing of this nature is possible. Sources close to *Tadić* assure EU officials they have "got the message" and are backing away from partition.<sup>42</sup>

As the crisis developed, northern Serbs began to regard EULEX and KFOR as occupiers, acting outside their UN mandates, no longer neutral guarantors of their safety. They treated the customs operation as an invasion challenging the community. The four mayors and the district chief coordinated an ad hoc civil defence system comprising firemen, plainclothes local MUP and civilians.<sup>43</sup> They set up barricades at key points – initially improvised roadblocks using trucks and buses, later piles of gravel and logs – to prevent a "unilateral and violent establishment of *Pristina*'s institutions in the north"<sup>44</sup> – and ordered companies and state employers to send personnel to the barricades in lieu of working. Serving on them has brought the northern society together but increased its isolation. The mayors' credibility has soared, as they are seen as standing up for the interest of northerners as *Belgrade* has wavered.<sup>45</sup>

Crisis Group visited many barricades, interviewing a wide array, including volunteers and those in fear of losing jobs, honest people and criminals, men and women, displaced persons from elsewhere in the former Yugoslavia and orig-

<sup>39</sup> Articles 4.1.7 and 4.2 of Annex 5 of the CSP require Kosovo to create a protected zone around the historic centre of *Prizren* and to regulate protection of the religious and cultural heritage of *Velika Hoča*, a village in *Rahovec* municipality that is home to several medieval Serbian Orthodox churches.

<sup>40</sup> Crisis Group telephone interviews, Serbian and northern Kosovo officials and civil society leaders, 25-26 July 2011; interviews, *Radenko Nedeljković*, *Mitrovica* District chief, September and October 2011; North Kosovo citizens, July 2011.

<sup>41</sup> Crisis Group interviews, northern Kosovo, July-November 2011; focus group, *Jagnjenica*, November 2011.

<sup>42</sup> Crisis Group interviews, diplomat of non-recognising EU state, *Belgrade*, 24 August 2011; U.S. embassy official, *Belgrade*, 27 October 2011; EU member state officials, *Brussels* and other capitals, October 2011.

<sup>43</sup> The mayors are from *Zubin Potok*, *Leposavić*, *Zvečan* and northern *Mitrovica*. In Serbia's administrative structure, these municipalities comprise the district of *Kosovska Mitrovica*. The job of the district chief, *Radenko Nedeljković* (DS), is largely to coordinate between the mayors and *Belgrade*.

<sup>44</sup> Serbian Minister for Kosovo and Metohija *Goran Bogdanović* quoted in "Barricades need to be removed as soon as possible", B92, 25 December 2011. Barricades set up in July were aimed at blocking another police operation in the North. After 16 September, the barricades were set up at locations close to the ethnic line of divide (eg, *Zupče* and *Dudin Krš*) as well as at points where it was believed those unwelcome in the North might try to enter (eg, *Jagnjenica*).

<sup>45</sup> A local activist of the governing DS complained, "the government's negotiator to the talks with *Pristina* has succeeded where all others have failed: he united the Serbs of northern Kosovo, the DS, the SNS, the DSS, G17+, SPS, the NGO sector: no one agrees with him, not even the truth". Crisis Group personal communication, North *Mitrovica* community leader, 15 November 2011.

inal residents, hardline nationalists and moderates, young hotheads and village elders. Locals resent serving at the concrete and gravel barrier over the iconic Mitrovica Bridge they see as purely symbolic, but morale is high at roadblocks on key strategic points, where there are tents and containers providing heat and free coffee, food and drink.<sup>46</sup> Movement is not frozen. Many “barricades” are passable, better described as checkpoints at which traffic often moves freely. Lookouts monitor traffic and warn those at the barrier to block the lane when they see suspicious traffic. Where roads are completely blocked, alternative routes have been established.<sup>47</sup> KFOR convoys pass routinely and are only stopped at a few sites where locals say they are preventing peacekeepers from cutting them off from Serbia and the rest of the North.

The barricades have broad local support despite persistent charges by Pristina, internationals and even Belgrade that thugs man them. An alleged crime boss, previously resented, gained the status of patriotic bandit when identified as a barricade leader. Criticism of him came to be seen as threats against all on the barricades. Crime and the rule of law mean different things north and south of the Ibar. For Pristina, bringing goods from Serbia to northern Kosovo is smuggling; for locals, it is normal domestic commerce. Local gangs used to profit from fuel smuggling, a racket that ended when Serbia reintroduced excise tax on fuel sent to Kosovo. Locals are more worried about things like drugs, a small side business for some whose arrest by EULEX would have had wide local support.<sup>48</sup>

Belgrade’s control over the North is becoming ever weaker. Radical moves like cutting financing, closing institutions or arresting political foes in the North, which would be difficult for the president to do unilaterally and legally, are ruled out, above all because of their political cost in an election year. The relationship between the northern

Serbs and Belgrade has deteriorated and is marked by mistrust and mutual accusations. The prevalent mood in the North is that Belgrade has not been honest and transparent about its dialogue with Pristina, after deals on freedom of movement, cadastral records and border management were presented in a reportedly deceptive manner.<sup>49</sup> Belgrade officials insist, privately and publicly, that the North is dominated by narrow political aims of opposition parties, northerners do not understand high politics, and “coordination with them is impossible as they immediately make private meetings public”.<sup>50</sup>

Communication is limited – high-profile visits by Serbian officials have stopped, as have publicised trips to Belgrade by the local officials. Interaction with bodies such as KFOR and EULEX is now “handled by the locals ... they can agree whatever they want with them during their meetings”, and Belgrade refrains from interference except for occasional press releases. The decision by Northern leaders to schedule a referendum on 14-15 February so inhabitants can indicate whether they accept Kosovo institutions has further strained relations. Belgrade sees it as unnecessary and “unconstitutional”.<sup>51</sup> When the government instructed DS members in charge of Leposavić municipality to abstain from voting on the referendum, the motion was passed without them.

## C. SERBIA

The constant in Serbia’s Kosovo policy under President Tadić is rejection of the declaration of independence.<sup>52</sup>

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<sup>46</sup> Crisis Group interview, Mitrovica barricade, 4 October 2011. The “bridgewatchers” then were three middle-aged women on a park bench, as several hundred other Serbs sat in cafés or strolled nearby. The bridge is in the crowded centre of Mitrovica and remains open to foot traffic; two nearby road bridges are open to vehicles. The symbolism of the barricade is felt in Pristina, where Prime Minister Thaçi sees it as a sign of partition that must be removed sooner or later. Crisis Group interviews, international officials, Pristina, September-November 2011. Crisis Group observed middle-aged ladies at the roadblocks, including the leading local liberal NGO activist and respected judge, throwing themselves against German KFOR vehicles.

<sup>47</sup> These roads, often no more than old logging tracks, are treacherous for small cars and require about double the time to reach Raška, but minibus transport of people and goods has increased; life has been normal, though heavy snow would present problems.

<sup>48</sup> Crisis Group observations, North Kosovo, October 2011; interviews, North Mitrovica residents, 2009-2011.

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<sup>49</sup> The freedom of movement deal specifies that all domiciled in Kosovo must have RKS or KS car plates. Belgrade told the northerners this does not apply to them, but they have no written guarantee; the cadastral records agreement acknowledges the Kosovo Supreme Court as the highest authority on those matters in Kosovo; Belgrade reportedly told the locals it is a “panel of international judges”; locals see the border management agreement as part of the Ahtisaari plan and legitimising Kosovo customs presence in the North, something Belgrade had told them it would never accept.

<sup>50</sup> Crisis Group interviews, Serbian officials, Belgrade, 22 December 2011.

<sup>51</sup> Crisis Group interview, Serbian official, Belgrade, 12 January 2012. “Na severu Kosova raspisan referendum” [North Kosovo set for referendum], Radio Free Europe, 28 December 2011 (online). “Tadić: Referendum neustavan, izlišan i vodi produbljivanju krize” [Tadić: Referendum unconstitutional, unnecessary and deepens the crisis], *Press*, 30 December 2011 (online).

