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Jacques Rupnik

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European Union Institute for Security Studies

THE WESTERN BALKANS AND THE EU: 'THE HOUR OF EUROPE'

Edited by Jacques Rupnik

Chaillot Papers | June 2011

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THE WESTERN BALKANS AND THE EU: 'THE HOUR OF EUROPE'

Morton Abramowitz, Florian Bieber, Dejan Jović, Robert Manchin, Alina Mungiu-Pippidi, Sašo Ordanoski, Momčilo Radulović, Jacques Rupnik, Denisa Sarajlić-Maglić, Igor Štiks, Veton Surroi, Jovan Teokarevic; edited by Jacques Rupnik

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Álvaro de Vasconcelos, Paris, May 2011

NB Disclaimer regarding use of Macedonia/FYROM: the Institute follows the EU and UN decision concerning the name of this country: FYROM/ARYM (UN Resolutions 817 and 845/93). However, in this volume, some external authors have chosen to use different wording.

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Paris

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Executive Summary

Today, more than fifteen years after the end of the wars of Yugoslavia's dissolution, the 'Balkan question' remains more than ever a 'European question'. In the eyes of many Europeans in the 1990s, Bosnia was the symbol of a collective failure, while Kosovo later became a catalyst for an emerging Common Foreign and Security Policy (CFSP). In the last decade, with the completion of the process of redrawing the map of the region, the overall thrust of the EU's Balkans policy has moved from an agenda dominated by security issues related to the war and its legacies to an agenda focused on the perspective of the Western Balkan states' accession to the European Union, to which there has been a formal political commitment on the part of all EU Member States since the Thessaloniki Summit in June 2003. The framework was set, the political elites in the region were – at least verbally – committed to making Europe a priority and everyone was supposedly familiar with the policy tools thanks to the previous wave of Eastern enlargement. With the region's most contentious issues apparently having been defused, the EU could move from stability through containment towards European integration.

There are favourable trends to make this possible: the EU has emerged as the unchallenged international actor in the Balkans; the region, exhausted by a decade of conflict, is recovering stability and the capacity to cooperate; the EU has no other equally plausible enlargement agenda in sight and could use the direct involvement of some of its Member States in the region to facilitate the accession process.

There are three international factors that have recently reinforced the EU's role as the key player in the region: these concern the evolution of the respective roles of the United States, Russia and Turkey

The US. There has been a gradual convergence of European and American policies in contrast to the underlying transatlantic tensions that accompanied the two US-led military interventions in the 1990s. The last decade was marked by a steady Europeanisation of the international presence in the Balkans, while the focus of US attention continued to shift to other international priorities, including a 'G-2' with China, a 'reset'

with Russia, nuclear non-proliferation in Iran, the war in Afghanistan as a test for NATO and relations with Pakistan, the Israeli-Palestinian conflict as the key to peace in the Middle East, and, most recently, the strategic implications of the 2011 'democratic wave' in the Arab world. The Balkans is close to the bottom of the list, something which is not always fully appreciated in the region.

Although scaling down the US engagement in the Balkans is consistent with the process of European integration, now seen as 'the only game in town', the EU should encourage that engagement to continue, especially in view of the fact that the United States enjoys strong credibility in the region (particularly in Kosovo and Bosnia) and that its professed primary goal, precisely, is to assist the region's accession to the EU. In short: European integration strengthened by an Atlantic insurance policy.

Russia. Moscow's approach in recent years was to focus primarily on its relationship with Belgrade, acquiring a major stake in Serbia's energy sector in exchange for Russian backing of Serbia's position over Kosovo in the UN Security Council. After the ICJ ruling of August 2010 on Kosovo independence and Belgrade's newfound pragmatism, Russia too has had to adjust. There is therefore likely to be only limited Russian obstruction in the Balkans, in the form of an occasional reminder that the Kosovo precedent has implications for secessionist enclaves in the Caucasus and elsewhere. In other words, for Moscow the Kosovo issue remains primarily a bargaining chip to be used for the furtherance of its own geopolitical ambitions in its 'near-abroad'.

Turkey's policies are the third positive factor in relation to the EU's role in the Balkans. There have been significant positive developments in relations between Turkey and several Balkan countries (Bulgaria, Greece and Serbia), which suggest that old animosities inherited from the past can be overcome. Turkey opened enlargement negotiations with the EU in October 2005 together with Croatia. The latter, however, seems likely to join the EU in 2013 while the Turkish negotiation seems open-ended, suggesting there is no direct connection between Turkey's accession prospects and those of the countries of the Western Balkans.

It remains to be seen whether the favourable international environment makes it any easier for the EU to shape a **coherent regional approach**. The question goes back to the debate of the 1990s about the regional priorities of the Stability Pact for the Balkans versus the individual competition encouraged by the Stabilisation and Association Process. Today the EU must reconcile the diverse situations and relationships it has established with individual countries of the region with the need to deal with state-building issues such as borders and minorities, as well as single market issues such as trade and communications, which require a regional approach.

There are two ways of assessing the situation in the region. One is to adopt the perspective of the EU Commission in its progress reports and to establish, in true regatta spirit, a ranking of the Western Balkans countries in their onward march towards EU membership. The other is to combine a broader regional picture with the view from the Balkan states themselves (the main aim of this volume), which shows the limits of individual, country-by-country approaches to the shared problems and remaining contentious issues and to EU integration.

The EU is dealing basically with three main categories of countries. Croatia is about to conclude its entry negotiations and is set to join the EU in 2013, although given the pace of reform of the judiciary, not even Croatia can afford to be complacent; the Former Yugoslav Republic of Macedonia (FYROM) and Montenegro (now about to be joined by Serbia) have EU candidate status; Bosnia-Herzegovina and Kosovo remain the most difficult cases of belated transition from protectorates to prospective EU members. Albania should have been in the second category but – given extreme domestic political polarisation – does not seem quite ready yet to give priority to the European agenda.

However, quite apart from these favourable developments, the main case for a regional approach to EU enlargement in the Balkans stems from the specific nature of the region's predicament: to reconcile the apparently contradictory tasks of nation-state building and European integration. The major difference with the countries of Central Europe is not just a time-lag or the degree of democratic consolidation but the question of statehood and state capacity. A democratic polity requires first of all a consensus on its territorial framework. As long as this was not established in the aftermath of the break-up of Yugoslavia and as long as issues pertaining to borders and national minorities shaped the political agenda, the chances of democratic consolidation remained slim. With the independence of Kosovo the redrawing of the map has been completed, but the successor states are still in the making: Kosovo in search of sovereignty and recognition; Bosnia and Herzegovina in search of a post-Dayton constitution (replacing a constitution designed to end the war with one for a functioning democratic polity); Serbia in search of accepted/acceptable borders with both abovementioned states (an equation complicated by its non-recognition of Kosovo and the ambivalence of its relations with Republika Srpska); Macedonia/FYROM in search of an identity and a name. For the first time the European Union, a project conceived in order to relativise states' sovereignty, has become involved in the formation of new nation-states that also aspire to become members of the Union. Until now the EU's transformative power has proved effective in integrating established states; now it is confronted with the challenge of integrating contested states.

The process of accompanying the creation of future Member States has implications for the other closely-related aspect of state capacity. It is one thing for EU accession prospects to facilitate a reformist consensus among candidate states and sometimes to help tip the political balance in favour of democratic forces (as was the case a decade ago in Slovakia, Romania and Bulgaria) at the expense of post-communist nationalists. It is another to facilitate institution-building and state capacity. The dual question of statehood and state capacity is a specific feature of South-East Europe and invites a search for a modified, adapted EU approach to enlargement. The argument that border and minority issues in the applicant states are interdependent strengthens the case for a concerted regional approach to EU enlargement. The shared European roof can help defuse contentious territorial and institutional issues in parallel to the EU accession process.

This is where the role of EU Member States directly involved in the region is of importance, although the contentious issues concerning the territorial waters between Croatia and Slovenia or concerning the Macedonia/FYROM name dispute are a reminder that an EU neighbour need not be a vector of integration. No less importantly, the 'Cyprus lesson' suggests that contentious issues should be solved prior to EU accession when the European leverage is strongest.

It would be unwise to let the current impression of drift spread in the region. The 'regatta' approach seems to work fine for the EU, as it makes the enlargement process 'discreet' enough to make it acceptable to Western public opinion and allegedly stimulating enough for the political elites' reformist agenda in the Balkan countries concerned. But this is also where 'enlargement fatigue' within the EU meets 'accession fatigue' in the Balkans. The latter has two faces: the region's political elites sometimes use verbal commitments to EU integration as a smokescreen for politics as a business model while we witness the erosion of popular support for EU accession: strongest where it is least advanced, in Albania, weakest where it is most advanced, in Croatia.

The EU should strengthen the regional approach by giving all the countries of the region candidate status and a date for the opening of negotiations. The pace and completion of the process will then depend on each country's capacity to deliver, thus making their respective responsibilities clear and the political costs involved more palatable to political elites in the region. But that, in turn, requires the EU to overcome its hesitation between containment and integration and to renew its commitment to the Balkans' European future in order to restore its credibility in the region and at international level.

Profile of the Balkan countries on the road to EU accession

Croatia: The frontrunner for EU accession, Croatia expects to join in 2013. However, as the chapter on Croatia suggests, its accession path is overshadowed by three ambiguities: (1) the political identity of the new state shaped by its self-perception as both a victim of and a victor in the wars of Yugoslavia's dissolution: a victim of Serbian aggression who was not helped by Europe, yet a victor in the war which achieved most of its objectives in nation-state building; (2) Croatia clearly favours the EU accession of the other Western Balkan countries in the long run yet it also often sees its own early entry as entailing a separation from the Balkans; (3) Croatia's moderate nationalist elites have become 'Eurorealists', favouring early entry into the EU, while the population seems clearly divided about the merits of joining the EU.

Serbia: A decade after the fall of Milosevic Serbia presents a contrasting situation. On the domestic front, Serbia is confronted with serious crises. They range from economic slowdown and significant deterioration in the living standards of the majority of the population, resulting in widespread disillusionment among citizens that is easily detectable in every aspect of public life. Yet at the same time democratic institutions have been consolidated and recently progress has been made in EU integration: the SAA agreement in 2008, the application for EU membership in 2009, the introduction of visa-free travel within the EU in 2010 and Serbia's candidate status should be confirmed in 2011. The consensus on Europe has grown but so has domestic disappointment with the post-Milosevic democratic elites.

BiH: Bosnia is facing its worst crisis since the end of the war in 1995 and EU integration in BiH remains a distant goal. The persistence of nationalism following the October 2010 elections has dealt a severe blow to the integration process, with ethnic blocs sidelining the EU agenda. Furthermore, despite indications of public support for EU integration, statistics paint a depressing picture of the situation in BiH, reflecting the depth of the country's social divisions and its lack of a common vision for the future. The EU Commission's Progress Report in November 2010 drew attention to the BiH authorities' failure to make progress on key EU reforms and clearly identified obstacles standing in the way of EU integration. It highlighted yet again the need for functional constitutional reform, including mechanisms enabling the state to enforce harmonisation with EU legislation across the entire country, and took note of the Progress Report's assessment that there had been little progress with improving governance and the functionality of the state. The international community's attempts to urge constitutional reform on the country are continually undermined by resistance among the political elites, particularly in Republika Srpska, which has turned

into a 'state within a state' under the presidency of Milorad Dodik . Unfortunately, in the current climate, it seems that in BiH the EU is engaged in a war against the logic of conflicting nationalisms, and it is not winning this war.

Montenegro: The status of EU candidate country granted to Montenegro in December 2010 offers many opportunities and challenges to Montenegro and its government. However, there are still many serious problematic issues that need to be addressed urgently in order to speed up the EU integration process and the overall democratisation of Montenegro. These problems are well-recognised internally and most of them are addressed in the seven requirements set out by the EU as a condition for offering a date for the opening of membership negotiations with the EU. It is now up to the Montenegrin government to show that it can meet these conditions.

The Former Yugoslav Republic of Macedonia (FYROM): The country, like the rest of the region, has been severely affected by the global economic crisis (with one third of the population hit by unemployment). The government has responded by an expansion of the public sector with huge deficit spending and international borrowing. There are also concerns about rule of law, independent media, and civil society. But the main obstacle to the country's Euro-Atlantic integration process remains formally the dispute over the 'name issue' with Greece. After two decades of fruitless diplomatic efforts and despite more frequent official meetings between the prime ministers of both countries in the last year, the matter has not moved forward in any significant way: the national posture on both sides prevails.

Kosovo: Since Kosovo's declaration of independence in February 2008 none of the predicted catastrophic scenarios have materialised. Now, following the ruling of the International Court of Justice of August 2010 which declared that the declaration of independence was not in contradiction of international law, a new context is emerging. The process leading up to independence was quite carefully managed although a number of problems have arisen since independence.

Although independence was the product of an international process it faces problems of international legitimacy. Since the joint UN resolution of 2010 was drafted by the EU and Serbia the question has moved from the UN to the EU. Yet Kosovo was recognised only by 22 out of 27 EU Member States, which hampers the unity and effectiveness of the EU presence there (EULEX).

Internally, Kosovo must address a number of challenges ranging from weak institutions to fighting organised crime. But externally it has to combine the search for a new relationship with Serbia and EU integration.

What are the objectives of the negotiations with Serbia? To find a *modus vivendi*? If so, in which context and for what period of time? Or is the aim to search for a 'historical accord' as part of parallel EU accession? For the EU Kosovo will be among the tests of the effectiveness of the CFSP post-Lisbon. For the first time the EU is dealing with an 'unfinished state', something requiring the establishment of rule of law and institution-building in Kosovo and consensus and political commitment in the EU.

The Western Balkans

Source: The University of Texas at Austin, Library website (modified)

The Balkans as a European question

Jacques Rupnik

In the immediate aftermath of World War I which had started in the Balkans, Arnold J. Toynbee observed that what was then known as the 'Eastern question' was in fact a 'Western question'.[1] Today, a decade after the end of the wars of Yugoslavia's dissolution, the 'Balkan question' remains more than ever a 'European question'. Bosnia was, in the eyes of many Europeans in the 1990s, the symbol of a collective failure, while Kosovo later became a catalyst for an emerging Common Foreign and Security Policy. In the last decade, with the completion of the process of redrawing the map of the region, the overall thrust of the EU's Balkans policy has moved from an agenda dominated by security issues related to the war and its legacies to an agenda focused on the perspective of the Western Balkan states' accession to the European Union, to which there has been a formal political commitment on the part of all EU member states since the Thessaloniki Summit in June 2003. The framework was set, the political elites in the region were – at least verbally – making Europe a priority and everyone was supposedly familiar with the policy tools thanks to the previous wave of eastwards enlargement. With the region's most contentious issues apparently having been defused, the EU could move from stability through containment towards European integration. What then is the difference between Central Europe and the Balkans? The answer is ten or fifteen years, the lost decade of the Balkans wars of the 1990s.

Before endorsing such a reassuring presentation about the Western Balkans we should examine the favourable regional developments and international trends, but also the contentious issues and obstacles to the process. Some have to do with the uneven pace of reform and democratic change in the region, others with doubts about the existence of sufficient political will and momentum within the EU to support a renewed and sustained enlargement process.

1. Arnold J.Toynbee, *The Western Question in Greece and Turkey* (London: Constable & Co, 1922).

International actors: 'the hour of Europe'

The 'hour of Europe', the memorable phrase coined by Jacques Poos, the Foreign Affairs Minister of Luxembourg and President of the EU Council in July 1991, was read in the Balkans at the very outbreak of the war as a display of presumably involuntary black humour. But two decades later the EU has indeed emerged as the main international actor in the Balkans. There are three factors that have recently reinforced its role as the key player in the region and which concern the evolution of the respective roles of the United States, Russia and Turkey.[2]

The United States. There has been a gradual convergence of European and American policies in contrast to the underlying transatlantic tensions that accompanied the two US-led military interventions in the 1990's. The last decade was marked by a steady Europeanisation of the international presence in the Balkans, while US priorities continued the shift away from Europe that had begun with 9/11. The list of Washington's international priorities today includes a 'G2' with China, a 'reset' with Russia, nuclear non-proliferation in Iran, the war in Afghanistan as a test for NATO and relations with Pakistan, the Israeli-Palestinian conflict as the key to peace in the Middle East, and, most recently, the strategic implications of the 2011 'democratic wave' in the Arab world.[3] The Balkans is close to the bottom of the list, something which is not always fully appreciated in the region. To be sure, the visits to the region by Vice-President Biden in 2009 and Secretary Clinton in 2010 showed a continuing US engagement that several actors in the region (the Bosniaks, Kosovars, Albanians and Croats) deem crucial. But the general trend is clear enough and is not likely to change anytime soon. Anne-Marie Slaughter, Head of Policy Planning at the State Department, recently presented the first 'Quadrennial Diplomacy and Development Review'.[4] It lists among the main themes: human security (as much as the military aspects), development (as important today as arms control issues were during the cold war), conflict prevention and the response to fragile states and divided societies. The Balkans was not mentioned, although all three issues are of course directly relevant for the region.

There are occasional transatlantic differences concerning the assessment of the region's stability and over Bosnia in particular,[5] with some policy implications: should the OHR be maintained or not? Is there a need for a US 'special envoy'? There is also a consistent American insistence on a firm European commitment to prosecute war criminals through the ICTY in The Hague. Finally, there is concern about the possible implications of European disunity over the recognition of Kosovo.

Although scaling down the US engagement in the Balkans is consistent with the process of European integration now seen as 'the only game in

2. To assess the contrast with the situation a decade ago see the relevant chapter on the US, Russian and Turkish policies and the transatlantic assessment by Pierre Hassner and Dana Allin in Jacques Rupnik (ed.) *International Perspectives on the Balkans* (Clemensport, NS: Canadian Peacekeeping Press, 2003).

3. Álvaro de Vasconcelos (ed.), 'The Arab Democratic Wave', *Report* no. 9, European Union Institute for Security Studies, Paris, March 2011.

4. Anne-Marie Slaughter, lecture at CERI, Sciences Po, Paris, 20 January 2011.

5. Richard Holbrooke and Paddy Ashdown, 'A Bosnian powder keg' , *The Guardian*, 22 October 2008; also Patrice McMahon and Jon Western, in 'The Death of Dayton', *Foreign Affairs*, September/October 2009, present Bosnia as being on the verge of disintegration and call for international action to prevent a new conflict.

town', the EU should encourage that engagement to continue, especially in view of the fact that the United States enjoys greater credibility than the Europeans, particularly in Kosovo and Bosnia, and that its professed primary goal, precisely, is to assist the region's accession to the EU. In short: European integration strengthened by an Atlantic insurance policy.

Russia under Putin has tried to regain a major role in the Balkans. In recent years it has acquired a significant capacity to make a nuisance of itself and has staged something of a comeback to the region, no longer with a vague rhetoric about solidarity with its Slav Orthodox brothers under threat, but seizing rather on the Kosovo question and the issue of energy supply. Russia has acquired a decisive position in the Serbian energy sector and Putin's visit to Belgrade on 23 March 2011 was meant to breathe new life into the South Stream pipeline project. The Russians are trying to convey to the European states the message that they should welcome this rival to Nabucco as part of a necessary diversification of energy supply, especially given the current turmoil in the Middle East. The second parallel vector for Russia's return to the Balkans has been the support it has given to Serbia's claims on Kosovo. The consistency of the EU position on Kosovo's self-determination and the 'frozen conflicts' in the Caucasus has, predictably, been called into question by Russia. To claim that these are self-serving arguments does not dispense with the need to address the tension that exists between the legitimacy of Kosovo's independence and its difficult quest for international legality and recognition (by 65 states so far). The International Court of Justice's ruling on August 2010 has considerably altered the picture. The current government in Belgrade is seen as being the most favourable to the EU in two decades. Their jointly proposed resolution in the UN and the more pragmatic stance taken by President Tadić, now ready to engage in concrete negotiations with Pristina, also has also implications for Russia's role. Initially Belgrade's approach was to make a deal with Russia, giving Moscow a stake in its energy sector while relying on its backing in the UN Security Council over Kosovo. After the ICJ ruling and Belgrade's new pragmatism, Russia can hardly be 'more Serbian than the Serbs'. There is therefore likely to be only limited Russian obstruction in the Balkans, in the form of an occasional reminder that the Kosovo precedent has implications for secessionist enclaves in the Caucasus and elsewhere. In other words, for Moscow the Kosovo issue remains primarily a bargaining chip to be used for its own claims in its 'near-abroad'.

Turkey's policies are the third favourable factor for the EU's role in the Balkans. There have been significant and on the whole positive developments in the relations between Turkey and several Balkan countries (Bulgaria, Greece and most recently Serbia), which suggests that old animosities inherited from the imperial past can be overcome.

Turkey opened enlargement negotiations with the EU in October 2005, before the Balkan countries, which given that they used to be part of the Ottoman Empire, was from their perspective not least among the paradoxes of 'Europeanisation'. To the extent that, historically, their national and European identities were constructed in opposition to the Ottoman legacy, it is by no means self-evident for them now to proclaim a concerted process of EU accession with Turkey.[6] On the road to Brussels, hitch your wagon to the Orient Express from Istanbul! Following enlargement to include the countries of the former Habsburg Empire, is the next step a 'post-Ottoman' enlargement embracing south-eastern Europe?

The case for geographic proximity and for the coherence of EU policy with regard to its south-eastern neighbours can and has been made. However, independently of its merits, the public reluctance that exists (particularly in Germany and France) with regard to EU accession by Turkey and the latter's new assertiveness as an international player (its vote against the EU at the UN, presenting itself together with Brazil as a go-between in the negotiations with Iran), would suggest that, if one is serious about bringing the Western Balkan states into the EU, one may consider decoupling their European agenda from that of Turkey. In either case there is nothing in current Turkish policy that could weaken the EU's position in the Balkans as the 'only game in town'.

Regional dimensions of state-building and EU integration

It remains to be seen whether the favourable international environment makes it any easier for the EU to shape a coherent **regional approach**. The question goes back to the debate of the 1990s about the regional priorities of the Stability Pact for the Balkans versus the individual competition encouraged by the Stabilisation and Association Process. Today the EU must reconcile the diverse situations and relationships it has established with individual countries of the region with the need to deal with state-building issues such as borders and minorities, as well as single market issues such as trade and communications, which require a regional approach.

There are two ways of assessing the situation in the region. One is to adopt the perspective of the EU Commission in its progress reports and to establish, in true regatta spirit, a ranking of the Western Balkans countries in their onwards march towards EU membership. The other is to combine a broader regional picture with the view from the Balkan states themselves (the main aim of this volume), which shows the limits

6. For a recent study of the evolving perception of Turkey see Bozidar Jezernik (ed.), *Imagining 'The Turk'* (Cambridge: Scholars Publishing, 2010).

of individual, country-by-country approaches to the shared problems and remaining contentious issues and to EU integration.

The annual reports on the Western Balkan countries released in November 2010 by the European Commission reveal a familiar blend of encouraging signs of progress and a long to-do list: the glass is both half full and half empty. In normal circumstances this might pass as the prosaic routine of the pre-accession process. But these are not quite 'normal circumstances', either for the EU or the Balkans A brief examination of recent changes and of the remaining obstacles can help set the framework for reconsidering and accelerating the enlargement process.

The EU is dealing basically with three main categories of countries. Croatia is about to conclude its entry negotiations and is set to join the EU in 2013; the former Yugoslav Republic of Macedonia[7] (FYROM) and Montenegro (now to be joined by Serbia) have EU candidate status; Bosnia-Herzegovina and Kosovo still remain for all practical purposes two Europeanised semi-protectorates. Albania should have been in the second category but now seems adamant to prove it remains a separate case. As for the pace of reform,[8] not even Croatia, the frontrunner, can afford to be complacent. In terms of economic performance, in 2007 it surely could have joined the EU with Romania and Bulgaria, with which it also shares the need to fight corruption and reform its judiciary, which until recently had a backlog of almost two million cases pending. It certainly lacks a track record in appointing independent judges, particularly for the politically sensitive cases. Under pressure from the EU this may be changing: former Prime Minister Ivo Sanader, the man who helped 'Europeanise' the nationalist HDZ inherited from the Tudjman era, has been in custody in Austria since December 2010 on charges of money-laundering and embezzlement, while several members of the government are also facing corruption trials. President Ivo Josipović's European vision combining regional cooperation and EU integration[9] is certainly appreciated abroad, but is now confronted with mounting social discontent and euroscepticism at home.

At the bottom of the list are Bosnia and Herzegovina and Kosovo where divided polities and a dysfunctional institutional framework account, at least in part, for the inability to fight corruption and organised crime. A senior EU representative remarked with regard to Bosnia that this year's report could have been called the 'non-progress report'. The middle group comprises FYROM, Montenegro and Serbia, with their shared concerns regarding the rule of law and good governance, but where some progress is being made in terms of economic reform and regional cooperation. The EU's belated visa liberalisation was certainly the most positive signal sent to the people of the region. How could they believe in the future of their country within Europe as long as they were not allowed to travel there? Only Kosovo remains set apart in a

7. The Institute follows the EU and UN decision concerning the name of this country: FYROM/ARYM (UN Resolutions 817 and 845/93). However, in this volume, external authors may have used different wording.

8. Neil Mac Donald, 'Pace of reform sets back Croatia's EU hopes', *Financial Times*, 3 March 2011.

9. Ivo Josipovic, 'Regional cooperation and EU integration: two foundations of the same process', speech given at the Kennedy School of Government, Harvard University, 11 February 2011.

ghetto. Candidate status has been granted to FYROM and Montenegro, but postponed for Albania: it is not self-evident to invite a country whose June 2009 election results have still not been recognised by the opposition. The extreme and violent political polarisation has brought parliamentary life to a halt and the country to the verge of its worst crisis since the financial pyramid scandal of 1997.[10] Candidate status will now be given to Serbia, because it was Belgrade that initiated some of the most encouraging changes of importance for the whole region.

In a clear departure from the tone and substance of the Kostunica government's policies, in 2010 under Tadić's leadership Serbia has replaced its pro-European stock phrases with an actual pro-European policy. The first necessary step was the normalisation of its relations with its neighbours. After a decade of wars of Yugoslav dissolution followed by a decade of recovery and stalemate, we have now seen a series of concrete steps being taken towards the recognition of crimes committed and a U-turn on the issue of Kosovo. Following tense relations with Croatia after mutual charges of genocide that were taken to the International Court of Justice in 2009, President Tadić found in his newly-elected Croatian counterpart, Ivo Josipović, a partner for a different approach.[11] Tadić's speeches during his visits to Srebrenica in Bosnia and to Vukovar in Croatia were meant as part of a process of reconciliation, opening a new phase in Serbia's relations with its neighbours. Probably the main persisting obstacle to change in Bosnia and Herzegovina is Republika Srpska which under Dodik behaves as a state within a state. The difference, however, is that Belgrade no longer supports its implicit separatism (and the same goes for Zagreb's attitude towards the Croats in Herzegovina). On 31 March 2010 the Serbian Parliament passed by a narrow majority (127 votes in a 250-seat legislature) a resolution accepting responsibility for a major crime committed by General Mladić's troops in Srebrenica in 1995.[12] A Serbo-Croatian commission has been created to deal with the most difficult bilateral problems, a welcome precedent for Serbia's relations with Kosovo. Independently of government efforts, a project sponsored by the Institute for Historical Justice and Reconciliation suggests ways in which scholars from Serbia, Croatia and other ex-Yugoslav successor states can attempt to rid historiography of nationalist mythology and seek a shared narrative.[13]

It is indeed with regard to Kosovo that significant and unexpected changes have occurred. Serbia's endorsement of a joint resolution with the EU at the UN General Assembly in September 2010 heralded a fundamental change in its dealings with Kosovo. In the past Kosovo Albanians considered the question of status as paramount, while Serbia preferred to deal with the technical issues. After Kosovo's declaration of independence in February 2008 there was a reversal of roles: Belgrade considered status talks to be a precondition for solving the practical

10. 'Three men killed and sixty wounded in opposition protest', Mathew Brunwasser, 'Two Men Jostle for Power', *The New York Times*, 26 January 2011. Edi Rama, the Socialist mayor of Tirana, called demonstrations against 'violence and crime' while Prime Minister Berisha denounced an attempted *coup d'Etat*. See also 'Albania and Kosovo: a bad week', *The Economist*, 27 January 2011. Without consolidation of democracy there will be little chance of a European prospect for Albania.

11. Marek Kubista, 'Reprise du dialogue entre la Serbie et la Croatie', *Euractiv.fr*, 29 March 2010.

12. Stephen Castle, 'Serbia's censure of 1995 massacre falls short for EU', *International Herald Tribune*, 1 April 2010.

13. Darko Gavrilovic and Vjekoslav Perica (eds.), *Political Myths in the former Yugoslavia and Successor States: a Shared Narrative*, Institute for Historical Justice and Reconciliation (Dordrecht: The Republic of Letters, 2011).

problems while Pristina preferred to focus on specifics. In September 2010 Serbia agreed to unconditional direct talks with Kosovo, primarily concerning Kosovo Serbs' relations with Serbia, but also a series of concrete bilateral issues (ranging from customs to energy supply). This shift in the Serbian stance follows the International Court of Justice ruling of 22 July 2010 to the effect that Kosovo's declaration of independence is not contrary to international law. This was a blow for Serbia, which considered that it had a strong legal argument even if the political realities on the ground were moving in a different direction. What has happened since the summer of 2010 could be described as giving satisfaction to the Kosovars, with the ICJ ruling and above all the triumph of pro-European realism in Serbian politics. It was certainly also a success for the EU to have been able to draft a joint resolution with Serbia and emerge as the facilitator in the relations between Belgrade and Pristina. As a result, it was possible for direct talks between Serbia and Kosovo to start on 8 March 2011. Nobody can tell how long they will take or what the outcome will be once the most sensitive issues (such as Mitrovica and Northern Kosovo) are on the table. But if the EU provides the appropriate backing and political incentives, we may be closer to overcoming the most difficult security issue in the Balkans and what is potentially the main stumbling block in the EU's attempts to stabilise and integrate the region.

One of the political obstacles to the development of regional cooperation in the immediate aftermath of the war was the underlying suspicion, particularly in Croatia, that it was an externally induced attempt to put back together something resembling former Yugoslavia. This is no longer so, as Tim Judah so pertinently observed: 'From Slovenia to the Macedonian border with Greece, most people in the region still have a lot in common, even if they do not talk about it too much. Every day the bonds between them, snapped in 1990, are being quietly restored. Yugoslavia is long gone; in its place a *Yugosphere* is emerging'.[14] This goes beyond the rhetorical posturing of Presidents Josipović and Tadićand concerns trade and restored links between companies, professions and citizens. Without overestimating the potential spillover effect of these developments, they create a favourable context for approaching EU integration beyond the logic of emulation and individual accession strategies.

However, besides these favourable developments, the main case for a regional approach to EU enlargement in the Balkans stems from the specific nature of the region's predicament: to reconcile the apparently contradictory tasks of nation-state building and European integration. The major difference with the countries of Central Europe is not just a time-lag or the degree of democratic consolidation but the question of statehood and state capacity. A democratic polity requires first of all a consensus on its territorial framework. As long as this was not

14. Tim Judah, 'Entering the Yugosphere', *The Economist*, 20 August 2009. A longer and more elaborate analysis of the subject was presented by the author in a research paper for the London School of Economics.

established in the aftermath of the break-up of Yugoslavia and as long as issues pertaining to borders and national minorities shaped the political agenda, the chances of democratic consolidation remained slim. With the independence of Kosovo the redrawing of the map has been completed, but the successor states are still in the making. In 1988 Zoran Djindic called Yugoslavia an 'unfinished state'. Today Veton Surroi calls its successors 'unfinished states': Kosovo in search of sovereignty and recognition; Bosnia and Herzegovina in search of a post-Dayton constitution (replacing a constitution designed to end the war with one for a functioning democratic polity); Serbia in search of accepted/acceptable borders with both abovementioned states (non-recognition of Kosovo and ambivalence of its relations with Republika Srpska); Macedonia in search of an identity and a name. For the first time the European Union, a project conceived in order to relativise states' sovereignty, has become involved in the formation of new nation-states that also aspire to become members of the Union. Until now the EU's transformative power has proved effective in integrating established states; now it is confronted with the challenge of integrating contested states.

The process of accompanying the creation of future member states has implications for the other closely-related aspect of state capacity. It is one thing for EU accession prospects to facilitate a reformist consensus among candidate states and sometimes to help tip the political balance in favour of democratic forces (as was the case in Slovakia, Romania and Bulgaria) at the expense of post-communist nationalists. It is another to facilitate institution-building and state capacity. The dual question of statehood and state capacity is a specific feature of South-East Europe and calls for a modified, adapted EU approach to enlargement. The argument that border and minority issues in the applicant states are interdependent strengthens the case for a concerted regional approach to enlargement. The shared European roof is meant to help defuse contentious territorial and institutional issues in parallel to the EU accession process.

To be sure, this is not a very popular argument with the Commission or the most advanced candidate countries. Indeed, no country's accession should be hostage to the intransigence of its neighbour. But given, for instance, the interaction between different aspects of the 'Serbian question' (with Kosovo or Bosnia) it seems wise to build on the recent positive developments in order to encourage a regional approach to the resolution of those issues.[15]

To sum up the favourable trends: the EU has emerged as the unchallenged international actor in the Balkans; the region, exhausted by a decade of conflict, is recovering stability and the capacity to cooperate; the EU has no other plausible enlargement agenda in sight and could use

15. Cf. 'Pour une nouvelle entente balkanique', special issue of *Anatoli* (CEMOTI), CNRS, Paris, September 2010.

the direct involvement of some of its member states in the region to facilitate the accession process.

Member States as vectors for EU integration?

It seems prudent from the EU's perspective to make sure that contested issues in relation to 'unfinished statehood' are settled during the accession process when the EU's leverage is strongest. A related assumption is that neighbouring EU member states can act as facilitators or 'sponsors' for that process of 'Europeanisation'. A brief examination of some of the remaining obstacles casts doubt on this assumption.

There are several contentious bilateral issues that could become serious obstacles to the EU accession process. Croatia, to take the frontrunner, has pending border issues with most of its neighbours. The easiest one to solve, or so it seemed, was that of Slovenia's access to international waters. But in recent years this has escalated into a potential stumbling block for Croatia's EU accession.[16] Slovenia's 2010 referendum on the proposed solution was a high-risk gamble that could have caused a major setback for Croatia's EU prospects, with repercussions for the rest of the Western Balkans.

The second bilateral conflict that is becoming a serious obstacle on the road to the EU concerns Macedonia's quest for a post-FYROM name and identity acceptable to its Greek neighbour. In 2009 Greece vetoed FYROM's accession to NATO and there is little indication that it intends to be more flexible as far as EU accession is concerned. FYROM's government (also exploiting adversity for domestic purposes) has now taken that obstruction to the International Court of Justice in The Hague, accusing Greece of having breached the provisions of their 1995 Agreement.[17] Above and beyond the unresolved name issue between Athens and Skopje, the Greek case has broader relevance for the EU's enlargement to the Balkans.* Given its history, socio-economic development and political culture, Greece gives us an idea of what Bulgaria or Serbia would be like if they had not experienced a communist regime after World War II. A country that has been in the EU for some 30 years and has benefited considerably from its structural funds now reveals that it is bankrupt and does not have a functioning state. It is not clear who is supposed to learn from whom. In any case, the Greek crisis is bad news for the Balkans, as it affects the way the region is perceived within the EU; unless the country's current financial crisis and massive

* Georges Prevelakis writes about the 'rebalkanisation' of Greece in 'La Grèce: trois décennies d'anesthésiant européen', in *Géostratégiques*, no. 31, 2011, pp. 97-109.

