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**Kosovo's Semi-Sovereign Status and its Effects on EU Accession
for the Western Balkans**

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Kosovo's declaration of independence, on 17 February 2008, and its subsequent recognition by 51 out of 192 UN member states, has created a formally sovereign, but internationally supervised state. The new legal status arrangement is based on the "Comprehensive Proposal for Kosovo Status Settlement" presented by UNSG special representative Martti Ahtissari. It grants independence to Albanians, while safeguarding Serbian interests through decentralization, community rights, and protection of religious sites.¹ The main problem however is that the plan was strictly rejected by Serbia and that it did not obtain Security Council approval. Therefore, the international community remains split over whether Kosovo's unilaterally declared independence violates international law and whether or not it constitutes a sui generis case or sets a precedent. Recent events in Georgia where Russia pointed to the former Serbian province when it recognized the breakaway regions of Abkhazia and South Ossetia have reinforced the latter view. The UN General Assembly meanwhile backed Serbia's request for seeking an advisory opinion from the International Court of Justice (ICJ) on this matter.

The absence of any new UNSC Resolution on Kosovo's final status has caused both confusion and serious delays in the implementation of the "Comprehensive Proposal". It has left the country with a plethora of international missions, none of which have a clear mandate and exit strategy. The EU's Kosovo policy is in a deep dilemma between respect for international law on the one hand, and respect for political positions on the other. Therefore, member states have not reached a unified stance on recognition policy. As a result, the deployment of the European rule of law mission (EULEX) has been delayed for months, and details of the envisioned transfer of powers and competencies from UNMIK have not been agreed upon.² Kosovo is proving to be an ambitious and difficult test for EU security and defence policy which will undoubtedly affect its future strategies towards the Western Balkans region as a whole.

This paper addresses four issues: the EU and Kosovo's status; the new state's prospects for EU accession in light of its semi-sovereign status; immediate and long-term consequences in the Western Balkans with a view to the European integration process; and the potential of the EU's enlargement strategy for conflict resolution.

It will be argued that Kosovo's status will not resolve outstanding economic and political uncertainties that underlie instability in and around Kosovo in the short run. While (semi-)

¹ The Comprehensive Proposal for Kosovo Status Settlement, <http://www.unosek.org/unosek/en/statusproposal.html>.

² For details see: International Crisis Group: Kosovo's Fragile Transition, Europe Report No 196 – 25 September 2008.

sovereignty has removed an important formal impediment to EU approximation, the large and powerful international presence tends to distort both institution building and sustainable economic development. Moreover, cooperation and cohesion within the region has become more difficult. Yet, the Western Balkans have a realistic chance to continue positive political and economic development and steady European integration – provided the EU reconsiders its policy towards the region.

I. The European Union and Kosovo's status

Although the EU initially demonstrated resolve to determine Kosovo's final status, it has not found a unified stance on the issue. Spain, Slovakia, Romania, Cyprus and Greece have expressed doubts about legality and fear that recognition would boost separatism in their own countries. They have not recognized the new state and will not consider doing so without a UNSC resolution. They also have voted in favour of involving the ICJ in this matter, on Serbia's request.

A majority of EU member states, however, believes that although conditions for full sovereignty did not exist within Kosovo when Martti Ahtisaari proposed a final settlement, uncertainty constituted a major threat to regional stability and economic recovery. This might have led to new violence in the region. In light of the repeated failure of diplomatic negotiations between Belgrade and Prishtina, unilateral independence, even against the declared will of Serbia and despite legal uncertainties, was seen as the lesser evil. Thus, pushing for final status instead should

- address security concerns and prevent frustration among Kosovo Albanians (that had sparked violence against minority Serbs in spring 2004);
- assist Kosovo institutions in building up a peaceful, multi-ethnic, democratic, functional and fully sovereign state;
- create an environment conducive to economic development and foreign investment as well as conditions for external borrowing; and
- improve conditions for EU accession by Kosovo and the rest of the region.

Following Kosovo's declaration of independence, the European Council concluded on 18 February 2008 that "...member States will decide, in accordance with national practice and international law, on their relations with Kosovo." It also reiterated "the EU's adherence to the principles of the UN Charter and the Helsinki Final Act, inter alia the principles of sovereignty and territorial integrity and all UN Security Council resolutions". It also underlined that "Kosovo constitutes a sui generis case which does not call into question these principles and resolutions."

