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Engagement without Recognition: The Relationship between Sarajevo and Pristina

Abstract



Twelve years since Serbian southern province of Kosovo and Metohija (thereafter Kosovo) unilaterally declared independence from Serbia in 2008, the Presidency of Bosnia and Herzegovina, a body in charge of conducting Bosnia and Herzegovina's foreign policy, considered recognizing Kosovo. The central argument suggests that the lack of recognition does not prevent Sarajevo and Pristina from engaging, particularly at the regional level. The article analyses how polarized political scene is in Bosnia and Herzegovina on the issues of recognition of Kosovo and what are the limitations to these relations from advancing. It will be argued that the internal political dynamics in Bosnia and Herzegovina play a decisive role in shaping Sarajevo's relationship with Pristina. By relying on the state recognition theory, the article aims to analyse bilateral and multilateral elements of diplomatic engagement without recognition. It will be argued that the key element of interaction between the two is the lack of a formally shaped intent on the Bosnian side to recognize Kosovo as an independent state.

Key words



engagement without recognition, state recognition, Western Balkans, Bosnia and Herzegovina, Kosovo

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Introduction

Twelve years since Serbian southern province of Kosovo and Metohija (thereafter Kosovo*¹) unilaterally declared independence from Serbia in 2008, the Presidency of Bosnia and Herzegovina, a body in charge of conducting Bosnia and Herzegovina's foreign policy, considered recognizing Kosovo. The internal political dynamics in Bosnia and Herzegovina play a decisive role in shaping Sarajevo's position on Kosovo's self-declared independence. Bosnia and Herzegovina thus belongs to the club of non-recognizers with a strict visa regime with Kosovo and *vice versa*, visas are required for Bosnians to enter Kosovo. Bosnia and Herzegovina issues visas to Kosovars only on a separate sheet of paper, as it does not recognize any Kosovo document. In a nutshell, from Sarajevo perspective Kosovo is perceived as a part of Serbia.

On the other hand, internal disputes in Bosnia and Herzegovina over the recognition issue were, at least formally, put under the carpet up until the summer of 2020 and the Washington deal on economic normalization between Belgrade and Pristina.

In Washington, Serbia agreed to relocate its embassy from Tel Aviv to Jerusalem, which triggered the Serb Member of the tripartite Presidency of Bosnia and Herzegovina, Milorad Dodik, to initiate the same – Bosnia and Herzegovina to relocate its embassy from Tel Aviv to Jerusalem. Reacting to Dodik's proposal, the Croat Member of the Presidency, Željko Komšić, obviously discontented with Dodik's initiative, requested a special session of the Presidency of Bosnia and Herzegovina with one item on the agenda – the recognition of Kosovo as an independent state. After the first round of voting, divergent positions of the three members of the Presidency were noticed. While Bosniak Member, Šefik Džaferović, and

[1] 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.

Croat Member, Komšić, voted in favour of recognition; the Serb Member, Dodik, voted against it. As the three members of the Presidency failed to find a common ground, the item was tabled again. In the second and final voting, with Džaferović and Komšić not voting and Dodik's no, Bosnia and Herzegovina for the first time formally confirmed its non-recognition policy towards Kosovo.

A fundamental reason behind the decision of five European Union (EU) Member States, Spain, Romania, Slovakia, Greece and Cyprus, not to recognize Kosovo are internal issues, primarily centrifugal tendencies of some of their regions, which have the potential to deteriorate if a central government decides to recognize Kosovo. Although centrifugal tendencies also occupy significant public attention in Bosnia and Herzegovina, the reason for insisting on non-recognition policy is the Serb people in Bosnia and Herzegovina disapproval of treating Kosovo as an independent state and insisting on Kosovo being treated as a southern province of Serbia. Kosovo and Metohija has been considered as the cradle of Serbdom and hence any political decision contrary to the Belgrade one would have a negative effect on both relations with Serbia's capital and local electorate which take this issue very sentimentally. While the Bosniak and Croat political elites have nothing to lose if Bosnia and Herzegovina eventually recognizes Kosovo, the Serb ruling but also opposition parties, providing they favour recognition, would lose significant political credit and most probably will not be able to recover. The 'traitor' label will hunt them forever. On the contrary, a pro-recognition policy from the Bosniak and Croat political elites' point of view is justified by the fact that the majority of EU Member States and regional influencers, such as Croatia and Turkey, have recognized Kosovo's statehood. To sum up, the Bosniaks and the Croats have no obstacles to the recognition of Kosovo whereas in the eyes of the Serbs it would represent a betrayal of Serb national interests. Noteworthy, on important foreign policy matters, such as recognition of Kosovo, a unanimous position of all three members of the Presidency of Bosnia and Herzegovina is a prerequisite for any decision to take effect.

Having such context in mind, the aim of this article is to examine the extent of diplomatic interaction between Bosnia and Herzegovina and Kosovo despite the fact that one side rejects to recognize the other as independent. The article finds no issue with Kosovo recognition of Bosnia and Herzegovina whatsoever as Kosovo seeks to be recognized and admitted to the independent states' club not *vice versa*. As for the time frame, the article covers period from 2008, when Kosovo recognition emerged as a subject of discussion internationally, until the attempt of the official Sarajevo to discuss the matter of the recognition of Pristina.

