

## Serbia – tying the EU in knots

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»» The Spanish presidency of the EU opened 2010 on a rather high note for the Western Balkans and for Serbia in particular: the December European Council decided to unfreeze the implementation of the Interim Trade Agreement with Serbia and to lift the EU's long-resented visa regime for citizens of Serbia (along with those of Macedonia and Montenegro). Encouraged by these developments, the Serbian government swiftly submitted its formal application for EU membership, hoping to sustain the momentum and catch up with its neighbours in the Western Balkans. Public opinion polls duly recorded a surge of pro-EU sentiment and new optimism that EU membership could be within reach in just a few years' time.

The Spanish presidency now faces the challenge of maintaining this momentum in order not to disappoint raised expectations in Serbia, which now hopes to be granted candidate status this year. Serbia looks upon Spain as a key friend and ally within the EU, mainly due to its position on Kosovo, which Spain has so far refused to recognise (along with four other EU member states: Greece, Romania, Slovakia and Cyprus). However, the deep division within the EU over Kosovo is a major contributor to the feeling of 'Balkans fatigue' evident in many member states. As current EU presidency, Spain has to rise above these divisions and act with scrupulous impartiality while trying to forge effective unity among member states on the next steps forward in the Balkans.

This is no easy task. The problem is that the EU's internal divisions and hesitations over the strategy for enlargement to the Western Balkans reinforce the tendency in the region to prevaricate over fundamental political challenges posed by the legacies of the region's unhappy past.

### HIGHLIGHTS

- Serbia took several steps forward on its path to EU integration at the end of 2009, but there is a danger of momentum being lost again;
- Division within the EU over Kosovo independence undermines regional initiatives, and fosters 'Balkans fatigue' in the EU;
- The ICJ's opinion on Kosovo independence is not likely to resolve the matter, so the EU will have to make further efforts to reach a common and coherent political position.

»»»»» As long as the debris of the past obstructs the path to durable stabilisation and reconciliation in the region, many EU members will remain sceptical about the readiness of Serbia (and its neighbours) to respond effectively to the promise of accelerated integration with the EU. Meanwhile, other priorities – notably the dire economic situation in several member states and concerns about the euro – are pushing the Western Balkans further down the EU’s political agenda.

### **SERBIA FIRST?**

Spain is one of a broader group of member states who favour what might be dubbed a ‘Serbia first’ strategy in the region. This argues that ‘getting Serbia right’ is crucial to the stabilisation and EU integration of the whole Western Balkans, not just because Serbia is by far the largest country in the region, but also because of the legacies of the wars of the 1990s. These legacies include a delayed and still fragile transition to democracy in Serbia; sizeable numbers of ethnic Serb kinsfolk scattered more or less unhappily throughout the Yugoslav successor states; and lingering fear and mistrust of Serbia throughout the region. The faster Serbia can be advanced along the EU integration path, it is argued, the more robust its democracy will become and the easier it will be for both Serbia and its neighbours to lay the ghosts of the past to rest.

But several member states are sceptical about the ‘Serbia first’ approach, insofar as this implies accelerating Serbia’s progress by softening conditionality, which is the EU’s key instrument for promoting reform and preparing credible candidates for eventual membership. For the Netherlands in particular, Serbia’s compliance with the International Criminal Tribunal for the former Yugoslavia (ICTY) has been regarded as the key benchmark of Serbia’s political maturity, its readiness to confront its heavy share of the responsibility for the disastrous conflicts of the 1990s, to meet its international legal obligations and uphold the rule of law in the way expected of a potential future EU member state.

Moreover, softening EU conditionality for Serbia runs the risk of alienating other Western Balkans countries – for example, Montenegro or Macedonia – who feel they are more deserving than Serbia of the EU’s attention. They also resent what they see as ‘double standards’ on the part of the EU and fear that the EU may hold back their integration in order for Serbia not to be left behind. This approach risks sending Serbia the message that it is so important to the success of the EU’s strategy for the region that it can dictate its own terms to the EU; and it encourages Serbia’s view that it can assert itself as the ‘natural leader’ of the region, regardless of its neighbours’ misgivings.