16. For a detailed presentation of the negotiations see Vasilka Sancin, 'Slovenia-Croatia Border Dispute: from "Drnovsek-Racan" to "Pahor-Kosor" Agreement', in *European Perspectives*, October 2010, pp. 93-111.

17. The ICJ started examining the case in March 2011. See *Dnevnik* (Skopje) 7 March 2011. Not surprisingly Greece is perceived by the citizens of Macedonia as the EU state most hostile to their accession while in Serbia Greece is, on the contrary, seen as the most favourable (Gallup Balkan Monitor).

aid from its EU partners brings home the message that this is not the time to obstruct EU policy in the Balkans.

The Macedonian question reveals the tensions between EU policies in the Balkans and those of some of its member states. Some of them (Greece, Austria, Italy) for historical and geographic reasons have been directly involved and have been considered in Brussels as vectors of EU influence in the region. Others, such as new EU members Slovenia, Bulgaria and Romania, have a direct stake in the region's stability and accession prospects. However, the problems faced by the latter two in the realm of the rule of law and the fight against corruption have increased reservations within the EU with regard to the 'premature accession' of other post-communist Balkan states. Proximity and involvement thus do not automatically make an EU member state a facilitator in the enlargement process.

The third warning for the EU in the region comes from Cyprus. It was included in the 2004 eastern enlargement at the insistence of Greece, on the assumption that accession to the European Union would simultaneously overcome the partition of the island in accordance with the Annan Plan.[18] We know what happened to that assumption and the way the EU proved unwilling or unable to make full use of the leverage it enjoys at the moment of accession of a new member. The EU must now bear this in mind as the 'Cyprus lesson' in its future dealings with the Western Balkans. There will be no EU enlargement without the pending bilateral conflicts having been resolved first.

These developments should suffice to qualify the widespread assumption that an EU member state automatically acts as a stabiliser and as an 'advocate' of a neighbouring country's accession. Croatia's inclusion in the EU would certainly contribute to stabilising its democracy and the rule of law. However, the impact on neighbouring Bosnia and Herzegovina remains debatable, as Croats from Bosnia and Herzegovina, holders *en masse* of Croatian passports, are losing interest in the future of their state. Croatia is the only European state with more voters than citizens! The passports delivered by Romania to an estimated 800,000 citizens in Moldova, or by Bulgaria (on a much smaller scale) to citizens of FYROM pose a similar problem. What then is the European norm in the matter? In his essay Igor Štiks seeks in vain a coherent answer to this question. It surely cannot be that of Viktor Orban's Hungary, holding the EU Presidency in 2011 while offering citizenship to Hungarian minorities in neighbouring states.[19] But it confirms the importance of questions concerning the nature of citizenship and certain potentially destabilising effects of EU enlargement on some of its new neighbours. Any EU enlargement policy in the Balkans should entail careful consideration of its impact on fragile states that are not

18. The UN plan was rejected in a referendum by the Greek Cypriots on 24 April 2004, literally on the eve of EU accession. For a detailed analysis of the case, see Olga Demetriou, 'Catalysis, Catachresis: the EU impact on the Cyprus crisis', in Thomas Diez et al. (eds.), *The European Union and Border Conflicts* (Cambridge: Cambridge University Press, 2008).

19. It provoked a sharp rebuke from Slovakia and the threat to deprive any members of the Hungarian minority opting for Hungarian citizenship of Slovak citizenship.

included, and hence of its relationship with the EU's neighbourhood policy and 'Eastern partnership'.

Conclusions

These are some of the main challenges and dilemmas confronting the EU in its approaches to the Western Balkans. The common wisdom – which surely must be questioned – is that the 'regatta' approach works fine for the EU, as it makes the enlargement process 'discreet' enough to make it acceptable to Western public opinion and stimulating enough for the political elites' reformist agenda in the countries concerned. No wonder 'Europeanisation' looks different depending on whether it is seen from Brussels or from the countries at the receiving end.

This is also where 'enlargement fatigue' within the EU meets 'accession fatigue' in the Balkans. The latter has two faces: the region's political elites sometimes use verbal commitments to EU membership as a smokescreen for politics as a business model. No less important is the erosion of popular support for EU accession (strongest where it is least advanced, in Albania; weakest where it is most advanced, in Croatia).[20] According to the *Gallup Balkan Monitor*, the majority of citizens in all the countries concerned (except Croatia) would vote for EU accession even though a majority in each of the EU candidate countries believes their country to be 'heading in the wrong direction'.[21] Hence the importance of checking such premature doubts about a process which has a long way to go and cannot succeed without the support of the societies concerned. This points to the limited effects of initiatives such as a 'summit to commemorate a summit' (Sarajevo 2010 celebrates Zagreb 2000) and to the need for tangible measures that citizens can directly identify with Europe. There is no doubt that visa liberalisation has been the most important such measure, both symbolically and politically, although provisionally leaving out Kosovo.

The agenda for the countries of the Western Balkans and for the EU seems clear enough. For the former it entails addressing the doubts raised about the rule of law *after* the accession of Romania and Bulgaria by tackling corruption, nepotism and the preference for by-passing legal norms. That implies dealing with the main sources of those phenomena, legacies of socialism ('social capital' means corrupt networks to get around the law), of the war economy (getting around embargoes by cooperating with organised crime) and of the market transition (with an opaque and largely corrupt privatisation process). Last but not least: the use of public sector employment for political patronage and state capture.

20. In Croatia we are witnessing the emergence of two types of euroscepticism. The first, more familiar, comes from the nationalists and sovereigntists on the right of the political spectrum who consider that the EU did little for Croatia during the 1990s war and that General Gotovina is a national hero whose handing over to the ICTY in The Hague was made a condition for opening accession talks with Croatia. The second comes from the young generation on the left: during their March 2011 demonstrations in Zagreb they called for new elections, but also demanded the renationalisation of some parts of the economy, with slogans such as 'No to capitalism', 'No to the EU'. This dual challenge to EU accession makes the outcome of the forthcoming referendum on EU entry a very uncertain one.

21. Gallup Balkan Monitor, Brussels; see also the chapter by Robert Manchin in this volume.

The dividing line in Balkan politics is not (or only very rarely) between liberal democrats who connect Europe with their civil societies, on the one hand, and authoritarian radical nationalists, on the other. In most cases one is dealing with a continuum of nationalisms and today the task of EU accession is mostly in the hands of governments composed of moderate nationalists. The case of Croatia suggests that pragmatic nationalists can be made 'eurocompatible': the evolution of the governments of the post-[22]Tudjman HDZ under Ivo Sanader and now Jadranka Kosor (under pressure from the EU and two successive presidents, Mesić and Josipović) paved the way. The process is now at work in Serbia, which has moved in a decade from radical to moderate nationalism: from Milosević to Kostunica and now Tadić.[23] This shift in the centre of gravity of domestic politics, with the emergence of 'eurorealism' and pragmatism, will be essential for overcoming the abovementioned contentious issues and establishing a consensus on the reforms needed in order to complete the region's EU accession process.

After the obstacles in the Balkans there are those that exist in the EU. The crisis of the euro and the challenges it poses to the EU's cohesion and leadership raise concerns about the EU's ability at the same time to keep an eye on the enlargement ball. It is not easy to promote openness and generosity (without which EU expansion to the Balkans is a non-starter or merely a matter for technocrats) when the economy is in crisis and the politics of accountancy prevail. The result is mutual distrust or pretence: 'We pretend we want you and you pretend you're getting ready'. All this is only reviving suspicion in the Balkans about the plausibility of the enlargement agenda. The EU is seen as fussy about the process but uncertain about the outcome. For such doubts to be dispelled, two complementary things are needed. Firstly, a strong positive signal from Brussels, in the form of an accelerated and coherent EU regional expansion policy in the Balkans. Secondly, and no less importantly: the capacity of local actors to tackle the European reform agenda not just as something that is imposed from outside, but as domestic homework for any democratic European society in the twenty-first century.

The misunderstandings are not helped by the different and often confusing definitions of what 'Europe' or the 'European project' stands for. It can be summed up by three paradoxes. The European project since World War II stands for peace through institutionalised interdependence: 'pooled sovereignties' is just another term for the relativisation of nation-states and European integration becoming a vector for post-1989 globalisation. However, in the Balkans, since the early nineteenth century, the path to European modernity has been identified precisely with the building of nation-states. The EU is advocating the transposition of its model of peace through institutionalised interdependence to the Balkans, while at the same time, and most reluctantly, being drawn into a belated process of nation-state building or future member state-building.

22. This argument was first developed by Jacques Rupnik in 'The demise of Baklan nationalisms? A sceptical view', in Judy Batt (ed.), 'The Western Balkans: Moving On', *Chaillot Paper* no. 70, European Union Institute for Security Studies, Paris, October 2004.

23. Milosević's heirs in the Socialist Party (SPS) are now in the government coalition, applying for membership in the Socialist International and working for EU accession. Even the Radical Party (with V. Seselj, its founding-father, at the ICTY in The Hague) has toned down its europhobic nationalism in order to focus more on social discontent in its search for voters.

A second paradox concerns multiculturalism: the EU, rightly, resists ethnic partition in Kosovo, Bosnia or FYROM in the name of a civic concept of the new nation-state in the making and of a multicultural society. This argument was voiced loud and clear in the 1990s by Western intellectuals, politicians and the media, creating legitimacy and public support for a European engagement, and even for military intervention against ethnic cleansing in Bosnia and Kosovo. Today the argument is becoming blurred as, in all corners of old and new Europe, we see a return of identity politics and the rise of national-populist forces on issues related to immigration and integration. If Chancellor Merkel declares that there has been a 'complete failure of multiculturalism' in Germany, how then do you promote it in Bosnia? We opposed ethno-nationalist logic in the Balkans only to discover it in our own midst.

The third paradox concerns public opinion in the applicant countries. According to various Gallup Balkan Monitor surveys,[24] citizens become more sceptical the closer their country gets to EU accession. We knew about public opinion in Western Europe which, in the midst of a major economic crisis, might prefer to close the door in order to preserve an *acquis* (albeit one that is not always very *communautaire*). But now in the Balkans we are discovering what could be called 'premature euroscepticism' in proportion to the advancement of the accession process: Albanians seem to love the EU from a safe distance, the Croats resent it on their doorstep. The Serbs are somewhere inbetween. If confirmed, this trend would be extremely worrying, as there is no chance that enlargement could succeed without the support of public opinion and the involvement of civil society actors.

None of the above mentioned paradoxes would be sufficient on their own to undermine confidence in the process of the Balkans' EU integration, but they happen to coincide with a crisis of confidence and leadership at the core of the EU. It is not easy to expand the Union to the periphery when its very core seems in doubt or otherwise engaged.

This situation may lead some to call for a combination of Gramscian 'pessimism of reason' and 'optimism of the will'. Indeed, some NGOs, think-tanks and indignant advocacy groups are calling for the process to be speeded up and one can only sympathise with their efforts. It seems to us, on the contrary, that there may well be grounds for pessimism about political will in the EU, while remaining optimistic about the imperatives of reason. Unlike in the aftermath of the 1989 revolutions in eastern and central Europe, the case for the EU's expansion to the Balkans cannot be based on the emotional appeal of the 'return to Europe'. Nor can the *élan* come from the sympathy and humanitarian response inspired by the tragedies of the 1990s. The European promise to the Balkans must remain based on reasoned arguments about what is at stake for the region and the EU.

24. Gallup Balkan Monitor, Brussels (see also the chapter by Robert Manchin in this volume).

Here are three (among a number of other) arguments to support a realist's case: political success, self-interest and credibility. EU enlargement to the Balkans represents the pursuit of its most successful policy since the fall of the Berlin Wall. This is not called into question within the EU and remains, for the foreseeable future, the only plausible prospect for EU enlargement. The inclusion of the countries of the Western Balkans will represent an addition of some 20 million to the EU's a half a billion citizens. When considering the costs of enlargement in a context of budgetary restrictions one must not forget the costs of non-enlargement. The cost of the wars and subsequent recovery programmes has been estimated at $100 billion for the 1990s alone.[25] Without credible prospects of accession to the EU the latter's influence will recede among the political elites and more radical forms of nationalism are likely to resurface around the unresolved contentious issues pertaining to the 'unfinished states' of the Balkans. Without a tangible and assertive European commitment to the Balkans, the progress made over the last decade could unravel, at enormous political and financial cost to an EU which would then be forced to return to a logic of protectorates. What such a failure of Europe's transformative power would do to its attractiveness as an inspiring model of institutionalised interdependence is open to debate. What is absolutely sure, however, is that this would shatter the EU's credibility as an international actor. What credibility would it have in dealing with crises in the Middle East, Africa or Asia if it were unable to fix problems in its own backyard? Ivan Krastev argued a few years ago that the choice facing the EU in the Balkans is between enlargement and Empire. It would seem rather to be one of European enlargement as a 'substitute for an empire',[26] a common roof for the completion of the unfinished states, with nation-state building, a regional approach and European integration as three dimensions of that process.

For these reasons the Balkans requires a rethink of the EU approach to enlargement, which cannot simply replicate the pattern so successfully applied in Central Europe. The EU should strengthen the regional approach by giving all the countries of the region candidate status and a date for the opening of negotiations. The pace and completion of the process will then depend on the capacity to deliver of each country's political elite, thus making their respective responsibilities clear and the political costs of failure more palatable. But that, in turn, requires the EU to overcome its hesitation between containment and integration and to renew its commitment to the Balkans' European future in order to restore its credibility in the region and at international level.

25. A. Ross Johnston, 'An assessment of the decade of Western peacekeeping and nation-building in the Bakans', East European Studies Special Report, Woodrow Wilson Center, May 2003, p. 3.

26. Jacques Rupnik, 'L'Europe centrale et les Balkans à la recherche d'un substitut d'empire', in Anne-Marie Le Gloannec et Aleksander Smolar (eds.), *Entre Kant et Kosovo* (Paris: Presses de Sciences Po, 2003).

Part One: A view from the Balkans

Chapter 1

Turning nationalists into EU supporters: the case of Croatia

Dejan Jović

The views expressed in this chapter are those of the author and do not represent the official views of any institution.

Introduction

Providing that nothing unexpected happens in the last phase of the accession talks between Croatia and the European Union, it is likely that they will be completed in the autumn of this year. Once the Treaty of Accession is signed, it will be followed by a referendum in Croatia on joining the European Union, which – providing there is sufficient support for EU membership among Croatian voters – will in turn be followed by a longer process of national ratification in the EU Member States. Although no date has been officially set, even for the completion of the accession talks, Croatian political leaders hope for EU entry on 1 January 2013,[1] while EU officials indicate that this might not happen before the end of 2013 or even in 2014[2] provided there are no further complications in the ratification process.

Croatia has always insisted on an 'individual approach' to membership for each candidate country and has persistently rejected any grouping with other Western Balkan states, arguing that other candidates in the region are too far behind in post-war reconstruction and in establishing stable democratic institutions and practices. Furthermore, they have unresolved internal issues, open disputes with their neighbours and internal border disputes (Serbia and Kosovo). Croatia's journey towards EU membership would only be slowed down if it was grouped with other states. This does not mean that the Croatian authorities do not support their neighbours' EU membership bids. On several occasions in 2010 and 2011 Croatian officials explicitly encouraged other countries in the Western Balkans to speed up reforms in order to become credible candidates for EU membership as soon as possible. President Josipović promised that once it joins the EU and becomes a full participant in debates on further enlargement Croatia would do nothing to slow down or block Serbia's or Bosnia and Herzegovina's entry.[3] Moreover, recent

1. See President Ivo Josipović's statement at: http://www.hrt.hr/index.php?id=48&tx_ttnews%5Btt_news%5D=93587&tx_ttnews%5BbackPid%5D=48&cHash=e46b727876.
2. See statement by Hannes Swoboda at: http://www.jutarnji.hr/hannes-swoboda--hrvatska-ce-u-eu-uci-tek-krajem-2013-/920502/.
3. See Dejan Jović, 'Palubna diplomacija i funkcionalna suradnja: hrvatsko-srpski bilateralni odnosi na početku mandata Ive Josipovića', *Izazovi evropskih integracija*, vol. 11, pp. 27-42.

opinion polls conducted by *Eurobarometer* in autumn 2010[4] show that the majority of Croats – unlike the majority in the EU 27 – support the EU membership bids of all the Western Balkan countries. For example, while 66 percent of Croats would support Montenegro's membership, only 36 percent in the EU 27 are in favour of it. Support for other countries is also high: for Bosnia and Herzegovina 74 percent (as against only 35 percent in the EU 27), for the Former Yugoslav Republic of Macedonia (72 percent (as against 35 percent in the EU 27), for Kosovo 66 percent (29 percent), for Albania 65 percent (29 percent), and even for Serbia 61 percent (and only 34 percent in the EU 27).

Paradoxically, by relying only on public opinion polls, one could indeed conclude that more Croats support Serbia's EU membership than that of Croatia. Although the polls show that support for membership has increased in the last year of negotiations, Croats remain largely unconvinced of the benefits of EU membership. The last *Eurobarometer* survey shows that only 27 percent of Croats believe that EU membership would be good for their country, while 29 percent think it would be bad for Croatia (41 percent says it would be neither good nor bad). Only 37 percent expect Croatia to benefit from EU membership, while 54 percent think there would be no benefits at all. There is a widespread sense of unease that EU membership would bring new opportunities for foreigners (i.e. Europeans) to buy Croatian real estate, in particular on the Adriatic coast. In addition, jobs that are now available exclusively to Croatian nationals (and *de facto* this means all jobs, since very few are advertised without a request for *domovnica*, a certificate of Croatian nationality) would also be available to other EU citizens, irrespective of their nationality. Due to factors that will be explained below, the general image of the EU is less positive in Croatia than in most other EU countries. Only 28 percent of Croats have a 'predominantly positive image of the EU', while 25 percent have a 'predominantly negative' one.[5] Nevertheless, a poll conducted by Croatian pollster *Ipsos Puls* in November 2010 shows that Croats are unlikely to reject EU membership in an eventual referendum. Of the total population, 52 percent are in favour of joining the EU and 35 percent are opposed to it. There was an alleged increase of 10 percent in the number of people supporting EU membership between June and November 2010, which goes to show how volatile public opinion is with regard to this issue.[6]

Based on these data one might conclude that there is not much enthusiasm for EU membership in Croatia. Yet it is as if there is a sense of inevitability about it. Media reports on the EU accession talks have been rather technical, often using new jargon that means little to the general public. Most have simply stated which 'chapter' in the EU negotiations has been opened and closed, without describing the actual substance of the process and what it really means. This has left the impression that the entire EU accession process is something technical and better left

4. See: http://ec.europa.eu/public_opinion/archives/eb/eb74/eb74_hr_hr_nat.pdf.

5. See: http://ec.europa.eu/public_opinion/archives/eb/eb74/eb74_hr_hr_nat.pdf.

6. See: http://www.poslovni.hr/vijesti/istrazivanje-rast-podrske-pristupanju-eu-165356.aspx.

to politicians, experts and the state administration. There again, the negotiators themselves have preferred to be left to their own devices, rather than having to face sometimes difficult questions and protests by various segments of the general public. No politician anywhere is likely to gain popularity by talking about the EU – and the same was (and still is) the case in Croatia.

The public opinion data correspond to what can be seen in Croatia itself. Most Croats believe that it is decisions made somewhere else and by somebody else that will (or will not) lead to EU membership. They do not feel that they can influence the decision in any particular way. This is not really surprising. People (not only in Croatia) rarely feel that they can influence political decisions, be it on a local, national or supranational level. The less influence they have, the more distant these issues are from their own personal lives. Croats are no exception to this general trend in Europe. Thus they believe that even if they voted 'No' in the referendum on EU membership, the pro-EU political elite would manage to find a way to overturn the result; if in the end Croatia did not achieve membership, then it would be due to decisions taken by external forces (the EU itself or some of its Member States) and not because Croatia had done or failed to do something. This sense of the outcome being all but inevitable, regardless of what happens on the ground, is at the root of the relative indifference in Croatia towards EU accession. It also means that Croats' expectations of the EU are fairly low, and consequently Croats are actually unlikely to be disappointed once they enter the EU. Those who are likely to be disappointed are those who expected much more than can be delivered, which is not the case here.

Nevertheless, at this stage it does indeed look as if Croatia has advanced towards achieving the paramount (and some would even say the only) foreign policy objective: membership of the EU; and it is indeed very likely to become the 28th Member State. The fact that there is not much enthusiasm for membership still needs to be addressed during the referendum campaign on membership. The real challenge will be how to convince moderate (and as yet unconvinced) Croatian nationalists – especially those who participated in the war of independence (known in Croatia as the *Homeland War*) – that joining the EU does not mean losing sovereignty. To do this, the pro-EU political elite will need to get across the message that EU membership is the final stage on the long road of transition from 'the Balkans' (personified in the concept of *Yugoslavia*) to 'Europe' (i.e. the European Union, which for all intents and purposes is referred to as Europe, and which in this paper we will also call Europe). The aim is to show that, by joining the EU, Croatia would be more protected, more influential and more respected in the community of nation states; that it will have achieved not only symbolic recognition (such as in 1992) but *real recognition of its statehood*. If this

strategy is successful, the pro-EU forces are likely to win the day and secure sufficient support for a 'Yes' vote. In this author's view, due to circumstances that are specific to Croatia, this argument has perhaps more chance of convincing nationalists in Croatia than in other EU countries. However, as in all EU Member States, the battle between nationalists and anti-nationalists will never be over. The forces of nationalism will keep challenging the European Union as a concept and will agree to compromise only when and if it is instrumental to their national interests. In the case of Croatia this is likely to be manifested in a policy of opposing any further EU enlargement towards Serbia and Bosnia and Herzegovina, and imposing more bilateral conditions for supporting further enlargement into the remaining Western Balkan states.

Croatia's fivefold transition: from war to peace

Croatia's accession to the European Union is a more complex process than any previous one due to the fact that the country was at the centre of the post-Yugoslav conflicts and wars. While Slovenia also experienced some resistance to its independence in 1991, the violence was limited to ten days of conflict with only a dozen casualties. Soviet intervention was also rather limited in scope in the Baltic states once they had indicated their intention to break away from the Soviet Union. But in Croatia's case, the entire first decade of independence was marked by internal and external conflicts over its borders and internal disputes over its constitutional structure. It was not until January 1998 that the last part of the territory of what used to be the Socialist Republic of Croatia (1945-1991) was reintegrated into the post-Yugoslav Republic of Croatia. The intensive military conflict lasted from August 1991 until January 1992 but peace did not arrive until August 1995, when the largest part of the self self-proclaimed secessionist Krajina region was defeated militarily and incorporated into the newly independent Croatia. The war claimed some 20,000 lives all told (including both military and civilian deaths). Even now, 20 years after the beginning of the conflicts, there are still about 2,000 people missing as a direct result of the atrocities. The bodies of some victims might never be found, as they were most likely transported to other territories of the former Yugoslavia, or even abroad. Some of those who died were reportedly buried beneath or beyond the minefields which have still not been completely cleared.[7] Some were buried in unknown locations, while other bodies were hidden in already existing graves, under other people's names. The problem of missing people is still high on the agenda of bilateral relations between Serbia and Croatia, as demonstrated at three

7. Croatia plans to clear the remaining minefields by 2019. Currently, 994 square kilometres are still laid with mines. See: http://www.24sata.hr/politika/razminiranje-hrvatske-bi-trebalo-zavrsiti-do-2019-50486.

meetings between Serbian President Boris Tadić and Croatian President Ivo Josipović in 2010.[8]

In addition, the Serbo-Croatian war of the early 1990s created about half a million refugees and internally displaced people (IDPs). In the first phase of the war, there were about 250,000 registered IDPs and refugees, mostly ethnic Croats who had to leave Krajina and neighbouring Bosnia and Herzegovina which had been at war in 1992-1995. But after 1995, most ethnic Serbs from Croatia had become refugees in neighbouring Serbia and Bosnia and Herzegovina. As a result of the war, the ethnic Serb community in Croatia was reduced to approximately one third of its pre-war size. While in 1991 there were 581,663 Serbs (12.2 percent of the total population of Croatia), in the 2001 census there were only 201,631 (4.5 percent). Moreover, those who in previous censuses had declared themselves as 'Yugoslavs in the ethnic sense' also disappeared after the collapse of Yugoslavia. In 1981 there were 379,057 ethnic Yugoslavs (8.2 percent of the Croatian population), while even in 1991 (at the moment when the conflicts in Yugoslavia had already started and the process of disintegration was at an advanced stage) 106,041 Croatians (2.2 percent of the population) declared themselves Yugoslavs in the ethnic sense. Most of them changed their ethnic self-definition (which in Yugoslavia and in all post-Yugoslav states was one of the fundamental markers of political and social identity) under heavy pressure and as part of the policy of *voluntary* or (in most cases) *involuntary assimilation*. Consequently, after the war, Croatia became a *de facto* mono-ethnic country. While in 1991 ethnic Croats made up 78.1 percent of its population, in 2001 they accounted for 89.6 percent.

The war thus dramatically changed the nature of Croatian society which historically had been fairly open to the influences of other cultures. Croatia's transition was therefore unique and much more complex than in any other EU candidate country. It was a case not of triple[9] or even quadruple[10] transition, but fivefold, having an additional – fifth – element: the transition from war to peace. In Croatia's case, not only have the political and economic system changed, the very identity of the state and the nation went through a radical and thorough transformation after 1989. The fact that it experienced major conflict has made its democratisation and Europeanisation much more difficult. Although unique compared to any other previous EU accession state, Croatia is only the first in a series of similar cases that might follow if the EU opts to expand further into the Western Balkans. All the potential candidate countries in Southeast Europe had similar experiences in the 1990s, although not to the same extent.

In Croatia, just as in other countries of the post-Yugoslav area, the political culture of the 1990s – and to a degree of the 2000s as well – was marked by nationalism, not by multiculturalism. The principles of

8. 'This is the primary, central issue in our bilateral relations. This issue has to be resolved so that we show to everyone that we care about the victims of the war and those who were left behind them', said President Tadić on 24 November 2010. http://www.komentar.hr/portal/vijesti/svijet/5369.

9. Claus Offe, *Varieties of Transition: the East European and East German Experience* (London: Polity Press, 1996).

10. Taras Kuzio, 'Transition in Post-Communist States: Triple or Quadruple?', *Politics*, vol. 21, no. 3, 2001, pp. 168-77.

internationalism and multi-ethnicity that dominated Yugoslav politics (and the European international system during the Cold War in response to the radical nationalism of the Second World War) were quickly abandoned and replaced by a 'return to nationalism', following similar trends in Eastern Europe after the 1989 'revolutions'. The main objective was to create, defend and strengthen the newly achieved statehood, not to preserve diversity and increase interaction. Politics of 'ethnic engineering' comprised a range of political and legal measures which favoured ethnic Croats – including members of the Croat ethnic community who lived in neighbouring Bosnia and Herzegovina – and discriminated against all minorities, especially ethnic Serbs from Croatia. Even if the laws were subsequently changed to avoid discriminatory practices, they were often implemented according to ethno-nationalist objectives and principles. In the early 1990s this was most evident in the policy of citizenship,[11] while throughout the post-1995 period there was a high degree of bias against ethnic Serbs from Croatia in the Croatian judicial system, especially in cases related to war crimes.

On the whole, it can be said that Croatian nationalism more or less succeeded in achieving its main objectives in the 1990s, and was perhaps more successful than any other brand of post-Yugoslav nationalism. The three main objectives it achieved were: (a) international recognition of Croatia, despite initial hesitation and resistance on the part of the main European and global powers; (b) successful reintegration of all the territories that used to belong to the Socialist Republic of Croatia; and (c) an ethnically more homogenous Croatia than at any time in the past, with the size of its ethnic minorities much reduced. Ethnic homogeneity was one of the main objectives of all ethnic nationalisms in the Western Balkans, but nowhere else has it been so successful than in Croatia during the 1990s. Furthermore, by granting *de facto* citizenship to all the Croats of Bosnia and Herzegovina, Croatia enhanced its political influence over this neighbouring and complex country, without any territorial expansion. It used politics of dual citizenship not only to protect ethnic Croats (who found themselves torn between loyalties to Croatia and Bosnia and Herzegovina) but also to advance its political objectives in the Western Balkans.[12] At the same time Croatia skilfully avoided international sanctions and isolation, although its initial policy towards Bosnia and Herzegovina took it dangerously near. If there was any clear winner of the wars of the 1990s, it was Croatia, or rather Croatian nationalism. Indeed, this is how Croatian nationalists describe their own successes in the 1990s: as a victory for the Croatian cause, sometimes against all odds and mostly without significant EU support.[13]

The consequences were and still are significant: such victory not only strengthened Croatian nationalism domestically but also determined Croatia's stance towards Europe. If you (unexpectedly) win a war, you do not heed any 'conditionality policy' or any such similar advice from

11. Igor Štiks, 'The Citizenship Conundrum in post-Communist Europe: The Instructive Case of Croatia', *Europe-Asia Studies*, vol. 62, no. 10, 2010, pp. 1621-38.

12. That being said, the author does not argue against the policy of dual citizenship when it comes to Croats (or anyone else in Bosnia and Herzegovina). If introduced now, a ban on dual citizenship would force ethnic Croats to opt for one of two citizenships. If faced with such choice, a very large majority would chose Croatian citizenship and renounce Bosnian, if not for any other reason than because Croatian citizenship is soon to become also EU citizenship, with all the benefits that status brings. As a consequence, they would become foreigners in their own country of birth (Bosnia and Herzegovina), which could lead to a wave of migration from Bosnia and Herzegovina to Croatia. This would in fact make Bosnia and Herzegovina less likely to remain multi-ethnic, and would in fact be another victory for ethnic nationalists in their attempt to construct mono-ethnic societies.

13. Croatian nationalists acknowledge the fact that they had support from the United States, especially in the final military and police operations in the *Homeland War*, such as Operations *Flash* and *Storm* in 1995.

the European Union. If you are convinced you were able to win a war on your own merits, it is difficult to accept external pressure to reform. Those who won the war are unlikely to agree to their policies and actions being thoroughly scrutinised. The increased confidence that came with winning the war was a major stumbling block to initial cooperation with the International Criminal Tribunal for former Yugoslavia (ICTY). Pressure from the ICTY on Croatia, as well as EU pressure for reforms, was not at all welcome in Croatia which was the only post-Yugoslav state that could claim victory in the wars of the 1990s.[14]

The other fundamental element of Croatia's post-war identity was based on the notion of victimhood. In Croatian political circles – and in Croatian society in general – Croatia was viewed not only as the winner of the war, but also as a victim of that war.[15] The official narrative – which was soon to focus on glorifying the *Homeland War* (*domovinski rat*) – presented Croatia as the victim of foreign (Serbian/Montenegrin) aggression. This narrative insists on the inter-state and inter-ethnic nature of the war, and rejects any attempt to describe the conflict as a 'civil war'. Ethnic Serbs in the Krajina region (and often Serbs in general) are described as 'foreign invaders' who committed an act of international aggression (invasion), although they did not come to Croatia from anywhere else (at least not in the last few centuries) but were in fact born and lived in Croatia. But because the secession was organised and supported by Belgrade, the areas that declared secession from Croatia were treated as 'occupied'. This narrative then served to justify the expulsion of the 'occupiers' and restrictive measures when it comes to their returning home. In the nationalist narrative that emerged in the first years of independence, ethnic Serbs were collectively treated as 'guests' in what is essentially an (ethnically) Croat homeland. They were not seen as an integral part of Croatian society but rather as temporary and undesirable inhabitants.

In addition, Croatia declared itself a victim of the passivity and indifference with which the European Community approached the post-Yugoslav crisis from 1991 to 1995. Croatian nationalists are largely critical of Europe's role during the breakup of Yugoslavia, blaming it for being too passive in preventing the worst consequences of the war, for being morally deficient and completely insensitive to the suffering of other Europeans or for wanting to maintain the *status quo*, namely Yugoslavia, for too long. On more than one occasion, former President Tudjman criticised Europe for not helping Croatia. Without decisive US intervention in 1994 and 1995 (via Washington and the Dayton Agreement), the war in the former Yugoslavia would have caused even more casualties. Thus, while the United States understood the plight of the victims, Europe failed to do so. Subsequently, Croatian nationalists and supporters of sovereignty became even more dismissive of Europe. It had not helped the victim and got involved only to apply pressure on

14. For the ICTY and Croatia see: Christopher K Lamont, *International Criminal Justice and the Politics of Compliance* (London: Ashgate, 2010).

15. Victor Peskin and Mieczysław Boduszyński: 'International Justice and Domestic Politics: Post-Tudjman Croatia and the International Criminal Tribunal for former Yugoslavia', *Europe-Asia Studies*, vol. 55, no. 7, 2003, pp. 1117-42.

the winner. This came on top of the ideological scepticism with which all nationalists in principle view the European 'experiment'. The European Union is – after all – an alternative to the old Westphalian state system in which only nation states matter. It combines national sovereignty with functional institutionalised cooperation, something about which nationalists would by definition be sceptical. In the case of the post-Yugoslav states, the ambition to create new states out of multiethnic Yugoslavia led to the victory of nationalism over any alternatives. In order to create new states, a degree of nationalism was inevitable, and the political elite used all means available to promote it.[16] In this context it was only logical that the membership of the European Union was not seen as a priority over the objective of consolidating the new statehood. If membership of any international organisation was desirable, then it would be the United Nations and NATO. While membership of the United Nations meant confirmation of newly achieved statehood and thus had high symbolic value, membership of NATO (which Croatia achieved in 2009) offered an additional guarantee of safety and protection and thus increased the level of *de facto* sovereignty. The 1991-95 war thus provided the context within which Euroscepticism flourished in newly independent Croatia.

Constructing a new narrative: making nationalism compatible with EU membership

In response, pro-EU forces in Croatia need to show that in order to have a functioning and independent state, Croatia needs to be a member of not only NATO but also the European Union, as it is the only way for Croatian national interests to be fully protected. It is not enough to declare sovereignty as such: a declaration can still be challenged and is purely symbolic unless there are sufficient guarantees from powerful, international actors. By joining the EU, Croatia will be offered a seat among the powerful nations of Europe, and will thus gain real power. EU membership is in direct continuity with the declaration of independence, and is its culmination.

The Croatian position towards EU membership changed in 2000, not because of a complete rejection of the nationalist narrative but rather because it has been reinterpreted in such a way as to present EU membership as the final stage in the process of making Croatia an independent and sovereign state. EU membership is now seen as the final step in the long process of transition which started with the formal declaration of independence from Yugoslavia but will only end once

16. For transformation of elite nationalism into popular nationalism, see Catherine Baker: *Sounds of the Borderland: Popular Music, War and Nationalism in Croatia since 1991* (London: Ashgate, 2010).

Croatia no longer feels that its survival as an independent state is being challenged. In the years of war and post-war reconstruction, Croatia was a sovereign state in name only. In reality, for a long time it was not in full control of its territory due to the presence of secessionist forces (supported, financed and politically controlled by Serbia during most of the war) as well as UN peacekeepers and other international observers in the United Nations protected areas of Krajina and Eastern Slavonia. It was also exposed to *de facto* interventionism as a result of the activities of the International Criminal Tribunal for the former Yugoslavia (ICTY) whose jurisdiction and authority significantly reduced the independence of Croatia's political and judicial systems. Although Croatia began to reflect on the crimes committed by its own side in the post-Yugoslav wars (especially since 2001), had it not been for permanent pressure from the ICTY, its own prosecutors would have been rather reluctant and much more hesitant to prosecute. Finally, the EU *conditionality policy* further reduced the *de facto* sovereignty of the new Croatian state as regards domestic public policies. Over the last six years, since the accession talks began, the Croatian authorities have been obliged to implement reforms that otherwise they would rather have avoided. But it is primarily because of the prospect of EU membership that they decided to change.