<sup>52</sup> Tadić argued that Kosovo’s unilateral declaration of independence, “if allowed to stand ... would cause severe damage to the international system in at least the following six ways. First, it would legitimise the act of unilateral secession by a provincial or non-state actor. Second, it would transform the right to self-determination into an avowed right to independ-

For Belgrade, Kosovo's final status is an open question that can only be resolved with Serbia's consent. The solution must be a "mutually acceptable compromise, not an imposed outcome where one side gets everything it has ever wanted, and the other side gets nothing".<sup>53</sup> A successful outcome would be "an historical reconciliation between Serbs and Albanians throughout our region".<sup>54</sup> Tadić has called for a "comprehensive" solution and hints negotiated, recognised independence might be possible by often repeating that Serbia will never recognise the "unilateral declaration".

But virtually none in the international community believe Belgrade is seriously interested in a compromise solution that includes recognition of Kosovo. What mild concessions Serbia has made came late and under strong pressure. Tadić harshly described a plan to integrate the North into Kosovo's legal system, formulated by the International Civilian Office (ICO), the organisation charged with monitoring implementation of the Ahtisaari plan, as "unilateral schemes, intended to forcibly implement the so-called Ahtisaari Proposal, [that] blatantly violate Resolution 1244" and could "only be advanced by ... draconian, undemocratic" means. He warned Serbia would not tolerate the imposition of any Kosovo institutions on the North, though his rhetoric softened after the ICJ opinion in July 2010.<sup>55</sup>

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ence. Third, it would legitimise the forced partition of internationally recognised, sovereign states. Fourth, it would violate the commitment to the peaceful and consensual resolution of disputes in Europe. Fifth, it would supply any ethnic or religious group that has a grievance against its capital with a play-book on how to achieve its ends. And sixth, it would resurrect the discredited Cold War doctrine of limited sovereignty", address to Belgrade Security Forum, 15 September 2011.

<sup>53</sup> Tadić speech to the UN General Assembly, 23 September 2011. He described the sides as the Serbian and Albanian peoples, whose conflict "has been going on ... for almost a century and a half". "Tadić: Problem rešiti kompromisom/Tadić" [Problem needs to be solved by compromise], B92, 29 October 2011 (online). Tadić recently noted that his policy "takes into account the legitimate interests of the Albanians", address to the DS main board, reported in "Srbija samo u EU čuva i Kosovo" [Serbia can only protect Kosovo within the EU], *Dnevnik*, 3 September 2011 (online).

<sup>54</sup> Tadić, address to Parliamentary Assembly of the Council of Europe, Strasbourg, 26 January 2011.

<sup>55</sup> Crisis Group interviews, EU and U.S. officials, Belgrade, Pristina, Washington, Brussels, Berlin, Paris, Rome, 2010-2011. Tadić, address to UN Security Council, 22 January 2010. He said that "the ethnic Albanian authorities have to be told what the consequences will be – should they try unilateralism again. Otherwise, Serbia will have no choice but to reassess its relations with the international presence in the province", *ibid*, 6 July 2010.

No Serbian official has publicly explained the details of the sought-after compromise, leading many to doubt Belgrade's intentions. Privately, officials have discussed a range of options, including a confederation between Serbia and Kosovo (with the two sharing a single UN seat) to partition, as well as interim solutions short of the full "historic reconciliation", such as the 1972 Basic Treaty in which the two German states in effect normalised diplomatic relations without *de jure* recognition. The attempts to sell the "historic" compromise, however, centred on recognition in exchange for partition, were never sufficiently clear and failed to persuade.<sup>56</sup>

Under intense pressure, the leadership changed tactics in September 2011, dropping calls for a comprehensive solution, especially one based on partition. In its place, Tadić advanced four points: a search "for the best option for north of Kosovo; guarantees for the security of Serbs who live in enclaves in other parts of Kosovo; clarity for the status of the most important Serbian religious cultural monuments; and the issue of the property of the Serbian state and Serbs in Kosovo". The North, he said, was "an issue that must be addressed on the basis of the current realities. Attempts to change the current realities would not be conducive to constructive solutions".<sup>57</sup> Partition was an "attractive but not realistic solution"; Serbia now wants special status for northern Kosovo. He and others also mentioned Bosnia's Brčko District, Finland's Åland islands and the Good Friday agreement between the UK and Ireland as potential models.<sup>58</sup>

At the same time, Tadić hardened his stance against recognition, indicating that Serbia views the above models as

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<sup>56</sup> In June 2011, Tadić said there were "several options for Kosovo ... some talk about partition, others offer the model of South Tyrol and the two Germanys, there is also the Hong Kong model". RTS interview, 15 June 2011. Crisis Group interviews, Serbian official, 28 October 2011. Some foreign ministry officials described a desire to reach such an agreement. See Crisis Group Report, *Kosovo and Serbia after the ICJ Opinion*, *op. cit.* Tadić and Foreign Minister Vuk Jeremić reportedly proposed partition privately to Kosovo and international officials on several occasions. Crisis Group interviews, Serb and international officials, April-November 2011.

<sup>57</sup> Crisis Group interview, adviser to President Tadić, Belgrade, December 2011. Tadić, speech at Serbia-European Union forum, Belgrade, 9 September 2011. He repeated the same points in his 23 September 2011 address to the UN General Assembly.

<sup>58</sup> Tadić, address to International Institute for Strategic Studies and response to audience questions, 18 November 2011. Crisis Group interviews, Serbian officials, October-December 2011. Brčko is an autonomous condominium of Bosnia's two entities; Crisis Group Europe Briefing N°66, *Brčko Unsupervised*, 8 December 2011. The Irish analogy is deliberately ambiguous: Serbia sees itself as the UK, Kosovo as Ireland and the North as Northern Ireland; internationals are encouraged to view Belgrade as Dublin, Pristina as Belfast.

interim solutions, not involving it. A senior official described the new policy as no partition now, but no recognition before partition.<sup>59</sup> Belgrade will not discuss recognition openly because it is still seen as a controversial issue that carries a steep electoral price. Nevertheless, some elites understand it will not be able to join the EU until it is resolved.<sup>60</sup>

Serbia's outreach is directed almost entirely to the international community, on the assumption that once it negotiates a solution with key players in the Quint group, they will force the Kosovo government to accept it.<sup>61</sup> Belgrade prepared a "non-paper" in the final quarter of 2011 proposing to discuss "an overall settlement of relations [with Kosovo] ... to begin immediately and conclude by spring 2012", but shared it with the Quint, not with Pristina, thus undermining the credibility of the offer.<sup>62</sup> Its insistence on punitive measures, ranging from denying Kosovo an international dialling code and refusing to accept personal documents issued by UNMIK to prohibiting airlines travelling to or from Kosovo from using Serbian airspace, provide more convincing evidence of intentions than speeches and diplomatic initiatives by its leaders.<sup>63</sup> Even unilateral concessions on such issues, none of which would harm

any Serbian interest or complicate the lives of Kosovo Serbs, would benefit Belgrade by showing it is willing to treat Pristina with respect and generosity.

