

Beyond

Constructive Ambiguity

How to Stop Worrying
and Love the Association/Community
of K/Serb Majority Municipalities



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I Introduction

While aggravated by the COVID-19 pandemic, Kosovo is faced with a situation where the dialogue process had largely stalled and efforts to find a durable solution had seemingly collapsed as the United States and the European Union competed for influence in Kosovo.¹ Furthermore, within Kosovo, the government has struggled to provide adequate and sustainable institutional solutions to discrimination, violence and segregation. None of these issues have been adequately addressed, nor have potential remedies been proposed by the current dialogue process. Furthermore, the rise of the concept of 'partition'² as a proposed solution does not hold promise of addressing the institutional and legal concerns of Serbs in Kosovo, particularly those south of the river Ibar. The question that invariably arises because of this is whether or not Kosovo's institutions are, from a structural standpoint, able or willing to address problems facing non-majority communities and protect their legal and constitutional rights in a systematic manner?

In order to answer this question, this proposal will look at the potential that an Association/Community of Kosovo-Serb Majority Municipalities (A/CSM) has to assuage many of the problems facing Kosovo Serbs. Its principle argument will be that the formation of such a body can create an institutional framework for a viable long-term solution to the aforementioned issues. This, along with other points of consideration, will be further elaborated in later passages.

It must be noted, before delving into greater detail regarding the potential formation of an A/CSM, that it has presented a number of legal challenges to Kosovo. Some aspects of the A/CSM were deemed potentially unconstitutional by the Constitutional Court

¹<https://balkaninsight.com/2020/06/17/us-and-eu-policy-on-kosovo-is-in-disarray/>

²<http://www.ngoaktiv.org/uploads/documents/scenario-territorial-exchange-between-serbia-and-kosovo-and-it-s-repercussions-for-serbs-south-of-the-ibar.pdf>

of Kosovo in a decision issued on the 23rd of December 2015.³ This did bring into question the eventual nature and scope of the power that the A/CSM would have. However, in the absence of any clear agreement or law regarding the establishment of the A/CSM passed by the Assembly of Kosovo, it is premature to enter into a detailed discussion of the legality of an as-yet non-existent entity. Aside from this, the fact that the Kosovo government is party to the Brussels Agreement⁴ (2013) and the Association/Community of Serb Majority Municipalities in Kosovo – General Principles/Main Elements (2015)⁵ means that it is legally bound to creating the A/CSM and not doing so would be a clear abdication of the commitment that it made by signing those accords.

Taking these arguments into consideration, this proposal will not seek to analyse in any detail the legal minutiae of the A/CSM but rather to present a set of arguments in favour of its creation and why it is necessary in order to fully preserve and protect the Kosovo Serb community and indeed contribute (positively) to local and regional stability as well as the peace-building process.

This paper was drafted in the belief and assumption that the A/CSM should have a set of powers as envisaged by Articles 4-6 of the Brussels Agreement which state that the Association/Community should have 'full overview' in key areas of public life in Serb-majority communities.⁶ It was conceived and drafted having a 'best-case' scenario in mind in order to demonstrate the positive potential it holds for both Kosovo and the region as a whole.

³ Judgement on Case No. KO 130/15, Constitution Court of Kosovo. <https://gjk-ks.org/en/decision/concerning-the-assessment-of-the-compatibility-of-the-principles-contained-in-the-document-entitled-associationcommunity-of-serb-majority-municipalities-in-kosovo-general-principlesmain/>

⁴ Brussels Agreement Articles 1-6. <https://www.srbija.gov.rs/cinjenice/en/120394>

⁵ http://eeas.europa.eu/archives/docs/statements-eeas/docs/150825_02_association-community-of-serb-majority-municipalities-in-kosovo-general-principles-main-elements_en.pdf

⁶ 4. In accordance with the competences given by the European Charter of Local Self Government and Kosovo law the participating municipalities shall be entitled to cooperate in exercising their powers through the Community/Association collectively. The Association/Community will have full overview of the areas of economic development, education, health, urban and rural planning.

5. The Association/Community will exercise other additional competences as may be delegated by the central authorities.

6. The Community/Association shall have a representative role to the central authorities and will have a seat in the communities' consultative council for this purpose. In the pursuit of this role a monitoring function is envisaged.

