



Fondacioni i Kosovës për Shoqëri të Hapur
Kosovska Fondacija za Otvoreno Društvo
Kosovo Foundation for Open Society



Klubi për
Politikë të
Jashtme

Aiming High:

A European Vision for the Dialogue Between Kosovo and Serbia

Kosovo Foundation for Open Society
and
Foreign Policy Club

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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.'*¹

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.'*²

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 Stabilisation 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-win

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

² Thessaloniki Declaration, June 2003

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 favour 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 programmes. 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.’³

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.

Status Quo in Kosovo’s EU relations in regional comparison

	CR	MAC	MN	ALB	SRB	BIH	KOS

³ Enlargement Strategy and Main Challenges 2010-2011, Communication from the European Commission to the European Parliament and the Council

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'*⁴

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:

Kosovo⁵ - 'All references to Kosovo are without prejudice to member states' positions on status.'

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 UNSCR 1244/99. The references to Kosovo in these conclusions

⁴ Treaty of Accession to the European Union 2003, AA2003/TR/X 2

⁵ See footnote 1, at Council Conclusions On Enlargement/Stabilisation And Association Process, 3060th GENERAL AFFAIRS Council meeting Brussels, 14 December 2010

		are without prejudice to Member States' positions on status.
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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 'Europeanised' Serbia is Kosovo's best insurance against violent Serbian nationalism and a stable, economically prosperous and 'European' Kosovo is the best neighbour 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 'normalisation'.
- 5) The dialogue is formally concluded with the signing of a 'Treaty for Good Neighbourly 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.⁶

The 2010 enlargement strategy confirmed once more how:

the experience of visa liberalisation 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.⁷

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 liberalisation** 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 liberalisation. 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.**⁸*

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:

⁶ Presidency Conclusions, Brussels European Council 19/20 June 2008, 11018/1/08 REV 1, Annex 'Declaration on the Western Balkans'

⁷ Enlargement Strategy and Main Challenges 2010-2011, Communication from the European Commission to the European Parliament and the Council

⁸ 'Kosovo - Fulfilling its European Perspective', Communication from the Commission to the European Parliament and the Council (COM 2009, 5343)

*'The Council takes note of the Commission's intention to launch a visa liberalisation 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.'*⁹

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.

- 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 roadmap 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.'*¹⁰

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-recognisers 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:

⁹ European Council Conclusion on enlargement/stabilization and association process, December 2010

¹⁰ Kosovo - Fulfilling its European Perspective', Communication from the Commission to the European Parliament and the Council (COM 2009, 5343)

*'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 on status.'*¹¹

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*'¹². 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 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-recognisers. By default, the 5 non-recognisers – 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-recognisers. In fact, the 5 non-recognisers 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:

¹¹ Kosovo - Fulfilling its European Perspective', Communication from the Commission to the European Parliament and the Council (COM 2009, 5343)

¹² Commission Staff Working Paper, EU Regionally relevant activities in the Western Balkans, 2008/09

- 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:

'Europeanisation': 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 - Internationalisation

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 neighbouring 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-recognisers, this is only the 'natural' way of pretending Kosovo is still part of Serbia; for the 22 non-recognisers 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 Neighbourly 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.

Catch-up Strategy:

