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REGAINING AGENCY: HOW TO HELP SERBIA AND KOSOVO MOVE TOWARDS THE EU?

A strategic review of non-recognition of Kosovo

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Four years after Kosovo declared its independence, the five EU member states that do not recognise it risk being cornered into a defensive situation in the EU, despite their numerous concessions, and left with the threat of veto as their trump card on Kosovo issues. Thanks to the agreement between Belgrade – Pristina on denomination, the five countries now have the opportunity to rethink their objectives and strategy, and to play out their non-recognition in a new way, which allows them to be not just constructive, as they have proved to be in the past, but proactive and strategic. To seize the opportunity, they should:

Put aside the fear of back-door recognition. The preoccupation with ‘tacit’ or ‘implicit’ recognition, which has resulted in so many disputes and blockages, is misplaced. The whole point about recognition is that it is public and official. The decision to recognise will always remain in the hands of each state.

Use the Belgrade – Pristina agreement on designation across the board. Their dialogue is in line with the position of the five EU non-recognisers, who claim that the status of Kosovo should not be resolved without direct negotiations between the two parties. Now that it has produced a mutually-accepted designation, that designation could be used to allow Kosovo into organisations and to upgrade relations with the EU, including a full Association and Stability Agreement

Focus on the integration of Serbia and Kosovo into the EU. All EU countries agree that their future is in the EU, regardless of their status. Therefore, the objective should not be to block recognition or support one party over the other, but to use the minority position of non-recognisers to steer Belgrade and Pristina towards reform and compromise, both of which are indispensable for their accession to the EU.

Communicate better non-recognition and its motivations. Despite constant denial by its governments, the non-recognition of five EU member states is connected to their internal motivations by observers and partners in the Balkans, in Europe and beyond, and by domestic audiences. With the exception of Greece, the constructive steps of most non-recognisers happened behind closed doors, and are therefore invisible and brought no benefits to non-recognisers.

Introduction

One day after Kosovo's declaration of independence in February 2008, all hopes that the EU would share a common stance were disappointed. The ministers of Foreign Affairs of the 27 could not agree on a joint position, and instead approved a declaration that certified their failure to react in a unified manner to an event of which they had had ample previous knowledge. The result was a succession of recognitions that lost momentum progressively until the Portuguese recognition in October 2008. At that point, five member states had not recognised, and their position became entrenched in the following years. The EU has since been divided and has struggled to find formulas to deal with Serbia and, in particular, with the new-born state, Kosovo, that it could not recognise owing to a lack of consensus.

The four years since independence have seen blockage and mutual accusations, recrimination and stalemate, frustration and outrage between recognisers, non-recognisers and the EU institutions. Accusations of disloyalty and a game of mutual blaming characterized the first months after independence, and they are still far from extinguished. Long hours have been spent discussing issues of denomination and legal detail, to the detriment of any substantive progress. It would be wrong, however, to depict a situation of total inactivity: the 27 MS and the EU institutions have found compromises and formulas to proceed on a number of issues, from the deployment of the EULEX mission to substantial involvement of the EU in dialogue between the authorities of Belgrade and Pristina.

Mistakes have probably been made by all sides, and there is room for compromise and change in all quarters. This paper, however, addresses specifically the position of the five EU member states which have not recognised Kosovo as an independent state: Cyprus, Greece, Romania, Slovakia and Spain. In so doing, it rejects the position that non-recognition is a purely obstructive strategy and that, by being in the minority in the EU and not changing their position in line of the majority, the non-recognisers are to blame not only for division in the EU, but also for the disappointments of the EU engagement with Serbia and with Kosovo.

The objective of this paper is to review the position of non-recognition of Kosovo in light of the current challenges and developments in the region. Advocating for or against recognition is not the aim. The focus is on the practical steps that the five EU non-recognisers could undertake to serve the shared objective of facilitating the path of Serbia and Kosovo towards EU membership. Before turning to those practical steps, however, we will outline ten assumptions and review the evolution of non-recognition as a position inside the EU.

Ten assumptions

1. The decision to recognise or not is a political one, in the hands of the highest centres of decision in each of the five governments, and not just a technical adjustment. Yet, contrary to general perceptions, non-recognition is not

a vital interest for any of the five EU non-recognisers. It has a limited impact on their domestic arenas (although all five countries seem to have social majorities against recognition) and even on their international standing. Comparisons to situations like those in the Basque country and Catalonia, Hungarian minorities, Transdnistria or Northern Cyprus are simply untenable.