The central argument suggests that the lack of recognition does not prevent Sarajevo and Pristina from engaging on a regular basis, particularly at the regional level. By examining the official positions and moves of bearers of the highest-level functions in charge of foreign policy in the

two, the article is divided into several chapters. The article will first provide a brief overview of the state recognition theory. The following chapter focuses on the case study through twofold analysis: first, an analysis of bilateral exchange that although existent does not lead to formal recognition; and second, an analysis of the engagement of Bosnia and Herzegovina and Kosovo at the multilateral and regional level. Finally, the concluding remarks will provide an analysis of the trend and explain what are the limitations to further deepening of diplomatic engagement without recognition between Sarajevo and Pristina.

Theory of State Recognition

A 'territorial entity' in order to be recognized by other states as 'a state it must be a state' (Radan, 2020: 49). It has to reassure other states that it can effectively join their club and hence enjoy the stemming rights and obligations. According to Bartmann (2004:12-13) the issue of inclusiveness and acceptance of would-be states as 'normal states' in the global system was triggered by the two processes - decolonization and the collapse of communism including the wars of succession in Yugoslavia. In this article, recognition is understood as:

(...) the way for the conduct of diplomatic relations, recognition of passports, recognition of a nation's consular protection of its citizens, trading in a national currency, trading in state assets and debts, acceptance of state guarantees, the possibility of concluding binding inter-state agreements, the possibility of becoming party to inter-state conventions, of taking a seat in the United Nations, and of acceding to other inter-state organizations (...) (Bailes, 2015: 253).

The theory of international relations identifies two traditional approaches of state recognition - the constitutive and the declarative. The constitutive doctrine suggests that a state becomes a subject of international law 'when a state is recognized by other states that belong to the international community' (Geis et al., 2015: 10). The constitutive conception of state recognition was best summarized by Lassa Oppenheim: 'A state is, and becomes, an International Person through recognition only and exclusively' (Grant, 1999: 2). According to the constitutive theory, it is an arbitrary and independent decision of a state to recognize another state as a state without being bound to some criteria. Following this logic, recognition is an 'additional requirement of statehood' (Dugard and Raič, 2006: 97). In contrast to the constitutivists, 'declarativists characterized recognition as an acknowledgment of statehood already achieved' (Grant, 1999: 4). According to the declarative theory, the argument of effectiveness prevails and, in the absence of internationally recognized set of requirements, it entails an obligation of a to-be-state to meet the criteria of statehood as enshrined under the 1933 Montevideo Convention on the Rights and Duties of States (Grant, 1999; Ker-Lindsay, 2015;

Nicholson and Grant, 2020). The Montevideo Convention pinpoints four qualifications which a state has to meet in order to be recognized as a person of international law: a) a permanent population; b) a clearly defined territory; c) an effective government; and d) a capacity to engage in international relations (Grant, 1999: 5). In other words, a state has to fulfil the 'credentials of statehood' that is to accomplish the 'functions of statehood' which can be seen as a 'measure of a state's 'survivability'' (Bartmann, 2004: 15).

The combination of two approaches, statehood and act of recognition, led to what Nicholson and Grant (2020: 29) called the 'hybrid approaches to recognition'. According to the first 'recognition and the criteria for statehood both play necessary roles in constituting statehood', whereas according to the second there are situations in which 'the criteria suffice on their own but, in particular circumstances, recognition may also suffice' (Nicholson and Grant, 2020: 29). The former acknowledges the significance of criteria but also requires some kind of an '*authoritative certification*' (Paul Guggenheim, 1953 cited in Nicholson and Grant, 2020: 29). The latter deals with the situation in which recognition represents a 'legal obligation' for the states that failed to meet the criteria (Nicholson and Grant, 2020: 31).

Other scholars offered other thoughts on state recognition. Wendt (2003) introduced the concept of 'thin' and 'thick' recognition. While thin recognition is about being 'acknowledged as an independent subject within a community of law' and having 'the judicial status of a sovereign person', the thick recognition, on the other hand, is about being respected for its particular difference (Wendt, 2003: 511-2). In other words, as Allan and Keller suggest a thick recognition means that 'each party needs to understand the Other in terms of essential elements composing its identity' (Geis et al., 2015: 13). Further, Caspersen (2012: 15) differentiates internal and external recognition where the latter is understood as an international recognition.

The method of recognition may be either unilateral (bilateral) or collective (Dugard and Raić, 2006; Ker-Lindsay, 2015; Radan, 2020). Further, bilateral may take form of either 'explicit' or 'implied recognition' (Ker-Lindsay, 2015: 272). Ker-Lindsay (2015: 275) argues that 'the most usual form of recognition is for a state to indicate its decision directly through a bilateral process' and it could do so, for instance, through issuing an official statement notifying another state of its decision. On the contrary, implied recognition indicates that one state treats another as an independent but without formal notification (Ker-Lindsay, 2015: 272). In conclusion, an act of recognition is a 'discretionary judgment' of a state that includes a wide range of considerations from legal and political, to moral, economic and security considerations (Fabry, 2013: 166).

