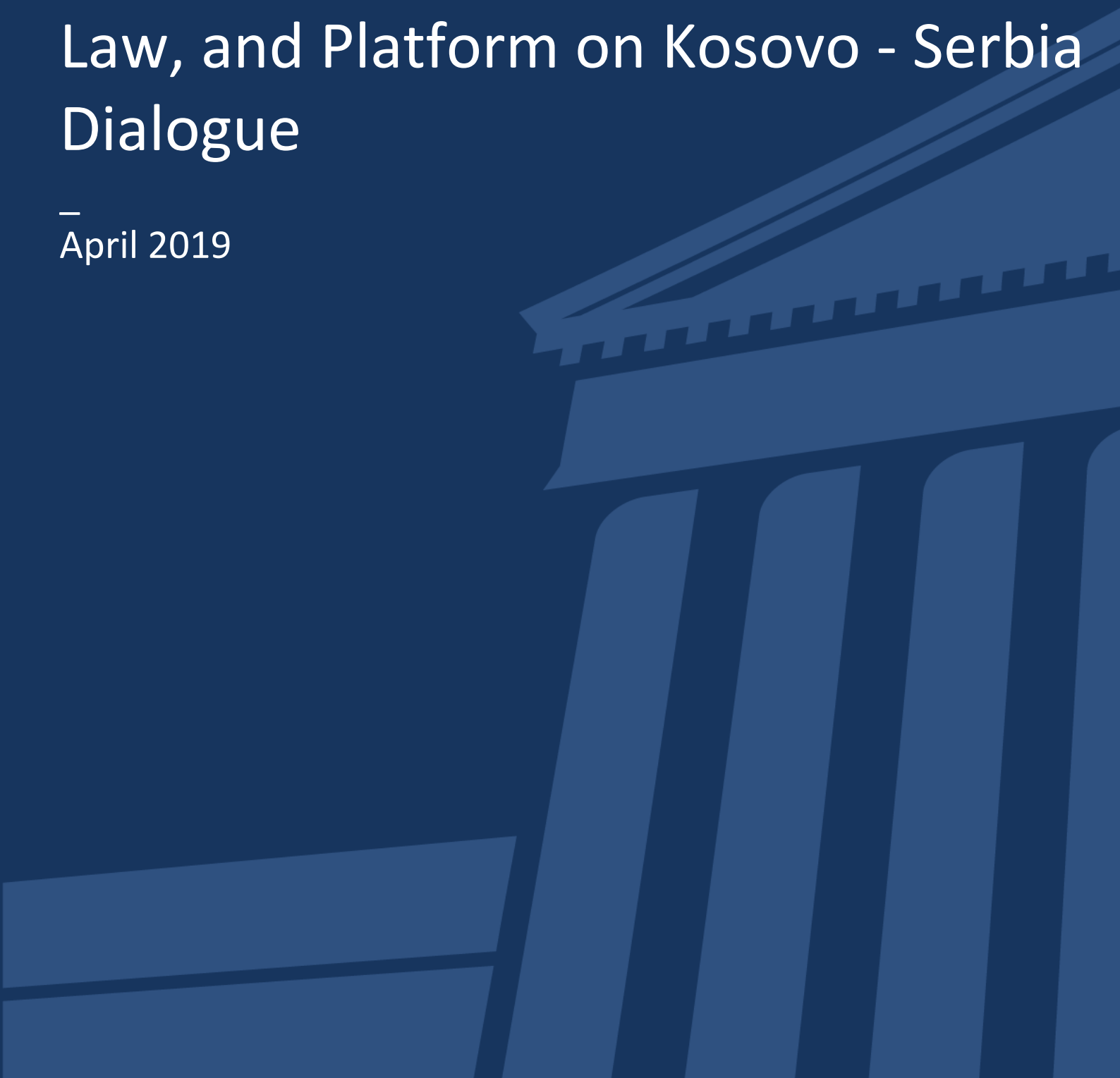


# DIALOGUE THROUGH DOCUMENTS: An Analysis of The Resolution, Draft Law, and Platform on Kosovo - Serbia Dialogue

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April 2019





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Policy Analysis 05/2019

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April 2019

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# DIALOGUE THROUGH DOCUMENTS: AN ANALYSIS OF THE RESOLUTION, DRAFT LAW, AND PLATFORM ON KOSOVO - SERBIA DIALOGUE

## Executive Summary

Driven by unprecedented disagreements between all leading state institutions on the matters related to dialogue, political parties turned to the Parliament. Within a time span of little over two months, the parliament produced three particular documents, namely a resolution, draft law and platform. The three were responsible to facilitate a wide political consensus embedded in a single and exclusive unit, authorized and mandated from the Parliament to represent Kosovo in the dialogue, in which discussions on territorial matters are off the table. This policy analysis aims at pointing out why these documents have failed to achieve any significant results in relation to their core original responsibilities and how Kosovo still faces strong uncertainties regarding the process of dialogue.

First, the resolution failed to attain its main political purpose, since at no point did it manage to produce a wide political and social consensus it willingly promised pertaining matters related to dialogue. Second, the draft law refutes all of its three public propositions. As a result, the State Delegation (1) is not the sole and exclusive authority that will frame, lead and conclude the process of Dialogue, (2) will not pursue the principle of unanimity when it comes to decision making and (3) based on the decision-making model in place parliamentary opposition has no decisive role within the State Delegation. Third, the platform on dialogue failed to explicitly annul any possibility of including border revision talks in the Dialogue agenda, did not make it clear that the principles set in the document are representative of all state institutions expected to be part of the dialogue, and failed to determine a mechanism responsible for establishing a wide political consensus with regard to Kosovo's negotiation position in the dialogue process.

