

# BALKAN DIALOGUES

STRATEGIC OPTIONS TO SECURE  
AND SAFEGUARD SERBIAN ORTHODOX  
CHURCH HERITAGE IN KOSOVO  
AND METOHIJA IN A LONG-TERM AND  
SUSTAINABLE MANNER

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## BALKAN DIALOGUES:

# STRATEGIC OPTIONS TO SECURE AND SAFEGUARD SERBIAN ORTHODOX CHURCH HERITAGE IN KOSOVO AND METOHIJA IN A LONG-TERM AND SUSTAINABLE MANNER

Si cela va sans dire, cela ira encore mieux en le disant.  
– Tallyrand, au Congrès de Vienne (octobre 1814)

A.A<sup>1</sup>.

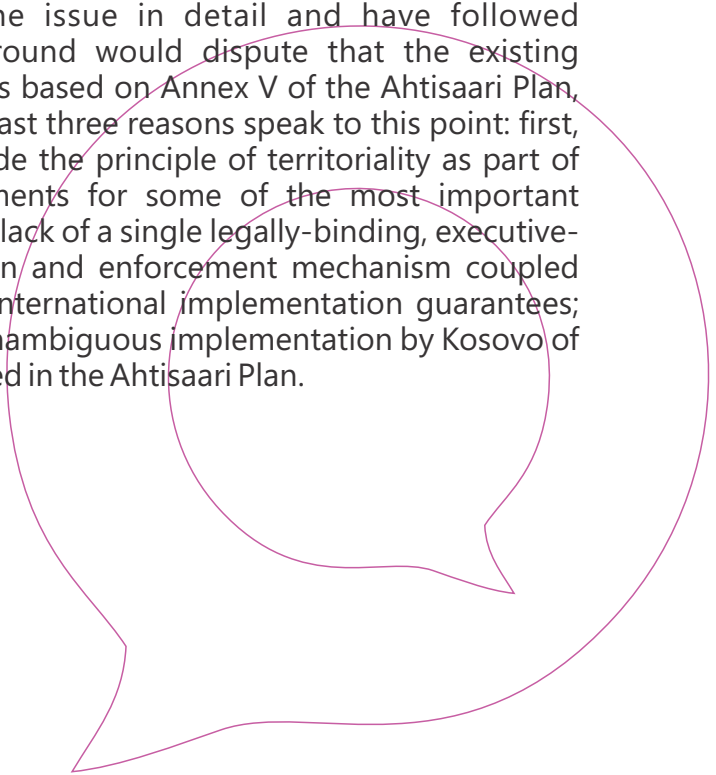
Serbian Orthodox Church Heritage in Kosovo is fundamentally important for the Serb people inasmuch as it represents the single-most important source for their national, cultural, and religious identity (at the heart of this Heritage stands a network of living monastic communities that plays a critical role in maintaining said identity). The political significance of this fact for the achievement of reconciliation between Serbs and Albanians in Kosovo as well as between Belgrade and Priština, on the one hand, and advancing the European perspective of not only Serbia and Kosovo but the entire Western Balkans, on the other hand, is further heightened by the widely-held view that the Church in Kosovo is the most endangered religious institution in Europe: its status and Heritage (which is overwhelmingly located in majority-Albanian parts of Kosovo) is in some important ways in greater peril and vulnerability than it was in Ottoman or Communist times.

A.A. is a pseudonym used at the request of the author, a former senior Serbian official whose identity is known to the editors of this document. The author has indicated his two principal reasons for anonymity: to write with greater frankness than would otherwise be proper and to focus the reader's attention on the views expressed rather than the source of those views.

A window of opportunity is opening to revisit existing arrangements in Kosovo as they relate to the Church its Heritage, irrespective of whether or not these go on to constitute a distinct part of the agreement on "comprehensive normalization." It is a good sign that after nearly a decade of negotiations in various formats on numerous issues that took place in the wake of Kosovo's February 2008 unilateral declaration of independence, the international community (understood in this context to consist primarily of the Quint and the European Union) finally appears ready to explore novel and creative strategic options to secure and safeguard the Church and its Heritage in Kosovo in a long-term and sustainable manner.

There is a widespread and justifiable expectation that Priština is the party to the dispute that will need to demonstrate the greatest possible level of flexibility with regards to the issue of the Church and its Heritage. However, given political realities in both Belgrade and Priština, the likelihood of success of an agreement on Heritage would increase significantly should the international community take the tactical lead in proposing a way forward.

Few who understand the issue in detail and have followed developments on the ground would dispute that the existing protection regime, which is based on Annex V of the Ahtisaari Plan, has been insufficient. At least three reasons speak to this point: first, the unwillingness to include the principle of territoriality as part of special position arrangements for some of the most important Heritage sites; second, the lack of a single legally-binding, executive-function dispute resolution and enforcement mechanism coupled with the lack of binding international implementation guarantees; third, the lack of full and unambiguous implementation by Kosovo of various provisions contained in the Ahtisaari Plan.



Nonetheless, the provisions contained in Annex V of the Ahtisaari Plan represent a good baseline for building a stronger protection mechanism. This paper presents six such options, each of which builds on Annex V as originally envisioned (regrettably not fully implemented in the more than thirteen years since it was accepted by Priština). Each of these options is *sui generis*, which is fully consistent with the logic inherent in the view that the "Kosovo case is *sui generis*." Thus, none of the strategic options put forward in this paper are cookie-cutter reproductions of existing models, although some of the options put forth draw conceptually from some of these, most notably the Lateran Treaty.

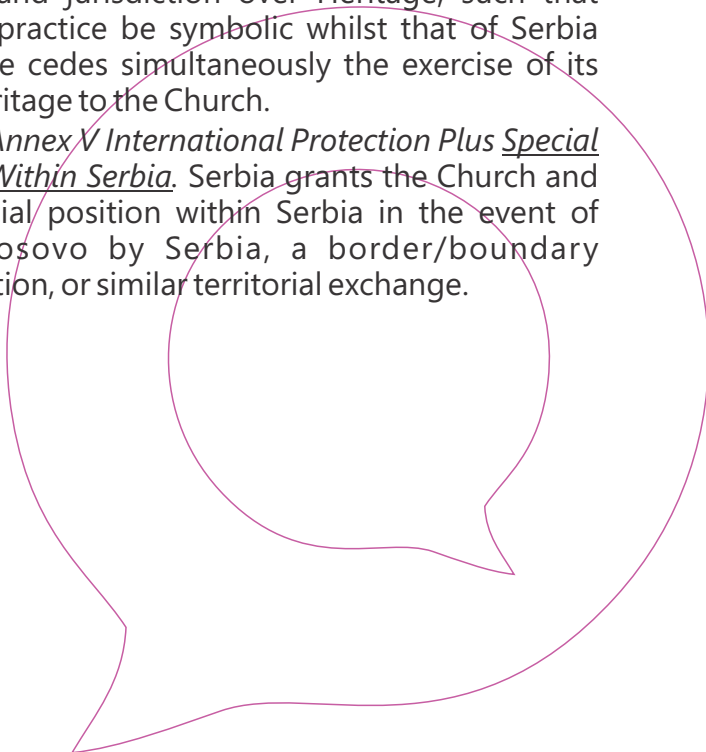
The six strategic options share a common set of goals and elements. Some of the most important include, first, a robust and legally-binding international-backed and internationally-guaranteed mechanism for Church status and Heritage protection, which would need to be contained in a distinct international legal instrument guaranteed by the international community.

