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BRUSSELS DIALOGUE - TOPICS FOR NEXT PHASE

A. MAIN PRINCIPLES OF BRUSSELS DIALOGUE

In order to completely normalize interstate relations between the Republic of Kosovo and Republic Serbia and close the chapter of hostilities, the Brussels dialogue must continue with EU and U.S. mediation and assistance, in respect of the Constitution of the Republic of Kosovo, our national interests, the Resolutions of the Assembly of Kosovo and our aims of European and Euro-Atlantic integration.

The Brussels dialogue is a diplomatic engagement of the Government of the Republic of Kosovo, in accordance with the Constitution of the Republic of Kosovo and its foreign policies that contribute to peace and stability in the region and the European principles of good neighborly relations and regional cooperation.

The main principles of the Brussels dialogue are based on international law and European standards for good neighborly relations between states that have a history of war caused by Serbian aggression in Kosovo and oppression and genocide committed against Kosovo Albanians, in the circumstances of disintegration of former Yugoslavia and the birth of seven new states.

The Government of the Republic of Kosovo will continue to be committed to the Brussels dialogue, and will continue to follow a serious and constructive approach and realistically assess the achievements to date of the dialogue and agreements reached in the technical dialogue and dialogue to normalize bilateral relations between both countries, aspiring to become EU members.

The Brussels Agreement dated April 19, 2013, and results to date in the implementation of all Brussels agreements, have established a good basis for normalization of interstate relations between Kosovo and Serbia, but many challenges remain in terms of full and effective implementation of agreements. Within the framework, Kosovo has fulfilled its implementation obligations, while Serbia continues to avoid obligations by diversion and occasionally even in violation of the agreements.

The Brussels dialogue should proceed only after full implementation in practice of the agreements reached.

The main guiding principles of this process are as follows:

- 1. Establishment of the international border between the two states / demarcation of interstate border between Kosovo and Serbia**
- 2. Mutual recognition between two states. Respecting good neighborly relations between the two states and noninterference in each other's sovereignty. Termination of Serbia's interferences in Kosovo in other areas that are not addressed in the Brussels Agreements, of April 19, 2013 and of technical dialogue**
- 3. Establishment of interstate cooperation in areas of mutual interest, in accordance to European and Euro-Atlantic standards**
- 4. War reparations**
- 5. Succession on the principle of disintegration of former Yugoslavia, where Kosovo was one of eight federal units**

B. TOPICS OF BRUSSELS DIALOGUE ACCORDING TO DEFINED PRINCIPLES

1. ESTABLISHMENT OF THE INTERNATIONAL BORDER BETWEEN THE TWO STATES/DEMARCATIION OF INTERSTATE BORDER BETWEEN KOSOVO AND SERBIA

The Agreement on the establishment of the international border between the two states is one of the main conditions for the normalization of interstate relations between Kosovo and Serbia. Therefore, one of the main topics in the next phase of dialogue should be the issue of interstate border demarcation between Kosovo and Serbia. In this regard, the Agreement on integrated border management (IBM) and its practical implementation have paved the way to the border demarcation issue with Serbia.

The state of Kosovo is in the process of demarcation of the borders with neighbors. Kosovo's border with Macedonia is marked, with Albania is in the process, and with Montenegro is being finalized, while with Serbia it has not started yet.

The demarcation of the border between Kosovo and Serbia is very important, taking account of the fact that the length of the state border of Kosovo is 743,556 km, of which 380,068 km with Serbia, i.e. over 50%.

Under the Ahtisaari package (Comprehensive Proposal for the Kosovo Status Settlement), the territory of Kosovo is defined by the Kosovo border line, defined in the 1974 Constitution of the former Yugoslavia, where Kosovo was a federal unit equal to other federal entities of former Yugoslavia.

Based on international practices, it can be proposed to establish a joint technical tripartite committee to make the demarcation of the border. The tripartite technical committee work will be completed within one year from the date of its establishment. The European Union and KFOR will be represented in this committee to facilitate discussions between the two parties and participate in the process of border demarcation.