Since current efforts have failed to produce a political consensus and reflect domestic political unity in the international domain, this policy analysis argues and recommends the following. First, in doing so, it recognizes organizing of new elections as a violable last resort. Second, it recommends the establishment of an informal core-parties consensus group responsible for engineering a political consensus that has the support and the approval of a qualified majority in the parliament. Last, this policy analysis recommends against an agreement that is comprehensive in its nature. The ongoing political dialogue between Kosovo and Serbia should revolve around and conclude in a political agreement that first and foremost addresses the main issues between the two states, that of reconciliation and mutual recognition. Other topics of more technical nature should defer to other secondary agreements that will follow once the two states have established full diplomatic relations.

## Introduction

A seemingly stalemate process, instantly became alive as alleged behind the curtains talks between President Thaci and President Vucic might have hit a breakthrough. President Thaci's idea is nothing short of controversial. Even worse it lacks genuine originality. While his lips read 'border correction', the audience vividly hears 'territorial exchange', and even 'partition of Kosovo' – peculiar phrases once heard only from strong opponents of Kosovo's independence and statehood. Almost the entire political constellation, including Prime Minister Haradinaj and Speaker of the Parliament Veseli, publicly opposed President Thaci's suggestion for border

revision. Some called it harmful to Kosovo's statehood. Others called it warmongering<sup>1</sup>. But President Thaci has consistently appeared confident and eager in his quest, suggesting his willingness to sign at sight an agreement that accommodates his vision of border revision, despite the unconstitutionality of such action.

Driven by unprecedented disagreements between leading state institutions on the matters related to dialogue, political parties turned to the Parliament. This was an attempt to capitalize their political opposition towards the controversial idea in hand, and produce a representative consensus of Kosovo's position in the forthcoming final stage of dialogue in Brussels. Within a time span of little over two months, the parliament produced three particular documents, namely a resolution, draft law and platform. The three are responsible to facilitate (i) a wide political consensus (ii) embedded in a single and exclusive unit, authorized and mandated from the Parliament to represent Kosovo in the dialogue, (iii) in which discussions on territorial matter are off the table. This policy analysis aims at pointing out why all three documents have failed to achieve any significant results in relation to their core original responsibilities.

## **Resolution on Process of Dialogue for the Normalization of the Relations between Kosovo and Serbia**

### **Summary of the Resolution**

On December 15<sup>th</sup> of 2018 the Parliament passed a resolution on the process of Dialogue with a simple majority of votes.<sup>2</sup> This was considered to be the first step towards a consolidated and consensual political framework within which the Kosovar institutions will operate towards a final agreement with Serbia. It was a welcoming initiative with positive intentions.

Reciprocal recognition, membership in the United Nations and a firm commitment on the acceleration of Kosovo's Euro-Atlantic integration were set as the general principles of a sustainable and comprehensive agreement between Kosovo and Serbia.<sup>3</sup> Moreover, it printed down three fundamental issues in what the resolution deemed as 'red lines' in the process of dialogue.<sup>4</sup> The first regarded territorial integrity and uniform nature of state structure as inviolable and unalienable. Affirmation of the two certainly came as a matter of concerns for border revision as well as the establishment of the Association of Serb Municipalities within parallel system of governance. Second, the resolution vowed that Kosovo will not indulge in any negotiating process that is incompatible with and might undermine Kosovo's national strategic interest of good neighborly relations and Euro-Atlantic integration. Last, according to the resolution, Kosovo is and will remain a parliamentary democracy and multi-cultural society, and anyone who attempts to dismiss such fundamental structural and identity characteristics does not have the support of the Parliament. Suggestively, the latter was intended to address President Thaci's manner of doing things, as he had previously shown willingness to by-pass the Parliament when it comes to reaching

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<sup>1</sup> RTV21, "Haradinaj paralajmeron: Ndryshimi i kufirit me Serbine 'nenkupton lufte'", 30 August 2018. Accessed on 2 April, 2019 at <http://rtv21.tv/haradinaj-paralajmeron-ndryshimi-i-kufirit-me-serbine-nenkupton-lufte/>

<sup>2</sup> Telegrafi, "Kuvendi voton rezoluten per dialogun me Serbine", 15 December 2018, <https://telegrafi.com/kuvendi-voton-projekt-rezoluten-per-procesin-e-dialogut/> Accessed on 1 April 2019

<sup>3</sup> Parliamentary Resolution on the Dialogue Process for the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia, on Principles of Sustainable and Comprehensive Agreement Available at [http://www.kuvendikosoves.org/common/docs/2018\\_12\\_18\\_Resolution%2006-R-015.pdf](http://www.kuvendikosoves.org/common/docs/2018_12_18_Resolution%2006-R-015.pdf)

<sup>4</sup> Ibid, on Definition and Dialogue Framework.

an agreement with Serbia.<sup>5</sup> In doing so, the resolution called for a wide political and public consensus in the process of dialogue.