This mechanism would be predicated on a tripartite categorization of Heritage sites with respect to level of international protection and include the principle of symbolic territoriality as part of special position arrangements for some of the most important Heritage sites, namely those four inscribed on the UNESCO World Heritage Sites (and the list of UNESCO World Heritage Sites in Danger) as well as several others. Second, Priština's limited competence and jurisdiction regarding the Church and its Heritage and the transference of the rest to a novel institution granted robust executive powers to ensure the terms of whichever strategic option is chosen are implemented in full. Third, the recognition by Kosovo of the international legal instrument's authority through a constitutional amendment. Fourth, the renunciation by Kosovo of jurisdiction and responsibility over Heritage in the context of the fulfillment of duties and responsibilities with regards to future membership in UNESCO or other international or regional organizations.

The six strategic options to secure and safeguard Heritage in Kosovo in a long-term and sustainable manner put forward in this paper are

:

1. *Fully Implemented Annex V International Protection Plus Church Affiliation or Membership in the Association/Community of Serb Majority Municipalities in Kosovo*. For all intents and purposes, the Church is treated as a municipality and its Standing Representative a mayor; alternatively its Heritage would fall under the jurisdiction of the Association/Community without the benefit of membership.
2. *Fully Implemented Annex V International Protection Plus Special Territorial Position Within Kosovo*. Priština grants the Church and its Heritage a special position within Kosovo ("soft extraterritoriality"), falling within the range of arrangements governing diplomatic missions, military bases on foreign territory, the seat of the Order of the Knights of Malta, and the Monastic State of Mount Athos.
3. *Fully Implemented Annex V International Protection Plus Dual Sovereignty (Condominium)*. Belgrade and Priština agree to share sovereignty and jurisdiction over Heritage, such that Kosovo's would in practice be symbolic whilst that of Serbia would not. Belgrade cedes simultaneously the exercise of its jurisdiction over Heritage to the Church.
4. *Fully Implemented Annex V International Protection Plus Special Territorial Position Within Serbia*. Serbia grants the Church and its Heritage a special position within Serbia in the event of recognition of Kosovo by Serbia, a border/boundary demarcation correction, or similar territorial exchange.



5. *Fully Implemented Annex V International Protection Plus Dual Concession of Sovereignty to Third Party*. Serbia and Kosovo separately conclude identical agreements with the same third party (e.g. the EU, an ad hoc entity modeled on the ICO or OHR) conceding sovereign functions and jurisdiction over Heritage. This third party then grants the right to exercise jurisdiction thereof to the Church. Thus, Serbia and Kosovo would not be direct parties to the same agreement with the same third party. Should the third party end up being the EU, the Heritage sites may in fact be considered as falling under the (non-sovereign) jurisdiction of the EU.
6. *Fully Implemented Annex V International Protection Plus the Establishment of a Corpus Separatum (Special International Regime)*. The UN Security Council establishes a Special International Sovereign Regime over Heritage in Kosovo thereby transferring this aspect of sovereign jurisdiction to a third party (e.g. the EU, an ad hoc entity modeled on the ICO or OHR) to serve as the Church's counterpart or cede to it the exercise of its sovereign functions and jurisdiction regarding Heritage. Should the third party end up being the EU, the Heritage sites may in fact be considered as falling under the (non-sovereign) jurisdiction of the EU.

Some of these options would neither require nor preclude implicit or explicit recognition or their inclusion in a larger package of “comprehensive normalization” whilst others would.

## ***1. Introductory Remarks***

Resolving the question of the position and status of the Serbian Orthodox Church in Kosovo ('Church') as well as the institutions, sites, and properties of Serbian Orthodox Church Heritage in Kosovo and Metohija ('Heritage') over which the Church presently holds (or should hold) exclusive spiritual authority, exclusive canonical jurisdiction, and exclusive ownership<sup>2</sup> is at least equal in importance to any other open or unresolved or contentious question or issue.

A window of opportunity is opening to revisit existing arrangements in Kosovo as they relate to the Church and its Heritage, irrespective of whether or not these go on to constitute a distinct part of "comprehensive normalization of relations between Serbia and Kosovo, in the form of a legally binding agreement." It is a good sign that after nearly a decade of negotiations in various formats on numerous issues that took place in the wake of Kosovo's February 2008 unilateral declaration of independence, the international community (understood in this context to consist primarily of the Quint and the European Union) finally appears ready to explore novel and creative strategic options to secure and safeguard the Church and its Heritage in Kosovo in a long-term and sustainable manner.

There is a widespread and justifiable expectation that Priština is the party to the dispute that will need to demonstrate the greatest possible level of flexibility with regards to the issue of the Church and its Heritage. However, given political realities in both Belgrade and Priština, the likelihood of success of an agreement on Heritage would increase significantly should the international community take the tactical lead in proposing a way forward.

<sup>2</sup> On the territory of present-day Kosovo, the Archdiocese of Peć holds jurisdiction over the holy patriarchal and stauropegic monastery of Peć and its dependency at Budisavci near Klina. The Diocese of Raška and Prizren holds jurisdiction over all the other parish churches, monasteries, and dependencies in Kosovo and Metohija. Note that whenever the term "Serbian Orthodox Church" is used in the text, the reference is to the institution in its entirety, headed by a Patriarch with his primary seat in Belgrade; the use of the term "Church" in the text refers to the Serbian Orthodox Church in Kosovo, namely the Diocese of Raška and Prizren and, for all practical purposes, the Archdiocese of Peć (it is formally headed by the aforementioned Patriarch but is in an everyday sense overseen by and essentially dependent on the Diocese of Raška and Prizren, which is headed by its Bishop whose seat is in Prizren).

The Church/Heritage issue has neither been formally enumerated as constituting a part of the aforementioned “normalization agreement” nor been a formal subject of discussion in the ongoing Belgrade-Priština dialogue conducted under the auspices of the High Representative of the Union for Foreign Affairs and Security Policy (or anyone else for that matter).