2. There is no danger of recognising by accident or without realising. Definitions of what exact acts constitute tacit recognition vary both in practice and in the doctrine, but it can be safely assumed that recognition is an intentional act and can thus only be deliberately decided by the government of a country. It has become a cliché to compare recognition to pregnancy (*either you are pregnant or you are not*) but, as a Pristina-based diplomat put it, the comparison is misleading: recognition, unlike pregnancy, cannot happen by mistake.
3. The future of Serbia and of Kosovo is in the European Union if their citizens so choose, and provided that each country introduces the necessary reforms to fulfil all membership criteria. Both memberships are closely interlinked, but neither of the two countries should be allowed to condition or block the other's EU path. Some EU member states (in particular Germany) have now publicly stated that Serbia cannot enter the EU with an open territorial claim over Kosovo – Serbia cannot have both Kosovo and EU membership. Non-recognisers who support Serbia's integration into the EU should reconsider their tactics in accordance with the new situation.
4. The EU has been weakened by division over recognition, not just because it hampers the deployment of the whole panoply of instruments that have proven useful in bringing about reform in the rest of the countries in the region, but also because the EU's very image, and therefore its influence, attractiveness and soft power, continues to suffer. The rift over recognition clouds the way towards EU membership for Serbia and of Kosovo.
5. Serbia's outright recognition of Kosovo would not only be an extraordinarily difficult decision to take politically, it would also go against its Constitution, which is protected against change by very demanding requirements. Indeed, every step towards better relations with Kosovo carries a political cost. For that reason, Serbia should not be left by the five non-recognisers in the position of having to take the first steps. The leverage that the five non-recognisers hold over Belgrade should be used to encourage Serbia towards conciliatory steps, which will in turn bring the country closer to the EU.
6. Enthusiasm after independence in Kosovo is decreasing rapidly, and concessions from Pristina carry a growing price. The country suffers from economic problems, a deficient rule of law and institutional underdevelopment. Isolating it does not make sense – the EU cannot afford a black hole in its backyard. But there are many options between isolation and recognition. The situation of Northern Kosovo is adding tension. In Kosovo, as in Serbia, maintaining the *status quo* has its limits and may result in a backlash in the processes of reform and of reconciliation.
7. Both in Serbia and in Kosovo there are parts of the society that are ready to compromise and accept solutions which should not only pave the way for their European

integration, but should also be the seed for improving neighbourliness. The Europeanists and moderates in Serbia and Kosovo should be encouraged and supported and, by the same token, radicals on each side should be discouraged from thinking that any member states, recognisers or non-recognisers, are on their nationalist side. In particular, the Serbian pro-Europeans would be strengthened in their country if the five non-recognisers led the way in seeking middle-way solutions with Kosovo.

8. The realities on the ground cannot be ignored, but they are not immutable: they have changed in the past and can change again in the future. The Republic of Kosovo is not an entity which will disappear if one ignores it; it exerts a significant degree of authority and legitimacy over most of the territory and enjoys wide international support and recognition. It is clear, even to a majority of Serbians, that Serbia cannot re-incorporate Kosovo without an untenable economic cost and dangerous conflicts. Tension with Serbian populations remains in Kosovo, in particular north of the Ibar river, and will not disappear without a political solution. The whole discussion about recognition cannot be conducted in isolation from the situation on the ground, and by disregarding what options are realistically open.
9. Kosovo has become a geopolitical card for many countries that show little or no interest in the EU perspective of Serbia and of Kosovo, and indeed by some, like Russia, who have shown their hostility to that perspective. EU non-recognisers should not fall into the trap of those who see Kosovo as an abstract case, irrespective of the well-being and future prospects of its inhabitants, and should ensure that their position is maintained in a way that favours Serbia's EU integration.
10. Any fears of domino effects in the Balkans after Kosovo's Declaration of Independence did not materialise. It did not even cause ripple effects elsewhere in Europe or on other continents, with one exception: Russia did cite the Kosovo precedent when it recognised the independence of South Ossetia and Abkhazia (both of which had been declared years before Kosovo's). Moscow claims that Kosovo creates a dangerous precedent, but it has been the only country to act on that precedent. After four years of independence and the opinion of the International Court of Justice, Kosovo has lost most of its international salience and should be judged on its own merits rather than in fear of so-far inexistent domino effects.

Non-recognition in search of a strategy

For the purposes of economy of expression, we speak in this paper about 'the five EU non-recognisers'. This expression can be misleading, however, in that those five member states are not a block within the EU, not even in relation to Serbia and Kosovo. Each country has its own motivations and policies towards each of the two countries. There are very different approaches to crucial issues, such as how to conduct direct relations with the authorities of the Republic of Kosovo, or what would and what would not imply recognition through the back door.