Just as importantly, the resolution also sets the ground for the establishment of a State Delegation as the sole and only entity authorized by the Parliament responsible for negotiating and finalizing an agreement during the process of dialogue. It will be composed of members of both the Government coalition as well as opposition parties, and it will be equally co-chaired by one representative of the government coalition and one from the parliamentary opposition.<sup>6</sup> The resolution assigns the State Delegation with the responsibility for drafting and presenting before the Parliament two underlying documents, a draft law and a draft platform on dialogue.<sup>7</sup> The former sets the legality of the State Delegation's competences, responsibilities and the scope of operation. Whereas the latter sets the leading principles that determine Kosovo's negotiation position in the process of dialogue. In the end, the Resolution reinstates the central role that the Parliament should uphold in the process, and affirms that any final agreement should and will be ratified in the Parliament with the vote of at least 2/3 of all its members.

### Analysis of the Resolution

Due to the resolution's lack of legal binding effects, its significance relied only on the political weight it manages to manifest in response to talks about border revision. In the end, it failed to attain its political purpose. Firstly, at no point did it manage to produce a wide political and social consensus it willingly promised - the parliament passed the resolution with only 59 out of 120 votes in favor - nor did it truly pushed for it. Evidentially, in addition to the ruling coalition, namely Democratic Party of Kosovo (PDK), Alliance for the Future of Kosovo (AAK) and NISMA, the resolution was voted in favor from one of the opposition parties as well, *Social Democratic Party* (PSD). It should be duly noted that ratification of any international agreement requires the support of 2/3 - or 80 votes - of all members of the parliament.<sup>8</sup> Hence, as long as the two major opposition parties - *Self-determination!* (VV) and *Democratic League of Kosovo* (LDK) - are not on board, the lone inclusion of the minor opposition party of PSD is not indicative of a wide political consensus. Consequently, entering into a final process of dialogue without a wide political consensus on the principles of an agreement indicates absence of unity towards most sensitive issues of the dialogue, such is border revision, and in the end may lead to an easily predicted political deadlock as well as social unrest.

Secondly, the political and public legitimacy for drafting of the resolution in the first place derived from the univocal opposition towards border revision as a basis for an ultimate agreement between Kosovo and Serbia. Although supporters claim that the resolution capitalizes on their political opposition towards any possibility that discussions on territorial matters will take place, the matter of the fact is that nowhere in the text of the resolution is there any explicit reference to that. Admittedly, the resolution makes a strong reference to the 'inviolability of territorial integrity', and in doing so proponents of the resolution, have insisted that such reference equates to the

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<sup>5</sup>Constitutional Court, President's Request for assessment of the conflict among constitutional competences of the President of the Republic of Kosovo and the Assembly of the Republic of Kosovo. Available at [http://gjk-ks.org/wp-content/uploads/2019/03/ko\\_131\\_18\\_av\\_ang.pdf](http://gjk-ks.org/wp-content/uploads/2019/03/ko_131_18_av_ang.pdf)

<sup>6</sup> Parliamentary Resolution on the Dialogue Process for the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia, on State Delegation: structure, mandate, functioning and oversight. Available at [http://www.kuvendikosoves.org/common/docs/2018\\_12\\_18\\_Resolution%2006-R-015.pdf](http://www.kuvendikosoves.org/common/docs/2018_12_18_Resolution%2006-R-015.pdf). State Delegation: structure, mandate, functioning and oversight

<sup>7</sup> Ibid.

<sup>8</sup> Constitution of Republic of Kosovo. Article 18.1. Available at: <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>

disallowance of talks on territorial changes. However, the legal interpretation of the clause or norm of territorial integrity under international law begs to differ. The norm of territorial integrity, enshrined in the article 2 of the United Nations' Charter<sup>9</sup>, suggests that territorial integrity of a state could become violable only under threat and/use of force from an another fellow state, as it explicitly refrains them from doing so. In the narrowest of interpretations, failing to do so would constitute a violation of international law. Ergo, the reference to the 'inviolability of territorial integrity' in the resolution refers only to the improbable actions by the Serbian government to deploy military forces against Kosovo's territorial integrity, but in no way, shape or form does it express the utter political will to disallow peaceful talks over border revision.

Conclusively, the suggestion that the resolution in itself, and particularly its reference to the norm of territorial integrity is an expression of political will to refrain President Thaci's agenda is at best inaccurate, and at worst intentionally so.

## **Draft Law on the Duties, Responsibilities and Competences of the State Delegation of the Republic of Kosovo in the Dialogue Process with the Republic of Serbia**

### **Summary of Draft Law**

As foreseen in the resolution, the state delegation ought to present before the parliament a draft law, often referred to as draft law on the dialogue, within a 30 days period since the voting of the resolution. On February 2<sup>nd</sup> of 2019 - two weeks passed the deadline - the draft law was presented to the parliament and, expectedly, received only the support of a simple majority in the parliament.<sup>10</sup> The draft law regulates the organizational structure, duties, responsibilities and competences of the State Delegation, and by doing so determines the institutional hierarchy and the decision-making procedures in and during the dialogue process.

Accordingly, it establishes a State Delegation co-chaired equally two representatives, one from the ranks of the parliamentary opposition and the other from governing coalition, authorized and mandated by the Parliament to negotiate and produce an agreement under the dialogue process.<sup>11</sup> Moreover, in compliance with the resolution, it determines the proportional representation between government coalition and opposition in the state delegation. Thereby, the total difference in the number of members from the government coalition and opposition within the state delegation must not be more than two (2) members.<sup>12</sup> In this delegation of twelve (12) members, a reserved seat for a representative from the Civil Society in the capacity of a regular member is also foreseen.