But on the ground, a real shift occurred. Serbia initially supported the establishment of barricades that "would only allow freedom of movement for EULEX if they promise not to transport Kosovo officials" and demanded that Kosovo customs officials be pulled back.<sup>64</sup> After the 28 November Jagnjenica clash, however, Tadić called for the barricades to be removed as "they don't protect any national interest" and for full freedom of movement for EULEX and KFOR. That turnaround was too sudden and sharp for many in his government and in parliament. Attempts to secure a resolution to buttress the new policy and Belgrade's negotiating team failed in November, and opposition figures as well as Northern Serb leaders are threatening court challenges to the decrees for implementing the deals already reached in the dialogue with Kosovo.<sup>65</sup>

Kosovo has little impact on the daily lives of ordinary Serbs but "is an emotional issue that quickly rises to the top on the priorities list if there is trouble". A sizeable minority has family roots there and follows events closely; many of these voters gravitate to the Democratic Party of Serbia (Demokratska stranka Srbije, DSS) and the Serbian Progressive Party (Srpska napredna stranka, SNS). Parties to the right, led by the DSS and the Serbian Radical Party (SRS), demand an end to the EU-facilitated dialogue; visit the barricades regularly to boost their patriotic credentials; and feel vindicated by Serbia's failure thus far to secure EU candidate status.<sup>66</sup> The largest opposition party, Tomislav Nikolić's SNS, has privately expressed views similar to the government's, but Nikolić has shifted

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<sup>59</sup> "Serbia will not recognise the independence of Kosovo. Starting from that principle, I emphasise the importance of four elements ...". Tadić, address to the Igman Initiative, Belgrade, 14 October 2011. Similarly, he argued that "in my country people are not going to accept that Kosovo is not part of Serbia .... In our view, unilateral declaration of independence is an attempt [at] partition of Serbia", making division of Kosovo a "partition within a partition". Tadić, response to audience questions, op. cit. Tadić emphasised that the Good Friday agreement was "very interesting, not only in terms of how you solved that problem with Ireland and the UK, but also in terms of how some countries that are intending to become member state of [the] European Union can join without making huge and very dangerous concessions", ibid. Crisis Group interview, senior Serbian official, 28 October 2011.

<sup>60</sup> Crisis Group interviews, Serb officials, Belgrade, July-September 2011.

<sup>61</sup> France, Germany, Italy, the UK and U.S. comprise the informal Quint group that has taken a leading role in international policy in the western Balkans. In November, Serbian officials shared a more detailed version of Tadić's plan with London and possibly other capitals but denied they had communicated it to any Kosovo officials. Crisis Group interviews, international and Serbian officials, January 2012.

<sup>62</sup> Serbian government non-paper on the Tadić plan, November 2011, made available to Crisis Group.

<sup>63</sup> See Crisis Group Report, *Kosovo and Serbia after the ICJ Opinion*, op. cit., pp. 21-22 for more detail. Serbia offered a country code of 3815, which Kosovo rejected because it consisted of the Serbian code (381) plus a regional digit. Serbia refused to accept UNMIK documents (birth and marriage certificates, personal ID), thus violating Resolution 1244, even before Kosovo's declaration of independence.

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<sup>64</sup> "Barikade dok se carinici ne povuku" [Barricades until customs officials leave], *Press*, 24 October 2011. Serbia's chief negotiator in the technical talks with Kosovo, Borislav Stefanović, addressed those on the barricades almost daily, encouraging them to continue non-violent resistance to show that the North's image as a haven for criminals and extremists was false. Goran Bogdanović, Kosovo and Metohija minister, also regularly appeared. "KFOR pogazio sve što je dogovoreno, prevozi kosvoske carinike do prelaza" [KFOR reneges on deal, ferries Kosovo customs officials to the gates], *Blic*, 27 July 2011.

<sup>65</sup> "Tadić: Nacionalni interes se ne brani na barikadama" [Tadić: National interests are not defended at the barricades], *Blic*, 30 November 2011. This call was repeated by other officials, including Serbia's negotiator, Stefanović. Crisis Group interviews, Serbian parliamentarian, northern Kosovo politicians, November 2011.

<sup>66</sup> Crisis Group interview, Srđan Bogosavljević, IPSOS/Strategic Marketing, Belgrade, 1 November 2011. "Petković: Prekinuti dijalog sa Prištinom, vratiti UNMIK" [Petković: Stop the dialogue with Pristina, bring back UNMIK], *Vesti.rs*, 3 October 2011. Former Prime Minister Vojislav Koštunica and his DSS call for new talks under UN mediation.

toward the DSS as the election approaches.<sup>67</sup> Even within the governing coalition there are deep divisions. Internal Affairs Minister Ivica Dačić (SPS) has publicly called for “demarcation” between Serbs and Albanians, stated a military solution cannot be ruled out and declared that “Thaçi must know that an attack on Mitrovica is an attack on Belgrade”.<sup>68</sup>

On the other end of the spectrum, the left-leaning Liberal Democratic Party (Liberalno demokratska partija, LDP) has started a campaign, “Preokret” (Turnaround), that has attracted several NGO and political leaders including Vuk Drašković’s Serbian Renewal Movement (Srpski pokret obnove, SPO), which is a part of the governing coalition, and Žarko Korać’s Social Democratic Union (Socijaldemokratska unija, SDU).<sup>69</sup> Preokret favours EU membership and calls for the endorsement of the non-status part of the Ahtisaari plan.

### III. SERBIA’S EUROPEAN PERSPECTIVE

Serbia has known for several months that its attitude to Kosovo, particularly participation in the technical dialogue facilitated by High Representative Catherine Ashton’s representative,<sup>70</sup> and behaviour vis-à-vis the North will determine whether it receives EU candidate status in 2012, which Tadić has made a defining aim of his presidency. EU officials and representatives of member states say that Belgrade must demonstrate clear political will to reach an agreement with Kosovo. Yet, they have not given a consistent, clear explanation of what this amounts to in practical terms. The goalposts have repeatedly been shifted.<sup>71</sup>

Germany, and to a slightly lesser degree the United Kingdom, has been the most demanding. During her 24 August 2011 Belgrade visit, Chancellor Angela Merkel said Serbia would not be offered candidate status until it removed its institutions from the North – in effect, until it abandoned its partition policy. Some German officials softened this, understanding Serbian administration could not end overnight, but others said, “We have been patient enough”, and Serbia’s institutions “must go”.<sup>72</sup> The European Commission (EC) recommended on 12 October that Serbia receive candidate status for “progress achieved so far”, with the only conditions being to continue dialogue with Pristina and “swiftly” implement agreements already reached. It further suggested opening membership talks once Serbia met several further conditions: allowing Kosovo to participate in regional organisations; cooperating with EULEX “in all parts of Kosovo” (eg, ensuring it operates freely in the North); agreeing on telecommunications and diplomas; and respecting the Energy Community Treaty.<sup>73</sup>

With the candidacy carrot, the EU was mainly able to encourage Belgrade to return to the technical dialogue with Kosovo on 2 September and settle the customs issue,

<sup>67</sup> Crisis Group interview, international official, Belgrade, October 2011; “Savetujem Tadića da me odmah zove” [I advise Tadić to call me immediately], 2 January 2012, *Blic* (online).

<sup>68</sup> “Dačić: Novo razgraničenje je nužno” [Dačić: New demarcation is needed], B92, 15 October 2011. While some government officials talked about partition in private, they have not been as explicit. “I. Dačić: Napadom na Srbe i Kosovsku Mitrovicu, Thaçi napada i Beograd” [I. Dačić: By attacking Serbs and Kosovska Mitrovica, Thaçi attacks Belgrade], Radio KiM, 24 November 2011.

<sup>69</sup> The initiative has been supported by respected NGO figures such as Miljenko Dereta, Nataša Kandić and Vladimir Goati.

<sup>70</sup> The technical dialogue began on 8-9 March 2011.

<sup>71</sup> EU officials are apparently aware that they have been insufficiently clear about the conditions, and in late January member state ambassadors met to clarify them at the Political and Security Committee (PSC).

<sup>72</sup> Crisis Group interviews, German officials, Berlin, September 2011.

<sup>73</sup> “Conclusions and recommendations of the Commission’s Opinions on the membership applications by Serbia”, 12 October 2011. On 7 October 2011, the Energy Community Secretariat notified Belgrade that Serbia was not complying with the directives on cross-border electricity transmission, gave Serbia two months to implement the directive and offered “to discuss swift and practicable solutions with all parties involved”. Discussions are ongoing but Serbia has not complied. See case number ECS-3/08 at [www.energy-community.org](http://www.energy-community.org).

which it had refused to do in July.<sup>74</sup> The dialogue's chief achievement so far is the agreement on the "EU developed concept of integrated management for crossing points (IBM)", according to which Serbia and Kosovo "will gradually set up the joint, integrated, single and secure posts at all their common crossing points", with EULEX present in line with its Kosovo mandate.<sup>75</sup>

Desiring to appear cooperative, Serbia claimed to seek only "the widest possible autonomy, a super-autonomy for the North".<sup>76</sup> On the eve of the EU Council decision, sources close to Tadić scaled demands back to "the Ahtisaari plan with a few decorative additions" for the North. Tadić described the presence of Kosovo customs officials at the northern gates as inevitable.<sup>77</sup> The EU General Affairs Council concluded Serbia had met the EC's conditions. Without imposing a new condition, it noted it "attaches great importance" to EULEX's and KFOR's ability to perform their tasks unhindered.<sup>78</sup> Over the next several days, Belgrade exerted strong pressure on locals in northern Kosovo, persuading them to remove the barriers at the two official crossing points.