While both traditional theories take recognition as a unilateral act of states, with the EU Member States wishing to act unanimously on foreign policy matters including the recognition requests, a collective rec-

ognition received particular attention. Most notable methods of 'direct collective recognition' (Ker-Lindsay, 2015: 273) were the European Community's (EC) recognition of Slovenia and Croatia in 1992 and the EU's recognition of South Sudan in 2011, which rendered the individual Member States' statements of recognition unnecessary. By way of contrast, in the case of Kosovo a joint statement 'signalled that there was no uniform opinion' of the EU and that Member States had to reach out decision individually (Ker-Lindsay, 2015: 274). Moreover, the EC, building on the declarative theory of state recognition, went out with a catalogue of additional requirements for recognition in response to Yugoslav republics' request for recognition. The EC Guidelines on Recognition stipulated that recognition would only be granted if a republic, *inter alia*, endorses the UN Charter, the OSCE Helsinki Final Act and guarantees the rights of ethnic and national minorities (Radan, 2020: 52). By applying these guidelines, Bosnia and Herzegovina was recognized by the EC in 1992.

The second method of collective recognition is an 'indirect collective recognition' which entails a situation when a territory with statehood aspiration is 'admitted into an organisation that is composed of states' (Ker-Lindsay, 2015: 274). On the other hand, '[a]dmission to the UN, although an important step towards achieving international recognition, does not, of itself, amount to recognition by any of its member states' (Radan, 2020: 56). Notwithstanding, the membership in the UN used to be a requirement to enter other international organisation like the Union of European Football Associations (UEFA). As Radan (2020: 56) pointed out the UEFA in order to admit Kosovo had to change a part of its Statute that implied that only a state which has been recognized by the UN as independent might be admitted to this international football association. As a reminder, a UN door for Kosovo has remained closed.

This article finds a combination of two traditional approaches more appropriate for the discussion to follow. Meeting only the effectiveness criteria does not immediately imply the admittance to the club of independent and recognized states. It should be rather seen as a first step towards the completion of statehood request. The entire process is encircled once the other actors in the international arena green-light a new actor's membership bid. According to Fabry (2013: 165) '[a]n entity has the status of a 'state' internationally not only because it asserts so internally, but also because it is acknowledged as such externally'.

The significance of recognition is additionally proven by examining the case of Kosovo. Berg (2009: 231) rightly concludes that '[r]ecognition per se does not imply universal treatment of applicants'. At the first glance, Kosovo meets effectiveness criteria, but fails to get a wider international recognition. Caspersen (2015: 395-6) argues that 'Kosovo's recognition, in some ways, simply added to the confusion over state recognition that dominated the post-Cold War era' in a sense of the normative criteria applied and 'it further emphasized the importance of political considerations'. Furthermore, judging by the level of interaction coun-

tries (non)recognisers enjoy with Pristina administration, Ker-Lindsay and Ioannis Armakolas classify them into four categories, namely 'strong recognisers', 'weak recognisers', 'soft non-recognisers' and 'hard non-recognisers' (Ker-Lindsay, Armakolas, 2020: 3). Ker-Lindsay and Armakolas (2020: 3) justify their typology by claiming that '[e]ven amongst 'hard non-recognisers' there is a degree of pragmatism between those that do not recognise and actively try to prevent Kosovo from integrating into the wider international community, and those that oppose recognition and have little engagement, but are not trying to lobby against Kosovo.' The two authors (2020: 3) therefore conclude that 'while recognition is certainly a binary choice, the ways states actually interact with Kosovo tell a very different and far more interesting and nuanced story than recognition alone.'

It can be argued that recognition, nowadays, represents 'a political decision that does not, by definition, universally and impartially attribute sovereignty to all actors equally and on the same merits' (Berg, 2009: 221). The following chapter aims to analyse diplomatic engagement of Sarajevo and Pristina, which although occasionally on the verge of recognition does not amount to recognition.

Engagement without Recognition: The Case Study

Kosovo unilaterally declared independence from Serbia in 2008, an act which divided not only world powers but also Balkan countries. The insistence that Kosovo's self-declared independence was 'a "unique case" whose recognition did not set a precedent reinforced the dominance of politics over international law, specifically great-power politics' (Caspersen, 2015: 397). Soon after the Kosovo Parliament adopted the Declaration of Independence, Albania, Turkey, Slovenia, Croatia and Bulgaria recognized Kosovo. In October 2008, North Macedonia and Montenegro reached a decision to recognize Kosovo's statehood.² Romania, Greece and Bosnia and Herzegovina maintained a non-recognition policy throughout. As per usual diplomatic practice, countries recognizers established direct diplomatic relations with Pristina and exchanged ambassadors. Other countries, non-recognizers, also established some kind of diplomatic presence in Kosovo. For instance, through opening a liaison office as Athens and Bucharest.

Despite its tough non-recognition position, Sarajevo engages with Pristina at bilateral, regional and multilateral levels. Pristina benefits from such engagement, as from the Pristina perspective, it is a waiting room for recognition in full sense. For Sarajevo, engagement is a way to move things forward without tackling the recognition issue. However, as

[2] A list of states that recognized Kosovo with a date of sending notification is available at the website 'Kosovo Thanks You' which keeps the record of all new developments regarding the international recognition of Kosovo - <https://www.kosovothanksyou.com/>.

Caspersen (2015: 407) argues '[e]ngagement may be pursued, but it is a poor substitute and such a policy will be subject to significant pressures.'