The delegation will function based on two underlining documents, namely the State Platform which was publicly discussed in the Parliament, and the Negotiation Strategy of the State Delegation which will remain undisclosed due to its sensitivity. Failing to strictly follow the principles set in these documents could trigger the motion for dismissal of the State Delegation or its individual members.<sup>13</sup> As for the process of decision-making within the state delegation, similarly to the

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<sup>9</sup> Charter of the United Nation, Chapter 1, article. 2.4. Available at <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>

<sup>10</sup> KOHA, "Projektligji per Dialogun Kalon ne Kuvend". 2 February 2019. Accessed on 2 April 1, 2019 at <https://www.koha.net/arberi/143069/projektligji-per-dialogun-kalon-ne-kuvend/>

<sup>11</sup> Draft Law on Duties, responsibilities and competences of the State Delegation of the Republic of Kosovo in the Dialogue process with the Republic of Serbia, Article 2.

<sup>12</sup> Ibid. Article 5.1

<sup>13</sup> Ibid. Article 5.7

provision in the resolution as well as the public proposition of its proponents, the draft law stipulates that the decisions shall be taken unanimously, with the consent of all its members.<sup>14</sup>

In addition, as part of the organizational structuring, the draft law also provides the legal basis for the establishment of the working commission responsible for negotiations on specific topic, based on the aforementioned State Platform and Strategy, and an Ad-hoc Parliamentary Committee on Dialogue Oversight.<sup>15</sup>

### **Analysis of the Draft Law**

The political legitimacy of this legal initiative was based on three particular propositions that, according to the proponents of the draft law, counter and neutralize President's agenda for border revision while at the same time guarantee the basis for a wide political consensus. First proposition claims that the draft law determines the State Delegation as the sole and exclusive institutional body to frame, lead and conclude the process of dialogue. Second proposition states that in order to ensure a rightful and consensual decision-making, all decisions within the state delegation shall be taken unanimously. Third proposition infers that parliamentary opposition will have a determining role in and throughout the dialogue process via active participation in the State Delegation. A closer read of the draft law actually refutes all three of them.

Firstly, State Delegation is not the sole and exclusive authority that will frame, lead and conclude the process of Dialogue. Although it is authorized to negotiate and enter an agreement, it ought to do so in close consultation with other constitutional institutions – namely the President and Prime Minister - without specifically determining the nature and weight of these consultations. This is explicitly stipulated in the article 2 on the *Objective and Purpose* of the draft law<sup>16</sup>. Moreover, the draft law does not explicitly prescribe the sole authorization and responsibility of the Delegation to lead the Dialogue either. In the matter of fact, article 4 on the *Procedures for Establishing the State Delegation* stipulates that despite the prescribed lead role of the Delegation in the Dialogue, the Delegation itself is legally obligated to consult with other constitutional institutions. Furthermore, article 11.2 on the *Relations of State Delegation with Constitutional Institutions* goes on to provide the legal basis for the mediator of the Dialogue, Ms. Mogherini, to invite at her will any of the other constitutional institutions to partake in the future rounds of the dialogue, without clearly defying what the role of the State Delegation will be during those meetings.

Therefore, the Delegation under this legal framework does not enjoy complete and exclusive authorization by the Parliament to represent the Republic of Kosovo in the final stages of the dialogue. It certainly has some authority, but by the same token it is legally undermined by the political context it inhabits; a context in which one the constitutional institutions, namely the presidency, with whom the delegation is obligated to be consulted, continues to believe - in contrast with the rest of institutions, including the State Delegation - that the border revision should be the basis for an ultimate agreement between Kosovo and Serbia. Conclusively, this law has not grounded the State Delegation as a leading and exclusive authority. As a result it has failed to limit and contain President's role in the dialogue process, let alone substitute him completely.

Secondly, article 13.3 on *Decision-making in State Delegation* refutes the claim that state delegation will pursue the principle of unanimity when it comes to decision making. Although it

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<sup>14</sup> Ibid, Article 13.2

<sup>15</sup> Ibid, Article 7 and 8

<sup>16</sup> Ibid. Article 2



recognizes it in principle, if after two attempts it has proven that unanimity is impossible, a qualified majority (2/3) of votes of all members of the delegation is sufficient for a decision to be considered approved.<sup>17</sup> Numerically, that translates to a number of eight (8) votes necessary for a decision to be made within the State Delegation; decision that may vary from the simple to the decisive ones that will determine the core content of the final agreement between Kosovo and Serbia.

Thirdly, with this decision-making model in place parliamentary opposition has no decisive role whatsoever within the State Delegation, and consequently in the way in which the dialogue may progress. Article 13 of the law states that for a meeting of the state delegation to take place, seven (7) of the total number of members (12) should be present<sup>18</sup>, whereas a decision is considered approved with eight (8) votes out of the total number of twelve (12). Since the law foresees only four (4) members of parliamentary opposition in the Delegation, as opposed to six (6) from the government coalition, one (1) from civil society and another one (1) from the minorities, one can rightfully conclude that the delegation can function properly by holding regular meetings and taking full-fledged decisions even in the event of a complete boycott from the members of the parliamentary opposition. Therefore, it is safe to say that opposition members hold no leverage or actual decisive power to neither block any development that may be considered wrong or effectively oppose them during the voting. Besides, the law creates no basis for a wide political consensus given the composition of and the decision-making model within the Delegation. Quite frankly, it discourages it to the extent that it makes it unnecessary.