This cooperation would not have been possible if the mainstream nationalist narrative developed by the Croatian political elite, including the Croatian Democratic Union (HDZ) which led the country for 17 out of 20 years since independence,[17] had not incorporated the objective of EU membership. The HDZ now argues that without EU membership, Croatia would remain a semi-sovereign country, still under heavy pressure from external forces. It would be much more vulnerable to potential tensions in the region of Southeast Europe, particularly in Bosnia and Herzegovina which shares a 932-kilometre border with Croatia and where some 450,000 Croatian nationals live. Furthermore, by becoming a member of the EU, Croatia would disassociate itself from the complexity of the 'Western Balkans', a concept invented to describe a specific group of countries which emerged out of Yugoslavia but were not yet fully consolidated, plus Albania. By becoming part of Europe, Croatia would finally – and once and for all – 'leave the Balkans behind'. One of the key claims of the Croatian nationalist discourse – that Croatia is a Central European, not a Balkan country – would finally materialise. Ever since the Yugoslav state was created in 1918, Croatian nationalist discourse argued against it on the grounds that Yugoslavia pushed Croats into the Balkans, a place where they did not belong. Even after the collapse of Yugoslavia, Croatia was still seen as part of the Western Balkans and not really as part of Europe. This view was compounded by the fact that in Europe there was a tendency to treat the Balkans as a 'European backyard' rather than as a room in its house. Europe also referred to 'the Balkans' as being the 'other Europe'. In the collective mind

17. For the transformation of HDZ in the early 2000s, see: Dejan Jović, 'Croatia after Tudjman: the ICTY and issues of transitional justice', in Judy Batt and Jelena Obradovic-Wochnik (eds.), 'War Crimes, conditionality and EU integration in the Western Balkans', *Chaillot Paper* no 116, June 2009, pp. 13-27.

the Balkans is closely associated with violence and conflict, despite the fact that there have been longer periods of cooperation than of conflict in this part of the world. For many Europeans, the Balkans is lawless, violent and pre-modern; a rather simplified picture which does not reflect the other – multiethnic and tolerant – side of the region. The process of transformation is about turning the 'Balkans into Southeast Europe', and then – into 'Europe', as John Lampe has indicated in the title of his book.[18] The process of EU enlargement to the Balkans is also the process of 'de-Balkanising the Balkans'.[19] It would be the end of the Balkans, at least as a political concept.

The cultural and political dichotomy between 'Europe' and 'the Balkans' had direct consequences on how Croatian nationalism perceives EU accession. It appropriates it as the final step in the long struggle against Yugoslavia and anything associated with Yugoslavia, and thus with the Balkans.[20] In other words, EU membership is seen as 'missing evidence' that the Croatian nationalist discourse was in fact right in starting the process of secession from Yugoslavia in the first place. It is an opportunity to present the whole nationalist programme as progressive and modernising, rather than as regressive and out of step with contemporary trends of multiculturalism in the EU. In addition, by joining the EU, Croatia would leave the Balkans and would therefore contribute to its disappearance in the political sense.

Moreover, EU membership of Croatia would spell the end of 20 years of international supervision of the state's policies. The Croatian nationalist discourse has always been critical of the ever-expanding international presence in Croatia in the war and in the post-war period. It viewed the various UN, ICTY, OSCE, EU and IMF missions to Croatia as hampering the country's sovereignty. This was especially the case with the ICTY, against which Croatian nationalists are quick to mobilise. They hope that once the country becomes a member of the EU, such interference in internal Croatian politics will cease. Thus, EU membership is seen also as a bulwark against (in their view undesirable) foreign influences.[21] From the point of view of most nationalists in other EU Member States, it must seem a paradox that EU membership is seen as an instrument of gaining, not losing, *de facto* sovereignty. However, this is what has motivated and successfully transformed many ardent Croatian nationalists into (at least temporary) supporters of the European Union. On the one hand, they never liked the idea of Croatia becoming part of another multiethnic and supranational structure which some see as a kind of 'New Yugoslavia'. On the other, however, they hope that once Croatia has become a fully-fledged member, it will be more powerful and thus have more freedom to implement its own policies without being told what to do (or not to do).

18. John R. Lampe, *Balkans into Southeast Europe: A Century of War and Transition* (London: Palgrave Macmillan, 2006).

19. This concept occurs in both academic and semi-academic discourse. For the former, see: Andrew J Pierre: 'De-Balkanizing the Balkans: Security and Stability in Southeast Europe', USIP Special Report no. 54; available at: http://www.usip.org/publications/de-balkanizing-balkans-security-and-stability-southeastern-europe. In political discourse, see the official website of the President of Serbia, Boris Tadić, where it is said that the President 'has actively promoted the 'de-Balkanization of the Balkans' by taking the initiative in reconciliation efforts as well as by encouraging an increase in regional trade'. See: http://www.predsednik.rs/mwc/default.asp?c=100000&g=20061005141211&lng=eng&hs1=0.

20. Arguments of this nature are expressed, for example, in newspaper articles by three leading nationalist columnists in the Croatian daily press. See: Zvonimir Despot, 'Ipak bolje EU nego Balkan', *Večernji list*, 7 March 2011; Davor Butković, 'Treća Jugoslavija je besmislica kao i politička jugosfera', *Jutarnji list*, 13 November 2010; and Tihomir Dujmović: 'Hrvatskom ulasku u Europsku uniju najviše se protivi Srbija', , 5 March 2011.

21. One could here reverse the old slogan of Croatian nationalists according to which Croatia was a *bulwark of Christianity (antemurale Christianitatis)* into Europe becoming the *bulwark of Croatian sovereignty*.

Conclusion

With the accession negotiations almost complete, the Croatian political elite now needs to secure sufficient support for EU membership among Croatian voters. Most of them are undecided, and a not insignificant proportion of the public opposes membership. However, the decision will be made by the large body of moderate nationalists who have prevailed in all the parliamentary elections since the country's independence with the exception of those in 2000.

The key to their acceptance of the EU lies in convincing them that EU membership is not incompatible with the long-term objectives of Croatian nationalism. Although at first sight this may appear paradoxical, the nature of Croatian politics since 1990 shows that it is not entirely impossible, largely due to the mental and conceptual dichotomy that opposes 'Europe' to 'the Balkans'.

The more nationalistic the government's rhetoric regarding the EU agenda, the more likely it is that these voters will be in favour of EU membership. They will support EU membership only if they see that the achievements of their nationalist struggle during the *Homeland War* (1991-5) are better protected if the country is in the EU rather than if it remains outside. However, there would be consequences for their expectations of EU membership. Once the country joins the EU, these very same people, elite and voters alike, will try to exploit the EU in an effort to disassociate Croatia from the 'remaining Balkans', namely from Serbia, first and foremost, but also from Bosnia and Herzegovina. There is thus a very real danger that, unless they are marginalised within Croatia, the same nationalists who voted for the EU would become the most vocal opponents of further enlargement to other Western Balkan countries. Indeed, they will almost certainly oppose any further softening of the EU border, because it is the border that divides 'Europeans' from the 'Others', in particular from Bosnians and Serbs, who should – according to Croatian nationalists – be kept permanently out of Europe. It is the fact that 'we' belong to Europe and 'they' do not which keeps us different and determines 'our' new identity. From that perspective, it is only logical that they want to keep that division (which they argue has deep historical, cultural and political roots) distinct. One of the leading Croatian opinion makers, Davor Butković, expressed this in clear terms in one of his columns in *Jutarnji list*, on 13 November 2010:

> If Croatia joins the European Union at the beginning of 2013, it will be separated from Serbia – in fact: separated from Serbia more than at any period of its modern history – for a solid period of time. This separation will be manifested both in economic terms and physically – through the

> Schengen system. For that reason it is indeed unbelievable that some still argue that Croatia is now being threatened by some *Third Yugoslavia*. Croatia, I repeat, has never been farther away from Yugoslavia and Serbia in its whole history... When at the end of 2012 or the beginning of 2013 we finally join the EU, any talk of any sort of association with a Yugoslav prefix will become long-forgotten history. Fortunately.[22]

One may of course wonder whether the narrative of Croatian nationalism will survive the deep political and cultural changes that EU membership brings. As we saw in public opinion polls conducted recently, most Croats today are in favour of Bosnia and Herzegovina and Serbia joining the EU. The same is true of the political leadership of Croatia. So, what chance do Croatian nationalists and supporters of Croatian sovereignty have within an increasingly globalised and Europeanised framework? Regardless of why and how they entered the EU, no Member State remained quite the same after joining. In all of them the EU was instrumental in defeating excessive nationalism and in promoting (in many cases rather successfully) liberal politics. Would Croatia not also become much more liberal and cosmopolitan once it joins the Union?

It might indeed. In fact, in the last decade Croatian politics have become increasingly liberal, largely as a result of the EU accession process. However, the founding discourse of the *Homeland War*, which in essence celebrates the war and conflict of the 1990s, has survived. Indeed, in this final phase of the EU negotiations and with the twentieth anniversary of Croatia's new statehood this discourse has been revived and revitalised. In these last 20 years, the myth of the *Homeland War* has become the keystone of official discourse and enshrined in the official declaration enacted by Parliament back in 2000.[23] This narrative has now become one of the main obstacles to creating a more liberal, open-minded and tolerant Croatia which is open to its neighbours. However, the European Union is primarily a community of peace, which actively promotes a culture of peace and tolerance. It should thus be expected that those who are unwilling to actively promote peace might come under some pressure.

The experience of previous enlargements shows that EU membership offers a new chance not only to liberal and anti-nationalist globalising forces but also to nationalist anti-globalists. While the former use the new institutional set-up to advance their liberal agenda and defeat local nationalism, the nationalists also use EU membership to consolidate their own discourse and respond to the challenges of globalisation. They use the EU as the new 'hostile other' in order to mobilise the nation against it. Both of them – nationalists and globalists – are constantly restructuring. They both survive, and even strengthen their own positions in the new circumstances. Similar trends may of course be expected in Croatia too.

22. Davor Butković, 'Treća Jugoslavija je besmislica kao i politička jugosfera', *Jutarnji list*, 13 November 2010.

23. See: http://narodne-novine.nn.hr/clanci/sluzbeni/274008.html.

By accepting Croatia in the Union, the EU will be faced with the new experience of including a country that has recently been at war and where that war is still much remembered and celebrated. It will accept a member that bases much of its contemporary political identity on the notion of being both a winner and a victim of a war that Europe considered unfortunate and unnecessary. It will be a challenging experience and one that is likely to have a major impact on the EU integration of other Western Balkan states in the future.

Chapter 2

BiH after the elections – a tale of disillusioned optimism

Denisa Sarajlić-Maglić

Introduction – post-election change?

The success of the October 2010 general elections in Bosnia and Herzegovina (BiH) should not be judged according to the victory of a particular party or coalition, but rather by whether or not they brought change in terms of strengthening the country's democratic processes. After four years of reform stalemate, with the political elite having reverted to extreme nationalist discourse and policies, the October 2010 general elections represented an opportunity for the citizens of Bosnia and Herzegovina to seek change. Their awareness of the need for change was evident first and foremost from the 56.28 percent turnout rate,[1] the highest since the national authorities had been running general elections independently.[2] Moreover, 370,000 more ballots were cast in 2010 than in 2002, an increase of 22 percent.[3] The high turnout in itself gave some cause for optimism.

Civil society also played a major role, encouraging voter turnout, particularly among the younger generations, by means of a very creative activist campaign. This was important, given the fact that since the 2008 municipal elections, 80,000 young people had become eligible to vote, including a whole generation born the year when the war started. Gathered around an informal platform, civil society organisations moved from pure advocacy to serious activism in a very short period of time. They organised actions calling for accountability on the part of political parties, awareness-raising on the issues of party funding and candidates' property, voter profiling on the basis of party programmes, measurement of the extent to which parties had kept the promises they had made in the 2006 campaign and many other activities. Thus, for the first time, the political parties found themselves not only in competition with each other, but also under very visible pressure from civil society, which to some extent succeeded in shifting the political campaign away from

1. The highest turnout recorded so far was in 2002, at 55.5 percent. Source: http://www.izbori.ba/documents/2010/ID750-prilog.pdf.

2. The first elections administered by the BiH Central Election Commission were held in 2002, while the 2004 General Elections were conducted and funded independently by the BiH authorities. See: http://www.izbori.ba/documents/ODZIV2008/Odzivi_po_izbornim_jedinicama.pdf.

3. The turnout in 2002 was 1,298,827, and in 2010 it was 1,671,977, according to information from the Central Election Commission. This increase can be attributed to a system of passive voter registration (i.e. the voter register uses data from the Central Identification Protection System).

the highly emotive ethnic issues that had dominated previous elections towards issues affecting the daily lives of voters.

Contrary to all expectations, the rhetoric during the election campaign was somewhat milder than had been the case in the four years preceding the elections. The 2006 elections had marked a turning-point, with the government agenda veering sharply towards nationalism and away from Euro-Atlantic integration. This trend was already clear during the 2006 election campaign and continued afterwards. This period was marked by the lowest government activity since the country's European agenda had been set and by the most divergent nationalist positions since the signing of the peace agreements in 1995. Although BiH managed to sign a Stabilisation and Association Agreement with the EU in 2008, its progress in implementing it has been slow and arbitrary. It was therefore somewhat encouraging to see a milder tone adopted during the 2010 election campaign than in the period preceding it. The nationalist rhetoric escalated only after the elections.

Bosnia and Herzegovina's EU integration process was dealt a severe blow, falling victim to a political power struggle dominated by nationalist issues. Reform was slowly pushed off the political agenda; between 2006 and 2010 the reform process slowed, grinding to a full halt in the six months following the October 2010 elections.

Thus the EU agenda suddenly found itself engaged in a war of rhetoric against the nationalist agenda. While the international community was taking a 'hands off' approach, the nationalist political leaders tried to construct a new political reality composed not of individual parties, but of ethnic political blocs, sidelining the EU agenda for several months.

Relations with neighbours

The election of Ivo Josipović as the new Croatian President in January 2010 created new dynamics in the relations between the Western Balkan neighbours. Mr. Josipović laid emphasis on restoring good-neighbourly relations and sending reconciliatory messages to regional political leaders. On several occasions he paid his respects to the war victims on all sides. On 14 April 2010, during a visit to BiH where he addressed the BiH Parliament, President Josipović expressed deep regret about Croatia's involvement in the division of Bosnian society and the suffering of innocent victims. After the BiH elections, Mr. Josipović met with the newly-elected Bosniak member of the Presidency, Bakir Izetbegović. Mr. Izetbegović himself contributed to the new positive climate of relations, apologising on Serbian B92 television for 'all innocent persons killed by the Army of BiH', albeit in a personal rather than official capacity.

The intensified cooperation between BiH and Croatia is also reflected in a number of bilateral agreements, among other things on cooperation in the field of the information society and electronic communications and the restoration and modernisation of the Sava River waterway. A major development was the signing of an agreement on the mutual recognition and enforcement of court rulings in criminal matters. The two countries also signed an agreement on police cooperation in the fight against cross-border crime that had been initialled at a joint session of the two governments in Split in June 2010. Cooperation among all countries of the region has progressed in the fields of the fight against crime and corruption, police and the exchange of data, resulting in a series of arrests and prosecutions throughout the region.

However, as time goes by, it appears that the changed dynamics of bilateral relations is in danger of remaining limited to form rather than substance. Without substance the novelty of the new dynamics will soon wear off and President Josipović might lose the momentum generated by the initial boost to good-neighbourly relations. Even though he has now positioned himself as a respectable regional partner, real relations between Croatia and BiH are still marked by a series of open issues, such as the status of Port Ploče, access to the open sea and the Peljesac bridge, transit through Neum, dual citizenship, unresolved borders and property issues, to mention but a few.

There are also unresolved border issues between BiH and Serbia, as well as a lack of formalised dialogue through the Interstate Council for Cooperation. At the beginning of 2010, Serbia agreed to the appointment of a new BiH Ambassador to Belgrade, a position that had stood vacant for three years. Also, in March 2010, the Serbian Parliament adopted a resolution condemning the crimes committed in Srebrenica.

However, the Serbian leadership appears to be playing a double game. On one hand, Tadić is trying hard to project the image of a progressive and moderate politician to the international community. On the other hand, however, he continued to show public support for the rhetoric of the then Prime Minister and the current President of Republika Srpska (RS), Milorad Dodik. Tadić played a very destructive role by showing symbolic support for Dodik, riding roughshod over what little had been restored by way of inter-ethnic relations in BiH. Tadić joined Dodik in a series of pre-election events, such as the opening of a primary school named 'Serbia' in Pale and the inauguration of a bridge over the Drina River in Zvornik. On the eve of elections both Tadić and Serbian Foreign Minister Vuk Jeremić showed up at Alliance of Independent Social Democrats (*Savez nezavisnih socijaldemokrata* – SNSD) party rallies hosted by Svetlana Ceca Ražnjatović, wife of Željko Ražnjatović Arkan, a war criminal who was killed in 2000. Ms. Ražnjatović has since been

indicted by Serbian prosecutors for corruption and the illegal possession of weapons.

Thanks to the efforts of the Turkish authorities, regional cooperation was further stepped up in April 2010, when the Presidents of Turkey, BiH and Serbia signed the Istanbul Declaration following a series of trilateral meetings at the level of the Foreign Affairs Ministers. It was agreed at the summit that members of the BiH Presidency would soon visit Belgrade, although this did not happen prior to the October elections in BiH. President Tadić and Prime Minister Erdogan visited Srebrenica on the 15th anniversary of the genocide. Serbian President Boris Tadić stated in Istanbul that EU membership was in the common interest of all three states and hailed the Istanbul Summit as a 'new beginning' in their relations. Tadić, Gül and Silajdžić agreed that they would continue to work on building peace, prosperity and stability in the Balkans. The former Chairman of the BiH Presidency, Haris Silajdžić, welcomed President Tadić's assurances in Istanbul that Serbia would never do anything to harm the integrity and sovereignty of BiH, which he said brought 'peace and serenity into our hearts'. However, the Serb member of the BiH Presidency, Nebojša Radmanović, proclaimed Silajdžić's signature on the Istanbul Declaration to be unconstitutional, while Milorad Dodik dismissed the entire Declaration as 'non-existent'. For this reason, a meeting between President Tadić and the Republika Srpska authorities was organised at the end of May in Laktaši, at which the RS officials conveyed their honest opinion about the Declaration to the Serbian President.

A shadow over democracy in BiH

The newly-elected President of Republika Srpska (RS), Milorad Dodik, continued throughout the entire election campaign to canvass for greater autonomy for the RS, only slightly softening his tone as compared with the previous four years. He made frequent reference to the possibility of the RS seceding through a referendum, expressed the intention that certain state competences would be devolved to the entity level, and encouraged the Croat political community to seek a third ethnic-territorial entity within BiH. He consistently denied genocide in Srebrenica and criticised the State of BiH, its symbols and authority, calling into question its very existence. His party representatives in the State Parliament blocked major legislative projects from the European agenda, including the Laws on State Aid and small and medium-sized enterprises (SMEs), as well as veterinary and environmental legislation.

Another significant point concerning the elections is that the nationalist rhetoric escalated only *afterwards*, at least on the part of the Croat

nationalist parties. Frustrated by the failure of its candidate to be elected to the Presidency of BiH, the Croatian Democratic Union (*Hrvatska demokratska zajednica* – HDZ) tried to undermine Social Democratic Party candidate Željko Komšić's re-election to the Croat seat. HDZ challenges Mr. Komšić's legitimacy as the Croat member of the Presidency on the grounds that his election was also supported by Bosniak voters, which is perfectly admissible under the BiH Election Law. However, rather than manifesting itself through proposals for changes to the way Presidency members are elected, their reaction has prompted stronger claims for territorial autonomy for the Croats through the creation of a third entity.[4] This has raised doubts about the HDZ's motives for claiming more rights for Croats, whose constitutional representation deserves due consideration, but cannot be achieved through territorial reorganisation at the expense of the country as a whole. This ambition has extended to claims that the HDZ and HDZ 1990 are the only 'legitimate' representatives of the Croat people.

This position is inaccurate on several counts. First of all, to claim that only nationalist parties with a nationalist prefix in their title can be the legitimate representatives of an ethnic group is tantamount to introducing entirely new political categories that do not even exist in the Constitution. The constitutional power-sharing system includes a series of mechanisms designed to prevent the domination of any single ethnic group over the others, while the voting and decision-making procedures demand the participation of representatives of all ethnic groups, regardless of which political party they belong to. Denying elected representatives the right to represent their constituencies, allowing them only the right to represent their ethnic group, surpasses even the existing complex protection mechanisms enshrined in the Constitution. The claim that only elected representatives from nationalist parties can represent an ethnic group denies non-nationalist parties the right to have a cross-ethnic appeal, and individual parties the right to be composed of representatives from different ethnic groups. In essence, this concept undermines the need for multi-ethnic parties, and ultimately, the need for elections, if political representation in government is solely the reflection of the population's ethnic composition. It would mean that the outcome of elections would depend not on the share of votes won, but on the proportional representation of ethnic groups. And finally, this concept infringes the basic human right to elect or to be elected as an individual. It is particularly worrying that this concept received either tacit or open support from Republic of Croatia officials, including President Josipović.

As a result of the increasing post-election nationalist activism, Republika Srpska's two main parties, the Serbian Democratic Party and the Alliance of Independent Social Democrats, signed a platform on 'joint action in the institutions of BiH', announcing their intention to protect the

4. BiH is divided into two territorial entities, Republika Srpska and the Federation of BiH, the population of the former being majority Serb, while Croats and Bosniaks form majorities in some areas of FBiH. Some Croat parties have been demanding the right to form a third territorial entity with a majority Croat population. A previous attempt to challenge the BiH Constitution and the country's territorial integrity in 2001 ended in the arrest and indictment of its initiator and former member of theBiH Presidency Ante Jelavić and his associates.

'integrity and institutions of Republika Srpska'.[5] The two largest Bosnian Croat parties, HDZ and HDZ 1990, soon followed suit, thus forming two ethnic political blocs that took firm positions during the coalition negotiations, limiting the room for manoeuvre on any non-ethnic issues and making the coalition negotiation process much more cumbersome and time-consuming.

At state level change was evident in the election of the Bosniak member of the BiH Presidency, with Haris Silajdžić losing his seat to Bakir Izetbegović. In broad terms, Dr. Silajdžić's four-year mandate had been marked by the categorical rejection of any *rapprochement* of ethnic communities and by ambitious and idealistic political goals. Bakir Izetbegović, on the other hand, consistently advocates reconciliation among neighbours and takes a significantly less rigid stance on internal political relations.

The Social Democratic Party almost doubled its result compared to 2006, winning eight seats in the BiH House of Representatives (HoR)[6] as well as a significant majority in the Parliament of the Federation of Bosnia and Herzegovina (FBiH) and in five out of ten cantons. The Party of Democratic Action (SDA) lost a significant number of seats, but still secured a position as one of the key negotiators in the process of forming a post-election coalition, due mainly to its success in maintaining equidistance with all the major parties before and during the election campaign. The Alliance of Independent Social Democrats (SNSD) again won a significant majority in the RS National Assembly, even though nominally it lost a large number of votes. It stands on an equal footing with the Social Democratic Party of Bosnia and Herzegovina (*Socijaldemokratska partija* – SDP) in terms of the number of seats in the BiH HoR. Conversely, none of the so-called 'Croat' parties individually has won a large number of seats in the HoR, the largest being HDZ with three seats.

However, the continuing political fragmentation, with such a limited number of representatives in the lower House of Parliament, still creates difficulties for the formation of post-election coalitions. One encouraging development following those elections is that a number of parties forming the core of a potential new coalition have managed to impose a dialogue on the new coalition's programme goals, counteracting the concept of two or three ethnically-based political blocs. This is in itself an important milestone towards strengthening democracy in BiH, although it will not be sufficient unless it is thoroughly implemented during the government's four-year mandate.

However, concern about the questionable democratic nature of the electoral process continues to cast a dark shadow, given that the elections were held in compliance with the discriminatory provisions of the BiH Constitution, thus preventing members of ethnic groups other than

5. See: http://www.mojevijesti.ba/novost/60813/tekst-platforme-o-zajednickom-djelovanju-snsd-i-sds-scenarij-raspada.

6. The BiH House of Representatives has 42 seats.

the Constituent Peoples from running for the BiH Presidency and the House of Peoples of the Parliamentary Assembly of BiH (HoP). Under Annex IV of the Dayton Peace Accords, only members of one of the three Constituent Peoples[7] of Bosnia and Herzegovina are permitted to stand for those elections, thus excluding members of the country's 14 other national minorities. The European Court of Human Rights (ECHR) found that this amounted to discrimination and ruled in favour of Dervo Sejdić and Jakob Finci, members of the Roma and Jewish communities, both citizens of BiH, whose ethnic origin barred them under the Constitution from standing for election to the Presidency and the HoP. Following this, the Head of the EC Delegation warned that the EU's Stabilisation and Association Agreement with BiH could be suspended if the Constitution was not brought into line with the ruling. Lady Ashton repeated the same message during her visit to the country in February 2010. However, the BiH authorities were still unable to reach an agreement on the implementation of the ECHR ruling before 2010 general elections were announced, and they were thus conducted on the basis of the discriminatory rules. By the same token BiH was also in breach of Article 2 of the Interim Agreement with the EU.

EU integration – a declarative goal only

The 2010 EU Progress Report for the first time is quite blunt in its description of the obstacles standing in the way of EU integration: 'No steps have been taken to address the problem of legislation relevant for EU integration being blocked'.[8] The blockages are attributed to a number of causes, including the lack of a joint vision, deliberate political obstruction through the misuse of rules on quorums,[9] a lack of coordination between the different levels of government, the failure to harmonise legislation, the lack of enforcement mechanisms for the implementation of EU priorities, etc. These and other factors have 'delayed reforms and reduced the country's capacity to make progress towards the EU'.[10]

One exception to this in the rule-of-law area concerns BiH's compliance with the conditions for granting visa-free travel to Bosnian citizens. Although it lagged behind the other countries of the region (except Albania) in fulfilling the criteria of the roadmap on visa liberalisation, all conditions were met by mid-2010, enabling visa-free travel to commence on 15 December 2010. The very technical criteria entailed legislative amendments and the adoption of laws, the formation of new institutions, the appointment of officials and the recruitment of new staff, as well as training in numerous areas such as immigration, asylum, border control, the fight against crime, terrorism and corruption, and the protection of identity, and the installation of a very sophisticated

7. The Constituent Peoples are the Serbs, Bosniaks and Croats, and the rest fall into the category 'others' and do not enjoy equal political rights.

8. European Commission, 'Bosnia and Herzegovina 2010 Progress Report', SEC(2010) 1331, Brussels, 22 November 2010, p. 8. Available at: http://www.delbih.ec.europa.eu/files/docs/2010progress2.pdf.

9. Ibid.

10. Ibid.

system of biometric passports. The decision to grant free travel to BiH citizens throughout the Schengen area will have long-lasting positive effects. Not only does it give Bosnian citizens a sense of belonging to Europe, but it finally also gives them a sense of freedom now that they are able to travel beyond the very narrow confines of their immediate neighbourhood. Hopefully, in the long run, this decision will influence mindsets too, encouraging young people especially to think beyond narrow-minded ethnic divisions and internal segregation.

It would appear that citizens have grasped the technical nature of the EU integration process better than the political elite. In the focus group research conducted by the Foreign Policy Initiative BH in late 2010, it was apparent that BiH citizens valued the merit-based system of progress towards the EU and did not expect any undeserved political rewards. They also objectively valued the progress made by the other countries of the region.

In spite of the slow progress of EU reforms, the Gallup Balkan Monitor[11] still records increased public support for EU integration. Although there is still some discrepancy between the levels of support registered in FBiH and RS, there has been some increase in the case of the latter. Support in FBiH remains high at 75 percent, and while it stands at only 59 percent in RS, it is still higher than the 48 percent recorded last year. Quicker EU integration also ranks quite highly as an issue for all three ethnic groups, with Croats ranking it as the first area in which changes would be expected after elections, Serbs ranking it as second, and Bosniaks as third. Interestingly enough, all three groups have more faith in changes in the area of EU integration, than they do, for example, in job creation, which was placed in fourth position by all of them.

However, the statistics concerning the different visions of the country's future paint a more depressing picture. According to Gallup's research, 87 percent of BiH Serbs would agree with the secession of Republika Srpska to form an independent state, if the people were to vote for such a change. 43 percent of Bosnian Croats would be in favour of splitting FBiH into a Croat and Bosniak entity, as would 61 percent of Bosnian Serbs. Finally, in international sports events 88 percent of Bosnian Serbs support the Serbian national team, 72 percent of Bosnian Croats the Croatian national team, and 94 percent of Bosniaks the BiH national team, which is yet another indicator of the depth of the country's social divisions and its lack of a common vision for the future.

Given the number of commitments the country entered into when signing the Stabilisation and Association Agreement (SAA), it is clear that some constitutional change will be necessary in order to unblock the reform process and speed up EU integration. Constitutional reform is a prerequisite for addressing the country's dysfunctionality and

11. Gallup Balkan Monitor, 'EU support on the rise – the right moment to speed up reforms?', *Insights and Perceptions: Voices of the Balkans*, December 2010.

democratic deficit. It will thus remain one of the major challenges facing any coalition government, yet without it, SAA obligations will be hard to implement.

There is also a need for clarification as to what functional constitutional reform actually means in practice. What it does not mean is another attempt at territorial reorganisation, because there is no ideal solution that would satisfy all territorial appetites, even within the same ethnic communities (as was the case with the different positions adopted by the HDZ and HDZ 1990, with the latter calling for the third entity to extend across the entity border, while the former wished to limit it to the territory of FBiH). Even if such an ideal ethnic-territorial divide existed, it would still not make the country more functional or better equipped to deal with the challenges of EU integration. Functional constitutional reform must therefore include measures to create a decision-making system more conducive to change, with less blockages, and mechanisms enabling the state to enforce harmonisation with EU legislation across the entire country. However, according to the Gallup Balkan Monitor, only 10 percent of Serbs would like to see constitutional change strengthening the state government in accordance with EU regulations, as opposed to 44 percent of Bosniaks and Croats. According to the same research, all three groups show a very low level of trust in both national institutions and the EU. The national government is among the least trusted institutions, while the EU is trusted only slightly more. The most trusted institutions for all three groups are the military and the religious communities.

The BiH authorities have thus failed to make progress on key EU reforms, including finding a solution regarding the ECHR ruling in the Sejdić-Finci case, or with regard to issues of state property, state aid, the census and defence property. Also according to the EU Progress Report 'very little progress was made towards meeting the requirements set by the Peace Implementation Council Steering Board for the closure of the Office of the High Representative (OHR)'.[12]

Agenda for the international community

The main task of the Office of the High Representative of the International Community in BiH since the Dayton Agreement has been to implement the Peace Agreement and interpret its provisions. No one ever put an end date on the mandate of the High Representative (HR), nor was it made clear what would determine the closure of OHR. The general understanding was that it would be closed down once the country was on an 'irreversible' road to the EU and NATO. But with the chances of

12. Ibid. p. 10.

'irreversibility' getting slimmer after 2006, the international community started to run out of arguments for closing it down.

Paddy Ashdown was the first HR to announce that he would be the last, right at the start of his mandate in 2002. His successor Christian Schwarz-Schilling conveyed the same message throughout his one-year mandate, while the next two High Representatives, Miroslav Lajcak and Valentin Inzko, were tasked with planning the transition from the OHR to the EU Special Representative (EUSR). Formally, the Peace Implementation Council Steering Board (PIC SB) set the '5+2' conditions for OHR transition, which included the resolution of state property and defence property allocation issues, the completion of the Brcko Final Award, fiscal sustainability and the entrenchment of the rule of law. In addition to those five objectives the PIC SB agreed that two further conditions must be met prior to transition: 'signing of the SAA and a positive assessment of the situation in BiH by the PIC SB based on full compliance with the Dayton Peace Agreement'.[13] The first condition was met in 2008, while BiH seems to have moved further away from the second as time has gone by. For several years the EU Progress Reports stated that 'The European Union would not be able to consider an application for EU membership until the OHR has been closed.'[14] However, this sentence was not included in the 2010 Progress Report, indicating recognition of the fact that the political situation in BiH had deteriorated and that the OHR presence continued to be necessary.

In December 2010, the PIC SB communiqué reflected the EU's scepticism about stability and progress in BiH. The PIC SB 'expressed concern at the findings of the European Commission's annual Progress Report, adopted on 9 November, regarding the limited progress on the country's European integration agenda and on key EU-related reforms, as well as the lack of a shared vision among Bosnia and Herzegovina's political leaders'.[15] It took note of the Progress Report assessment that there had been little progress with improving governance and the functionality of the state, including aligning the Constitution with the European Convention on Human Rights. It reiterated that the transition from the High Representative to a reinforced EU presence remained the goal based on the 5+2 agenda, but recalled that it was 'the responsibility of Bosnia and Herzegovina's political leaders to build consensus and reach agreements necessary to fulfil these criteria'.[16]

In the same spirit, Operation EUFOR *Althea*'s executive mandate was renewed by UN Security Council Resolution 1948/2010 on 18 November, enabling it to continue its role of ensuring compliance with the military annexes of the Dayton Agreement. This could also be interpreted as recognition of the continued need for an international presence to maintain a safe and secure environment in Bosnia and Herzegovina.

13. Declaration by the Steering Board of the Peace Implementation Council, PIC SB political directors, 27 February 2008. Available at: http://www.ohr.int/pic/default.asp?content_id=41352.

14. Extract from the Communication from the Commission to the Council and the European Parliament, 'Enlargement Strategy and Main Challenges 2009-2010', COM(2009)533 final, Brussels, 14 October 2009, p. 1.

15. PIC SB Communiqué, 1 December 2010. Available at http://www.ohr.int/pic/default.asp?content_id=45573.

16. Ibid.

Against this backdrop, the discussion on the closure of the OHR has gradually turned into a debate on the ways and means of maintaining its mandate while strengthening the mission of an EUSR. In parallel there is very heated discussion among BiH's political parties, with those of RS consistently demanding an immediate closure of the OHR on the one hand, and those of FBiH arguing that the OHR should not be closed down before its responsibilities can be transferred to the legitimate institutions of BiH, on the other. The latter have a particularly strong case when one considers all the unresolved issues stemming from the Peace Agreement requiring clarification, interpretation or even arbitration. Through Annex X to the peace agreement and thanks to its action these past 15 years, the OHR has become an integral part of the legal and political system in BiH. Its abrupt 'extraction' from the BiH legal system would create a political and legal vacuum that would lead the country into further crisis. Some civil society organisations have supported the idea of OHR gradually devolving its responsibilities to the BiH institutions until there comes a time when the country is capable of sustaining its stability and functionality on its own.

The PIC Steering Board urged the authorities to 'establish as a matter of priority a transparent and effective mechanism for developing concrete constitutional reform proposals', which would address the discriminatory provisions based on the ruling in the Sejdić-Finci case. It stated furthermore that 'Bosnia and Herzegovina also needs to increase efforts to improve its decision-making in order to be in a position to be able to adopt, implement and enforce steps required to promote the country's integration into the EU'.[17] All of the above is based on the Progress Report assessment that 'there has been little progress on improving governance and the functionality of the state'.