This article finds particularly valuable an elaboration of diplomatic engagement with 'contested states'³ as put forward by Ker-Lindsay (2015). It can be argued that engagement without recognition can take bilateral and multilateral form alike. Following the Ker-Lindsay's (2015: 276-82) analysis, this article groups five sub-forms under the bilateral form of engagement without recognition: a) the interaction between officials, an area with 'high degree of latitude'; b) titulation and terminology used at these meetings; c) the venue of meetings indicative of statehood; d) establishment of a permanent diplomatic mission in an unrecognized state; and e) the presence of officials at ceremonies indicative of statehood. Additionally, the article finds it important to analyse the statements of officials in charge of creating foreign policy, which touch upon the recognition issue. Furthermore, diplomatic engagement without recognition in multilateral context concerns the interaction of officials at 'external multilateral events' as such meetings/ summits are generally 'understood to be indicative of statehood' (Ker-Lindsay, 2015: 282). Participation in such meetings at multilateral and regional scenes could be 'construed as recognition' or an 'unacceptable degree of legitimation' (Ker-Lindsay, 2015: 282).

Bilateral Engagement

The Presidency of Bosnia and Herzegovina is 'the only constitutionally entrusted institution for designing foreign policy and spearheading foreign affairs' while the role of the Ministry of Foreign Policy of Bosnia and Herzegovina is to execute 'the policies brought by the Presidency in the domain of foreign affairs, mainly through sustaining a diplomatic network' (Hasić, Karabegović, 2019: 10). When it comes to statements of those officials in charge of creating the foreign policy of Bosnia and Herzegovina two trends have been noticed. The first wave of statements following Kosovo's declaration of independence showed a consensus among all three members of the Presidency – a declarative non-recognition position was taken. A fierce reaction of the Serb politicians who claimed that the same opportunity should be given to the Republic of Srpska as it was given to Kosovo and that the double standards have been applied contributed to the Bosniak and Croat Members of the Presidency somewhat calming statements which primarily aimed to stress that the status of Kosovo has nothing to do with the sovereignty and territorial integrity of Bosnia and Herzegovina and then that Bosnia and Herzegovina will not recognize Kosovo.

[3] The contestation can refer as Ker-Lindsay (2015, 268) puts it to 'their status on the international stage or to whether they are states at all.' As an example of a contested state Ker-Lindsay uses, among others, Kosovo.

Reacting to Kosovo's independence declaration, the then-Chairman and the Croat Member of the Presidency of Bosnia and Herzegovina, Željko Komšić, in an official press release underlined that Bosnia and Herzegovina would not recognize the independence of Kosovo in the forthcoming period, as there was no consensus on the matter within the Presidency; furthermore, Komšić stressed that a fact that one third of population of Bosnia and Herzegovina (i.e. Republic of Srpska) disagrees with Kosovo secession represents an obligation of elected officials to respect it (Presidency of Bosnia and Herzegovina, 2008a). At that time the Bosniak Member of the Presidency, Haris Silajdžić, stated that Kosovo's declaration of independence had no effect on Bosnia and Herzegovina and underlined that the change of the status of Kosovo would not endanger the sovereignty and independence of Bosnia and Herzegovina (Presidency of Bosnia and Herzegovina, 2008b). The then-SDA (the Party of Democratic Action) President Sulejman Tihić, probably the most influential politician in Bosnia and Herzegovina in those times, stated that:

Bosnia and Herzegovina should not rush to recognize the independence of Kosovo and will probably be the last country to recognize Kosovo. Bosnia and Herzegovina cannot recognize Kosovo until an internal consensus is reached among all peoples. It is a process that will be related to EU membership (Čubro, 2008).

The major Croat parties in Bosnia and Herzegovina, the HDZ (the Croat Democratic Union) of Bosnia and Herzegovina and HDZ 1990 took a balanced stance stressing that the act of Kosovo Parliament should not destabilize political situation in Bosnia and Herzegovina and that the recognition of Kosovo should be carefully approached having in mind stances of the Serb people in Bosnia and Herzegovina (Čubro, 2008). On the other hand, Serb officials in Bosnia and Herzegovina immediately and vociferously rejected the one-sided declaration of the independence of Kosovo. The National Assembly of the Republic of Srpska adopted the 'Resolution on non-recognition of the unilaterally declared independence of Kosovo and Metohija and the commitments of the Republic of Srpska' on 22 February 2008 (National Assembly of the Republic of Srpska, 2008). The Resolution (2008) called on all representatives of the Republic of Srpska in the institutions of Bosnia and Herzegovina to prevent Bosnia and Herzegovina from recognizing Kosovo. The Resolution (2008) also touched upon the status of Srpska and stressed that if the majority of EU and United Nations (UN) Member States recognize Kosovo, the Republic of Srpska will decide about its future status via referendum. Ever since Kosovo unilaterally declared independence, the Serb officials in Bosnia and Herzegovina more loudly drew parallels between the Republic of Srpska and Kosovo.