II COVID-19

As the COVID-19 pandemic swept across the globe, governments, overwhelmed by the scale of the problem, rushed to enact measures designed to prevent its further spread. Much of the world found itself under strict lockdown in circumstances that were alien to most. In these unusual and frightening conditions, states found themselves presented with a set of unique challenges: how to safeguard public health and wellbeing while at the same time guarantee the protection of basic civil and human rights? Kosovo, with its relatively weak institutional structures and wobbly constitutional and legal foundations, found itself in a particularly challenging position. The Kosovo Government's response, in many aspects, was largely congruent to that of other governments in Europe; strict lockdowns, social distancing, restrictions on movement and gatherings as well as a slew of other actions geared at mitigating the pandemic's affects. That having been said, the emergency cast a stark light on pre-existing problems faced by Kosovo's non-majority communities. The situation further exacerbated feelings of isolation and ostracization due to uneven and ineffective communication with central governing institutions, violent incidents targeting individuals and private property as well as questionable access to financial and material aid.

The pandemic is not the only source of the problems that Kosovo faces, but it did put a damper on dialogue efforts, and indeed served to distract from broader issues facing Kosovo's non-majority communities. Furthermore, it exposed the extent to which some of Kosovo's institutions are unprepared to react in an adequate manner to violations of the constitutional rights of minority groups. On top of this, the continued passivity on the part of international missions in Kosovo shows that the Serb community is in need of an institutional framework, which would sufficiently address the current gaps in the implementation of legislative and constitutional norms that were otherwise designed to protect the basic civil rights of non-majority communities.

The A/CSM is often painted in public discourse in a misleading and perhaps even dishonest manner, leading to widespread misconceptions as to what its initial mission is. This has led to a seven-year long limbo, in which the formation of the A/CSM has been largely forgotten as a political priority both by Pristina, Belgrade as well as the primary facilitators of the dialogue process such as Brussels and Washington.



Why Pristina should stop being afraid of the A/CSM

The most obvious argument against the A/CSM in public discourse is that it would constitute a kind of 'Republika Srpska'⁷ and thus a threat to Kosovo's territorial integrity. This is can be described as 'coded language' as it implies heavily the probability for the A/CSM to have an insidious influence on public life in Kosovo and for it to be a destabilising factor. The spectre of irredentism and the narratives surrounding it generate a level of fear that can preclude having an objective view of solutions that hold significant potential due to the fact that they are perceived as having 'hidden' objectives. This is indeed the case with the A/CSM – the problem is not necessarily about whether or not it will have executive powers, but rather with its negative symbolic weight in that it is believed that the A/CSM is a roundabout way of undermining Kosovo's territorial integrity. It has been suggested, for example, that the A/CSM would act as a backdoor means for the Russian Government to exert influence over Kosovo affairs. There is, in fact, little-to-no evidence that suggests that this is the case, given the very low-level Russian presence on Kosovo territory and the infrequent contacts between Russian officials and Serbian political representatives from Kosovo.

Rather than focusing on (perceived) Russian influence, it is perhaps more useful to return to the argument that the A/CSM would constitute an entity akin to the Republika Srpska in Bosnia and Herzegovina. This argument is deeply flawed for a number of reasons, starting from the fact that it is reflective of a profound misunderstanding of a) what the A/CSM would be and b) anything about Bosnia, Bosnian politics or the Republika Srpska. The mere fact that no one has offered a detailed or argument-driven explanation of the 'Republika Srpska spectre' demonstrates a lack of proper debate in public discourse in regard to the establishment of the A/CSM. Bosnia and Herzegovina is a creation of the Dayton Accords and has perhaps one of

⁷ <https://balkaninsight.com/2013/12/12/kosovo-ngo-predicts-a-republika-srpska-to-be-formed/>

the most complicated, convoluted and chaotic political systems in Europe, if not the world. Although it is not constitutionally defined as such, it is functionally a federative (or perhaps confederative) state.⁸ ⁹ Furthermore, the Republika Srpska as a sub-state body has extensive autonomy and its own constitution, laws, assembly, and legal system.¹⁰ The establishment of something comparable in Kosovo would be constitutionally questionable and functionally impossible, given both the nature of its legal framework and the geographic distribution of Serb communities that are unevenly dispersed throughout the territory. Quite unlike the Republika Srpska, the A/CSM is not envisaged as having the range of legal and executive powers that federal units have. For example, U.S states have executives (governors), assemblies, constitutions, legal codes, police forces, and enjoy an autonomy that is much broader and deeper than what the A/CSM would have.