As stated earlier, constitutional reform was also a core issue during the coalition discussions, but opinions diverged on its meaning and substance. However, the international community's role in that regard remains undefined. After several failed attempts to initiate and facilitate negotiations on constitutional reform among political leaders,[18] the Swedish EU Presidency represented by Foreign Minister Carl Bildt, aided by European Commission and US representatives, made another attempt during the election year to gather political leaders together in EUFOR's camp Butmir in order to reach an agreement on constitutional change. But that effort only further exposed the divergences among the different parties and fed existing suspicions about the international community's motives, perceived by the public to be self-serving and directed at a single aim – to speed up the closure of OHR.

17. Ibid.

18. The largest-scale effort to reform the BiH Constitution took place in 2006 in the form of the so-called 'April package', and it failed in BiH Parliament by one vote less than it needed to be passed. The international community was subsequently involved in a series of smaller-scale efforts to negotiate constitutional reform, including the Mostar Declaration, Prud Agreement, etc.

Conclusion: the EU is losing a war of rhetoric

Even though the EU has repeatedly pointed to the need for constitutional reform in order to speed up the integration process, it has never given any clear indications as to the precise way in which the problematic constitutional provisions need to be changed. However, in view of this latest attempt and all previous efforts by the international community to facilitate constitutional reform, there is growing scepticism as to the degree to which it is willing to be involved in similar efforts in the future. Caution is therefore recommended. International efforts to offer constitutional packages or specific proposals have not delivered the desired results so far. However, given the need for constitutional reform, the international community, and the EU in particular, could play a constructive role by designing a framework that sets the parameters for changes that are essential in order to remove the obstacles to EU integration.

Unfortunately, this is an area in which the EU seems to be losing the abovementioned war of rhetoric. While the international community is taking a 'hands off' approach, however concerned it may appear about the rhetoric of secession and division, the nationalist political leaders are using that vacuum to impose the concept of nationalist blocs. In this way they are sidelining the EU agenda. As stated earlier, the EU agenda is thus becoming a victim of the nationalist agenda. Once the government coalition is up and running, the EU will have to face the challenge of bringing public political discourse back into its own court. This will be difficult given, on the one hand, the very emotionally charged nationalist rhetoric, and the very technical nature of the EU agenda, on the other. Nonetheless, this is the job that the EU will need to do itself. It is not something that can be done by the US, or that will be done independently by local political leaders. They will need the EU as a strong partner in deferring the nationalist agenda and sustaining the EU agenda for the years to come, at least until such time as the state of BiH is capable of guaranteeing stability and a functioning government. Until then, the issue of the OHR's closure should not even appear on the agenda of the international community, however strong the new EU presence becomes.

Chapter 3

Ten years of post-Milosevic transition in Serbia: problems and prospects

Jovan Teokarevic

Introduction

One decade after the beginning of democratic transition, Serbia is going through a number of serious crises, from economic slowdown and a significant drop in the living standards of the majority of the population, to EU 'accession fatigue' and disappointment with the post-Milosevic democratic rulers. As a result there is widespread pessimism and disillusionment which can be seen in every aspect of public life.

Such feelings stand in sharp contrast to the optimism of ten years ago when the fall of the previous regime was welcomed by most citizens as a sign of radical change and hope for the future. A decade ago it was only too natural to expect a whole new era to begin once Milosevic was gone, with stable peace instead of the wars and conflicts of the 1990s, with sustainable development instead of decay and suffering, and with consolidated democracy instead of dictatorship.

Ten years later, despite obvious though uneven progress, many expectations have not been met. Although the past decade has not seen military conflict, the process of disintegration unleashed 20 years ago with the break-up of Yugoslavia has continued. In 2006 Montenegro opted in a referendum for independence (to leave the federation with Serbia) and Kosovo, as a former autonomous region of Serbia, unilaterally declared independence in 2008. Furthermore, EU membership, a goal now shared by a convincing majority in contrast to the 1990s, is still an objective which, in the best of scenarios, could only be achieved in the long run. Economic recovery has been replaced by decline, and the newly-won democracy suffers from many problems, both old and new.

The social atmosphere today is far worse than it has been even in the past several years. From today's perspective, 2008, while far from perfect,

was a year of great optimism throughout the country because Kosovo's secession in February – a traumatic event for Serbia – was not followed by a new cycle of violence, as many had feared. That same year there came further encouragement in the form of two election victories by pro-European political forces, namely the Democratic Party (DS) under its president Boris Tadic: they won both the presidential (January) and the parliamentary (May) elections in very difficult circumstances. A few months later, the biggest opposition and nationalist party, the Serbian Radical Party, split into two: the larger part – the Serbian Progressive Party led by Tomislav Nikolic – took a pro-European stance, which for the first time resulted in an almost universal consensus about the country's priorities.

Things changed for the worse soon afterwards, with the global economic crisis getting in the way of many ambitious plans for the future. Faced with today's harsh reality, Serbian citizens now have a different perception of the past, which no longer looks as bad as it did just a few years ago: in particular, life in communist Yugoslavia tends to be seen in a rosy light when compared with today. There is a popular joke which captures this nicely and which goes: 'Sweden is lagging thirty years behind Serbia. Why? Because the Swedes still live well!'

It is not surprising that pessimism holds sway. According to some opinion polls, Serbia is the fourth most pessimistic nation in the world. While it is difficult to predict the effects of each crisis or all of them together, it is nevertheless worth explaining here the main issues and prospects.

The economy

The prevailing gloom in Serbia can first of all be ascribed to numerous economic problems. Serbia was certainly hit extremely hard by the global economic crisis. At the same time the government has been unable to find the appropriate cure and has clearly performed much worse than many other governments in the region and in Europe in response to the crisis. Previously high rates of growth (5-6 percent on average during the second part of the last decade) were below zero in 2009 and 2010.

While some growth is expected during 2011, it is difficult to be optimistic about future economic prospects with data still showing poor performance in certain crucial areas. For instance, exports are rising again, but hardly enough and only after a major drop at the beginning of the crisis. De-industrialisation, which almost became a symbol of the Serbian transition during the previous decade, has not been replaced by an opposite trend,

and the level of Serbia's production is still far below what it was in the former Yugoslavia. A drastic fall in foreign investments, together with high foreign trade, current account and budget deficits, have forced the government to keep borrowing with the result that the country is deeply in debt (each citizen owes around €1,900). The inflation rate is among the highest in Europe, and the stability of the national currency, the dinar, is still very much under threat after a dramatic loss of almost a quarter of its value against the euro in the last couple of years.

The employment figures are the most striking and indeed the most frightening signs of decline. In only two years, 2009-2010, in a nation of 7.5 million people, more than 200,000 lost their jobs, with the total number of jobless verging on 800,000 officially and one million unofficially. An already very high level of unemployment of 13 percent before this period went up to 20 percent at the end of it.

High inflation, coupled with the constant devaluation of the dinar, has hit families very hard. Around 700,000 people are estimated to be currently living under the so-called poverty level. More than 300,000 retirees receive less than €100 in pension payments. On the other hand, most of those who are employed are not necessarily to be envied. The average monthly income of €320 is the lowest among all the ex-Yugoslav states, and comparable only to that in Kosovo – the least developed part of the whole Balkan region. The standard of living, which was higher a few years ago, is now for many people not very different from what they were used to during the notorious years of deprivation under sanctions and hyper-inflation in the 1990s. A good part of the average family's budget (46 percent) is spent only on food, and very little remains for other needs.

The deteriorating social situation in Serbia has given rise to waves of protests which tend to radicalise as times goes by. The government is hardly capable of finding the appropriate solution and responds hastily and without a clear strategy. The pressure on the government is growing not only from below, but also from above: that is, from international financial institutions which made their loans conditional on tight monetary policy and frozen wages in the public sector. Little by little, as the government's former programmes in every sector are being cut back and delayed, and pressure from both sides is growing, key decision-makers resemble firemen running from one fire to the next, trying to put them out with a leaky watering can.

It is clear that for many problems there is no strategy and no will or capacity to implement any strategies that do exist. Despite numerous papers produced and adopted by the government, Serbia does not seem to have any effective plan to deal with the economic crisis. The same is true for the most pressing issues, such as reducing the overgrown

public sector, or the 'guillotine' of excessive regulations that prevent rather than support the development of private business, or the fight against corruption. Achievements in these areas are few and far between, and the indecision of those in power does nothing to provide solutions. Among the main reasons why effective, systematic and long-term solutions to such pressing issues have not been found, the following can be cited: the survival of vested interests of wealthy and influential 'tycoons' (reflecting the 'captured state' phenomenon), incompetence, poor coordination within the government, etc.

It would certainly be an exaggeration and wrong to conclude that the government elected in July 2008 is to blame for all the economic and social problems and failures in today's Serbia. It undoubtedly inherited a considerable number of problems from previous post-Milosevic governments as well as others dating back to the 1990s and beyond in Serbia's communist past. In addition, and even more importantly, the present government was elected on the very eve of a global economic crisis that nobody had seen coming. One might therefore speculate that the economic performance of any government would have been at least equally unsatisfactory.

Politics

During the last few years, and particularly since the last parliamentary and presidential elections held in 2008, Serbian political life has acquired three new features, which have also become its main characteristics. The first of these has already been mentioned: a consensus on European integration among the majority of parties represented in the Serbian Assembly. The second one is the beginnings of a two-party system, and the third is the informal transformation of the former semi-presidential system into a presidential one.

Before 2008 all the parties in the Democratic Opposition of Serbia (DOS) coalition (18 in all!), which took power when Slobodan Milosevic's regime came to an end after it lost the elections in October 2000, accepted that *EU membership was not only a goal but also a priority for Serbia*. The main promoter of this position was the Democratic Party (DS), led first by the Serbian Prime Minister Zoran Djindjic who was assassinated in 2003 by representatives of the country's Special Forces. The incumbent President of Serbia (now in his second mandate), Boris Tadic, took command of the Democratic Party afterwards and has remained in the driver's seat ever since.

Some important members of the original DOS coalition, such as the Democratic Party of Serbia (DSS) led by Vojislav Kostunica, did

not initially deny the worth of this goal, but later began to express reservations. This was reflected in the attitude towards the EU membership conditions during two governments led by Mr. Kostunica (2004-2008; its main coalition partner in the second government, 2007-2008, was the Democratic Party). While the more technical EU demands were being met during this period, there was little enthusiasm for the more political demands relating to Serbian citizens indicted for war crimes which were not being fulfilled completely. On the eve of Kosovo's secession from Serbia, the DSS finally gave up its pro-European stance completely, since it blamed the EU Member States for allowing Kosovo to gain independence.

Before the split within the Serbian Radical Party (SRS) in autumn 2008, this highly nationalist party stood firmly against EU membership being a priority for Serbia. After the split, the larger group – the Serbian Progressive Party (SNS) led by Mr. Tomislav Nikolic – made a complete U-turn and became pro-EU. The smaller SRS group has changed neither its leader, Vojislav Seselj (indicted by the Hague International Criminal Tribunal for the former Yugoslavia (ICTY) and in custody since 2003), nor its anti-EU ideology.

This newly-found unity around the common goal of EU integration was further strengthened by a similar transformation within the Socialist Party of Serbia (SPS) which, having once been the main instrument of the nationalist regime in the 1990s, turned into a pro-European party. The first signs of this change could be seen in the support it gave in parliament to the minority government of Vojislav Kostunica, elected in 2004. The SPS' newly-forged pro-EU identity was given particular emphasis after 2008, when it became the main ally of the DS in the incumbent government.

The Serbian Progressives' and Socialists' transformation from being symbols of the non-democratic and nationalist regime in the 1990s to being supporters of the pro-EU policy in the last few years certainly remains a controversial issue, with many possible outcomes. However, its significance for the consolidation of Serbian democracy is undisputed. For the first time in the country's recent political history, the main political actors are no longer sharply divided on an issue that has been a unifying force in all other Balkan and Central European countries, i.e. until recently everywhere else except in Serbia.

The second defining characteristic of Serbian political life in the last few years has been the gradual *shift from a multi-party into a genuinely two-party system*.

Although Serbia became a multi-party democracy in 1990, more or less at the same time as other post-communist countries, throughout the

1990s the political scene was dominated by limited pluralism with one hegemonic political party – the Socialist Party of Serbia. It was run by Slobodan Milosevic, President of Serbia and of the Federal Republic of Yugoslavia (FRY), whose undisputed power rested upon the following factors: unlimited extra-institutional powers (among which complete control over the security services, the economy and main media outlets in the period of wars and isolation), a majoritarian electoral system initially, a semi-presidential system of government, lack of democratic experience and lack of democratic political culture.

Also of special significance was the very large number of parties, particularly within the chronically disunited opposition, in stark contrast to first one (SPS) and then – at the end of the decade – two and finally three 'parties of power' (the Yugoslav Left – JUL, and the Serbian Radical Party – SRS). Milosevic's party had to share power in coalition governments with them (and others) as early as the second multi-party parliamentary elections in 1992, when the majoritarian electoral system was replaced with the proportional one. Failure to change the regime during the 1990s can largely be attributed to extremely unfavourable external circumstances, as well as to irregularities in the conduct of elections.

Regime change in October 2000 came as a result of a temporary unification of a very diversified opposition in the DOS coalition (Democratic Opposition of Serbia), which first won the presidential elections in FRY (Vojislav Kostunica beat Milosevic) and then in December of the same year scored a landslide victory in the Serbian parliamentary elections with a two-thirds majority. The unmanageable DOS coalition of almost 20 parties broke apart just six months later, but managed to hold on to power for three years and eventually collapsed soon after Prime Minister Zoran Djindjic was assassinated in 2003. The predominantly Democratic Party (DS) government was then replaced by the minority coalition government of Vojislav Kostunica, leader of the Democratic Party of Serbia (DSS), with the support of a now small Socialist Party of Serbia (SPS) in parliament.

At this point two major new elements were introduced into Serbia's party system. First, the majority of parties in the former governing DOS coalition failed to meet the threshold for a parliamentary seat, thus radically decreasing the number of parties that really did count. Secondly, the opposition consisted of two completely opposed sides: the nationalist and populist Serbian Radical Party (SRS) that took one third of the votes and became by far the most numerous party; and the pro-European, pro-modernisation Democratic Party (DS) whose new leader took office as President of the Republic in 2004, thus launching the first cohabitation.

In the third post-2000 parliamentary elections, held in January 2007, SRS repeated its success and with one third of the seats remained the strongest individual party in parliament; however, pro-European parties (DS included) took the other two thirds of the votes and managed to form a new government in an uneasy coalition, with the same Prime Minister Kostunica. Because of the newly introduced rule according to which national minority parties did not have to pass the 5 percent threshold, the number of parliamentary parties did not drop. Nevertheless, the parties continued to become increasingly polarised, with DS and SRS at the two extreme ends of the spectrum (pro- and anti-European, respectively). Various other dividing lines cut across this dominant division, too. At that time Kostunica's DSS pursued a policy of providing a link between the two poles, and, by manoeuvring between the two, was able to secure the biggest coalition potential, and a much more influential position than its election result would have suggested.

The Serbian party system continued to change – to 'institutionalise' – along different lines to other post-communist countries. According to traditional thinking, Serbia still did not fulfil the conditions for the 'institutionalised party system' because: (i) there was no stability in the sense of more or less equal electoral results for the parties in subsequent elections; (ii) parties were not really embedded in society; (iii) parties had no legitimacy among the elite and citizenry; and (iv) party organisations failed to become more important than the leaders and their coteries.

Before the abovementioned split within the Serbian Radical Party which took place in autumn 2008, political parties in Serbia could be divided according to several criteria, two of which are more important than the others. First, they could be divided into three camps, with the DS (representing the 'civic' option) on one side, the SRS ('nationalist' or 'chauvinistic') on the other, and the DSS in between as a kind of a 'national democratic' option. The two opposing poles in this triad also comprised the traditional divide between the 'modernisers' (equal to 'pro-Europe') and 'traditionalists' (equal to 'nationalists'). The other divide existed only in Serbia at that time: between the 'systemic' and 'anti-systemic' parties; the former had a two-thirds majority in parliament (DS, DSS and some smaller parties) and the latter consisted of the SRS and to some degree the SPS – parties of the '*ancien regime*'.

When in autumn 2008 the newly-created Serbian Progressive Party (SNS) of Tomislav Nikolic decided to change sides and distance itself from the radicals and draw closer to the DS, the most important phase in the transformation of the party system was finally complete. The pro-European camp was strengthened at the expense of the nationalists, and the 'anti-systemic' category lost its previous significance as it was narrowed down to the Radical Party alone. This finally made Serbia

comparable to other post-communist countries in the Balkans and Central Europe.

During the last three years, on the basis of these changes, two key political actors – DS and SNS – have managed to grow, marginalising along the way their smaller allies in power and in the opposition, and becoming the undeniable centres of gravity at the two ends of the Serbian political spectrum. Serbian has thus acquired a genuine two-party system. Equally important is the ideological *rapprochement* of the SNS to the pro-European mainstream, i.e. to its main contender DS. The two parties now occupy the centre of the Serbian political spectrum, without any serious competition from other parties, and with the DS formally positioned slightly to the left and the SNS slightly to the right of centre. In fact, such an old-fashioned description has lost almost all meaning in Serbia, because SNS followers are mostly 'transition losers' who appreciate the leftist-populist ideology that the SNS has in big supply.

One can only speculate about all the possible consequences this may still have on the political life of the country. One already noticeable effect is the effort of the 'big two' to tailor the main rules of the political system to suit their needs, which is likely to involve a change from the proportional electoral system to a mixed majoritarian-proportional one, according to the German model. This and other similar changes will further reinforce the domination of the two parties. They will be able not only to compete for power at different levels between themselves, but also to make all kinds of political agreements, including major ones such as forming the 'grand coalition' government, or changing the Constitution. The ideological differences between them are not so big as to prevent cooperation, and, more importantly, they do not matter much anymore. Last but not least, the fact that these previously fierce opponents have come together might also mean that a potential change of government at the next parliamentary elections or later should be considered as a normal part of the political game, without entailing any significant change in the main political priorities, or even for that matter an actual regime change. In other words, if the SNS were to come to power, it would not spell the end of the EU accession process but would be a continuation with certain modifications, as in other countries.

The third new feature of Serbian political life is the informal *change from the semi-presidential to the presidential system*, with the informal, extra-Constitutional and extra-institutional powers of the President of the Republic having grown significantly since 2008. Boris Tadic, as head of state in his second consecutive term in office, has secured for himself much more political influence than is offered by the letter of the Constitution, or than the usual range of powers that a president can enjoy in a semi-presidential system of the Serbian type. This type of

hybrid regime that Serbia shares with most post-communist countries of Europe does not include the possibility of the president leading the government, but this is exactly what the incumbent Serbian President is capable of today. This practice has been borrowed from France or Russia (under the presidency of Vladimir Putin) where, although the two parts of the executive branch of power are formally separated, the presidents effectively direct the governments' work. The Serbian Constitution does not allow for this. On the contrary, the position of the prime minister has been made more independent and even strengthened *vis-à-vis* the president in the last Serbian Constitution passed in October 2006. Nevertheless, Tadic can enjoy extra-Constitutional informal powers because instead of the cohabitation that existed in the previous two governments of Vojislav Kostunica, Boris Tadic's Democratic Party has a majority in the Serbian Assembly. It is a constellation of forces which – as political theorists have already described in other examples – creates the conditions for the semi-presidential system to function in practice as a purely presidential one.

Tadic has engineered one more advantage for himself and his party. He keeps the function of president, leaving the post of prime minister to someone else, which, in turn, allows him greater flexibility since he can choose when and how he wants to associate himself with the government's policies, or to dissociate himself from them and play the role of an independent power broker. In many instances, particularly in certain critical moments, he has been clearly identified by citizens and even more so by international interlocutors as the one in charge of all the main political issues and choices in Serbia. Such presidential power does sometimes allow for quick fixes and bold decisions. However, this 'Putinism Serbian style' has often been criticised as being the main factor contributing to the lack of much-needed accountability in the present Serbian coalition government.

This third feature of Serbian political life also accounts for the current domination of the Democratic Party which goes far beyond the central legislative and executive branches of power. In addition to the majority it has in parliament and in the government (within a coalition, of course), DS has a majority with partners in the Assembly of Vojvodina as well, and similarly also holds sway in most major Serbian cities. This is the single most important reason why the public associate the current government's poor performance, particularly in the economy, directly and first and foremost with the Democratic Party. It dominates the political life of Serbia to an extent not seen before during the entire decade of the post-Milosevic era.

Of course, the DS has used its power in numerous institutions led by its coalition for many good purposes, particularly for the advancement of EU-driven political reforms. Without the leading role played by the

DS in implementing those reforms, Serbia would not have made such significant progress in the consolidation of democracy or towards EU integration. It is currently estimated that democracy in the country has reached the level of 'semi-consolidation', which puts Serbia, together with Croatia and Montenegro, just below Bulgaria and Romania in this respect. In the same group of countries which lies between the better performers from Central Europe, on the one side, and the much poorer performers from the former Soviet Union, on the other, are the former Yugoslav Republic of Macedonia and Albania. Bosnia and Kosovo are lagging behind Serbia and others from the region and are in the next group of countries that are still in transition and have hybrid regimes.

Serbia's distinctive 'DS epoch' will also be remembered for the problems it created. First among which is, without any doubt, an insufficiently high level of rule of law, which blocks and makes pointless all economic and political initiatives. Failure to uproot widespread corruption is another case in point which goes hand-in-hand with the lack of rule of law. Despite tangible results in the fight against organised crime, much more has to be done in this area too.

Two remaining remarks about the absence of necessary progress in democratisation are of a more general nature. The first has to do with the obvious tendency of the ruling coalition and its key party to try to influence as much as possible all spheres of life and branches of power, which of course runs counter to the basics of democracy. Recent efforts by the executive to tighten controls over the media and the judiciary, using new laws and reforms as a pretext, were met with deserved criticism from the public. These laws were withdrawn or changed only after the intervention of the European Commission, which speaks volumes about the ruling coalition in Serbia. After several cases of *ex-post* complete change of policies that were previously commended and pushed by the executive, only in response to demands from abroad, the legitimacy of this pro-European government has been seriously shaken.

There is also a growing public consensus about the potential harm to democracy that may result from a specific political phenomenon known as 'partocracy'. It was certainly not invented by the incumbent rulers in Serbia but has been developed to previously unthinkable proportions in the past few years.

Because of the dimensions of the problem, some political scientists even label the Serbian political system an open and unrestricted 'partocracy', using the term in the most pejorative sense. Firstly, while there has been undisputed improvement (namely the partial consolidation of democracy in the post-2000 period), Serbian political parties (the way they are organised internally, the way they function and their relations with the public) have been untouched by this positive trend. They have

preserved, and even reinforced, a genuinely undemocratic hierarchical structure and undemocratic decision-making, and party leaders have absolute control of each and every move. To make things worse, this is equally true of parties in the 'new' regime as in the '*ancien*' regime.

They all consistently oppose stricter legal regulation, including in particular financial scrutiny, and have even recently increased the level of control over their parliamentarians through the introduction of two mechanisms rarely seen in other countries. The first is the so-called indirect proportional electoral system, which means that under existing laws the parties are not obliged to respect the order of names on the party list for which citizens vote. On the contrary, the parties are free to pick and choose from the list as they like, thus overriding voter choice and ensuring that potential members of parliament toe the party line. Elected candidates have no independence from their party and there is a complete lack of accountability towards their constituents: voting is thus anything but an instrument of democracy.

To make things worse, a second mechanism has been introduced: the elected officials of all parties are obliged to sign a blank resignation letter before they take office. Thus their party leaders can decide whether and when to activate the resignation, replacing one party representative with another (who must also sign a blank resignation letter in advance).

If these and other serious shortcomings (including, for instance, excessive centralisation) are not rectified soon, Serbia risks forfeiting the promised fast track to EU membership. Even more importantly, in the absence of necessary change, the Serbian political elite may further alienate citizens and create even higher levels of absenteeism than already exists and which is already very worrying.

European integration

Serbia's path to EU integration has been uneven and generally very rocky. In the past few years, the various post-Milosevic governments have made more progress and have been more enthusiastic about meeting technical demands than political ones. Apart from periods of extreme dedication to EU business, on several occasions Brussels temporarily suspended negotiations with Belgrade because of lack of progress in certain critical reforms, mostly relating to Serbia's reluctance to prosecute indicted war criminals. Many foreign and domestic observers have had the impression that, unlike some of its neighbours, Serbia could have done much more during all these years and speeded up its accession. But somehow there was always something missing and Serbia has been

unable to pass this threshold and move rapidly and with determination towards EU membership.

The current Democratic Party government is trying to prove that it is capable and willing to turn the page and get the country to the point of no return in the accession process. It is true that some elements of the puzzle, which were missing until recently, are now finally in place: a political consensus on EU membership being a national priority has been achieved (as described above) and in recent years efforts to meet EU conditions have become much more effective. For example, the alignment of legislation with the EU *acquis* is on the 'fast track'; parliament has amended its rules of procedure to restrict the possibilities of the opposition blocking the legislative process; there is greater accountability in the EU integration process which is more transparent than before: results can be measured more precisely through action plans and coordination of the whole process has been improved.

The crucial test for the incumbent DS Government will be if Serbia acquires candidate status by the end of 2011. The winning combination for Serbia would, of course, be to begin accession negotiations soon afterwards and to aim for EU membership by the end of the decade. Like other candidate and potential candidate countries, it will have to go through this process at a time when there is little enthusiasm for further enlargement among the Union's Member States. This 'enlargement fatigue' is a product of the current economic crisis and the EU institutional crisis and has led to an informal tightening of the accession criteria for the Western Balkan countries.

If all goes well, Serbia could at last move from the group of slower Balkan travellers on the European train to the fast one. Ten years after the end of the previous regime, Serbia still does not have EU candidate status, although EU membership has always been a priority and all post-Milosevic governments claimed they were dedicated to and busy with Europeanisation. While no other Western Balkan country has yet become a fully-fledged EU member, Croatia is closest to that goal (most probably in 2013) since it acquired candidate status in 2004 and began accession negotiations a year later. FYROM and Montenegro are also candidates (since 2005 and 2010, respectively), while Serbia is still in the waiting room for this level of integration, together with Albania, Bosnia and Herzegovina and Kosovo.

However, the fact that Serbia's integration process has speeded up in the last few years is an encouraging sign that things really are changing in this respect. After the signing of the Stabilisation and Association Agreement in 2008, Serbia officially applied for EU membership at the end of 2009, which coincided with another major success: acquiring a visa-free regime for Serbian citizens travelling to the Schengen area.

Currently, in spring 2011, having replied rapidly to the European Commission's Questionnaire, Serbia is waiting for a decision on its candidacy which is due in December.

Perhaps the best (and largely unexpected) results were those accomplished in regional cooperation. Serbia even took a lead in many initiatives, first of all in strengthening good relations with Croatia. In order to advance the process of reconciliation in the region, in spring 2010 Serbia's Assembly passed a resolution on the Bosnian genocide committed by Bosnian Serbs in Srebrenica, stressing its condemnation of this crime. In general there has been a significant increase in the number of initiatives and practical steps aimed at reconciliation, and cooperation in all spheres of life has greatly improved. Of special significance is the cooperation between the judiciaries and police departments of the Western Balkan states in their joint fight against crime and corruption. Greater regional cooperation is, of course, particularly important in a post-conflict region such as the Balkans. Moreover, it is one of the formal obligations each state in the region has undertaken in its Stabilisation and Association Agreement with the EU. This new and positive wave of cooperation comes after the crisis triggered by the unilateral secession of Kosovo. While Serbia has not changed its policy of not recognising Kosovo, it has clearly changed its regional policy.

Nevertheless, the latest improvements in regional cooperation and other areas do not alter the fact that Serbia's EU integration has been very slow, particularly if judged from the perspective of the promises made by all post-Milosevic governments and expectations of Serbian citizens. There are *three main reasons* for this.

First of all, for most of the post-Milosevic period the pressing *issues of nation and state building* have taken up all the attention, time and energy of the nation and especially of the government. Fortunately, the means for dealing with those issues were different to those resorted to in the 1990s. However, even without war, it was anything but easy to do everything that was necessary at the same time: rebuild a post-conflict state and society, introduce far-reaching political and economic reforms, remain on course for European integration, and deal with perhaps the biggest challenge of all – the decision of Montenegro and Kosovo to break away from Serbia. Whatever one makes of Belgrade's policy *vis-à-vis* their independence, it was certainly very demanding to juggle these events and other tasks, and to keep doing so within the democratic process. The first part of the past decade was taken up with tough negotiations with Montenegro and most of the second part with Kosovo (and they continue, as will be explained below). Although the levels of engagement were certainly changing, and the same could be said about the intensity of the consequences of these processes on all

other issues, it was often difficult to prioritise and EU integration might have slipped down the political agenda.

Furthermore, without clear borders and as a kind of unfinished state, Serbia was in many significant ways incapacitated to fulfil EU-related demands. EU integration is a serious business that presupposes that the candidate is a 'finished' state with full sovereignty in the classical sense of the term.

The second reason that explains why Serbia has fallen behind in the integration process is the *prevailing attitude in the country, under all the post-Milosevic governments, towards war crimes*. Two different but complementary attitudes developed with regard to this key political criterion set by the EU for former Yugoslav nations which took part in the wars of the 1990s. Periods of half-hearted efforts to arrest and send all indicted war criminals either to domestic courts or to the ICTY alternated with periods in which such efforts were more or less stopped largely because of the alleged lack of impartiality of the ICTY and of the EU towards Serbia (the same arguments were also put forward in Croatia). It was argued that although Serbia of all the former Yugoslav states had delivered the largest number of indicted individuals to The Hague, it nevertheless remained the main target of pressure and blackmail from the EU and other influential international organisations and states.

Such arguments were put forward not only by opposition circles, but also by key parties and figures in a number of Serbian governments, which of course made things much worse. The EU relied on periodic reports from the main ICTY prosecutor when it came to judging whether and to what extent Serbia and other neighbouring countries were complying with demands relating to war crimes. Some of the demands, if not met fully, were moved to the next step in Serbia's EU path, so as not to stop the accession process and at the same time to allow political conditionality to work. In this way, Brussels kept both the 'carrot' (further EU accession) and the 'stick' (suspension) as key instruments in the process. This kind of 'conditionality plus' for hard and very specific cases such as Serbia has without any doubt been necessary, and also quite successful so far; but it obviously requires a lot of time and effort on both sides.

The third reason that might explain why Serbia's EU integration is taking such a long time is that there is *no clear strategic vision*, and accompanying consensus, which puts Brussels at the very top of the country's list of priorities.

As already pointed out, much has been achieved in this respect. There is now a broad pro-Europe consensus amongst all the parliamentary parties, and while there are understandable nuances between the

different parties, the situation is also clearly different from before. A good illustration of how things have changed is the Resolution on EU accession voted in 2004: although only a political document without legal force, it was passed after a very rough ride in parliament and with a tiny majority of just four votes; today, now that the Serbian Progressive Party (SNS) joined the pro-EU camp in autumn 2008, it would be adopted with a very clear majority.

The same party – to give one more example of how things have changed for the better – dubbed the signing of the Stabilisation and Association Agreement (SAA) 'an act of national betrayal' in spring 2008, only six months before it changed sides. Today, the SNS promises that it would continue to implement the SAA if it came to power after the next parliamentary elections.

Improvements notwithstanding, there are still question marks hanging over the key question: does Serbia have any alternative to the EU? Different Belgrade governments have given different answers to this question. At the beginning of the past decade, the answer was so unequivocally 'no' that the very question seemed pointless. Later on, as more and more people began to realise that Europeanisation was far from easy and that it demanded sacrifices including those which could – rightly or wrongly – touch national pride, more and more people began to voice doubts. Since EU membership in the meantime had become a kind of a moving target (always ten years away), the grounds for EU scepticism were prepared. In addition, the nationalists conveniently recalled the 1999 bombing of Serbia by NATO which, they pointed out lest anyone should forget, included some of the same countries as are in the EU. It was therefore mooted that maybe the EU was not the best direction to head in.

The final and decisive step that confirmed that the EU was not necessarily Serbia's indisputable goal was made when the country turned towards Russia on the eve of Kosovo's secession. The leading party of the ruling coalition at that time, Prime Minister Kostunica's Democratic Party of Serbia, tried to convince its partners (including Tadic's Democratic Party) that Serbia should turn its back not only on NATO but also on the EU as they had contributed to and made possible Kosovo's secession. The signs that Serbia had found a new destination were all too clear to see. In December 2007 parliament suddenly and without public debate passed a resolution which proclaimed Serbia a neutral country. Neutrality at that time meant (and now still means) little more than 'no NATO membership', but that was the best gift Russia could have received, since the enlargement of the Atlantic Alliance was thus stopped in the Balkans. In exchange for Russia's support (in the UN Security Council and elsewhere) for Serbia's non-recognition of Kosovo's independence,

important economic concessions were made to Russia, such as giving Gazprom a controlling share in Serbia's oil and gas monopoly, NIS.

In the months that followed the end of Prime Minister Kostunica's government, efforts to marginalise the EU as Serbia's goal were discontinued. Tadic and his party won both the presidential and parliamentary elections in the first part of 2008 mainly on the 'EU ticket'. In other words, he got support for the continuation and intensification of the EU integration process. However, judging by the election results that support was limited, which is why a new version of the 'not only the EU' policy was invented and promoted by the Democratic Party and its coalition government.

This time around, the ideological formula that was intended to satisfy as many domestic supporters and as many foreign partners as possible was that there were four pillars to Serbia's foreign policy: Brussels, Moscow, Washington and Beijing. The order of the capitals in the formula would sometimes change, but Brussels always kept the leading position.

This formula contained many messages, and the message to the EU was that Serbia had alternatives it might use if Brussels continued to keep Serbia on a tightrope, constantly raising the accession bar and asking the impossible, such as the arrest of the remaining two indicted war criminals (Mladic and Hadzic) who the Serbian authorities maintained could not be found. It did not take long for Belgrade to discover that a country of Serbia's size and geographic position, and also a potential candidate for EU membership, was not really capable of conducting such an independent foreign policy. Therefore the formula was forgotten for a while, only to resurface later when favours from the other capitals were needed. Such inconsistency resulted in manoeuvrings and misunderstandings with Serbia's allies. At home it demonstrated a chronic lack of consensus among the current elite and began alienating supporters. In essence, no one knows exactly what the country's foreign policy is, and no one believes the leaders because they have made so many contradictory statements.

The latest version of the Serbian government's effort 'not to put all their eggs in the EU basket' involves 'strategic partnerships' that Serbia began to conclude with individual countries. For the time being, such bilateral agreements have been signed with Italy, France and China, and one with Russia will be signed by summer 2011. In practice, they might not be very significant after all. The idea behind them is probably to garner political support and economic aid from these influential countries, and generally to seek and preserve as much preferential treatment as possible for Serbia in these difficult times of crisis. Internally, as before, seeking strategic partners beyond the EU serves to attract Eurosceptics to Tadic's pro-European camp. The problem is, of course, that this is

exactly what takes pro-European voters away from the Democratic Party and its coalition government.

This brings us to some final considerations about Serbia's EU integration. The whole international and domestic context of the last few years, as described below, led to another new phenomenon in Serbia that might be called 'accession fatigue'. It is specific to the people of Serbia and elsewhere in the 'EU waiting room' who are dissatisfied and disappointed with the results of the EU accession process so far. They feel that they have sacrificed too much, believing in more or less empty promises that the EU is just around the corner and that it will turn the present hell on earth into a paradise. And they blame both the Union and domestic EU proponents for this disappointment. Their expectations have been betrayed, which is why they have either become extremely sceptical about EU membership or turned completely against it.

This reaction is reflected in public opinion polls. The latest poll from early spring 2011 shows a considerable drop in support for future EU membership in Serbia. Only 57 percent of respondents were in favour of EU membership – the lowest number in the last ten years. Another 18 percent said they would vote against joining the Union, while 20 percent said they would not bother voting at all.