2. TERMINATION OF SERBIA'S INTERFERENCES IN KOSOVO IN OTHER AREAS THAT ARE NOT ADDRESSED IN THE BRUSSELS AGREEMENTS

The Brussels Agreements put an end to Serbia's interferences in many areas of Kosovo state sovereignty through the model of dismantlement of Serb parallel structures and extension of Kosovo state sovereignty in the northern part of the country. The issue of Serbian interference in other public sectors in the northern part of the country, such as: Education, Health, Culture, Sports, Environment and Spatial Planning, Road & Rail Infrastructure, etc. should be addressed and resolved in the next phase of Brussels dialogue.

3. ESTABLISHMENT OF INTERSTATE COOPERATION IN AREAS OF INTEREST, IN ACCORDANCE TO EUROPEAN AND EURO-ATLANTIC STANDARDS

3.1 Cooperation in Civil Aviation / Air Transport

Achieving a cooperation agreement in the field of civil aviation/air transport would be of economic interest to both countries and the region.

The agreement would foresee the establishment of cooperation in the field of civil aviation between the relevant national authorities of both countries through a memorandum signed by the three parties. In this context would also be signed the technical agreement between the providers of air navigation services in Kosovo and Serbia, with EU guarantees and, when required, by NATO as well.

The agreement should also envisage a ban to Serbia's interventions in this area, as Serbia still publishes aeronautical announcements on PIA from Serbia; Serbian authorities also constantly publish false aeronautical information that allegedly the Prishtina Airport is closed to civil aviation.

Another issue that can be addressed, in consultation with NATO, is the issue of the agreement for use of the airspace of both countries for transit purposes, which is not regulated yet.

On April 3, Kosovo is expected to open its higher air spaces to transit overpasses, in accordance with the decision of the NATO Council and the Implementing Agreement signed between Hungary and the Commander of KFOR.

In this case, Serbia cannot stop the aircraft from flying through its air space, even if these planes will transit through Kosovo's higher air space. However, this does not mean that Serbia will allow the aircraft to fly through its air space in cases when those planes take off from Prishtina or land in Prishtina.

3.2 Rail Transport

Achieve one cooperation agreement in the field of railway transport, including transport of goods and people between the two countries, and dissolve parallel structures in this area.

Kosovo Railways JSC should be reinstated in the management of the railway lines in northern Kosovo, from Mitrovica railway station to the Leshak railway station, the official state border with Serbia.

3.3 Mutual recognition of conformity assessment certificates

Reach one agreement on mutual recognition of conformity assessment certificates issued by accredited testing laboratories by the relevant authorities of both countries; in this case the Kosovo Accreditation Directorate (KAD) and its counterpart authority in Serbia. This measure curbs product costs, and obviously, mutual recognition of conformity assessment certificates facilitates trade between the two countries.

4. WAR REPARATIONS

Reparation is a principle of international law, which implies that in case of violation the infringing party is obliged to make reparation in an adequate manner to the injured party.

The right to reparation is a defining principle in international law and is supported by a number of international legal instruments in the UN Charter and other relevant documents.

Reparation is often not properly understood and there's a tendency to reduce the concept to compensation for war damages. In fact, the concept of reparations is broader and includes the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees.

In the case of war damages caused in Kosovo by Serbia, by appealing to reparations as prescribed by international law, the state of Kosovo, as injured party, should seek reparations based on compensation, guarantees and satisfaction of justice.

4.1 Compensation of war damages

Compensation includes quantified damages of war against the state and against the population, physical and moral damages to the state and individuals, pain, suffering and emotional suffering, damages for lost opportunities including education; material damages and damages for lost profits; damages to dignity and reputation; damage to cultural and religious heritage and the cost of expenses for legal or professional assistance, medicines and medical services and other social and psychological services needed for recovery from war.