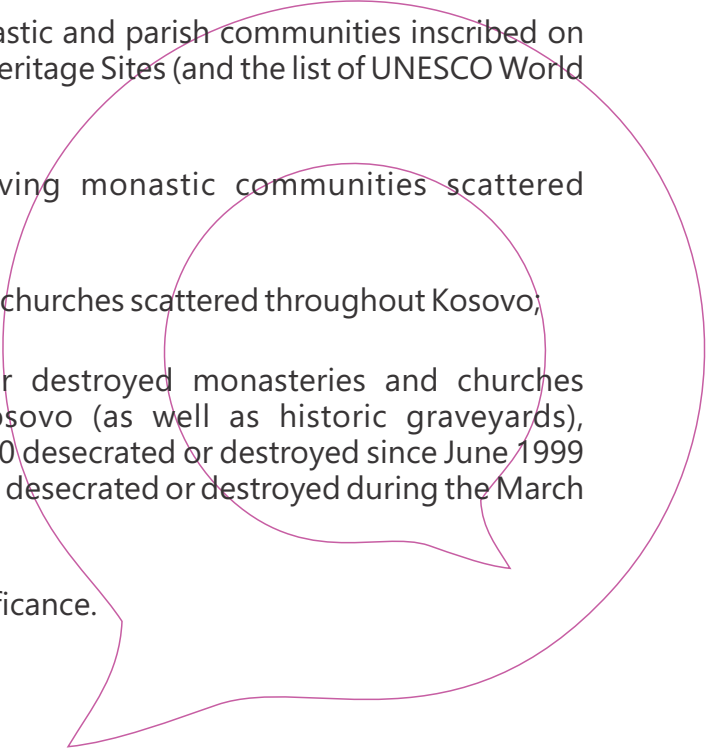
## ***II. Sui Generis Path to Reconciliation***

Comprehensively addressing the special concerns of Serbia and the Serbian Orthodox Church on the question of safeguarding the Church and its Heritage is of fundamental importance. As the then-Director-General of UNESCO, Mr. Koïchio Matsuura, stated in response to the tragic events of March 2004 that resulted in the destruction of dozens of Heritage sites in a three-day period, Serbian Orthodox Church heritage in Kosovo is fundamentally linked to “memory and cultural identity.” At bottom, this is a civilizational question, predicated on entrenching cornerstone European principles and values, that can help to advance both the European perspective of not only Serbia and Kosovo but the entire Western Balkans as well as efforts at achieving reconciliation between Serbs and Albanians within Kosovo and between Belgrade and Priština.

Thus, comprehensively addressing these special concerns through the enshrinement of internationally-backed institutional safeguards and guarantees for the Church and its Heritage furthers the widely acknowledged proposition that the issue of Kosovo for the Serb people is not simply an issue of Kosovo's political status or governance issues affecting the Kosovo Serb community (neither of which are intended subjects of this paper) but of national, cultural, and religious identity. Simply put, the Church and its Heritage represent the single-most important source for their national, cultural, and religious identity (as will be explained below, at the heart of this Heritage stands a network of living monastic communities that plays a critical role in maintaining said identity).

The logic inherent in the claim that “the Kosovo case is sui generis” indicate that any proposed settlement to secure and safeguard Heritage in a long-term and sustainable manner ought itself be “unique” or “sui generis.” Thus, none of the strategic options put forward in this paper are cookie-cutter reproductions of existing models, although the most similar is the Lateral Treaty. However, each embraces many of the provisions contained in Annex V (entitled “Religious and Cultural Heritage”) of the Comprehensive Proposal for the Kosovo Status Settlement (‘Ahtisaari Plan’). Hence, it could be said that those aspects of the Ahtisaari Plan that are not criticized or discussed negatively should be considered, as a general rule, to constitute a part of the upgrade in protection that each strategic option contained in this paper puts forward. In other words, each option should be considered as “Ahtisaari Plan Annex V plus x,” with the x representing the specific option laid out for consideration.

Each presented option is predicated on the need to enshrine internally and guarantee externally the uniquely special position and status of the Church and its Heritage. To that end, Heritage should be understood as consisting of five interrelated parts:

- the network of living monastic and parish communities inscribed on the list of UNESCO World Heritage Sites (and the list of UNESCO World Heritage Sites in Danger);
  - the network of other living monastic communities scattered throughout Kosovo;
  - the network of other parish churches scattered throughout Kosovo;
  - the network of ruined or destroyed monasteries and churches scattered throughout Kosovo (as well as historic graveyards), including the more than 160 desecrated or destroyed since June 1999 (a subsection of which were desecrated or destroyed during the March 2004 pogrom);
  - sites of mixed cultural significance.
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More importantly, Heritage should also be understood according to a tripartite categorization of sites with respect to levels of international protection (as defined and explained in Appendix A) in the following manner:

- sites requiring the highest level of international protection, including the principle of symbolic territoriality as part of special position arrangements (Appendix A, Section A, Parts I and II), on the basis of the fact that these hold exceptional places in the national consciousness of the Serbian people and constitute irreplaceable sources of their national, cultural, and religious identity, as well as their acute vulnerability;
- sites requiring heightened levels of international protection (Appendix A, Section B), on the basis of their exalted standing in the national consciousness of the Serbian people and constitute irreplaceable sources of their national, cultural, and religious identity, as well as their acute vulnerability; and
- sites requiring the full implementation of Ahtisaari Plan Annex V international protection (Appendix A, Section C), on the basis of the terms laid out in the Plan itself.

Safeguarding this invaluable Heritage network in perpetuity requires that it be given an enhanced status of protection that goes beyond a level of legal security generally afforded to cultural monuments and patrimony by sovereign states, UNESCO World Heritage Sites, or the parameters defined by or derived from existing arrangements in Kosovo, including the Ahtisaari Plan. An internationally-guaranteed institutional status for the Church and its geographically incontiguous Heritage sites and monastic communities that inhabit, serve as custodians over, and own is therefore judged to be an essential part of the measures proposed.

This judgment is made on the following double basis: first, the unique historical, cultural, and security vulnerabilities of the Church and its Heritage sites; second, the widespread expectation that it is imperative for this issue to constitute Priština's main political and diplomatic concession in the process of achieving normalization and reconciliation.

### **III. Understanding Monasticism**

At the heart of any enhanced status of protection for the Church and its Heritage must stand a keener understanding of monasticism and the critical role it plays in the formation and perpetuation of identity for the Serb people.

Monasticism, a formal life of internally imposed self-renunciation, plays a unique and central role in the Orthodox Christian tradition, growing stronger as the presence of externally imposed self-renunciation diminishes. The commonest form of Orthodox monastic life in Kosovo is the coenobitic communion. In the coenobitic monastery everything is shared: living quarters, food, work, prayer, common efforts, cares, struggles, and achievements. (The leader and spiritual father/mother of the coenobium is the abbot/abbess, and of the network of coenobia is the bishop.)

The exceptional status of coenobitic communities has been recognized in one form or another for as long as their persecution has been recognized as barbarous. More generally, there are significant historical and contemporary precedents for an exceptional territorial, legal, and administrative status to be granted to those who have selected the ascetic life within the institutions of their church or faith community. In the Orthodox tradition, one finds examples of exceptional status for, inter alia, the Holy Mountain of Athos, the Patriarchate of Jerusalem, the monastery of St Catherine's and its dependencies in the Sinai desert. In the tradition of the Catholic Church, one finds examples of exceptional status in the Lateran Treaty (Italy and the Holy See) and various bilateral Concordates (the Holy See and another state). Each of these provide for a sui generis special position vis-à-vis one or more sovereign states and reference will be made to aspects of the arrangements found in some of these examples below.