It is true that the A/CSM would wield what can be described loosely as 'devolved powers' in the sense that it would involve the transfer of a certain amount of executive authority from the central level of governance to the Association. This would, in all likelihood, cover local/community affairs, areas such as health-care, education, culture (cultural heritage) social welfare and infrastructure. Excluded from this would almost certainly be judicial powers, policing, foreign and security policy.

If an international comparison must be made, it can perhaps be found in South Tyrol in Italy. Although markedly different in the sense that the A/CSM would not constitute a province or other similar territorial division, it would have a comparable level of autonomy. South Tyrol has full control over local affairs, independent of the executive¹¹, which is reminiscent of the 'full overview' stipulated in the Brussels Agreement.¹² South Tyrol is often cited as a success story, in the sense that it was provided mechanisms for the solving of ethnic disputes (usually around language and culture)

⁸ <https://www.theguardian.com/news/datablog/2014/oct/08/bosnia-herzegovina-elections-the-worlds-most-complicated-system-of-government>

⁹ IBID

¹⁰ Constitution of Bosnia and Herzegovina, Article III, Law and Responsibilities of the Entities and the Institutions

¹¹ Article 8, Special Statute for Trentino Alto Adige

¹² Article 4, Brussels Agreement

and has created a sustainable position for Italy's German-speaking minority within that country's legal and institutional system.¹³

The 'Srpska argument' is in fact a form of 'dog-whistle politics'; the employment of coded language that is backed up not by rational arguments but rather by emotional appeals to nationalistic narratives that do not have a grounding in reality. Generally speaking, this argument is easily refuted due to a number of reasons:

- It would not constitute a federalisation of Kosovo. Bosnia and Herzegovina is a tri-partite, federal state, divided into two main entities, one of which is the Republika Srpska that enjoys a level of autonomy comparable to that of Scotland in the United Kingdom or a federal subject in the U.S.A, Brazil, Canada, or Russia. Unlike Republika Srpska or Quebec, it would not lead a quasi-independent foreign policy with representative offices abroad.¹⁴
- Unlike federal states in the USA or Canada, it would not issue its own identification documents;
- The A/CSM would not have a constitution or set of laws independent of those of Kosovo but rather a statute that governs internal issues, procedures and functions;
- The A/CSM wouldn't necessarily have an influence on internal security matters.

¹³ <https://web.archive.org/web/20071008123321/http://www.civil.ge/eng/detail.php?id=15335>

¹⁴ According to Article 2A of the Constitution of Bosnia and Herzegovina, entities may establish "parallel relations" with neighbouring states. Republika Srpska has representative offices Israel, Cyprus and Russia, among others (<http://www.vladars.net/sr-SP-Cyrl/Vlada/Predstavnistva/Pages/default.aspx>) while Quebec has missions in the United States, the United Kingdom, and Mexico, among others (<http://www.mrif.gouv.qc.ca/en/ministere/representation-etranger>)

IV

Why an Association/Community of Kosovo-Serb Majority Municipalities?

Seven years after the signing of the Brussels Agreement, progress towards the reaching of a conclusive solution seems to be more elusive than ever. The absence of political will among relevant stakeholders and an unstable political situation in the Western Balkans have created a major stumbling block in the fulfilment of Kosovo Serbs' basic community rights. Numerous papers have been written, studies conducted, and analyses drafted regarding the state of non-majority communities in Kosovo. More can be expected. The conclusions tend to be similar in their nature: Kosovo has an expansive constitutional and legal foundation when it comes to the protection of the cultures, languages, and political positions of its non-majority peoples but this is not 'implemented in practice.' The last part of this sentence has been uttered at countless conferences, seminars, and meetings and splashed across the 'conclusions' sections of numerous publications and reports issued by international missions and civil society organizations. All have attempted to address a question that has hovered over Kosovo for the past decade: how can a situation be created where governing institutions would be able to successfully integrate Kosovo Serbs while respecting their legal and constitutional rights? Nevertheless, none of this has led to the undertaking of concrete/realistic steps to achieving this. One potential remedy, that is rarely discussed, is the establishment and creation of an Association/Community of Kosovo-Serb Majority Municipalities.