Kosovo as an injured party should seek:

- Indemnity for the destruction of Kosovo's financial system and budget
- Indemnity for disinvestment - in the period of occupation
- Indemnity for loss of wages to persons dismissed because of their ethnicity
- Indemnity for the destruction of the pension system
- Indemnity for the destruction of the banking system and the looting of foreign currency savings of Kosovars

- Indemnity for war damages to public and private property and cultural heritage
- Indemnity for damages to cultural and religious heritage in Kosovo
- Indemnity for the families of those killed and made disappear by Serbia □
 Indemnity for former Yugoslav political prisoners or their families □
 Indemnity for women raped during the war in Kosovo.

In this direction, the main topics, but not limited to them, during the following phase of Brussels dialogue should be:

4.2 Complete resolution of the issue of the missing persons

The issue of missing persons continues to be void of a complete resolution. After fifteen years of commitment by the state of Kosovo, with the assistance of the International Red Cross, results have been achieved in solving part of the problem. The total number of missing persons was 6,026, and the number of pending cases is 1,716. The engagement and participation of the European Union to provide a final solution to this problem is considered as a good option, considering the influence and instruments available to the EU in relation to candidate countries, which is the case of Serbia too.

Our approach and our position should consider the following elements:

Require from the European Union to take a mediating role in this issue and, among other things, appoint a special envoy for the issue.

Request the opening of the archives of the former Yugoslav Army and other institutions involved in combat operations in Kosovo during the war years, as well as pre-war years when the content of the documents is related to reliable information about resolving the issue of missing persons in the last war. There is sufficient basis of confidence that these documents will provide answers and reliable information on: location of missing persons; other “illegal” or “clandestine” burial sites of remains of war victims; information on destruction of evidence, using furnaces for burning bodies, etc.

Insist on further processing of the following cases:

- Raska Case (to be continued in the spring of 2014 under an agreement)
- Rrezalla Case
- New Poklek Case

- The Kastrat Pepelevac and Kursumli Triangle Case
- Prof. Ukshin Hoti Case
- And other cases, including cases for which additional information is required, such as Pastaseli case, Izbica case, etc.

4.3 Return of the displaced

As noted in the Ahtisaari package (Comprehensive Proposal for the Kosovo Status Settlement), all refugees and internally displaced persons from Kosovo shall have the right to return and reclaim their property and personal possessions in accordance with domestic and international law. Every person shall have the right to take decisions freely and to be informed on where he comes back to.

Kosovo will continue efforts to create a favourable environment for safe and dignified return of refugees and displaced persons, based on their own free and well informed decisions, including efforts to promote and protect their freedom of movement and freedom from intimidation.

This should happen over the entire territory of Kosovo, including the northern part, where the return of displaced Albanians has not happened yet.

4.4 Return of cultural heritage artefacts taken/borrowed by Serbia

Require the return of archaeological and ethnological exhibits of the Museum of Kosovo, the return of documentation of cultural heritage monuments in Kosovo to the Kosovo Institute for Protection of Monuments, the return of archival collections of the Archives of Kosovo.

Provide unhampered public and professional access to sites of Kosovo Cultural Heritage, Orthodox Monasteries and Churches in Kosovo.

4.5 Return of Kosovafilm movies

Movies produced by "Kosovafilm" have been taken by Serbia, and film negatives must return to Kosovo.

Their importance is great in completing and maintaining the film archive.

4.6 Return of the pension and disability fund of Kosovo citizens

In June 1999, during its departure from Kosovo, Serbia also took the Kosovo Pension and Disability Fund. The return of this fund should be required in order to redress the injury. The right to pension is a fundamental human right, it is acquired through work and contributions paid specifically for pension and disability insurance.

The Strasbourg Court, on 24 September 2012, asked from the state of Serbia to pay the pension of contributors from Kosovo.

According to original records of the Electronic Accounting Centre of the former SelfManagement Communities of Interest (BVI), on 31.12.1998, in Kosovo there were 89,135 pension beneficiaries of three categories: 33,308 elderly pensioners, 28,034 family pensioners, and 25,045 disabled pensioners. Beneficiaries of compensation for bodily injury were 1,266 people, while the beneficiaries of assistance to tetraplegic were 1,252 people.