Yet even with this important shift, and while noting "the considerable progress that Serbia has made towards fulfilling the political criteria", the 9 December European Council requested that it satisfy additional conditions to obtain candidate status in March.<sup>79</sup> In effect, it took the most difficult conditions the EC had proposed as tests for

actual membership talks – full cooperation with EULEX in the North and Kosovo's participation in regional bodies – and turned them into conditions for candidacy, while making no reference to starting membership talks. It did so under the influence of Germany, the UK and the Netherlands, the countries with the most reservations about Serbia's candidacy.<sup>80</sup> This was devastating. DS officials had long assumed candidacy was a sure thing and counted on the start of membership talks to provide a boost for the May 2012 election. The deputy prime minister, who had made EU accession a signature issue, resigned.<sup>81</sup>

Ashton and Enlargement Commissioner Štefan Füle quickly gave political and moral encouragement, but the shifting conditions – the product of differences between member states and institutions – have eroded EU influence. It would have been easier for Belgrade to define a cooperative strategy if requirements for each accession stage – candidacy, start of talks and opening of chapters – were clearly explained and unchanged. The frequent shifts have led Belgrade to believe that its best strategy is to delay concessions until the last minute, as it has done several times.<sup>82</sup> This tactic annoys EU representatives and suggests to them that Serbia is not taking the process seriously.<sup>83</sup>

As required by the EU, Serbia has issued decrees and set up a coordination office to implement the technical dialogue agreements reached in 2011 on free movement of persons and goods, civil registry, and cadastral records.<sup>84</sup> Implementation of agreements on freedom of movement

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<sup>74</sup> Serbia's negotiators knew they would have to accept Kosovo customs stamps the UN endorsed as consistent with Resolution 1244; they played for time, and time had run out. Crisis Group interviews, Serbian and UN officials, Belgrade, Pristina, 2010-2011.

<sup>75</sup> "EU-facilitated dialogue: Agreement on IBM", European Council press release, Brussels, 2 December 2011. IBM refers to Integrated Border Management. The EC "IBM Guidelines for the Western Balkans" give guidance for development in the region.

<sup>76</sup> Crisis Group interview, Serbian official, Belgrade, October 2011. Initially Serb officials rejected discussing issues related to the North in the technical dialogue; by October they were saying "We need to open the North package as soon as possible". Crisis Group interviews, Serbian officials, Belgrade, April-July, October 2011. Serbia had consistently linked its relations with Pristina to its claims on the North, seeking partition or territorial "adjustment".

<sup>77</sup> Crisis Group interviews, NGO official, Washington, DC, December 2011; senior Serb official, Belgrade, 31 October 2011.

<sup>78</sup> General Affairs Council conclusions on enlargement and stabilisation and association process, 5 December 2011.

<sup>79</sup> Serbia must show it has made "further progress in moving forward with the implementation in good faith of agreements reached in the dialogue including on IBM, has reached an agreement on inclusive regional cooperation and has actively cooperated to enable EULEX and KFOR to execute their mandates". European Council conclusions, 9 December 2011, p. 5.

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<sup>80</sup> Crisis Group interview, EU official, Brussels, December 2011. Possibly member states like France, traditionally supportive of Serbia's candidacy, postponed debate over the issue because the summit was concentrated on the European financial crisis.

<sup>81</sup> Crisis Group interviews, senior DS officials, Belgrade, July 2011. "Đelić podneo ostavku" [Đelić resigns], RTS, 9 December 2011.

<sup>82</sup> "We are looking forward to see Serbia progressing on the path to the European Union in the near future and are confident that Serbia can now make the final steps and ensure that the decision to grant candidate status in February can be taken", Ashton and Füle joint statement, 12 December 2011. On two unrelated occasions, Serbian officials explained they knew they would have to concede a particular issue but were waiting for the last minute; otherwise, "they will just impose more conditions". Crisis Group interviews, Belgrade, October-December 2011. Serb leaders in Bosnia are similarly reluctant to make concessions lest new demands follow, a strategy they believe has been successful, Crisis Group interview, senior Republika Srpska officials, Banja Luka, 23 August 2011.

<sup>83</sup> Crisis Group interviews, German foreign ministry officials, Berlin, 24-25 January 2012; EU officials, Brussels, 27 January 2012.

<sup>84</sup> Commission Opinion on Serbia's application for membership of the European Union, 12 October 2011, p. 12. The first batch of civil registry documents has been scanned, certified and handed over to the Kosovo authorities via EULEX.



(FoM) signed on 1 November and the IBM is more challenging. The FoM, which went into force on 26 December, includes agreement on identity cards, driver licenses and car insurance. It regulates how Serbia and Kosovo residents can travel in each other's territory, including a complex scheme for vehicles to exchange Republic of Kosovo (RKS) plates for temporary plates when they enter Serbia. Kosovo Serbs have tended to retain Serbian plates, but according to the agreement all Kosovo residents are to use either Kosovo (KS) or RKS plates. Pristina argues that Serbia can no longer issue plates in the North; Serbian negotiators say it can either continue to do so or there should be an interim period before it has to stop.<sup>85</sup>

For now, the agreement has actually made travel more costly and difficult. Long lines jammed the border posts in early January as Serbian police struggled with the new procedures. They charge €105 per month per vehicle with KS plates; Kosovo has reciprocated with monthly charges of €100 on Serbian cars.<sup>86</sup> The fees mostly hit minorities in border regions, especially the Preševo Valley Albanians, for whom they are a substantial fraction of average monthly income.

So far, the IBM agreement is only a framework. It crucially specifies there will be joint posts between Kosovo and Serbia but is largely status neutral, as it refrains from calling the line between the two a border to appease both Serbia and the five EU member states that do not recognise Kosovo independence. It does not say how customs revenue will be distributed, though EU and Kosovo sources agree that funds collected at Kosovo gates will go to the

Kosovo state budget. For an EU official close to the talks, it means Serbia has accepted Kosovo authorities,<sup>87</sup> but EULEX will at least initially also be present, performing border police and customs duties at gates 1 and 31 and supervising elsewhere.

For IBM implementation to start, a tripartite implementation group (chaired by the EU) must be set up, and the Agreed Conclusions should be supplemented by technical protocols on how implementation will be organised and funded (partially by the EU). The December European Council conclusions suggest start of implementation is expected by late February – near impossible considering the level of inter-agency coordination to be established, first domestically then between Kosovo and Serbia. There are also still key disagreements: the Serbs, for example want EULEX to retain its executive function at the two northern gates and for these to be treated differently than others between Serbia and Kosovo. The facilitators of the dialogue say, “The IBM concept will be gradually implemented as soon as practically possible”.<sup>88</sup> Other European officials say that as long as the technical work continues, this will count positively for Serbia's candidacy bid.<sup>89</sup> Working groups to prepare the protocols have at least started to meet.