However, recognition has become a central issue in EU, international and regional debates, and very often these five countries found themselves together and at odds with the majority of their EU counterparts. Four years after these five states decided to break with the majority of their EU partners and not recognise the independence of Kosovo, it may be useful to assess what they achieved thanks to non-recognition, what they failed to achieve, what differentiates their stances and where non-recognition stands at this point of the debate.

What non-recognition has achieved for the EU non-recognisers includes good bilateral relationships with Serbia, which at times provided some additional leverage and opportunities to steer the government of Serbia towards constructive positions. Some important examples worth mentioning are the role played by the Spanish socialist party in steering the Socialist Party of Serbia towards pro-European positions, thus making it possible for the Serbian Europeanists to form a government coalition, and the role of non-recognisers in helping to convince Serbia to withdraw a resolution presented to the UN General Assembly and replace it with one co-sponsored by the EU, calling for direct dialogue, and which was adopted without a vote. Serbian alienation from the EU was avoided, in particular in the initial months after Kosovo's declaration of independence.

What non-recognition has failed to achieve is to stop the process of recognition by other EU member states, or even by non-EU member states (though they may have contributed to slowing it down). Non-recognisers have also failed to detach themselves from the image that non-recognition had to do with their own problems rather than with their standing in the region. Afraid to be seen as incoherent with their own position, they blocked initiatives and, whenever they showed flexibility and found ways to proceed, in particular in relations with Kosovo, they choose to do it discretely and unknown to their public opinions or those of the region. As a result, Kosovars feel antagonised, as if non-recognisers (with the exception of Greece) were hostile to them, while some Serbians feel used for the domestic interests of the non-recognisers. Friendship with Serbia has not resulted in overwhelming business advantages for the non-recognisers (for instance, Spanish firms do not seem to have profited disproportionately from state contracts in Serbia compared to their French or Italian counterparts), nor have the five avoided bilateral rifts (such as the one with the Romanian government over the Vlach minority).

The differences between the ways in which non-recognisers interpret and enact their non-recognition can be summarised into six main areas:

- **Their interpretations of what constitutes tacit recognition** and support to the independence of Kosovo, whereby for instance Spain decided it had to withdraw its troops from KFOR, but not Greece or Romania.
- **Their willingness to block EU and other international initiatives** over fears of implicit recognition, with Cyprus singled out as the country most likely to block and Greece as the least likely to block.

- **Their readiness to antagonise the majority of the EU member states** and even to break ranks in international votes at places like the UN or the IMF, Greece being the least ready to break with the majority.
- **Their direct relations with the authorities of Pristina**, in which Cyprus and Spain have been most restrictive (they do not have a permanent official presence in Pristina, nor do they conduct official visits).
- **Their outreach to the Kosovar population**, where Greece has made efforts to show support despite non-recognition, Slovakia has focused on the minorities (in particular, the Serbian minority), while the other three have allowed a negative perception to solidify in Kosovar society. Romania's position in Kosovo public opinion is particularly sensitive, due to the unfortunate shooting in 2007 of two protesters by Romanian UN police officers.
- **The degree of emotional, political and personal involvement.** Whereas in Cyprus the firm stance was sustained by virtually the whole political spectrum, the personalities of President Basescu in Romania and of Foreign Minister Moratinos in Spain have been important factors in hardening their positions on Kosovo.

The five non-recognisers are privileged partners of Serbia, but by no means exclusive. After the first initial reactions and temporary disruption when they recognised Kosovo, virtually all recognising countries have normalised their bilateral relationship with Belgrade. With Serbia pursuing its path towards the EU, new and more complex issues are appearing on the horizon. The list of the main supporters of Serbia's EU path contains states that recognise the Republic of Kosovo, including some of the most vocal advocates of Serbia's EU bid, such as Italy and Slovenia. The advantages of non-recognition in the relationship with Serbia are thus eroding very quickly. Non-recognisers are therefore less influential in Belgrade than they were immediately after the declaration of independence, and their relationship becomes less based on the emotional bond. On the other hand, their position in Kosovo is weak and still deteriorating, given the importance of non-recognition for the Kosovar authorities. Only Greece can claim some leverage and influence over the authorities of Pristina – Greece had an open policy to communicate to Kosovar society and work with the authorities there, economic ties between Greece and Kosovo are solid and people-to-people contacts numerous. As the other four have been slow to establish relations and, by their refusal to fully engage with the government there, they have by and large renounced their ability to play a role also in the Kosovo side.

