

**Statement by Roland Gjoni, JD, LLM**

**Before the**  
**US Congress Committee on Foreign Affairs**  
**Subcommittee on Europe, Eurasia and Emerging**  
**Threats**

**Kosovo and Serbia: Pathway to Peace**  
**Wednesday 14 April 2013**  
**15:00hrs**  
**Rayburn House Office Building**  
**Room 2172**

Thank you Mr. Chairman and members of the committee!

I welcome the opportunity to appear before your committee to discuss the relations between Kosovo and Serbia. I have previously held various legal and policy advisory positions with USAID governmental reform projects in Kosovo and Albania. I testify today in a private capacity as an expert witness based on my extensive work experience with both central and local government institutions in Kosovo. In my presentation, I will outline the progress made in the last two years in the EU facilitated dialogue, the key terms of the agreement and the prospects for sustainable peace between Kosovo and Serbia.

Two years ago the European Union (EU) took a leading role in facilitating a new phase of dialogue between Kosovo and Serbia. After the failed Rambouillet Peace Talks (1998-1999) and the Final Status Talks (2005-2007), the EU-led dialogue is the third major effort by the international community to find a negotiated solution to the long standing conflict between Kosovo and Serbia. Kosovo unilaterally declared independence on 17 February 2008. Although the International Court of Justice ruled on 22 July 2010 that Kosovo's declaration of independence did not violate the international law, Serbia has continued to challenge the finality of Kosovo's statehood internationally and on the ground. Serbia's rejection of Kosovo independence and the growing inter-ethnic tensions over the status of the Serb community in the northern Kosovo have created a mutually destructive frozen conflict between Kosovo and Serbia with implications for international security and regional stability.

Against the backdrop of deeply antagonistic relations and tense security situation, in March 2011 EU launched a new dialogue between Kosovo and Serbia facilitated by the High Representative of the European Union for Foreign Affairs, Catherine Ashton. The EU's ultimate objective in the dialogue was to facilitate a process by which Serbia and Kosovo would move out of the frozen conflict and embark upon a steady European integration process. Domestically, the EU led talks were highly unpopular in both countries but the prospect of EU integration is a vital interest that neither Serbia nor Kosovo can afford to ignore. During the dialogue, the parties were expected to resolve all controversial issues, including but not limited freedom of movement of people and goods, mutual recognition of identification documents, Kosovo's representation in international organizations and most importantly the status of the Kosovo Serb community in the northern municipalities of Kosovo. This was indeed an ambitious process at the end of which Serbia and Kosovo would move out of conflict and normalize relations.

During 2011 and 2012, a number of important agreements were concluded on free movement of people and goods (recognition identification documents, driver licenses, vehicle registration plates) mutual recognition of university diplomas, return of Kosovo's land property records from Serbia and Kosovo's

participation in regional organizations and initiatives without the presence of the United Nations Mission in Kosovo. One of the important breakthroughs in the technical dialogue was the agreement on the Integrated Border Management (IBM) which regulates the joint management of the border between Kosovo and Serbia's police with the assistance of the EU authorities. The discussions on energy and telecommunications have produced no tangible progress thus far.

Throughout the technical dialogue, ethnic enmities on the ground have persisted often resulting in violent incidents in the north. In the meantime, Serbia consolidated its control over the northern part of Kosovo amid Kosovo's unsuccessful efforts to extend law and order there. Due to delays in the implementation of the agreement on customs, on 25 July 2011, Kosovo deployed Special Police Forces in an attempt to install the custom offices, police stations and secure its border with Serbia in two border crossings the north. This intervention led to strong reactions of Kosovo Serbs who set up barricades blocking access of Kosovo institutions and EU in the north. Belgrade considered Kosovo's attempt to seal the border with Serbia as an aggression against the local population and supported the barricades. NATO's attempts to remove the barricades and ensure complete freedoms of movement have been repeatedly challenged with violent reactions of Kosovo Serbs, often ending casualties from both NATO forces and local Serbs. Belgrade consistently pressed for moving from technical issues to the status of the Serb community in the northern municipalities of Kosovo and after a coalition of the nationalist parties won the elections in Serbia, the EU High Representative Ashton invited the Prime Minister of Serbia Ivica Dacic and Prime Minister of Kosovo, Hashim Thaci to a high level political talks over the status of the northern municipalities of Kosovo.

After 2008, Serbia's defiance of an independent Kosovo has entrenched north of the Ibar River, where Kosovo courts, border and customs posts, railway system, and penitentiary institutions do not operate. The term "northern Kosovo" is increasingly used to refer to the areas of Leposavic, Zubin Potok, Zvecan, and northern Mitrovica, which are adjacent to Serbia and home to a third of Serbs (roughly 40-45 thousand) living in Kosovo. These areas effectively operate as a part of Serbia and the vast majority of population there refuses to co-operate with Kosovo institutions. Two-thirds of the Kosovo Serb population (roughly 65-70 thousand) lives in small municipalities throughout Kosovo south of the Ibar River and participate in the central and local institutions.

