



Project of Kosovo foundation for Open Society

Europe's Choice: Integrate or Stagnate!

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We would especially like to thank parliamentary political parties and their senior representatives for their outstanding contribution to drafting the Platform for Normalizing Relations with Serbia. We also received great input from several embassies of the "Quint" as well as civil society representatives, whose opinions and remarks were cross-checked with those of political representatives. Their contributions resulted in a document that we hope you will find interesting to read and useful for your work.

The other two documents presented in the summary, which bring information and critical analysis about Kosovo's integration processes, were elaborated based on frequent contact between VerenaKnaussand officials in Brussels and Pristina, and we thank her greatly for her work.

Below are the names of many officials who attended meetings held throughout summer 2010 which discussed modalities for normalizing relations between Kosovo and Serbia. "The Platform for Normalizing Relations with Serbia" was based on these discussions and does not necessarily reflect the opinions and convictions of participants in discussions.

Political parties:

1. VloraQitaku
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INSTEAD OF A FOREWORD

During a conversation that some of the authors of this summary had in Brussels with a senior European Union official, one of his advisor's asked us: Why are you (Kosovo) not as pro-European as Serbia? The question came as a shock ... !

Coincidentally, that very same day in Brussels, only a couple of blocks from the offices of the European Commission where we were presenting our document "The Platform for Normalizing Relations with Serbia", Gallup International published a survey on the level of support in Balkan countries towards EU integration. Results showed that Kosovo citizens were the most favorable to integration, with over 94% in support of EU membership, whereas Serbia tallied only 44%!

These incidents raise the questions: how well does Europe know us? Was this only coincidental ignorance or something else? Is it possible that such a senior official can have such misunderstandings about the policies and integration perspective of Balkan countries? Perhaps it is a mere a misunderstanding or better yet lack of understanding – whatever these words imply in this particular context!

Witnessing Kosovo's position vis-à-vis EU integration and knowing the fact that it lags well behind neighboring states in the process, one must inevitably ask the question why are we at this stage? Does Europe know us, or could it be that we simply haven't done enough for Europe to know us better and to give us more opportunities for integration?

The summary below includes three documents that the Foundation has prepared after months of research. The first two documents attempt to respond to the gap in understanding or misunderstandings in Pristina – Brussels relations. During our research, Belgrade will also be addressed as it impacts the European integration process of Kosovo.

The final document that we bring to your attention, "Europe's Choice: Integrate or Stagnate!", unlike previous studies on the subject, highlights the integration options that have been presented in Pristina and Brussels. Using the EU Progress Reports' vocabulary, the analysis evaluates measures and activities that officials in Pristina have applied to advance Kosovo towards EU membership; and to measure whether the Brussels slogans on Kosovo's European perspective, continuously repeated for years, are truthful or a simple "bluff."

Luan Shllaku

BRUSSELS CALLING

On 20 June 2011 Baroness Ashton hosted a special meeting of European Foreign Ministers and their peers from the countries of the Western Balkans to discuss the European perspective of the region. The list of topics discussed provides a snapshot of the current 'state of play' in the Balkans: participants searched for ways out of the political crisis in Albania sparked by yet another disputed election, there was diplomatic murmuring about a giant Alexander the Great statue being erected in downtown Skopje and there was talk about the ongoing EU-facilitated dialogue between Prishtina and Belgrade.

After several rounds of face-to-face meetings, Catherine Ashton's team hammered out a proposal on cadastre documents, freedom of movement and mutual recognitions of university diplomas. After much feet-dragging by Belgrade and last-minute procedural wrangling on the format of the 'agreement' (since Belgrade adamantly refused to sign any agreement that may be construed as implicit recognition), a first compromise was finally reached in early July.

The July agreement, it is hoped, may indeed deliver on one of the dialogue's stated objectives, notably to 'improve the lives of the people'.¹ (At the time of writing the details of the agreement were still not known in full). It remains to be seen, however, if the dialogue can also deliver on its second objective – to 'achieve progress on the path to the European Union' as it was defined in the Resolution adopted by the UN General Assembly on 9 September 2010.

In March, on the eve of the dialogue, civil society organizations in Prishtina published a paper titled 'Aiming High: A European vision for Kosovo'. The paper argued that real concessions in the dialogue will only come forth in return for real EU accession. The March paper defined success of the dialogue in terms of measurable and concrete progress for both Kosovo and Serbia on the path to the European Union².

The authors of the March paper never doubted the importance of finding practical solutions to technical problems, such as the exchange of cadastre documents or recognition of university diplomas. That is welcome and clearly in everybody's, including Prishtina's best interest. The main concern has always been that in its current design the dialogue is unlikely to deliver much in terms of advancing Kosovo's European integration perspective.

The dialogue seems tilted in favor of helping Serbia achieve progress on the path to the European Union, but not necessarily Kosovo. While a constructive approach of Serbia is likely to be rewarded with candidate status and possibly a date for accession talks by the end of this year, Kosovo may be left to linger in the EU's waiting room, with little more than a 'European perspective'.

At present, the only offer on the table to reward good behavior on Kosovo's side is the much-delayed start of a visa dialogue. The visa dialogue is crucial to restore trust in the EU, but strictly speaking, it is not part of the accession process. One also cannot compare candidate status with the beginning of a visa dialogue, which, in essence only marks the first step of a reform process that is likely to take more time and –

1 Resolution adopted by the General Assembly A/RES/64/298, on 9 September 2010

2 Aiming High: A European Vision for the Dialogue between Kosovo and Serbia, Kosovo Foundation for Open Society and Foreign Policy Club, March 2011

given the mood in Europe today- is unlikely to yield tangible results soon. For lasting peace and stability in the region, constructive engagement in Prishtina also needs to be rewarded with more courageous steps on the accession path.

A breakthrough between Kosovo and Serbia is far from guaranteed; Belgrade has been repeatedly clear about the limits of the dialogue; at a public lecture in June, Serbian President Tadic told the audience: 'what you know and what is not debatable: Serbia will not and cannot recognize the self-proclaimed independence of Kosovo'.³ With Mladic and Hadzic arrested, EU leverage over Belgrade may be waning fast. Straight to the point, Serbia's Prime Minister Cvetkovic told local media recently that 'for as long as there is at least one (EU) member state that does not recognize Kosovo's independence, and currently there are five of them, recognition cannot be a condition for EU integration'.⁴

In 2003, the EU had also cherished hopes that enlargement would help resolve the long-standing Cyprus conflict. In the Thessaloniki Council conclusions one can read that 'Cyprus' accession to our Union is already creating favorable conditions for the two communities to reach a comprehensive settlement of the Cyprus problem'.⁵ In the case of Cyprus, the EU eventually backed down on conditioning Cyprus' accession on a resolution of the Cyprus problem. With Cyprus an EU member, the EU has become a party to the conflict, stripped of political leverage and credibility. There is a real risk that the same mistake is about to be repeated again.

Taking the March debate further, this paper takes a look at the current state of Kosovo-EU relations. It assesses what has been achieved since independence in terms of concrete progress towards the EU. There is little cause for celebration. The findings are quite alarming; since 17 February 2008, Kosovo has become more and more isolated and the promise of a European perspective has become less and less credible. **To reverse this negative trend and to transform Kosovo's European perspective into a European reality is the dialogue's real litmus test.**

Given the close links between Kosovo's stability and that of neighboring countries, Kosovo's future is key to the overall success of EU policy in the Balkans.⁶ **An increasingly isolated Kosovo left on its own risks holding back the entire region and may jeopardize the entire European project in the Balkans.**

Kosovo, like no other country in the region, needs the EU as a partner and the European accession process as a motor for reforms and growth. By postponing accession into the indefinite future, Europe is losing influence fast and may lose Kosovo altogether. With a per capita GDP of less than 8 percent of the EU-27 average and with two out of three youth without a job, Kosovo's economy urgently needs to be put on a sustainable growth path. **The best way forward is to make Kosovo part of the same inclusive and irreversible enlargement process.**

3 http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=06&dd=28&nav_id=75147

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

5 Thessaloniki European Council, 19 and 20 June 2003, Presidency Conclusions

6 Communication from the Commission 'A European Future for Kosovo', 2005, COM (2005)/156,

It is true that one key obstacle on the path towards the EU is Kosovo itself; at current speed and with existing institutional capacities, Kosovo is unlikely to meet the requirements for a trade agreement or Stabilization and Association Agreement any time soon, let alone the far more complex requirements for EU membership. The best way to motivate Prishtina to take on difficult and costly reforms is for the EU to offer achievable and credible short-term goals. The rules of democracy dictate that local politicians need to be able to show concrete results in time for the next election. It would be naïve to expect politicians in Kosovo to be any different from politicians elsewhere. A credible and transparent accession process is by far the most powerful tool to empower voters and civil society to hold local politicians to account.

Once progress towards the EU really depends on Kosovo's own merits, there will be little space for local leaders to make excuses or blame the EU for lack of progress. Without a credible accession perspective, however, politicians can get away with empty promises and cosmetic reforms. **One of the biggest challenges for Ashton's team therefore is not how to get Belgrade and Prishtina to agree, but how to persuade the five non-recognizers to put the Union's interests above their own domestic agenda.**

INTEGRATE OR STAGNATE

In 2008, a few months after Kosovo's declaration of independence, the European Commission proudly proclaimed that 'enlargement is one of the EU's most powerful policy tools. It serves the EU's strategic interests in stability, security and conflict prevention. It has helped to increase prosperity and growth opportunities, to improve links with vital transport and energy routes and to increase the EU's weight in the world'.⁷

Without doubt, the European Union has been the most successful peace and economic development project in history. The powerful vision of Robert Schuman, one of the Union's founding fathers, to create a 'community of peoples' has helped to transform continent shattered by war and destruction to become the world's largest single market and a zone of prosperity and political stability. Today, the legacy of Schuman's vision lives on in the enlargement process.

On the eve of the fifth anniversary of the 2004 enlargement, the European Commission produced a report assessing achievements and experiences, focusing in particular on the economic benefits of enlargement. The report found that in all the countries aspiring to join, 'the prospect of membership spurred reforms and set a firm economic political course towards the fundamental liberal and democratic values that are shared in the EU'.⁸

It concluded that '**key drivers of the growth process in the new Member States were trade openness, foreign direct investment and an overall improvement in the institutional framework to which accession contributed decisively.**'⁹

In the decade between 1999 and 2008, enlargement contributed to increase trade openness in new member states from 47 to 56 percent, and in old member states from 34 to 38 percent in the decade from 1999 to 2008. Inward FDI as a percentage of GDP increased from an average of less than 5 to almost 7 percent.¹⁰ Economists also estimated that accession provided an extra growth boost of nearly 2 percent on average¹¹. All the new members experienced accelerated output growth accompanied by strong job creation. These factors helped to close the income gap between new and old Member States from 40 percent of the EU-15 average five years before enlargement to 52 percent in 2008¹².

It is of course always difficult to disaggregate which factors precisely contributed to growth. Emerging market economies in Southeast Asia or Latin America also experienced impressive growth rates coupled with a rise in living standards. There is one big difference, however, that distinguished the catching-up process in the new Member

7 Enlargement Strategy and Main Challenges 2008-2009, Communication from the Commission, COM(2008)/674

8 Five years of an enlarged EU: Economic achievements and challenges, 2009, http://ec.europa.eu/enlargement/5years/documents/impact/publication14078_en.pdf Chapter II, p.21

9 Ibid, Summary

10 Ibid, Chapter II, p.38

11 Ibid, Summary. During the period 2000-2008 accession was estimated to give the new Member States an extra growth boost of around 1 3/4 percent on average.

12 Ibid.

States from the growth experienced in emerging market economies elsewhere. This was the EU's influence and focus on internal reform and quality institution-building.