An inalienable part of the identity of the Serb people is the permanent presence of the Church as an institution and is inseparable from its Heritage. Kosovo, and especially Metohija (itself a Slavicized derivative of the Greek word metochion (pl. metochia), meaning "dependency/ies of the Church"), is home to many of the oldest and most sacred monasteries to the Serb people, the Church, and, to an extent, Orthodox Christianity and European (and Western) civilization as a whole.

It is critically important to understand that these Heritage sites are thus not museum pieces or cultural artifacts<sup>3</sup>. Rather, experiencing this Heritage in its full majesty can properly take place in the sacred context of the liturgical centrality of a living monastic (or parish) community. The Heritage in question are at bottom living liturgical objects lovingly cared for and venerated by living monastic (or parish) communities and must be understood as such. This fact, too, is integral to the argument in favor of establishing special position arrangements for the Church and its Heritage.

#### ***IV. Annex V of the Ahtisaari Plan: Baseline and Flaws***

The Church in Kosovo is the most endangered religious institution in Europe whose status and Heritage (which is overwhelmingly located in majority-Albanian parts of Kosovo) is in some important ways in greater peril and vulnerability than it was in Ottoman or Communist times. In the twenty-first century, the Church has been governed under the authority of two distinct Priština-based regimes—namely the UNMIK-led administration that began in June 1999 followed by the post-February 2008 arrangements derived from the Ahtisaari Plan. The safeguards for its Heritage put in place by these serve as a good baseline yet at the same time have proven to be woefully inadequate and grossly insufficient for the long-term, sustainable protection of both the Church and its Heritage. Compelling evidence of this is the fact that all of the Heritage sites in Kosovo inscribed on the list of UNESCO World Heritage Sites are also inscribed on the list of UNESCO World Heritage Sites in Danger.

Present safeguards and arrangements are, in their essence, contained in Annex V of the Ahtisaari Plan and were designed to achieve limited objectives within the context of the constitutional and legal order that came into force in the wake of Kosovo's unilateral declaration of independence in February 2008. In the verbatim record of the session of the talks between Belgrade and Priština held in Vienna under the auspices of UN Special Envoy Martti Ahtisaari devoted to a discussion of the scope and intent of Annex V (28 February 2007), the chairman is quoted as saying:

<sup>3</sup> Notwithstanding the fact that, as UNESCO documents have described the most valuable Heritage sites, which were built prior to the Ottoman occupation by successive Serbian sovereigns, are unique in having successfully reconciled two distinct architectural styles (namely that of Orthodox Byzantium and Catholic Romanesque) in a period characterized by internecine warfare, suspicion, and division between East and West; or that their preserved frescoes and icons are amongst the most aesthetically refined found anywhere in the Western civilizational space.

The [Protective] [Z]ones are not an acquisition of territory. They do not affect the ownership directly. What they do is, *they restrict certain commercial and industrial activities in order to protect the unique architectural natural environment of some of these important sites* and allow, especially the monasteries, to lead a quiet, active, religious life. Our approach was never a territorial one, we never counted hectares or metres of these zones” [emphasis added].

The Ahtisaari model, which continues to be applied in Kosovo, albeit not fully, thus demonstrated an unwillingness to include the principle of territoriality as a means to achieve the long-term, sustainable protection of some of this Heritage<sup>4</sup>. The Ahtisaari model was also unwilling to consider the establishment of a Serbian entity within Kosovo that would include the Church and/or its Heritage within its jurisdiction—a proposal first made by the negotiating team of Serbia in 2007. Additionally, neither the First Agreement of Principles Governing the Normalization of Relations ('Brussels Agreement') from April 2013 nor subsequent documents derived therefrom—inclusive or exclusive to the ongoing Belgrade-Priština dialogue conducted under the auspices of the High Representative of the Union for Foreign Affairs and Security Policy—most notably subsequent talks regarding the establishment and powers of the Association/Community of Serb Majority Municipalities in Kosovo, allow for the possibility of the Church or the Heritage (especially those not located in majority Serb municipalities) to fall within its limited competencies (it also did not embrace the possibility of the Church becoming a member of said Association/Community).

The premise informing the Ahtisaari model has not produced hoped-for results for three distinct but interrelated reasons. The first, discussed above, is the unwillingness to include the principle of territoriality as part of special position arrangements for some of the most important Heritage sites.

<sup>4</sup> The immediate precursor to the approach adopted by Ahtisaari, in the sense of establishing a “special zoning area for the Dečani canyon area” and thus the provision of limited protection to a natural preserve that includes a single monastic community, is the April 2005 UNMIK Executive Order issued by SRSG Søren Jessen-Petersen. The historical precursor go back to the Ottoman period when the Visoki Dečani monastery was granted special status and the highest level of imperial protection by a succession of sultans in a dozen fermans starting in the sixteenth century as well as permanent Ottoman military protection from 1903 until the end of its rule in Kosovo.

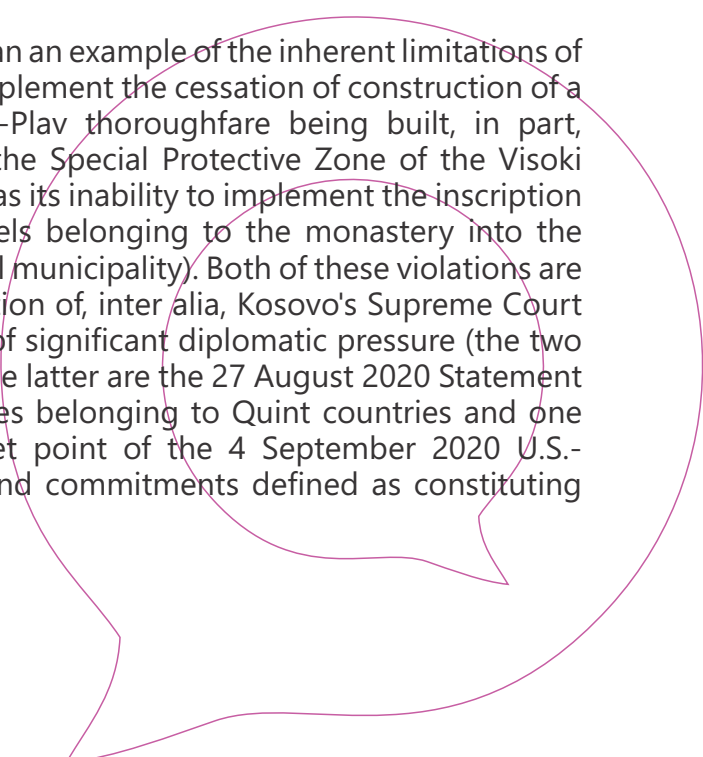
The second reason is the lack of a single legally-binding, executive-function dispute resolution and enforcement and corrective mechanism coupled with the lack of binding international implementation guarantees whatsoever.