The fall in support for the EU is hardly specific to Serbia. The same downward trend can be seen in most other EU aspirants, particularly in those countries at the same level of integration as Serbia at present. The closer a country gets to attaining EU membership, the higher the demands become and this, of course, sets a price that many parts of society are not willing or able to pay. At the same time, the rewards that might come from membership will be seen only in the long run and rarely before the actual accession date.

Kosovo

Kosovo's secession from Serbia in 2008 has been an issue of the utmost importance for Serbia's internal and external policies. Belgrade's resolute rejection of this unilateral move was shared by both the government and the opposition. It also led to misunderstandings and conflicts with the states that recognised Kosovo's independence, including neighbouring states. What was a very complex situation in the second half of 2010 nearly turned into a stalemate which threatened to acquire the 'frozen conflict' label.

The issue gained a new dynamic at the end of July 2010 when the International Court of Justice (ICJ) gave an advisory opinion on Kosovo's

unilateral declaration of independence of February 2008 and stated that it was not in violation of international law. A busy diplomatic August followed, during which time the authorities in Pristina gloated in the expectation of receiving new recognitions of its statehood, while Belgrade was desperately trying to persuade other countries that regardless of the ICJ verdict, Kosovo's secession was unjust, illegal and that it set a dangerous precedent which could be repeated in many other countries. Then, at the beginning of September the UN General Assembly (UNGA) – which had requested the opinion from the ICJ two years earlier – passed a joint Serbian-EU resolution on the same topic.

Rather than spelling the end of the matter (in the form of a political ruling which followed the legal one), the resolution marked the beginning of yet another cycle of difficult negotiations between Belgrade and Pristina which have now begun with the aim of putting an end to this long, complicated and controversial issue. Although not legally binding, like the ICJ ruling itself, the resolution carries considerable political weight. The first reason for this is the change in Serbia's position on the eve of the UN meeting. Contrary to the situation in 2008, when Serbia managed to persuade the majority of UN members to ask the ICJ for its opinion on the legality of Kosovo's secession, thus challenging influential Western and other states which had backed Kosovo's independence, this time around those same states were not against the new resolution. The September resolution was thus adopted in UNGA by consensus, i.e. without a vote, because it had been previously negotiated between Serbia's President Boris Tadic and the EU foreign policy chief Catherine Ashton.

Belgrade agreed to change the substance of its own original resolution sent to UNGA at the end of July, immediately after the ICJ ruling. Previously, it had stressed that 'secession cannot be an acceptable way of solving territorial issues', and had demanded that the parties should 'find mutually acceptable solutions to all open questions'. This clearly meant reopening talks on the very status of Kosovo. A day before the UNGA session, the Serbian government backed down under heavy pressure from the EU, deleted the key parts of its text quoted above and agreed instead to the 'readiness of the EU to facilitate the process of dialogue between the parties'. The resolution further states that dialogue should 'promote cooperation, make progress on the path towards the EU and improve people's lives'.[1]

The change is considerable and it is a reflection of the radical shift in Belgrade's strategy of resistance vis-à-vis Kosovo's independence. Although Tadic and other officials in Belgrade insist that Serbia will never recognise its former autonomous region as a separate state, it has become clear that the Kosovo policy they have been pushing since February 2008 has not been successful. By the beginning of September,

1. United Nations General Assembly Resolution A/RES/64/298, 9 September 2010.

70 states had recognised Kosovo, including 22 of the EU 27, 24 of the 28 NATO members, and all but one Balkan state (Bosnia, because of the Bosnian Serb veto). The pace of recognition was indeed slowed down by hyperactive Serbian diplomacy coupled with Russia's support in the Security Council and by the fact that many countries fear secession in their own territories.

In contrast to its predecessors in the 1990s, the incumbent Serbian government should be given credit for using only peaceful, diplomatic and legal means in this ambitious struggle. But its stubborn insistence and lack of any productive idea on how to resolve the conflict eventually began to alienate its Western partners. With the convenient ICJ ruling in their pocket, they simply did not want to see another 'frozen conflict' in the EU's backyard. In order to press Serbia harder, the German and British foreign ministers paid visits to Belgrade at the end of July, stressing in private talks and also publicly two things that were obvious everywhere except in Serbia: firstly, Kosovo's status has already been decided and cannot be changed, and the same is true for any other border in the Balkans, and secondly, Belgrade has to comply with the EU approach if it wants to progress further towards the membership it requested last December and if it wants the EU to help in other areas.

In return it seems that Serbia has been offered the prospect of faster EU integration, but the joint EU-Serbian resolution finally came about only when the five EU Members States that have not recognised Kosovo (Cyprus, Greece, Romania, Slovakia and Spain) found a common position with the 22 other Member States. The inclusion of the EU-5 legitimised Tadic's risky change of policy at home, only weeks after he had sent special envoys around the world to lobby for the original Serbian resolution of July.

Although it is still impossible to predict all the consequences of the breakthrough in the Kosovo issue in the summer of 2010, some things seem clear already. Serbia has made a step in the right direction which offers a chance for the problem to be resolved. Whether this step will be followed by others will depend on the internal political situation, on the readiness of Kosovo leaders to make concessions, and on the strategy of the EU which has taken the reins as the single facilitator of future negotiations.

Tadic's pro-European government will have a hard time persuading the public in Serbia that the current change of its Kosovo policy does not mean a complete abandoning of its slogan 'both Kosovo and Europe' which helped it win the last elections in May 2008. To remain in power, Tadic will have to demonstrate that the concessions he made will, in return, generate some relatively fast results. There are still hopes among the Serbian public that they will regain the northern part of

Kosovo under Serbian sovereignty as a kind of symbolic trade-off, but in time they might eventually be satisfied with the Serbian minority in northern Kosovo gaining special status, together with guaranteed international protection for Serbian monasteries in its former province. If there is a change of government, it will find that it also has limited room for manoeuvre.

Kosovar Albanians are unlikely to be ready for big compromises, since they finally have the edge in this contest. But if Russia continues to block their UN membership in the Security Council, and certain EU countries refuse to recognise them, they will eventually have to come up with significant offers which will ultimately see neither winners nor losers in the 'battle for Kosovo'.

Conclusion

By taking the wheel on a bumpy road, the EU showed for a moment that it had reached unity on one important foreign policy issue. It remains to be seen whether it is up to the challenge. Less will depend on its diplomatic capacity, and more will depend on the 'carrots' it could promise to both Pristina and Belgrade in return for their mutual concessions. Faster EU integration is certainly a viable incentive, but it would have to be juggled with the prospects of other Balkan EU aspirants for whom membership is a distant goal, and with the Union's enlargement fatigue and a serious economic crisis.

Kosovo is just one of the major problems Serbia will have to face in the years ahead. It will have to deal with other problems that are no less difficult relating to the economy, politics and EU integration. A decade after the demise of Milosevic, the number and intensity of Serbia's difficulties still run high, and the country continues to walk a thin line between key alternatives and allegiances. Serbia has nevertheless made significant progress in all areas and has left many major problems behind. Given that its problems today are less specific and are similar to those of any other European state, it might be hoped that in the future it will be more successful than at present in coping with the challenges ahead.

Chapter 4

Montenegro's journey towards EU accession

Momčilo Radulović

The 2006 referendum and its aftermath

The repercussions of the referendum on independence are still very visible within Montenegro, as well as at the wider Western Balkans regional level and internationally.

Montenegro officially proclaimed its independence on 3 June 2006, after the referendum held on 21 May 2006, when 55.5 percent of citizens voted for independence and thereby confirmed the creation of a new independent state in the Balkans.

This time, unlike the previous crises during the 1990s, the EU's reaction was timely and effective. EU institutions were involved in the process of preparing for the referendum from the very beginning, mediating between the Montenegrin government and the opposition and prescribing the 55 percent voter threshold for achieving independent status.

Even though the fixing of this percentage may have been contentious from the point of view of basic democratic principles, the outcome of the referendum was widely accepted. Since May 2006 this has served as the basis for the goodwill shown towards Montenegro in many diplomatic circles in Brussels and in the region, as well as representing a significant success for the EU 'in its own backyard'. The role of the EU in the process was essential: through soft-power intervention in internal Montenegrin circumstances it contributed to a democratic solution and stabilisation in the country, as well as to the democratic and peaceful dissolution of the State Union of Serbia and Montenegro, thus giving a new qualitative impetus to the European Union's Common Foreign and Security Policy (CFSP).

Although in the case of the State Union of Serbia and Montenegro and of the referendum in Montenegro, the EU was obliged to exercise a

certain degree of flexibility in its interpretation of democratic standards, and had to resort to improvised and rather risky legal and political compromises (like the 55 percent voting threshold for achieving a majority in the referendum), in the end this game paid off for all actors. For the first time in the territory of the former Yugoslavia, a new state was created without war. In this particular case where the EU 'gambled' with the law and traditional democratic practices, Montenegro got its independence and the EU chalked up an important success as a foreign policy actor.

The stabilisation of Montenegro was also a clear sign of the stabilisation of the whole Western Balkans region, both with regard to relations between countries and state entities and with regard to relations between ethnic and religious communities.

Even during the long run-up to the referendum, Montenegrin political and social elites were engaging in the process of European and Euro-Atlantic integration and advocating EU membership as one of the country's most important objectives.

Immediately after the referendum on independence, both the government and the parliament of the Republic of Montenegro emphasised the European and Euro-Atlantic integration processes as a priority for Montenegro. Full diplomatic relations between the EU and Montenegro were established on 12 June 2006, as well as diplomatic relations with all the Member States. Regarding relations with other international structures, even though it had been agreed that Serbia would remain as a legal successor of the State Union, Montenegro openly declared that it would respect all international obligations and agreements undertaken while it was still part of the State Union of Serbia and Montenegro.

Montenegro strengthened its position on the international scene, and thus already in June 2006 it became the 192nd member of the United Nations. In addition, within the first year of independence, Montenegro became a member of the OSCE, the World Bank, the IMF, the Council of Europe, Partnership for Peace and many other international political, economic, sports and cultural institutions and organisations.

On 24 July 2006, the EU Council of Ministers made the decision to proceed with 'the negotiation of a Stabilisation and Association Agreement (SAA) with Montenegro[1] while on 8 November 2006 Montenegro received its first Annual Progress Report. The Decision of the Council on the principles, priorities and conditions of the European Partnership was issued on 22 January 2007.[2]

Meanwhile, on 15 October 2007 the SAA was signed in Luxembourg. In addition, the Interim Agreement allowed Montenegro to qualify for EU

1. Council of the European Union, Press Release, doc. 11556/06, Presse 216, 2746th Council Meeting, Justice and Home Affairs, Brussels, 24 July 2006. See: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/90655.pdf.

2. Council Decision 2007/49/EC of 22 January 2007 on the principles, priorities and conditions contained in the European Partnership with Montenegro, *Official Journal* L 20, 27 January.2007.

preferential trade status just after 1 January 2008 and the Delegation of the EU Commission was established in Podgorica in November 2007.

Despite difficult political circumstances within the European Union and increasingly obvious enlargement fatigue during this period, Montenegrin officials persevered and the application was submitted in December 2008, during the French EU Presidency. For the French EU Presidency, who did little for Western Balkans enlargement, this involved no significant efforts while on the Montenegrin side, in contrast, significant efforts were expended. It represented a success for Montenegrin diplomacy, especially given a certain amount of hostility, both within the EU and among certain regional players.

This put Montenegro ahead of other potential candidate countries and new confirmation of the commitment of European institutions came with the famous questionnaire that the European Commission sent to the government of Montenegro in July 2009. The process of answering more than 3,000 questions (with almost 700 additional questions) lasted until the second quarter of 2010. Even though the outcome of this process was ultimately successful, it was weakened by excluding the participation of Montenegrin civil society actors. Meanwhile, an additional boost to Montenegro's European integration prospects happened in December 2009 when visa liberalisation was granted as of January 2010.

The European Commission issued a positive evaluation of Montenegro's preparedness in November 2010 and on the basis of that recommendation Montenegro officially became an EU candidate country in December 2010.

Even though this represented a significant achievement for Milo Djukanović's government, the date for the opening of negotiations with Montenegro has been conditioned on Montenegro fulfilling requirements relating to reforms to be undertaken in seven distinct areas. The necessity to commit to reforms in these fields had already been raised by the EU in previous Annual Progress Reports, Parliamentary Declarations and other analytical and expert documents about Montenegro and its progress in European integration processes from 2002 until today (these seven areas will be discussed later in the chapter).

Having in mind that these did not constitute new or additional demands being made of Montenegro, many EU officials warned about the difficult tasks which Montenegro needed to fulfil on its path to EU accession. Thus, already in 2007, Olli Rehn in an article for the daily *Vijesti* stated: 'growth depends on investments, and investors need legal and political security, transparency and predictability. Key for this would be strengthening of the rule of law and an efficient fight against corruption

and organised crime … EU assistance will hasten the development of better institutions and administrative capacities.'[3]

Messages such as these constituted a clear warning to the authorities while at the same time serving to incentivise internal democratisation forces, especially those spearheaded by civil society, to continue to fight against many aspects of the political and economic system in Montenegro that lag far behind EU standards and constitute a heavy burden on this country in the European integration process.

According to reports and analysis of all relevant international stakeholders (the EU, UN, OSCE, CoE), there are still many problems that require serious efforts and improvements. Namely, rent-seeking political elites, monopolies in the economy, 'clientelism' in government, corruption in all areas of social, political and economic life, an inefficient approach to tackling organised crime, a politicised judiciary, a partisan approach in employment policies, strong political control of public media, nepotism and a non-transparent privatisation process. For citizens of Montenegro, these are part of everyday life.

This highlights a phenomenon that seems quite specific to Montenegro – being burdened with complex transitional problems while at the same time being quite successfully advanced on the path to European integration. How can this paradoxical situation be explained?

Many people in Montenegro would attribute much of the credit for the plus side of this specific paradox to a key political figure – Milo Djukanović, who resigned as Prime Minister in December 2010. Even though such an interpretation is open to dispute, it is clear that a brief overview of Milo Djukanović's political trajectory tells us a lot about the entire political, economic and social transition of Montenegro.

The role of Djukanović

From 1989 until late 1996 Djukanović was an associate and political partner of Slobodan Milosević, but in 1997 he started to gradually distance himself from Milosević and take the path toward democratisation and integration in the international community, focusing primarily on EU countries and the US.

Since the option of democratisation and EU integration was supported by the minority opposition movement that was advocating the independence of Montenegro, in spring 1997 Djukanović began to adopt this pro-independence political agenda, directing the majority of his political followers towards the same goals and thus taking his distance from Miloševič's politics. By the same token he distanced himself from the common state with Serbia.

3. Olli Rehn, 'The Gate to the EU', *Vijesti*, 16 October 2007, p.3.

This political volte face led Djukanović towards strengthening cooperation with the EU, although in the period from 1997 to October 2000 such cooperation remained on the level of bilateral and multilateral meetings, political support in the West's conflicts with Milošević and financial help for the resolution of refugee problems during the Kosovo crisis and immediately after that. There were no specific formal moves regarding Montenegro's status in relation to the EU but Djukanović and his ministers enjoyed a certain amount of goodwill from the EU and countries in the region and on this basis a certain amount of informal and formal cooperation was launched.

This situation was used by Djukanović to develop parallel institutions, independent from Belgrade, and in this way to pave the way towards Montenegrin independence. At the time, he was additionally encouraged by many EU officials, either officially or informally. At this particular juncture, exerting internal pressure on Milošević in this way suited the EU, while Djukanović managed to save Montenegro from more intense bombardment in 1999,[4] since in talks with EU officials he rightly explained that further bombing of Montenegro (as a part of the Federal Republic of Yugoslavia) would only play into the hands of Milošević and his followers in Montenegro.

This situation in which Djukanović courted the West, and his government was focused on swiftly achieving Montenegrin independence, lasted until October 2000 and the fall of Milošević's regime.

With the arrival of (relatively) democratic forces to power in Serbia after October 2000 the EU's attitude towards Montenegrin independence cooled somewhat, since its main focus now shifted to the stabilisation of Serbia, and thus Djukanović and Montenegro were relegated to the background to some extent.

As an additional burden for Djukanovic, he was cited in a series of internal and international allegations about cigarette smuggling and corruption. There are still some unresolved questions surrounding his activities and those of his close associates and friends, and they have been the subject of investigations by the Italian and other European authorities. All this has raised uncomfortable questions about crime and corruption in official circles in Montenegro.

In spite of this, Djukanović was slowly but steadily moving towards achieving independence for Montenegro, engaging in significant compromises with international actors and the Serbian leadership along the way, as demonstrated by the so-called 'Belgrade agreement' forming the State Union of Serbia and Montenegro on 14 March 2002.

4. During the NATO intervention in 1999, Montenegro was deeply divided and dangerously poised in a stand-off between the advocates of an independent Montenegro (led by Djukanović) and Milošević's followers, who had the support of the Army of FRY, whose regular and special units were placed throughout Montenegro until the fall of the Belgrade regime in October 2000.

This compromise also took place before the referendum on independence in May 2006, which Djukanović successfully organised, in spite of significant opposition from important actors in the international community. One of the most important characteristics of Djukanović's approach was that he never openly said 'no' to any of the requests of the international community, even to some which were domestically very difficult for him, as was the case with the 55 percent voter threshold for a majority in the referendum on independence or the recognition of Kosovo.

But at the same time that he was accepting new conditions and demands for reforms from outside, he continued in many ways with the same old practices inside the country – implementing a minimum amount of concessions and seeking to maximise time for adaptation to new political circumstances. In that way he was postponing internal implementation of certain reform initiatives in a manner that was not producing consequences that were significantly visible outside the country and at the same time buying time to accommodate to new situations and in an attempt not to lose control over any of these newly-reformed sectors.

All of this created a dual perception: one from outside, where the tempo, quality and results of reforms were regarded as relatively adequate and another internal impression, from the perspective of citizens and civil society actors, where the speed, quality and results of reforms were far from satisfactory.

However, it would be wrong to say that this situation went unnoticed by the European Union, the US and other international actors. The evidence shows that the international community continually requested reforms in virtually the same areas for years (as testified by all the EC Annual Progress Reports 2002-2009). Nevertheless, it seems that political pragmatism in regional and international relations sometimes eclipsed strong support for the internal democratisation of Montenegro – Djukanovic always maintained strong and stable government which fulfilled all the regional and international priorities while at the same time not causing extremely significant problems at home. That was the reason why the EU, US and other international actors lent constant support to Djukanovic (or at least support with 'one eye closed') for such a long period of time.

This conclusion seems inescapable if we take two additional factors into consideration – the regional context and the development of serious problems within other countries of the Western Balkans; and the specific local situation with regard to the opposition parties in Montenegro.

The opposition in Montenegro

In this context it is necessary to present a brief overview of the present situation regarding the Montenegrin opposition, where even after the referendum of 2006, the majority of opposition parties are still 'swimming in the waters' of Serbian nationalism and challenging the independent state status of Montenegro.

Such a position was one of the main reasons for the opposition's constant failure to unify and create a more substantive political bloc that might challenge Djukanović's rule on the basis of the values of democratisation, promotion of civic rights, religious tolerance and equality between nations.

Instead of that, major opposition parties like the Socialist People's Party (SNP) or New Serbian Democracy (NOVA) still support radical Serbian nationalist elements in Montenegrin society. However, there are some differences between those two parties, with the SNP having already moved towards focusing on social and economic issues and the fight against corruption, to the detriment to some extent of this pro-Serbian agenda. Nevertheless, it is hard to find much evidence of a shift towards strengthening of civic and democratic potential inside these parties.

While the SNP and NOVA had not been expected to easily overcome the nationalistic mindset inherited from previous periods and to become pillars of democratic change in Montenegro, the most radical impetus towards democratic change was supposed to come from the Movement for Changes (PZP), the party which had strong roots and origins within the civil society and democratic actors in Montenegro. This party was formed in 2006 on the basis of a wave of strong social support for democratic changes, which resulted in the PZP obtaining 11 seats in the Parliament of Montenegro and its emergence as the strongest single opposition party.

Unfortunately, since then, along with the significant pressures with which it has had to contend from the ruling structures, the leadership of the PZP has failed to perform effectively as a political party. The behaviour of the PZP leadership led to numerous political mistakes both locally and internationally as well as a number of internal partisan clashes that resulted in a party split and the loss of a large number of leading party figures and an even more significant number of voters. All of this created a strong feeling of disappointment among civic and democratic activists in Montenegro which resulted in failure at the 2009 elections (the PZP only gained 5 seats).

Now, after the latest failure of the opposition parties to present a united front, it seems that a change of power in Montenegro could only come

about if there were splits among the ranks of Djukanović's Democratic Party of Socialists (DPS). Bearing this in mind, it is worth considering what is the likelihood of internal splits occurring within this, the strongest party in Montenegro.

Future prospects

The post-referendum period in Montenegro further strengthened the political authority of Milo Djukanović, who survived the collapse of the socialist system and has 'outlived' all other political actors in the Western Balkans.

Both strongly supported and strongly opposed, after 21 years in executive power as the president of Montenegro and the president of the government, Djukanović resigned from the post of Prime Minister in December 2010. Even though this was not the first time he stepped down (he resigned in November 2006 for one and a half years only to return to office in February 2008), it seems that this new decision may prove to be more binding, at least until new presidential elections in 2013.

Djukanović's decision to step down was influenced by different considerations on both occasions. The first time, in 2006, he said that he was leaving politics to start his own private business, while he explained his resignation in December 2010 as his 'contribution to the further democratisation of Montenegro'. Even though his resignation was predominantly a matter of his own political calculation, many believe that in addition he was both directly and indirectly encouraged by different international actors to make a move in that direction.

Nevertheless, it would be a mistake to think that Djukanović is no longer interested in power. Since the ruling DPS is still in control of all social, political and economic processes in Montenegro together with their junior partner, the Social-Democratic Party (SDP), it is obvious that real power and influence over the main decision-making processes are still in the hands of Djukanovic, given that he is still in charge as a president of the DPS.

During the period after his first resignation (2006-2008), things swiftly began to escape his control. In particular his position and that of his interest group (composed of family and friends and influential businessmen) both within and outside the DPS began to be jeopardised by the ambitions of Svetozar Marovic (deputy president of the DPS) and President of Montenegro Filip Vujanovic (second deputy president of the DPS). This moved Djukanovic to return to office as Prime Minister in February 2008. This time Djukanović used his term until December

2010 to carefully prepare his exit and shore up his position and the position of certain business and political circles close to him. He provided political and party support for Igor Luksic as new Prime Minister and he successfully curbed the power of both his actual and potential opponents within the ruling DPS. In this respect, unless Luksic makes some sudden radical changes, a strong element of continuity is likely to prevail in Montenegro's domestic and European policies.

Having said that, even though some analysts predicted stronger clashes within the ruling DPS, so far internal political conflicts have remained at a low level. This is predominantly a consequence of the specific political situation after the arrest of the mayor of the city of Budva and the brother of the ex-vice president of the government, Svetozar Marovic, in the so-called 'Zavala' case. This arrest was a clear sign of the existence of internal partisan conflict within the ranks of the highest officials of the DPS and at the same time signalled the start of the partial fulfillment of EU conditions for fighting against organised crime and high-level corruption.

This situation could evolve in either of two directions: it could remain an internal party clash between Djukanović and Marovic (in that case there will be no proper trial in the 'Zavala' case) or alternatively it could lead to more serious reforms and an extensive fight against corruption and organised crime. In that sense, both Djukanović and his heir, the new Prime Minister Igor Luksic, are in a strong position and have a chance to start a new chapter.

Nevertheless, even though commitment to a more dedicated fight against organised crime and corruption may materialise in the middle and longer run, it will be very hard to predict more substantial steps in that direction before the forthcoming congress of the DPS (to be held on 21 May 2011) This congress should also confirm and strengthen the political position of the young new Prime Minister Igor Luksic, who owes his appointment to his long association with Milo Djukanović. Even though Luksic is not generally regarded as someone who will challenge Djukanović's authority, it seems that he has already demonstrated a significantly different style in communication with civil society and media, including a certain increased transparency with regard to the work of the government.

Prime Minister Luksic is widely seen, internally and externally, as a figure who is untainted by high-level corruption or abuse of power. Nevertheless, it may be difficult for him to make much progress in the fight against certain power structures and interest groups that have traditionally shaped the political and economic scene in Montenegro and that are either directly or indirectly connected to ex-Prime Minister Djukanović, Svetozar Marovic and other high-ranking DPS officials.

Curtailing the influence of these groups and making them play by the rules will be the most significant test for Luksic's government in the immediate future.

However, Luksic will have the significant support of the EU and the international community in attempting to implement reforms and fight against criminality, corruption and other problems in Montenegrin society. His governmental programme and goals are dedicated to fulfilling the European integration agenda but it is not yet clear how strong he will be in challenging different local players, especially those within the ranks of his own DPS party and his government.

On track towards European integration

Regardless of the future prospects of his success in governing Montenegro, PM Luksic has inherited a certain advantage in comparison to most of his counterparts in the region and that is the fact that at the beginning of 2011, Montenegro is on track to join both the EU and NATO, confirming the success of its European and Euro-Atlantic integration trajectory.

However, if we take into consideration Milada Anna Vachudova's definition of 'asymmetric interdependence', where East and Central European candidate countries depended significantly on the perspective of EU membership, while 'the EU depended on them but little,[5] it is clear that Montenegro has greatly benefited from its engagement with the EU and that the development, reform and transition of Montenegrin society, politics and economics are inseparable from the European integration processes.

With regard to Euro-Atlantic cooperation and eventual NATO membership, Montenegro received a Membership Action Plan (MAP) in December 2009 and since then the Montenegrin government has received positive feedback regarding fulfilment of its MAP obligations.

Even though internal public support for NATO membership is not high, it is expected that NATO membership will come prior to full EU membership and this will also serve as an additional impetus for fostering the overall European integration of Montenegro. This is the case since Euro-Atlantic and especially European integration have provided a framework for important assistance to internal reform processes in Montenegro. Both politically and economically, the support of the EU, along with the assistance of the US (which was one of the highest in the world *per capita*), have played a key role in shaping the reform processes of social and institutional transition in Montenegro.

5. See Milada Anna Vachudova, *Europe Undivided* (Oxford: Oxford University Press, 2005), p. 63.

The economic context

From an economic perspective, according to EU data,[6] the overall financial assistance of the EU to Montenegro between 1998 and 2010 was over €408.5 million. Within the CARDS programme (1998-2006), €277.2 million was distributed, while €131.3 million was distributed between 2007 and 2010 under the Instrument of Pre-Accession Assistance (IPA). The support was offered within the reform process in the country 'in the context of European integration with a focus on institution building, introduction of the EU *acquis* and improvement of socio-economic conditions as well as environmental protection and sustainable development. Financial support is also being provided to civil society.[7]

The EU countries continue to be the most important trading partners for Montenegro. According to statistics more than 40 percent of Montenegro's imports come from the EU Member States while more than 48 percent of exports go towards the EU.[8]

Since the beginning of the European integration process, Montenegro has shown a significant improvement in the macroeconomic sphere. From 2001-2003 average annual GDP grew between only 1 percent to 2 percent, then accelerating to 4.5 percent in 2004 and 2005, showing a significant increase of 8.6 percent in 2006 and soaring to 10.7 percent in 2007. The following year, 2008, saw it fall to 6.9 percent while 2009 witnessed the full impact of the global economic crisis with a contraction to – 5.7 percent of GDP.

Nevertheless, in 2010 the Montenegrin economy stabilised and GDP posted 0.5 percent positive growth. Today, according to international estimations, it seems that the worst is behind Montenegro and that a 2 percent increase of GDP in 2011 and even more in 2012 will follow. Nevertheless the budget deficit will force the Montenegrin government to issue new state bonds and seek credit arrangements with the IMF. This has already been announced by Prime Minister Luksic.

GDP *per capita*, which increased from €1,679 in 2000 to €2,800 in 2006 and €4,900 in 2010, reflected developments within the process of European integration. A low inflation rate, a high level of foreign direct investment (FDI) and a significant drop in unemployment are also encouraging for future prospects.

Political progress

In addition to these economic data, a comparative review of political transition and democratisation processes in Montenegro in the period

6. European Commission, Communication from the Commission to the European Parliament and the Council, 'Commission Opinion on Montenegro's application for membership of the European Union', COM(2010) 670, Brussels, 9 November 2010.
7. Ibid.
8. Ibid.

from 1999 and the European integration process up until today, shows considerable improvements in many fields.

Thus, the annual Annual Progress Reports (2002-2009) and all relevant documents (from 1999 until today) show that there have been significant improvements which have contributed to a higher degree of democratisation of Montenegrin society and of the relevant institutions. These range from economic reforms designed to ensure monetary and fiscal stability to political reforms targeting for example the public administration and the judiciary.

However, these account for only a part of all those reforms that need to be defined, developed and implemented. In that sense, so far, both state institutions and the public in Montenegro (and the majority of representatives of civil society and NGOs) have learned that the adoption of a legislative framework and legal regulations is one thing, and their successful implementation and making them an integral part of the institutional framework and social context, completely another.

There are still many serious problematic issues that need to be addressed urgently in order to speed up the process of EU integration and the overall democratisation and transition of Montenegro. These are well recognised both internally, by the citizens of Montenegro,[9] and by the international community and especially European Union structures.

Among many different tasks confronting Montenegro, the most important and the most urgent were defined by the EU and listed in the Commission's Opinion on Montenegro's Application for membership of the European Union, which was produced in November 2010. The Commission's Opinion included a chapter on political criteria which drew attention to the persistence of 'deficiencies in the functioning of democratic institutions and shortcomings in implementation of the legislation'. It concluded that 'the parliament's overall capacity to ensure appropriate oversight of the government remains limited.' In addition, it indicated that 'the election law has not been fully harmonised with the Constitution' and that 'the separation of powers is not fully respected in the case of the judiciary'. The public administration was judged as still 'weak and highly politicised'.[10]

Therefore, in spite of the fact that Montenegro has achieved EU candidate status, it has not been given a date for the opening of negotiations with the EU. This is a clear sign that there are still serious obstacles that have to be removed within a short timeframe in order to prove to EU institutions that Montenegro has achieved sufficient political and economic maturity to negotiate full EU membership. This is the reason that the EU has set out seven conditions relating to areas for immediate intervention: compliance with these will be assessed in the

9. See various public opinion surveys, e.g. Balkan Monitor, 'Insights and Perceptions: Voices of the Balkans', Gallup 2010. The survey results showed that 85 percent of Montenegrins consider corruption as a serious, very serious or fairly serious problem.

10. European Commission, Communication from the Commission to the European Parliament and the Council, 'Opinion on Montenegro's application for membership of the European Union', COM(2010) 670, Brussels, 9.November 2010.

next Annual Progress Report that should be presented during October or November 2011.

If Montenegro shows significant progress in these seven key areas, the date for the opening of negotiations might be agreed at the end of 2011. Some of these requirements are clear and measurable, while others might be problematic for both sides, especially in terms of evaluation.

Seven Priority Areas outlined in the Commission's Opinion (November 2010)

1. Improve the **legislative framework for elections** in line with the recommendations of the OSCE-ODIHR and the Venice Commission; strengthen the Parliament's legislative and oversight role.
2. Complete essential steps in **public administration reform** including amendments to the law on general administrative procedure and the law on civil servants and state employees and the strengthening of the Human Resources Management Authority and the State Audit Institution, with a view to enhancing professionalism and de-politicisation of public administration and to strengthening **a transparent, merit-based approach to appointments and promotions**.
3. Strengthen **rule of law**, in particular through **de-politicised and merit-based appointments of members of the judicial and prosecutorial councils and of state prosecutors** as well as through reinforcement of the independence, autonomy, efficiency and accountability of judges and prosecutors.
4. Improve the **anti-corruption legal framework** and implement the government's anti-corruption strategy and action plan; establish a solid track record of proactive **investigations, prosecutions and convictions in corruption** cases at all levels.
5. Strengthen the **fight against organised crime** based on threat assessment and proactive investigations, increased cooperation with regional and EU partners, efficient processing of criminal intelligence and enhanced law enforcement capacities and coordination. Develop a solid track-record in this area.
6. Enhance **media freedom** notably by aligning with the case-law of the European Court for Human Rights on defamation and strengthen **cooperation with civil society**.
7. Implement the **legal and policy framework on anti-discrimination** in line with European and international standards; guarantee the **legal status of displaced persons**, in particular Roma, Ashkali and Egyptians, and ensure respect for their rights. This will include the adoption and implementation of a sustainable strategy for the closure of the Konik camp.

Nevertheless, it seems that, so far, the new government has taken these demands seriously.

A new Action Plan for fulfilment of obligations set out in the Opinion of the EU Commission was adopted after wide and serious public consultation with civil society. In this document[11] the government, parliament and other state institutions set out the various steps and activities that should serve to meet the Commission's seven recommendations.

Meanwhile state officials have pledged full commitment to achieving these tasks before the new EU evaluation in October 2011. However, the relatively weak position of the new government with regard to introduction of reforms in the judiciary and the fight against organised crime and high-level corruption means that some uncertainty hangs over the prospect of the majority of these tasks being successfully implemented.

Ultimately the real answer to these doubts depends on the determination of the new Prime Minister and his team to clamp down on serious cases of wrongdoing by many high- and middle-ranking officials in the state bureaucracy and local authorities.

On the plus side, apart from these critical observations by the Commission regarding some internal aspects, EU officials praised Montenegro's regional positioning and positive role in various aspects of international relations. Montenegro does not have any significant conflicts or serious unresolved issues with its neighbours and Montenegrin official (and unofficial) policy within the past decade has been one of the cornerstones of every successful regional initiative for cooperation. Such positive contribution to regional cooperation and good neighbourly relations has confirmed Montenegro's position as a leading example for all other countries of the region in this regard.

To support these positive evaluations of Montenegro's good regional relations, Milan Rocen, the Minister of Foreign Affairs of Montenegro, emphasised the example of Montenegrin recognition of Kosovo, while at the same time endeavouring to maintain relatively solid relations with Serbia. He emphasised that Montenegro has no contentious issues with any of its neighbouring countries and that the only issue with Croatia, regarding the border on the Prevlaka peninsula, will be resolved by a decision of the International Court of Justice (ICJ). He also announced that he expects that in the context of Croatia's application for membership of the EU, the work of negotiation experts on this border issue will be intensified on both sides during this year.[12]

As well as seeking to strengthen regional political ties, Montenegro also maintains very strong economic connections with countries of

11. Government of Montenegro, Ministry of Foreign Affairs and European Integration, 'Action Plan for Monitoring Implementation of Recommendations Given in the European Commission's Opinion', 17 February 2011.

12. Author's interview with the Minister for Foreign Affairs, Milan Rocen, 19 December 2010.

the region, with a significant proportion of Montenegrin exports and imports going to and coming from Serbia (28 percent of exports and 36 percent of imports[13]) and Bosnia, but also Croatia, the Former Republic of Macedonia and Kosovo.

Such constructive behaviour towards regional partners as well as towards EU institutions and EU Member States would seem to augur well for Montenegro's aspirations to EU membership.

If this is also followed by resolute and visible action taken against widespread corruption and organised crime and a commitment to other internal social, political and economic reforms, it seems that, as was recently intimated by senior EU officials, the EU's doors might be wide open for Montenegro.

Conclusion

Five years after its proclamation of independence Montenegro is steadily addressing issues of democratisation rather than being predominantly preoccupied with the 'pre-political' questions of identity, statehood and nationalistic rhetoric.

Despite the fact that Montenegro is still burdened with numerous problems of different scale and intensity in areas related to general democratisation and social and economic transition, the main debates are now less focused on state status issues than on economic, social and other existential and development problems.