The Commission's study concluded that 'a key driver of growth was institution building. Institutional reforms introduced by the adoption of the 'acquis communautaire' have improved the regulatory framework and increased the effectiveness of public administration in the new Member States. The resulting rise in trade and investment, including FDI inflows associated with technology transfers, together with EU transfers, strengthened the growth performance in the new Member States'.¹³

The secret ingredient that makes enlargement the most effective and sustainable development model is thus its emphasis on institution building - in other words, the root-and-branch reform that is required from any country aspiring to join. It is not enough for the EU to pour money into a country. To reap the full economic benefits of enlargement, a country must undergo the painstakingly complex and at times difficult approximation and harmonization process that characterizes the integration process.

At the moment Kosovo is denied the opportunity to reap these economic and political benefits that a credible EU accession process would bring. The SAP Dialogue, EULEX, the EUSR and the ongoing dialogue with Serbia are all important, but they are no substitute for the 'real thing' – a trade agreement, a Stabilization and Association Agreement, the screening process, candidate status and accession negotiations.

The – perhaps unintended- consequence of the current status-quo in Kosovo-EU relations is that Kosovo is increasingly left on its own to fend an enormous social and economic challenge. Instead of bringing Kosovo closer, Kosovo is becoming more and more isolated. Politically, its European future is blocked by the five non-recognizers – Spain, Greece, Slovakia, Cyprus and Romania. Economically, goods made in Kosovo no longer enjoy duty-free access to the EU markets. But not only goods, also its people are kept out. As of this year, Kosovars are the only ones in the region excluded from visa free travel to Europe.

The latest Medium-term Expenditure Framework put it bluntly: 'Kosovo has the highest unemployment numbers in the region, highest poverty and the weakest economic growth performance'. In a rare sign of economic realism, the authors admitted that 'in the current situation and acting alone...it can nowhere near achieve an economic development performance that can be sustained so as to realize the EU objective as stated above'.¹⁴ Without integration, Kosovo is likely to face stagnation.

13 Five years of an enlarged EU: Economic achievements and challenges, 2009, http://ec.europa.eu/enlargement/5years/documents/impact/publication14078_en.pdf , Chapter II, p.39

14 Medium-Term Expenditure Framework 2009-2011, Statement of Government Policy Priorities, <http://ec.europa.eu/enlargement/archives/seerecon/kdc/MTEF%20%202008-2011%20June%202012.pdf>

A TICKING BOMB

Kosovo is by far the poorest and politically most fragile country in Europe. Nearly every second child lives in poverty and one in five children live in extreme poverty, unable to meet their critical survival needs. Kosovo is the only place in Europe where maternal mortality rates are actually on the rise.¹⁵ Youth unemployment is shockingly high: three out of four youngsters have no job¹⁶. With an annual income of 1,800 Euros, per capita GDP in Kosovo is only 7.6 per cent of the EU-27 average. This makes Kosovo stand out, even by regional standards.

Table I: GDP per capita compared to the EU-27 average

	/%EU-27 GDP average
Croatia	43.2%
Macedonia	35%
Montenegro	43%
Albania	27.1%
Serbia	37%
Bosnia Herzegovina	30% ¹⁷
Kosovo	7.6%

Source: EC Progress Reports (2010)

The essential problem for Kosovo is that too few people work, and those who work do not produce goods that can be sold outside Kosovo. Even if the economy could move to a permanent growth rate of 6 percent, in ten to fifteen years time, unemployment will only have halved¹⁸. At present, the share of the population working is only about one quarter (26 percent), and one third of employment is still to be found in Kosovo's predominantly inefficient and uncompetitive subsistence agriculture. The challenge is clear: Kosovo will need to create several thousand jobs a year for its economy to catch up. The challenge is particularly acute given Kosovo's unique demography. With over 53 percent of the population under the age of 25, Kosovo has the youngest population in Europe.

15 UN Common Development Plan for Kosovo, 2011-2015, United Nations Kosovo Team

16 Youth in Jeopardy: being young, unemployed and poor in Kosovo, World Bank Report, 2008, http://siteresources.worldbank.org/INTKOSOVO/Resources/Kosovo_Youth_Employment.pdf

17 Measured in Purchasing Power Standards, see European Commission Progress Report 2010

18 Midterm Expenditures Framework 2010-12, p.5

Table II: Overview of employment and FDI

	Employment rate	Foreign Direct Investment
Croatia	56.6 %	1,875 milion
Macedonia	43.3 %	181 milion
Montenegro	48.7 %	944 milion
Albania	53.4 %	680 milion
Serbia	50.4 %	1,410 milion
Bosnia Herzegovina	40 % ¹⁹	177 milion
Kosovo	26 %	288 milion

Source: EC Progress Reports for these countries (2010)

While population growth has slowed in recent years, an additional 150,000 young people will be looking for jobs in the next five years. The required transformation of Kosovo's agricultural sector from subsistence farming into a modern and competitive sector will inevitable result in more jobs being lost; without alternative income opportunities in the countryside, the number of people looking for employment will further increase.

But where will new jobs be created? The only sustainable motor for economic growth is Kosovo's private sector. Job creation happens when new firms are created or existing ones expand. Jobs are also created when companies are able to produce goods that consumers outside Kosovo want to buy. The track record of the last few years is not encouraging; in recent years, economic growth was mainly driven by government expenditure, and not private sector activity.

Without rapid economic growth, providing better education, employment and health care will be impossible. As the independence generation is coming of age, 'statehood' alone will no longer suffice as panacea for Kosovo's economic and political troubles. The next generation rightly expects that living standards not only in Prishtina, but also in Dragash, Kamenica and Viti improve and gradually resemble living standards in the rest of Europe.

This growing gulf between what the EU promises and what it can actually deliver does not yet seem to discourage people to believe in Europe; close to 90 percent of Kosovars consider EU accession 'a good thing' and 93 percent would vote 'yes' if there were a referendum on Sunday on whether to join the European Union.²⁰ What Kosovars expect from the EU is simple and clear: the three top expectations associated to EU membership are freer travel, rule of law and employment opportunities²¹.

As we have been reminded by the Arab Spring, events can get out of control quickly once economic stagnation and political frustration reach a tipping point. After all, it was

19 Measured in Purchasing Power Standards, see European Commission Progress Reports, 2010.

20 Gallup Balkan Monitor 2009, p.22

21 Ibid

a 29 year-old Tunisian fruit vendor that sparked a revolution that has led to regime-change in two countries, a NATO bombing campaign in Libya and a protest wave engulfing most of the Arab world.²²

Table III: Comparing Kosovo and Tunisia

	Kosovo	Tunisia
Population	1.8	10.3 ²³
Share of population under 25	53%	42.1% ²⁴
Youth unemployment	76%²⁵	69.47²⁶
GDP per capita	1,800 euro	6,131 euro ²⁷

Sources: EC Progress Report, Economist, World Bank

The trigger that unleashed the Arab Spring was the growing frustration among the countries' youth with the lack of jobs and perspectives. In fact, youth unemployment rates in Kosovo (76 percent) and Tunisia (69 percent) are worryingly similar. Frustration with the prevailing status quo in Kosovo-EU relations, particularly among Kosovo's increasingly educated, IT-savvy and unemployed youth, is sure to increase sharply. The European Union is one that many in Kosovo and across the Arab world aspire to join; the choice for Europe is only whether by accession or immigration.

The time has come for a European spring – a new momentum in Kosovo-EU relations - before the growing frustration with Europe and the deepening economic stagnation unleashes the kind of revolutionary fervor we have seen on the streets in Tunis, Cairo and Damascus.

22 http://www.washingtonpost.com/world/in-tunisia-act-of-one-fruit-vendor-sparks-wave-of-revolution-through-arab-world/2011/03/16/AFjfsueB_story.html

23 http://www.economist.com/blogs/dailychart/2011/03/arab_unrest_0

24 http://www.economist.com/blogs/dailychart/2011/03/arab_unrest_0

25 Kosovo Youth in Jeopardy, Being young, unemployed and poor in Kosovo, A report on youth employment in Kosovo, September 2008, http://siteresources.worldbank.org/INTKOSOVO/Resources/Kosovo_Youth_Employment.pdf

26 http://www.economist.com/blogs/dailychart/2011/03/arab_unrest_0

27 \$8,620 – converted into Euro (1 USD = 0.711222 EUR), see http://www.economist.com/blogs/dailychart/2011/03/arab_unrest_0

KOSOVO* - FULFILLING ITS EUROPEAN PERSPECTIVE

In 2008, the European Commission enthusiastically promised to 'present a feasibility study to examine how Kosovo can best take advantage of regional and European integration²⁸. In other countries, the Commission produced feasibility studies to evaluate a country's capacity to negotiate and implement a Stabilization and Association Agreement.²⁹ Under normal circumstances, publication of a feasibility study is followed by talks on a Stabilization and Association Agreement.

In Kosovo, however, things are never quite as 'normal'. The study that was finally presented by the Commission in October 2009 differed significantly from 'feasibility studies' produced elsewhere, thanks to effective lobbying by the five non-recognizers. First of all, it differed in name. Whereas Bosnia's 2003 feasibility study was officially titled a 'Report from the Commission to the Council on the preparedness of Bosnia and Herzegovina to negotiate a Stabilization and Association Agreement with the European Union', Kosovo's report ended up just being called 'Kosovo – Fulfilling its European Perspective'.

Secondly, and more importantly, it differed in content. Whereas Bosnia's feasibility study contained individual chapters focusing on areas of the *acquis* such as a chapter on 'price and trade liberalization' or 'consumer protection', Kosovo's report contained chapters titled vaguely 'The EU's commitment to Kosovo', 'Delivering on Kosovo's European perspective' or 'Bringing Kosovo citizens closer to the EU'. The purpose of Bosnia's study was explicitly to 'identify the requirements inherent in a Stabilization and Association Agreement (SAA) and judge whether BiH has progressed sufficiently to allow it to negotiate meaningfully and subsequently implement successfully such an agreement'.³⁰ In the case of Kosovo, the purpose of the Commission communication was limited to 'identify the challenges on Kosovo's road to Europe, confirm the measures it should take to address these challenges, and propose Community Instruments to help Kosovo further its political and economic development'.³¹

Despite its obvious shortcomings, the final communication presented in October 2009 contained two important political messages: first, it called on Member States that 'Kosovo must not be left behind as the Western Balkans region progress towards Europe'.³² Secondly, it optimistically argued that 'the absence of an agreed position on Kosovo's status does not prevent the EU from substantial engagement with Kosovo'.³³

The Commission obviously had to choose its words carefully to avoid the embarrassment of proposing anything that member states may not endorse. In the case of Kosovo, this narrowed the range of options, given the position of the five non-recognizers

28 ECLO Press release, 5 November 2008, http://www.eusrinkosovo.eu/pdf/081105%20-%20PR_Kosovo%20Progress%20Report%202008%20ENG.pdf

29 <http://ec.europa.eu/enlargement/potential-candidate-countries>

30 http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=503DC0692

31 Communication, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0534:FIN:EN:PDF>

32 Communication from the Commission to the European Parliament and the Council, COM (2009) 5343, Kosovo – Fulfilling its European Perspective, Conclusions and Recommendations, October 2009

33 Ibid, p.2

and the prevailing mood among politicians fatigued by enlargement and alarmed by the prospect of yet another small state with a weak economy and frail institutions knocking on Europe's doors.

The Commission ended up presenting seven objectives that seemed achievable without recognition by all 27 member-states: three concern Kosovo's inclusion in existing regional processes such as the Stabilization and Association Process, IPA-funded cross-border cooperation programs, and an EU economic and fiscal surveillance mechanism established for the Western Balkans. Two measures concern trade: the extension of the Autonomous Trade Measures as an interim measure until conclusion of a trade agreement and inclusion of Kosovo in a revised Pan-Euro-Med Cumulation Convention.

The proposal that attracted most media and public attention has been the prospect of a visa dialogue leading to eventual visa liberalization. One measure that has not received much attention has been the Commission's proposal for a first contractual relationship on the basis of a Framework Agreement paving the way for Kosovo's participation in Community programs.