The third reason is the lack of full and unambiguous implementation of various Annex V provisions by the Priština-based institutions established on the basis of the Ahtisaari Plan. This last can be understood in at least two ways. First, there is no single piece of legislation that establishes in a clear and comprehensive manner the parameters and terms of relations between Priština, on the one hand, and the Church and its Heritage, on the other, as well as no formal supervisory, oversight, mediation, or other mandated role for the international community with enumerated executive powers and responsibilities: the example of the Implementation Monitoring Council ('IMC') is discussed below in greater but not exhaustive detail. Existing parameters and terms and their implementation are contained in various constitutional provisions, several laws, and various administrative documents. Second, in many instances the several laws on the books (or currently in draft form) do not follow the scope, spirit, and letter of Annex V and in every instance of deviation the formulations are less strict, less encompassing, or do not address specific guarantees contained in Annex V, all of which increases the vulnerability of the Church and its Heritage.

The example of the IMC is a good illustration of the limits of the existing approach. A comparison of the relevant text of Annex V with the Law on Special Protective Zones (NR. 03/L-039) makes it clear that the law is both less concrete and more ambiguous in enumerating the IMC's tasks; it also narrows the scope of the IMC. Sonority of language is maintained in the weakness of its mandate, however: the IMC is explicitly defined as a monitoring and facilitation mechanism; in the law's version, its jurisdiction is further limited to monitoring and facilitating the implementation of the Law on Special Protective Zones, not, as per the Annex V, the "provisions of this Settlement related to the protection of the Serbian religious and cultural heritage in Kosovo." In other words, the IMC has no formal executive power.

Thus the Law on Special Protective Zones is a watered down version of a mechanism already limited in the scope of the objectives it is designed to attain and protections to confer. One could have argued that the semi-Bonn-like powers temporarily granted to the International Civilian Representative ('ICR') specifically, and the International Civilian Office ('ICO') in general, could have supplemented those of the IMC (although it is indicative that the Law on Special Protective Zones was adopted during the "supervised" phase of the implementation of the Ahtisaari Plan—i.e. while the ICR/ICO operated in full capacity). This, however, is no longer the case. In other words, the IMC, as the sole remaining mechanism (however weak its powers) that ties the international community to any sort of quasi-executive or guarantor role with regards to the Church and its Heritage, is effectively powerless to enforce compliance with the terms of the law in question, much less compliance with the terms of provisions contained elsewhere in the post-February 2008 arrangements, whether or not derived from Ahtisaari Plan. Informal means, such as political pressure exercised by Priština-based embassies belonging to Quint countries, the EU Office, various Special Representatives or Special Envoys, and so on, are occasionally useful but hardly constitute a substitute in and of themselves.

An example that is more than an example of the inherent limitations of the IMC is its inability to implement the cessation of construction of a 35-kilometer long Dečani-Plav thoroughfare being built, in part, within the boundaries of the Special Protective Zone of the Visoki Dečani monastery (as well as its inability to implement the inscription of a number of land parcels belonging to the monastery into the cadastral record of the local municipality). Both of these violations are being perpetrated in violation of, inter alia, Kosovo's Supreme Court decisions and in defiance of significant diplomatic pressure (the two most recent examples of the latter are the 27 August 2020 Statement by Priština-based embassies belonging to Quint countries and one part of the eleventh bullet point of the 4 September 2020 U.S.-brokered set of pledges and commitments defined as constituting "economic normalization").



## ***V. Common Goals and Elements of the Various Strategic Options***

From both a conceptual and implementation standpoint, the six strategic options to secure and safeguard Heritage in Kosovo in a long-term and sustainable manner are presented in such a manner that they presuppose conformity to a number of common goals and elements as integral parts of each proposed option.

It is critical to understand that the predicated acceptance of such goals and elements for the selection, pursuit, and implementation of any of the enumerated options would accomplish four fundamentally important policy goals of the international community: first, it would decisively ensure the further entrenchment of cornerstone European principles and values in deepening the European perspective of not only Serbia and Kosovo but the entire Western Balkans; second, it would boldly advance efforts at achieving reconciliation between Serbs and Albanians within Kosovo and between Belgrade and Priština; third, it would unambiguously represent a firm commitment on the part of both Belgrade and Priština to the establishment of full normalization of relations; and fourth, it would meaningfully relativize and compartmentalize the potential for destabilizing political impact regarding the implementation of whichever enumerated option ends up being selected.

In accordance with the aforementioned imperative that maximal flexibility on the part of Priština with regards to the Church/Heritage issue would constitute its main political and diplomatic concession in the process of achieving normalization and reconciliation, it necessarily follows that the burden of accepting and implementing the below common goals and elements will need to be primarily shouldered by Kosovo.

The enshrining of these goals and elements into some sort of distinct international legal instrument will also be discussed.

## 1. Common Goals

- a.** A robust and legally-binding, international-backed, and internationally-guaranteed mechanism for Church status and Heritage protection; the basis of this mechanism would be the establishment of an “Ahtisaari Plan Annex V plus x” formula, with the x representing the each of the six strategic options put forward for consideration.
- b.** A tripartite categorization of Heritage sites with respect to level of international protection, as defined and explained in Appendix A.
- c.** The establishment of an international executive authority possessing Bonn-like powers to ensure the implementation of the aforementioned mechanism and adjudicate any and all disputes between the Church and Priština-based and local authorities.
- d.** The establishment of a physical security protection mechanism for Heritage under the overall authority, jurisdiction, and command of an international military presence possessing Bonn-like powers, with provisions for the secondment of Kosovo Police, non-Kosovo police personnel, or private security contractors subject to the consent of the Church.
- e.** The establishment of a mechanism for the return or provision for just compensation for confiscated or expropriated Church property<sup>5</sup>.

Such a mechanism would also forbid additional privatization of confiscated or expropriated property claimed by the Church as well as new construction or renovation on said property before the establishment of rightful ownership. Priority of resolution would be given to confiscated or expropriated Church property located within the various Special Protective Zones and their immediate vicinity.

From the standpoint of achieving full reconciliation and normalization, the optimal “effective from” date is 17 April 1941. This date marks the beginning of a period in which confiscation or expropriation took place by a succession of regimes, established on the basis of one or another form of totalitarian or authoritarian ideology (each predicated, inter alia, on disrespect for the supremacy of the rule of law, including the basic right to own property), ruled or governed the territory of present-day Kosovo without interruption—a period of time that ended only with the establishment of UNMIK in June 1999.