The A/CSM, as a concept, is generally viewed negatively by much of the general public in Kosovo¹⁵ and its potential positive effects on inter-ethnic relations, reconciliation and the overall institutional and political health of Kosovo are largely ignored. The rhetoric of many political actors in Kosovo has fed into negative pre-conceptions that the A/CSM would constitute a threat to the Albanian majority. Furthermore, it is a fact that large and often violent protests are reflective of entrenched opposition to the idea.¹⁶

¹⁵ Kosovo Public Opinion on Dialogue with Serbia, National Democratic Institute (NDI), 2018, pg. 5.

¹⁶ <https://balkaninsight.com/2015/10/13/albin-kurti-released-by-police-after-heavy-attacks-10-13-2015/>

This is in no small part due to popular misconceptions of what the A/CSM would actually be, what powers it would have and the role that it would play in political life and in the state-building process in Kosovo. In this section, a number of main arguments for the A/CSM will be outlined and elaborated upon.

1. A Sustainable Institutional Framework for Protecting Community Rights and Interests

It is necessary now to return to the question that was initially posed in the introductory section of this paper: Are institutions willing and capable of providing adequate protections to the Kosovo Serb community? The past couple months appear to have furnished us with a very clear answer: **No**.

COVID-19 has exposed the shortcomings in institutional communication between the Serb minority and Albanian majority. It was, in essence, a microcosm (or perhaps macrocosm) of already-existent deficiencies when it comes to the implementation and respect of community rights in Kosovo. From March until June of 2020, NGO Aktiv carefully monitored the occurrence of potentially-ethnically-motivated incidents. It recorded a total of thirty (30) arsons, thefts, physical attacks and vandalism that targeted members of the Kosovo Serb community.¹⁷ It must be noted that the vast majority of these incidents have not been prosecuted nor have a significant number of arrests been made. On top of this, the Albanian language media largely ignored these events, save for a report in Koha Ditore about a physical attack committed against a Serb resident in the Istok Municipality.¹⁸ Also notable was the lack of translations of government instructions and orders during the pandemic, which served to generate widespread confusion and disquiet. This further deepened feelings of mistrust that Kosovo Serbs have towards the Kosovo government.¹⁹

¹⁷Based on reports from members of the Rapid Response Civic Group (RRCG) between

¹⁸March and June of 2020. <https://www.koha.net/kosove/225596/ne-oprashke-te-istogut-rrahet-nje-serb-mkk-thote-se-nga-shkurti-ky-eshte-incidenti-i-26-te/>

¹⁹According to the 2019 Trend Analysis Survey carried out in Kosovo Serb communities by NGO Aktiv, Serbs in Kosovo expressed the least amount of trust and confidence in the Government of Kosovo out of all other institutions and bodies (both regional and international.) Trend Analysis 2019, NGO Aktiv 2019, Pg. 29.

These problems, whatever their cause, greatly increased Kosovo Serbs' sense of alienation. The poor communication and coordination between Pristina and Belgrade also contributed to an overall lack of clarity and confusion during the COVID-19 pandemic. **It would therefore appear that “constructive ambiguity” is not only a concept present on paper, but something that is actively practiced by governments in both Pristina and in Belgrade.**

An A/CSM would serve to provide a number of clear-cut, viable and sustainable solutions to many of the issues outlined above and would do so in the following manner:

- As will be further elaborated, the A/CSM has the potential to centralise a wide array of concerns and interests by creating a systematic means of addressing them;
- It could provide instruments for facilitating **local solutions for local problems** for the Kosovo Serb community to address issues affecting their communities directly (i.e pollution of the River Gračanka/LumiiGraçanicës, construction of small hydro-electric power plants in Štrpce/Shtërpçë and other similar problems.)
- It could **facilitate communication between central-level governing institutions which has previously either been absent or partial;**
- It could facilitate and streamline **communication between Belgrade and Pristina by providing a sustainable conduit for information-sharing and cooperation;**
- It could significantly reduce the pressure and stress on other Kosovo institutions by **creating a go-between local governing authorities and the political centre – in other words, it would be a body with enough competencies to effectively protect many community rights both at the local as well as at the central level;**

- It could act as a body that is able to **articulate the needs of the Kosovo Serb community** in the sense that it would institutionalize the relationship between a non-majority and majority community;
- It could greatly contribute to the integration of Kosovo Serbs by providing them with adequate institutional protections and a layer of governance that will increase the level of trust and decrease feelings of alienation;
- It could have a degree of autonomy that would allow it to exercise 'overview' and control over areas such as education, healthcare, social welfare and cultural heritage by removing the controversy over so-called 'parallel institutions.' **It would do so by officialising and legalising support provided to Serb communities in Kosovo by the Republic of Serbia;**
- It could have a markedly positive impact on the health and safety of all communities by creating new channels of official contact and communication between health and welfare providers;
- It could create more quality and equality within the Kosovo Serb community by reducing the discrepancies between the amount of funding and attention received by the four northern municipalities as opposed to those south of the River Ibar, which would further contribute to the concept of decentralisation in Kosovo by transferring more responsibilities to the level of local governance;

2. The A/CSM as a potential guarantor of stability

More than twenty years after the end of hostilities, Kosovo is still beset by sporadic flare ups of violence and instability. The introduction of the idea of partition or 'territorial swap' into public discourse has inserted an additional degree of uncertainty and ambiguity into the dialogue process and has brought into question the future of the Kosovo Serb community: should such a plan come to fruition, it would threaten the basic legal and constitutional rights of Serbs in Kosovo, furthermore the constitu-

tionality of the concept in both Serbia and Kosovo is highly questionable.²⁰ Moreover, the idea is perceived negatively by a large majority of Kosovo Albanians and Serbs, both of whom tend to view it as a potentially destabilising scenario, albeit for different reasons.²¹ Additionally, such a plan would create a physical division of Kosovo Serbs, leaving those living south of the Ibar in a precarious position and with less political and civil rights than they have now and would lead to their further isolation (ending with assimilation?)²² Complicating the question and a cause of much concertation among Albanians is Serbia's policy of blocking Kosovo's membership in international and regional bodies and organisations, meaning that negotiations often go around in circles and result in numerous dead ends. On the other hand, the lack of will on the part of political elites in Pristina to fully implement the Brussels Agreement (such as the A/CSM) has produced yet more roadblocks in the process of the normalisation of relations. Compounding these problems is the fact that the Kosovo Serb community has found itself frozen out of the dialogue process, their needs overlooked or ignored by political actors in both Pristina and Belgrade.

An oft-forgotten factor is that of economic prosperity and stability, something that tends to get lost in political discussions. As is the case across the Balkans, the economic situation in Kosovo Serb communities is poor. Indeed, economic factors are a major cause of the ever-increasing trend of outward migration among Kosovo's Serb population.²³

The question that stems from all of this is quite simple: how is it possible exit this quagmire, and find a solution that not only addresses community needs but that can also appeal and have value for both Pristina and Belgrade? How to reach an agreement that can provide stability, safety and wellbeing for all parties involved? While it would be naïve to suggest that the A/CSM is a cure-all solution without its own setbacks, it does offer a certain remedy to these ills, especially if it is done in a way that addresses issues in a holistic manner.

²⁰ <http://www.ngoaktiv.org/uploads/documents/scenario-territorial-exchange-between-serbia-and-kosovo-and-it-s-repercussions-for-serbs-south-of-the-ibar.pdf>

²¹ Kosovo Public Opinion on Dialogue with Serbia, National Democratic Institute (NDI), 2018, pg. 5.