Kosovo used to have an independent organizational system of the pension system until 1990, when its status as federal unit was violently suppressed. (all Kosovo's SelfManagement Communities of Interest (BVI) were abolished (Article 242 sec.6); all properties, inventory, assets, rights and obligations of Kosovo BVI of SPI were seized (Article 243 sec. 1) and the Law on Kosovo Pension and Disability Insurance and other provisions issued under that law were repelled (Article 248).

4.7 Return of banking deposits

In Kosovo, the main banks of former Yugoslavia were "Bankkos", "Bank of Ljubljana" and "Jugobanka". Banks were occupied violently, while Bankkos was violently forced into bankruptcy, while all savings were transferred to Serbia. The Central Bank of Kosovo has no accurate information on the amount of savings taken by Serbia, but experts have calculated that these savings must have been about 500 million German marks.

5. GUARANTEES

According to international law, the guarantees imply measures taken to ensure that such a situation will never be repeated, so in the case of Kosovo the guarantees arising from international law must be provided according to the following principles:

5.1 Recognition of the independent and sovereign state of Kosovo from Serbia

5.2 Conditioning of Serbia's EU membership with the recognition of Kosovo's independence and inability to impede Kosovo's membership in the EU, given the consensual mode of decision-making in the EU on the admission of new member countries

5.3 Preclude Serbia from hindering Kosovo's membership in other European and International organizations, including the United Nations Organization (UN), and to become a signatory party to the Vienna Convention on the Law of Treaties (1969).

5.4 Preclude Serbia from hindering Kosovo's membership and participation in all cultural and sports organisations including the full membership in the Council of Ministers of Culture of South-eastern Europe, in UNESCO, UEFA-s, FIFA, FIBA, International Olympic Committee and of many other sport federations and events such as World Championships and Olympics.

5.5 Serbia must remove Kosovo from its constitution and consequently amend its legislation by removing any liaison to Kosovo.

6. SATISFACTION OF JUSTICE

- Acceptance of responsibility for the war and war damages
- Justice and punishment of perpetrators of genocide and war /crimes against the population of Kosovo, including the rape of women as a weapon of war
- Public apology for the crimes committed in Kosovo

7. SUCCESSION

The right of the state of Kosovo to take part in the succession process within the framework of the disintegration of former Yugoslavia is a legal and legitimate right, taking into account *inter alia* the legal status of Kosovo in former Yugoslavia and the decisions of the International Court of Justice on the legality of the Declaration of Independence.

The succession process is based on the Vienna Convention on Succession of States in Respect of Treaties of 1978.

Succession is very important in international law, because it really is about the legal consequences of the change of sovereignty over a territory. According to author Daniel P. O'Connell, "the succession of states in international law means a set of rules and clear principles that define the legal consequences of changing the territorial sovereignty of states." These legal consequences imply rights and obligations associated with international treaties, citizenship, state property, private property, foreign debt, archives, and rights acquired under the laws of the precursor state.

According to experts who have dealt with this issue, and based on information obtained at the meetings I had with some members delegations of other states who participate in process of succession of Former Yugoslavia, Kosovo can approach this process in two ways: first, by applying to become part of the succession process that takes place between states emerging from the former Yugoslavia; and second, by entering the succession process between Kosovo and Serbia, which could be done through the process of Brussels dialogue.

In case the second option is chosen, namely the Brussels dialogue, given the political situation of mutual non-recognition between both countries, the strategy that should be used is to raise as topics for dialogue all matters that under international law belong to the succession process, but the process itself should not be named so, in order to avoid possible political obstacles that may be imposed by the other party.

7.1 Division of former Yugoslavia Assets and International Debts

The Ahtisaari package (Comprehensive Proposal for the Kosovo Status Settlement), in Annex VI, speaks of International Debt. Article 1, General Provisions, states: "1.1. Kosovo shall accept its share of the international debt of the Republic of Serbia.