The first trend was also manifested with occasional disagreements within the Presidency when Kosovo was in question. In 2011, the troika in the Presidency failed to agree on the final text of Bosnia and Herzegovina's address at the UN Security Council debate on the UN Mis-

sion in Kosovo (UNMIK). According to the then-Serb Member Nebojša Radmanović, the other two members, Komšić and Bakir Izetbegović, did not support a line which aimed to emphasize Bosnia and Herzegovina's support to territorial integrity of Serbia (Presidency of Bosnia and Herzegovina, 2011). Similarly, during Mladen Ivanić mandate as the Serb Member of the Presidency (2014-2018), Ivanić would exclusively refer to Kosovo as a southern province of Serbia and not as an independent state (Presidency of Bosnia and Herzegovina, 2017a).

The emergence of the second trend is linked with the session of the Presidency on the recognition of Kosovo's statehood of October 2020, which showed that the Bosniak and Croat Members have started officially to advocate recognition of Kosovo while the Serb Member maintained a strong non-recognition position. Couple of months ahead of the session, Komšić stated that 'Kosovo is a state. Done. That's the end of the story.' (Rose, 2020). A reason for the shift could be found in the fact that both the Bosniaks and Croats have nothing to lose if Bosnia and Herzegovina recognizes Kosovo primarily because the announced referendum on the status of Republic of Srpska, pinpointed in the Assembly's Resolution, has never been materialised despite the fact that the majority of EU Member States have recognized Kosovo. In addition, the advancement of the EU and United States (US) facilitated dialogue between Belgrade and Pristina made the Bosniak and Croat side think that Bosnia and Herzegovina should change its position regarding the status of Kosovo.

The fact that Bosnia and Herzegovina has not recognized Kosovo as an independent state did not prevent high officials of the two to interact bilaterally, the practice that has been established only recently. Following the session on the recognition of Kosovo independence, Kosovo Prime Minister (PM) Avdullah Hoti reached out to the Bosniak Member of the Presidency, Džaferović, and thanked Džaferović for his initiative to have Bosnia and Herzegovina recognize the Republic of Kosovo (Prime Minister Office, 2020). PM Hoti also urged Bosnia and Herzegovina to abolish visa requirements for Kosovo citizens and to exchange a liaison office (Prime Minister office, 2020). Bosniak Member Džaferović and the Kosovo PM Albin Kurti also interacted in their official capacity in May 2020 after Kosovo authorities' decision to abolish the 100 percent customs tariffs for goods imported from Bosnia and Herzegovina (Presidency of Bosnia and Herzegovina, 2020a). Džaferović, on this occasion, stressed that regardless of the fact the issue of the recognition of Kosovo has not been resolved, due to the lack of consensus about it in Bosnia and Herzegovina, it is necessary to improve economic cooperation and simplify procedures for free movement of people, goods, services and capital; The officials also agreed that it is unacceptable for Bosnia and Herzegovina and Kosovo to have the most rigid relationship in the region (Presidency of Bosnia and Herzegovina 2020a). By way of contrast, Dodik assessed these meetings as private talks and not official meetings

(Srna, 2020). For the time being, only Džaferović has bilaterally engaged with Kosovo officials.

On certain occasions Bosnian officials see no issue in using official titles for officials of a contested state, non-recognized by Bosnia and Herzegovina. On other occasions, but with no clear rule, Bosnia and Herzegovina uses terms which avoid legitimising Kosovo as an independent state. An official press release issued by the Presidency following the Džaferović-Kurti telephone meeting of May 2020 reads that the 'Chairman Šefik Džaferović spoke with Prime Minister of Kosovo, Albin Kurti' (Presidency of Bosnia and Herzegovina, 2020a). On the other hand, when the Serb Member of the Presidency, Dodik, was in position to interact with Kosovo officials he avoided any terminology indicative of Kosovo's statehood. The invitation of Dodik, in capacity of Chairman of the Presidency, to Hashim Thaçi not as the President of Republic of Kosovo but as a representative of Pristina resulted in Kosovo boycotting the Southeast Europe Cooperation Process Summit hosted by Bosnia and Herzegovina in July 2019 (Beta, 2019). A few years back, in an official press release of the Presidency from 2013, the then-Kosovo President Atifete Jahjaga was referred to as 'Atifete Jahjaga from Kosovo' avoiding thus mentioning Jahjaga's official capacity unlike in the case of other leaders from the region who participated in the meeting (Presidency of Bosnia and Herzegovina, 2013). On the other hand, the release from 2017 reads that the then-Chairman of the Presidency Dragan Čović participated in the meeting also attended by the President of Kosovo Thaçi (Presidency of Bosnia and Herzegovina, 2017b). Moreover, the release covering an informal Brussels's meeting of February 2020 stressed that the Croat Member Komšić participated the meeting with, among others, the President of Kosovo Thaçi (Presidency of Bosnia and Herzegovina, 2020b).

As for the venue of bilateral meetings, thus far only telephone meetings among the high level officials were held. Moreover, no bilateral visits have been paid by the officials in charge of foreign policy. An exception was an experts' level meeting initiated and hosted by Bosnia and Herzegovina in January 2019, which aimed, although unsuccessfully, to make Kosovo to consider the abolition of discriminatory trade tariffs on goods originating from Bosnia and Herzegovina (Fena, 2019).

Bosnia and Herzegovina and Kosovo have not established any kind of diplomatic presence in their respective capitals neither Bosnia and Herzegovina officials attended ceremonies indicative of Kosovo's statehood. The initiative for exchanging liaison offices was put forward by Kosovo Parliament Bosniak minority representative Duda Balje, but was immediately refuted by the Serb officials rejecting any possibility of Pristina having diplomatic presence in Bosnia and Herzegovina (Gazeta Express, 2020; RTRS, 2020).