²² <http://www.ngoaktiv.org/uploads/documents/scenario-territorial-exchange-between-serbia-and-kosovo-and-it-s-repercussions-for-serbs-south-of-the-ibar.pdf>

²³ <http://www.ngoaktiv.org/publication/trend-analysis-2019>

- The A/CSM **could be a realistic, achievable and humane alternative to territorial exchange/partition** because it unites the Kosovo Serb community under one umbrella, while not posing a threat to the territorial integrity or the constitutional orders of Kosovo or Serbia;
- The A/CSM can be an **example of providing realistic solutions to ethnic disputes** while avoiding the more obvious pitfalls of partition such as regional instability;
- If Kosovo **wishes to remain multi-ethnic then it should create a mechanism for retaining members of all of its communities** the first step of which would be the creation of the A/CSM;
- The A/CSM could be a facilitator in the peace-building process between Kosovo and Serbia potentially becoming a success story for the Western Balkans region (having in mind unstable inter-ethnic relations);
- It could create an additional channels of communication between Kosovo Serbs, Pristina, and Belgrade, that is capable of giving a voice to Kosovo Serbs in the dialogue process thereby giving the overall framework for talks a much more grass-roots dimension;
- It has the potential to generate additional economic opportunities that would motivate Kosovo Serbs to remain there;
- It could concentrate funds for development and infrastructure under a single umbrella that could lead to the more even and equitable distribution of economic and other forms of material assistance, particularly to those communities that have not yet had access to such resources as is the case with the Development Fund for the North of Kosovo;
- It could ensure a more sustainable and safer returns and reintegration process by making the A/CSM the principle arbitrator and facilitator in that process in close cooperation and coordination with the Ministry for Communities and Returns.

3. A/CSM and the international community

As a major factor and player in Kosovo's internal and external affairs, the international community is in a position to play a vital role in the formation of a future A/CSM. International missions and foreign embassies exercise an enormous degree of influence when it comes to political developments in Kosovo and have often directed the course of its internal policies. The international community, despite its efforts to encourage both parties to sign the Brussels Agreement, is fairly passive in exerting pressure to fully implement its stipulations. This passivity is partially to blame for the fact that Kosovo has yet to establish the A/CSM, which it is otherwise legally bound to do.

Taking this into consideration, the A/CSM presents itself as a unique opportunity for the international community to materialise many of their initial goals and visions for a functional, multi-ethnic state that is structurally and systematically ready for E.U integration. The formation of the A/CSM is not a one-way-street; it is an opportunity that is mutually beneficially both for Kosovo itself as well as international actors present in the region.

The creation of the A/CSM would indeed require significant dedication and work on the part of international community, particularly the E.U, the United States and possibly the United Nations and/or the Organisation for Security and Cooperation in Europe. This, however, for reasons that will be outlined below, promises a number of possible benefits:

- As Kosovo aspires to join the European Union, the formation of the A/CSM will foster adherence to the E.U's structural requirements for membership and ensure that the E.U will eventually absorb a more stable region;
- As the primary administrators of regional security in the Western Balkans, the potentially stabilizing nature of the A/CSM can serve to lessen the financial and structural burdens on the U.S and the E.U;

- The formation of the A/CSM can be a positive, solution-driven framework for addressing long-term ethnic conflicts that may have the potential to be applied in other areas of the Balkans and even further afield;
- Having in mind the current disagreements between the US and EU towards Kosovo, the A/CSM can act as a unifying factor and an opportunity for more harmonious cooperation towards achieving common goals;
- It would fulfil promises/obligations while at the same time putting Kosovo on the road to regional integration as defined in the Brussels Agreement.

V

A proposed framework implementation

This proposed framework will consist of two practical rough guides in terms of the establishment of the A/CSM. It should be understood that this is a set of suggested ideas and concepts, and that the establishment of the A/CSM will involve a certain degree of legal wrangling which will not be covered in full by these recommendations. What's more, the need for the Constitutional Court to ensure that any eventual A/CSM is in line with constitutional norms should be taken into consideration.

After drafting the A/CSM statute, the steps outlined below should take place within a period no more than **twelve (12) months**.