Following its presentation in October 2009, the European Council meeting in December formally 'welcomed the Commission communication'. In the official conclusions, endorsed by all 27 EU member states (including the five non-recognizers), the Council 'invited the Commission to take the necessary measures to support Kosovo progress towards the EU in line with the European perspective of the region³⁴'. Specifically, the conclusions read, 'the Council attaches importance to measures related to trade and visa, without prejudice to Member States' positions on status'³⁵.

In essence, the Communication defined the European Union's Kosovo strategy for a five-year period starting in 2009³⁶. Two years have passed; now is a good moment to assess what has actually been achieved in terms of 'fulfilling Kosovo's European perspective'. In the following chapters, we will present a summary overview of progress achieved to date and take a closer look at how the absence of an agreed position on Kosovo has effectively paralyzed the European Union by empowering the five non-recognizers to prevent any real progress on the accession path.

34 European Council 10-11 December, Conclusions, 2009, EU CO 6/09, <http://www.consilium.europa.eu/uedocs/cmsUpload/st00006.en09.pdf>

35 Ibid

36 The Commission had published a previous Communication on Kosovo in 2005 titled 'A European Future for Kosovo'.

SCORECARD

If one were to apply the terminology and methodology of the Commission Progress Reports (measuring 'progress' in terms of 'concrete outcomes' and actual deliverables), the following picture emerges: there has been no progress with regard to the visa dialogue, no progress concerning trade and no progress with regard to Kosovo's participation in Community Programs.

There has been some progress in the field of cross-border cooperation and Kosovo's participation in the economic and fiscal surveillance mechanism. Kosovo has also been formally included in the Pan-Euro-Med Cumulation of Origin agreement signed in March this year; on paper, this was progress. In practice, however, there was no progress since Kosovo cannot actually benefit from the provisions of the agreement without a trade agreement.

This leaves the reinforced SAP Dialogue as the one area where significant progress has been achieved. With one caveat: the jury is still out whether the current SAPD format is capable of guiding Kosovo towards conclusion of a Stabilization and Association agreement, or whether it remains just an exercise for Kosovo and the Commission to mimic the accession process.

Another way to evaluate progress is to apply a simple scorecard system used in primary schools in Kosovo, assessing progress on a scale from 1-5, with 5 being the best. Graded individually, Kosovo scores a 2+ (not satisfactory) and the Commission a minus 3. If one were to evaluate the collective performance of Kosovo and the EU, the result would be a disappointing 3-.

** The idea behind this scorecard is simply to illustrate progress in a way that everyone can relate to. The grades do not claim to be quasi-scientific and obviously reflects the author's subjective political judgment.*

	BE	Kosovo	Com-bined Score
1. Visa Dialogue			3
<i>'Move forward with a structured approach to bring Kosovo's citizens closer to the EU through a visa dialogue with the perspective of eventual visa liberalization when the necessary reforms will have been undertaken and the conditions met'</i>	1 The visa dialogue has not started.	Kosovo undertook major efforts at the central level to meet the preconditions for the beginning of a visa dialogue – including in particular a functioning readmission and reintegration process, improvements in the area of document security and civil registries. Implementation at the local level and disbursement of reintegration assistance, however, remained problematic.	2
2. Autonomous Trade Measures (ATMs)	1 On 1 January 2011 the Autonomous Trade Measures expired and have not been extended since. The term 'trade agreement' – implying a contractual trade agreement – has recently been replaced in Council conclusions and official Commission correspondence by a reference to 'enhanced trade relations'.	3 Kosovo has made legislative progress in the area of internal market regulations, including a new law on Inspectorate and Market Surveillance, laws on state aid, patents, industrial design and trademarks. An inter-ministerial council and a Working Group on Trade Policy have been established. An economic impact assessment of Trade Agreement with the EU is being prepared. But overall capacities to negotiate or implement the provisions of a trade agreement remain weak.	2
3. Pan-Euro-Med Cumulation of Origin	3 Kosovo – as Kosovo under 1244 – has been added to the Convention signed in March 2011, but without a trade agreement in place, Kosovo cannot benefit from the Convention. Its inclusion is thus symbolic only.	n.a. Kosovo accepted to be included as 'Kosovo under 1244'.	3

	BE	Kosovo	Com-bined Score
4. Economic & Fiscal Surveillance Framework "Progressively integrate Kosovo into the economic and fiscal surveillance framework that has been established with the Western Balkans'	4 Kosovo has been included informally and meetings are being held regularly; Kosovo is not, however, listed on ECOFIN's website as a partner in the economic and fiscal surveillance framework.	2 Kosovo has been participating in a Fiscal Surveillance Mechanism as foreseen by the Ahtisaari Agreement; five meetings have been held in Prishtina. Recent public investment projects and announced increases in public sector wages caused much concern with the EC and IMF.	2
5. 5. Participation in Community Programs "Examine the opportunity of a framework agreement with Kosovo on the general principles of its participation in Community programs, and on this basis prepare negotiating directives'	2 The Commission has presented a draft framework agreement to the Council for discussion, but disputes over which name to use for Kosovo (with or without reference to UNSC 1244) and objections by some non-recognizers have put the process on halt.	n.a. Kosovo did not yet have any formal say in this process.	2
6. SAP Dialogue "Strengthen and deepen Kosovo's participation in the Stabilization and Association Process through establishing a regular 'SAP Dialogue'	5 SAP Dialogue is operational and structured around an annual plenary session and regular sectoral meetings.	5 Kosovo is actively participating in the SAP Dialogue and has been commended for the professional organization of two SAPD Plenary meetings.	5
7. 'Cross-border Cooperation' Progressively activate the IPA cross-border cooperation component for Kosovo'	3 The 2010 EC assistance program foresees 3 million Euro for cross-border cooperation programs. To date, no money has actually been spent.	3 Two cross-border cooperation programs, one with Albania and the other with Macedonia, have been prepared and officially approved by the Commission in December 2010. A draft cross-border program with Montenegro has been submitted to the European Commission for review in February 2011.	3
Final Score	3-	2+	3-

TWO STEPS FORWARD, ONE STEP BACKWARD

What does the score of 3- tell us about the current state of play in Kosovo-EU relations? A closer look reveals that all the measures where there has been 'some progress' involved decisions that could be taken by the Commission without the need for much consultation or approval by member states.

This included upgrading the existing Stabilization and Association Process Tracking Mechanism (STM), initiated in late 2002, to a Stabilization and Association Process Dialogue as well activating 3 million Euros in IPA funding for cross-border cooperation programs with Macedonia, Albania and Montenegro. By renaming the existing tracking mechanism 'SAP Dialogue' the Commission intended to imitate the usual SA process more closely. The fact that a new name had to be found for Kosovo instead of the usual 'Stabilization and Association Process' hints again at the problem of Kosovo's non-recognition by five EU member states.

The Commission also went ahead to include Kosovo in the economic and fiscal surveillance mechanism established for the Western Balkans. This fiscal surveillance mechanism is designed to prepare candidate countries for participation in the Economic and Monetary Union. Whereas candidate countries - Croatia, Macedonia, Montenegro, Turkey and Iceland - are required to submit elaborate annual Pre-Accession Economic Program (PEP), a 'lighter version' has been designed for 'potential candidates'.

Article 8.1 of the Ahtisaari Plan already foresaw the establishment of a Fiscal Surveillance Mechanism to help Kosovo prepare its budget and maintain sustainable public finances.³⁷ A first meeting in the presence of EC experts was held in early 2009. Five meetings of the Fiscal Surveillance Mechanism have been held since, the latest taking place in Prishtina in March 2011. (On the official ECOFIN website, however, there is still no mention of Kosovo's participation.)

A fourth area where some progress has been achieved concerns Kosovo's inclusion in the Convention on Pan-European Mediterranean Cumulation. The Convention essentially grants reciprocal trade preferences to its members on the basis of association and trade agreements. By offering trade opportunities within an enlarged trade area and creating incentives to source and produce within the region, participation in the Convention is intended to improve regional cooperation and increase foreign trade investment. For Kosovo to actively participate and benefit from diagonal cumulation it must have concluded a trade agreement with the EU. Kosovo's signature on the Convention therefore has symbolic value only.

None of the above measures where some progress has been achieved imply contractual relations between Kosovo and the Union. They are also of lesser political significance in the enlargement process (or not really part of it). All those measures proposed in 2009 that would really have resulted in bringing Kosovo closer to EU membership on the basis of a contractual relationship have stalled. This is true for Kosovo's participation in European Community Programs, and it is also true for the increasingly elusive promise of a trade agreement and a Stabilization and Association Agreement.

³⁷ Economic Criteria, Article 8.1, <http://www.auswaertiges-amt.de/cae/servlet/contentblob/349798/publicationFile/3348/Ahtisaari-Plan.pdf>

The one exception is the visa dialogue, which in itself is 'status-neutral' and could be brought to conclusion even without the five non-recognizers on board. As ESI described in 'Isolating Kosovo: Kosovo vs. Afghanistan 5:22', the fact that Taiwan had not been recognized by a single European member state did not prevent the Commission from initiating a visa dialogue. And, the fact that in 2009 Kosovo could be included on the Schengen 'Black List' as a 'territory' next to the Palestinian authority and Taiwan, means that it can also be included on the White List among those countries that enjoy visa-free travel to Schengen.³⁸

With Lisbon, the European Parliament is now a co-decision maker on equal footing with the Council. The Parliament has been very vocal calling for Kosovo to be included in the visa process; passing a vote in favor of visa free travel for Kosovo should be no problem. The final decision to be taken by the Council, on the basis of a proposal prepared by the Commission, is done by qualified majority. Kosovo would need 228 votes in favor of visa liberalization; even if all five non-recognizers (64 votes in total) would oppose they cannot block it. A blocking minority requires at least 82 votes.³⁹ The EU's failure to deliver is therefore particularly disappointing.

38 http://www.esiweb.org/index.php?lang=en&id=156&document_ID=111

39 Isolation Confirmed. How the EU is undermining its interests in Kosovo, ESI, 2010, http://www.esiweb.org/index.php?lang=en&id=156&document_ID=119

FREEDOM OF MOVEMENT: PEOPLE

The formal exclusion of Kosovo from the visa dialogue and the continued isolation of its citizens have stirred much debate and frustration; it was probably the one issue most talked about with regard to Kosovo-EU relations in the past two years⁴⁰. The fact that the Commission has not even started a visa dialogue is a disappointment on three counts: first, the prospect of visa-free travel is the strongest signal the EU can send to reassure citizens in the region that they really are part of Europe. Secondly, the reform process leading to visa-free travel actually addresses key European security concerns. It seems absurd to delay the start of a reform process that would specifically focus on migration management, border security or anti-corruption - concerns that EULEX is also meant to address. Thirdly, the visa process is one of few policy areas where a decision to move forward does not depend on the approval of the five non-recognizers.

Across the region the prospect of visa-free travel has been a powerful incentive to carry out difficult and costly reforms. The visa liberalization process succeeded even in coercing Bosnian politicians to unite behind a common reform agenda, leaving no space for politicians to find excuses. Kosovo would be no different. In the past two years we have seen how the mere prospect of a visa dialogue has already helped to mobilize resources, focus political attention and engage civil society.

Once it became clear that the start of a visa dialogue hinges on Kosovo's ability to receive and reintegrate nationals illegally residing in Europe, politicians rallied behind the goal and tried hard to deliver on the required reforms. By defining what needed to be done in return for the start of a visa dialogue, the EU also empowered voters and civil society to hold the government to account. The government signed readmission agreements, adopted a new Strategy and Action Plan on Reintegration and allocated 3.4 million Euros for reintegration assistance; the Ministry of Interior established a Reintegration Fund, published reintegration guidelines and adopted directives setting out the responsibilities of Municipal Return Officers, mayors and line ministries.

Albeit slowly, reintegration assistance has begun to reach the most vulnerable, including repatriated children and disabled. Problems remain, but overall reintegration has probably been the most focused reform effort and capacity building program in the past year. It was a powerful reminder that politicians in Prishtina, just like anywhere else, can deliver provided there is a credible prospect for progress on the EU path.