In conclusion, this chapter showed the two trends, the initial non-recognition consensus within the Presidency which lasted from the proclamation of the independence of Kosovo in 2008 through 2020 when

the Bosniak and Croat Members of the Presidency have deviated from their previous, declarative non-recognition position and have started to openly favour the recognition of Kosovo by Bosnia and Herzegovina. The Bosniak Member of the Presidency almost exclusively conducts bilateral interaction with Kosovo officials and does so via telephone conversation. The titulation and the usage of official titles for Kosovo officials appears not to be an issue for the Bosniak and Croat Members while the Serb Member sticks to avoiding any terminology, which might be taken as unacceptable legitimization of Pristina authorities. The fact that no bilateral visits have taken place and that there are no established permanent diplomatic missions clearly indicates that Bosnia and Herzegovina and Kosovo are far from the engagement enjoyed by the entities that recognize each other.

Multilateral Engagement

As indicated above, even participating in the same international organisations could be treated as implied recognition simply through not vetoing the state's membership request. Since 2008, one of the main tasks of the Pristina administration was to assure international recognition through membership in the international organisations. It could be concluded that Pristina has been more successful in obtaining the membership status in regional than in international organisations. Pristina is not admitted in the UN, furthermore, Pristina has no seat in other important organisations in European continent such as the Council of Europe (CoE) or the Organisation for Security and Co-operation in Europe (OSCE). On the other hand, both Bosnia and Herzegovina and Kosovo are members of, *inter alia*, the World Bank, the International Monetary Fund (IMF), the Energy Community, the Venice Commission of the Council of Europe. Pristina is much more visible in the regional organisations and initiatives. Bosnia and Herzegovina and Kosovo officials equally participate in the work of the Regional Cooperation Council (RCC), the Southeast European Cooperation Process (SEECP), the Central European Free Trade Agreement (CEFTA) 2006, the Regional Youth Cooperation Office (RYCO), the Western Balkans Fund, the Berlin and Brdo-Brioni Process.

Notwithstanding, Bosnia and Herzegovina and Kosovo participate in the work of the same organisations, Bosnia and Herzegovina voted against the Kosovo International Criminal Police Organization (INTERPOL) November 2018 membership bid. On this occasion, Bosnia and Herzegovina aligned its position with Serbia's in blocking Kosovo from joining the INTERPOL. In retaliation, which was criticised by the EU, Pristina authorities decided to introduce first ten percent, and soon after 100% custom tariffs on goods originating from Bosnia and Herzegovina and Serbia (Koleka, 2018). The real aim of tariffs was to exert pressure on Belgrade and Sarajevo alike to reconsider their non-recognition pol-

icy as both made surpluses in trade with Kosovo (Reuters, 2018). Although the decision of Pristina to introduce the discriminatory custom tariffs was in violation of CEFTA rules, Pristina insisted on their application until April 2020 when the caretaker Government led by Albin Kurti lifted the tariffs. (European Western Balkans, 2020). A financial loss of Bosnia and Herzegovina incurred due to Pristina's decision eventually did not yield any political benefits for Pristina as Sarajevo did not even consider recognition of Kosovo while the tariffs were in place. This was a concrete example of an attempt of the Pristina administration to make Bosnia and Herzegovina to recognize its statehood by using the instruments of economic pressure. Since the tariffs were lifted, the trade flow has resumed. The long-run consequence of the tariffs will be borne by Bosnian companies which will certainly face difficulties in regaining previously held position in Kosovo market now filled in by other competitors.

The two engage with more success in regional initiatives with occasional setbacks. A reason behind it should be found in the Belgrade-Pristina normalization dialogue, under the EU auspices, and its outcome – the technical agreements. For this article the Agreement on Regional Cooperation and Participation between Belgrade and Pristina reached in February 2012 has prime importance. It allowed Pristina to take part in regional initiatives and organisations and sign new agreements on its own account (before agreements were signed by the UNMIK on behalf of Kosovo) under the usage of an asterisk - Kosovo* - which implies that the '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' (European Union, 2012). The full-fledged participation of Kosovo with asterisk in regional meetings brought also protocol readjustments. Ever since regional meetings were organised without display of any statehood insignia, such as flags or official titles of participants. This allowed Bosnian and Kosovo officials to interact without facing domestic criticism primarily from the Serb electorate in Bosnia and Herzegovina.

As a result of the regional initiatives Bosnia and Herzegovina and Kosovo signed several multilateral agreements. The 2019 Poznan Western Balkans Summit of the Berlin Process endorsed the clean energy transition declaration, the regional roaming agreement, a connectivity package and the Roma integration declaration (European Commission, 2020). The two are also founding members of the Transport Community, an international organisation in the field of mobility and transport, consisting of EU Member States and the Western Balkans economies established in 2017 (Transport Community, 2017).