EU candidate status was granted to Montenegro in December 2010 and at the beginning of 2011, its European and Euro-Atlantic integration prospects look promising, offering many opportunities to Montenegro and its government. However, there are still many serious problematic issues that need to be addressed urgently in order to speed up the EU integration process and the overall democratisation of Montenegro. These problems are well-recognised both internally and externally and most of them are addressed in the seven requirements set out by the EU as a condition for offering a date for the opening of membership negotiations with the EU.

Today, the Euro-integration ball is in Montenegro's court and it is now up to the government and other state institutions to show that Montenegro can meet its European destiny.

13. The Economist Intelligence Unit, Country Report Montenegro, January 2011.

Chapter 5

The story of Macedonian populism: 'All we want is everything!'

Sašo Ordanoski

The views expressed in this chapter are the author's own views and do not represent those of any organisation or institution. An early version of this paper was originally presented as a paper at the colloquium 'The Western Balkans and the EU' held in Paris by the EUISS at the end of January 2011. The author would like to point out that this chapter does not take account of any political developments in Macedonia since mid-March 2011.

Nikola Gruevski, Macedonia's Prime Minister and undisputed leader of the governing Internal Macedonian Revolutionary Organisation-Democratic Party for Macedonian National Unity party (VMRO-DPMNE), firmly believes that he has invented a magic formula for staying in (absolute) power forever. It is a simple formula consisting of two main pillars and one additive.

The first pillar is the number of public administration employees.[1] When Gruevski came to power in mid-2006 after VMRO-DPMNE won the elections largely thanks to promises of economic revival, there were some 95,000 public sector employees. At the time, this was considered to be an excessive number of state bureaucrats. While previous governments provided no clear strategy, the overstaffed public sector was supposed to be reduced in the years ahead as part of the general endeavour to boost economic growth and cut fiscal deficits.

However, Gruevski soon realised that public administration staff cuts in a country with low social welfare standards and an unemployment rate of around 32-35 percent were widely unpopular among voters.[2] The table overleaf[3] illustrates the magnitude of the problem.

1. It is difficult to provide a clear definition of what public administration is in Macedonia, even when relying on official documents on public administration reforms. A brief study published in 2009 entitled 'Rightsizing of the Public Administration in Macedonia' by the Skopje-based Analytica think tank (www.analyticamk.org) claims that there is a difference between public administration and the civil service (state administration): 'All those who perform duties related to the executive, legislative and judiciary branches of government belong to the civil service, while those working in other public sectors, such as culture, health, education etc. are members of the public administration'.
2. It should be said at this point that some experts in Macedonia warn that official government statistics on social, economic and financial issues should be treated with caution, as they are 'unreliable or politically manipulated' (S. Vaknin), or because 'there are some indicators that are really strange, inexplicable and contradicted by reality' (D. Doncev). Both the latter authors are quoted from the article 'Macedonian Statistics' published on 24 April 2010, in WAZ's online edition of *EUobserver*.
3. Source: Macedonian State Statistical Office and the State Health Fund as published in *Vreme*, 2 February 2011.

Category/Year	1992	2000	2005	2010
Employed	650,070	545,222	417,465	478,962
Unemployed	190,000	261,452	324,766	300,540
Pensioners	166,224	241,221	297,324	278,863
Children (under 15)	260,659	256,280	223,876	215,078

So, the Gruevski government decided to begin a mass recruitment drive in the state administration, pushing numbers to unprecedented levels. Today, in early 2011, there are some 130,000-140,000 state employees (excluding staff in public enterprises). The real figures are unknown to anyone outside the highest levels of government and when questioned on the matter the political authorities give deliberately vague answers. The number of ministries, state agencies and various other state bodies has grown significantly, making Macedonia a regional leader in high-, mid- and low-ranking state officials.[4] The number of drivers, secretaries, office assistants, assistant deputies and deputy assistants grew accordingly.

In addition to this employment strategy, extensive state subsidies were distributed to the agricultural sector. This sector, encompassing some 190,000 farm holdings,[5] was largely ignored in the past two decades, and the governing party wanted to correct this historic injustice.

These two strategies paid off for the governing party. VMRO-DPMNE confirmed its convincing victory in the early parliamentary elections in 2008 and won an absolute majority in parliament on the same 'economic revival' election platform.[6] In 2009, VMRO-DPMNE won both the local and presidential elections decisively. They installed their own people as mayors in most of Macedonia's 85 municipalities and their candidate Gjorge Ivanov as president.

The only 'catch' to getting state employment or a subsidy was to have a membership card of one of the coalition government parties, preferably VMRO-DPMNE. As a result, not only did the party win the elections, but party membership also grew. The consequences in the public sector were obvious: it became heavily partisan from top to bottom.

The party's capture of the state did not stop at the threshold of public institutions and administrative bodies. In an attempt to widen its political base and replace the elite, it soon embarked on a complete 'VMROisation' of all socio-economic layers, with the governing party targeting the business sector, the media, the health system, the academic and educational community, non-governmental organisations, trade

4. By way of comparison, Slovenia (which is almost equal in size to Macedonia) has a total of 15 ministries, while Macedonia has 18 (three without portfolio), plus the prime minister's cabinet and the offices of three deputy prime ministers.

5. In 2009 the Macedonian government released some €70 million for agricultural subsidies, and it was announced that €100 million was to be distributed in 2010. Few or no subsidies were available under previous governments. The agricultural sector, together with the food-processing industry, accounts for some 15-20 percent of the country's GDP.

6. In 2006 VMRO-DPMNE's election platform was dubbed 'Revival in 100 steps.' For the early elections in 2008 the platform was conveniently renamed 'Revival: Extended and upgraded.'

unions, professional and sports associations, agricultural unions, etc.[7] There was little opposition. As in 'the good old days' of communism, if you wanted prosperity, you had to be a member of the governing party.

But partisan loyalty – a typical instrument for post-communist reformers of all parties in Macedonia – was neither the only, nor the main criterion of trustworthiness promoted by the current government. VMRO-DPMNE's leadership[8] went one step further than this 'proof' of political allegiance by promoting *family* loyalty as a qualification to win the highest confidence of the leaders. Fathers, sons, brothers and sisters, godfathers, close relatives and other family members and friends were appointed by the dozen to top positions in government, including the secret police, customs, the justice system, ministerial and diplomatic posts, independent regulatory bodies, the state energy sector, state agencies, public companies and their managing boards. A number of them occupied several posts simultaneously in order to limit the number of decision-makers and maximise personal income.

This *omerta*-style clientelism was rampant throughout all levels of government, from the very top down to the lowest ranks of state and municipal administrative structures. Four years after VMRO-DPMNE came to power, there were unprecedented and widespread conflicts of interest in Macedonia's transitional society and what seemed to be a real plague of systematic corruption, favouritism in public spending and cronyism of the worst kind.

Governing by the polls

The second pillar of Gruevski's formula for staying in power involves influencing public perceptions. The ruling party realised that by spending an adequate amount of money on public relations (PR) and political marketing techniques, public perceptions could be manipulated and they could thus establish ultimate authority over the country. PR activities were stepped up dramatically. The public was literally overrun by dozens of campaigns: announcing economic reforms; promoting moral values; inviting foreign investors; proclaiming a clean environment and a green future; pleading for tolerance; combating domestic violence; promoting literacy; warning against the dangers of smoking, drugs and alcohol; encouraging regular health checks; calling for people to buy Macedonian products; encouraging families to have a third child; proclaiming education for all, education for the elderly, tennis courts in every town, transparency and the fight against corruption; announcing an 'open day' with the government and live TV broadcasts of government sessions ... At times over the past few years the government must have been simultaneously running around 15 campaigns per week.

7. This breathtaking strategy was best described in a one-liner from a personal friend in government circles: 'All we want is everything!'.

8. In order to safeguard against unexpected democratic ideas or initiatives in the party, in Article 22 of VMRO-DPMNE's statute it is clearly stated that the party chairman, according to his own judgment and will, 'can block implementation of decisions and other acts by the [party's] Executive Committee and other [party] institutions and bodies.'

Transparency Macedonia has estimated that Gruevski's government was/is spending around 1.5 percent of the annual state budget[9] on domestic and international public relations and promotional and advertising campaigns, from CNN and *The Financial Times* to local television and village radio stations. Bearing in mind that Macedonia's media advertising market is very small, representing some €40-50 million annually,[10] the influx of such large amounts of government money caused mayhem among media owners and eliminated any semblance of fair market competition.

Governing through public relations had added value for the ruling class: as a result of the government giving millions of euro to the owners of some of the main national commercial television stations, independent editorial policy gave way to uncritical support for government policy. The prime minister's chief of cabinet and general secretary of VMRO-DPMNE, Martin Protogjer, became the most influential spin doctor in the country. Censorship and self-censorship became the order of the day for many journalists and editors employed by state-sponsored media owners.

Opinion polls also became a key instrument for deciding government policies. Polls were commissioned on a regular basis, sometimes weekly, and there was an explosion of new 'independent' polling institutes.[11] The pollsters looked into every possible issue; ministerial agendas depended on the results. Pride of place was given to the ratings of the prime minister, who developed an obsession with poll results.

Given this mode of government – unlimited state employment, widespread subsidies and relentless, round-the-clock public relations – it is not surprising that the machinery was soon to be oiled by a little 'additive': the concentration of power in the hands of the Prime Minister and his party engendered *growing fear* in all political and social spheres. The omnipresent state was in control of everything, from the 'independent' justice system and news media, through much of the economy, to sports clubs and theatre companies. The few remaining independent institutions left in the country – the Constitutional Court, the Governor of the National Bank, the Broadcasting Council, the new President of the State Anti-Corruption Commission, and several influential media outlets and NGOs – were put on the government's 'blacklist' and now come under constant attack from the pro-government media and suffer government and party bullying. The state flexes its muscles through televised arrests and by deploying police in full riot gear for the smallest of offences. Government spokespersons give several press conferences a day, openly attacking (usually *ad personam*) anyone who disagrees with the official government line. Businesses deemed 'hostile' to the state are regularly subject to financial and other state inspections. Ads openly attacking political opponents can be seen in the daily press.

9. The size of the annual budget between 2007 and 2010 was €2.2-2.5 billion.

10. Since no reliable official statistics are available, this estimate should be treated with caution, as it is based purely on an approximation of the real income of the five major national commercial TV stations, two national commercial radio stations and the five major dailies which cover some 80-90 percent of the national advertising market.

11. A flurry of new 'independent' news websites in Macedonian also flooded the Internet, in an attempt to overwhelm the main Internet news aggregators and the blogosphere with intensive and voluminous pro-government news.

Party activists are regularly sent to demonstrate in front of the main headquarters of the opposition party or the EU offices in Skopje.[12]

The people fell silent. To voice a different opinion to that of the government became an act of bravery in a country which acquired EU candidate status in 2005. It was soon clear that instead of democracy, it was *demokratura* – a combination of democracy and dictatorship – that has steadily taken hold in Macedonia over the last four years.[13]

When Disneyland meets les Champs Elysées

In the first few years of government, Prime Minister Gruevski and his team were praised by many in domestic and international circles as promising 'young technocrats', as opposed to the 'old-fashioned' and 'corrupt' social democrats that governed Macedonia for most of the post-communist transition period from the beginning of democratisation in 1990. Macedonia stood out as a clear outperformer in the World Bank's Doing Business 2010 Report. In the World Economic Forum's Global Competitiveness Report 2009-2010, Macedonia – together with Albania and Montenegro – increased its ranking. In its Corruption Perception Index 2010, Transparency International ranked Macedonia 62 out of 178 countries (in equal position with Croatia, Ghana and Samoa), 43 places up from 2006.[14]

The last few years have seen many celebratory press conferences and official government announcements. Opinion polls in 2006, 2007, 2008 and 2009 suggested that Gruevski was by far the most popular politician in the country[15], and VMRO-DPMNE had an almost three-figure lead over the opposition Social Democratic Union of Macedonia (SDSM).

Gruevski's political ratings were largely attributed to his tough and 'strictly principled' stance on the Macedonian-Greek name issue: Macedonia is not going to change its name, so Greece should either give in or face the consequences on the international scene.

He got further support from the majority of ethnic Macedonians as a result of his 'soft' but effective nationalistic treatment of ethnic Albanians. Unlike VMRO-DPMNE's previous, more aggressive and confrontational policy towards Albanians, Gruevski adopted a quieter and more contemptuous approach, applying a 'technocratic touch' of corporatist power-sharing with their political representatives.[16] Making virtue out of necessity, Gruevski has tried all the ethnic Albanian political parties as coalition partners in the last four years in government, exploiting their influence

12. Many of these appalling practices were exposed and criticised, albeit in diplomatic language, in the regular European Commission progress reports, with no real effect on the government's conduct.

13. Teuta Arifi, member of parliament and member of the DUI Presidency, first suggested *demokratura* as a definition of Gruevski's method of government in the Macedonian daily press in July 2008.

14. The country was ranked 105 in 2006, 84 in 2007, 72 in 2008, 71 in 2009, and 62 in 2010.

15. In many surveys, Gruevski was supported by up to 27-29 percent of respondents, while the leader of the opposition SDSM, Branko Crvenkovski, regularly got below 10 percent.

16. A good illustration of how Gruevski treats his Albanian partners in government is the manner in which Macedonia recognised Kosovo: after six months of refusing to do so, it took the presence of the US Defense Minister in Ohrid at a NATO conference in October 2008 for the government to officially recognise Kosovo. Gruevski left the government session, leaving one of his deputies to preside over the formal decision. It took 12 more months and a lot of internal Albanian pressure for the formal establishment of diplomatic relations between Macedonia and Kosovo in October 2009.

over their voters at will. The 2001 Framework Ohrid Agreement is treated more as a manual for proportional budget spending, than as a key interethnic political agreement for power sharing and consensus building as a long-term strategy.[17] Right-of-centre ideologists in Skopje are giving serious consideration to Angela Merkel's declaration of the failure of multiethnic society.

But it was not only 'politics as usual'. In order to confirm its 'extended and upgraded' national revival agenda, the government introduced the grandiose 'Skopje 2014' project. The idea is, by 2014, to change the 'socialist' architectural face – and, by extension, soul – of the nation's capital, Skopje, at a cost of hundreds of millions of euro. A number of neoclassical and neo-baroque buildings will be erected around Skopje's main square to be inhabited by a range of state institutions and a handful of businesses. The 'historic' part of the project includes the construction of a large Triumphal Arch to All Macedonian Victories. Some 50 different monuments to the 'glory' of ancient, medieval and modern Macedonia will adorn the square. A Museum of National Struggle with 100 or more life-size wax models representing historical figures will stand next to the restored National Theatre (destroyed during the 1963 earthquake). There will be a monumental Orthodox church (conveniently called The Church of St. Nikola). A giant panoramic wheel is planned as an attraction on one side of the square, not too far from the artificial summer beaches already established on the banks of the river Vardar. Several fountains will play in the river itself as part of a 'son et lumière' show.[18]

The centrepiece of this architectural extravaganza will be the monument of Alexander the Great,[19] over 35 metres tall, to be erected in the middle of the square and expected to be completed by the end of 2011.

Neither professionals nor the general public were consulted on the look and content of 'Skopje 2014.' The majority of Skopje's inhabitants expressed reservations in opinion polls.[20] When a large group of students from the Architectural Faculty in Skopje tried to protest peacefully against the project, they were brutally beaten – in the presence of the police and media – by VMRO-DPMNE hooligans. Regardless of the dramatic rise in poverty in the country, construction of this multimillion-euro project is already underway.

The national revival agenda held some other surprises. For instance, as a part of the search for an ethnic identity and in recognition of newly discovered roots, the Prince of the Hunza people and his entourage were invited on an official visit to Macedonia. Full state protocol was accorded to this well-mannered gentleman representing his people from an isolated valley in the mountains of Pakistan who are famed for their longevity. They are believed to be descendants of Alexander

17. 78 percent of respondents in the poll published by the Skopje-based Centre for Interethnic Tolerance and Refugees in February 2011 believe that current interethnic relations in the country are very bad, while only 19 percent felt they were very good. 71 percent of respondents think that interethnic intolerance is on the rise. According to the Centre's experts, the current state of deteriorating interethnic relations compares only with data from a 2001 survey during and after the conflict in Macedonia.

18. Considering the level of pollution in the Vardar river, local ecologists expressed concern about what will actually be sprayed in the air.

19. This monument alone will cost around 10 million euro of taxpayers' money.

20. Ethnic Albanians in Skopje, whose largest municipality borders Skopje's main square across the river Vardar, presented their version of a big modern square around the existing monument of Skanderbeg and asked for state money to finance this huge construction site, only a few hundred metres from the 'Skopje 2014' building site.

the Great's conquering army, which was deemed sufficient reason by the current Macedonian government to establish relations between modern Macedonians and their alleged ancestors. His Royal Highness the Prince of Hunza was even given a plot of land in Macedonia to build his own imperial palace.

There was a major push to introduce educational and cultural programmes, generously funded by the state, to promote religious values and practices, ancient and pre-ancient Macedonian history, and the country's rich cultural heritage. Macedonia was ambitiously building its future through the relentless exploration/exploitation of the past.

At the same time as devoting so much attention to the past, the government sought to steer a modern course through a number of 'e-projects': it launched a 'computer for every child' campaign in schools, and opened 'Internet points' in far-flung villages; the fact that the inhabitants still live medieval lives without decent roads, running water or electricity did not stop the authorities from bringing twenty-first century virtual reality to their doorsteps.

All this and more was part of the government's grand project for the 'revival of Macedonia.' Some measures, such as the 'digital and internet revolution,' did boost business in certain sectors. Others, like the government's populist decision to allow the import of cheap second-hand cars over 10 years old, pushed the new car dealers' import businesses to the verge of bankruptcy. But many of the government's 'innovative' policies and policy decisions were implemented in haste, ill-prepared or unfinished, and accompanied by various financial scandals and occasionally comical organisational mishaps; many millions of euro were wasted through mismanagement or for want of proper cost-benefit analysis.

Given the social fallout from never-ending economic transition and disillusionment engendered by previous political disasters, for a while Macedonians said of their prime minister: 'Well, at least he is doing something!' Gruevski's aura shone like no one else's before in modern Macedonian politics.

Unnoticed by the government pollsters, however, more and more people were refusing to answer the numerous public surveys. Before long over 50 percent of all responses were either '*don't know*' or '*don't wish to answer*'. In most of the 2009 and 2010 polls, this figure was constant. This trend did not go unnoticed by international organisations dealing with democratic standards in the world, but was ignored or downplayed by pro-government media, local think tanks and the ruling party.[21] Other statistics revealed the negative trend in public attitudes towards the government: while in 2008 48.1 percent of respondents trusted

21. The Bertelsmann Transformation Index 2010 states that 'corruption in Macedonia is a serious and widespread problem that affects many aspects of the social, political and economic life'. BTI Macedonia, 2010, p. 10; see: http://www.bertelsmann-transformation-index.de/178.0.html?L=1. The Freedom House Nations in Transit democracy score has fallen continuously since 2006 (see: http://www.freedomhouse.org); Reporters Without Borders Press Freedom Index 2010 ranks Macedonia in 68th place, down 26 notches from 34th place in 2009.

the state, only 38.7 percent (10 percent less) did in 2010; trust in the government dropped even further, with 51 percent in 2008, and only 36.8 percent in 2010.[22]

Reality check

There was only one flaw to this grand populist socio-political engineering project initiated in 2006 with VMRO-DPMNE's first election victory: in order to be sustainable and successful, it required a constant flow of money – a lot of money – and close to double-digit annual growth.

This simply did not happen.

After the first few, economically unconvincing, years in power (2007-2008) spent preparing for and announcing the economic rebirth of the country, the global financial crisis erupted and the Macedonian government found itself in the cold.[23] Lavish spending on the growing public sector, large sums needed for various subsidies, and unproductive but expensive projects: all dug a deep hole in the state budget which was impossible to fill with such little revenue coming in. There were also a large number of elections in just four years (two parliamentary elections, one presidential and one local election) which cost a great deal in terms of PR and increasingly lavish election campaigns. Some 90 percent of the state budget went on salaries and unproductive expenditures.

In the last five years, there has been no money left over for any major capital investment project. There has been no significant investment in roads, railways, energy, infrastructure, technology or the tourist industry. The government had planned nothing that could create economic added value in the future or start a new economic cycle. Many ceremonial ribbons were nevertheless cut and dozens of ceremonial holes dug – empty holes that remain scattered around the country in testimony to pre-election promises.

The biggest disappointment was the low level of foreign direct investment (FDI) which in the last five years has never come even close to the expectations of Macedonians who over and over again were promised billions of dollars by the government. Tax and investment incentives were introduced,[24] 'one-stop-shop' investment services were promoted, a 'Regulatory Guillotine' project aimed at removing legal obstacles was established, a number of free economic zones were opened … Many 'letters of intent' were signed, there were 'road shows' in foreign countries, an expensive 'Invest in Macedonia' campaign was launched in prominent world media, numerous upbeat statements and press conferences were given. At the beginning of its mandate, the ambitious government even cancelled the extension of the IMF arrangement, claiming that its very existence sent out a bad signal to foreign investors.

22. 'Trust in Macedonia', Macedonian Centre for International Cooperation annual survey, Skopje, December 2010.

23. After three years (2004-2006) of annual GDP growth of around 4 percent, in 2007 growth reached 5.9 percent, and 5 percent in 2008. In 2009 it dropped down to -0.8 percent. In 2010 GDP growth was 0.7 percent, and realistic prognoses for 2011 are around 1-2 percent.

24. A flat tax structure was introduced at the start of 2008 by applying a single rate of tax (10 percent) to both corporate profits and personal income.

But no major investors actually came to Macedonia, not on the scale needed by the local economy. In 2007 the sum total of the country's FDI was about €500 million; in 2008 the FDI was €399 million, while in 2009 it plummeted to around €150 million; in 2010 the FDI rose to €309 million. Compared to neighbouring Western Balkan countries, Macedonian FDI figures resemble pocket money.[25] Those who *did* invest put their money mostly into building flamboyant shopping malls, as if Macedonia was set to become the Dubai of the Balkans.

These results are even more depressing considering the state structure that was put in place to attract FDI. Gruevski's government created not one but two ministerial posts responsible for bringing in foreign investors. There is a full-size state Agency for Foreign Investments. An important part of the Finance Minister's portfolio was to attract foreign investors, and likewise for the Deputy-Prime Minister in charge of economic affairs. Some 30 'economic promoters' or 'investment ambassadors' with formal diplomatic status were sent to capitals around the world to attract foreign investors. At the top of this pyramid of very young and mostly inexperienced people, was Gruevski himself, symbol of this huge effort which was in fact a huge failure.

Exit strategy: take out more loans

Today, with 32 percent of the population below the poverty line, and an official unemployment rate of 32-35 percent,[26] nobody in Macedonia jokes about the government's false promises. The healthcare system is falling apart. Payments of benefits and financial support for the most vulnerable parts of the population are many months overdue. The government cannot pay the generous farm subsidies promised in 2010, leading to mass roadblocks by angry farmers. The state pension fund is seriously depleted. Frustrated citizens are turning their backs on the government, in protest and disdain. Even Gruevski's and his party's ratings are taking a downturn. In December 2010 the opposition held a protest march which brought around 50,000 demonstrators onto the streets of Skopje, the largest political gathering in Macedonia in the last decade. Pressure for early elections was growing daily.

In order to fill the widening budget gaps, the government decided to turn to short-term domestic borrowing. In 2010 the government issued short-term state bonds – with an interest rate of 9.2 percent and six months maturity – amounting to €460 million, most of which was spent on urgent fiscal transfers for public sector salaries, pensions, and other social expenditure. Again on 1 February 2011 the government issued €42 million worth of bonds (with an interest rate of 4.1 percent) which, according to the Finance Minister, is still not enough to cover

25. In 2009 Macedonian FDI reached €180 million (only €81 per capita), while Croatia attracted €1.8 billion, Serbia €1.9 billion, and Montenegro's FDI reached €800 million.

26. The IMF believes that 'real unemployment' is around 25 percent.

February's financial obligations on previously issued state bonds.[27] Social peace in the country depended on expensive weekly borrowings. Soon the government was borrowing in order to pay back previous loans, increased by interest due.

However, this strategy consumed a large proportion of the free bank capital intended for loans to the developing domestic business community. This community was supposed not only to feed some 300,000 employees and their families, but also to provide tax revenue and raise key social funds. The government's strategy produced fairly predictable results: commercial banks were making hefty profits, while small and medium-sized enterprises were going bankrupt overnight, unable to cover their daily costs or fund development projects.

In 2010 the state deficit reached unprecedented levels. It was never officially confirmed how large it was, but it was mostly likely anything between €500 million and €1 billion. The state could not pay electricity or phone bills, or even pay for hospital food. Thousands of people relying on state health insurance could not get vital medication. VAT returns were months late. Hundreds of private companies went unpaid by the government for outsourced services and many went bankrupt (with no right of appeal).

But tax inspections and police traffic controls were as vigorous as ever. And construction work on 'Skopje 2014' never ceased.

Five years after the last IMF agreement in Macedonia, at the end of 2010 Gruevski's government was forced to seek another loan. The country was given a credit line of €480 million over two years,[28] on the pretext that it was a safeguard against the potential effects of exposure to the global economic crisis. The credit line is based on the government's economic programme and on the projected 2.5 percent GDP fiscal deficit for 2011 – if the deficit remains lower than 2.5 percent of the GDP, the government will not need to withdraw funds from the IMF's approved credit line. Indirectly, the IMF sent a signal to other creditors that it has faith in the economic stability of Macedonia, as a country that is making progress. But it also regained some control over the country's economic development, which it lost five years ago when Gruevski came to power.

The government mostly blames the global financial and economic crisis for the lack of foreign investors, poor general economic development and GDP growth. It is certainly true that the global crisis is partly to blame for the enormous difficulties.

However, many local economic experts argue that the country is becoming less attractive for investors and is economically 'frozen', not

27. 'The Government has hardly endured one month without state bonds', *Utrinski vesnik daily*, 2 February 2011.

28. Macedonia is the first country in the world to use the new IMF tool known as the Precautionary Credit Line (PCL) which is designed to meet the needs of vulnerable countries precluded from using the Flexible Credit Line (FCL).

because of its bad taxation policy and global economic trends, but rather because of its dysfunctional institutions, underdeveloped business and banking sector, widespread corruption, uncontrolled spending, and stalled NATO/EU accession bids, all of which are key factors for the stability of the country and which in the current state of play hinder economic growth.

Most of these issues are linked to Macedonia's bid for Euro-Atlantic integration. 'Greeks are to blame for everything,' is the convenient mantra of government representatives when criticised for failed reforms and lack of progress.

The 'name dispute'

Macedonia's Euro-Atlantic integration process has been effectively blocked by the well-known dispute over the 'name issue' with Greece. The dispute is about to enter its third decade of fruitless diplomatic negotiations, currently mediated by UN special envoy Matthew Nimetz. Despite the fact that the Greek and Macedonian prime ministers have met more frequently in the last year, there has been no significant progress, just a series of futile photo opportunities. Both governments give the impression that they are either unable to find a compromise or are not really interested in finding one.

This is certainly true of the current Macedonian government. It has not taken any positive initiatives or made any goodwill gesture that might indicate it is ready for a compromise. On the contrary, Gruevski's government has toughened its stance on the name issue by indicating unofficially that it is prepared to leave the negotiation process, mediated unsuccessfully by the UN for the last 15 years. In the early days of his government, Gruevski clearly stated that any compromise solution, if and when it came, would be put to popular referendum, and that his government would not support any compromise that involved changing or adding to the name 'Republic of Macedonia.'

With its aggressive policy of cultural and historical 'antiquisation' of Macedonia, by renaming Skopje's Airport 'Alexander the Great' and building an over 36-metre high monument of Alexander the Great in the centre of Skopje, by initiating proceedings against Greece in November 2008 in the International Court of Justice in The Hague, and through various other initiatives that may be deemed unnecessary nationalistic provocations, it seems that the government actually used the dispute mainly for domestic purposes: to boost its ratings among the 'patriotic' voters and to use it as an excuse for every and any political failure.

However, in the process, the government has lost its moral and diplomatic standing on the international scene, and eroded support in Brussels and Washington for Skopje's arguments. Both Brussels and Washington insisted time and again that 'both sides' should make an effort to reach an acceptable compromise, but now more often than not the finger is pointed at Macedonia for refusing to compromise.

At the end of February 2011, Macedonian Foreign Minister Antonio Milošoski publicly admitted sending a letter to the UN Secretary General in which he reiterated that Macedonia was ready to discuss a compromise name: 'Republic of Macedonia (Skopje)', the same one that was on the table at NATO's 2006 Bucharest Summit. This move was an anxious reaction to Gruevski's diplomatically disastrous visit to Washington D.C. on 16 February 2011, when he openly spurned the United States' encouragement and offer to help resolve the name dispute.[29] After separate meetings with Vice President Joe Biden, Secretary of State Hilary Clinton and Assistant Secretary of State Philip Gordon, according to the official statement from the State Department, Gruevski and his hosts had discussed 'a wide range of bilateral and regional issues' and Americans 'expressed concerns about trends regarding rule of law, independent media, and civil society' in Macedonia; Hillary Clinton 'reiterated [their] hope that Macedonia and Greece resolve together the longstanding name issue so that Macedonia can move forward on seeking NATO membership and fulfilling its Euro-Atlantic aspirations.'[30]

Gruevski was not invited to make a common press statement with Vice-President Biden or Secretary of State Clinton, but gave his statement to a handful of Macedonian journalists[31] on a pavement outside the State Department building.

At home, the Social Democratic opposition party, accused again and again by VMRO-DPMNE of being an 'internal traitor' because of their pro-compromise position, decided to refrain from making any public comments on the way Gruevski was handling the dispute. They simply declared that they would 'support any acceptable solution for Gruevski' which would resolve the dispute *and* speed up Macedonia's Euro-Atlantic integration. VMRO-DPMNE's coalition partner, the Albanian Democratic Union for Integration (DUI), has no power to steer Gruevski towards a compromise.

These developments – or, rather, non-developments – served as a good excuse in Brussels for further inactivity regarding Macedonia's integration. A number of countries in the EU, either overwhelmed by enlargement fatigue or openly supporting the Greek side in the dispute (France, Cyprus), use this situation as a justification for the slow pace of Macedonia's progress towards full membership.

29. The author has drawn this conclusion from reliable diplomatic sources present at the meetings between Macedonian and American dignitaries.

30. See: http://www.state.gov/r/pa/prs/dpb/2011/02/156407.htm.

31. The government covered the expenses of a few selected media outlets from Macedonia for the trip to Washington D.C.

Sharp divisions on EU perspectives

Gruevski and his associates have never been over-enthusiastic about Macedonia's integration into the EU. Or, to be more precise, their attitude can be summed up as: integration – yes, but not under EU terms. European bureaucrats and their close monitoring of the reform processes were seen as major obstacles to the 'VMROisation' of Macedonia which the governing party had in mind and which was their main priority rather than EU integration. They had to make up for years lost in opposition, while Brussels was insisting on professionalism, efficiency, tolerance, political dialogue, a sound economy, and independent state institutions, an autonomous judicial system, free media, etc.

Like all populists, the only policy that Gruevski understands is a domestic one, one that brings in votes here and now. Bowing and scraping in Brussels and promises of a better future in a few years or decades are a recipe to lose elections. Moreover, being very sensitive to any criticism of his style of government, Gruevski easily took offence at any sign of disapproval from Brussels.[32]

The government's immediate tactic was to talk loudly about EU reforms and put constant pressure on Brussels to speed up the integration process.[33] But the promised reforms were highly selective and only in areas and to an extent compatible with the party's priorities. In this context, the dispute with Greece served as a perfect excuse for any and every stumbling block in Macedonia's path to NATO/EU integration.

Still, the leadership in Skopje makes every effort not to antagonise the international community, especially when it comes to regional strategic issues. They maintain just the right level of involvement in regional initiatives, particularly as regards American interests or issues relating to Albanians in the Balkans, and manage to stay just below the international radar of special attention devoted to troublemakers.

However, it seems that this strategy also keeps them below *any* radar. Once – five years ago – a leading Western Balkan candidate for EU membership, today Macedonia is at the very end of the queue in this regional process. Using the European monetary and constitutional crisis as a pretext, various pro-government actors started to develop conspiracy theories: since the EU is falling apart anyway, and the eurozone is in its death throes, Macedonia should stay out of the EU like Norway or perhaps offer a confederation pact to its neighbour Bulgaria, or join the Non-Aligned Movement, become neutral like Switzerland or turn to China as the world's next superpower ... In 2011 and 2012 Macedonia is opening new embassies in Tokyo, Buenos Aires and Astana.

32. In the last couple of years, the government has stirred up a number of diplomatic incidents targeting the EU Ambassador in Skopje, a number of European parliamentarians and other foreign dignitaries or representatives who expressed any criticism of the government's policies and actions.

33. For example, it should be noted that all three of the government vice presidents (G. Konevska, I. Bocevski, V. Naumovski) in charge of the EU integration process who succeeded each other in the last five years were complete VMRO-DPMNE outsiders (Ms. Konevska and Mr. Bocevski were not even members of the party). They had no meaningful influence over state policy in any sector, and certainly not over Gruevski. Even at the symbolic level Gruevski wanted to be clear how much he cares about EU integration.

This confusion and the deadlock in the integration process, mainly due to the name dispute, has had an adverse effect on public attitudes towards the EU. For the first time in years, polls have showed increasingly anti-European feelings among ethnic Macedonians: 72 percent of ethnic Macedonians do not trust EU policy towards Macedonia (while 74 percent of ethnic Albanians do); 50 percent of ethnic Macedonians believe that Macedonia will be the last country to join the EU. At the same time, a majority of respondents (51 percent) are not satisfied with the government's policy on EU integration, as opposed to 47 percent of those who are satisfied.[34]

The country is sharply divided as to which key strategic direction it should take.

Future prospects

Macedonia's macroeconomic projections for 2011 are more optimistic, showing modest improvement. Real GDP is estimated to grow around 2 percent. The national currency, the denar (*de facto* pegged to the euro), will remain stable with moderate inflation of around 3 percent, provided that food and energy prices do not surge. The budget deficit should stabilise at about 2.5 percent of GDP. More foreign investments are expected to enter the country, but the government is planning a significant increase in capital investments. The budget is projected to be €2.6 billion, 85 percent of which is going to be spent on salaries, goods and services for the state. It is expected that domestic commercial banks will increase their credit supply by up to 10-15 percent. Exports will increase thanks to the ongoing recovery in the economies of Macedonia's traditional international trading partners. Private transfers will continue to grow.

All in all, the Macedonian economy will grow in 2011 and 2012, but not so much as to make a difference to ordinary people in their everyday lives.

The government's ratings are likely to continue falling in 2011, while there will be a modest increase in support for the opposition. More and more people from the undecided 'silent majority' will choose sides or lose their nerve. The government will become even more sensitive and prone to flexing its muscles, while corruption, organised crime, political scandals, and media witchhunts will continue to dominate the socio-political scene. Political dialogue will deteriorate further, making it impossible to build a common vision of key domestic and foreign challenges. Interethnic relations – as always in times of social and political crisis – will deteriorate overall, but this will probably not

34. Survey published by the influential daily *Dnevnik* in November 2010.

amount to more than squabbling and name-calling with rare violent outbursts.[35]

The financial situation is likely to decide Gruevski's political future. If he finds enough money to proceed with the current unsustainable (but politically beneficial) '*two-pillars-and-an-additive*' formula for governing, he will probably wait for the next elections in mid-2012. If the government fails to control the budget deficit and meet the population's growing social needs, then Gruevski may choose to go to early parliamentary elections in order to avoid even greater delegitimisation of his government.