Since October 2012, ten rounds of negotiations between the two prime ministers were held in Brussels. At the outset of the talks Prishtina maintained the position that all the concerns of the Serb community in the north can be addressed within the framework of the Ahtisaari Plan. Serbia's Assembly approved a new Platform for the Political Discussions on 13 January 2013 proposing the establishment of an Autonomous

Community of Serb Community of Kosovo comprising the northern municipalities and six other municipalities with sizeable Serbian community in the southern part of Kosovo. The Autonomous Community would be vested with extensive powers over the local affairs and have separate legislative, executive and judicial institutions effectively creating a new legal system outside the constitutional order of Kosovo. With this new approach Serbia attempted to comply with the EU's demand (firmly expressed by Germany) to discontinue its support for the parallel institutions in the north. Instead of dismantling the parallel institutions, Belgrade proposed their transformation into an autonomous entity beyond the reach of Prishtina authority. During the talks in February and March 2013, Kosovo accepted the creation of an association of Kosovo Serb municipalities with extensive powers short of having its own police and court system. On the other hand, Serbia maintained that the Serb community would not feel secure if it does not have its own court and police system. On 4 April 2013, Serbia firmly rejected a draft agreement offered by the EU arguing that the draft failed to address the security needs of the Serb population.

Under strong pressure from EU, talks over the powers of the Serb majority municipalities resumed and on 19 April 2013, High Representative Ashton publicly announced that the two prime ministers had initialed an agreed text containing 15 provisions. Since Serbia does not consider Kosovo a state, both prime ministers have separately signed copies of the agreed text with EU but not with each other. In the end, Kosovo made further concessions partially accepting Serbia's requests for an autonomous community.

Under the agreed text, an association of municipalities shall be created to exercise the responsibilities on behalf of all Serb-majority municipalities in the north and south. The municipal authorities in the north will be able to jointly exercise their responsibilities, including designating the commander of the regional police as well as the heads of local police stations. A separate court consisting of Serb judges shall be established and exercise jurisdiction over the population of the majority Serb municipalities. It is also reported that Kosovo has accepted Serbia's request that no other police or security forces Kosovo shall access the territories of the majority Serb-municipalities for a number of years following the agreement. This last request of Serbia does not appear in the wording of the publicized text but if such agreement has been made, it means that no special police, intelligence or armed forces of Kosovo are authorized to access or operate in the Serb areas. Such an unprecedented arrangement may have serious consequences for Kosovo's future as a unitary state.

While the details of such agreement should be analyzed more closely, a number of obvious shortcomings may compromise its stated objectives. In my view, the agreement has three important shortcomings which I will elaborate below.

Firstly, the agreement violates the principle of sustainable multi-ethnicity, one of the fundamental principles for Kosovo's society enshrined in the Ahtisaari Plan, the Kosovo Constitution and all post-independence laws. During the Final Status Talks in Vienna, EU and United States weighted upon the applicability of the "territory based solutions" implemented in Post-Dayton Bosnia and "minority rights solutions" applied in the Ohrid Framework Agreement that ended the conflict in Macedonia. All international negotiators agreed that a "minority rights solutions" modeled on Ohrid Framework Agreement would offer the best mix of institutional mechanisms for the protection of and promotion of minority communities in Kosovo. Under strong pressure from EU and United States, Kosovo unilaterally incorporated Ahtisaari's Plan in the new Constitution and has adopted over one hundred laws to comply with it. The new legal framework established new municipalities for the Serb community and asymmetrical competencies between majority Serb and Albanian municipalities. The new majority Serb municipalities were allowed to have unhindered links with each other and special ties with Serbia, including the right to receive financial and technical assistance.

Despite challenges in the north, the majority of Kosovo Serbs living in the southern part of Kosovo and all other minority communities (Bosniak, Turkish, Roma, Egyptian and Ashkali) are integrated in the Kosovo's society. The participation of Serbs in the newly established Serb majority municipalities is yielding very positive results that were beyond imagination only a few years ago. For example, the turnout in the first ever elections of the establishment of the majority Serb municipalities of Partesh in June 2010 reached 65.3%, an unusually high turnout for local elections compared to majority Albanian municipalities. The five years of Kosovo's independence have demonstrated that an independent Kosovo represents no threat to minority communities.