International debt to be shared includes inter alia debt to the WB, the Paris Club creditors and the London Club; Kosovo's part will be determined through negotiations of Kosovo and the Republic of Serbia, taking into account the principles used for the division of sovereign debt in the case of succession of the SFRY, in agreement with the relevant creditors."

The Republic of Kosovo, after joining the World Bank (WB) and International Monetary Fund (IMF), has pledged to repay to the World Bank the debt of USD 231 million for loans taken during the 80's in Yugoslavia. Kosovo's initial debt was USD 381 million, but the U.S. agreed to pay USD 150 million of this debt. However apart from the WB, other debts remain. Kosovo allocates funds annually to pay out a settlement to pay foreign debts.

7.2 Former Yugoslav Financial Assets

Under the agreement for succession to the former Yugoslavia, the financial assets in the International Monetary Fund and the World Bank are allocated based on a ratio (which became known as the IMF key) which means that Bosnia and Herzegovina gets 13.20 per cent, Croatia 28.49, Macedonia 5.40, Slovenia 16.39 and Yugoslavia (Serbia, Montenegro, Kosovo) 36.52.

The IMF key was also used regarding the division of assets of the Bank of International Settlements in a deal dated April 10, 2001.

According to other sources, under the succession agreement of former Yugoslavia, assets are divided under agreed proportions: B&H gets 15.5 percent, Croatia 23, Macedonia 7.5, Slovenia 16 and Yugoslavia (Serbia, Montenegro, Kosovo) 38 percent.

7.3 Properties of former Yugoslav Diplomatic and Consular Missions

Kosovo should insist on reaching a separate agreement to seek its share of what Serbia has taken on its behalf from the properties of former Yugoslav diplomatic missions, as well as military ones.

There are a total of 123 diplomatic estates of former Yugoslavia abroad that have not been divided yet. Under the succession agreement to former Yugoslavia, most goes to Serbia (about 40 percent or about 62 million U.S. dollars).

It is believed that so far Serbia has received 32 sites, of which 13 embassies, 11 residences, three consulates, two apartments and a plot. Embassies: Berlin, Rome, Athens, Prague, Budapest, Cairo, Mexico City; as well as residences in Washington DC, Paris, London, Lisbon, Ottawa, Ankara, Lusaka. In Washington DC, Serbia has received a building, a house in Ankara and a plot in Istanbul.

What remains unresolved with the succession agreement to former Yugoslavia is the issue of the former Yugoslavia apartment in New York, Park Avenue, the most expensive part of the city, and estimated at over 20 million U.S. dollars. The idea is to sell it and then divide the proceeds among the heirs. Serbia is expected to take 39.5 % of the sale in order to compensate for the 2 million USD it has spent so far for its maintenance.

Besides the division, the heirs (according to the succession agreement) agreed to jointly sell the former Yugoslav building in Bonn/Germany and after paying legal and administrative fees to divide the remaining funds proportionally to each successor state.

7.4 Valuables of former Yugoslavia

According to an analysis published by the World Gold Council in 2014, with regard to reserves in this precious metal, Serbia has 16.1 tons of gold in reserve and holds the 62nd position in ranking. "Kosovo economy experts say that Kosovo's gold stocks were part of the joint property of the former Yugoslavia." It is estimated that Kosovo's contribution to former Yugoslav GDP was 2.1%, and Kosovo is entitled to at least 20 percent of the general gold reserves of Serbia."

7.5 Military assets of former Yugoslavia

Regarding military property, consensus is required among all heirs to divide it. This remains the case with most disputes. In reality, military properties constitute the largest portion of the entire succession, by some estimates between 80-90% of the total, or about 70 billion U.S. dollars. Discussions on this property were stopped in early 1993, at the request of the international community. Only the Republic of Croatia has documented its request for 10 billion U.S. dollars from its inheritance of former Yugoslav joint property.

7.6 Former Yugoslavia Archives

Request the participation of Kosovo in the division of archives of former Yugoslavia, according to the Agreement on succession of former Yugoslavia, (29 June 2001) Annex D.