So why is Europe continuing to withhold the visa dialogue? The main reason is the widespread fear of illegal migration once visa barriers are lifted. This fear is greatest in countries with sizable Kosovo Albanian Diaspora communities like Germany or Sweden.

40 The European Stability Initiative(ESI) produced two detailed reports specifically dealing with Kosovo's exclusion from the visa process include two ESI's reports, 'Isolation confirmed. How the EU is undermining its interests in Kosovo' (http://www.esiweb.org/index.php?lang=en&id=156&document_ID=119) and 'Isolating Kosovo: Kosovo vs. Afghanistan 5:22' (see http://www.esiweb.org/index.php?lang=en&id=156&document_ID=111). KFOS also produced a widely-read report titled 'Living in a Ghetto' which became the basis also for a documentary film.

These fears are not entirely unfounded. In 2010, with visa requirements still in place, 14,285 Kosovo nationals claimed asylum in the EU.⁴¹ This is incredibly high for the size of the country (1 asylum seeker for every 130 inhabitants) and considering how stable and peaceful Kosovo is today; by comparison, 20,580 nationals of war-torn Afghanistan and 14,350 Somalis escaping hunger and conflict claimed asylum last year⁴².

These figures, however, hide the true scale of illegal migration from Kosovo to the EU. The drowning of 15 migrants from Kosovo trying to cross the Tisza River in Hungary in October 2009 was a sad reminder of the existence of organized crime groups offering illegal passage to Europe. Another way to assess the scale of illegal migration is to look at last year's repatriation figures. In the course of 2010, Western European countries repatriated a total of 5,198 Kosovo nationals. Germany and Sweden combined accounted for one third of all repatriations (34 percent) or 1,728 persons.⁴³ The vast majority were single, Albanian men who had resided illegally in Western Europe.

What caused the last-minute decision in October to postpone the promised visa dialogue has little to do with Kosovo. The official line that the visa dialogue was postponed because Kosovo was still lacking capacities to sustainably 'reintegrate' all repatriated persons was convenient, but only half-true. In fact, no other country had to meet such stringent requirements with regard to 'reintegration' prior to even starting a visa dialogue. Albania, for example, did not even have a reintegration strategy in place when the visa dialogue began. The adoption of a reintegration strategy was one of the last three benchmarks that Albania had to fulfill just a few months prior to visa-free travel (a reintegration strategy was finally adopted in June 2010).⁴⁴

What had turned the mood sour in Europe was the incredible surge in asylum claims by Serb and Macedonian citizens once visa restrictions were lifted end of 2009. The number of asylum claims from Serbia jumped from 5,290 in 2009 to 17,715 last year – an increase of 335 percent. The number of asylum claims from Macedonia increased by 803 percent, from 940 in 2009 to 7,550.⁴⁵

The three countries most affected – Germany, Sweden and Belgium – were not surprisingly, the countries most opposed to initiating a visa dialogue with Kosovo. In 2010, 86 percent of Serb and 82 percent of Macedonian asylum claims were filed in Germany, Sweden and Belgium; in terms of timing, Germany in particular registered a dramatic increase in October, just at the time when the visa dialogue was about to begin. Recent news about North African refugees landing on Europe's shores have turned the mood even more anti-immigrant and populist politicians across Europe have threatened to dismantle the Schengen Regime. In a recent poll by the German Marshall Fund, every second Spaniard, Italian, Dutch and Brit viewed immigration as more of a problem than an opportunity.⁴⁶

41 Asylum seekers from the Balkans: Statistical Data, ESI Presentation: Freedom of Movement in a populist age – Why Balkan visa liberalization is (still) a success, 1 July 2011, www.esiweb.org

42 Ibid

43 Annual Report 2010 on repatriated persons, official data provided by the Kosovo Ministry of Interior.

44 <http://www.esiweb.org/index.php?lang=en&id=478>

45 Asylum seekers from the Balkans: Statistical Data, ESI Presentation: Freedom of Movement in a populist age – Why Balkan visa liberalization is (still) a success, 1 July 2011, Source: www.esiweb.org

46 Transatlantic Trends, Immigration 2010, German Marshall Fund

The government of Kosovo has to take these new realities into account and work even harder to assuage fears about illegal migration. The goal posts have changed. The best way forward is for the government to take Europe's concerns seriously and dedicate effort and resources to combating illegal migration, improving document security and border management. One way to reduce the number of asylum claims is to investigate and address the causes for legitimate asylum claims; in 2009, 480 asylum claimants were granted full protection on grounds of 'well-founded fear of persecution' and around 200 received 'subsidiary protection' due to 'risks of serious harm⁴⁷'. At the same time, the government must actively discourage citizens from filing false claims; an information campaign is urgently needed to explain what visa liberalization is about and help reduce the number of asylum seekers and illegal migrants. This is best done in partnership with civil society.

But it is also high time for Europe to deliver on its promise and begin the visa dialogue, independent of progress in the dialogue with Belgrade. Kosovo should be judged on its own merits and given the same fair chance to deliver on the reforms. Any further delay of the visa dialogue only serves to undermine the EU's own interests and provide excuses to local politicians.

The catalogue of reforms that each country has to undertake to obtain visa-free travel is extensive and closely resembles the *acquis communautaire* for justice and home affairs; it is therefore not a question 'if' Kosovo adopts these reforms but only 'when' it does so. The earlier the reform process starts in earnest, the better. In addition to 'monitoring, mentoring and advising' the Kosovo authorities – to use EULEX-jargon – the start of a visa dialogue would be the best way to also 'motivate' politicians.

Especially given the EU's paralysis and inability to deliver much in terms of tangible progress with regard to European integration, the visa process is the one and – possibly only – promise that the EU can actually deliver without Spain, Greece, Romania, Slovakia and Cyprus on board. An immediate start of a visa dialogue and a fair process that really guides Kosovo towards visa free travel within two years (that is roughly how long it took all the other countries in the region once the visa dialogue had started) is urgently needed and will go a long way to help the EU restore trust and regain credibility.

⁴⁷ Asylum seekers from the Balkans: Statistical Data, ESI Presentation: Freedom of Movement in a populist age – Why Balkan visa liberalization is (still) a success, 1 July 2011, Source: www.esiweb.org

FREEDOM OF MOVEMENT: GOODS

When the news broke on 1 January that goods made in Kosovo can no longer access the EU markets duty-free, it seemed to confirm a public perception that not only the people, now also goods from Kosovo are no longer welcome in Europe. It came as a shock given that Kosovo products had enjoyed (almost) unrestricted access to EU markets since 2000.

To boost post-war recovery in the region, the EU had extended Autonomous Trade Measures (ATMs) allowing goods from the region to enter the EU single market duty-free. ATMs are believed to have contributed to an average increase of 8 percent of exports from the Western Balkans to the EU.⁴⁸ In the meantime, all the other countries in the region – except Kosovo – had signed Trade Agreements with the EU incorporating the provisions of the ATMs. When the current ATM regime expired in December 2010, the only country left without a Trade Agreement and without access to EU markets was Kosovo.

The reason why the Commission failed to extend the ATMs in due time has nothing to do with trade or the quality of Kosovo products. The delay was caused by disagreement among the EU-27 on how to refer to Kosovo – as 'Kosovo' or as 'Kosovo under Security Council Resolution 1244/1999'. The UK and others argued that any reference to UN Security Council Resolution 1244/1999 in Kosovo's name no longer reflects the political reality on the ground and is not 'status neutral'. The five non-recognizers, on the other hand, argued that as long as UNSC 1244/1999 remains in place and five member states consider Kosovo part of Serbia, the EU must remain 'status neutral' and always refer to Kosovo under UNSC 1244/99.

In 2009 the Commission had warned explicitly that 'progressive entry into force of the respective SAA/Interim Agreements for the rest of the Western Balkans and the expiry of the current preferential regime will result in a deterioration of Kosovo's trading position, in both absolute and relative terms'.⁴⁹ That is exactly what happened on 1 January 2011. Without duty-free access to EU markets, the attractiveness of Kosovo to foreign investors and its ability to export were greatly reduced. The impact on the few Kosovo companies that have succeeded in finding an export market niche was immediate. Companies like the small vegetable producer exporting pickles to Austria or the filament producer based in Prizren, exporting to Poland and Hungary, struggled to keep up production and retain jobs.⁵⁰

It is clear that without ATMs – and without a trade agreement – Kosovo will not be able to develop its export industries and attract investors in labor-intensive export industries. It will consequently miss out on several thousand jobs. With an employment rate of 26 percent, a female employment rate of 12.5 percent, the lowest in the region by far, and only 10 percent of jobs in manufacturing, this is an issue of great

48 http://ec.europa.eu/enlargement/enlargement_process/acccession_process/how_does_a_country_join_the_eu/sap/history_en.htm

49 Communication from the Commission to the European Parliament and the Council, COM (2009) 5343, Kosovo – Fulfilling its European Perspective, Conclusions and Recommendations, October 2009

50 www.eciks.org

concern.⁵¹

It matters little where Kosovo ranks in the World Bank's 'Doing Business' or Transparency International's 'Corruption Index', as long as Kosovo companies are denied access to EU markets and the region (Serbia and Bosnia Herzegovina also do not allow goods from Kosovo to access or transit their markets). Cosmetic changes aimed to improve Kosovo's position in these rankings will have little impact on job growth and living standards.

If the dispute on Kosovo's name was only an academic debate among international lawyers, no need to worry. But the disagreement among EU member states on Kosovo's name has far-reaching economic and political implications. Another short-term solution to extend the ATMs and hereby re-establish the previous status quo now seems within reach; but the damage to Kosovo's reputation and to its nascent export industries has already been done. To attract investors and boost growth, Kosovo urgently needs a sustainable solution in the form of a full-fledged trade agreement with the European Union.

CRUNCH TIME: CONTRACTUAL RELATIONS

In its 2005 Communication named 'A European Future for Kosovo', the Commission made it clear that without contractual relations, there is no European perspective for Kosovo:

'To achieve the ultimate goal of the Stabilization and Association process, which is integration into the European Union, the EU has to establish contractual relations with its partners'.⁵²

While cautioning that the possibility of negotiating a Stabilization and Association Agreement with Kosovo was not yet on the table, it promised that Kosovo would 'depending on the outcome of status talks – in due course engage in contractual relations with the Union as appropriate.'⁵³ Six years have passed; twenty-two member states have recognized Kosovo as an independent country, but Kosovo still does not have any contractual relations with the European Union.

The first contractual agreement proposed by the Commission in 2009 concerned Kosovo's participation in European Union Community programs. Since 2003, all the countries of the Western Balkans are invited to participate in European Union Community Programs. These programs cover a wide range of fields from combating social exclusion to e-learning, from cultural heritage to youth mobility. The explicit purpose of participating in these EU-wide community programs was to 'familiarize the countries concerned and their people with the policies and working methods of the EU, thus anchoring them more firmly to the EU and encouraging them on the path towards European integration'.⁵⁴

Before participating in any Community Program, a country has to sign a Community Framework Agreement.⁵⁵ Turkey signed such an agreement in February 2002; Serbia signed a Framework Agreement in December 2004. As the name implies, a Framework Agreement only sets out the general terms for participation in community programs. The specific conditions regulating a country's financial contribution, its decision-making rights or obligations associated with participation, are determined by separate agreements.⁵⁶ In terms of substance, a Framework Agreement is really no big deal. The political importance of concluding a first ever-contractual agreement between Kosovo and the European Union is great.

Last November, Enlargement Commission Stefan Fühle, once more confirmed the Commission's intent to propose opening relevant Union programs for Kosovo's parti-

52 COM(2005) 156, Commission Communication 'A European Future for Kosovo', October 2005, http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&g=en&numdoc=505DC0156

53 Ibid

54 Framework Agreement between the European Community and Serbia and Montenegro on the general principles for the participation of Serbia and Montenegro in Community Programmes, Official Journal of the European Union, L 192/29, Prologue

55 Ibid

56 Ibid

pation, such as Europe for Citizens or Culture.⁵⁷ Early this year, the Commission then prepared negotiating directives for a Community Framework Agreement. When the issue was tabled, the discussion among EU member states quickly turned sour. Three out of five non-recognizers made it clear that any kind of 'contractual relationship' between the EU and Kosovo was out of the question; two tentatively agreed, but on the condition that Kosovo is referred to as 'Kosovo under UNSC 1244/1999' and UNMIK would be the signatory on Kosovo's behalf.

