

FINAL REPORT
OF THE AD HOC COMMISSION
FOR REVIEWING THE BORDER DELINEATION PROCESS
BETWEEN
THE REPUBLIC OF KOSOVO AND THE REPUBLIC OF MONTENEGRO

SUBMITTED TO THE PRESIDENT OF THE REPUBLIC OF KOSOVO

MARCH 30, 2016

PRISTINA, KOSOVO

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SUMMARY

The Ad Hoc Commission has concluded that, based on the essential legal and technical criteria, the Kosovo Process of delineating the border with Montenegro clearly satisfied international standards.

In the interest of transparency, we append to this report extensive material on the border agreement, furnished from both its supporters and critics. (See Annex.)

BACKGROUND

On March 15, 2016, the President of the Republic of Kosovo established the Ad Hoc Commission of three international experts with many years of professional expertise and practical experience related to borders in Europe, the region and Kosovo itself. (For biographical information, see the presidential announcement in Annex.)

The President mandated the Ad Hoc Commission to review and evaluate the work of the State Commission for Marking and Maintaining of the State Border – in particular, the *process* by which the State Commission collaborated with its counterpart body from the Republic of Montenegro to reach an agreement on their common border. (Hereinafter referred to as the “Kosovo Process.”)

Together the two State Commissions met in 16 two-day sessions during the period of 2012 to 2015. Their meetings were carried out at alternating places in Kosovo and Montenegro with mutually signed protocols and with the hosting institution serving as chair. The two States, represented at the ministerial level, signed the Agreement in Vienna on August 26, 2015.

VIEWS OF THE AD HOC COMMISSION

In our capacity as the Ad Hoc Commission, we pursued our mandate in the period March 15 – March 29, 2016. We presented our Final Report, in its present form with findings and recommendations, on March 30 to the President of Kosovo.

During our work, we enjoyed excellent cooperation from all Kosovars with an interest – professionally, institutionally, politically or personally – in the border agreement. International stakeholders from the diplomatic and military communities in Pristina also cooperated generously. We wish to express our special thanks to the President and her team for their extraordinary support.

Our Ad Hoc Commission held extensive consultations and conducted intensive study. We listened respectfully to all points of view. We paid particular attention to relevant documents and maps. State, government and party leaders in Pristina at the highest level took time to lay out their views to us. On March 23, we traveled to the border region to meet with mayors and interested citizens. On March 24, we drove to the border itself and received thorough briefings in the vicinity first of Çakor and then of Kulla.

Indeed, we focused much of our inquiry on Çakor and Kulla, two contested points. We sought to maintain an impartial view of the dispute, drawing on our collective professional experience and international perspective. We understood from citizens the depth of sentiment involved in the matter – as is often the case, the world over, in border delineations.

All four mayors of the municipalities with an administrative boundary contiguous to Montenegro met with us to discuss the border agreement. They represented parties both in the Kosovo government and in the opposition. Two of them shared with us resolutions from their respective assemblies addressing the border issue, another indication of political and public opinion. (See links below as well as in Annex for resolutions.)

<https://kk.rks-gov.net/peje/News/Advertisement/Takimi-i-jashtezakonshem-i-Kuvendit-te-Pejes.aspx>

<https://kk.rks-gov.net/decan/Shpalljet.aspx>

During our consultations with KFOR representatives, we confirmed that KFOR maps currently in use follow the same line as municipal boundaries of border municipalities in the Kosovo-Montenegro area, also the same line delineated by

the two State Commissions. We confirmed that U.S. Government maps show this border as closely aligned with these same municipal boundaries.

INTERNATIONAL BORDER MANAGEMENT

It is vital that both countries take advantage of the findings of this Ad Hoc Commission to enhance working protocols through the establishment of key international standards, including the following:

- One stop shop i.e. both border agencies operating out of a single building, search facilities and equipment;
- Deployment of a common ANPR (Automatic Number Plate Reader) and CCTV technology systems (Closed Circuit Television);
- Intelligence Management;
- Strategic Risk Assessments;
- Strategic Threat Assessments; and
- Tasking and Co-ordination in a combined multi-agency environment.

By adopting such an approach, the two neighboring States will create much greater cooperation, effectiveness and efficiency.

In Podgorica, Montenegro, we continued our border consultations, this time with Montenegrin officials. We met on March 25 with the State Commission of Montenegro, which had served as the partner body in the delineation exercise. This discussion helped us round out our understanding of the process that led to the agreement, especially in relation to its legal and technical aspects. (See Annex for material provided by the Montenegrin side.)

Although our mandate centered on the Kosovo Process, we attached great significance to consultations with the Montenegrin side. We are grateful for their cooperation. We know from our own prior experience that border delineation is not solely a unilateral enterprise but also a bilateral one; and that it is not simply a bilateral enterprise but ultimately a conjunctive one. Delineation is one line converging from two sides.