In conclusion, having had fail to uphold its three public propositions, as a consequence the draft has also failed to meet its main purpose; that of establishing an exclusive and single institutional unit with a clear and definitive mandate that will counter and neutralize President's agenda for border revision, while simultaneously building a wide political consensus on matters related to dialogue.

## **The Platform for the Dialogue on Final, Comprehensive and Legally Binding Agreement for the Normalization of Relations between Kosovo and Serbia**

### **Summary of the Platform**

After months of suspense, the State Delegation finally published its guiding principles for the forthcoming negotiation process in Brussels. Once presented to the Parliament on March 3<sup>rd</sup> 2019, after a rather exhaustive and unproductive discussion as the two major opposition parties left the hall, it eventually was voted in favor by a simple majority (61). According to the platform document, this platform represents the official position of the Republic of Kosovo.<sup>19</sup>It determines a number of principles under which the State Delegation must operate during the negotiation process, and it covers a broad range of topics/open issues foreseen to be discussed and agreed upon before a comprehensive agreement can be considered concluded. Accordingly, there a total of nine (9) major topics set in this document and eleven (11) principles.

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<sup>17</sup> Ibid. Article 13.2 and 13.3

<sup>18</sup> Ibid. Article 13.1.

<sup>19</sup> Platform for the Dialogue Process on Final, Comprehensive and Legally Binding Agreement for the Normalization of Relations between the Republic of Kosovo and Republic of Serbia, Paragraph 5. Available at [http://www.kuvendikosoves.org/common/docs/2019\\_03\\_08\\_PLATFORMË%20PËR%20DIALOGUN%20MBI%20MARRËVESHJEN%20PËRFUNDIMTARE,%20PËR%20NORMALIZIMIN%20E%20MARRËDHËNIEVE%20MES%20REPUBLIKËS%20SË%20KOSOVËS%20DHE%20REPUBLIKËS%20SË%20SERBIË.pdf](http://www.kuvendikosoves.org/common/docs/2019_03_08_PLATFORMË%20PËR%20DIALOGUN%20MBI%20MARRËVESHJEN%20PËRFUNDIMTARE,%20PËR%20NORMALIZIMIN%20E%20MARRËDHËNIEVE%20MES%20REPUBLIKËS%20SË%20KOSOVËS%20DHE%20REPUBLIKËS%20SË%20SERBIË.pdf)

Topics include recognition, reciprocity with regards to the Albanian community in Serbia, war crimes, missing persons, victims of sexual violence, reparations, return of properties (archives, artifacts, documents etc.), succession and Yugoslavia's national debt, and other issues pertaining cross-border cooperation, free movement of people, goods and capital, trade, energy, telecommunication, and education.

The platform insists that the process must conclude with a comprehensive and legally binding agreement where all open issues must be addressed and agreed up under the principle of '*nothing is agreed until everything is agreed*'<sup>20</sup>. The ultimate goal of Republic of Kosovo in the process of the dialogue is established in principle one (1); a de jure recognition from the Republic of Serbia. Other goals include advancement of rights of the Albanian community living in Serbia; establishment of proper mechanism to address human rights violation, war crimes, missing persons and reparations; and the abolition of all remaining obstacles in exercising sovereign governance competencies, in accordance with the international principles of non-intervention and non-interference. In doing so, the platform takes note that Kosovo will not engage in any negotiations that extends beyond the legal obligation deriving from the Ahtisaar's Plan<sup>21</sup>. That is mainly addressed towards growing concerns about the future statute of the Association of Serb Municipalities. In that regard, principle seven (7) stipulates that there shall not be any other governing level apart from local and central level. Furthermore, in response to concerns over border revision, the platform stipulates that, any agreement should be in accordance with article 2.2 of the Constitution of Kosovo stating that "the sovereignty and territorial integrity of the Republic of Kosovo is intact, inalienable, indivisible and protected by all means provided in this Constitution and the law". In addition, it states that "territorial integrity of Kosovo is also guaranteed under the international law"<sup>22</sup>.

In the end, the process which the State Delegation vows to conduct in a transparent, comprehensive and accessible manner, will only be considered concluded if and only Serbia agrees to recognize Kosovo as an independent and sovereign state, a referendum on the final agreement is held, and the final agreement is ratified by the parliaments of both countries.

### **Analysis of the Platform**

Regardless of the positive notes, the platform stumbles over three fundamental issues that defy its original purpose. First, it does not explicitly annul the possibility of including border revision talks in the Dialogue agenda. A serious platform that wholeheartedly aims at protecting the Kosovo's territory in principle from become subject of negotiation should have expressively noted it down in a simple and intelligible manner that *talks of any nature over territorial change are not and shall remain indefinitely outside the dialogue agenda.* The argument that reference to the article 2.2 of Constitution is sufficient and as such discards any possibility for talks over territorial change is inaccurate. That is because the norm of 'territorial integrity' referees to protection of external borders of states in cases when aggressive measures are taken against them but not in cases when a political will exists for peaceful agreement over border changes. This is stipulated in article 2.4 of United Nations' Charter<sup>23</sup>, principle a) of the preamble of United Nations' General Assembly resolution 2625<sup>24</sup>, article 1 paragraph 2 and article 4 paragraphs 1 and 2 of the Helsinki Final Act.