When the name dispute first appeared in the debates surrounding the extension of the ATMs, both sides – recognizers and non-recognizers – had hoped that the advisory opinion issued by the International Court of Justice on the legality of Kosovo's declaration of independence would bring clarity on the subject. While confirming that Kosovo's declaration of independence was not illegal, the ICJ opinion did not actually help to resolve the name question – just as it did not change the political minds in Madrid, Nicosia, Bratislava, Athens and Bucharest. Without clarity and consensus on how the EU should refer to Kosovo under the dotted line of a contractual agreement, the conclusion of a Framework Agreement, a Trade Agreement or, in the distant future, a Stabilization and Association Agreement, is impossible.

In April this year, the UK with the support of some member states asked the European External Action Service (EEAS) to undertake a review of references to Kosovo in EU documents with a view to referring to Kosovo in a genuinely status neutral way. EEAS concluded that while the term 'Kosovo' as such is genuinely status- neutral, as it can be taken to refer to a geographical area or a state, any references to 'Kosovo under 1244' imply that Kosovo is administered by UNMIK, which is not acceptable to those who have recognized Kosovo as an independent state. While bringing some clarity to the matter, this review did not yet bring a political solution.

Some among the non-recognizers want to prevent the conclusion of a Framework Agreement as a matter of principle. By denying Kosovo the chance to participate in Community Programs, they actively deprive Kosovo of the opportunity to become familiar with the policies and working methods of the EU. More worryingly, some of the five non-recognizers are wholeheartedly committed to do whatever it takes to prevent a trade agreement between Kosovo and the EU.

57 Stefan Fuehle, European Commissioner for Enlargement and Neighbourhood Policy, European Commission Press Conference, Brussels, 9 November 2010.

THE ELUSIVE PROMISE OF A TRADE AGREEMENT

In 2009, the Commission held out the prospect of a trade agreement once Kosovo meets the relevant requirements. In May 2010, the Commission handed over a questionnaire to assess Kosovo's capacity to negotiate and implement a trade agreement. An EC assessment mission followed in July. In April this year DG Trade finally published its recommendations based on the answers to the questionnaire and the on-site assessment.

In the meantime, however, the non-recognizers have been successful at pressuring the Union to backslide on its earlier promise. Whereas the 2009 Communication explicitly referred to a 'trade agreement in due time', the December 2010 conclusions call 'on the Commission to continue assisting Kosovo in its efforts to meet the relevant requirements **for a strengthened trade relationship**'⁵⁸.

The recent letter from Trade Commissioner Karel De Gucht sent to the Kosovo Ministry of Trade and Industry in April this year, left no doubts as to the direction in which the pendulum had swung: 'The Commission will continue to assist Kosovo to meet the relevant requirements for a strengthened trade relationship, as per the Council conclusions of 14 December 2010'⁵⁹ To cast aside any remaining doubts, Commissioner Gucht concluded the letter by saying: 'Allow me to underline that this is not a commitment to enter into free trade agreement negotiations, for which anyway a Council mandate is necessary, nor does it set the timeframe for the next steps'⁶⁰

Obviously, a trade agreement requires a lot of homework to be done by the Kosovo government. The assessment mission identified serious shortcomings across the board, from weak administrative capacities to prevailing technical (and partly) political barriers to trade. It concluded that 'there is an overall shortcoming especially when it comes to implementation and enforcement of trade and trade-related matters'⁶¹ It also deplored that 'statistics appear not to be fully reliable'. Reliable trade statistics, however, are crucial for trade negotiations and the setting of tariff offers.⁶²

Some of these challenges have already been addressed by the Ministry of Trade and Industry. New legislation on Metrology, Industrial Design, Patents, Trade Marks and Market Surveillance has been drafted. An Inter-Ministerial Council and a Working Group on Trade Policy has been established in November last year. Kosovo customs has hired additional officers and an economic impact assessment of a Free Trade Agreement with the EU has also been initiated.

58 European Council, 16-17 December 2010, Conclusions EUCO/30/1/10, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/118578.pdf

59 Letter from Karel De Gucht to Ms Kusari Lila, Deputy Prime Minister and Kosovo Minister for Trade and Industry, Member of the European Commission, Brussels, VS/amw/Ares (11)S-594998

60 Ibid

61 Ibid

62 A key requirement in the area of standardization is membership of Kosovo's Standardisation Agency in ISO and CEN; something that is not possible without UN membership.

By its very nature, a trade agreement does not have the same emotional appeal like visa-free travel. The required reforms are also more painful politically; serious internal market reforms inevitably touch on business interests, monopolies and profit margins. Maintaining the momentum for reforms is crucially important, and it is in the EU's own best interest. Fully aware that Kosovo was not yet ready to negotiate and implement a trade agreement; the Commission had argued explicitly that the **prospect of a trade agreement will constitute an important incentive for Kosovo to advance with its reforms in all areas affecting the internal market, including administrative capacity.**⁶³ The best 'incentive' to drive internal market reforms and strengthen Kosovo's administrative capacities – the prospect of a trade agreement 'in due time' – has just been sacrificed, it seems, on the altar of EU disunity.

The benefits of a trade agreement go well beyond trade flows and export opportunities. Trade agreements are crucial in providing a legal framework offering stability and predictability to investors. Above all, trade agreements are a necessary and integral part of the accession process. If Kosovo cannot jump this hurdle, it does not bode well for its European future.

Indeed, it does not look good. Article 218 of the Lisbon Treaty states the procedures for negotiating and concluding European Union agreements with third countries or international organizations.⁶⁴ It describes how the Council can open negotiations, adopt negotiating directives and authorize the signing of agreements. It also details the agreements that require unanimity, including association agreements.

In the eyes of the European Union – divided and paralyzed as it is today – Kosovo is neither a 'third country' nor an 'international organization'. A unanimous vote of all 27-member states in favor of a Stabilization and Association Agreement with Kosovo is inconceivable today. A 'European perspective' without a credible prospect of a Stabilization and Association Agreement, however, is a utopian dream, as it is stated on the Commission's website, where one can read,

'The stabilization and association agreement constitutes the framework of relations between the European Union and the Western Balkan countries. ... In the context of accession to the European Union, the agreement serves as the basis for implementation of the accession process.'⁶⁵

When presenting the new Enlargement Package in November last year, Stefan Fühle emphasized the importance of 'credibility' in the enlargement process. In his speech, he reminded his audience that

'for the candidate and potential candidate countries, credibility is about their **tangible European perspective**. We have to provide them with a framework in which they can achieve real change, real reform and real results'.⁶⁶

63 COM(2005) 156, Commission Communication 'A European Future for Kosovo', October 2005, http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=505DC0156

64 <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-the-functioning-of-the-european-union-and-comments/part-5-external-action-by-the-union/title-5-international-agreement/506-article-218.html>

65 http://ec.europa.eu/enlargement/glossary/terms/saa_en.htm

66 Stefan Fühle, European Commissioner for Enlargement and Neighbourhood Policy,

Kosovo certainly needs all three: real change, real reform and real results. Europe on the other hand needs credibility above all. It is particularly important given the EU's new role as a mediator in the dialogue between Kosovo and Serbia.

For the dialogue to deliver on its stated objective to 'achieve progress on the path to the European Union', the absence of an agreed position on Kosovo must be addressed heads-on. The hope that the EU can engage substantially with Kosovo without a unified position on recognition has been shattered. An EU-internal dialogue between recognizers and non-recognizers is as important for the region's future as direct talks between Prishtina and Belgrade.

The prevailing paralysis and Europe's disunity makes the gap between Kosovo and the other countries in the region grow wider. Kosovo without a credible European accession process is a ticking bomb in a volatile region. The choice for Europe is simple: integration or stagnation.

Aiming High: A European Vision for the Dialogue between Kosovo and Serbia

**Kosovo Foundation for Open Society
and
Foreign Policy Club**

**March 2011
Prishtina, Kosovo**

BACKGROUND

In the summer of 2010, in an effort to encourage political debate about Kosovo's future relations with Serbia, the Kosovo Foundation for Open Society and the Foreign Policy Club started to prepare ideas for a negotiating platform to positively transform the relationship between the two countries. The platform's key recommendation was to anchor the process of normalization of relations between Kosovo and Serbia to the respective European integration process for both countries.

On 9 September 2010, the EU assumed responsibility for finding a lasting solution to the decades-old deadlock in Kosovo-Serbian relations. The UN General Assembly Resolution calling for dialogue between Kosovo and Serbia marked an important step in taking responsibility for the Kosovo problem away from the UN to where it belongs: Europe. In fact, the Resolution itself commits the EU to 'achieve progress on the path to the European Union'. The relevant passage of the Resolution welcomes

'the readiness of the European Union to facilitate a process of dialogue between the parties; the process of dialogue in itself would be a factor for peace, security and stability in the region, and that dialogue would be to promote cooperation, achieve progress on the path to the European Union and improve the lives of the people.'⁶⁷

Enlargement: a win-win situation

The promise of eventual EU membership for all the countries of the Western Balkans dates back to the Thessaloniki Summit in June 2003. It was back then that the EU confirmed its

'unequivocal support to the European perspective of the Western Balkan countries. **The future of the Balkans is within the European Union.** ... Preparation for integration into European structures and ultimate membership into the European Union, through adoption of European standards, is now the big challenge ahead. ... The speed of movement ahead lies in the hands of the countries of the region.'⁶⁸

Looking back, there has been substantive progress in bringing the countries of the Western Balkans closer to Europe. In the years since 2003, two countries (Montenegro and Kosovo) declared independence, four more countries have signed Stabilization and Association Agreements with the EU (Montenegro, Albania, Serbia and Bosnia Herzegovina), five countries have formally applied for membership and three have obtained candidate status (Croatia, Macedonia and Montenegro). Citizens from all the countries of the region, except Kosovo, now also enjoy visa free travel to Schengen countries.

What enlargement skeptics often fail to see is how the enlargement process is a win-

67 Resolution adopted by the General Assembly A/RES/64/298, on 9 September 2010

68 Thessaloniki Declaration, June 2003

win situation for all sides – the countries of the region reform their own public administrations and by adopting EU norms, open their markets and improve living standards, while the EU extends its area of prosperity, stability and European-style democracy.

There is also a strong economic rationale in favor of enlargement. On the one hand, the 'Integration Dividend' implies that as countries advance on their accession path, security-related spending like budgets currently earmarked for NATO troops, international governance structures or police missions, can be redirected to other, more sustainable, purposes such as rural development or social programs. On the other hand, the 'Integration Dividend' results in a generally improved economic situation in the countries themselves, manifested in increased FDI, EU and inter-regional trade as well as poverty reduction.

By helping the countries introduce European standards in all areas covered by EU treaties, the enlargement process helps the EU to attain its own objectives. For this virtuous reform process to work, however, enlargement needs to be credible for all involved.

'Aspirant countries and their citizens need a clear perspective of accession, once conditions are met, and should see tangible benefits along the way'⁶⁹.

This is not the case when it comes to Kosovo. At present, Kosovo's European perspective exists only on paper.

Right after Kosovo's declaration of independence in 2008, the member states confirmed the 'EU's readiness to assist Kosovo's political and economic development through a clear European perspective, in line with the EU perspective of the region.'

In the much-awaited 2009 'Study' titled 'Kosovo- Fulfilling its European Perspective', the EU put forth two important promises: 'a structured approach' leading to eventual visa liberalization for Kosovo citizens and conclusion of a trade agreement. Offering these two 'sweeteners' was meant to buy time and demonstrate good will short of offering any other concrete steps.