Serbia has deliberately framed the negotiations as a territorial issue and not a human rights issue but the EU should have rejected the establishment of mono-ethnic territorial entities that are not even connected geographically with each another. The creation of a mono-ethnic autonomous community with authority over the already integrated Serb areas in the southern Kosovo may undermine all the achievements made in Kosovo since 2008 to establish a multi-ethnic society. The EU's withdrawal from the principle of multi-ethnicity is a dangerous precedent for other similarly situated minority populations in the Balkans. Ethnic nationalists in Preshevo Valley, Macedonia and Bosnia may construe the new status of the northern Kosovo as a reward for confrontational nationalistic policies of local Serbs and adopt similar strategies to find territorial solutions for ethnic issues.

Secondly, the agreement does not create any links between Kosovo central institutions and the Serb community. The *de facto* partition of the Serb community from Kosovo is now transformed into a *de jure*

partition extending even in the Serb areas in the south of Kosovo. Kosovo will have no legal, financial or political authority to re-orient the local population towards Prishtina. Due to Serbia's past record of attempting to change the *de facto* situation on the ground, there is a risk that under the instructions from Serbia, the autonomous entity could escalate their claims into secession. Since 2008, Belgrade has unsuccessfully tried to persuade the international community to support a territorial exchange between the Serb majority municipalities in the North with Albanian majority areas in Preshevo Valley. A secessionist north coupled with the firm rejection of Kosovo's independence by Serbia and EU's non-recognition of Kosovo may reopen the finality of Kosovo's independence.

Even if secession is not feasible, the current arrangements will render Kosovo, like Bosnia, hard to govern as a normal state. Serbia will effectively be a "veto player" over the longer term stability and territorial integrity of Kosovo. If Serbia insisted on the non-recognition of Kosovo, the EU should have at least pressed for Serbia's commitment to refrain its international campaign against Kosovo's membership in the UN system. Making Kosovo ungovernable like Bosnia and pushing it at the brink of state failure may undermine all the achievements made after independence. I suspect that in the months ahead, the EU and Serbia will come to realize that the greatest threat to the Balkan peace is a weak and unstable Kosovo, not a stable one.

Finally, the agreement does not comprehensively address the future relations between Kosovo and Serbia. Kosovo has gone beyond the Ahtissari Plan in accepting the existence of an autonomous community for a small and geographically dispersed population vested with executive powers unprecedented in Europe and beyond. The new concessions should have been reciprocated with Serbia's acceptance of Kosovo's membership in the United Nations and other international organizations. In the current situation, Serbia can continue to oppose Kosovo's independence, block its membership in international organizations and play a veto role on Kosovo's territorial integrity when its own self-interest so dictates.

The EU may have had its reasons to press for any settlement at the fear of overseeing a complete debacle of negotiations but we have yet to see how the "normalization of relations" can occur in absence of mutual recognition, diplomatic relations and no other confidence building arrangements that would turn the northern population towards Prishtina. A more comprehensive agreement should have addressed other unresolved issues such as: missing persons; return of Kosovo pension funds; border demarcation, energy, transport, and education with a view at building good neighborly relations. The EU should have pushed for a full and complete resolution of all outstanding issues that would have ended with a treaty of friendship and good neighborly relations between Serbia and Kosovo.

To conclude, I believe that the EU led dialogue has produced mixed and uneven results. It has shown that despite deep disagreements between parties, Kosovo and Serbia agree on the critical importance of the EU integration process. Indeed, the EU accession may be the only issue that Kosovo and Serbia agree and this shows that EU's soft power can yield results in the Balkans albeit limited and less than ideal.

However, the dialogue was characterized by deep mutual distrust. All compromises were painfully achieved under last minute heavy pressure exerted by EU rather than through gradual political rapprochement. Two years of EU mediated talks have not lead to increased trust and normalization of relations between Kosovo and Serbia. For now, the EU has settled for the less ambitious goal of elevating the status of the Serb community in the northern Kosovo. This may be a pragmatic first step but does not promise any long term normalization of relations between Serbia and Kosovo.

The next months will be critical as the parties have to implement on the ground what has been agreed in Brussels. The north of Kosovo still has the potential to be either glue or the absolver to Kosovo's multi-ethnicity. Peaceful and even good neighborly relations are possible in the region if Serbia values the well-being of its ethnic kin more than the self-delusion of returning Kosovo under Serbia.

I believe that in the near future, all parties will understand the limits of such a short-term and overly pragmatic solution. The EU and the US should gradually direct the parties to achieve a comprehensive agreement centered on multi-ethnic co-existence and good neighborly and not on ethnic segregation and territorial ambitions. Only a historical agreement consistent with EU principles of good neighborly relations and backed by the US government can secure the peace between Kosovo and Serbia.

Thank you all for your attention and I am more than pleased to answer any question you may have.