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<sup>20</sup> Ibid. Principle 2.

<sup>21</sup> Ibid. Principle 3

<sup>22</sup> Ibid. Principle 6

<sup>23</sup> Charter of the United Nation, Available at <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>

<sup>24</sup> United Nations' General Assembly Resolution 2625, available at <http://www.un.org/documents/ga/res/25/ares25.htm>

<sup>25</sup>. More importantly, a supporting legal interpretation of the norm of 'Territorial Integrity' is found in the International Court of Justice' late advisory opinion with regard to the legality of Kosovo's declaration of independence<sup>26</sup>.

This rather ambiguous stance regarding the lack of explicit reference in an official document expressively preventing the possibility of talks over border revision is seemingly intentional. We have learnt that from a recent letter delivered from Prime Minister Haradinaj to Quint ambassadors and EU representative in Kosovo in his very risky and short-lived call for an International Conference<sup>27</sup>. In this letter, Prime Minister has shown his capacity to intelligibly articulate his position toward border revision idea by using simple and clear language that ingrains a political stance against "*any redrawing of the existing borders, partition of Kosovo, or territorial exchange of any nature whatsoever*"<sup>28</sup>. Such direct language and linguistic formulation is non-existent in any of the three official documents that frame Kosovo's negotiation position in the Dialogue, including the platform, leading us but to believe that use of ambiguous language and terms instead of simple and clear language is done so in purposefully.

Second major fallback of the platform is related to the scope of institutions obliged to follow the principles set in the document. Article 9 of the draft law suggests that the set of principles enshrined in the platform will be binding only to the State Delegation. This is worrisome, when taking into account the fact that article 2, 4 and 11 of the draft law recognize the parallel role of the President of the Republic of Kosovo as an authorized institution to represent Kosovo in the forthcoming rounds of dialogue; particularly when the President becomes part of these negotiations upon a formal invitation from the EU<sup>29</sup>. From a legal perspective, it seemingly sets the President free from submitting to the principles of the platform. Therefore, in order for the platform to truly reflect a consensual negotiation position of the Republic of Kosovo, a provision should have been included clearly stating that the principles set in the document are representative of all state institutions, including the institution of Presidency.

Last, the platform fails to determine a mechanism responsible for establishing a wide political consensus with regards to Kosovo's negotiation position in the dialogue process. Despite that the platform says it aims at reaching a wide political and social consensus<sup>30</sup>, not a single provision in the platform determines the weight of such consensus. A document that received the support of only 61 votes of Parliament and did not insist on the support of a qualified majority (80 or more) does not contribute to the wide consensus. The vital importance of such consensus determines the success of the process of the negotiation in general and the enactment of the potential agreement in particular. Advancing into the final phase of dialogue without a generally agreed set

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<sup>25</sup> Helsinki Final Act, 1975. Available at <https://www.osce.org/helsinki-final-act>

<sup>26</sup> International Court of Justice, Advisory Opinion on the Declaration of Independence with Respect to Kosovo. Available at <https://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-00-EN.pdf>

<sup>27</sup> Office of Prime Minister, "Letter of Prime Minister Haradinaj Sent to Quint Ambassadors and EU Representatives in Kosovo", 28 January, 2019. Accessed on 1 April, 2019 at <http://kryeministri-ks.net/en/the-letter-of-prime-minister-haradinaj-sent-to-quint-ambassadors-and-eu-representative-in-kosovo/>

<sup>28</sup> Ibid. Paragraph 2(i)

<sup>29</sup> Draft Law on Duties, responsibilities and competences of the State Delegation of the Republic of Kosovo in the Dialogue process with the Republic of Serbia, Article 2

<sup>30</sup> Platform for the Dialogue Process on Final, Comprehensive and Legally Binding Agreement for the Normalization of Relations between the Republic of Kosovo and Republic of Serbia, Paragraph 5. Available at [http://www.kuvendikosoves.org/common/docs/2019\\_03\\_08\\_PLATFORMË%20PËR%20DIALOGUN%20MBI%20MARRËVESHJEN%20PËRFUNDIMTARE,%20PËR%20NORMALIZIMIN%20E%20MARRËDHËNIEVE%20MES%20REPUBLIKËS%20SË%20KOSOVËS%20DHE%20REPUBLIKËS%20SË%20SERBIË.pdf](http://www.kuvendikosoves.org/common/docs/2019_03_08_PLATFORMË%20PËR%20DIALOGUN%20MBI%20MARRËVESHJEN%20PËRFUNDIMTARE,%20PËR%20NORMALIZIMIN%20E%20MARRËDHËNIEVE%20MES%20REPUBLIKËS%20SË%20KOSOVËS%20DHE%20REPUBLIKËS%20SË%20SERBIË.pdf)

of principles by a parliamentary qualified majority is doomed to face political opposition of unpredicted magnitude and consequences.

### Concluding remarks

Government coalition and State Delegation's public opposition towards President's agenda no longer seems genuine because the patters of their actual political and legal initiatives suggest otherwise. As the dialogue is expected to resume anytime, our analysis has shown that the three documents supported by the government coalition have knowingly failed to provide any legal or political barrier to President's aims; that is to (i) facilitate a wide political consensus (ii) embedded in a single and exclusive unit that represents Kosovo in the dialogue, (iii) in which discussions on territorial matter are off the table. Instead, these documents have reinforced president's role and potentially institutionalized his agenda for border revision in the final phase of dialogue by not expressively and explicitly ruling it out. The fact that government coalition's recent actions have not produced any restrains on President is also supported by the fact that the President has graciously shown public approval to all three documents, and yet has still remained cemented on his stance regarding border revision. In fact, President has intensified his activities and has lately gone on to admit on record that his border correction idea truly means territorial exchange<sup>31</sup>.