The new status is defined by Kosovo's constitution, which entered into force on 15 June 2008.³ It enshrines basic human rights, sets out democratic governance and institutions and provides for "a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions." Article 1 proclaims: "The Republic of Kosovo is an independent, sovereign, democratic, unique and indivisible state."

Some confusion arises as regards the question of who is 'the sovereign': the three language versions (English, Albanian, Serbian) differ when it comes to defining the people of Kosovo. The Albanian version states that Kosovo's sovereignty "stems from" and "belongs to" "the people" [populli], a term which carries an ethnic notion in the Albanian language. The Serbian text, instead, uses either the term "citizens" [građani] or the "population" [stanovništvo]. Is Kosovo the state of the (ethnically defined, e.g. Albanian) people, or, rather of all its citizens notwithstanding their ethnic affiliation?

The constitution states that ratified international agreements and legally binding norms of international law have superiority over the laws of the Republic of Kosovo. Furthermore: "The Republic of Kosovo may on the basis of ratified international agreements delegate state powers for specific matters to international organizations" (Article 20).

Article 143 refers to the Comprehensive Proposal for the Kosovo Status Settlement (the Ahtisaari Plan) as the de facto basic law of the new state. "All authorities in the Republic of Kosovo shall abide by all of the Republic of Kosovo's obligations under the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007. They shall take all necessary actions for their implementation." These "shall take precedence over all other legal provisions in Kosovo... If there are inconsistencies between the provisions of this Constitution, laws or other legal acts of the Republic of Kosovo and the provisions of the said Settlement, the latter shall prevail."

³ <http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>. [16 October 2008].

Article 146 empowers the International Civilian Representative (ICR), notwithstanding any provision of this Constitution, with “the mandate and powers set forth under the said Comprehensive Proposal, including the legal capacity and privileges and immunities set forth therein.” More explicitly, Article 147 notes that the ICR should “be the final authority in Kosovo regarding interpretation of the civilian aspects of the said Comprehensive Proposal. No Republic of Kosovo authority shall have jurisdiction to review, diminish or otherwise restrict the mandate, powers and obligations referred to in Article 146 and this Article.” Finally, Article 156, determines, that the Head of the International Military Presence should be the final authority in theatre regarding military matters. Because the constitution does not spell out any procedure to supervise or control the international presence, let alone to end their mandates, it leaves ample room for interpretation.

The EU assumed a prominent role in implementing the settlement by establishing a Police and Rule of Law mission (EULEX) and appointing an EU Special Representative in Kosovo. The EUSR is “double-hatted” and performs at the same time as the International Civilian Representative appointed by an International Steering Group (ISG). The EU is therefore not the principal actor in theatre (the above Council conclusions mention “a” leading role, not “the” leading role in implementation of this settlement). Although the EU does not have the principal supervising authority in Kosovo alone, it will most probably be viewed as the primary institution responsible for any delays or failure that may (and probably will) occur.

The mission in Kosovo is proving to be an ambitious and difficult test for the EU’s credibility. Belgrade and the Serb community in Kosovo consider both EULEX and the ICR illegal and refuse cooperation. UNMIKs “reconfiguration” is underway, but details of the transfer of authority to the EU presence have not have not been agreed upon, although a technical agreement has been signed in mid-August. Overstepping the originally envisioned transition phase of 120 days that ended in June, EULEX has yet to be fully deployed, but it is believed that by December it should reach its full complement of 1,900 international and 1,100 local staff. It will comprise police officers, customs agents, prison guards, judges and prosecutors from EU member states, Norway, Switzerland, Turkey and the United States. To add to the institutional confusion, some EU member states recognize the ICR only as EUSR, not as chief supervisor installed by the International Steering Group that includes non-EU members. As a result, not only are the legality

and legitimacy of the new country in question, but the functionality and credibility of the international presence in Kosovo is undermined as well.