## 2. Common Elements

- a.** The recognition by Priština of the exclusive spiritual authority, exclusive canonical jurisdiction, and exclusive ownership of the Church over its Heritage; and the explicit non-recognition of any past, present, or future claim by any other authority, faith, or church over this Heritage.
- b.** The recognition by Priština of canonical and administrative links between the Church with the Serbian Orthodox Church and its patriarchal seat in Belgrade.
- c.** The recognition by Priština that the Church exercises full discretion in the management, reconstruction, preservation, and access to its Heritage; and that the Church's movable and immovable property (actual, confiscated, or expropriated) and other assets are inviolable and not subject to expropriation.
- d.** The recognition by Priština of the strictly limited competence and jurisdiction of its institutions (executive, legislative, judicial), authorities, and agents, constitution, laws, regulations, and codes toward the Church as an institution and its Heritage sites; these limits would need to be enumerated explicitly: whatever is not enumerated explicitly as falling within Priština's competence and jurisdiction is to be considered as falling beyond the scope of what is allowed.
- e.** The recognition by Priština that competences and jurisdiction not explicitly defined as belonging to Kosovo will be granted instead to a new institutional mechanism (having its own secretariat) that would replace the IMC; the permanent members of this new mechanism would need to include the heads of the aforementioned international executive authority and international military presence, as well as a Standing Representative appointed by the Diocese of Raška and Prizren and tasked with representing the Church in its affairs before the mechanism and all other relevant actors, institutions, authorities, and agents.

<sup>6</sup> Serbia regards Kosovo's 2008 declaration of independence as a partition of its sovereign territory.

**f.** The renouncing by Priština of jurisdiction and responsibility over Church and its Heritage in the context of the fulfillment of duties and responsibilities with regards to future membership (or observer status) in the United Nations, UNESCO or any other UN specialized agency, subsidiary organ, fund and programme, specialized agency, functional commission, regional commission, related organization, other entity, or other body associated with the UN; the European Union; or any other non-UN multilateral entity or organization in receipt of a standing invitation to participate as an observer in the sessions and the work of the UN General Assembly (e.g. Council of Europe, OSCE).

### ***3. Distinct International Legal Instrument***

The enshrinement of the aforementioned goals and elements in a distinct international legal instrument ('Charter') would be a requirement, as would its recognition by Kosovo in the form of a constitutional amendment and a consolidated law (*lex specialis*) that would supersede existing pieces of legislation.

This Charter would also set forth, *inter alia*:

**a.** the details of whichever strategic option is chosen as well as the establishment of the international executive authority and the international military presence; their relationship to one another and the Standing Representative, the institutional mechanism replacing the IMC (including lines of reporting), Priština, and the rest of the international community.

**b.** the terms of legal, administrative, and jurisdictional links between the Church as the custodian of Heritage and organs of Serbia responsible for cultural heritage preservation, and the like.

**c.** the terms of the rights, privileges, and immunities of the Church in various fields (e.g. economic activities, financial support, customs and tax privileges, entry/exit permits, and residency permits for bishops and auxiliary bishops, priests and their families, monks, nuns, novices, pilgrims, individuals in the service of (or seconded to) the Church including the Standing Representative, personnel employed by the institutional mechanism replacing the IMC, and private contractors, invited guests of the Church, and members of the Serbian Orthodox Church and other canonically-recognized Orthodox churches).

- e. the granting of explicit authority to the institutional mechanism replacing the IMC to ensure and enforce compliance and implementation with the terms and provisions of the Charter; to institute appropriate sanctions for non-compliance or non-implementation; and to exercise full executive, legislative, and judicial control over the administration of Special Protective Zones.
- f. the specifics of the institutional mechanism replacing the IMC's accountability to the Charter's international guarantors.
- h. the means by which the Church and its Heritage sites can secure unhindered provision of public utilities and communication links at fair market rates.

## ***VI. Outline of Six Strategic Options***

First Strategic Option: Full Implementation of Ahtisaari Plan Annex V International Protection Plus Church Affiliation or Membership in the Association/Community of Serb Majority Municipalities in Kosovo.

The Church and its Heritage (as provided in the parameters defined in Section V above and tripartite categorization of sites with respect to levels of international protection defined in Appendix A below) is affiliated with or becomes a member of (through the Standing Representative) of the Association/Community of Serb Majority Municipalities, thereby making this already non-contiguous administrative unit additionally non-contiguous. For all intents and purposes (and altogether inappropriately), the Church would be treated as a municipality and the Standing Representative as a mayor; alternatively, the Church would be subject to the jurisdiction and oversight of the Association/Community of Serb Majority Municipalities without the benefits of membership.

This option would necessitate enhanced institutional ties not only with the Kosovo Serb community but also with Serbia and would most likely constitute a distinct but integral part of "comprehensive normalization of relations between Serbia and Kosovo, in the form of a legally binding agreement."

The Serbian Orthodox Church is unlikely to favor this option, especially in the event that it entails implicit or explicit recognition of Kosovo, given the widespread expectation (one that is shared by much of the international community) that Priština would be forced to make its most significant concession on the issue of Heritage.

In the event that this option would involve a land swap, a border/boundary demarcation correction, or the like, the danger of Serbia working to ensure that the Standing Representative, although appointed by the Church, comes under the influence of Belgrade would increase even further.

There is a danger inherent in this arrangement that, over time, the Standing Representative could emerge as a political leader of the Kosovo Serb community, particularly in the event that he or she is elected to a high office (e.g. president or vice president) of the Association/Community. This could in turn lead to a situation in which the Church becomes an active political actor in Kosovo and thus add to the politically destabilizing perception of linkage between Serbia, the Kosovo Serb community, and the Church and its Heritage: questions of ethnic identity and political sovereignty would in this scenario become even more closely linked, further enhancing their divisive potency. Lastly, this would complicate the objectivity and effectiveness of the institutional mechanism replacing the IMC and its crucial implementation role.

**Second Strategic Option: Full Implementation of Ahtisaari Plan Annex V International Protection Plus Special Territorial Position Within Kosovo.**

The Church and its Heritage (as provided in the parameters defined in Section V above and tripartite categorization of sites with respect to levels of international protection defined in Appendix A below) are granted a special position within Kosovo, falling within the range of arrangements governing diplomatic missions (as per, inter alia, Article 22 of the 1961 Vienna Convention) or the headquarters of international organizations (e.g. UNHQ in New York or UNOG in Geneva), certain military bases on foreign territory (e.g. Bondsteel), the seat of the Order of the Knights of Malta in Rome, and the Monastic State of Mount Athos in Greece.

Notwithstanding myriad differences, such arrangements fall within the scope of the term “soft extraterritoriality” and share a conceptual commonality of self-governance in terms of status and self-management in terms of property, with limited to no applicability of executive, legislative, and judicial functions of the entity granting said extraterritoriality and formally retaining sovereign rights.

It is important to note that this option falls below the scope of those provisions in the Lateran Treaty that concern some Holy See properties falling outside the territory of the Vatican itself (e.g. the patriarchal Basilicas of St. John Lateran, Sta. Maria Maggiore, and St. Paul) but does fall within the scope of other provisions in said treaty with regards to other institutions or properties (e.g. the Gregorian University, the Biblical, Oriental, and Archaeological Institutes, and the Castel Gandolfo complex and all its endowments, appurtenances, and dependencies); with regards to the former, the terms of said treaty are such that these properties are understood as being more extraterritorially “hard” than “soft.”