But the worst-case scenario has now become true. Kosovo is more isolated today than ever: Kosovo citizens are the only ones in the region subject to costly and humiliating visa restrictions. Kosovo is the only country that has neither an SAA, a Trade Agreement nor at the very least an extension of the preferential trade regime with the EU.

69 Enlargement Strategy and Main Challenges 2010-2011, Communication from the European Commission to the European Parliament and the Council

Status Quo in Kosovo's EU relations in regional comparison

	CR.	MAC.	MN.	ALB.	SRB.	BIH	KOS.
EU membership							
Negotiations	2005						
Candidate Status	2004	2005	2010				
Application for EU membership	2003	2004	2008	2010	2009		
SAA signed	2001	2001	2007	2006	2008	2008	
Visa-free travel	2001	2009	2009	2010	2009	2010	

Starting point for the Dialogue

The starting position of the two dialogue partners is far from balanced. Serbia enters the dialogue from a position of strength compared to Kosovo's weak bargaining position. In fact, Kosovo's negotiating position is greatly disadvantaged; there are two key challenges: first, Kosovo's internal weakness:

- a) fragmented sovereignty due to lack of control over its territory in the north
- b) weak international legitimacy (recognitions, UN membership)
- c) fragile domestic institutions and a weak economy

Kosovo's second disadvantage relates to the character of relations between Kosovo and the European Union. While Serbia is a contractual partner of the EU, Kosovo is subject to a "mild" EU-protectorate (with both ICR/EUSR and EULEX retaining executive powers), a consequence of the non-recognition by 5 member states and the terms imposed on Kosovo's independence. **This makes Kosovo an unequal party and the EU an unequal mediator.**

A third challenge concerns the **legitimacy of the EU** as a mediator between Belgrade and Prishtina. The EU is not the impartial 'player' it likes to project. 22 member states have not only recognized; they have actively designed Kosovo's post-independence

settlement and contributed to Kosovo's declaration of independence, while some even defended it in front of the ICJ. It is in their strategic self-interest to ensure that an independent Kosovo is functional, economically viable and regionally integrated.

Nobody should wish for a repetition of the 'Cyprus scenario' - whereby Serbia would join the EU ahead of Kosovo, and hereby obtain all the tools of the accession process to condition Kosovo's European future or prevent it all together.

At the same, even without Serbia, Kosovo's European future is unthinkable unless a formula for Kosovo's name and contractual relations with the EU (short of recognition by all 27-member states) is found and Kosovo can pursue its own status-neutral accession process.

Agreeing on an acceptable name for Kosovo as a precondition for contractual relations and a status-neutral accession process is really only a first, small, but crucial step. There are another 70 or more veto points where unanimity is required among EU member states for a country to become a full member of the EU. The ball is clearly in the EU's court (since this is not subject to a dialogue between Serbia and Kosovo).

People matter, not only states

The 2003 Accession Treaty signed in Athens with the ten aspiring new member states included a sentence worth remembering:

'accession is a new contract between our peoples and not merely a treaty between our states'⁷⁰

With this in mind, as a key priority of the dialogue, the EU is called upon to come up with a creative yet sustainable solution for a status-neutral accession process for Kosovo. This implies finding urgently a solution to Kosovo's 'name question' as part of the dialogue process between Prishtina and Brussels.

Taking account of the realities on the ground, a workable compromise could look similar to wording used in the last Council Conclusions from December 2010:

Kosovo - 'All references to Kosovo are without prejudice to member states' positions on status.'⁷¹

70 Treaty of Accession to the European Union 2003, AA2003/TR/X 2

71 See footnote 1, at Council Conclusions On Enlargement/Stabilization And Association Process, 3060th GENERAL AFFAIRS Council meeting Brussels, 14 December 2010

Overview of evolution of Kosovo's name in official EU documents

2007	Progress Report (title page)	Kosovo Under UNSC 1244
2008	Enlargement Strategy	Kosovo (under UNSC 1244/99)
2009	Progress Report (title page)	Kosovo Under UNSC 1244/99
2009	Communication from the European Commission 'Kosovo* - Fulfilling its European Perspective'	Kosovo* (*under UNSC 1244/1999)
2010	Progress Report	Kosovo(*under UNSC 1244/1999)
2010	Enlargement Strategy 2010-11	Kosovo (under UNSC 1244/1999)
2010	Council Conclusions on Enlargement/SAA, December 2010	Kosovo (under UNSC 1244/99). The references to Kosovo in these conclusions are without prejudice to Member States' positions on status.

Objectives

Resolving the decades-old deadlock between Belgrade and Prishtina and hereby ending a cycle of conflicts, war, ethnic cleansing and economic decline is a strategic interest of the EU. All the more so at the time when the newly created External Action Service is craving for a success to prove that it is able to deliver an effective EU foreign policy, at the very least in its own backyard.

This dialogue may well be the last moment to try and find a lasting solution. Crises and instability elsewhere may soon distract the EU and strengthen those who already want to give up on the idea of integrating the entire Western Balkans into the European Union. Policymakers in Brussels and Washington may also grow tired of the Kosovo-Serbian stand-off.

To succeed, the EU must take account of its own limitations: **the EU's only leverage is the 'carrot' of EU membership.** As we have learned the hard way, nothing short of EU membership will persuade politicians in Belgrade to make meaningful concessions. In the short term this translates to a positive avis, candidate status and the start of accession negotiations.

In Brussels everyone is aware that Serbia's participation and cooperation in the dialogue is closely tied to Serbia's European aspirations. In the case of Kosovo, however, European decision makers prefer to treat the dialogue and Kosovo's European future separately. They are reluctant to apply the same incentives and rewards to Kosovo. But opposition parties and the public in Kosovo are already asking: how will the dialogue bring Kosovo closer to Europe?

The EU's credibility as mediator rests on its ability to offer Kosovo concrete steps on the accession path and remove obstacles for international recognitions. In the short term: contractual relations with the EU, visa free travel and a status neutral accession process. In the medium-term, clearing the path for UN membership.

The EU has a vital interest in Serbia's and Kosovo's stability – and the countries themselves have a vital interest in the respective EU accession process. A truly 'Europeanized' Serbia is Kosovo's best insurance against violent Serbian nationalism and a stable, economically prosperous and 'European' Kosovo is the best neighbor that Serbia and the EU can dream of.

Any hard-won compromise and concession will need broad based support in Serbia and Kosovo. Both governments are embattled and weak. The EU will need to do more than just coax weak leaders in Prishtina and Belgrade – it will need to 'sell' the dialogue's outcomes to skeptical publics. **Real concessions will only come forth in return for 'real accession'.**

The dialogue represents an historic opportunity to break the decades-old deadlock between Kosovo and Serbia. It is about realizing the European perspective of the region and saving the EU's face as a global player. **The resolution of various technical problems along the way is not the goal, but a means to a much bigger end: the normalization of relations between the two countries and EU membership for both.**

These objectives imply that the dialogue starting today will not end before the accession of both countries to the EU.

It should neither serve to 'hold up' or delay further recognitions of Kosovo nor should it serve the short-term career goals of politicians or diplomats on either side. It is too important to rush.

Objectives:

- 1) The dialogue is about ending the conflict between Serbia and Kosovo and helping both countries realize their European perspective.
- 2) Any 'compromise' or 'deal' agreed, as part of the dialogue must ultimately help both Serbia and Kosovo to meet the requirements for EU membership.
- 3) The dialogue must also help Kosovo to end its current international isolation. It must therefore focus on finding sustainable solutions for Kosovo to become a member of the UN and affiliated international organizations.
- 4) A commitment by Serbia to eventually recognize Kosovo should be included in the Accession Treaty to be signed between Serbia and the EU. This would imply that on the day of Serbia's accession to the European Union, the relationship between Serbia and Kosovo has reached a point of 'normalization'.
- 5) The dialogue is formally concluded with the signing of a 'Treaty for Good Neighborly Relations' between Kosovo and Serbia.

Starting Points

The government of Kosovo can only enter a dialogue that takes place between equal parties. At present, Prishtina is not an equal party.

It is therefore key that Brussels and Prishtina agree on a roadmap how to create a more balanced relationship between Prishtina and Belgrade vis-à-vis Brussels while enhancing the legitimacy of the EU as 'mediator' in the process.

To gain trust and reduce the striking imbalance in terms of the relationship of both parties with the EU, the following actions are needed:

- 1) First, to reassure the Kosovo public and prevent Kosovo's further isolation, Kosovo must be offered a visa roadmap and clear timetable how to obtain visa free travel for its citizens (of course, Kosovo must deliver on the required reforms, but equally, the EU must offer a clear time horizon for visa liberalization – e.g. summer 2012?)**

This is also in the EU's own strategic interest. The 2008 Declaration on the Western Balkans stated clearly that:

'Promoting people-to-people contacts between the Western Balkans and the EU is of the utmost importance, as it facilitates a better mutual understanding and reconciliation and promotes the principles upon which the EU is founded.'⁷²

⁷² Presidency Conclusions, Brussels European Council 19/20 June 2008, 11018/1/08 REV 1, Annex 'Declaration on the Western Balkans'

The 2010 enlargement strategy confirmed once more how:

'the experience of visa liberalization for the Western Balkans shows how much can be achieved by combining rigorous conditionality with the delivery of specific benefits, linked to progress towards EU membership.'⁷³

Equally, in its 2009 Communication titled 'Kosovo –Fulfilling its European Perspective', the Commission made the following offer:

'The Commission proposes to move forward with a structured approach to bring Kosovo's citizens closer to the EU through a **visa dialogue with the perspective of eventual visa liberalization** when the necessary reforms will have been undertaken. Based on a thorough assessment the Commission proposes to draft a comprehensive strategy to guide Kosovo's efforts to meet the EU's requirements for visa liberalization. This strategy will set benchmarks to measure Kosovo's progress in the context of a visa dialogue and **will be presented to the Council for information.**'⁷⁴

The Commission was tasked to assess Kosovo's progress independently and based on merits, not politics. Unfortunately, promises have been broken, the rules of the game changed (with additional preconditions for the start of a visa dialogue being imposed on Kosovo only) and the visa question has reverted back to the realm of politics.

The Council Conclusions in December 2010 foresee a further 'veto' by individual member states before even the visa dialogue can begin:

'The Council takes note of the Commission's intention to launch a visa liberalization dialogue once all conditions are met and the Commission's intention, before launching such a dialogue, **to share its assessment with the Council on the fulfillment of these conditions.**'⁷⁵

This is problematic. The strength of the visa process has been the fact that it was seen as technical and merit-based.

It has become increasingly difficult to square the EU's fear of visa liberalization for Kosovo citizens (while even Moldova and Ukraine have been offered visa roadmaps) with its mantra of a 'European perspective' for Kosovo. The EU's credibility as a fair player and 'mediator' has also suffered greatly. Sending a strong signal to the government, the opposition, civil society and the public at large that Kosovars are also welcome to visit Europe as tourists, students or guests will go a long way to reassure Kosovo of the EU's good intentions.

73 Enlargement Strategy and Main Challenges 2010-2011, Communication from the European Commission to the European Parliament and the Council

74 'Kosovo - Fulfilling its European Perspective', Communication from the Commission to the European Parliament and the Council (COM 2009, 5343)

75 European Council Conclusion on enlargement/stabilization and association process, December 2010

2) Second, the EU needs to put forth a concrete proposal how to secure a contractual relationship between Kosovo and the EU within six months of starting the dialogue- hereby finding a sustainable solution for naming Kosovo and designing a status-neutral accession process.

As part of the EU's 'catch-up strategy', Prishtina and Brussels need to define a road-map and find agreement on the basic terms and steps to help Kosovo catch up on the EU integration path.

The Kosovo Study of 2009 already pointed out the importance to ensure that

'Kosovo keeps pace with developments in the region to promote economic growth and foster political stability. This is in the interest of Kosovo as well as the Western Balkans and the European Union as a whole.⁷⁶

The only way forward to 'balance' the uneven relationship between Brussels, Belgrade and Prishtina is to offer Kosovo a contractual relationship and to develop a 'status-neutral accession process'. It is unlikely that Kosovo will be recognized by all 5 non-recognizers in the medium-term. But Kosovo's European future should not remain hostage to domestic politics in five member states. Too much is at stake for the remaining 22 member states to allow this to happen.