FINDINGS

Our key finding, also placed at the beginning of this report, states the following:

The Ad Hoc Commission has concluded that, based on the essential legal and technical criteria, the Kosovo Process of delineating the border with Montenegro clearly satisfied international standards.

On the *legal* dimension, we highlight three categories of special importance.

LEGALITY: The Kosovo Process rested on a sound legal basis, one constructed on the pillars of the State founding, including the 1974 Yugoslav Constitution, the 2007 Ahtisaari Plan, the 2008 Kosovo Declaration of Independence and the 2008 Kosovo Constitution. These charter documents not only formed the independent State but also shaped its territory.

Thus, Kosovo's borders were derived from the administrative boundaries of municipalities, which in turn were broken into cadastral zones. The boundaries of border municipalities defined the State borders. This legal underpinning is an essential part of the very definition of independent Kosovo.

In the case of the Kosovo-Montenegro border, the external boundaries of Junik, Deçan, Peja and Istog came together to define the border. That border line matches the one described in the Ahtisaari Plan in Annex VIII, 3.2., and used in the Kosovo Process.

In our review of that process, we found it useful to start with the law – and it is clear – and then consider maps – and there are many. Claims of “real territory” or “natural lines,” without a legal basis, can be misleading. Thematic and historic maps, without a legal basis, may have a place in a classroom but no standing in a courtroom.

The border debate is not only about the territory of the State but also the State of the territory. The State insignia show the territorial outline of the country, the very line drawn by the Kosovo Process.

CONTINUITY: In the legal framework of Kosovo, municipalities always existed and their boundaries encompassed all the territory within them. We found a remarkable continuity of cadastral data, going back decades, within the border municipalities. Further, the external border of the border municipalities also shows a long lineage, reaching back before the 1974 Constitution and remaining stable until the present day. This border is the same line set forth in the Kosovo Process.

The official repositories of cadastral information, at the State and municipal level, are the proper address for verifying cadastral information. We could find no evidence that this cadastral information was incomplete or falsified. The charge, however, is a serious one, best adjudicated if necessary in the legal institutions of Kosovo.

CONGRUITY: The State border between Kosovo and Montenegro, as determined in their June 2015 agreement, represents “a plane which transverses vertically the border line on the surface of the Earth and divides the territory of two states, their air space, underground space and the space under the water’s surface” (Article 1, Agreement on the State Border, contained in the Annex).

The two sides had to collaborate to define this vertical plane and its more familiar terrestrial line. We found that they did so as required by the profession of delineation – that is, without gap or overlap. And they did so in a spirit of collaboration and trust.

In our Podgorica consultations with the Montenegrin State Commission, we discovered the same legal approach to defining a border – constructed from cadastral zones and municipal boundaries – and the same stable database of cadastral and municipal information. Their work converged with that of their Kosovo counterparts; their delineated line admitted no no-man’s-land.

The legal and the *technical* criteria were essential for the State Commissions to draw a single line, as well as for our Ad Hoc Commission to judge the process. We emphasize three technical dimensions:

MEASUREMENT: We found that the delineated border line is based upon the congruent geometrical information of (1) the administrative boundary formed between the former Socialist Autonomous Province of Kosovo and the former Socialist Republic of Montenegro, (2) the municipal boundaries within the State of Kosovo and within the State of Montenegro in their contiguous touching of the border line, and (3) the cadastral boundary of both states where they meet the neighboring state. The Ad Hoc Commission found that this definition is proven practice based on threefold geometric data.

The definition from one source only, however, could be imprecise or misleading. This would be due to the fact that the boundary definitions of the maps (Kosovo and Montenegro) in scale 1:200.000 have only a limited geometric resolution. But this can be compensated for by using further information: The municipal boundaries in force in both countries and their subdivision into cadastral zones, which hold the most precise geometric information possible. The cadastral zones are one-to-one connected with the municipal area. The registered cadastral database provides the highest accuracy. Therefore, in their combined geometrical information, they allow delineation of the State border and territory of Kosovo at the required centimeter-level, the international standard.

TECHNOLOGY: The Kosovo State Commission introduced the most advanced technical equipment and technology available in geodesy for their search of the border delineation. These include GNSS receivers (Global Navigation Satellite Systems) for the most precise surveying purposes, and the GIS technology (Geographic Information System) for the interactive treating of the available maps and for combining cartographic layers and geodetic coordinates.

PROJECTION: The State Commission also used Gauss-Krueger coordinates and mathematical transformations to combine the results of modern GNSS surveying with the existing coordinates of the State borders. Further, it allows, at the two trilateral border points with Albania and Serbia at the start and end of the delineation line, the transformation of new geodetic measurements into the existing coordinates and map projections.