1. Procedural framework for establishing the A/CSM

- The creation of a Commission on the Formation of the A/CSM which would be comprised of community representatives (political), civil society organisations, as well as representatives of authorities in Belgrade. The Commission would issue initial recommendations as to the makeup and competencies of the A/CSM (as defined by agreements and monitored by the Constitutional Court of Kosovo);
- The launching of a comprehensive public information campaign aimed at both the Serb community as well as at the Albanian majority in order to clarify misconceptions and inform citizenry of the benefits of the A/CSM and other impending changes. This should include traditional and social media as well as town-hall style public events. This should be
- A call for the potential formation of a new municipality of Plemetina-Priluzhje that would unite Serb communities living in and around the municipalities of Vučitrn/Vushtrri and Obilić/Obiliq. The newly-formed municipality would include the villages of Babin Most, Grace/Gracë, Babin Most/Babimoci, Crkvena Vodica/Caravodicë.

This would ensure that the high number of Serbs living in that area would be able to benefit from the formation of the A/CSM in full compliance with Kosovo laws.²⁴ Serbs in this area do not have their own municipality and therefore their interests are generally not represented on an institutional level, the establishment of such a municipality would ensure this kind of representation. Based on factual and legal analyses carried out by the Commission on the possibility of the creation of a new municipality, a comprehensive proposal should be drawn up and sent to the Constitutional Court of Kosovo and to the Assembly for debate and consideration. Should the outcome of this initiative prove to be in favour of the establishment of a new Serb-majority municipality, it would be sent to the Working Group (described below) for absorption in the A/CSM Statute;

- A facilitated meeting should take place involving political representatives of Kosovo Serbs, as well as representatives of local municipal authorities (from the ranks of members of the municipal assemblies from ten Serb-majority municipalities) and members Commission on the Formation of the A/CSM. The OSCE, EU, 'quintet'²⁵, the Government of Kosovo should take part, with a special advisory role taken on by experts from the Ministry of Local Government and Ministry for Communities and Returns. The outcome of this meeting would be the creation of a Working Group (WG) for the drafting of a Statute for the A/CSM, consisting of members of the aforementioned bodies;
- In accordance with Article 6 of the Association/Community of Serb majority municipalities in Kosovo – general principles/main elements, an Assembly should be established comprised of members appointed by each assembly of the participating municipalities;²⁶

²⁴ Article 12 of the Law on Administrative Municipal Boundaries states that: "The Government shall engage in consultations with a non-majority Community where that Community makes up at least 75% of the population of a concentrated settlement in one or more adjacent cadastral zones with a minimum total population of 5000 citizens, with a view to establishing other new municipalities."

²⁵ The Embassies of the United States, United Kingdom, Italy, France and Germany

²⁶ Article 6, Association/Community of Serb majority municipalities in Kosovo – general principles/main elements" the Association/Community will have: an Assembly as a supreme body composed of representatives appointed by each assembly of the participating municipalities, among their elected members.

- The Statute that will be drafted by the Working Group should then be sent to a 'constituent assembly composed of the voted members of the assemblies of the participating municipalities' to be adopted.^{27 28} Following this, other organs as defined by the Association/Community of Serb majority municipalities in Kosovo – general principles/main elements should be formed. This process should be monitored by the E.U in cooperation with Kosovo institutions.
- After these procedures are adhered to in accordance with the Brussels and other agreements and Kosovo law, the A/CSM should begin to exercise its authority and functions as soon as legally possible, under the direct supervision of the E.U as the principle facilitator of the dialogue process

2. Thinking outside the box: Value-added proposals

- According to Article 7 of the Association/Community of Serb majority municipalities in Kosovo – general principles/main elements "The seat of the Community/Association/Community will be determined in the Statute." It is suggested that they consider making Gračanica/Graçanicë the seat of the A/CSM for several reasons:

Gračanica/Graçanicë is the unofficial seat of the Kosovo Serb community south of the Ibar. Despite its comparatively small size, it is nevertheless a cultural, economic and political hub for that region.

The establishment of an administrative centre in Gračanica/Graçanicë would contribute to greater urbanisation in an area (with a Kosovo-Serb majority) that currently lacks larger urban centres;

²⁷ Article 3, Association/Community of Serb majority municipalities in Kosovo – general principles/main elements

²⁸ The Association/Community of Serb majority municipalities in Kosovo – general principles/main elements does not define who will be tasked/responsible for the drafting of the statute.