All while, the State Delegation faces issue of its own, particularly with regard to internal consensus over different topic. For instance, we have witnessed rather clashing positioning of members of Delegation with regard to government's decision on imposing tax on Serbian and Bosnian goods. This is a mirror reflection of stubborn disagreements between main partners of governing coalition at central government level. Such rapport does not breed bipartisan cooperation. Delegation's vulnerability to every-day politics and tense relations between governing partners suggest that it is unable to represent and articulate a cohesive national interest that transcend partisan or individual ones.

In addition, members of State Delegation are at times even uninformed and unaware of the activities of the two co-chairs of the Delegation<sup>32</sup>; such has been the case with their unannounced visit to Brussels<sup>33</sup>. Therefore, more often than not State Delegation has not act in a unified and synchronized manner since its establishment. Besides, almost three months since its formation, State Delegation is yet to present a final and complete list of its members. As of today, there are still four (4) remaining lots, soon to be five (5) with one of the current members, Prime Minister's Chief of Cabinet and Head of Kosovo team in the technical dialogue with Serbia Avni Arifi, set to leave on a diplomatic mission as the newly appointed ambassador to the United Arab Emirates.<sup>34</sup>

On the other hand, we should be remindful that the political dialogue between Kosovo and Serbia has been conducted in a presidential level for more than a year now. Several official meeting between President Thaci and President Vucic have been held upon the invitation of EU High Representative for Foreign Affairs and Security Policy, Ms. Mogherini. Nothing substantive has

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<sup>31</sup> Koha, "Thaci ne SHBA: Nese nje korigjim i lehte i kufirit eshte cmimi per marreveshje perfundimtare, duhet te pranohet", 5 February, 2019. Accessed on 2 April, 2019: <https://www.koha.net/arberi/143559/thaci-ne-shba-nese-nje-korigjim-i-lehte-i-kufirit-eshte-cmimi-per-marreveshje-perfundimtare-duhet-te-pranohet/>

<sup>32</sup> Telegrafi, "Hoxhaj e quan te pakuptimte viziten e Limajt dhe Ahmetit ne Bruksel" 13 March 2019. Accessed on 1 April, 2019: <https://telegrafi.com/hoxhaj-quan-te-pakuptimte-viziten-e-limajt-dhe-ahmetit-ne-bruksel/>

<sup>33</sup> Telegrafi, "Limaj dhe Ahmeti e mbajne te fshehur udhetimin ne Bruksel, shkuan per te prezantuar platformen per dialog", 11 March 2019. Accessed on 1 April 2019: <https://telegrafi.com/limaj-e-ahmeti-e-mbajne-te-fshehur-udhetimin-ne-bruksel-shkuan-per-te-prezantuar-platformat-per-dialog/>

<sup>34</sup> Kallxo.com, "Avni Arifi behet ambasador", 17 December, 2018. Accessed on 1 April, 2019: <https://kallxo.com/avni-arifi-behet-ambasador/>

been done to alter that; not through the three documents discussed in this paper, and certainly not through the establishment of what seems to be an uncoordinated State Delegation. The constitution of a State Delegation has not substituted the role of President Thaci, and there has been no indication that the next rounds of dialogue on a final political agreement between Kosovo and Serbia will be conducted in any other level but presidential. In that regard, Ms. Mogherini was quick to show positive reception towards the news over the constitution of Kosovo's State Delegation as "an important development that will contribute to strengthening the weight of Kosovo authority", but was mindful to reiterate that "Kosovo positions will be expressed by its President in the current Dialogue" and everyone else, including the State Delegation will serve a supporting role and should "weight behind the efforts of the President in the Dialogue".<sup>35</sup> A role which the two co-chairs of the State Delegation have willingly played in the last couple of months as they partake in sporadic visit in Brussels during their 'role play' meetings with low key representatives of EU foreign policy office<sup>36</sup>, while Ms. Mogherini insist on her call for the revocation of Kosovo's Government decision to impose import tax on Serbian goods<sup>37</sup> so the 'real' dialogue can resume<sup>38</sup>. Regrettably, once the Dialogue resumes, nothing substantive has been achieved to effectively stop President's initiative for border revision – an initiative that violates Kosovo's statehood and could ignite both domestic and regional instability.

### Moving forward

Since current efforts have failed to produce a political consensus and reflect domestic political unity in the international domain, this policy analysis argues the following.