The EU is tying itself in knots over policy towards Kosovo and Serbia; undermining the credibility of its general strategy for the Western Balkans. Thus while the Netherlands was persuaded last December to allow Serbia’s Interim Trade Agreement to enter into force after hearing a supportive statement from the ICTY’s Chief Prosecutor, ratification of the full Stabilisation and Association Agreement (SAA - of which the trade chapters comprise only part) will not go ahead until Serbia has handed over to the ICTY the two remaining indicted war criminals, General Ratko Mladic (wanted for the genocide at Srebrenica) and Goran Hadzic (indicted for war crimes in Croatia). Serbia’s membership application was submitted last December with the support of the then Swedish presidency (against the advice of member states including Germany and the UK), but it will not get onto the European Council’s table – as the Spanish presidency would like – as long as there is no consensus among member states that the time is ripe and Serbia is ready. Member states will not ask the Commission to take Serbia’s application forward before they have at least begun the process of SAA ratification.

### **STALLING**

Now several member states are fretting at the prospect of another year of EU stalling: Austria and Greece are spearheading an initiative to set 2014 as the accession target date for all Western Balkans

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countries, which other member states regard as quite unrealistic. Meanwhile, other high level initiatives intended to inject renewed dynamism into the region's EU integration are brought into question by the EU's incoherence in the face of Balkan political intractability. So, for example, the unhappy 'Tale of Two Conferences' taking place in the first half of 2010. Slovenia decided to convene a conference of Western Balkans political leaders at the end of March, in a bid to relaunch its role as champion of EU enlargement to the Western Balkans after resolving a bilateral border dispute with Croatia that had paralysed Croatia's accession

negotiations for much of 2009. This was to be the first such high level occasion for 18 years, signalling a real break with the past.

But Slovenia's initiative rapidly ran aground. Not only did it receive lukewarm support from the Spanish presidency, irritated that the conference would steal the

thunder of its own planned Balkan leaders' summit to be held in Sarajevo in June; worse still, the conference nearly collapsed over Serbia's refusal to participate due to the presence of Kosovo's prime minister. In the event, the conference went ahead without Serbia and without the presence of top EU leaders such as EU President Van Rompuy or Spanish Foreign Minister Moratinos. Only Enlargement Commissioner Stefan Fuele put in a brief appearance, and the conference closed early with little to show. Spain now faces a real challenge to make more of a success of the presidency's Sarajevo conference. This means firstly finding a way round the tricky problem of the guest list over which the Slovenia conference came to grief; and secondly securing political backing for a more positive and substantial message. While Spain will find a way to accommodate Serbia's sensitivities, the price will

almost certainly be a boycott by the Kosovars. How far the EU itself will be ready to pledge renewed commitment to the region in these circumstances remains to be seen.

This is a no-win situation for both Serbia and Kosovo, but also for the EU, whose already faltering credibility is rapidly waning not only in the Western Balkans but more widely in the international community. However well-intended the strategy of supporting Serbia as the 'lynchpin' of the Balkans, the Kosovo status issue will remain a point of friction between Serbia and the EU. Despite strenuous efforts to keep the Kosovo issue separate from Serbia's EU integration progress, the inconvenient truth is that Kosovo is a serious obstacle to Serbia's EU membership prospects, not only because it complicates Serbia's ability to meet EU conditions but also because it regularly upsets Serbia's relations with some key member states whose goodwill is essential for Serbia to move forward to membership. Both the EU and Serbia need to get the Kosovo issue out of the way. What opportunities to move forward are in prospect?

### THE KOSOVO CONUNDRUM

In December 2009, the International Court of Justice began hearings on the question of whether Kosovo's declaration of independence was in accordance with international law, a question forwarded to it by the UN General Assembly at Serbia's request. Although many of the member states that had recognised Kosovo were dismayed by Serbia's decision to take this case to the ICJ, they had hoped that this could be a way for Serbia to remove the Kosovo issue from the domestic agenda for a while, in order to focus fully on accelerating Euro-Atlantic integration. But this is not how Serbia has been playing the game. To the irritation of several EU member states, Serbia's Foreign Minister Jeremic has instead been energetically trotting around the globe accusing them of breaching international law.

The ICJ was expected to issue its opinion on the case in the first half of 2010, but signs are

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## Serbia needs to adopt a more pragmatic approach to Kosovo, and meanwhile to focus on overdue reforms at home and better relations with its neighbours

»»»»» emerging that this may drag on until the end of the year or even later. Not only EU and UN member states are divided on what its ruling should be; so too are international legal experts, some of the most prominent of whom were deployed on opposing sides of the argument at the December hearings. In any case, its opinion will be of an advisory character, thus not binding on member states.