The 'seed' for a status neutral accession process has already been planted in the 2009 Kosovo Study:

'The absence of an agreed position on Kosovo's status does not prevent the EU from substantial engagement with Kosovo. the approach of diversity on recognition, but unity in engagement provides a constructive basis for progress. In line with Council conclusions, the EU can agree on measures to support Kosovo's political and economic development without prejudice to EU Member States' positions.'⁷⁷

Negotiators in Prishtina must therefore make it a precondition that within six months of starting the dialogue, Prishtina signs its first agreement with the EU. This could be Kosovo's accession to a Community Framework Agreement, conclusion of a Trade agreement or any other contractual agreement offered by the EU. Applying the same status-neutral formula, Kosovo would thus be in a position to negotiate and sign an SAA within 2-3 years - the 'main form of contractual relationship between the EU and each Western Balkan country'⁷⁸ . This would mark a milestone on Kosovo's path to Europe and change regional dynamics for good.

Failure to help Kosovo catch up would greatly undermine the EU's credibility as a foreign policy player. The 22 states that have recognized Kosovo have a stake in making sure that the EU's political and financial investments result in a 'success story' - a

76 Kosovo - Fulfilling its European Perspective', Communication from the Commission to the European Parliament and the Council (COM 2009, 5343)

77 Kosovo - Fulfilling its European Perspective', Communication from the Commission to the European Parliament and the Council (COM 2009, 5343)

78 Commission Staff Working Paper, EU Regionally relevant activities in the Western Balkans, 2008/09

European Kosovo. A successful and timely completion of Kosovo's accession process would also ensure the success of EULEX – after all, the largest-ever rule of law mission in post-Lisbon Europe. What is at stake is the EU's capability to project stability, judicial reform and the rule of law abroad.

Finding consensus on Kosovo's European future (e.g. a status-neutral accession process) should be relatively easy – including among the 5 non-recognizers. By default, the 5 non-recognizers – provided they support Serbia's EU integration – cannot afford to allow Kosovo to fall behind even further. According to their logic, as long as Kosovo remains part of Serbia in their eyes, any advance by Serbia on the EU path must result in progress in Kosovo as well.

At the very least (in non-recognition logic) – **a twin-track approach (similar to the twin-track process for the SAA negotiations with Serbia and Montenegro)** should be in place to keep up some 'semblance' of the 'one-state notion' supported by the non-recognizers. In fact, the 5 non-recognizers should be the ones pushing for an SAA with Kosovo, visa free travel and a **parallel screening exercise** in Serbia and Kosovo.

Preconditions for the Dialogue to begin:

1. First, to reassure the Kosovo public and prevent Kosovo's further isolation, Kosovo must be offered a visa roadmap and clear timetable how to obtain visa free travel for its citizens (of course, Kosovo must deliver on the required reforms, but equally, the EU must offer a clear time horizon for visa liberalization)
2. Second, the EU needs to put forth a concrete proposal how to secure a contractual relationship between Kosovo and the EU within six months of starting the dialogue– hereby finding a sustainable solution for Kosovo's name and designing a status-neutral accession process.

Multi-phased approach:

Phase I: preparatory phase

- Agreement on objective (s)
- Agreement on intervention tools & monitoring mechanisms to link dialogue with the respective EU accession process
- Agreement on 'starting point' (excluding certain topics, agreement on 'bottom lines', defining the reality on the eve of 17 February 2008 – with functioning courts and customs in the North - as a starting point)
- Agreement on an initial agenda (6-12 months) identifying priority topics and matters of technical and practical concern to each country (e.g. a list of agenda items like missing persons, civilian air traffic, energy transmission, recognition of license plates, etc)

Phase II: negotiations & resolution of technical and practical matters

Phase II is when the dialogue begins to address so-called 'technical problems' and where the EU assumes its role as mediator and facilitator of practical solutions.

The 'yard stick' to test the viability of any solution proposed by either party must be whether it is 'EU-compatible' in other words, whether it helps or harms the country's ability to meet requirements of the EU acquis and membership (this must also serve as a safeguard against 'creative' yet unsustainable solutions for the North).

This phase resembles 'classical negotiations' with expert working groups identifying practical solutions for technical problems affecting the lives of citizens, businesses and day-to-day relations between the two countries.

Priorities & concrete outcomes:

'Europeanization': Right at the outset of Phase II – **the EU launches the visa dialogue and Kosovo concludes a contractual relationship with the EU.** This is followed by substantive progress and assistance to meet the road map requirements for visa liberalization as well as progress towards concluding an SAA.

Also during Phase II – **an EU-compatible solution must be found for Kosovo's legal succession to UNMIK as signatory to treaties and EU-inspired regional initiatives** (CEFTA, Energy Community Treaty, European Common Aviation Area et al) and hereby removing obstacles to Kosovo's participation in regional initiatives (e.g. Regional Cooperation Council, Regional School of Public Administration).

Phase III: Consolidation – Integration - Internationalization

Dialogue continues as both countries continue on their accession path.

A twin-track approach has been put in place to make sure the gap between Serbia and Kosovo does not widen (the obvious precedent is the twin-track approach put in place for the SAA negotiations with Serbia and Montenegro). The 'catch-up' strategy agreed between Brussels and Prishtina is implemented to help Kosovo 'close the gap with Serbia and other neighboring countries (see graph below).

Priorities & concrete outcomes:

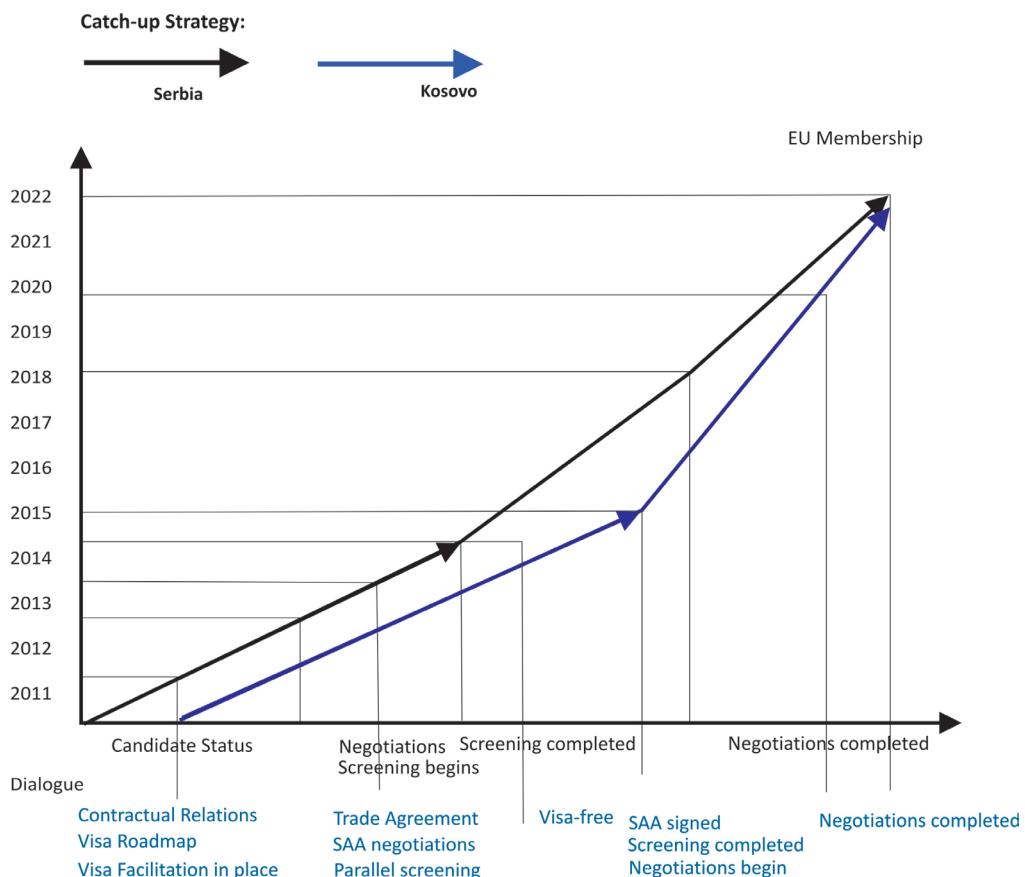
Serbia obtains candidate status, followed by the 'screening process'. As part of the EU's twin-track approach, a parallel 'screening process' starts with Kosovo (for the 5 non-recognizers, this is only the 'natural' way of pretending Kosovo is still part of Serbia; for the 22 non-recognizers this is part of the 'catch-up' strategy to help Kosovo close the gap).

Kosovo obtains visa-free travel and concludes a status-neutral SAA.

Once the relationship between Kosovo and Serbia has become balanced (e.g. both have contractual relations with the EU and both have a concrete EU perspective) and the international presence in Kosovo treats Kosovo as a fully sovereign country (no more executive functions and other limitations on Kosovo's sovereignty), negotiations on a 'Treaty for Good Neighborly Relations' (e.g. Peace/Friendship Treaty) can begin.

The signing of such a treaty – and/or signing of accession treaties with relevant passages for both Kosovo and Serbia – will eventually mark the formal end of the dialogue.

In parallel, a solution must be found for Serbia to unblock the path for Kosovo to join the United Nations and other UN- affiliated institutions.



Platform for the process of nor- malization of relations between Kosovo – EU – Serbia

**Kosovo Foundation for Open Society
and
Foreign Policy Club**

**October 2010
Prishtina, Kosovo**

I. Context

Two years ago Serbia asked the General Assembly of the UN to request an advisory opinion from the International Court of Justice (ICJ) on the question: Is the unilateral declaration of independence by the provisional institutions of self-government of Kosovo in accordance with international law?'

Belgrade's referral of the question to Western governments indicated that Serbia wanted to move the Kosovo issue from the political to the legal domain – a gesture interpreted as a self-explanatory tactical maneuver to gradually digest Kosovo's independence. It was also accompanied by a well-thought-out Serbian campaign designed to block the recognition of Kosovo's independence by many non-aligned countries (traditionally nervous about anything antagonistic in the UN), and indeed of five EU Member States, who would not recognize the independence despite it essentially being the product of an EU-mediated process under Marti Ahtisaari. The leading ideologue of the five non-recognizing EU countries, Spain, argued that the independence had been proclaimed in contravention to international law, and that therefore it would have to wait for the opinion of the ICJ.

Two years later, the ICJ delivered a very explicit opinion that Kosovo's declaration of independence did not contravene international law. And the first practical consequence on the ground of this verdict was the understanding that the Kosovo question had never actually moved to the legal terrain, but had always remained in the political sphere. Serbia, who had submitted the question, immediately refused to recognize the response by saying that its question had not been answered and then submitted another draft resolution to the General Assembly. The doubting countries of the non-aligned movement had yet another reason to wait until a further decision was taken. And none of the five non-recognizing EU states changed their minds, most notably Spain, despite a clear opinion from the ICJ. The second practical consequence of the ICJ opinion has been a small battle – fought by Serbia on the one side and the EU and US on the other – over how to further interpret the opinion in the international community; that is, how to find an appropriate context for the future Serbia-Kosovo dispute. Serbia opted for a draft resolution submitted to the General Assembly of the UN with, basically, the request of new negotiations on the status of Kosovo (dismissing the legality aspect of the opinion). The EU, now conducting foreign policy in the post-Lisbon context, tried to block this attempt. The end result was a common EU-Serbian resolution accepted by the General Assembly of the UN with the lowest common denominator (a call for a facilitated dialogue which 'by itself would be a factor of peace, security and stability in the region').