All things considered; it urges for further efforts from all relevant actors to push for a wide political consensus. First, in doing so, if a wide consensus cannot be reached, it recognizes organizing of new elections as a violable resort. Haradinaj's governing coalition has been fragile since it has come to power, and lately has knowingly failed to promote cooperation with two major opposition parties, particularly with regard to matters concerning dialogue. The latter partly due to the fact that Prime Minister Haradinaj's government has also been vulnerable to President Thaci, who has stressed his influence in the governing coalition through informal channel that he has maintained within the Democratic Party of Kosovo (PDK) since his reign as the former leader of PDK. The role of president in the dialogue process has been the focal point of a heated political discourse for the last year, and given the public opposition towards President's idea for border revision from all party leaders, including government coalition leaders, it is only fair to assume that a political consensus against his role and agenda could have easy been attained. Still President's role in the dialogue has remained untouched and his highly unpopular idea alive! Whether in the meantime the governing coalition has come to appreciate and align with President Thaci's intentions, or is politically incapable to limit his role because of his informal decisive influence over the stability of the governing coalition they both constitute strong reasons for the country to enter into new elections. The former represent a crucial shift that goes arguably against the mood of the majority of the governing coalition constituency in which case they have lost the political legitimacy and

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<sup>35</sup> Telegrafi, "BE-ja: Hardinajt: President Thaci Udheheq me Dialogun". 18 December, 2018. Accessed on 1 April 2019: <https://telegrafi.com/ja-haradinajt-presidenti-thaci-udheheq-dialogun-dokument/>

<sup>36</sup> Telegrafi, "Limaj dhe Ahmeti e mbajne te fshehur udhetimin ne Bruksel, shkuan per te prezantuar platformen per dialog", 11 March 2019. Accessed on 1 April 2019 at <https://telegrafi.com/limaj-e-ahmeti-e-mbajne-te-fshehur-udhetimin-ne-bruksel-shkuan-per-te-prezantuar-platformen-per-dialog/>

<sup>37</sup> European External Action Service, "EU calls Kosovo to revoke tax on Serbia", 7 November, 2018. Accessed on 2 April, 2019: [https://eeas.europa.eu/headquarters/headquarters-homepage/53758/eu-calls-kosovo-revoke-import-tax-serbia\\_nl](https://eeas.europa.eu/headquarters/headquarters-homepage/53758/eu-calls-kosovo-revoke-import-tax-serbia_nl)

<sup>38</sup> REL, "Mogherini: Hiqeni tarifken, e therras menjehere takimin Thaci-Viciq", 18 February, 2019. Accessed on 2 April, 2019: <https://www.evropaelire.org/a/29777054.html>

proceeding against the will of people might ignite social unrest<sup>39</sup> and cause political instability for years to come, whereas the latter represent a case in which the government cannot fully act according to its mandate.

This policy analysis recognizes that the current political momentum in the international domain goes against Kosovo's principal strategic interest. To make matters worse, this momentum finds Kosovo unprepared, uncoordinated and unable to speak in one voice. Cautious of Kosovo's geopolitical role and its effective weight in the international domain, suspending or withdrawing from dialogue in an arbitrary fashion is ill-advised. Instead, new general elections represent an effective tool that should be used in search for a new favorable momentum and wide political consensus during which the dialogue is not suspended nor canceled but only postponed until democratic election takes place and the newly democratic institutions take shape.

Secondly, this policy analysis recommends the establishment of an informal core-parties consensus group responsible for engineering a political consensus that has the support and the approval of a qualified majority in the parliament. This informal group should produce a negotiating framework or a platform with clear principles and limitations, on what can and cannot be negotiated during the dialogue process. Unlike the current State Delegation, members of this informal group ought not to be vested with the mandate to partake in these negotiations. The sole and exclusive responsibility to present Kosovo within the principles and limitations set forth by the informal group belongs to the government in the capacity of the constitutional institution bound to such constitutional competences<sup>40</sup>. Moreover, the fact that government is directly accountable to the parliament and upon which the parliament has constitutional oversight and authority<sup>41</sup>, will set the basis for continuous consensus over topics and development during the entire process of dialogue. As the result the government is bound to acquire the minimum support of a qualified majority before entering into each round of talks over a final agreement between Kosovo and Serbia, which in the end will guarantee a smooth enactment of the agreement in the Parliament and a similar implementation that should follow. This is the most normal form that parliamentary democracies represent their negotiating position in foreign policy matters.

In the end, this policy analysis recommends against an agreement that is comprehensive in its nature. The ongoing political dialogue between Kosovo and Serbia should conclude in a political agreement that first and foremost addresses the main issues between the two states, that of reconciliation and mutual recognition. Other topics such as cross-border cooperation, border demarcation, trade, energy, telecommunication and education should defer to other secondary agreements that will follow once the two states have established full diplomatic relations. Agreements over rather technical matters often require long preparations and professional capacities that combust too much time. During a political process that is often guided and dictated by a 'political mood', talks over technical agreements could halt the conclusion of the negotiation process and exert pressure for unwanted concessions in return for a mutual recognition<sup>42</sup> - what could prove to be detrimental for Kosovo.

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<sup>39</sup> A late survey conducted by the Research Institute for Development and European Affairs shows that only 30% of the population support border revision in exchange for Serbia's recognition and United Nations' membership. Report available at <http://www.ridea-ks.org/uploads/Report%20in%20English.pdf>

<sup>40</sup> Constitution of Republic of Kosovo. Article 93. Available at <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>

<sup>41</sup> Ibid. Article 65.

<sup>42</sup> A reference to concerns over border revision talks

## **Policy Analysis**

Policy Analysis in general is a policy advice paper which particularly aims to influence the key means through which policy decisions are made in both local and central levels of government. The purpose of Policy Analysis is to address, more in-depth, a particular problem, to examine the arguments related to a concerned policy, and to analyze the implementation of the policy. Through Policy Analysis, Group for Legal and Political studies seeks to stimulate wider comprehensive debate on the given issue via presenting informed policy-relevant choices and recommendations to the key stakeholders and parties of interest.



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