II. Kosovo's Prospects for EU membership

Kosovo's government has made it clear it definitely wants to join the EU, setting 2015 as its accession goal. It goes without saying that unless all member states recognize the new state, the EU will not be able to sign formal agreements with Kosovo or accept its EU membership. Below the level of contractual relations, however, status does not matter too much for "Europeanization."

Kosovo takes part in the so-called Stabilization and Association Process (SAP), the EU's main policy towards the so-called Western Balkans (Albania, Bosnia and Herzegovina, Croatia, Serbia-Montenegro, and Macedonia).⁴ The SAP was created in the wake of the Kosovo war in mid-1999 and aims at assisting countries in the region to move closer to the European Union, including full membership by "introducing European values, principles and standards." These are related to democracy, the rule of law, respect for human rights, protection of minorities and a market economy. The core of the SAP is the conclusion of a Stabilisation and Association Agreement (SAA) which commits the Western Balkan countries to a formal association with the EU over a transition period.

The SAP provides intensive technical assistance and support for improved governance, better functioning institutions, democratisation, protection of human rights, refugee return, economic development and the fight against corruption and organised crime. The EU-Western Balkans Summit in Thessalonica (21 June 2003) explicitly confirmed the "European perspective," of the Balkan countries, introducing new instruments to support this process. Until now, enlargement has followed the regatta-principle: each country's progress towards European integration will depend on complying with the Copenhagen criteria and other political conditionality (co-operation with the ICTY etc.).

Despite its unresolved status, Kosovo, under UNSCR 1244 has been participating in the SAP through the so-called "SAP Tracking Mechanism" (STM), a bureaucratic tool to monitor and promote the conformity of legislation, practices and policies with European standards, in

⁴ Communication to the Council and the European Parliament on the Stabilisation and Association process for countries of South-East Europe [COM(99)235 of 26.5.99].

particular as regards policy dialogue, good governance, the economy, internal markets, innovation and infrastructure. A European Partnership which defines internal reform priorities was adopted on 20 January 2006, followed by an “Action Plan” by Kosovo’s government. This document builds on the ‘Standards for Kosovo’ process that includes functioning democratic institutions, rule of law, economic development, property rights and freedom of movement. So far, Kosovo is the only Western Balkan country that has no contractual relations with the European Union. Further progress depends on the commitment of Kosovo’s institutions to ensure the adoption of European standards.

Against this background, one might argue that Kosovo’s new supervised international status does not matter too much as regards its European perspective, unless the country wishes to establish contractual relations or receive candidate status. Sooner or later, the EU will define a common position and accept Kosovo as a potential candidate. The core question is whether and when Kosovo will be able to meet European conditionality as a prerequisite to establishing contractual relations and becoming a full member in the future.

For obvious reasons, limited sovereignty in itself hampers the Europeanization process. With a large NATO-led international military presence and the continued existence of parallel Serb structures in some parts of the country, the Kosovo institutions do not exercise full control over the territory. This implies that certain European standards cannot be implemented on the entire territory. The frozen conflict over North Mitrovica will represent a major impediment to EU approximation for years to come.

Political criteria require stability of democratic institutions, the rule of law, human rights and respect for and protection of minorities. A major concern for the EU has so far been the lack of progress in the promotion and enforcement of human rights, the dysfunctionality of the judicial system, weak institutions, and a lack of clear political will to fight corruption.⁵ It may be hoped that, under the new status Kosovo will finally make faster progress towards meeting the political criteria which constitute the core of European values and standards. But there is also a risk that due to the above mentioned difficulties implementation of most of the civilian and constitutional provisions will take much longer than expected to have an impact, and that standards of governance may not improve substantially.

⁵ European Commission: Kosovo under UNSCR 1244, 2007 Progress Report, Commission Staff Working Document, Brussels 2007.

Kosovo will also have to improve its capacity to gradually approximate its legislation and policies with those of the European acquis and its administrative capacity. European integration structures within the government are in place now, but they depend heavily on technical assistance from various donors, which reduces sustainability. Weak institutions and lack of ownership still constitute a serious problem.