This option is likely to be unattractive to Serbia for reasons similar to those described in the First Strategic Option. In addition, it would be difficult to conceive how this option could be exercised outside of a larger package on “comprehensive normalization of relations between Serbia and Kosovo, in the form of a legally binding agreement” that would necessarily entail, in this case, implicit or explicit recognition of Kosovo by Serbia. The Church as well as the Serbian Orthodox Church would in all likelihood look very unfavorably upon this option as it would gravely curtail the principle of territoriality that stands at the heart of the logic of how to attain the highest level of international protection for Heritage. Lastly, this option would be suboptimal from the perspective of Priština as it would be interpreted as constituting a limited concession on its part, necessitating greater concessions in other areas. Ironically, this option may become acceptable to present Serbian authorities in the event that it is pressed to make beyond red line concessions in other areas: but such tactical cynicism should not be exploited on an issue of such fundamental, long-term importance.

### **Third Strategic Option: Full Implementation of Ahtisaari Plan Annex V International Protection Plus Dual Sovereignty (Condominium).**

As a distinct part of a larger package on “comprehensive normalization of relations between Serbia and Kosovo, in the form of a legally binding agreement,” Serbia and Kosovo explicitly agree to share sovereignty over Heritage (as provided in the parameters defined in Section V above and tripartite categorization of sites with respect to levels of international protection defined in Appendix A below). This condominium approach would require de jure sharing of sovereignty, such that Kosovo's would be symbolic whilst that of Serbia would not.

However, in order for this to be minimally acceptable to Priština, an integral part of such an arrangement would require Serbia to simultaneously cede by treaty with the Serbian Orthodox Church the exercise of its sovereign functions over Heritage to the Church. Thus, in practice the Church would stand at the center of a condominium arrangement (acting on behalf of Serbia), formally sharing sovereignty with Kosovo (in practice exercising it solely, symbolism aside) without having to formally acknowledge it. It may represent a good way forward.

### **Fourth Strategic Option: Full Implementation of Ahtisaari Plan Annex V International Protection Plus Special Territorial Position Within Serbia.**

As a distinct part of a larger package on “comprehensive normalization of relations between Serbia and Kosovo, Serbia concludes an agreement with the Serbian Orthodox Church, along the lines of the general formula “more than autonomy less than independence,” with regards to the Church and its Heritage (as provided in the parameters defined in Section V above and tripartite categorization of sites with respect to levels of international protection defined in Appendix A below).

In this case, the parties to the agreement are Serbia and the Serbian Orthodox Church. Priština formally relinquishes part of its sovereign claim to parts of the territory of present-day Kosovo, which Serbia retains symbolically but immediately signs over to the Church for a defined or undefined period of time, or even in perpetuity. Thus, this option could be considered to constitute “hard” extraterritoriality as understood, for instance, in the context of the relevant provisions of the Lateran Treaty regarding the Vatican itself and sites such as the patriarchal Basilicas of St. John Lateran, Sta. Maria Maggiore, and St. Paul.

While likely acceptable to Serbia and the Serbian Orthodox Church, this novel and creative way forward would likely be more acceptable to Priština in the event of explicit recognition of Kosovo by Serbia, a border/boundary demarcation correction, or similar territorial exchange.

**Fifth Strategic Option: Full Implementation of Ahtisaari Plan Annex V International Protection Plus Dual Concession of Sovereignty to Third Party.**

Serbia and Kosovo separately conclude identical agreements with the same third party (e.g. the European Union, notwithstanding that it itself does not directly possess the formal attributes of sovereignty, or an ad hoc entity modeled along the lines of the International Civilian Office or the Office of the High Representative) to concede sovereign functions and jurisdiction for a defined or undefined period of time, or even in perpetuity, with regards to Heritage (as provided in the parameters defined in Section V above and tripartite categorization of sites with respect to levels of international protection defined in Appendix A below); this third party then grants the right to exercise jurisdiction thereof to the Church, which would become the symbolic exerciser of sovereign functions.

Such a novel and creative arrangement would neither require nor preclude implicit or explicit recognition of Kosovo by Serbia. In addition, such an arrangement would neither require nor preclude a larger package on “comprehensive normalization of relations between Serbia and Kosovo, in the form of a legally binding agreement.” On its face, Serbia and Kosovo would not be direct parties to the same agreement with the same third party.

Should the third party end up being the European Union, the Heritage sites may in fact be considered as falling under the (non-sovereign) jurisdiction of the EU. This consideration, should it be widely publicized in Kosovo, may in and of itself contribute positively to the protection of Heritage and ease the implementation of this option.

This novel and creative option represents a particularly strong way forward that would allow both Serbia and Kosovo to save face whilst providing appropriate guarantees and protections for the Church and its Heritage. It may represent a most favorable and viable way forward.

### **Sixth Strategic Option: Full Implementation of Ahtisaari Plan Annex V International Protection Plus the Establishment of a Corpus Separatum (Special International Regime).**

With the prior consent of Serbia, Kosovo, and other relevant stakeholders, the UN Security Council establishes a Corpus Separatum in the form of a Special International Sovereign Regime over Heritage (as provided in the parameters defined in Section V above and tripartite categorization of sites with respect to levels of international protection defined in Appendix A below). Conceptually, this would be modeled on the UN Trusteeship Council's efforts and reporting to the UN General Assembly with regards to Jerusalem (see inter alia T/592, T/701, A/1286).

The Security Council is the sole international body whose resolutions are considered to be, in international law, universally binding (when acting under Chapter VII of the UN Charter in accordance with Article 25). On this basis, nothing theoretically precludes it from suspending, removing, restricting, or otherwise affecting sovereignty<sup>6</sup> or claims thereto by member states or non-member states, and by extension transferring this or these to a third party (e.g. the European Union, notwithstanding that it itself does not directly possess the formal attributes of sovereignty, or an ad hoc entity modeled along the lines of the International Civilian Office or the Office of the High Representative) for a defined or undefined period of time, or even in perpetuity. Formally, neither Serbia nor Kosovo would need to be involved in any of the steps that would be involved in setting up such a Corpus Separatum.

This third party would then be able to serve as the Church's formal or practical counterpart, or even concede the exercise of its sovereign functions and jurisdiction over Heritage to the Church. Should the third party end up being the European Union, the Heritage sites may in fact be considered as falling under the (non-sovereign) jurisdiction of the EU. This consideration, should it be widely publicized in Kosovo, may in and of itself contribute positively to the protection of Heritage and ease the implementation of this option.

<sup>6</sup> At the same time, the EU does enjoy a unique enhanced observer status at the UN, has the right to orally present proposals and amendments to resolutions, has the right of reply in debates regarding EU positions, is a full voting member of three UN bodies, is a (non-state) party to more than 50 UN conventions, and the President of the European Council is granted the right to address the General Debate.