The proximity of Pristina as a political/administrative/economic centre would contribute to an increase in the intensity and quality of communication between A/CSM bodies and central-level institutions. Furthermore, Gračanica/Graçanicë is situated on major transport routes with easy links to Prizren, Skopje, Vranje, Niš and other large Kosovo Serb population centres;

It would foster new economic and cultural development where it is desperately needed. In this sense, it would offer new perspectives and motivations for local residents to remain;

Despite the fact that the combined Serb population south of the Ibar is higher than that of the four northern municipalities, North Mitrovica nevertheless acts as a major administrative hub for Kosovo Serbs that exerts enormous political, social and financial influence. Having the seat of the A/CSM in Gračanica/Graçanicë would shift the centre of political power to an area that is otherwise underrepresented.

- In order to ensure that all Kosovo Serbs can enjoy the benefits and protections offered by the A/CSM, its statute should envisage the opening of 'A/CSM Liaison Offices' that will be situated in areas inhabited by significant numbers of Serbs that are outside the boundaries of Serb-majority municipalities:

Banja/Bajë (municipality of Srbica/Skenderaj);
Goraždevac/Gorazhdeci (municipality of Peć/Peja);
Kamenica;
Lipljan/Lipjani;
Osojane/Osojan (municipality of Istok/Istog);
Plemetina/Plemtini (municipality of Obilić/Obiliq);
Priluzhje²⁹/Prelluzhë (municipality Vuçitrn/Vushtrri);
Šilovo/Shillovë (municipality of Gnjilane/Gjilan);
Velika Hoča/Hoçë e Madhe (municipality of Oraovac/Rahoveci);

²⁹ Should a new municipality not be created

- The above-mentioned liaison offices would serve a double purpose in that they would facilitate communication between local Serbs and their respective municipal authorities and as centres for administrative coordination with the A/CSM. They would play a role when it comes to monitoring the social, cultural, economic and security aspects of local life;
- Within the A/CSM's representative organs (assembly, council, board and administration), there should be positions set aside for individuals that are, within the scope of the A/CSM, members of non-majority communities (i.e. Albanians, Bosniaks, RAE, Montenegrins, Gorani.) This would ensure guaranteed representation of the interests of all communities in the A/CSM and reflect its multi-ethnic nature;
- A special office should be formed within the A/CSM that will oversee the preservation of Kosovo-Serb cultural and religious heritage (both tangible and intangible) in accordance with Article 4 of the Law on Special Protective Zones.³⁰ This office would also act as a mediator between Belgrade and Pristina in regard to these matters;
- Due to an overriding lack of implementation of the Law on the Use of Languages³¹, the creation of a Department for Translation(s) would ensure the swift, timely and proper translations of official government instructions, orders, laws and other relevant documents of public significance. In the absence of an official higher education course for translation, it would serve as a recruitment and educational centre for translators/interpreters.

³⁰ Article 4 'The Implementation Monitoring Council', Law on Special Protective Zones

³¹ <http://ngoaktiv.org/publication/general-overview-of-language-rights-in-kosovo>

VI Conclusion

As has been outlined in some detail throughout the course of this paper, the A/CSM is a unique opportunity to provide a tangible solution to many of Kosovo's current challenges and to significantly contribute to the normalisation process between Belgrade and Pristina. However, doing so will require a significant and pro-active approach on the part of all relevant stakeholders as well as a new willingness for inter-ethnic cooperation. It will also demand a commitment on the part of Kosovo-Albanian political elites to actively work to reduce anxiety among their constituents and assuage fears that the A/CSM would pose a threat to Kosovo's stability and territorial integrity. The current political instability in Kosovo as well as the stalemate in negotiations between Belgrade and Pristina only deepens and aggravates overall institutional dysfunction in Kosovo. By adapting a legal framework that consecrates the rights of non-majority communities, Kosovo made a promise that it has thus far failed to keep, the A/CSM can rectify this.

The status quo is no longer a viable option: the A/CSM could be a crucial first step towards finalising the processes of peace building, inter-ethnic co-existence and democratisation.

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