Membership in the Union requires the existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union. The previous uncertainty over the future political status of Kosovo had affected every area of economic policy. General economic performance has improved since 2006, with an estimated GDP growth of 3% in 2007, but the general situation is still dire. Kosovo has the lowest GDP per capita in the region, and the unemployment rate is around 43%. 15 per cent of the population lives below the poverty line and more than double that amount are considered poor. On top of that, last year alone inflation was 13 per cent. Infrastructure and basic utilities are worn out.⁶ Against this background, economic considerations gave a strong motivation for pushing for independence sooner rather than later. But economists have already warned that status alone will not substantially change the performance of the economy unless more efforts are made to safeguard macroeconomic stability, to consolidate an effective civil service, to improve the regulatory framework, to invest in infrastructure and education, and to enhance regional integration. Furthermore, Kosovo is expected to assume a share of the old Yugoslav debt, so that status will bring new fiscal liabilities.⁷

Nevertheless, as a sovereign country and in a normal political context, Kosovo could quite realistically experience growth rates of 7 to 8% in the medium run, and between 4 and 5% per year in the long run, as in practically all transition economies. There could be large direct foreign investments due to privatization, and due to political normalization and economic transformation, e.g., as high as 10% of GDP in the medium run. And foreign trade could grow faster than GDP even in the long run (e.g., ten years or more), as in all Balkan countries. Last but not least, the entire region would benefit from stability, transition and economic development in Kosovo.⁸

⁶ UNMIK/EU: From Consolidation to Sustainability. Maintaining and Improving Achievements, Kosovo Economic Outlook, October 2007, <http://www.euinkosovo.org/upload/EPO%20Kosovo%20Outlook%202007.doc>.

⁷ Economic Outlook 2007, pp. 21-23.

⁸ Vladimir Gligorov, "Costs and Benefits of Kosovo's Future Status," The Vienna Institute for International Economic Studies, Vienna, November 2007.

The new status has only partially improved conditions for economic development and growth in the above sense. First, partial recognition could deter investment and prevent Kosovo from accepting loans from international institutions. The international financial crisis will add to the problem. Second, semi-sovereign status has not fully eliminated basic political, legal, and security related uncertainties that affect the business and investment climate. All over the world, nonstandard political solutions tend to be a significant drag on the economy. Third, a large international presence has not proven to be supportive of economic development in many post-conflict societies but has led to dangerous systemic distortions such as aid dependency. Bosnia and Herzegovina is just one telling example of that. Fourth, Serbian obstruction to Kosovo's independence causes direct and indirect costs for both countries (higher security costs, decline in investment). These will be higher for Serbia, although its economy is big compared to Kosovo (whose GDP is less than 10% of Serbia's). But Kosovo's investment climate and trade relations will be hurt too, which as a landlocked country heavily depends on its neighbours for market access. "Thus, whatever direct and indirect costs and benefits are to be incurred or gained, those will be relatively small for Serbia and comparatively larger for Kosovo."⁹

Kosovo's GDP is estimated to grow further at an estimated rate of 3,5%, despite a legacy of socially owned enterprise, inadequate skills and education, lack of institutional capacity and insufficient capital investment. But population growth is still high, so that growth rates per capita remain low. Creating employment opportunities and raising the standard of education and skilled labour represent major challenges in making growth and development sustainable.

International aid and foreign remittances therefore will remain vital to Kosovo's economy. The IMF estimates current aid at around 20% of Kosovo's GDP (466 in 2006). Direct contribution to GNDI (GDP plus remittances plus wages of foreign residents) was around 203 million euro in 2006.¹⁰ The European Union is the largest single donor in Kosovo, providing substantial financial assistance (EUR 1.8 billion to date) to build and improve Kosovo's institutions, foster socio-economic development and further advance Kosovo's regional integration. It will allocate more resources to Kosovo on a per capita basis than to any other place in the world over the next three years: for 2007, pre-accession financial assistance amounted to € 68.3 million (for administrative

(<http://www.stabilitypact.org/about/WIIW%20Study%20on%20Costs%20and%20Benefits%20of%20Kosovo's%20Future%20Status.pdf>).

⁹ Ibid, p. 6.