The most obvious international challenge to the pursuit of this option is the current state of acrimony between the permanent members of the Security Council. As part of the horse-trading process, the point in time in which sovereignty reverts or snaps back to Serbia could be defined as being the accession date of Serbia or Kosovo (whichever is last) to the European Union.

Priština may find this option additionally advantageous should it constitute a distinct but integral part of a package that sees it acquire non-member observer state status or membership in the United Nations. This option represents a particularly novel, creative, and favorable way forward that would allow both Serbia and Kosovo to save face whilst providing an appropriate international legal foundation to provide guarantees and protections for the Church and its Heritage.

# APPENDIX

## Section A.

**Minimum List of Serbian Orthodox Church Heritage in Kosovo and Metohija Requiring the *Highest Level of International Protection (Including the Principle of Territoriality as Part of Special Position Arrangements)*, Irrespective of Strategic Option:**

### **Part I. Heritage Inscribed on the List of UNESCO World Heritage Sites (and the List of UNESCO World Heritage Sites in Danger):**

1. Patriarchate of Peć (Peć, Peć/Peja municipality);
2. Visoki Dečani monastery (Dečani, Dečani/Deçan municipality);
3. Gračanica monastery (Gračanica, Gračanica/ Graçanicë municipality);
4. \*\*Church of the Mother of God Ljeviška (Historic Center of Prizren, Prizren municipality);

### **Part II. Heritage Not Inscribed on the List of UNESCO World Heritage Sites (and the List of UNESCO World Heritage Sites in Danger):**

5. Episcopal Residence Complex: Bishop's Residence, St. George Cathedral, Parish Buildings, church of St. George (Runović), and connecting open areas (Historic Center of Prizren, Prizren municipality);
6. Sts. Cyril and Methodius Seminary Complex (Historic Center of Prizren, Prizren municipality);
7. Gazimestan Memorial Complex (Obilić/Obiliq municipality);
8. Devič monastery (Lauša, Srbica/Skenderaj municipality);
9. Zočište monastery (Zočište, Orahovac/Rahovec municipality);
10. Budisavci (Budisavci, Klina/Klinë municipality), dependency of the Patriarchate of Peć;
11. Gorioč (Istok, Istok/Istog municipality), dependency of Visoki Dečani;
12. \*Dormition of the Holy Mother of God (Djakovica, Djakovica/Gjakova), dependency of Visoki Dečani;
13. \*St. Dimitrije (Sušica, Gračanica/ Graçanicë municipality), dependency of the monastery of Gračanica;
14. \*\*Holy Archangels monastery (Prizren municipality);
15. Draganac monastery (Draganac, Novo Brdo/Novobërdë municipality);

### *Explanatory Note:*

While each case is different, at a minimum the principle of territoriality anchoring the special position arrangements would apply to an area within a given Heritage site's walls or fence (e.g. Patriarchate of Peć, Visoki Dečani monastery, Gračanica monastery) or in more urban settings (e.g. Church of the Mother of God Ljeviška, Episcopal Residence Complex, Sts. Cyril and Methodius Seminary Complex) would apply to the site (building or buildings) itself and immediate courtyard (inner or outer). In no case would state flags, plaques, or other state symbols be displayed at a given area's boundary. As a general rule, this form of symbolic territoriality would follow the concept and practices established in the 1929 Lateran Treaty (most notably Articles 3, 4, 9, 11, 13, 14, 15, and 16). In most cases, this symbolic territorial approach would be supplemented by the existing delineations of the Special Protective Zone in question, which would not be considered part of the principle of territoriality.

This can be restated in terms of a formula: symbolic territoriality + Special Protective Zone + Charter = special position arrangements (highest level of international protection)

## **Section B.**

### **Minimum List of Serbian Orthodox Church Heritage in Kosovo and Metohija Requiring *Heightened Levels of International Protection*, Irrespective of Strategic Option:**

1. Other Heritage in the Historic Center of Prizren: Church of the Holy Savior, St. Nicholas church (Tutić) and Maraš Mahala (Prizren municipality);
2. Church of the Presentation of the Virgin (Lipljan, Lipjan/Lipjan municipality);
3. Heritage in the Village of Velika Hoča, including the church of St. John (Orahovac/Rahovec municipality);
4. Sokolica monastery (Boljetin, Zvečan/Zvečan municipality);
5. Hermitage of St. Peter of Koriša (Koriša, Prizren municipality).
6. Medieval Town of Novo Brdo, including the cathedral church of St. Nicholas (Novo Brdo/Novobërdë municipality);

### *Explanatory Note:*

The main difference with regards to Section B as compared to Section A is to be found in the following formula: Special Protective Zone + Charter = special position arrangements (heightened level of international protection)

## **Section C.**

### **Minimum List of Serbian Orthodox Church Heritage in Kosovo and Metohija Requiring the *Full Implementation of Ahtisaari Plan Annex V International Protection*, Irrespective of Strategic Option:**

1. Banjska monastery;
2. Duboki Potok monastery;
3. Church of St. George (Gornje Selo);
4. Sočanica monastery;
5. Hermitage with church (Uljarice);
6. Zvečan medieval fortress;
7. St. Petka monastery;
8. Holy Healers monastery;
9. Holy Virgin of Hvosno monastery;
10. Monastery of St. Mark;
11. Holy Trinity monastery (Mušutište);
12. Church of the Holy Virgin (Sredska);
13. Monastery of St. Uroš;
14. Binač aka Holy Archangels Michael and Gabriel monastery;
15. Dolac monastery;
16. Church of St. Nicholas (Djurakovac);
17. Church of the Holy Virgin Hoderica;
18. Church of St. Nicholas (Štrpce);
19. Church of St. Theodore;
20. Church of St. Nicholas (Gotovuša);
21. Church of the Holy Virgin (Gotovuša);
22. Church of St. George (Gornja Bitinja);
23. Church of St. Nicholas (Mušnikovo);
24. Church of St. Nicholas (Bogoševci);
25. Church of St. Nicholas (Drajčići);
26. Church of St. Nicholas (Sredska);

- 27. Church of St. Petka aka church of the Holy Apostles (Mušnikovo);
- 28. Church of St. George (Sredska);
- 29. \*Ubožac monastery (Kamenica);
- 30. \*Tamnica aka Rdjavac monastery (Kamenica);
- 31. \*Brnjak (Zubin potok).

*Explanatory Note:*

The main difference with regards to Section C as compared to Sections A and B is to be found in the following formula: Special Protective Zone + Full Implementation of Ahtisaari Plan Annex V + institutional mechanism replacing the IMC (and related parts of Charter) = special position arrangements (international protection).

**Legend:**

\* denotes the current absence of a Special Protective Zone.

\*\* denotes the current lack of inscription of the Church as owner in cadastral records.



## **BALKAN DIALOGUES**

STRATEGIC OPTIONS TO SECURE  
AND SAFEGUARD SERBIAN ORTHODOX  
CHURCH HERITAGE IN KOSOVO  
AND METOHIJA IN A LONG-TERM AND  
SUSTAINABLE MANNER