Inclusive regional cooperation is stuck on the issue of Kosovo's name; both sides have made concessions but remain far apart. Serbia agrees to allow Kosovo to join regional organisations without a UN chaperone and sign agreements but insists it be identified with a reference to Security Council Resolution 1244. Yet, UNMIK is already a member of most regional organisations and Serbia wants it to remain present, though it agrees Kosovo officials can make decisions in practice. Kosovo and the EU facilitators both reject reference to 1244 or UNMIK.<sup>90</sup> This issue

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<sup>85</sup> Agreed Conclusions on Freedom of Movement, 2 July 2011, Point 7. UNMIK introduced KS plates, and Kosovo Serbs saw them as status neutral and thus acceptable, though many retained their old Serbian plates. After independence, Kosovo issued RKS plates, which most Serbs reject, while Serbia began issuing its own plates with codes for towns in Kosovo (eg, KM for Kosovska Mitrovica). Northern Kosovo Serbs drive with old or new Serbian plates or no plates; they are unhappy with the agreement and want strong guarantees that they can keep Serb plates. Crisis Group interview, Serb official, Belgrade, 22 December 2011.

<sup>86</sup> Belgrade claims the market sets the fees, pointing out that neighbouring countries that recognise Kosovo charge even more: Croatia (€200), Slovenia (up to €320) and Bulgaria (€170). Kosovo is not a member of the Green Card insurance system. The problem can be solved through bilateral agreements between insurance associations in Serbia and Kosovo, such as Kosovo has with Montenegro and Macedonia. These lower charges to between €40 and €100 per year. Belgrade does not rule this out but wants “hard guarantees from the EU, whose joint insurance space we are joining next year, and cash in a deposit fund as Montenegro and Macedonia have experienced problems in getting Kosovo insurance companies to pay up”. Crisis Group interviews, Serbian government official, Belgrade, 21 December 2011, Insurance Association officer, Pristina, 18 January 2012.

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<sup>87</sup> An asterisk in the IBM Agreed Conclusions reads: “One party recognises the line as a border; the other party recognises the line as an administrative boundary”; also, because of status disputes: “Exceptionally, and limited to the common IBM areas, the parties will not display symbols of their respective jurisdictions”. Crisis Group interviews, EU official, Brussels, December 2011; Kosovo official, Istanbul, December 2011.

<sup>88</sup> Serbia rejected one of the EU facilitator's draft protocols and is considering a revision. Crisis Group interview, Serbian official, January 2012. The protocols, “are nowhere near good enough ... we need something that the locals will accept”. Crisis Group interview, Serbian official, Belgrade, 22 December 2011. “EU-facilitated dialogue: Agreement on IBM”, European Council press release, Brussels, 2 December 2011.

<sup>89</sup> Crisis Group interviews, German official, Berlin, 25 January 2012; EU official, Brussels, 27 January 2012.

<sup>90</sup> Kosovo's initial position was to be identified by its constitutional name, the Republic of Kosovo; Serbia's starting point was to demand that Kosovo be escorted by UNMIK officials and identified as “Kosovo under UN Security Council Resolution 1244”. Serbia wants Kosovo's name to be followed by an asterisk and a footnote, “without prejudice to member states”

risks determining whether Serbia gets candidate status.<sup>91</sup> It is emotionally charged and links the two main European conditions, the internal (cooperation with EULEX, removal of Serbian institutions) and external (Kosovo's regional representation). Serbia is trying to use 1244 to force Kosovo to admit the limits on its independence, while ignoring the resolution's prohibition of Serbian interference on Kosovo territory. If it persists in trying to have it both ways, the EU should withhold candidate status.

If Serbia continues to insist that 1244 is the cornerstone of international law on Kosovo, it can demand a reference to the resolution as the price for admitting Pristina to regional forums, but it must also cease operating its own institutions on Kosovo territory. Specifically, it must cancel local elections. It could turn responsibility for them over to UNMIK and organisations under its umbrella, EULEX and the Organisation for Security and Cooperation in Europe (OSCE). Alternatively, Belgrade can admit that 1244 is increasingly irrelevant and join the effort to move past it by admitting Kosovo to regional bodies as an equal partner. In that event, its institutions in northern Kosovo, which have the solid support of the local population, should be more acceptable, as transition to a negotiated and sustainable regime in the North.

The international community's positions are no more consistent. Some in Brussels claim that the 1244 reference would obstruct the EU's own ability to enter into contractual relations with Kosovo because of objections from non-recognising member states, though some of the latter deny this.<sup>92</sup> Others, notably Germany, criticise Serbia's "parallel institutions" while calling on Belgrade to give up on 1244. For Kosovo, any reference to 1244 – with its protection of Serbia's territorial integrity – calls its independence and sovereignty into question. Yet, Pristina's objections to Serbia's institutions in northern Kosovo rest on the UN resolution it otherwise rejects.

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position on status and in accordance with Resolution 1244". Crisis Group interviews, senior Serbian officials, Belgrade, 22 December 2011. Kosovo has agreed to drop the term "Republic" and to accept a "without prejudice" footnote. The EU team is considering an additional clause referring generally to international law and UN resolutions (but not specifically 1244). Crisis Group interviews, Kosovo and EU officials, Brussels and Istanbul, December 2011.

<sup>91</sup> A senior Serbian official said, "We will give up on candidacy to protect 1244", Crisis Group interview, Belgrade, 22 December 2011.

<sup>92</sup> A representative of a non-recognising EU member state confirmed that the reference to 1244 does not prevent contractual relations, and removing it does not guarantee them; Crisis Group telephone interview, Brussels, January 2012. The EU cannot fairly blame Serbia for failing to resolve a problem internal to the Union and relations between recognising and non-recognising states.

Whatever its post-independence relevance, 1244 is a Security Council resolution and should not be used as an obstacle to reconciliation; compromises exist. Kosovo should be able to participate fully and equally in regional organisations; Serbia should not object to Kosovo's membership without its UNMIK chaperone. A footnote is a reasonable compromise, preferably indicating simply that member states differ on status. Alternatively, the footnote could cite 1244 but also the ICJ opinion finding that Kosovo's declaration of independence did not violate that resolution or international law. Serbia should also publicly encourage other non-recognising states to accept Kosovo on the same terms and endorse EU contractual relations with it. The most resistant EU state, Cyprus, should allow the EU to have contractual relations with Kosovo, especially as it prepares to take on the Presidency of the Council in the second half of 2012.

Active cooperation by Serbia with EULEX and KFOR – a self-evident EU candidacy condition – is primarily stymied by the roadblocks in northern Kosovo. Tadić has called for their withdrawal,<sup>93</sup> but Kosovo Serb leaders are the primary actors blocking cooperation with EULEX, because they consider that it lost its status neutrality when it supported Pristina's effort to move the OSU to the border. Serbia should remove any barricades on its own territory, continue its calls for the rest to be pulled down, but not be penalised if the Kosovo Serbs refuse.

There is no guarantee Serbia will pass the test for candidacy in March, especially since the conditions are vague and depend heavily on member states' interpretation of progress. It should implement the technical dialogue agreements. Depending on how long it takes to work through the IBM protocols, it could also take interim unilateral steps on that agreement, such as moving its customs checkpoints at gates 1 and 31 so they are adjacent to the Kosovo/EULEX facilities and announcing that they are open and should be used. As an interim measure, it should monitor entry to Serbian-controlled territory, while EULEX monitors entry to Kosovo, with Kosovo officials present. Progress on EC conditions for starting membership talks, such as respecting the Energy Treaty and reaching a compromise on telecommunications, would likewise show good will.<sup>94</sup>

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<sup>93</sup> "Tadić: Srbi, povucite se sa barikada" [Tadić: Serbs, take down the barricades], B92, 29 November 2011. EULEX officers move through the North to meet with locals, though roadblocks still prevent them from reaching the border posts by land.

<sup>94</sup> Others include: fully respecting the principles of inclusive regional cooperation; finding solutions for mutual acceptance of diplomas; continuing to implement in good faith all agreements reached; and cooperating actively with EULEX in order for it to exercise its functions in all parts of Kosovo. Commission Opinion, *op. cit.*, p. 12.