On the other hand, Pristina officials were less cooperative and ready to engage when State institutions of Bosnia and Herzegovina were represented by Serb representatives. As an illustration, regional summit of the Brdo-Brioni Process hosted by Tirana in 2019 showed the real taste of Sarajevo-Pristina relations. Thaçi rejected to take part in the joint lunch after the Summit because the Serb Member of the Presidency,

Dodik, was also invited (Faktor, 2019). During the plenary, Dodik used the occasion to replicate Taçi who stated that he cannot support the creation of a subnational, intermediate level of authority that resembles the Republic of Srpska in Kosovo (meaning the establishment of the *Association/ Community of Serb majority municipalities in Kosovo*⁴) by stressing that Srpska has its Constitution and territory and went on by saying that the Republic of Srpska has no territorial claims towards Kosovo, because Kosovo is in Serbia (Klix, 2019). Taçi also rejected the invitation to attend the annual European Bank for Reconstruction and Development (EBRD) conference in Sarajevo because Bosnia and Herzegovina did not recognize Kosovo (Faktor, 2019).

As the engagement at regional level is concerned, worth mention is the Regional Cooperation Council efforts in pursuing the travel with ID cards only within the Western Balkans region. The bottom line aim of this initiative, which was endorsed by Western Balkans leaders at the 2020 Sofia Summit of the Berlin Process, is to, from the back door, abolish visas between Bosnia and Herzegovina and Kosovo. Its importance is recognized in the fact that as it stands now, any bilateral agreement between Bosnia and Herzegovina and Kosovo is not feasible, as it would require Bosnia and Herzegovina's recognition of Kosovo. In addition, an initiative to simplify the visa procedure for Kosovo travel document holders has been shelved for quite some time. Even if the two manage to abolish visas by endorsing multilateral agreement, special attention would need to be paid on other practical issues such as the recognition of car plates, driving licences, insurance issues etc. Furthermore, Bosnia and Herzegovina will face additional difficulties internally in making all parties to agree on abolishing visas for Kosovo. Whoever occupies the opposition benches from the Serb ranks in time when ratification of the multilateral agreement on travel with ID cards only is tabled before the Parliament of Bosnia and Herzegovina gets a great chance to blame ruling parties for a betrayal of Serb national interests and also a campaigning tool for the next elections.

Together with other Western Balkans economies (Albania, North Macedonia, Montenegro and Serbia), Bosnia and Herzegovina and Kosovo signed the Declaration on Common Regional Market and endorsed the Common Regional Market Action Plan 2021-2024. The Action Plan aims to achieve regional integration in four areas: trade area (free movement of goods, services, capital and people), investment area (promotion of the region to foreign investors), digital area (integration of the region

[4] The 2013 EU-brokered deal granted an autonomy to Serb majority municipalities in Kosovo in exchange for their integration with Kosovo's central government. The signed deal between Kosovo and Serbia Prime Ministers was challenged by the Kosovo Constitutional Court 2015 ruling. The deal has not been implemented yet. A detailed overview of the Association/ Community of Serb majority municipalities in Kosovo, see at: <http://www.kord-kim.gov.rs/eng/p17.php>. On the Kosovo Constitutional Court decision, see at <https://www.dw.com/en/kosovo-top-court-finds-parts-of-eu-sponsored-deal-with-serbia-unconstitutional/a-18937945>.

in the pan-European digital market) and industrial and innovation area (transformation of the industrial sectors) (Regional Cooperation Council, 2020). It seems that Bosnia and Herzegovina by committing to the abovementioned lack the understanding of the process and more importantly the requirements and necessary steps towards Pristina which are required in order to make the Common Regional Market happen.

This chapter showed that in spite of facing occasional hiccups Sarajevo and Pristina interact with more success at regional than at bilateral level. It could be argued that it is because of a greater interest in regional initiatives paid by the EU and the US. Most probably without Brussels and Washington facilitation efforts, very few initiatives would see the light at the end of the tunnel. Moreover, status-neutral meetings introduced at regional meetings benefited to the relations between both Belgrade and Pristina but also Sarajevo and Pristina. In addition, such outcome can also be attributed to Sarajevo's focus on regional cooperation as an arena where all 'matters immanent to all countries within the region could be mutually resolved' (Marković and Subašić, 2019: 199). It remains to be seen how the two plan to approach demanding obligations stemming from their commitments made at the Berlin Process summits, which undoubtedly tackle their bilateral relations. The next chapter will provide a final analysis of the trend and provide conclusions.

Conclusions

By relying on the state recognition theory, the article attempted to analyse bilateral and multilateral elements of diplomatic engagement without recognition between Bosnia and Herzegovina and Kosovo. It showed that Kosovo's self-declared independence, found Bosnia and Herzegovina unprepared to deal with a new-born entity in the Balkan region. Initial non-recognition consensus aimed primarily to secure territorial integrity of Bosnia and Herzegovina. Additionally, it aimed not to fuel centrifugal tendencies in Republic of Srpska caused by Pristina's move. The polarization in the Presidency of Bosnia and Herzegovina came to the surface once the Bosniak and Croat Members were reassured, as the time passed, that the announced referendum on the status of the Republic of Srpska triggered by Kosovo's unilaterally declared independence would not materialise.

The key element of interaction between Sarajevo and Pristina will remain to be the lack of a formally shaped intent on the Bosnian side to recognize Kosovo as an independent state. The existing interaction may be dubbed as *functional non-recognition* - the non-recognition position does not prevent Sarajevo from engaging with Pristina, as seen primarily at the regional level. The scope of formal engagement highly depends on the position taken by the Serb representatives in the joint institutions of Bosnia and Herzegovina. The position taken by Belgrade will certainly

continue to be a guiding principle for Serbs in Bosnia and Herzegovina on this matter.