The establishment of the borders between Kosovo – Albania and Kosovo – FYR of Macedonia are classic examples of nations working together towards a common aim. There are many similarities with the legal and technical methodologies used in the Kosovo – Montenegro negotiations. We found that such experience creates an environment of transparency and engenders trust.

RECOMMENDATIONS

In our review of the Kosovo Process, we were struck by various dimensions of the border debate that did not receive adequate attention. We therefore recommend that the Kosovo public not lose sight of important themes, including the following, related to border delineation.

Strengthening ties with Montenegro: From both sides, we heard that the two State Commissions worked in a professional and correct manner, an example of strong bilateral relations. Montenegro's decision to recognize Kosovo as a sovereign country, done October 9, 2008, was also a dramatic show of support. Both countries share an aspiration to integrate further with Euro-Atlantic institutions. Both can contribute greatly to deeper regional cooperation. In many discussions, we heard Kosovars speak of the importance of relations with its western neighbor and the benefits of their development. A central lesson of the success of the demarcation with Macedonia in October 2009 was to transform the static line into a dynamic relationship. Indeed, on the very same day of final ratification in both parliaments – October 17, 2009 – the two countries established full diplomatic ties. Demarcation was not an end but a beginning. The border was not a closing but an opening.

Upgrading Kosovo-Montenegro Border Management: IBM is not just about the free flow of passengers and goods transcending borders, it is also about facilitating efficient regulation of persons and goods entering and leaving the country and having effective counter-measures against all types of illegal cross-border activity across the whole spectrum of trafficking -- i.e. drugs, weapons, ammunition, human beings, money, excisable goods, animals and food products. Each of these illegal activities is a threat to public safety and the economic well-

being of the country. It is essential, therefore, that each agency within their respective countries contributes to the overall intelligence picture that is the foundation from which 'rich picture' risk analysis/assessments and threat assessments are formulated.

Pivotal to achieving the above objectives is the requirement that all three border agencies (Police, Customs, Food and Veterinarian) share responsibility for intelligence gathering and have the capability to provide input on an equal basis. Only by doing so will Intra-service co-operation, Inter-agency co-operation and International co-operation be achieved and be perceived as such.

Demonstrating State Responsibility: After long struggle, upon finally attaining its independence, Kosovo assumed the manifold responsibilities of sovereign statehood. In its Declaration of Independence, Kosovo committed to "have its international borders as set forth in Annex VIII of the Ahtisaari Plan, and shall fully respect the sovereignty and territorial integrity of all our neighbors." Now it must follow through on its pledge as it matures as a State. To be sure, the border debate has been contentious. But in 2008 Kosovo did not lose land; it gained a State.

Improving Public Outreach: We know from our experience that border disputes can be very emotive. They can involve misunderstandings and even misrepresentations. In the case of Kosovo, its Constitution gives matters of territory a special significance (for example, in Articles 1, 2 and 18 of the Basic Provisions). Thus, in border disputes, we see a heightened need for a transparent process and a well-informed debate.

We found that, unlike standard European practice, the technical preparation of border delineation and the delineation itself were treated as a confidential process. It may have been better to have reached out, to have informed the public more about the process of delineation, as well as about the underlying laws, the cartographic maps and the required geodetic observations. After all, it is today's technical standard that anyone can use a smartphone (with a simple

GPS receiver) to monitor the present position on a digital map with better than 100-meter resolution.

Further, a key publication with the most important results of the State Commission did not reach concerned groups – in particular, the volume entitled “Basic Documents,” a useful compilation of key texts (and included in the Annex). Some salient facts also never reached the public – for example, the fact that there remain, still intact, eighty percent of the border markers used in an earlier exercise to demarcate the Yugoslav line between the SAP Kosovo and the Republic of Montenegro.

Conforming with International Standards of Registration: After completion of the entire border exercise, both sides should arrange to provide an additional copy of the border documentation to the United Nations. Such treaties are registered at the UN secretariat (Article 102 of the UN charter), “United Nations Treaty Collection” <http://treaties.un.org/>. According to its own guidelines, INSPIRE is “an EU initiative to establish an infrastructure for spatial information in Europe that is geared to help make spatial or geographical information more accessible and interoperable for a wide range of purposes supporting sustainable development” <http://inspire.ec.europa.eu/>. Finally, we encourage submission of the border coordinates to the European dataset “State Boundaries of Europe” which is part of EuroGeographics <http://www.eurogeographics.org/sbe>.

ANNEXES

Announcement by President Jahjaga on the establishment of the Ad Hoc Commission.

Material submitted by the two State Commissions from Kosovo and Montenegro.

Material submitted by critics of the Border Agreement.

Municipal resolutions pertaining to the Border Agreement and Ad Hoc Commission.

Integrated Border Management Agreements.

Regulation establishing the Kosovo State Commission.