Any EU member state can block Serbia's candidacy, however, and German officials say that they will veto it if they conclude that Serbia has not met the conditions.<sup>95</sup> Germany, the Netherlands and the UK should not go beyond the December European Council conditions and impose new ones now, such as the dismantling of Serbian-supported institutions in Kosovo or full access for EULEX to the North Mitrovica court house.<sup>96</sup> Belgrade has already met the EC's conditions. If it now clears its side of the border, calls on the northern Kosovo Serbs to do the same and adopts a reasonable compromise on Kosovo's regional activity, that should satisfy the Council's additional demands regarding cooperation with EULEX and KFOR and be sufficient to qualify for candidate status in March.

Delaying the application further would diminish the EU's leverage over Serbia and damage its own strategy of using the prospect of membership to stabilise the western Balkans.<sup>97</sup> It would create a clear disbalance in the region, as Croatia will become a full member in 2013. The foreign ministers of Sweden and Italy reminded their colleagues in January that candidate status would also be an important sign of support for pro-European political forces in Serbia's 2012 elections.<sup>98</sup>

## IV. PREVENTING CONFLICT

The European Council's offer to Serbia in effect of candidate status in March 2012 in return for further Kosovo concessions creates a narrow window of opportunity, though the situation could quickly deteriorate on the ground, especially as Kosovo Serbs see little reason to compromise or even implement agreements made by Serbia. For a year or more thereafter, while parliamentary elections are held in Serbia and presidential polls are anticipated in both Serbia and Kosovo, there is likely to be little chance for a comprehensive political solution for northern Kosovo.<sup>99</sup> The best strategy is to minimise the risk of conflict and escalation by building consensus on principles that could guide the search for a solution in the mid to long term. Several potential conflict flashpoints are on the horizon, and all parties should prepare to react to them cautiously.

Should even low-level violence resurface between the Serb and Albanian communities in northern Kosovo, EULEX has extremely limited capacities to respond, as EU member states (Italy, France and Romania) have withdrawn special police units, leaving only one (Polish) unit available in Kosovo in 2012. The full burden of assuring security is now on KFOR, which is unsuited to crowd control. If violence spreads southward while KFOR is deployed in the northern municipalities, it could spill out of control. The Quint countries, widely seen as drivers of EULEX and KFOR strategy in northern Kosovo, should urgently deploy special police to EULEX.

### A. POTENTIAL CONFLICT ON THE GROUND

Implementation of the freedom of movement agreement is one possible flashpoint, as Pristina, Belgrade and northern Kosovo Serbs all have different interpretations of it. Belgrade officials say Serbia will keep issuing IDs and other documents and plates to any Kosovo residents who apply – in effect, to the North.<sup>100</sup> Pristina will likely allow northern Serbs several months to give up their plates and register their identity documents and licences, but it will want them eventually to obtain Kosovo plates to guarantee that all vehicles are registered. This promises to be problematic for Northerners. There could be trouble if a Serb who has refused to change plates is fined. Furthermore, EULEX is supposed to assist Kosovo authorities distribute plates in the North, which will probably further undermine its local credibility. EULEX cannot do this

<sup>95</sup> Crisis Group interviews, Berlin, 24-25 January 2012.

<sup>96</sup> The attempts by UN Police special units to remove Serbian judiciary staff from the Mitrovica court house, after they locked themselves in protest, led to Mitrovica-wide clashes on 17 March 2008. The pre-dawn raid was met by hundreds of people who rushed onto the streets. Clashes broke out immediately, lasting well into the afternoon, and led to fatalities on both sides and a UN Police withdrawal. For more, see Crisis Group Europe Briefing N°47, *Kosovo's First Month*, 18 March 2008. German and EU officials suggested that giving EULEX access to the court would be a good way to advance Serbia's EU candidacy. Crisis Group interviews, officials, Berlin and Brussels, 24-28 January 2012.

<sup>97</sup> In June 2012, the European Council is to decide whether to open accession talks with Montenegro, but according to German officials, reconsideration of Serbian candidacy would most likely be postponed to December 2012. Crisis Group interview, Berlin, 25 January 2012.

<sup>98</sup> Crisis Group interview, officials summarising discussions at the Foreign Affairs Council meeting, Berlin and Brussels, 24-28 January 2012.

<sup>99</sup> Some Serbian officials said they were ready to discuss aspects of relations with Kosovo even before the elections, Crisis Group interview, Belgrade, 22 December 2011.

<sup>100</sup> Crisis Group interview, Serbian official, Belgrade, 22 December 2011. License plates with codes for the Mitrovica area (KM) are issued in Raska, Serbia.

while its movement is constrained.<sup>101</sup> The registration obligation is also likely to keep Serbs with unregistered cars away from gates 1 and 31 if IBM is ever implemented.

The Kosovo government considers all Serbian institutions in Kosovo illegal but distinguishes between locally-elected bodies, like municipal assemblies and mayors, and those answering directly to Belgrade, like the district chiefs, police and courts. It will not engage with the former while the latter are present,<sup>102</sup> but a forceful attempt by Pristina to close down any of these is likely to end in violence, as in 2008 when it tried to regain control of the Mitrovica court, and should not be encouraged. Instead as a Serbian official said, “We should aim at gradual transformation of those institutions in a way that is acceptable to everyone”.<sup>103</sup>

During a December visit to Kosovo, Chancellor Merkel stated, “It is important that the implementation of joint border control is accomplished. Of course, we have to proceed in steps in order to come to the point that there are no parallel structures”.<sup>104</sup> But the bodies managed and financed by the Serbian state – schools, medical facilities, municipal and district offices, together worth approximately €200 million – keep the North functioning.<sup>105</sup> They cannot be dismantled overnight; Pristina has neither the financial nor technical capabilities to immediately fill the gap.

But the real test can be expected in April or May 2012, at the time of Serbia’s elections. Serbian officials say they plan to hold them also in Kosovo. No international representative has said cancellation is an EU candidacy condition, and it would be difficult: the procedure under Serbian law is protracted and unclear,<sup>106</sup> “political suicide” according

to a senior official.<sup>107</sup> Officials insist privately and publicly that the elections will take place. Serbs in the North nevertheless are worried that Belgrade will cancel the elections under pressure. They might then try to organise their own process while pledging allegiance to Serbia.<sup>108</sup> South of the Ibar Serbs are also beginning to organise for elections.

Pristina would regard new Serbian elections in Kosovo as extremely provocative and try to block them. Its reach in the North is limited, but it might seek to prevent election materials or officials from entering. Elsewhere, it could seize ballots, arrest organisers and block access to polling stations. Especially in the south, not only Pristina but also Kosovo Serb parties like the Independent Liberal Party (Samostalna liberalna stranka, SLS) that view parallel municipalities as rivals might try to prevent polls from opening.

Northern Kosovo voters should not be disenfranchised. They should have elected officials Pristina, Belgrade and the international community accept as legitimate. Though Brussels officials involved in the technical talks say elections are not yet part of the Kosovo-Serbia dialogue, it is urgent that the sides agree on a mutually acceptable process to ensure that persons elected are viewed as legitimate by all sides and to avoid another confrontation on the ground. Insofar as Serbia maintains its insistence that Kosovo accept a reference to Resolution 1244 in its regional representation, Belgrade has no legal grounds to

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<sup>101</sup> As warm weather approaches, large number of Kosovars who work in Western Europe may choose to take advantage of the agreement and travel through Serbia to return to their homes, thus putting new pressure on the customs gates.

<sup>102</sup> Crisis Group interview, adviser to the prime minister, Pristina, 18 November 2011.

<sup>103</sup> Crisis Group interview, senior Serb official, Belgrade, 23 December 2011.

<sup>104</sup> “Merkel pushes for rule of law, good neighbourly relations of Kosovo”, SETimes.com, 20 December 2011.

<sup>105</sup> On 24 December 2011, the Kosovo and Metohija ministry adopted its €45 million 2012 budget, but this covers only “support of local governments, sustainable returns, IDPs, improvement in life of children, youth activities and support for the Serbian Orthodox Church”. Other ministries provide other forms of funding, including pensions.