¹⁰ IMF 2007.

capacity building, rule of law, human rights, good governance etc.). CARDS assistance amounts to some € 170 million.¹¹ However, absorption capacity is limited, as has been efficiency of aid (in particular in the electricity sector). Instead, there are serious signs of aid dependency, and the immobilization of local monetary and fiscal policies, trade and prices.¹²

III. Kosovo and its Western Balkans neighbours

The perspective of future membership in the European Union, granted in 2000 and reaffirmed in 2003, has triggered considerable efforts to reform institutions, economies and legal systems in the Western Balkan region. Croatia and Macedonia have acquired formal candidate status, while the other countries count as “potential candidates.” All except Kosovo have signed Stabilisation and Association Agreements (but not all of them have entered into force). Principally, EU approximation commits them to aligning their foreign policies with that of the Union, and this may or may not include recognition policy. Since 2000, the region has become more peaceful, stable, and democratic. There are clear signs of economic stabilisation and recovery all over the region; GDP is growing at considerable rates ranging around 4-5%. Recent years have seen a steady improvement of good neighbourly relations and regional cooperation, in particular in the fields of trade, energy and infrastructure. Outstanding deficits refer to constitutional uncertainty, weak institutions and administrative capacity, a poor business environment (including corruption), as well as high rates of unemployment and poverty. On November 5, the European Commission will issue its newest progress report on all the Western Balkan states.

With the exception of Croatia and Albania, the Western Balkan states face a dilemma when it comes to Kosovo’s independence. Internal considerations such as minority issues, internal political splits, and strong economic ties with Serbia seemed to advise against recognition of Kosovo. So far, five out of seven of Serbia’s neighbouring states--Bulgaria, Croatia, Hungary, Macedonia and Montenegro—have recognised Kosovo as an independent country, while Romania, Bosnia and Herzegovina, and Serbia have not yet done so.

For *Serbia*, the dilemma is most obvious. For internal political reasons, Belgrade is reiterating that it is not giving up its claim to Kosovo, and it has launched an intensive diplomatic offensive

¹¹ Kosovo under Res 1244.

¹² Vladimir Gligorov, “Transition, Integration and Development in Southeast Europe,” in *Ekonomski Pregled* 5-6/2007, 259-304.

aimed at halting recognition of Kosovo as an independent state, including a request to involve the ICJ. The Serbian government expelled ambassadors from Montenegro and Macedonia after they recognized Kosovo in October, but at the same time indicated it would normalize relations after a short period. Apart from such diplomatic damage, Belgrade's obstruction of Kosovo's independence causes direct and indirect costs for Serbia. The actual direct burden of Kosovo on the Serbian budget is around € 125 million (which includes monies spent on refugees, the Ministry for Kosovo and Metohija, local government subsidies, foreign debt service etc.).

For the pro-European Serbian government and for a majority of the population, EU accession has a high priority, not only because 50% of Serbia's foreign trade is with the EU. The recognition of Kosovo is not an explicit condition for EU approximation, but it influences attitudes and positions towards Serbia in many European capitals. Peter Feith, Head of the ICO in Prishtina, said that the initiative to ask the ICJ about the legality of the Kosovo Albanians' declaration "does not contribute to Belgrade's aspirations to move closer to the EU, since most EU members have recognized Kosovo." But giving up Kosovo would be too high a political price.

The EU has not activated the Interim Agreement on Trade and the Stabilization and Association Agreement with Serbia, in order to maintain pressure for the extradition of fugitive former Bosnian General Ratko Mladic and Goran Hadzic. Although Belgrade complied with ICTY conditionality when delivering Radovan Karadzic, some countries still insist that Serbia should do more.

But the EU is also caught between two conflicting foreign political aims that can hardly be reconciled: on the one hand, the EU aims at normalizing Kosovo's international position as soon as possible. On the other hand, the EU needs to support a democratic and stable Serbia to avoid creating a new "black hole" in the middle of the Western Balkans. Although there is strong belief that both the political elite and the public in Serbia would eventually swallow independence of Kosovo, there is also fear that instability in Serbia is still possible, and that a sense of humiliation and victimization may feed nationalistic feelings and threaten the democratic transition process at any time.

In *Bosnia and Herzegovina*, Kosovo's independence has stirred major tension, as most Serbs reject this move as illegal. Recent news reports that Sarajevo might nevertheless recognize Kosovo sparked furious reactions by Bosnian Serb politicians. There was a clear warning from the Republika Srpska that this move would lead to the total partition of Bosnia and Herzegovina.