This part of the agreement is mostly completed and is in accordance with the 1983 Convention. This Convention of 1983 is based on the principle that documents and archival material of "any type and date" that is necessary for normal functioning of the administration in the inherited territory is included in heritage.

The "SFRY State archives" means all documents of any type and any location and date, which were produced and received by former SFRY (or by any previous constitutional structure of the Yugoslav state from 1 December 1918) for the exercise of its functions and which, by June 30, 1991, belonged to the former SFRY in accordance with its legislation on federal archives.

"Documents" means films, audio and video tapes and other recordings, including computer data and documents about cultural heritage.

7.6.1 Return of former Yugoslavia documents that implicate Kosovo

Kosovo may require obtaining original documents of any agreement or treaty that directly implicates Kosovo and copies of the above documents which implicate Kosovo.

7.6.2 Return of list with full data on radioactive sites and equipment

The Kosovo Agency for Radiation Protection and Nuclear Safety needs to have information / full list from Serbia with complete data for all radioactive lightning arresters installed in Kosovo in the 70s by the Vinca Institute in Belgrade. It is also necessary to required information on three barrels with radioactive residue in the First Tunnel in Mitrovica.

C. LIST OF TOPICS FOR NEXT STAGE

Based on the principles argued above, the list of topics for the next phase of dialogue is as follows:

- 1. Demarcation of interstate border between Kosovo and Serbia**
- 2. Termination of Serbia's interferences in Kosovo in other fields not addressed in the Brussels Agreements**
- 3. Establishment of interstate cooperation in areas of mutual interest, according to European standards**

3.1 Civil Aviation/ Air Transport

3.2 Rail Transport

3.3 Mutual recognition of conformity assessment certificates

4. Reparations

4.1 Compensation of war damages

4.1.1 Indemnity for the destruction of Kosovo's financial system and budget

4.1.2 Indemnity for disinvestment - in the period of occupation

4.1.3 Indemnity for loss of wages to persons dismissed because of their ethnicity

4.1.4 Indemnity for the destruction of the pension system

4.1.5 Indemnity for the destruction of the banking system and the looting of foreign currency savings of Kosovars

4.1.6 Indemnity for war damages to public and private property and cultural heritage

4.1.7 Indemnity for the families of those killed and made disappear by Serbia 4.1.8

Indemnity for former Yugoslav political prisoners or their families

4.1.9 Indemnity for women raped during the war in Kosovo.

4.2 The issue of missing persons

4.3 Return of the displaced

4.4 Return of artefacts and cultural heritage documents taken by Serbia

4.5 Return of Kosovofilm movies

4.6 Return of the pension and disability fund of Kosovo citizens

4.7 Return of banking deposits

5. Guarantees

5.1.1 Recognition of the independent and sovereign state of Kosovo by Serbia

5.1.2 Conditioning of Serbia's accession in the EU with the recognition of Kosovo's independence

5.1.3 Preclude Serbia from hindering Kosovo's accession in the EU and other European and International organisations, including the UN

5.1.4 Preclude Serbia from hindering Kosovo's membership and participation in all European and international cultural and sports organisations and world events

5.1.5 Removal of Kosovo from Constitution of Serbia

6. Satisfaction

6.1 Acceptance of responsibility for the war and war damages

6.2 Justice and punishment of perpetrators of genocide and war / crimes against the population of Kosovo, including the rape of women as a weapon of war

6.3 Public apology for crimes committed in Kosovo

7. Succession

7.1 Division of former Yugoslavia assets and Kosovo's international debt

7.2 Financial assets of former Yugoslavia

7.3 Diplomatic and consular mission assets of former Yugoslavia

7.4 Military assets of former Yugoslavia

7.5 Valuables of former Yugoslavia

7.6 Former Yugoslavia Archives

7.6.1 Return of former Yugoslavia documents that implicate Kosovo 7.6.2

Return of Kosovafilm movies

7.6.3 Return of list with full data on radioactive sites and equipment



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