Inside the EU, some of the non-recognisers may have found themselves surprised to be in a smaller group than they expected. As not only the large majority of member states but, increasingly, EU institutions push for progress with Kosovo, non-recognisers find themselves in a reactive position. They resent pressure from recognisers and in particular react against any perceived lack of neutrality of institutions such as the European Commission. With the objective of avoiding implicit recognition as a crucial preoccupation, their time and energy is spent on devising complex arrangements (in the form of asterisks, annexes, footnotes, renaming and attaching explanatory notes) with the ultimate threat of block-

ing progress. When an agreement is reached, and relations with Kosovo move forward, some of the non-recognisers are left with (and transmit) the impression of having made a concession, rather than obtained an achievement. Without a strategic vision for the region that reframes their non-recognition to their advantage, non-recognition becomes a purely defensive strategy, with veto as its main tool.

Time for a strategic review: Spring 2012, a moment of opportunity

Being on the defensive against progress on Kosovo's EU path is hardly an enviable position for the five member states, which are not the largest ones and have a complex enough EU agenda to deal with at present. *Rather than being cornered into a defensive situation, non-recognisers have the opportunity to rethink their objectives and strategy, and to play their non-recognition in a new way which allows them to be not just constructive, as they have proved to be in the past, but proactive and strategic.* This change would be particularly timely, as the current moment is ripe with opportunity, but also with dangers.

For a long time the Serbian government has claimed to its people that Serbia could have both sovereignty over Kosovo and EU membership. Serbia's Prime Minister Cvetkovic affirmed that 'For as long as there is at least one (EU) member state that does not recognise Kosovo's independence, and currently there are five of them, recognition cannot be a condition for EU integration'¹. This view has now been publicly rebutted by Chancellor Merkel of Germany, who made it clear that a permanent settlement of the Kosovo issue is an indispensable condition for Serbia to join the EU. This had an immediate impact on Serbian public opinion and its support for EU integration, and its effects on the popularity of the government will be tested in Serbian legislative elections in late April 2012.

As a condition to gaining its candidate status, Serbia was asked to achieve some results in its dialogue with the authorities of Kosovo. The round of talks that ended on Friday, 24th February 2012 in Brussels brought progress on the important issue of border crossings. Much more importantly, it served to find a commonly-agreed and acceptable footnote which, once added to the name of Kosovo and followed by an asterisk, should enable Kosovo to join up to 36 regional organisations without Serbia opposing it. The footnote is a compromise between Serbia's insistence on including a mention of UNSC 1244 and Kosovo's intention to refer to its Declaration of Independence, and it reads as follows:

"This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence".

1. http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=06&dd=24&nav_id=75084

The agreement opens the possibility to move beyond the fears of implicit recognition with a formula that is accepted by both Belgrade and Pristina. It has created an atmosphere where both capitals are feeling pressure from their people to achieve some concrete results for their concessions. As Serbian elections and the formation of a new government in Belgrade loom on the near horizon, it may be high time for the non-recognisers to assuage their fears of back-door recognition and to look for new strategies (each of the five countries will have its own) to use their special position to advance the regional integration agenda. That strategy should have at least two sides, one related to Serbia and another to Kosovo.

Renewing friendship with Serbia

As the advantages with Serbia of being a non-recogniser become less obvious, some of the five may feel the need to look for ways to rebalance their relationship with Belgrade from an emotionally (and in some cases personally) loaded one to a more pragmatic, long-term vision. The will to bring Serbia, a key actor in the Western Balkans, closer to the EU is an objective which depends on the ability of the EU to use its policy carrots and sticks in a balanced way, and to deliver on its promises.

Inside the country, the balance between reformists and conservatives, between Europeanists and nationalists, is in transition. Advancing and taking new steps in the relationship with Kosovo will not be easy as pressure builds on the government in Belgrade. Thus, it may be useful if EU non-recognisers could be proactive in taking some of the steps before, rather than after, Belgrade undertakes them, as a way of providing encouragement and an alibi for the Serbian government. Non-recognition should not imply entrenching oneself behind the Serbian position, but rather leading from the front with the example of constructive steps. Also, links with Belgrade could be used to guarantee that agreements in the dialogue with Pristina are not undermined by additional measures (for instance, that movement of goods, once agreed, is not hindered by further insurance requirements for vehicles, as has been the case), and the same could be done with Pristina.