Serb politicians had repeatedly announced they might hold a referendum on independence, but later withdrew that proposition. The country is nevertheless deeply divided over constitutional reforms, one of the main requirements for EU accession. The state is dysfunctional, including lack of co-ordination and incompatibility at different levels of the state. Most reforms have stalled, as has progress on EU integration. Nevertheless, EU defence ministers are discussing EUFOR's phase-out, probably together with the hand-over from the international high representative to an EU special representative (EUSR) with fewer powers (but still some reserve executive powers). A decision shall be taken in November.

Macedonia and *Montenegro*, two countries that recognized Kosovo in early October, have been caught between rocks and a hard places over Kosovo. Both countries possess strong pro-Serb as well as pro-Albanian minorities, and both wish to establish good relations with Prishtina while not losing economically more vital ones with Serbia. Both countries are struggling over questions of power-sharing, and they face deep-rooted identity concerns and inter-ethnic distrust.

Multiethnic *Macedonia* is surrounded by two strong opponents of Kosovo's independence: Serbia and Greece. Trade relations, infrastructure, energy supply and the unresolved name issue make Macedonia dependent on both countries. On the other hand, its 25% Albanian population strongly supported recognition, and it has been argued that Macedonia would stabilize once an international border was fixed (but despite recognition, demarcation has not yet occurred). There is widespread fear among Macedonians that their country may split into a federal state (like Bosnia). The government had therefore abstained at the UN General Assembly's vote on Serbia's bid to transfer the case to the ICJ for an advisory opinion, but recognized Kosovo two days later, under strong US and EU external pressure.

Recognition happened in light of the upcoming evaluation report by the European Commission. Macedonia acquired EU candidate status in 2005, and hopes to receive a firm date for its EU accession talks this November. However, none of the nine benchmarks (political dialogue, the implementation of new police laws, tackling corruption, judiciary and public administration reform, and measures to boost employment and improve the business climate) have been met as a prerequisite for opening accession negotiations this year.

Apart from lagging behind in implementing necessary reforms, the 'name dispute' with Greece has also emerged as an obstacle to Macedonia's EU progress. Athens is insisting on a solution to the dispute before Macedonia moves forward. Ever since the country became independent in

1991, Athens has argued that the name Macedonia implies territorial ambitions on Greece, whose northernmost province is also named Macedonia. In April 2008, Greece vetoed Macedonia's bid to join NATO and may do the same at the EU. The most recent compromise proposal by US diplomat Nimetz suggests using the name 'Republic of Northern Macedonia' in international fora, while the constitutional name 'Macedonia' could be used internally and in bilateral relations.

The situation in *Montenegro* is similar, because Montenegro will formally apply for EU membership by the end of this year, and hopes to join by 2012. Montenegro, which split from Serbia only two years ago, is deeply divided over the recognition of Kosovo due to its complex ethnic composition. Serbs make up over 30 % of the population and vehemently oppose recognition. The ethnic Albanian community in Montenegro, which composes 6% of the country's population, had on the other hand demanded that Kosovo be recognized sooner rather than later. But economic relations with Serbia played an important role as well, so the government was facing a difficult balancing act. After Montenegro and Macedonia recognized Kosovo, Belgrade expelled the two countries' ambassadors according to its Action Plan, but did not introduce additional punitive measures.

Although one need not expect a major deterioration in bilateral relations, the Kosovo matter overshadows stabilization, normalization and development processes in a region which has a weak inclination for regional cooperation anyway. If countries move towards an uncooperative political and economic system, direct and indirect costs (lost gains) would mainly fall on Serbia, Bosnia and Herzegovina, Montenegro and Macedonia. But there would also be a greater risk of macroeconomic instability in the region. There seems to be no reasonable alternative to continued regional co-operation and, ultimately, European integration.

Could the European integration process bring the desired political solution, in that it has the potential to soften borders, alleviate tensions over ethnicity and identity, and contain political antagonism in its wider pan-European context?

IV. Will Europeanization Solve the Issue?

Since the mid 1990s, the EU has been applying a regional approach to the Western Balkans, out of which it later developed the Stabilization and Association Process. Each country is assessed

separately on the basis of EU conditionality and may advance at its own pace, with a view to becoming a full member of the Union.

Empirical evidence confirms the high importance of EU integration prospects for accession countries because they foster liberalization and institutional change. The more concrete the perspective the greater is the impact: The experience of the six countries that joined the EU between 1973 and 1986, and of the CEECs, shows that candidate countries are able to attract significantly more FDI than non-candidates. Already the prospect for membership and the process of preparing for accession are in themselves attracting more outward and inward investment because foreign investors anticipate completion of reforms once a clear political prospect effectively guarantees their implementation.¹³ Instead, an unclear political perspective, combined with notorious institutional weaknesses, reduces the prospects for economic growth, potentially trapping laggards at a low level of economic development. Accession countries are more attractive as a production location because they guarantee access to the European market and protect investors against sudden changes in trade policy and arbitrariness in market policies. However, as long as not all EU members have recognized Kosovo as a sovereign state, and internal conditions lag behind standards, formal association and candidate status are out of the question.

It should also be noted that the Stabilization and Association Process, although modelled after the enlargement process, provides for rather weak instruments as compared to the complexity of the problems that they are intended to address. The Western Balkan region faces a number of protracted problems following a decade of war and destruction and it lacks the institutional and administrative capacity to use EU instruments properly, while neither the political determination nor substantial economic growth are in place to underpin the necessary reform process.

Evaluation confirms that aid has been most efficient in the areas of physical infrastructure, while assistance in institutional building has proven to be less successful. Also trade measures have had a minor effect on increasing exports from the region, due to low production standards, legislative impediments, and inadequate certification capacity and control. As a result, while imports from the EU to the Western Balkans have increased, exports from the region to the EU have lagged

¹³ Alan Bevan, Saul Estrin, Heather Grabbe, "The impact of EU accession prospects on FDI inflows to central and eastern Europe," Policy Paper 6/ 2001.

behind.¹⁴ Current EU policies will not automatically have the same transformative effect in the Western Balkans as the pre-accession process did in Central and Eastern Europe, and it will take much longer.

The EU would need to change its enlargement strategy fundamentally if the region's countries were to join the Union as a group, notwithstanding constitutional status and individual reform progress. Indeed, it might not be totally inconceivable to soften conditionality, including the criteria of absorption capacity of the Union itself, in order to bring the weaker candidates in. Such a "Copenhagen minus"-approach would allow outstanding constitutional and status issues to be solved in the framework of EU approximation. But there is currently little hope for the region that the Copenhagen conditionality could be watered down in the near future. Critics maintain that it is not the EU's primary goal to solve conflicts beyond its borders and that it would put internal stability at risk.

This position emanates from the EU's current internal state and the lack of "ripeness" for a new round of southeastern enlargement. Since the failed referenda on the EU constitution in France and in the Netherlands, and the subsequent failure to ratify the reforming Treaty of Lisbon, to put it in the words of the French EU Presidency, the equation seems to be "no Lisbon treaty, no enlargement." There have been lengthy and controversial discussions on whether or not future enlargements (Turkey, the Western Balkans) would be digestible by the European Union.¹⁵ The European Commission in November 2005 presented a "Strategy Paper with a Road Map for the Future Accession Process of the Western Balkans," whereas the Council, on 12 December 2005, set a debate on enlargement strategy, which should, first and foremost, take into account the EU's absorption capacity.¹⁶ Politicians all over Europe also maintain that financial restrictions and the public's acceptance of future members would have to be considered more carefully. The European Parliament Committee on Foreign Affairs on 3 February 2006 even suggested the need to review a "broader spectrum of operational possibilities," including a "multilateral framework as an intermediate step towards full membership."¹⁷ Both the Georgian crisis and the global

¹⁴ Development Researchers' Network, "Study on the linkages between the economic development of the countries of the Western Balkans," Final Report, Rome/Brussels July 2005.

¹⁵ Marie-Janine Calic, "The Western Balkans on the Road Towards European Integration," (Bonn: Friedrich Ebert Stiftung, December 2005).