Since the prospect of early elections suddenly seems more likely at the time of writing (spring 2011), it would appear that Gruevski has understood that he needs to overhaul his priorities and his team, if not his entire method of governance. It seems clear that whoever forms the government will have a much smaller power base to form a governing coalition, with a substantially smaller majority in parliament.

But there is also a broader regional and European reality which affects Macedonia's politics. The possibility of a more dynamic EU policy towards the Western Balkans in the next couple of years may put additional pressure on the government to deal with the name issue and concentrate on the domestic EU agenda rather than the current domestic VMRO-DPMNE agenda. Since Gruevski needs funding and support to perpetuate his way of government, the international community has the means to bring its influence to bear. However, it might not be willing to support yet another typical populist regime in the Balkans that is failing to produce democracy, economic sustainability and progress.

Being an economist by training and a technocrat by profession, it seems that Gruevski believes that the *economy* will save Macedonian *politics*. This has rarely been the case in the Balkans. History teaches us that, for small Balkan states like Macedonia, a clear political orientation has always been a more powerful drive for increased economic output, even for far more successful economies.

That is why, sooner or later, Macedonia will have to follow a democratic, liberal, pro-European and pro-Western path. With or without the current government. With or without international help. But sooner rather than later.

35. An ugly interethnic incident took place in mid-February 2011, causing a dozen injuries among protesters and police officers, and was entirely provoked by the ethnic parties in the current government over the building of a church/museum in the medieval fortress in the centre of Skopje. It was swiftly condemned and contained from further escalation by the Macedonian and Albanian coalition partners in the government.

Chapter 6

The unfinished state(s) in the Balkans and the EU: the next wave

Veton Surroi

Anomalies resulting from Kosovo's contested status

Kosovo is an unfinished state. Its international legitimacy was contested from the moment of its birth. Kosovo's declaration of independence did not have the support of the United Nations Security Council as the ultimate conferrer of international legitimacy. Instead, a number of UN member states, including permanent Security Council members Russia and China, opposed its independence.

Since Kosovo's declaration of independence on 17 February 2008 there have been three layers of contestation. The first is basically territorial, i.e. Serbia claiming that Kosovo continues to be part of its territory. The second is one of European identity, with five of the 27 EU states refusing to recognise Kosovo's independence, thus denying it legitimacy in the context of the Continent's strongest post-war historical process: that of European integration. The third layer consists in a global/ideological tug-of-war in which some countries see Kosovo as a product of either US or Western unilateralism, with the result that Kosovo is recognised by 75 countries worldwide, with a low percentage of non-aligned states. And obviously, the country does not have UN membership.

All three layers have a common denominator: the idea that there might be a different status for Kosovo than the present one of independence, implying that the present state of affairs is *unfinished*, which constitutes a psychological burden for Kosovo in its relations with the outside world.

But above and beyond that collective psychological burden, Kosovo's contested legitimacy has quite practical, and palpable, negative effects.

In the area of trade relations, Kosovo cannot export goods to Serbia and Bosnia and Herzegovina, the only two countries of the region that have not granted it recognition, because they do not recognise the export stamps. To add insult to injury, Kosovo is a member of the Central European Free Trade Agreement (CEFTA) and should hold the rotating presidency this year, but cannot preside, or for that matter use, the free trade agreement to export its goods, because of opposition from Serbia.

In its relations with the EU, Kosovo is being treated in a hybrid fashion, best illustrated by the Schengen visa regime. Holders of Kosovar passports can acquire a Schengen visa, but the conditions clearly exclude travel to the non-recognising Member States. Thus Kosovo is an independent country for the majority of Member States, but not for five of them, and hence because of those five, neither is it an independent country for the EU as a whole. In EU parlance this is called a 'status neutral' attitude, implying that the EU does not take sides in the dispute over independence. However, a point is reached when the creative ambiguity of the 'status neutral' attitude no longer works, and that is when it comes to defining the nature of the relationship between the EU and the country/entity: in order to embark on the formal process of European integration (starting with the Stabilisation and Association Process) the country must be recognised as a contractual partner, but only sovereign states can be identified as such. Kosovo's non-recognition as a contractual partner means that its relationship with the EU is not 'status neutral', but 'status negative', since it is the five non-recognising EU states that determine the nature of its relations with the EU. In a bizarre development, it is Cyprus and Romania (as non-recognising countries) and not France and Germany that are fundamentally influencing most EU policies *vis-à-vis* Kosovo, which has a further disorientating effect on the new state and its relationship with the outside world.

In terms of global relations, Kosovo's lack of UN membership has practical consequences in a wide range of areas. The international dialling code for telephone calls to Kosovo is that of Serbia, or those of Monaco or Slovenia for mobile phones, with both financial and security implications. Regarding the internet, the country does not have a country code top-level domain. And its basketball and football teams cannot compete at international level. Kosovo did not participate in the last Olympic Games, nor is its participation foreseen in the 2012 London Olympics.

But Kosovo is also unfinished in terms of its sovereignty. The government of Kosovo does not, in effect, control part of its territory ('the North'), consisting of three majority Serb municipalities. Neither does the 'international community': UNMIK did not fulfil its mission of establishing functioning democratic institutions of self-government in this part of

the territory. Nor did it suspend the illegal functioning of Belgrade-run institutions, as required by UNSC Resolution 1244. EULEX, which has taken over the rule-of-law prerogatives, has not established Kosovo as 'one legal zone' or 'one customs zone'. 'The North' functions as a hybrid zone where either laws are suspended, or there is selective application of Serbian ones.

EULEX, which has also adopted a 'status neutral' policy, is in fact applying a 'status negative' policy. For example, the border crossings (Gates 1 and 31) were burned by Serbian mobs following the declaration of independence and since then no border or customs regime has been established, with obvious consequences in terms of security and lost revenues. EULEX tolerates the Serbian institutions, deemed illegal by UNSC Resolution 1244, in an environment that is degraded even by comparison with UNMIK rule.

The situation in the North is not self-made, but rather the result of deliberate action by Belgrade to create a 'frozen conflict'-type situation similar to that in the Caucasus, as part of a policy of contesting Kosovo's statehood and independence. Through the non-transparent allocation of budgetary funds since 1999 and under the consecutive governments of Milosevic, Djindjic, Kostunica and Tadic, Belgrade has kept its institutional foot in the door of Kosovar independence through the 'parallel institutions'.

The EU's 'unfinished policy'

An unfinished state is, to a certain extent, the product of an unfinished policy. While arguably, the UN Security Council's policy could be described as 'unfinished', that is, failing to see the declaration of independence as a legal and logical consequence of UNSCR 1244, the UNSC is hardly a club of shared values in terms of democracy, statehood or much else. The 'unfinished policy' tag might be applied more judiciously to the European Union.

During the status negotiations mediated by President Ahtisaari, the European Union gave full support to his efforts and, ultimately his proposal, which was based on the condition of the acceptance of EULEX as a robust rule-of-law mission. But, almost three years after Kosovo's independence, the EU does not have a single policy, since five of its Member States refuse to recognise that independence. The point reached by the EU's common position is 'status neutrality' and as we have seen from its behaviour in the North, it is a policy that can move in reverse, towards 'status negative'.

An unfinished policy has left EU action in Kosovo in limbo, and with it Kosovo as well. Under President Ahtisaari's proposal the EU had a double role in Kosovo: to supervise independence and to exercise executive powers in the area of the rule of law. This role of robust supervisor has been negotiated and renegotiated since day one of independence, to the point where it is no longer clear at all what the EU's role in Kosovo is supposed to be. Is it to supervise independence (in accordance with the Ahtisaari plan)? Is it to prevent independence (in accordance with the view of the five non-recognising EU states)? Or is it to divide the job with UNMIK, a mission being kept in place by the non-recognising members of the Security Council?

Yet, without clarity on the EU side things cannot be further clarified on the side of Kosovo. Throughout the last decade UNMIK and the Kosovo leadership played a game in which neither assumed responsibility, with each blaming the other for the malfunctioning of the entity/state. With this unclear division of labour, and due to weak domestic leadership and ambiguity regarding its international status, Kosovo has not developed into a state under the rule of law. The EU with its EULEX mission has not made things any easier: three years on, the question of whether the court in Mitrovica should be re-opened (without negotiations) and what the applicable law should be remains unanswered.

Ambiguity in terms of governance and the rule-of-law deficit have left their scars on democracy. Non-transparent funding, links with organised crime and rampant corruption are widely perceived to characterise the way the political parties – the ruling ones at least – operate.

Regional dynamics of integration and disintegration

Kosovo is not the only unfinished state in the region or, for that matter, in the world. Alongside Kosovo in a situation of constitutional *provisorium* is Bosnia and Herzegovina, which functions as an internationally recognised country without having created internal constitutional legitimacy. The Dayton Agreement was supposed to provide breathing space for building a legitimate constitutional order with the consent of the people of Bosnia and Herzegovina. Instead, the peace agreement with its functional restrictions has served as the constitutional order. Serbia, by claiming Kosovo as part of its territory and by having a 'special relationship' with Republika Srpska in a dysfunctional Bosnia and Herzegovina, is another unfinished state. And, in a region where ethnic state-building and territorial partition along ethnic lines are still perceived as viable options, the former Yugoslav Republic of Macedonia (FYROM) is also an

unfinished state in terms both of its external identity as highlighted by the name issue and, increasingly, of its internal legitimacy, as reflected in its difficulties in defining the nature of the relations between its ethnicities. In FYROM, the ethnic divide has reached an unprecedented level, with ethnic Albanians as a group opting for NATO and the EU and a very significant group of ethnic Macedonians emotionally firmly attached to everything symbolised by the name 'Macedonia', far more important to them than the issues of EU-NATO integration and the functioning of the democratic state.

The common denominator for all four countries is that they are experiencing an internal contradiction between two historical processes that are taking place simultaneously: that of disintegration and that of integration. In other words, the 'unfinished space' made up by the four countries is still feeling the tremors of the disintegration of the former Yugoslavia, while at the same time 'the space' as a whole as well as individual countries are engaged in the process of EU integration.

That contradiction between those two divergent processes is not new; it has been there since the beginning of the disintegration of the former Yugoslavia. Yugoslavia started disintegrating when it could not be integrated into the EU as a whole, democratic and functioning market economy. Instead, it is the countries emerging from the former state that are joining the EU, beginning with Slovenia.

The difference now, though, is that twenty years and four wars later, the 'unfinished space' has had a taste of the integration process: it is not starting from scratch in its relationship with the EU. Indeed, FYROM already has and Serbia aspires to candidate status, the citizens of Bosnia and Herzegovina can travel visa-free within the Schengen area and Kosovo has the quite distant promise of 'European perspectives'.

Nonetheless, the question remains the same as twenty years ago: what road will 'the space' take: that of disintegration or of integration?

For the purpose of understanding the road signs, disintegration should be defined as the next negative step after the present negative *status quo* (frozen conflict in Kosovo, a dysfunctional Bosnia and Herzegovina, a legitimacy deficit in FYROM, irredentist policies in Serbia) or even worse, a series of (probably violence-driven) ethnic partitions that would destroy Bosnia and Herzegovina and the former Republic of Macedonia, creating the conditions for the violent redrawing of borders, thus fulfilling the nationalist aspirations of the last century.

Integration, on the other hand, would entail a clear and measurable process of interaction between the EU and the countries of 'the space', enabling them to achieve membership on their own merits.

Twenty years on, the dangers of disintegration and violence have not disappeared.

Possible future scenarios

The issue that may define the way things evolve in the future is the relationship between Kosovo and Serbia.

Indeed, Kosovo and Serbia carry within them all three possible paradigms for the future. The first would be a *status quo* lasting several years in which there would be small improvements to their relationship, but these would not be in the nature of a mutually established framework of relations. This paradigm could culminate in the 'frozen conflict' of the North, with the probability of either low-intensity violence or negotiations driven by violence leading to a partition scenario. Moreover, it would confirm Kosovo on its path towards becoming a failed state.

The second paradigm would be that of territorial dismemberment or exchange between Kosovo and Serbia along ethnic lines, creating pressure for the same pattern to be applied to FYROM (for the Albanians) and Bosnia and Herzegovina (for the Serbs).

And the third paradigm would entail establishing a negotiated framework of relations (a 'normalisation of relations' framework), whereby both Serbia and Kosovo would cooperate in order to strengthen their democratic institutions and the interaction between them.

After the declaration of independence, the Serbian leadership proclaimed that it wanted to change the way Serbia had traditionally responded to political conflicts in the former Yugoslavia, with, as the default position, the use of violence. It also said that it wanted to move the Kosovo dispute out of the realm of politics and into the legal sphere.

The result was a mixed set of attitudes. Its response was to organise controlled, albeit violent, 'spontaneous' demonstrations leading to the burning of two border crossings (Gates 1 and 31) between Kosovo and Serbia, creating new realities on the ground (the 'status negative' realities mentioned above). It continued funding 'parallel institutions', including the security services, both overt and covert. And, in the international arena, it engaged in a very dynamic campaign to contest Kosovo's independence by means of a General Assembly Resolution asking for an advisory opinion from the International Court of Justice (ICJ) on the legality of the declaration of independence. In parallel to the ICJ move the Serbian foreign ministry (with the aid of Russia) launched a very energetic worldwide campaign to block Kosovo's recognition.

Serbia's policy designed 'to remove Kosovo from politics and move it to the legal sphere' created several tactical advantages. It froze the situation on the ground in Kosovo in a *status quo ante* mode (with Gates 1 and 31 remaining without proper controls). It made Kosovo an issue of international dispute, creating doubts about recognition among countries that, for whatever reason, did not see the recognition of Kosovo as a priority or of immediate interest. And, indeed, it kept Kosovo as a disputed issue within the UN system, where Serbia could at least rely on Russia in the global tug-of-war. This consistent policy approach has enabled Serbia to efficiently maintain the 'unfinished' nature of the Kosovo state.

Its policy has remained consistent even in moments of defeat. On 22 July 2010 the International Court of Justice issued its *Advisory Opinion on the question of the Accordance with international law of the unilateral declaration of independence in respect of Kosovo (request by the General Assembly of the UN by its Resolution 63/3 of October 2008)*. It pronounced the Court to be 'of the opinion that the declaration of independence of Kosovo, adopted on 17 February 2008 did not violate international law'. The ICJ went on to explain that the declaration of independence had taken place within the framework of UNSCR 1244, strengthening the case that the independence of Kosovo was the product of multilateralism.

Despite that advisory opinion, Serbia embarked on another international campaign calling for a new UN General Assembly resolution on another question pertaining to the independence of Kosovo. Only at the eleventh hour and under considerable pressure from the European Union and some of its Member States did Serbia and the EU arrive at a joint draft resolution, based on the lowest common denominator, welcoming EU-hosted talks between Pristina and Belgrade.

The Serbian summer campaign and the EU pressure culminating in the joint resolution had three outcomes. The first was that Brussels was starting to become the natural arena for resolving issues between Kosovo and Serbia; this was an important foreign policy development, following years in which they had been part of a UN mandate. Secondly, despite this perceived climbdown from the UN to the EU, Serbia managed to preserve Kosovo's 'unfinished' status. And thirdly, EU policy has consistently been geared to the lowest common denominator, not only in relation to Serbia (as with the draft resolution) but more importantly, to its Member States, some of which are maintaining a 'status negative' attitude.

Kosovo, which had eagerly awaited the ICJ's Advisory Opinion, did not feel the benefit of its clarity. Although the ICJ stresses in unequivocal terms that the declaration of independence does not contravene international law and falls under UNSCR 1244 (which declares the Serbian government's

presence in the territory of Kosovo illegal), currently, in the spring of 2011, all options for the future remain open: a prolonged *status quo*, partition or a 'normalisation framework'.

A change of paradigm

In the short term the auspices for the Pristina-Belgrade dialogue (this is what the negotiation process is called, which in itself says a lot about the fragility of the process) are not good.

Belgrade is pursuing its 'frozen conflict' and 'unfinished state' policies to give it leverage in the process, while at the same time seeking candidate status in an EU which according to its values should contest both of those policies. Furthermore, Belgrade will need an early closure of the negotiations with Pristina to avoid them interfering in the elections due to be held in spring 2012.

Pristina's own elections are behind it, but it will be very hard put to establish the legitimacy of governance it needs for a healthy negotiating position. Furthermore, it might be facing a period of introspection as issues like corruption, organised crime and political crimes come increasingly under the spotlight and draw the attention of the media, judicial authorities and international organisations alike.

Brussels can hardly be described as even-handed in its role as facilitator. It recognises Belgrade as a contractual party, and the next step might soon be for Serbia to acquire candidate status. The nature of the relationship with Pristina is different altogether: Brussels is exercising a 'soft protectorate' over Kosovo, including executive powers in the field of the rule of law. Kosovo has not taken even the first step towards a formal EU accession process, quite simply because it is not recognised as a sovereign state by all EU member countries.

Furthermore, this new facilitating role has caught Brussels at the time of its post-Lisbon reorganisation, when a new external affairs structure is still in the process of being built. An unfinished entity (the European External Action Service) with an unfinished policy (22 countries in favour of independence, five against) mediating with an unfinished state (Kosovo) is not a very encouraging prospect.

Seen from that perspective, it is hardly surprising that Brussels has opted for a 'bottom-up approach' as its strategy for the talks, which means resolving the 'easy' issues first (missing persons are considered to belong to this latter category, as well as energy and communications, all of which have been on the table since UNMIK started mediating

these talks ten years ago). The drawback of this approach is that the 'easy' or 'technical' issues, as they are also described, are either easily derailed into the political realm, where they belong anyway, or else the talks remain stuck at the beginning with no clear perspective on where they are to end. The added value of this approach is that it creates the pretence of talks. This may benefit some parties, in this case Brussels (by showing that the new European diplomatic entity can function) and Belgrade (by allowing it to be perceived as a cooperative party). But while this pretence may serve Belgrade's interests the opposite is true for Pristina: it will do nothing to help any of the basic statehood problems Kosovo is facing, such as partition, and the issues of its recognition by all 27 Member States and UN membership.

These dynamics need to change, in terms both of the aim and timeframe. Whereas the present 'bottom-up' approach is intended to establish a process of dialogue that at some point will arrive at a mutually acknowledged aim, an entirely different tack is required. Namely, Pristina and Belgrade but also Brussels need to agree on the aim beforehand, and that aim should be EU integration within a ten-year timeframe, which would not be binding on Brussels, but would provide the two societies with a framework within which to prepare themselves.

Such an approach would define the nature of the negotiations between Pristina and Belgrade (a process of normalisation of relations within the EU integration process) and it would define the role of the facilitator (as equal to the parties, and not a simple host but an agent of change for both societies).

The negotiating process between Kosovo and Serbia would thus be anchored within the European integration process. Within that process, the EU could use the instruments it currently has at hand, but it would also need to do a bit of tailoring in order to be able to define Kosovo as a contractual partner in the current situation of five non-recognising Member States. The Kosovo-Serbia 'normalisation process' would also need to be integrated within the EU's respective negotiation processes with Serbia and Kosovo.

This drastic change of approach could lead to a dramatic shift for the better throughout the region. For Kosovo, it would be an invitation to deal with the 'unfinished state' issue in cooperation mode, both with Belgrade and Brussels. Moreover, its sovereignty-building would have a tangible end-objective: Euro-Atlantic integration. This would provide a goal for the Kosovar Albanians to rally around, instead of engaging in the debate on territorial and political unification within the region that is gaining ground in Kosovo and FYROM. For the Kosovar Serbs, this would also be a reassuring aim, in line with their natural quest to strengthen ties within the Serbian cultural area.

For the 'unfinished space', normalisation of the relations between Kosovo and Serbia would be a change of paradigm. Instead of the *status quo* leading to disintegration, the paradigm would be one of integration, within the Euro-Atlantic framework.

The European integration process would thus enter its third historic wave. In the first wave, the post-dictatorship countries Greece, Spain and Portugal were welcomed into the European community of democracies. In the second wave, the post-communist countries from the Baltic States to Bulgaria re-energised the European Union. Now the European Union should welcome the post-nationalist countries that have emerged from their mutual conflicts and understood the values of peace and cooperation, albeit, to paraphrase the song, 'with a lot of help from their friends'.

Part Two: Horizontal perspectives

Chapter 7

The European Union and citizenship regimes in the Western Balkans

Igor Štiks

Introduction

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The geopolitical landscape in the Western Balkans is not as uniform or homogenous as the umbrella term might suggest. The region christened 'the Western Balkans' by Brussels is basically a space squeezed between EU Member States, supposedly destined to join them but without a clear accession timetable. The analysis in this chapter covers a larger territorial area, including all former Yugoslav republics plus Albania. Slovenia might be excluded from the 'Western Balkans' family, as defined bureaucratically, but is certainly part of and is still closely linked to the rest of the post-Yugoslav space. This enlarged Western Balkans is clearly subject to a strong albeit differentiated influence from its supra-national neighbour. It comprises one EU Member State (Slovenia), three EU accession candidates (Croatia, the Former Yugoslav Republic of Macedonia – hereafter referred to as Macedonia – and, as of recently, Montenegro), a protectorate (Kosovo), a semi-protectorate (Bosnia-Herzegovina), and a country (Serbia) that wants to join the EU but has a major disagreement with the majority of the EU Member States over its own territorial shape and population in relation to the matter of Kosovo. Albania clearly has a special status. On the one hand, it is connected to the post-Yugoslav space via Kosovo and the Macedonian Albanian population, and, on the other hand, to the EU via its diaspora in Greece and Italy and many Greek/EU passport-holders in Albania. All of this adds up to a rather variegated landscape.

How does citizenship fit into the picture? Citizenship is here generally understood as the major cohesive tool of any polity that binds citizens together and defines not only their relationship with the state, involving rights and duties, but also their political status. Due to colossal changes over the last two decades, the nature of citizenship has changed significantly throughout the region, in such a way that the role of citizens and their rights have been radically redefined, and they find themselves

treated very differently by the new states and new regimes. This chapter seeks to analyse the EU's considerable though under-researched role in shaping the present citizenship regimes in the Western Balkans. If we take into account the fact that since early the 1990s the EU was a major external partner exerting considerable transformative power over the region, it is only natural to ask how this process affected citizenship as a central component of any political community.

The EU and citizenship regimes in the Western Balkans

By citizenship regime is meant not only the laws, regulations and administrative practices regarding the status and rights of citizens (as well as of non-citizens) within a given polity but also existing mechanisms governing their political participation. More precisely, a citizenship regime is based on a given country's legislation defining the body of citizens (i.e. who is entitled to citizenship and all duties and rights attached to that status), on government policies for dealing with citizenship matters and the status of individuals, and, finally, on the official or non-official dynamic of political inclusion and exclusion. 'In the citizenship context, therefore, the concept encompasses a range of different legal statuses, viewed in their wider political context, which are central to the exercise of civil rights, political membership and – in many cases – full socio-economic membership in a particular territory'.[1]

When it comes to the EU's role in influencing, managing, defining and re-defining the citizenship regimes in the Western Balkans, this chapter shows how diverse the EU's actions and results are and how often, alongside obvious improvements, they appear problematic, counter-productive or fruitless. It must first be noted that the EU often acts in this region in cooperation with or in parallel to other international organisations such as the UN or OSCE. There is also a myriad of international norms (conventions, adopted or not, and regulations) and bodies that influence citizenship regimes in these countries such as the Council of Europe and its Venice Commission, and the European Court for Human Rights.[2] In this respect, Europeanisation of the Western Balkans and the citizenship regimes in place there cannot be identified only with the 'EU-isation' of the region, even though the two are generally conflated. Nonetheless, the overall orientation of the Western Balkans towards political, legal and economic integration into the EU gives the Union a major role in actively transforming not just these countries as such but also their citizenship regimes.

1. Jo Shaw and Igor Štiks, 'The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia: an Introduction', *CITSEE Working Paper 2010/01*, School of Law, University of Edinburgh, 2010, p. 5.

2. See Jo Shaw, 'The constitutional mosaic across the boundaries of the European Union: citizenship regimes in the new states of South Eastern Europe', *CITSEE Working Paper 2010/07*, School of Law, University of Edinburgh, 2010.

Does the EU have a coherent policy in the vital domain of citizenship, which is, clearly, crucial for the functioning of 'new democracies'? Does it follow any particular norm? It appears that there is certainly no consistent citizenship policy towards future members. This comes as no surprise since the previous enlargements showed limited EU influence on national citizenship regimes of the candidate countries, as exemplified by the EU's tolerance of the prevalence of statelessness in the Baltic countries and the case of the 'erased people' in Slovenia.[3] And yet, in sharp contrast to Central and Eastern Europe, the EU appears to be quite actively involved in managing post-Yugoslav citizenship regimes.

Broadly speaking, the EU's influence on citizenship regimes in the Western Balkans could be defined as either *direct or limited*. When it comes to direct influence this is doubtless strongest in Kosovo, very strong in Bosnia and, finally, significant in Macedonia. Those are the countries where the EU actually intervened militarily and administratively (in Kosovo and in Bosnia) or where it influenced significant constitutional and political changes that directly affected citizenship regimes as well (as in Macedonia after the 2001 conflict and the EU-sponsored Ohrid Framework Agreement). In these countries the citizenship legislation was either proposed to local actors or imposed ready-made by the international actors (with the EU in the driver's seat) or else changes in legislation affecting citizenship were introduced according to the EU's stated preferences (as in Macedonia).

In contrast, the EU's limited influence can be observed in Montenegro and Croatia. In Montenegro the governing structures are keen to please the EU but are also very careful to preserve, via the country's citizenship regime, fragile ethnic (and therefore electoral) balances in that tiny mountainous republic. The case of successful candidate country and, as is expected, soon-to-be EU member Croatia surely deserves a different kind of attention for being the first post-socialist, post-partition and post-conflict country to enter the EU with a legacy of war that significantly complicated its accession process. The Albanian citizenship regime, although the most stable and long-established one, was also influenced in a limited manner by the visa liberalisation process. Finally, Slovenia as an EU member needs special treatment, since joining a new supra-national union also entailed introducing a new supra-national dimension of citizenship as an additional layer of the national citizenship regime.

Serbia seems to stand between the direct influence group and the limited influence group depending on how one perceives the EU's role in the territory of that country, i.e. how one perceives what is actually its territory. On the one hand, the EU has a limited influence on Serbia's citizenship legislation and practices, mostly through the

3. For more information on the case, see footnote 14.

visa liberalisation process, but, on the other, the EU's role in Kosovo, where a new separate citizenship regime has been created with the direct assistance of the EU (and also other international bodies), could be equally seen as having a direct and major influence on the Serbian citizenship regime as a whole.

In previous works[4] this author has concentrated on how the political elites in the new states (mis)manage their citizenship regimes. This chapter focuses on what he sees as five major ways whereby the EU itself (mis)manages these citizenship regimes across the Western Balkans: (i) direct intervention and supervision; (ii) the visa liberalisation process; (iii) the pre-accession influence; (iv) the post-accession influence, and, finally, (v) the influence exerted by individual EU Member States.

Five ways to (mis)manage citizenship regimes in the Western Balkans

Direct intervention and supervision

Kosovo

The EU's actions with regard to citizenship are most visible in Kosovo. The NATO bombings in 1999 brought an end to Serbian rule over Kosovo. Kosovo was turned into a *de facto* protectorate under the UN mission (UNMIK) and with a heavy NATO and EU presence. The EU took complete control when EULEX replaced UNMIK in 2008. However, in spite of the complete separation from Serbia, Kosovans remained *de jure* citizens of Serbia and the Federal Republic of Yugoslavia (FRY) and, between 2003 and 2006, citizens of the State Union of Serbia and Montenegro. After the disintegration of the State Union in 2006, Kosovans were technically transformed into citizens of the Republic of Serbia exclusively. Following Kosovo's declaration of independence in February 2008, a new Constitution based on the Ahtisaari plan was adopted defining Kosovo as 'a state of its citizens'. On the same date the new law on Kosovo citizenship came into effect as well. The main aim was to establish the body of Kosovo citizens by using a highly inclusive and liberal 'new-state' model[5] that grants citizenship to all permanent residents on the territory of the new state (in this case the former FRY citizens residing in Kosovo back in 1998 and/or holders of UNMIK documents).[6] Although the first Kosovo passports were issued in summer 2008, the Serb-majority municipalities, especially in northern Kosovo around the town of Mitrovica, refuse to accept the jurisdiction of the Kosovan authorities. In these enclaves, Serbia's legislation is still in force. If in the 1990s we saw the widespread political exclusion of ethnic

4. See Igor Štiks, 'Nationality and Citizenship in the Former Yugoslavia: From Disintegration to European Integration', *South East European and Black Sea Studies*, vol. 6, no. 4, 2006, pp. 483-500; and Igor Štiks, 'A Laboratory of Citizenship: Shifting Conceptions of Citizenship in Yugoslavia and its Successor States', *CITSEE Working Paper 2010/02*, School of Law, University of Edinburgh, 2010.

5. See Rogers W. Brubaker, 'Citizenship Struggles in Soviet Successor States', *International Migration Review*, vol. 26, no. 2, 1992, pp. 269-91.

6. The first major intervention affecting the totality of Serbian citizens on the territory of internationally-administered Kosovo and the first move towards the establishment of a separate body of Kosovo residents/citizens was initiated already in 2000. UNMIK issued a regulation establishing the Central Civic Registry for 'residents of Kosovo' and had been issuing new Kosovo identification cards and travel documents that, as it was stated, did not determine a resident's citizenship. See Shpend Imeri, (ed.), *Rule of Law in the Countries of the Former SFR Yugoslavia and Albania: Between Theory and Practice* (Gostivar: Association for Democratic Initiatives, 2006), pp. 149-62. See also Gezim Krasniqi, 'Citizenship as a Tool of State-Building in Kosovo: Status, Rights, and Identity in the New State', *CITSEE Working Paper 2010/10*, School of Law, University of Edinburgh, 2010.

Albanians and their political self-exclusion from Serbian citizenship and creation of a parallel society, since 2008 the situation has been reversed: now many members of the Serb minority refuse to be integrated into Kosovo or to accept Kosovan citizenship, judging it illegitimate, and have created a new parallel society. The international bodies also induced a redrawing of Kosovo's internal map and the creation of new highly autonomous Serb municipalities. In exchange for political integration into new Kosovo structures, a high degree of autonomy is offered to these municipalities without demands being made on Serbs to abandon their Serbian citizenship and the ties with Belgrade.

As with the Constitution itself, the Kosovo citizenship law was drafted by the international bodies supervising Kosovo, namely the International Civilian Mission whose head was also the EU representative in Kosovo. The local politicians promptly accepted the documents with little local debate or initiative. State-building in Kosovo is thus designed and supervised by the international community and, since the EULEX mission started to operate directly, by the EU itself. This oxymoronic 'supervised independence' amounts to a neo-colonial situation without a clear roadmap towards total local control and/or EU membership. Conflicting signals therefore have been sent out: the EU is heavily present in Kosovo but the country's eventual EU accession process is not expected to start anytime soon. At the same time, the EU effectively runs the place but cannot speak or act unanimously since five EU Member States still refuse to recognise an independent Kosovo. Without a clear perspective of joining the EU, which in itself would have to result from an EU-led effort, without a prospect of breaking the visa deadlock, and without solving some of the pressing issues between Kosovo and Serbia (such as economic normalisation, border issues, and management of the Mitrovica region) the Kosovan citizenship regime will remain highly unstable for the years to come.

Bosnia-Herzegovina

Bosnia-Herzegovina has been a theatre of major EU external involvement for more than 15 years. As in Kosovo, a gradual transfer of competences from the international bodies towards the EU has taken place. The Office of High Representative (OHR), endowed by the extensive so-called Bonn powers with the authority to basically rule Bosnia, was headed since the beginning by EU Member State politicians and since 2002 the High Representative also serves as the EU Special Representative in Bosnia. Since the Dayton Peace Agreement and an ensuing peacekeeping operation in which both the US and the EU played a major role, Bosnia has been under direct supervision, making it effectively a semi-protectorate. The new Dayton law on citizenship was introduced, or rather imposed, much later in 1997 by the High Representative. It annulled all existing wartime

legislation adopted by the Republic of Bosnia-Herzegovina and the non-recognised breakaway Serb republic between 1992 and 1995.[7]

If the citizenship situation was quite chaotic during the war, the citizenship landscape after the war remained highly complex. The 'Dayton' Constitution of Bosnia and Herzegovina (annex IV) defined citizenship of the country, similarly to socialist Yugoslav citizenship, as *dual* or two-tiered. Citizens possess both state citizenship and citizenship of one of the two entities. The Dayton Agreement thus introduced *dual*, or two-level, and, politically speaking, *multiethnic* citizenship.[8] There is also the curious case of citizens from the self-governing district of Brčko, functioning *de facto* as Bosnia's third entity. Brčko is 'shared' by the entities, although under direct Bosnian sovereignty, and its citizens may choose which entity citizenship they wish to have. Bosnia's citizenship could be defined as *multi-ethnic* insofar as almost all political participation of citizens is based on their ethnic affiliation. Bosnia's Dayton-enshrined *ethnopolitics* not only consolidated ethnic division and led to permanent institutional paralysis but also provoked widespread discrimination against so-called 'others', i.e. those not belonging to any of the three ethnic groups or not wishing to state their ethnic background.[9] When dealing with the citizenship issue in Bosnia and the EU's influence, the fact must be mentioned that a considerable number of Bosnian citizens possess citizenship of another, usually neighbouring, state as well, but also of many EU states where they settled during and after the conflict.

The Former Yugoslav Republic of Macedonia

The reason that Macedonia ranks among the group of countries where the EU has a direct influence is the aftermath of the short-lived conflict between the Macedonian government and Albanian rebels in 2001. The EU backed the Ohrid Framework Agreement and sent a military and police mission to the country. The Ohrid Agreement transformed Macedonia from a nation-state dominated by its ethnic majority into a state functioning on consociational principles designed to guarantee a balance between the Macedonian majority and 25 percent-strong Albanian minority. The EU played a major part in these constitutional transformations that directly affected the Macedonian citizenship regime.[10]

Macedonian citizenship as defined in the 1990s was seen as a key factor in exacerbating the conflict in 2001, since the Albanian representatives claimed it prevented a large number of Albanians (who came to Macedonia during socialist times) from acquiring full citizenship rights and that, even upon acquisition of citizenship, the constitutional set-up rendered Albanians second-class citizens. By signing the Ohrid Agreement in August 2001, ethnic Macedonian and Albanian parties committed

7. For more on wartime and post-war developments, see Eldar Sarajlić, 'A Citizenship Beyond the Nation-State: Dilemmas of the "Europeanisation" of Bosnia and Herzegovina', *CITSEE Working Paper 2010/09*, School of Law, University of Edinburgh, 2010.

8. Igor Štiks, 'Being a Citizen the Bosnian Way: Transformations of Citizenship and Political Identities in Bosnia-Herzegovina', *Transitions*, vol. 50, no. 2, 2011.

9. In 2010 the European Court for Human Rights, in the case of *Finci and Sejdić vs. Bosnia-Herzegovina*, ordered Bosnia to change that part of its electoral law, which forbids those not belonging to the three constituent peoples to run for office in the collective presidency and in the House of Peoples of the Bosnian parliament. See also Asim Mujkić, 'We, the citizens of Ethnopolis', *Constellations*, vol. 14, no. 1, 2007, pp.112-28; and Eldar Sarajlić, op. cit. in note 6.

10. Ljubica Spaskovska, 'In Search of a Demos: Transformations of Citizenship and Belonging in the Republic of Macedonia', *CITSEE Working Paper 2010/11*, School of Law, University of Edinburgh, 2010.

themselves to a multiethnic Macedonia. Albanian demands for a reform of both the Constitution and, subsequently, the citizenship law were met as well. The agreement also included the country's decentralisation, administrative reorganisation and a change of linguistic policies. The Albanian language was recognised as an official language in the majority Albanian areas, and greater representation of ethnic Albanians in the state sector was affirmed.

