



REACTION MEMORANDUM NR. 2 – THE TWO GERMANIES MODEL

TO: THE PRESIDENT, THE PRIME MINISTER, THE FOREIGN MINISTER
FROM: DEMOCRACY FOR DEVELOPMENT INSTITUTE (D4D)
TOPIC: A REVIEW OF THE TWO GERMANIES MODEL FOR KOSOVO AND SERBIA
DATE: 21 DECEMBER 2012
CC: BARONESS CATHERINE ASHTON, QUINT REPRESENTATIVES, KOSOVO THINK TANKS, THE MEDIA

RECOMMENDED ACTION

Following the beginning of the Kosovo-Serbia IBM agreement implementation and the announced exchange of liaison officers between the two sides, the leaders of this process must begin to foresee a general framework for the establishment of relations. The two Germanies model was often mentioned, briefly discussed, and quickly disregarded, without analysing its advantages. According to this model, Kosovo and Serbia could agree to enter into a binding agreement to recognize one another's existence—territory, internal and external sovereignty—without doing so formally and symbolically. It may not seem timely and serious to bring up something that was previously rejected. However, Kosovo would benefit from this approach as it is in its interest more so than the current dialogue process. The model of the two Germanies can serve as a platform for a temporary normalization of relations.

ISSUE

The two Germanies model was often mentioned, briefly discussed, and quickly disregarded. D4D does not engage in the promotion of this model, but our Institute analysed it in order to understand it better and discuss it widely. The achievements of the technical and the political dialogue are important. However, there are significant advantages to adopting the two Germanies model, based on the agreement between the German Democratic Republic and the Federal Republic of Germany.

This model was disqualified by decision makers due to superficial considerations. In one aspect, the model was attractive due to its stipulation of de facto state relations and East Germany's membership in the UN as a result. Counter-arguments had to do with the model referring to "one people", and the historical evidence of them joining three decades later. Unfortunately, emotional arguments lead to a similar prejudice for Kosovo and Serbia, rendering the model politically radioactive. The opinion that Kosovo should adopt regarding this model should be taken after a more thorough analysis.

Firstly, in the case of Kosovo and Serbia, we are dealing with two peoples and not one. Secondly, the weight of an inter-state treaty is superior to even the most positive outcome that Kosovo can expect from the foggy "normalization" process. The fact that the two Germanies eventually united with one another had nothing to do with the initial treaty but with the will of the German people on both sides of the fence to unite. Such a will does not exist either in Kosovo or in Serbia.

The main arguments in support of the two Germanies model are:

- (a) the agreement was made in the form of a treaty;
- (b) de facto treatment of one another as states;

(c) mutual UN membership achieved; and

(d) the German Democratic Republic is mentioned in its full name including the word “Republic”.

The treaty denoted “good neighbourly relations” and established permanent legations. Even though these were not embassies, these “legations” are much more advanced and substantial in diplomatic terms than “liaison officers”, which was recently agreed upon between Prishtina and Belgrade. Most importantly, the treaty foresaw the “inviolability of frontiers and respect for the territorial integrity and sovereignty”. Cooperation mentions “two States” and does not pose a threat to the statehood of one by the other, despite non-recognition.

The state sovereignty of the signatory parties is strengthened by Article 2 (of the treaty between the two Germanies) which regulates that the relations of the two countries be led by the principles of the Charter of the United Nations, “especially those of the sovereign equality of all States.” It adds, “Respect for their independence, autonomy and territorial integrity, the right of self-determination.”

More specifically, Article 3 affirms the “inviolability” of borders, the settling of all disputes through peace, and with respect for each other’s territorial integrity. Article 4 maintains that the two republics agree that neither can represent the other in the international sphere or act on its behalf. Article 6 specifies the sovereign jurisdiction of each of the republics within their territories. Moreover, the treaty obliges the parties to respect the independence and autonomy of each other for their internal and external affairs.

The list of areas for cooperation is very broad, and includes many more topics than those that the technical Kosovo-Serbia cooperation has dealt with in the past or that it seems to have ambition for in the future (e.g. it included judicial relations).

OPTIONS

The simplest option would be to continue with the dialogue process and its agenda, with the proposals of the EU, Kosovo and Serbia. The dialogue has made notable progress but Kosovo needs something more than an incremental process lacking a clear target. This may result in a devaluation of the normalization process in Kosovo and enable Serbia to acquire a date for accession negotiations while having done far too little. With the current model, the result will likely be the lowest common denominator between Kosovo and Serbia, without any features of mutual state relations imposed on Serbia.

Kosovo must insist that by June of 2013, a treaty as similar to that between the two Germanies is reached. The confusion and the emotional dissatisfaction that is caused by some of its aspects can be explained to the public with the potential real benefits that this outcome could accomplish.

IMPLEMENTATION

Immediately	Insist that the model of the two Germanies is launched as a platform for a temporary normalization of relations. Kosovo should lobby for this model with its key allies. This process could lead to a different set of expectations and put the burden on Serbia to argue against a model which successfully resolved a major dispute.
6 months	The treaty is signed and is overseen by the EU, leaving the formal recognition by Serbia for a later stage, when the parties are closer to their integration in the EU.

The full text of the treaty between Germanies can be found [here](#).

Read the previous reaction about the [police overreaction](#).