It would also be useful to regain unity of action within the EU to a larger extent than exists now. The issue of recognition could be relatively encapsulated now that there is a mutually-agreed designation. But there are other crucial issues where the EU's lack of a unified position is detrimental, such as the need to dismantle parallel structures in Kosovo paid for by Belgrade (which contradicts the very resolution 1244 that Serbia has insisted on including in the footnote) or the opposition to an incorporation of Northern Kosovo into Serbia in exchange either for other lands (the Albanian-populated Presevo corridor) or for recognition. In the past, the ability of the non-recognisers to reach out to a much wider spectrum of the Serbian political landscape than most EU member states proved useful. If there is a coherent message to be sent out from the whole EU, those links can be useful in reaching out to all parts of the Serbian society.

Concrete steps to bring Kosovo closer to the EU

The other side of the equation is the relationship between non-recognisers and Kosovo society, the authorities in Pristina, their role inside the EU and towards Kosovo's integration into international forums. If the newly-agreed designation is used extensively, there is a large field of possibilities to advance in without questioning the non-recognition stance. There is also much room for changing the nature of bilateral relations with the authorities of Kosovo: while Greece is willing to openly meet and discuss with Kosovar authorities, the other four non-recognisers create complex, and even at times contradictory situations by refusing to meet Kosovar representatives, even in unofficial positions. Here follows a list of measures that could be undertaken, some of which are already a reality for some of the non-recognisers, but not all of them.

- Unblock the feasibility study for a Stabilisation and Association Agreement between Kosovo and the EU, which High Representative Ashton has already announced the Commission will propose.
- Agree on a Framework Agreement that can allow participation in a broad spectrum of EU programmes, rather than engage in case-by-case negotiations.
- Find a formula for a Free Trade Agreement with full guarantees, as the only way to provide a stable long-term perspective for investors, rather than just staying with autonomous trade measures that offer no security of returns for investments.
- Agree with recognisers to vote in favour of Kosovo membership, rather than voting against or abstaining, in all regional international organisations, provided that the mutually-agreed designation is used.
- Vote in favour of the integration of Kosovo, with the footnote, into international federations of partly governmental nature, such as sports federations, the International Olympic Committee, the Red Cross or Eurovision. Many of those have precedents of non-state equal participation (Scotland, Wales, Faroe Islands, and dozens more) and membership would have a high visibility for the Kosovar population.
- Allow the use of administrative and official documents, with the necessary precautions, from the Republic of Kosovo, with the aim of making people-to-people and business exchanges as easy as possible.
- Establish direct contacts, where they do not yet exist, with the authorities of the Republic of Kosovo, including official visits, with the necessary precautions over symbols of recognition.
- Encourage political and social dialogue, creating simple formulas for the activities of governmental departments and employees, parliamentarians and local and regional authorities to cooperate without prejudice with the country's stance on Kosovo status.
- For those countries which have no permanent presence in Pristina (Spain and Cyprus), either open a permanent presence with consular functions, or delegate those functions to another state present in Pristina (possibly a non-recognising one, for example, Greece for Cyprus).
- Publicise the constructive stance on Kosovo and all the progress made with Kosovo media and civil society,

showing them that non-recognition is not aimed at being against their European perspective.

- Use the non-recognition for leverage on the Pristina authorities, to encourage them to implement meaningful reform.
- Be careful to delink legitimate interest in minority rights from the general stance both on recognition (negative) and on Kosovo's EU perspective (positive).

Conclusion: Moving beyond the (non)recognition game

The five states that have not recognised Kosovo insist, rightly, that their position must be respected inside the EU, even if it does not constitute the majority. Four years after the declaration of independence, and in the middle of an important period of change in Serbia and Kosovo and in the relationship between the two, these countries find themselves in a minority and without a clear view on how to move from defensive non-recognition into a proactive strategy that can build upon it with the objective of contributing to the integration of both Serbia and Kosovo into the EU in the future.

A window of opportunity has opened with the agreement on a designation of Kosovo that is mutually acceptable. It demonstrates the clear will of both Serbia and Kosovo to advance along their EU path. But there is also a danger that concessions on both sides may be seen as excessive by the populations, and that pro-Europeans in both countries may lose popular support if they perceive that there is no progress. The compromises in the dialogue were achieved against promises of concrete delivery from the EU side, and non-compliance would further erode the EU's position and reinforce alternative players such as the USA (in Kosovo) and Russia (in Serbia) in the perception of many citizens.

Non-recognisers are well positioned to contribute to real progress. By putting aside the fear of back-door recognition; using the Belgrade – Pristina agreement on designation to upgrade EU – Kosovo relations and to foster Kosovo's further regional integration; supporting the integration of Serbia and the Europeanists inside that country; and communicating better the non-recognition stance inside the EU and in Kosovo, non-recognisers have the opportunity to capitalise on their intense efforts of the last four years and to invest that capital in the European future of the Western Balkans.