<sup>106</sup> Serbia held no elections in Kosovo from 1999 to 2008. Elections were organised at all levels by UNMIK. After Kosovo declared independence, the Serbian government issued an order nullifying the declaration and affirming commitment to implement Serbia’s constitutional order and laws wherever possible in Kosovo, thus giving a basis in its law for Serbian polls there. Crisis Group interview, senior Serb officials, Belgrade, 22 De-

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ember 2011. Serbian elections are regulated by laws on voter rolls, local self-government and local elections. Voter rolls legislation requires a single roll that is to be released when elections are called. If the government fails to do this, it can be sued by individuals and institutions in the areas affected, but this would at most delay the process. Once the speaker of parliament calls elections and the voter roll is released, everything is done locally through electoral commissions. Article 16 of the local self-government law deals with the possibility of abolishing municipalities, but this requires a change in legislation through parliament and an advisory referendum in the area affected. Article 85 treats temporary measures, but none of the three necessary conditions are met by the northern municipalities, and after temporary measures are imposed, new elections must happen within 60 days.

<sup>107</sup> Crisis Group interview, senior Serb official, Belgrade, 22 December 2011.

<sup>108</sup> “Our answer to any sentence that uses words like abolish and impose is No”, Crisis Group interview, senior Serb official, Belgrade, 22 December 2011. “Bogdanović: Izbori i na Kosovu” [Bogdanović: Elections in Kosovo as well], *Mondo*, 23 December 2011. “Upitno održavanje srpskih izbora na KiM” [Serb elections in Kosovo questionable], Radio KiM, 23 December 2011; “Marko Jakšić: Bez lokalnih izbora na KiM” [Marko Jakšić: No local elections in Kosovo], Radio KiM, 23 December 2011. Crisis Group interviews, northern officials/leaders, Mitrovica, October-November 2011.

organise elections on Kosovo territory.<sup>109</sup> It should then cancel the elections and call on UNMIK to extend the mandates of existing municipal officials or conduct a vote under its own or OSCE authority.

The weakest actors, yet the ones with capability to immediately cause conflict, are the northern Kosovo Serbs, who continue to wield influence with their barricades. While resistance has been largely peaceful, it at times has turned violent. International sources in Pristina state that paramilitary groups operate freely there. Other sources say dozens of Serbian gendarmerie entered the North in August and still operate. Many international officials, including in KFOR and from Western intelligence entities, claim there are strong links between criminal and armed groups, mayors and the district coordinator, and have called upon Serbia to pull back any of its forces in Kosovo.<sup>110</sup>

Serbian security services deny having operatives in the North. In repeated visits through northern Kosovo Crisis Group has seen no signs of Special Forces or police sent from Serbia but has encountered plainclothes locals who appear to work for the MUP. About 200 Kosovo residents who were already Serbian police before 1999 remain on the MUP payroll in the North. They question persons they consider suspicious at barricades, serve as sentries and watch KFOR movements with binoculars. They carry weapons, even badges, and coordinate actions with municipal crisis teams and the district.<sup>111</sup>

Groups of young people, more violent and nationalistic, less predictable and controllable, have appeared, organised through football fan groups or far right movements. Most are local, but they receive regular visits from far-right organisations in Serbia. Some of the latter are in Kosovo full time and bring in other visitors from places like Slovakia and Russia. Despite nationalist and defiant rhetoric, they say they will never go against decisions of the local people and authorities. Some have guns, most at least knives. They are much more unpredictable than the infamous Bridge-watchers who are now near middle age but still form the

backbone of a “civil defence” that is rapidly activated at community level when locals feel threatened.<sup>112</sup>

Local leaders are adamant that the security situation is under control and that popular support is geared towards peaceful protests and not provocations.<sup>113</sup> In the coming months, however, as Kosovo Serbs feel coerced to carry out agreements made by Belgrade to dismantle the barricades and implement the freedom of movement agreement and eventually the IBM, it is essential that Belgrade and local officials retain control over these groups to avoid violence. Elimination of the barricades is best achieved through political dialogue and agreement on the IBM. While these talks are ongoing, KFOR and EULEX should stop confronting northern Kosovo Serbs by removing barricades and closing alternative routes, steps that increase tension and make a political solution more difficult, while risking needless casualties. Recent experience also demonstrates that KFOR cannot keep official roads open and close alternative routes with its current rules of engagement and capacities, making these occasional shows of force ineffective.

Should violence increase and locals face integration through coercion – whether by internationals, Belgrade or Pristina – many northern Kosovo Serbs are likely to leave. North Mitrovica, already tense, may lose its most educated and dynamic residents, especially university and medical centre staff.<sup>114</sup> Young Serbs, raised without contact with Albanians and the Albanian language, would likely emigrate. Older and rural Serbs and those too poor would remain. Mass departure from the North would create a humanitarian, social and economic issue but also damage the Serb communities in the south and thus be a deep blow to the concept of a multi-ethnic Kosovo. The only Serb-language university is in the North; loss of most faculty and fund-

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<sup>109</sup> Crisis Group interview, EU official, Brussels, December 2011. “[M]unicipal by-elections in May 2008 [are] inconsistent with UNSCR 1244/1999”, Commission opinion, op. cit., p. 8.

<sup>110</sup> Crisis Group interviews, Western diplomat, September 2011; international official and Western intelligence officer, Pristina, December 2011; Senior KFOR officials, Pristina, August 2011; German official, Berlin, January 2012; EU official, Brussels, January 2012.

<sup>111</sup> For more on MUP presence in the North, see Crisis Group Report, *North Kosovo*, op. cit. Serbian officials consistently deny the presence of MUP officers in Kosovo, since it is a violation of Resolution 1244, so their organisational structure is unknown.

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<sup>112</sup> “U kući pokreta 1389 na Kosovu” [In the home of movement 1389 in Kosovo], B92, 23 December 2011. Crisis Group Europe Reports, N°165, *Bridging Kosovo’s Mitrovica Divide*, 13 September 2005; *Kosovo’s First Month*, op. cit. The territorial defence was activated after 25 July 2011. Crisis Group interview, local Serb officials, northern Kosovo, July-December 2011.

<sup>113</sup> Crisis Group interviews, mayors and other local officials, northern Kosovo, July-November 2011.

<sup>114</sup> Local Serb belief that integration means the end of Serbian institutions would lead to a large number of professionals currently employed in Serbian state institutions, the bulk of which are based in northern Mitrovica, to leave. Without them, the large hospital, the ever-expanding university and ambitious institutions like Telekom Srbija, would struggle to survive. The area would be ruralised without the professional, urban Serbs from northern Mitrovica.

ing would be hard to overcome. Declining numbers of Serbs could put pressure on the Ahtisaari plan itself.<sup>115</sup>

## B. POLITICAL TASKS

The technical talks facilitated by the EU are becoming increasingly complex, both difficult to implement, because they require buy-in by Kosovo Serbs who are not at the table, and hard to disguise as purely technical, as they touch upon political issues, such as whether Kosovo must be identified with reference to Resolution 1244. When issues that affect the daily lives of northern Kosovo Serbs are addressed, their leaders should participate.

The northern Kosovo Serbs refuse to talk to Pristina without Belgrade's endorsement and leadership. While comprehensive dialogue is nearly impossible as long as the parties disagree about what country they are in, initial contacts could help improve the climate of hostile distrust. President Tadić should express support. He and Kosovo officials should drop derogatory rhetoric calling the northerners criminal, illegal and extremist. Instead Pristina should explain clearly and repeatedly that it does not aim to change their way of life and will cooperate with Belgrade and offer investments and extended rights. Pristina should not force its authority on the northern municipalities but launch an inclusive and long-term policy of engagement, which the EU would support technically and financially.<sup>116</sup> Agreement on organisation of elections is essential for achieving legitimate local authorities who could be included in such cooperation and dialogue.