Probably the most important outcome of all this is the fact that Serbia agreed to move the Kosovo issue from UN forum to EU forum. In what could have been a strategic move, Serbia chose Brussels over New York as the negotiating venue for the future of Kosovo. By deciding that future dialogue on Kosovo be held in Brussels, with EU facilitation, Belgrade may have accepted the European context of the Kosovo question, and further, the political and economic mechanisms within the EU realm.

But things may not have evolved to that stage yet. First of all, the EU is handicapped in playing the role of facilitator by an in-built problem. Five of the 27 member states have differing opinions on the question of Kosovo's independence (one of them, Spain, being an active agitator against it). The lowest common denominator tone ('dialogue is good') of the EU-Serbian resolution voted in the General Assembly reflects not only the strain of reaching a common language with Serbia, but probably even more of reaching a common language within the EU.

With this in-built problem it will be very difficult for the EU to play a role in more than the first phase of dialogue between Kosovo and Serbia, and that is talks on talks. Indeed, the resolution of the General Assembly says that there should be dialogue – the EU has invited Belgrade and Pristina to conduct it in Brussels, but to date no one has been informed what the parties should talk about.

Belgrade, on the other hand, is still relying on two 'non-EU' factors to further dictate the course of events. One is the illegal presence of its authorities in Kosovo itself, in the municipalities with a higher ethnic Serb population (from tax administrators to policemen). A 'de facto' partition or 'frozen conflict' situation controlled by Belgrade is incompatible with a dialogue based on EU economic and political incentives. The other 'non-EU' factor is the reliance on Russia and/or strong non-recognizing countries on the international stage. With Caucasus-type 'frozen conflict' behavior and reliance on non-Transatlantic powers, Serbia would be introducing a different code of language into these talks.

And then, there is Kosovo, by definition not ready for this dialogue. If the dialogue is to be between equals, with the EU serving as an honest facilitator, then Pristina is not qualified for such a process. In not being recognized by all EU Member States, Kosovo is not an equal party in this dialogue and it cannot perceive the EU as an entirely honest broker. Serbia and Kosovo both have entirely different natures of relationships with the EU: Serbia is a contractual partner of the EU, Kosovo is the subject of a 'soft' EU protectorate.

Despite the muddled start, this may be a road towards the normalization of relations between Kosovo and Serbia. Indeed, it may be the only road if it is understood that both Kosovo and Serbia have futures as member states of the European Union. And it may take quite some time, probably the whole decade.

And it may not start at all now. The stumbling block for the first question is: what to talk about? And the second one: how to talk if we are not equal? Or even the third: how to talk now when elections are coming? Alongside these, any number of other stumbling blocks could emerge.

The question though is whether Pristina and Belgrade see this as their palpable European futures. And indeed, does Brussels have clarity on the palpable European future of Kosovo and Serbia as member states?

Time will soon prove the next test. Now that the President of Kosovo has resigned after being caught in breach of the Constitution (a positive indicator on the rule of law checklist), Kosovo is undergoing the process of deciding when it will hold extraordinary elections. And Serbia will have its own elections, too, in the spring of 2012. For both parties, time has to be found in which talks can feasibly be conducted without interference from domestic politics. That is the timeframe for developing a European agenda for the normalization of relations between Kosovo and Serbia, failing which they will have to wait for the next cycle of opportunities.

II. Guiding Concept

Kosovo will be entering the negotiation process with Serbia with four fundamental drawbacks:

- a) Limited sovereignty (lack of control in northern territory),
- b) Limited international legitimacy (the number of recognitions, lack of membership in international organizations, etc.),
- c) Fragile in institutional and economic functioning,
- d) Lack of clarity about relations between the state and international presence.

In this regard, the negotiation process should tackle the abovementioned drawbacks; therefore the process should assist in:

- a) Extending sovereignty throughout the entire territory of the country.
- b) Attaining international legitimacy.
- c) Strengthening the institutional and economic functioning.
- d) Fully clarify the relation between the state and international presence.

The International Court of Justice (ICJ) advising opinion should serve as legal support to the position of Kosovo. ICJ has concluded with two assessments that could serve as additional support:

- a) The declaration of the independence is an act which is a result of certain events, including a previous negotiation process,
- b) The declaration of independence is within the context of the 1244 Resolution.

The first assessment - that the declaration of independence is a result of certain events, including a negotiation process - serves to further strengthen the position that negotiations cannot start over, but should rather continue from where they ended. The latter indicates that the negotiations should not treat the status of Kosovo but the status of the relationship between Kosovo and Serbia.

The assessment that the declaration of independence is within the context of the 1244 Resolution, among others, serves two main purposes:

- To conclude that the 1244 Resolution has been executed, thus it is coming to its natural end (without the need for another resolution, beside one that would accept Kosovo's request to join the UN),
- To reassure the position stated by the 1244 Resolution on Kosovo's territorial integrity – put differently, the illegality of the presence of Serbia's institutions in Kosovo.

Kosovo should address negotiations with Serbia as a long-term framework for normalization. Such a framework contains two processes: one, regarding the relationship with Serbia, and the other regarding the relationship with the EU.

The basic assumption of the framework is that Serbia would recognize Kosovo only once the EU membership is near. In that case, Kosovo's strategic interest would be to treat normalization of the relationship with Serbia as the key indicator of Serbia's advancement towards the EU.

Normalization of relationship with Serbia would suggest two essential phases:

- a) Mutual recognition of states within the Prishtina-Belgrade-Brussels triangle, recognition between Kosovo and Serbia, and full EU membership for both countries (last phase),
- b) Establishment of functional relationship between two states, reconciliation and mutual respect - but without any obligation towards recognition (interim phase).

Normalization of relationship with the EU means:

- a) Attaining the status of a membership candidate,
- b) Status of a contractual party for an interim phase.

These processes are inseparable - there cannot be normalization of relationship with Serbia without the normalization of relationship with EU, and there cannot be normalization of relationship with EU without the normalization of relationship with Serbia.

In such a triangle, Kosovo's strategic interests include:

- a) The platform of relationship normalization with Serbia should be possible only with the status of a contractual party (for the initial phase) and the status of the candidate in an interim phase.
- b) The platform of relationship normalization with the EU should be closely connected to the deployment of a unique legal system in Kosovo and an unhindered regional communication system with its neighbors,
- c) Closely timed EU membership of Serbia and Kosovo - put differently, reducing the strategic distance that already exists between Kosovo and Serbia to the issue of accession. Serbia as an EU member could condition or even make membership impossible for Kosovo.

The issues between Kosovo and Serbia are not technical, but rather political issues. The EU's announced stance that initially Kosovo and Serbia should attempt to solve technical (practical) issues is in fact the phase when the political framework will be established for the interim phases - cohabitation phase between Kosovo and Serbia without mutual recognition. Such a phase, constructed without the principles of Kosovo, could serve as an advancement platform for Serbia toward EU while limiting similar advantages to Kosovo.

Kosovo should build its own principles for the interim phase. Among others, it should include the following objectives:

- a) At the beginning of this phase, external to Kosovo – Serbia negotiations, EULEX should establish a unique and valid border and customs system throughout Kosovo.
- b) An interim process be defined for the integration of the North (suppression of all institutions within a determined timeframe beside those elected within the Kosovo legal system)
- c) The interim phase should clearly define that although no mutual recognition between states exists, a mutual recognition of institutions elected within the legal systems of each country should be established (this means recognition of the legal source of personal documents, establishing interconnection offices in both capitals).

The complete dynamic of the interim phase should be described through guiding principles with which both parties would enter the negotiation process.

III. The North of Kosovo

"The North of Kosovo," increasingly defined as a frozen conflict, remains the hardest challenge of the process that should be treated along two paths:

- a) Kosovo, the EU and international presence should define the required emergency measures for securing Kosovo's territorial integrity as defined by already established obligations,
- b) Kosovo, Serbia and the EU should define the modalities for the integration of the north within the interim phase of relationship normalization.

During the preparatory period of the negotiations, together with the EU, emergency measures for establishing a unique legal system throughout the territory of Kosovo should be defined (and their execution timeframe). This includes:

- establishing border and customs control on gates 1 and 31,
- functioning of the court in the northern Mitrovica,
- enforcement of law and order through measures which would result in disintegration of illegal security structures, and
- Police in the north.

The interim phase for the north would serve for the local population as a period of adaptation to the constitutional and legal system of Kosovo. In this line, Kosovo and the EU should define modalities, steps and the timeframe for gaining control over institutions, which continue to subordinate to Belgrade.

For the interim phase, Kosovo should focus on:

- full establishment of law and order and the functioning of police and courts,
- full suppression of all institutions except those within the constitutional system of Kosovo,
- implementation of decentralization process in northern Mitrovica and establishing proper official communication with southern part of Mitrovica,
- organization of local elections for four northern municipalities and electing local, legitimate governments – thus, extinguishing any form of interim administration,
- extending control of Kosovo Tax Administration to four northern municipalities,
- reestablishment of public enterprise services in the north
- encouragement of investment and economic development of the north.

As far as the interim phase is concerned, Kosovo and the EU should keep in mind Kosovo's EU integration aspirations. Thus, choices made within the interim phase should be in line with developing Kosovo's integrating capacities.

Kosovo and the EU, in a long term aspect for the north, must discuss particular measures to ensure an economic prosperity for this part of Kosovo. A donor's conference may be required to support and incite this process.

IV. Anchoring the Kosovo-Serbian dialogue in the European integration process

Shifting the normalization process between Kosovo and Serbia from the UN to EU is a commendable success. The decision that the future dialogue will be held in Brussels with EU mediation has led Belgrade to accept the European context for Kosovo, and the political and economical mechanisms with the EU.

In this line of work, the unique possibility of linking the process of relationship normalization between Kosovo and Serbia with the accession of both countries into the EU should be exploited. The likelihood for solving enduring issues between both countries is greater if progress made during the progress is placed also within the framework of EU integration.

In order for this dialogue to be successful, the EU should be able to use the "carrot of enlargement." Today, Kosovo is an unequal party due to the lack of contractual capacity since five EU member states have not recognized Kosovo's status. The EU is unable to offer a real European perspective for Kosovo, and without this element the process is bound to fail. As such, the EU should either overcome its internal division by making the five states that have not recognized Kosovo to change their opinion, or draft a strategy for Kosovo's accession with no preconditions on recognition.

The dialogue should push forward the EU membership process for both countries. Every solution and proposal during the interim phase should be assessed in the spirit of "accordance" with the EU and conditions for accession. The question should always be placed as such: does this help or hinder the country's ability to fulfill the conditions for EU accession?

The EU should recognize Kosovo's need to become equal to Serbia and other countries in the region on the road to integration. It should also be very clear that "fast forwarding" Serbia's accession on the expense of Kosovo is a "lose-lose" strategy. A politically isolated Kosovo, with economic and social problems still unsolved, unsecure borders and no rule of law in the north would become a stumbling stone to Serbia and the entire region in realizing the European perspective.

Anchorage of the dialogue and "relationship normalization" between Belgrade and Prishtina requires from the EU to install other "tools" (e.g. monitoring, assessment

tools and reporting means) and also applicable “benchmarks” particularly for Kosovo and Serbia in this integration process.

Possible “tools,” “benchmarks” and “monitoring mechanisms” that the EU could consider include:

- “additional chapters” in the Progress Report for Kosovo and Serbia (or a special separate report based on the “roadmap” of the dialogue)
- “additional” chapters on the process of negotiations (and/or inclusion of “initial standards” or “concluding standards” for individual chapters during the process of negotiations)
- “progress” to be assessed regularly (e.g. every year) by the European Commission (mandated by the Commission, but independent from day to day quarrels and domestic problems of individual states)
- Involvement of the European Parliament in the process of assessment/monitoring
- To prevent the widening of the gap between Kosovo and Serbia- undertaking creative steps to help Kosovo catch up with other EU candidates including a common assessment for Kosovo and Serbia in 2011
- Defining a timeframe for “intervention moments” where the progress on the EU accession process would depend on the progress made on the “normalization agenda” (e.g. Serbia will not receive the status of a candidate unless it accepts the Kosovo customs stamp).