¹⁶ Commission of the European Communities, Communication from the Commission - 2005 Enlargement Strategy Paper, Brussels: COM (2005), 561, 9 November 2005.

¹⁷ European Parliament. Committee on Foreign Affairs: Report on the Commission's 2005 enlargement strategy paper (<http://www.europarl.europa.eu>).

financial crisis will have a lasting impact on the general political atmosphere, potentially reducing the EU's willingness to accept the economic, domestic political and geopolitical costs of bringing the Western Balkans closer to the Union, let alone to full membership. In conclusion, accession has become more difficult, not easier. Countries in the region now face a new dimension of conditionality that - in contrast to the fulfilment of the Copenhagen and other political requirements – they cannot influence themselves. Seen from a regional point of view, then, it appears clear that moving on with the reform process, meeting standards and improving cooperation would not automatically be rewarded by improved relations with the EU. This has particularly scared Croatia and Macedonia as recognized candidates for membership of the EU, but it will also impact Kosovo once it starts working seriously on the European agenda.

Even if this was not the case, one more argument needs consideration. Neither historical nor political analysis supports the assumption that EU integration could be considered a panacea to all Balkan ills. 'Sovereignty' has lost its original meaning in a globalized world with manifold transnational actors, alliances and institutions – but this may be true primarily for consolidated nation states. Historical evidence shows that during the process of European integration after WWII, all potential member states underwent a process of national consolidation, by which they strengthened their national state institutions, developed their national legislation and forged their specific national identities. Empirically, this has proven to be an essential prerequisite for each country to transfer competencies from the national to the multi-national European level. One should not expect Kosovo to be able to simply skip this phase of intensive nation-building and consolidation that all European states experienced before they became members of the Union (one may only think of the EU's new member states' reluctance to transfer sovereignty rights to the Union).

Conclusion

The European perspective in itself will not help solving many of the problems that emanate from Kosovo's semi-sovereign status because of partial recognition and all of its consequences: internal weaknesses within Kosovo and its neighbours, the shakiness of the EU presence in Kosovo, and the internal state of the European Union itself. As much will depend on the political will of Kosovo's authorities to deliver on its commitments in building a functioning, democratic,

and responsible state as on EU determination to define common positions and reform its constitution. This leads to the following conclusions:

1. One should be realistic about the transformative impact of the European Union in Kosovo and in the region. Instruments applied will take a considerable time to have an impact considering on the ground conditions such as absorption capacity, etc. There is no quick fix to the problem.
2. A divided EU will not be able to make the Kosovo project a success. Neither will it be willing to sign formal agreements with Kosovo, nor will it enhance its southeastern enlargement strategy, which would need to be adapted if the region's countries were to join the Union as a group, notwithstanding constitutional status and individual reform progress. As it stands now, the situation in and around Kosovo risks becoming a drag on the Europeanization process for the entire region.
3. In light of this, and for many other reasons, it would be important to search for creative ways of bringing the process back inside the legal framework of the UN, as difficult as this may appear. A UNSC resolution may be unrealistic to achieve at this stage, but there may be other ways of enhancing the legal credibility of the process which would help both EU member states and Serbia handle Kosovo's independence in a more cooperative way (maybe by a Solomonian ICJ opinion?).
4. There is an urgent need for the international presence in Kosovo to be streamlined. Mandates, competencies, responsibilities and exit strategies need to be defined more clearly (in particular those of the EU and its different missions). Local ownership needs more emphasis.
5. Normalization inside the region is as important as the European integration process. Since prospects for positive developments are generally good, assuming that the reform process advances, Serbia and Kosovo should be encouraged to normalize their relations and establish true economic cooperation, even if Belgrade does not recognize Kosovo as a sovereign state. For Kosovo, Serbia is potentially an important export market. Conversely, Kosovo would offer major opportunities to Serbian investors. It is hardly conceivable that the EU would move towards more innovative approaches towards the region if there was not substantial normalization between Kosovo and Serbia and within the entire region.

6. Serbia needs to be offered a face-saving strategy, and not be threatened with negative conditionality, which has proven to be counterproductive. De-freezing of the agreements with the EU and other incentives will achieve much more than a policy of exclusion and isolation.