Some in Serbia want full-fledged political talks to start, but Pristina has been loath to consider this, saying Belgrade had such an opportunity before the declaration of independence and any talks will drag on, seal the status quo and undermine efforts at more international recognitions.<sup>117</sup> But eventually Kosovo and Serbia must agree on managing the North. Crisis Group has outlined the three main options that exist for them: through integration into Kosovo under the Ahtisaari plan; through integration into Kosovo, with greater autonomy; or through partition or a

land swap agreed by the two sovereign states, with the North joining Serbia.<sup>118</sup>

The middle option is broader autonomy – “Ahtisaari plus”. Europe has many examples of autonomous regions with powers well beyond those envisaged by the Ahtisaari plan, some no larger than North Kosovo.<sup>119</sup> Crisis Group has advocated a package of autonomous rights for North Kosovo, including a regional legislature and executive; local police and courts with jurisdiction over civil disputes and less serious crimes; and the right to a percentage of tax receipts and customs revenues. The package could be extended further.<sup>120</sup> For example, only laws ratified by the regional legislature might apply; or a legislature-appointed regional executive might nominate the regional police commander and judges.

But “Ahtisaari plus” is no silver bullet. Regardless of theoretical attractiveness, virtually no one Crisis Group interviewed in the North expressed interest. Belgrade officials who previously rejected it now accept that the North should have a special, highly autonomous status within Kosovo, but only as a stepping-stone to partition: Serbia can normalise relations with a Kosovo that includes an

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<sup>115</sup> The Ahtisaari plan was based on an assumed Serb population of about 10 per cent of Kosovo's total. As the Serbs' share declines, provisions ranging from decentralisation, language rights at state level and a disproportionate share of seats in the state assembly to the prohibition on union with other states would become harder to justify and sustain.

<sup>116</sup> General Affairs Council conclusions on enlargement and stabilisation and association process, 5 December 2011, para 56. Foreign Minister Carl Bildt of Sweden, for example, has proposed the start of a Pristina-North structured dialogue.

<sup>117</sup> As of 23 January 2012, 86 UN member states have recognised the Republic of Kosovo.

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<sup>118</sup> Crisis Group Report, *Kosovo and Serbia after the ICJ Opinion*, op. cit., p. 8. Additional options surface occasionally, such as an independent North Kosovo or shared sovereignty for Kosovo and Serbia. A senior Serbian official cited Brčko, which belongs equally to Bosnia's two constituent entities; Crisis Group interview, Belgrade, October 2011. Eventually Serbia and Kosovo will most likely agree on something within the range marked out by the three main approaches.

<sup>119</sup> Some regions of Spain have their own basic law, legislature, president, government, police and civil law courts and schedule their own elections. Autonomous Italian regions control between 60 and 100 per cent of tax receipts. Alto-Adige (Süd-Tirol) has joint representation with Austrian Nordtirol in Brussels. Swiss cantons are sovereign entities with competence for law enforcement, taxation, education and control over their portions of the external border. Republic of Ireland police may be seconded with full powers to the police in Northern Ireland, where English police have only limited rights. Finland's Åland Islands, with about half the population of northern Kosovo, are neutral and demilitarised by treaty and exclusively Swedish-speaking by law. Several Swiss cantons are also smaller; the smallest of Italy's autonomous regions, the Aosta Valley, has about twice the North's population.

<sup>120</sup> Crisis Group Report, *Kosovo and Serbia after the ICJ Opinion*, op. cit., p. 11. The Z-4 plan crafted by the U.S., EU and Russia to end the conflict between Croatia and its breakaway “Republic of Serbian Krajina” (RSK) might offer some options. Serbs' rejection of it in 1994 preceded Croatia retaking RSK by force in August 1995.

autonomous North, they say, but only recognise it once it agrees to let the North join Serbia.<sup>121</sup>

Moreover, if Belgrade and Pristina could agree on a special status for the North and the local Serbs were persuaded to accept it, there would still be pitfalls. Northern Serbs might use new privileges to press for secession. Their deputies could provoke repeated conflict with Pristina, passing unconstitutional laws, trying to nullify legislation, setting up duplicate institutions and so on. Many diplomats acknowledge some kind of “Ahtisaari plus” as the best solution but rule out anything resembling the status of Bosnia’s Republika Srpska (RS). The analogy is inexact, however. RS has broad powers over all aspects of Bosnian state policy; nobody proposes to give the North a veto in Pristina, in effect, federalising Kosovo.<sup>122</sup> But tensions could turn violent more easily with a separate police that might confront Kosovo police. With limited institutional capacity and funds, the region would struggle to govern itself.<sup>123</sup>

Political talks, between Kosovo and the North and Kosovo and Serbia, are needed to resolve the conflict over the North, but there are no easy solutions. Any agreement will have to be implemented gradually, as Kosovo builds up its institutional capacity, finances and trust. It will also likely require an executive international presence to mediate and enforce what is agreed for several years beyond the lapse of the ICO and EULEX mandates elsewhere in Kosovo.

## V. CONCLUSION

The EU-mediated technical dialogue is already in deep political waters. The parties are grappling with sovereignty, territorial integrity and how to ease Kosovo’s next steps in the international community. In the early months of 2012, Serbia’s election campaign and the EU’s decision on candidate status may make it hard to tackle controversial issues. Yet, the time should not be wasted; all involved should begin laying the groundwork for a political dialogue whose participants might vary from topic to topic.<sup>124</sup> Whenever that dialogue starts, it will have to deal with two main and linked issues: normalisation of Kosovo-Serbia ties, including diplomatic relations; and transformation of Serbia’s institutions in northern Kosovo so that they are consistent with international law and acceptable to all concerned.<sup>125</sup> Progress or blockage in one area will impact the other. The more Belgrade accepts Kosovo’s sovereignty, the more Kosovo is likely to expand northerners’ rights.

Under DS leadership, Serbia has taken steps scarcely imaginable in the immediate aftermath of Kosovo’s declaration of independence, but often at the last minute, under intense EU pressure and with the appearance of doing the minimum necessary. This strategy has run its course and now fuels the EU’s own brinkmanship, since Brussels and member states believe Belgrade only moves when forced. For its own sake, Serbia needs a new approach. Whatever tactical gains result from keeping Kosovo in international limbo are more than offset by the damage to its reputation. Inability to treat Pristina with respect stimulates doubts about its embrace of European ideals.

EU member states’ practice of raising the bar for Serbia’s accession process is unhelpful, not least for the EU’s own ability to stimulate positive change in the western Balkans. In effect, it is training Serbia to be uncooperative. Refusing candidate status in March would risk the wider strategy of using membership prospects and negotiations to encourage regional stability – a strategy that has had reasonable success. Political dialogue should not question Kosovo’s borders but must build on the foundation of the

<sup>121</sup> Crisis Group interviews, northern Kosovo, 2010-2011; senior Serbian government officials, Belgrade, October 2011.

<sup>122</sup> Crisis Group interviews, U.S. and EU diplomats, Pristina, Brussels and Belgrade, 2011. See Crisis Group Europe Report N°214, *Bosnia: What Does Republika Srpska Want?*, 6 October 2011.

<sup>123</sup> Most better-educated residents are in North Mitrovica, near its main employers, the university and medical centre. Most university faculty commute from Serbia or elsewhere and could not be relied on to fill gaps. Crisis Group Europe Report N°211, *North Kosovo: Dual Sovereignty in Practice*, 14 March 2011.

<sup>124</sup> A senior Serbian official said that while there should be a “moratorium on the dialogue” during the election season and until a new government is formed, Belgrade was ready to discuss normalising relations with Kosovo and governing the North “even now – for something this big, we don’t care how close our elections are”. Crisis Group interview, Belgrade, 22 December 2011.

<sup>125</sup> Resolution 1244 and UNMIK decisions make Serbian institutions on Kosovo territory illegal; international consensus against partition, including non-recognising EU states, means those institutions will need to be within a Kosovo context or face isolation.

Ahtisaari plan and go beyond it. Attempts to pressure Serbia and the northern Kosovo Serbs into submission most likely would produce more unrest. Pristina would risk an intractable secessionist movement in its northern region, poisoning its politics and relations with its largest neighbour long after Europe's attention has moved elsewhere. Only a solution worked on together by Pristina, the North, and Serbia can be sustainable.

**Pristina/Belgrade/Brussels, 2 February 2012**



## APPENDIX A

### MAP OF KOSOVO