Paradoxically, the best outcome for Serbia could be for the ICJ to endorse the legality of Kosovo's declaration of independence. Being non-binding, such a ruling would not force Serbia to recognise Kosovo, but it would give Serbia's leaders an opportunity to shift towards a more pragmatic approach, and especially to begin dealing face-to-face with Kosovo's political leaders in resolving urgent and important day-to-day bilateral problems connected with the welfare of Kosovar Serbs, the return of refugees and security at the Serbia-Kosovo border. Moreover, it would create the conditions for the remaining five EU member states to recognise Kosovo, thus opening the way at last for a common EU position, which in turn would reinforce Serbia's readiness for a change of approach. This could open the way to a new dynamic in regional cooperation among Western Balkans states, all the rest of whom except Bosnia and Herzegovina have recognised Kosovo.

Unfortunately, the prevailing wisdom among international experts is that the ICJ's ruling will be not only purely advisory, but also ambivalent. Thus the hot potato will be tossed back into the EU's hands. Then the majority of member states who have recognised Kosovo will turn to the five who have not to come up with a way out of the poisonous stalemate of the *status quo*. These five may then decide to recognise on the pragmatic grounds that Kosovo's independence is now a fact and that the uncertainty of Kosovo's status is damaging to regional peace and security. If Spain and Greece were to be among them, this could affect Serbia's position significantly. After all, with the EU divided as it is at present, Serbia can hardly be expected to change its own position on such a sensitive national issue.

The current government under President Tadic came into office in 2008 promising its voters that they could have 'both Europe and Kosovo', unlike the previous nationalist government under Vojislav Kostunica, who had taken Serbia almost back to the isolation of the Milosevic years. Until very recently, Tadic's Western allies have avoided the question of whether 'both Europe and Kosovo' is a realistic scenario for Serbia, but now the strains are showing. The response of Serbia's Foreign Minister Jeremic is however depressingly reminiscent of that of Kostunica: if Serbia had to choose between Europe and Kosovo, it wouldn't choose Europe, he declared on 2 March.

This confrontational rhetoric may boost Jeremic's domestic popularity ratings, but it does little to sustain the sympathies of Serbia's friends in the EU. For now, everyone seems to agree that the EU cannot require Serbia to recognise Kosovo as a condition for its next steps towards EU membership; but nor can Serbia require the EU majority to reverse their position on Kosovo. What is being asked of Serbia right now is better cooperation with the EU in Kosovo, and readiness to engage pragmatically with Kosovo's elected authorities to solve real, practical problems on the ground.

#### **REFORM AGENDA**

The European Commission's 2009 Progress Report on Serbia provides much evidence of the homework Serbia still has to do in reforming its economic, administrative and judicial systems, countering corruption and organised crime, if it is to be ready for candidate status by 2011. Irrespective of the Kosovo issue, Serbia's eventual EU accession is still some way off. Accession negotiations may open in 2011 or 2012 and are likely to last for five years; ratification of the accession treaty by all 27 EU member states will take a further 18 months to two years.

Meanwhile, the EU can also expect Serbia to back its frequently declared ambitions to be the 'natural leader' of the Western Balkans region with more substantive action, and less impulsive bullying of

its smaller Balkan neighbours. The impromptu summit on 24 March between the presidents of Serbia and Croatia was thus a welcome move after the diplomatic setbacks of recent weeks, and promises more concerted effort by both states to support Bosnia and Herzegovina, the EU's other Balkan headache. A more constructive turn in Serbia's relations with Montenegro is now overdue. For many in the region, Serbia's unwillingness to acknowledge its share of responsibility for the atrocities that occurred during the wars of the 1990s is what makes it unacceptable as the region's 'leader', so the Serbian parliament's passage of a long overdue resolution on Srebrenica at the end of March was an opportunity for a welcome change of approach. Even so, the refusal of most Serbian parties to call the worst war crime in post-World War II Europe 'genocide' (as the ICJ designated it in 2008), and the plan to issue an accompanying resolution condemning 'crimes against Serbs', signal that much ground remains to be covered before the peoples of the former Yugoslavia will be ready to lay their still deeply-felt mutual animosities to rest.

The EU is not helping either Serbia or the rest of the Western Balkans with its internal divisions, ambivalence and 'enlargement fatigue'. The EU's ambiguity over Kosovo may have helped Serbia to weather the storm of Kosovo's secession; but as Serbia moves along the path to EU integration, this ambiguity becomes less 'constructive' and more a factor for mutual misunderstanding and mistrust. The EU needs to move swiftly to a more coherent and consistent position on Kosovo, and to set out a medium-term strategy to move Serbia towards a more pragmatic and realistic approach that will, in time, lead to an agreed definition of the basis on which both Serbia and Kosovo can credibly meet the conditions for EU membership.

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