The position of Bosnia and Herzegovina on Kosovo's independence, as illustrated at the Presidency session, is rather driven by ethno political interests than it is exemplifying a unique position of Bosnia and Herzegovina. The divergent positions of the three members of the Presidency will certainly continue to occupy public attention and send dissonant messages to internal and external audience. While Bosniak officials are more keen to interact with Kosovo's and the Croat officials are readier to make the statement acknowledging Kosovo's statehood, the Serb officials remain committed to adhering to the non-recognition position by all means and at all occasions. Moreover, the soft pressure of Pristina officials to make Sarajevo recognize Kosovo through rejecting to attend the regional meetings hosted by Bosnia and Herzegovina or the hard pressure by introducing custom tariffs did not yield any results in making Bosnia and Herzegovina reconsider its non-recognition position. Such state of play leads to a conclusion that the recognition of Kosovo will be shelved for quite some time.

The lasting consequence of Kosovo's one-sided declaration of independence will be the attempts to link the status of the Republic of Srpska and Kosovo and draw parallels between the two. It comes from the end of Serb officials in Bosnia and Herzegovina who claim that the Republic of Srpska should have the right to be treated the same way as Kosovo because the circumstances and historic prerequisites of the two were nearly identical. Serb Member of the Presidency, Milorad Dodik, continuously points out that the Republic of Srpska will demand a UN seat if Kosovo gets one and that Srpska will stay in Bosnia and Herzegovina providing that Kosovo remains part of Serbia. Such statements could potentially aim to put the weight of the Republic of Srpska on the negotiation table between Belgrade and Pristina. The Bosniak officials, on the other hand, are firm that redrawing borders would directly jeopardize peace in the Balkans and that Bosnia and Herzegovina should not be dragged into Belgrade-Pristina negotiation talks in any way.

The advancement of Belgrade-Pristina normalization dialogue facilitated by the EU and the US, subsequently relaxed Bosnia and Herzegovina's tough non-recognition position on Kosovo. Regional initiatives, following commitments and status-neutral meetings somehow brought the two around the same table. Apart from supporting inclusive regional cooperation, the EU has no alternative mechanisms at its disposal to further relax Sarajevo-Pristina relations. Moreover, it would be particularly challenging since the EU from within struggles to reach a common ground on Kosovo's self-declared independence.

As Sarajevo's interaction with Pristina is not driven by any binding document, its interaction is highly influenced by initiatives agreed at the regional level. Hence, the two may explore other mechanisms of diplomatic engagement without recognition without changing the current

status quo. However, the likelihood of Sarajevo and Pristina exchanging liaison officers or liaison, information or trade office is minor. Some Pristina officials have put forward an initiative for Sarajevo and Pristina exchanging liaison offices or officers modelled on Belgrade-Pristina⁵ or Athens-Pristina arrangement. The initiative has not been formally toppled down yet, but knowing the internal political dynamics in Bosnia and Herzegovina such initiative is far from materializing. On the other hand, if the two keep committing to regional initiatives such as the one on free movement of goods, services, capital and people under the auspices of the Regional Cooperation Council some sort of diplomatic link between Sarajevo and Pristina would be needed if such initiatives are to be implemented in their full capacity.

Given the unpredictable nature of the engagement of Sarajevo with Pristina, fluid and regionally driven relationship, a possible deterioration of their interaction below the currently achieved level should not be excluded.

Angažovanje bez priznanja: Odnosi Sarajeva i Prištine

Apstrakt



Dvanaest godina od kako je južna srpska pokrajina Kosovo i Metohija (dalje Kosovo) jednostrano proglasila nezavisnost od Srbije 2008. godine, Predsedništvo Bosne i Hercegovine, telo zaduženo za vođenje spoljne politike Bosne i Hercegovine, razmatralo je priznanje Kosova. Centralni argument sugerise da nedostatak priznanja ne sprečava Sarajevo i Prištinu da se angažuju, posebno na regionalnom nivou. U članku se analizira koliko je politička scena u Bosni i Hercegovini polarizovana po pitanju priznavanja Kosova i koja su ograničenja za napredak ovih odnosa. Jedan od zaključaka tvrdi da unutrašnja politička dinamika u Bosni i Hercegovini igra odlučujuću ulogu u oblikovanju odnosa Sarajeva i Prištine. Oslanjajući se na teoriju državnog priznanja, ovaj članak ima za cilj da analizira bilateralne i multilateralne elemente diplomatskog angažmana bez priznanja. U radu se tvrdi da je ključni element interakcije između Sarajeva i Prištine nedostatak formalno oblikovane namere na bosanskohercegovačkoj strani da prizna Kosovo kao nezavisnu državu.

Ključne reči



angažovanje bez priznanja, priznanje država, zapadni Balkan, Bosna i Hercegovina, Kosovo

[5] As a result of the 2013 normalization agreement, Belgrade and Pristina agreed to exchange liaison officers (not offices) with a task to monitor the implementation of key agreements reached between Belgrade and Pristina. See more at: <https://balkaninsight.com/2013/06/17/kosovo-and-serbia-exchange-liaison-officers/>.

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