Although Macedonia is not a country under EU supervision like Bosnia or Kosovo, its relationship to the EU is seen as crucial for the country's stability. However, the EU's intervention in order to ensure stability and Greece's blocking of Macedonia's accession, despite the fact that it has been officially recognised as a candidate for EU membership since 2005, provoked even further instability. The inter-ethnic balance as defined by the Ohrid Agreement (the subject of a lot of grievances on both sides) is seen as fragile, the relationship between the two communities, without any unifying supra-ethnic political platform, is far from perfect, and the perspective of EU accession, regarded as the only guarantor of future peace and the country's consolidation, remains unclear.

The visa liberalisation process

The EU successfully applied visa liberalisation as a tool of legal and administrative engineering in Serbia, Montenegro, Macedonia, Bosnia, and Albania. Not only was visa liberalisation used to consolidate civic registers and to introduce new security measures via biometric passports, but it was also used to alter existing legal provisions related to criminal law and the functioning of the police, customs and border control. However, the process itself was followed by many unintended political and practical consequences.

It could be said that the visa liberalisation process constitutes the most visible and tangible example of the EU's influence for citizens of the Western Balkans, unlike a distant membership prospect offered in return for an undertaking to implement often painful reforms. The EU used the visa liberalisation process as a way of applying leverage. To fulfil the conditions, the countries on the Schengen 'blacklist' (to which they could be relegated at any given moment) had to revise parts of their legislation concerning their citizenship regimes (laws on foreigners and asylum), including the penal code in some cases, as well as to implement significant police and administrative reforms. The process itself, especially the evaluation of the benchmarks as well as the decision to allow visa-free travel to holders of Macedonian, Serbian and Montenegrin passports at the end of 2009 but not to citizens and residents of Kosovo (even those possessing Serbian citizenship and passports), or Albanian and Bosnian citizens (included at the end of

2010), became mired in controversy and reinforced the bitter sense of isolation among those who were left behind.

Not only is Kosovo excluded from visa liberalisation but, furthermore, at the EU's insistence, Serbia agreed to exclude from the benefits of visa liberalisation those Serbian citizens, regardless of ethnicity, who reside on the territory of Kosovo. Serbia was thus forced by the EU to discriminate against one group of its citizens (not only Serbs but many Albanians still have Serbian identity documents and passports. One of the stated reasons is that since 1999 Serbia has not exerted control over the territory and individuals in Kosovo. Regardless of this fact, the policy breaches the right of every citizen to possess valid travel documents of his or her state and to be treated equally by that state – the right that Serbia, under EU pressure, denied to people it claims are its citizens in Kosovo. It seems however that the EU was primarily concerned with a possible influx of asylum-seekers or illegal migrants from impoverished Kosovo and the readmission process.[11] In addition, Kosovans were left with no alternative, thus further devaluing the attractiveness of Kosovo citizenship (especially for Kosovo Serbs) and rendering Kosovo's new symbols of independence (such as the Kosovan passport) more or less useless. In sum, the EU was attempting to reinforce Kosovo statehood and to win the allegiance of Kosovo minorities (namely, the Serbs) to the new state on the one hand and, on the other, undertaking initiatives that undermine these efforts and effectively force people to search for less legitimate ways to acquire useful travel documents.[12]

It was not until November 2010 that the EU Council of Ministers gave the green light for visa liberalisation for Bosnia and Albania after they had completed all necessary reforms. The visa liberalisation strategy proved to be highly effective in forcing local politicians to adopt certain administrative reforms following their dismay when in December 2009 Bosnia was left out of the visa liberalisation scheme. The majority of the Bosniaks were hit hardest by this decision. Croatian passports already permit those (almost all ethnic Croats but some members of other groups too) holding these documents to travel without visas and it was assumed that many Serbs either already possessed or would try to acquire visa-free Serbian passports. Again the EU's bureaucratic insensitivity proved problematic on the ground and created even deeper divisions in Bosnia. On the other hand, during the election year, Bosnian politicians were ready to accept reforms that were not necessarily related to citizenship issues or administrative practices. By using visa-liberalisation to exercise leverage, the EU pressed for effective police coordination, harmonisation of the criminal codes in both entities and in Brčko with the state criminal code, as well as for additional measures in fighting corruption and organised crime.

11. In early 2010, Belgium faced the problem of many asylum-seekers from Macedonia (mainly ethnic Albanians). Recently the issue of large numbers of (mainly Roma) asylum-seekers from Serbia was raised in the European Parliament as well as the possibility of putting some states back on the Schengen 'blacklist'. See CITSEE blog, 'Escaping the Balkans? After visa liberalization'. Available at: http://www.citsee.eu/blog/escaping-balkans-after-visa-liberalisation.

12. There is a lot of anecdotal evidence that Kosovans go to southern Serbian municipalities and obtain biometric visa-free Serbian passports there.

Montenegro also readily satisfied all the conditions for visa-free travel, including amending its law on foreigners. Here again it was clear that the EU's policies could lead to some problematic outcomes. Insistence on satisfying strict criteria for visa liberalisation in the context of recent conflict and disintegration and the restrictive citizenship policies such as those in Montenegro resulted in the marginalisation of the Roma refugees from Kosovo and their *de facto* statelessness. With their FRY documents invalidated and with no financial and practical means of acquiring new Serbian or rather travel-restrictive Kosovo identity documents, with no prospects of returning home and in a situation where they cannot hope to acquire Montenegrin citizenship (due to the criterion of 10-year permanent residence that the majority of them do not have), they linger in an administrative limbo, which results in complete socio-economic marginalisation and, in many cases, extreme poverty.[13]

The pre-accession influence

The general pre-accession influence of the EU on the candidate countries, when the EU dictates the tone of negotiations, is obvious. So far only Slovenia and Croatia have gone through the process. However, their experience shows that the EU's influence on these countries' citizenship regimes, although indeed potentially considerable, does not necessarily result in profound reforms being initiated. Two Baltic states, Latvia and Estonia, managed to enter the EU despite the widespread statelessness of their substantial Russophone minority populations. Slovenia also practised human rights abuses and social and political discrimination and exclusion, though on a much smaller scale than in the Baltics, towards those citizens of the former federation originating from other republics who did not mange to resolve their citizenship status in the newly independent state and were literally *erased* from civic registries by an administrative decision in February 1992.[14] Slovenia did not solve the issue of 'the erased people' before entering the EU, but, on the other hand, it had to adapt its legislation to the EU's *acquis* and prepare the ground for the introduction of EU citizenship.

Croatia offers an instructive example of the kind of ethnic engineering[15] that occurred in almost all successor states of the former Yugoslavia. Its 1991 law explicitly accorded a privileged position to individuals of Croat ethnic origin residing in and outside Croatia and not having Croatian republican-level citizenship from socialist times. This paved the way for ethnic Croats, mostly from Bosnia-Herzegovina but also for members of the Croatian diaspora, to obtain Croatian citizenship through facilitated naturalisation. At the same time, Croatian Serb refugees, who were forced to leave or who fled the breakaway Krajina region before, during and after the Croatian military takeover in 1995 and found themselves in Serbia or Bosnia-Herzegovina (in the Serb entity), were in an especially difficult situation. They were all legally

13. See Jelena Džankić, 'Lineages of Citizenship in Montenegro', CITSEE Working Paper 2010/14, School of Law, University of Edinburgh, 2010.

14. The case involves some 25,000 individuals. It is expected that the 'erased' chapter will soon be closed after the European Court for Human Rights in July 2010 found Slovenia guilty of breaching the European Convention on Human Rights and Fundamental Freedoms in the case of eleven applicants. See Tomaž Deželan, 'Citizenship in Slovenia: the regime of a nationalising or a Europeanising state?', *CITSEE Working Paper 2010/16*, School of Law, University of Edinburgh, 2011.

15. By ethnic engineering is meant here the intentional policy of governments and lawmakers to influence by legal means and related administrative practices the ethnic composition of their populations in favour of their ethnic core group. See Igor Štiks, 2006, op. cit in note 4.

Croatian citizens but a huge number of them could not obtain the certificate giving proof of Croatian citizenship (*domovnica*). Croatian authorities put enormous obstacles in the way of these people acquiring valid documents in order to prevent their return to Croatia.[16] During the accession period Croatia showed much more inclusiveness, both administrative and political, towards the Serb minority. It also showed that the EU influence was acceptable but not in all areas (keeping its 1991 citizenship law intact and not adopting the European Convention on Nationality) and that there was more willingness to change legislation in politically less sensitive areas (e.g. the asylum law).

However, this administrative and political inclusiveness, constituting perhaps the EU's most important legacy in the context of the Croatian accession process, did not alter the ethnocentric character of the state and its citizenship regime.[17] The 'EU-isation' of Croatian citizenship demonstrated how candidate countries could 'satisfy' general EU criteria without actually reforming the fundamental substance of their policies.[18] In fact, no significant legal changes in the Croatian citizenship law have occurred since 1991,[19] but the Croatian citizenship regime, in response to different political circumstances, changed in character (ethnic preference being 'moderated' by minority inclusion).

The post-accession influence

Regardless of the changes in citizenship laws that remain under the sovereign jurisdiction of member states, joining the EU itself entails a significant change in the new member's citizenship regime. It automatically introduces another, supra-national level to state citizenship with rights and duties attached to the institution of European citizenship. Slovenia, as the only post-Yugoslav state to join the EU, has therefore since 2004 had a similar two-tier citizenship regime to that which operated in socialist Yugoslavia. The advent of European citizenship in Slovenia introduced changes when it comes to EU citizens residing in the country with regard to their participation in local (involving also third-country nationals) and European elections, rights that are also shared by Slovenian citizens residing in other EU countries. This is the prospect awaiting other post-Yugoslav states once they join the EU, which would necessarily significantly shape their citizenship regimes.

On the other hand, Slovenia demonstrates that EU membership does not seriously call into question the ethnocentric conception of citizenship and, moreover, that the EU has failed to convince its members to adopt more inclusive citizenship policies, if indeed it ever seriously tried to do so. It is hard to expect the Western Balkan states to act differently and to re-define their citizenship policies allowing for ever-greater inclusiveness and non-discrimination on an ethnic basis – criteria that

16. See the report on Croatia in Shpend Imeri (ed.), op. cit. in note 6, pp. 129-31.

17. For more on Croatian citizenship policies see Igor Štiks, 'The Citizenship Conundrum in Post-Communist Europe: the Instructive Case of Croatia', *Europe-Asia Studies*, vol. 62, no. 10, 2010, pp. 1621-38.

18. See Maja Spanu, 'Blurring the Boundaries of Membership: la citoyenneté en Croatie à l'aube de l'adhésion à l'Union européenne', Master thesis, Institut d'Études Politiques de Paris, 2010.

19. See Viktor Koska, 'The evolution of the Croatian citizenship regime: from independence to EU integration', *CITSEE Working Paper 2010/15*, School of Law, University of Edinburgh, 2011.

are not clearly stated or enforced by the EU anyhow – unless there is a targeted pre-accession pressure (as in the case of Croatia) or some form of direct intervention.

The EU Members States' influence on citizenship regimes in the Western Balkans

The picture would be incomplete without describing a rather new phenomenon. Some EU Member States have recently started, unilaterally, to influence citizenship regimes in the Western Balkans (and in some other non-EU states) by offering citizenship to 'co-ethnics' in the near abroad. The result is that the citizenship regimes increasingly overlap in the Balkans today.

New EU member Bulgaria interferes directly with the Macedonian citizenship regime by granting Bulgarian and therefore European citizenship to those claiming 'Bulgarian descent' (more than 50,000 people in Macedonia have acquired Bulgarian citizenship in this way so far). Greece has had a big impact on the Albanian citizenship regime by offering its citizenship to those members of the Albanian population claiming Greek ethnicity and belonging to the Orthodox faith, but also by regulating the citizenship status of numerous Albanian immigrants in Greece.[20] A new Hungarian law on citizenship has already provoked fierce reactions (especially in Slovakia) but the real effects will be felt in Serbia. It is already expected that some 80,000 Serbian citizens of Magyar descent will apply immediately for Hungarian and therefore EU citizenship.[21] Mention should also be made here of Romania's generous citizenship policies towards Moldovan citizens. Romania, Bulgaria, Greece and Hungary are therefore enlarging EU citizenship in the areas to which the EU itself is slow or reluctant to enlarge.

In addition to that, Croatian accession to the EU will have a major impact on the rest of the Western Balkans. If it is true to say that the EU's influence has certainly been felt in pre-accession Croatia, it is equally certain that two decades of Croatia's citizenship policies will affect the EU itself. At the moment of its adhesion Croatia will bring to the EU almost one million future EU citizens living in the neighbouring post-Yugoslav but non-EU countries such as Bosnia (up to 800,000), Serbia and Montenegro combined (around 100,000), and Macedonia (around 10,000).

20. See Gezim Krasniqi, 'Citizenship in an Emigrant Nation-State: the Case of Albania', *CITSEE Working Paper 2010/13*, School of Law, University of Edinburgh, 2010.

21. 'Budapest expects that 80,000 Serbians will apply for Hungarian citizenship', *Sofia Echo*, 3 January 2011. See: http://sofiaecho.com/2011/01/03/1019017_budapest-expects-that-80-000-serbians-will-apply-for-hungarian-citizenship.

Conclusion

From a larger historical perspective, it is interesting to see how citizens of a former multinational federation with a two-level citizenship regime become part of another multinational union of states with a similar citizenship structure that will, once in place, restore to them some of the basic privileges they enjoyed during the Yugoslav era. There is a certain historical irony here. However, whatever is generally seen as ironic is often tragic on the ground. The twenty-year long process itself took the form of numerous partitions, secessions, and widespread political, social and material violence that turned the citizenship status of many former Yugoslav and many Albanian citizens into a highly complex and in some instances nightmarish situation. The results of economic devastation, war and general insecurity sent millions into exile. Today the process of gradually turning the people of the Western Balkans into European citizens is clearly under way. Slovenians have been EU citizens since 2004; with Croatia's entry another 4.5 million people together with up to a million abroad will follow suit. Some 50,000 Macedonians have already acquired Bulgarian citizenship. Even before joining the EU some Serbian citizens of Hungarian origin might want to secure Hungarian passports. Mention should also be made here of refugees from the former Yugoslavia and a huge number of Albanian emigrants living today within the EU Member States and enjoying EU citizenship.

It can also be predicted that dual citizenship will become a widespread phenomenon across the region. The combination of regional ethnic heterogeneity, although to a much lesser degree than before, with many ethno-centric laws in force and a historical tradition of migration, necessarily results in a high number of dual citizenship holders, especially in the core triangle between Croatia, Bosnia, and Serbia, but also between Kosovo and Serbia, Kosovo and Macedonia, and Serbia and Montenegro. There will be considerable overlapping between Albania and Greece as well as between Bulgaria and Macedonia, and Hungary and Serbia. It is difficult at this point to predict possible political consequences of overlapped citizenship regimes. In practical terms, dual citizenship could be seen as a means to overcome the mobility problems within the region and to facilitate travel towards the EU. Even if the EU integrates the whole region, being a citizen in more than one Balkan country might remain attractive for symbolic reasons related to shared ethnicity, but also for various benefits, family connections or property issues. However, people in the Western Balkans still have a long, insecure and bumpy road to travel before they become fully-fledged European citizens.

Chapter 8

The Western Balkans after the ICJ Opinion

Florian Bieber

Introduction

The process of the dissolution of Yugoslavia has dragged on for nearly two decades. The period between the first declarations of independence by Slovenia and Croatia in 1991 and that of Kosovo in 2008 has been shaped both by international efforts to resolve conflict through the recognition of new countries and by the preservation of existing countries through new institutional systems. State dissolution and the emergence of new countries are a highly unusual outcome to civil conflict around the world: rather, the most likely scenarios are victory by one side or a settlement, most commonly in the form of a power-sharing arrangement.[1] In Yugoslavia, however, one country dissolved into seven over a period of 17 years. Whether Kosovo concludes the dissolution of Yugoslavia or ushers in a new era of self-determination, including in the Western Balkans, depends largely on one's political perspective with regard to its independence. Although in terms of its actual declaration of independence Kosovo was a latecomer, the demand for independence from Yugoslavia on the part of most Kosovar Albanians arose much earlier than similar demands elsewhere in Yugoslavia. In that sense, Kosovo belongs to the same category as the republics that sought independence. However it stands out from the rest by being the only country which was not a Yugoslav republic and thus it could not claim independence on the basis of the Badinter Committee's opinion.[2] Instead, the argument put forward in support of Kosovo's independence is that it is authorised by a particular set of circumstances (quasi-federal unit in Yugoslavia, international protectorate, international mediation on status, *de facto* independence, and massive human rights violations).[3] This has often been called *sui generis*, i.e. a unique case of a country claiming the right to self-determination.[4] However, the combination of a number of factors which authorise self-determination must not be confused with *sui generis*, as these circumstances can be replicated and a number of

1. Barbara F. Walter, 'Designing Transitions from Civil War: Demobilization, Democratization, and Commitments to Peace', *International Security*, vol. 24, no. 1 (Summer 1999), pp. 127-28; Chaim D. Kaufmann, 'When All Else Fails: Ethnic Population Transfers and Partitions in the Twentieth Century', *International Security*, vol. 23, no. 2 (Autumn 1998), p. 126.

2. The opinions of the Badinter Committee have been also criticised for transferring the concept of *uti possidetis* from the post-colonial context to Eastern Europe and thus precluding the redrawing of administrative boundaries. See for example Peter Radan, *The Breakup of Yugoslavia in International Law* (New York and London: Routledge, 2002) pp. 204-43.

3. Written Statement by the United Kingdom, 'Request for an Advisory Opinion of the ICJ on the Question "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in Accordance with International Law?"', 17 April 2009. Available at: http://www.icj-cij.org/docket/files/141/15638.pdf?PHPSESSID=8aa6dc030f6fd0180a260a041872dc4b.

4. The declaration of independence also advances a *sui generis* argument. '*Observing* that Kosovo is a special case arising from Yugoslavia's non-consensual break-up and is not a precedent for any other situation': Preamble, Kosovo Declaration of Independence, 17 February 2008. Available at: http://www.assembly-kosova.org/?cid=2,128,1635.

aspiring states can and indeed have made such claims. Possibly the most credible candidate would be Kurdistan,[5] if it were to demand outright independence. However, no aspiring or potential state in the Balkans fits the bill.

The advisory opinion of the International Court of Justice, requested at Serbia's urging by the UN General Assembly, provided an opportunity to address the ambiguities and controversies of Kosovo's independence and also to broach the broader issue of self-determination, which remains shaped by the tension between the right to self-determination and the principle of territorial integrity. At first glance, the opinion seemed to favour Kosovo by finding the declaration of independence not to be in conflict with international law. However, the fact that the opinion assessed only the *declaration* of independence, not the wider question of Kosovo's right to independence, meant that the decision was based on very narrow grounds and did not try to offer an interpretation of the real controversies from the standpoint of international law. Thus Bruno Simma, the German judge at the ICJ, noted in his declaration on the opinion that 'by unduly limiting the scope of its analysis, the Court has not answered the question put before it in a satisfactory manner.'[6]

The clear yet narrow-based opinion of the ICJ appeared to favour Kosovo, but left many of the questions with regard to self-determination unanswered. While it may have avoided opening a Pandora's Box, it did not determine whether Kosovo is indeed a unique case.[7]

In this chapter, we will explore the implications of this decision for the region. Two questions in particular stand out: what are the implications for the consolidation of Kosovo's statehood and its relations with Serbia, and has the opinion accelerated further demands for self-determination in the region, in particular in Republika Srpska?

ICJ decision: precedent or not?

Since declaring its independence in February 2008, Kosovo has found itself in a strange state of limbo in regard to its international recognition. Most countries-to-be which have sought international recognition have either quickly achieved widespread recognition, like Montenegro in 2006, or they had to make do with a small number of supporters and no prospects of recognition by a significant number of countries. Abkhazia and South Ossetia would fall into the latter category. With more than 75 recognitions by the end of April 2011, Kosovo belongs to neither category. A significant number of major countries have recognised Kosovo; yet a breakthrough towards (near-)universal global recognition is still far from having been achieved. In fact, there was a marked slowdown in 2010,

5. Brendan O'Leary, John McGarry and Khaled Salih (eds.), *The Future of Kurdistan in Iraq* (Philadelphia: Pennsylvania University Press, 2005).

6. Declaration by Judge Simma, International Court of Justice, 'Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for Advisory Opinion) - Advisory Opinion of 22 July 2010'. Available at: http://www.icj-cij.org/docket/files/141/15993.pdf.

7. James Ker-Lindsay, 'Not such a "*sui generis*" case after all: assessing the ICJ opinion on Kosovo', *Nationalities Papers*, vol. 39, no. 1, 2011, pp. 1-11.

with only eight countries recognising Kosovo that year, none of them particularly significant. The ICJ's much-anticipated advisory opinion in July 2010 appears to have had either no impact on the recognition rate or even negative repercussions. At first sight this turn of events might seem surprising, considering that the Court found in its opinion that 'the adoption of the declaration of independence of 17 February 2008 did not violate general international law, Security Council resolution 1244 (1999) or the Constitutional Framework'[8] and that consequently, the opinion appeared to remove a key obstacle to widespread international recognition. Even if, as noted above, the Court's opinion addressed only a narrow aspect of the broader issue of independence, the fact that it did not find the declaration of independence to be in conflict with international law was more clear-cut than most observers would have expected. It is thus not surprising that not only the Kosovo media[9] but also observers predicted a new wave of recognitions.[10] The fact that only four recognitions (i.e. those of Honduras, Kiribati, Tuvalu and Qatar) trickled in in the six months following the opinion raises a number of questions on the broader implications of Kosovo's independence.

A number of international lawyers have argued that the opinion does not set a precedent. One of the arguments put forward is that the ICJ advisory opinion is non-binding and addresses a particular case.[11] More convincing is the argument that '[n]o secessionist movement can rely on the ICJ's Kosovo opinion to justify a right of secession', as it did not answer the question as to whether secession is the legitimate expression of the right to self-determination, nor did it prohibit the use by states of force against secessionist movements.[12] In fact, the ICJ did not break new ground by arguing that declarations of independence do not violate international law as long as there is no explicit prohibition.

It would appear, however, that the perceived precedent has been more significant than the implications in international law. This illustrates the blurred lines that exist in this case between international law and domestic and international politics. Irrespective of the legal fine print, both (potential) secessionist movements hailed the opinion as a victory, whereas governments that were reluctant to recognise Kosovo for fear of contagion expressed anxiety about it.

That response may help explain the apparent contradiction between the ICJ decision in Kosovo's favour and the limited number of new recognitions afterwards. It would seem that the main reason for the reluctance to recognise Kosovo is not the perceived breach of international law, but rather the domestic implications. This is hardly surprising, but means that while the Court's decision may have helped Kosovo's case in the light of international law, it appears to have confirmed the fears of those countries that do not recognise Kosovo. While it might be easy to dismiss this response as a misreading of the ICJ opinion, it

8. International Court of Justice, 'Accordance with international law of the unilateral declaration of independence in respect of Kosovo' (Request for Advisory Opinion) - Advisory Opinion - Advisory Opinion of 22 July 2010, Chapter V. 'General Conclusion', para. 122. Available at: http://www.icj-cij.org/docket/files/141/15987.pdf?PHPSESSID=fc602175bf500d76db76255fd9490ab3.

9. The Kosovo tabloid *Express* even sarcastically thanked Serbian Foreign Minister Vuk Jeremić with the headline 'Hvala Vuče!', 23 July 2010. Available at: http://www.gazetaexpress.com/?cid=1,13,35086#3.

10. 'Independence Day, Eastern Approaches', *The Economist*, 22 July 2010, online. Available at: http://www.economist.com/blogs/easternapproaches/2010/07/icj_ruling_kosovo; Peter Beaumont, 'Kosovo's independence is legal, UN court rules', *The Guardian*, 22 July 2010. Available athttp://www.guardian.co.uk/world/2010/jul/22/kosovo-independence-un-ruling.

11. Elena Cirkovic, 'An Analysis of the ICJ Advisory Opinion on Kosovo's Unilateral Declaration of Independence', *German Law Journal*, vol. 11, no. 7/8 (July/August 2010), p. 906.

12. Michael Bothe, 'Kosovo – So What? The Holding of the International Court of Justice is not the Last Word on Kosovo's Independence', *German Law Journal*, vol. 11, no. 7/8 (July/August 2010), p. 837.

points to the difficulties of divorcing a legal decision from its broader political (mis)interpretation. After all, the key question of precedent is as much a political question as it is one of international law. The 'non-proliferation'[13] of new countries is at least as much a consequence of restrictions in international law as it is the result of countries unwilling to support the creation of new countries against the will of their previous host country.

The political interpretation of the ICJ opinion would thus suggest that the blockage of Kosovo's international recognition can only be overcome through a settlement with Serbia, which would alleviate certain states' concern that Kosovo might open the door to further secession. Consequently, it would appear that the ICJ opinion was a Pyrrhic victory for Kosovo. If the ICJ opinion did not resolve the questions about the international recognition of Kosovo, it provided even less direct guidance for consolidating Kosovo's statehood.

Partition debate and future Serbia-Kosovo relations

Among the different options for Kosovo's status over the past two decades, the partition of Kosovo has been the elephant in the room. Already during the 1990s, a number of Serb nationalist intellectuals voiced the idea that Serbs and Albanians ought to be separated by partitioning Kosovo. Such plans included demographic horror-scenarios in which it was claimed that Serbs would be outnumbered by Albanians in all of Serbia unless Kosovo were partitioned.[14] Since 1999, Kosovo has been partitioned *de facto* due to the inability of international peacekeepers to protect Serbs and other minorities from attacks. Over time, the north of Kosovo and scattered Serb enclaves have become a form of *de facto* autonomy within Kosovo. Even if not fully recognised, these territorial divisions have shaped the reality of Serb settlements in Kosovo since 1999. The Ahtisaari plan took this into account when establishing new Serb municipalities and granting a range of additional competences to municipalities, but shied away from granting some form of territorial autonomy to the North.

The striking feature of the partition debate has been the lack of public or official support for partition, in particular in Serbia. Public statements in favour of partition, whether by international officials, such as Wolfgang Ischinger,[15] or by Serbian officials,[16] have usually been met with strong criticism, forcing them to backpedal. However, behind closed doors, the main supporters of partition have been Serb officials. This view has

13. While there have been a steady number of new countries emerging in the past two decades, they have emerged based either on the process of state dissolution (Yugoslavia), on mutual agreement (Sudan, Ethiopia/Eritrea) or both (Soviet Union/Serbia/Montenegro) and are thus qualitatively different from secession.

14. Branislav Krstić, 'Kosovo između istorijskog i etničkog prava' (Belgrade: 1994), p. 243; Florian Bieber, *Nationalismus in Serbien vom Tode Titos zum Ende der Ära Milošević* (Münster: Lit Verlag, 2005), pp. 368-74.

15. 'Kosovo partition "on the table"', BBC, 12 August 2007. Available at: http://news.bbc.co.uk/2/hi/europe/6943442.stm.

16. 'Tadić hints at Kosovo partition', B92, 30 September 2010. Available at: http://www.b92.net/eng/news/politics-article.

been corroborated by the recent release by Wikileaks of cables from the US Embassy in Belgrade.[17]

Since most support for partition has been in Serbia and there is little visible support for it in Kosovo, it appears unlikely to provide the basis for a mutually acceptable compromise. However, in 2010, the idea of partition appeared to be given additional credence by a report of the International Crisis Group which carefully maps out the consequences of a potential swap of territories between the North of Kosovo and parts of the Preševo valley. The report notes that there is little prospect of Northern Kosovo accepting to be governed by the Kosovo authorities or of parts of the Albanian-populated Serb municipalities of Preševo, Bujanovac and Medveđa being ceded to Kosovo.[18] Most critics of such a land swap point to the potential domino effect in Macedonia and Bosnia.[19] The supposed knock-on effect is not entirely convincing, if the borders between Kosovo and Serbia were redrawn peacefully and the new border was mutually agreed upon. Such a border adjustment would not only be fully in line with international law, but would also preclude the unilateral redrawing of borders that might be a threat in either Bosnia or Macedonia. The redrawing of borders thus seems to offer a way out of the deadlock between Kosovo and Serbia, removing a small region of Kosovo with a population largely hostile to the state and giving Serbia a face-saving solution enabling it to accept Kosovo's independence. Thus it comes as no surprise that besides the ICG a number of commentators have suggested this possibility.[20]

While border changes are possible by mutual consent, the idea of drawing new international borders in the Preševo valley is troubling and it would appear unlikely that Kosovo would even contemplate border changes without the inclusion of the Albanian-populated regions of southern Serbia. Unlike the existing *de facto* border between North Kosovo and the remainder of Kosovo, there is no dividing line between the Serb and Albanian communities there, in particular in the municipality of Bujanovac, which has only a slight Albanian majority. Drawing boundaries there would inevitably be a high-risk undertaking and communities on the 'wrong' side of any future border might feel compelled or even be pressurised to leave their home for the 'right' side of the border. Thus, border changes would solely be feasible without risking large-scale human suffering and conflict if only North Kosovo was included in the bargain. These problems are reflected in the public scepticism among Kosovo Serbs and Albanians with regard to this solution. Both communities overwhelmingly reject the partition of Kosovo, albeit for different reasons. Thus it remains an acceptable solution only to a significant number of Serbs in Serbia.[21]

In addition to these risks, this scenario has become less likely by virtue of the ICJ opinion. Had the court delivered an opinion that favoured

17. 'Post ICJ Opinion: Serbia to Continue Obstructing Kosovo, Independence', 12 January 2010, Confidential, US Embassy Belgrade. Available at: http://213.251.145.96/cable/2010/01/10BELGRADE3.html.

18. International Crisis Group, 'Kosovo and Serbia after the ICJ Opinion', 26 August 2010. Available at: http://www.crisisgroup.org/~/media/Files/europe/206 Kosovo and Serbia after the ICJ Opinion.ashx.

19. Daniel Serwer, 'Kosovo: The Next Steps', *USIP Peacebrief* 67, 5 November 2010. Available at: http://www.usip.org/files/resources/PB%2067%20-%20Kosovo%20The%20Next%20Steps.pdf.

20. Spyros Economides, James Ker-Lindsay and Dimitris Papadimitriou, 'Kosovo: Four Futures',*Survival*, vol. 52, no. 5, 2010, pp. 99-116.

21. 92 percent of Kosovo Albanians oppose partition; the figure for Kosovo Serbs is 90 percent, much higher than among Serbs from Serbia where the figure is 35 percent (and 43 percent in favour). A population exchange with the Preševo Valley is equally unpopular among Kosovo Albanians (92 percent). *Gallup Balkan Monitor*, 'Insights and Perceptions: Voices of the Balkans'. 2010 Summary of the Findings, Brussels 2010, p. 47. Available at: http://www.balkan-monitor.eu/files/BalkanMonitor-2010_Summary_of_Findings.pdf.

neither side of the argument or had it even followed Serbia's argument, renewed negotiations leading towards partition might have been more likely. This would have been due less to the substance of the opinion than to the fact that Serbia as the 'winner' of the case would have had a stronger bargaining position.

Thus it would appear that just when the partition scenario seemed closer than ever to being put on the negotiating table, the ICJ opinion has pushed it into the background. This does not mean that a renegotiation of Kosovo's internal structure is off the table. While the ('technical') talks scheduled between Kosovo and Serbia are not formally about re-opening the Ahtisaari package, which includes the constitution of Kosovo and its territorial organisation, revisiting the status of the North would constitute a potential opening. Arguably, it was a weakness of the Ahtisaari plan not to offer Northern Kosovo a degree of territorial autonomy beyond municipal decentralisation. This omission might now turn into an advantage. As I have argued elsewhere, one of the problems of the Ahtisaari plan was that due to Serbia rejecting the final recommendation, Serbia does not consider the plan to be a compromise between the Serb and Albanian positions, whereas the Kosovo Albanians view the plan as evidence of very far-reaching compromises.[22] Thus, the different perceptions of the degree to which the parties compromised render future negotiations more difficult. It is improbable that a promise of autonomy for the North would have secured Serbian support for the plan when it was drafted in 2007, given that the main stumbling block was independence. Thus now, some form of autonomy for the North just might enable a compromise to be reached between Kosovo and Serbia that could pave the way, not for full recognition of Kosovo by Serbia, but for a settlement which could unblock Kosovo's international recognition.

Disintegration debate in Bosnia and Herzegovina

The ICJ opinion not only shaped Kosovo's relations with Serbia, but also appeared to leave its imprint on Bosnia and Herzegovina. Milorad Dodik, Prime Minister of Republika Srpska, stated in response to the ICJ opinion that 'at least it can serve as a good road sign for the RS for its further struggle in regard to its status and future'.[23] The link between Republika Srpska and Kosovo had already been established earlier, when a resolution of the RS National Assembly condemned the declaration of independence and warned that 'in case that a large number of members of the UN, and in particular of the EU, recognize … Kosovo and Metohija, the National Assembly would consider that

22. Florian Bieber, 'After the ICJ Opinion: Ways Out of Deadlock', *Balkan Insight*, 20 July 2010. Available at: http://www.balkaninsight.com/en/article/after-the-icj-opinion-ways-out-of-deadlock.

23. 'Tadić: Odluka teška za Srbiju, nastavak političke borbe', *Blic*, 22 July 2010. Available at: http://www.blic.rs/Vesti/Politika/199570/Tadic-Odluka-teska-za-Srbiju-nastavak-politicke-borbe.

a new international principle and practices on the priority of the right to self-determination … has been established. In this case the National Assembly considers itself to have the right to determine the legal status through … a referendum'.[24] Both the 2008 National Assembly decision and Dodik's statements in 2010 would suggest a link between Kosovo's independence and the ICJ opinion, on the one hand, and Republika Srpska's quest for greater autonomy or even independence, on the other. However, this link appears to have been largely constructed by Republika Srpska itself and has only limited credibility. Already during the Montenegrin independence process, Milorad Dodik, unlike most party leaders in Serbia, disappointed the supporters of union in Montenegro by endorsing Montenegro's right to independence and expressing the view that an independent Montenegro was not a threat to the Serb identity.[25] This crucial support for Montenegrin independence reflects the pragmatic nationalist course that the RS leadership has followed since Milorad Dodik's return to power in 2006. Arguably, Montenegro's strategy of gradual de facto independence has served as a model for the RS since then. An observer dubbed the process of increased de facto independence combined with Milorad Dodik's strong personal control over the entity as the 'Montenegrinisation' of Republika Srpska.[26] In actual fact, Dodik had already brought up the idea of the RS holding a referendum on independence months before the Montenegrin referendum in May 2006.[27]

The political crisis which has paralysed most reforms in Bosnia since 2006, including constitutional reform, thus had little to do with Kosovo's independence.[28] Of course, this does not mean that Kosovo's independence and the ICJ opinion are irrelevant for Bosnia. Bosnia is in fact the only country of former Yugoslavia besides Serbia not to have recognised Kosovo. While there was some support in Bosnia for an independent Kosovo, especially among the Bosniak parties, including Haris Silajdžić's Party for Bosnia and Herzegovina, the fear that recognition would undermine Bosnia prevailed.[29] Similarly, while Republika Srpksa has sought to make the case that the ICJ opinion allows it to declare independence, outright support for Kosovo's independence – unlike in the case of Montenegro – remains incompatible with the Serb nationalist underpinnings of the quest for more independence for RS. Bosnia therefore appears unlikely to recognise Kosovo before Serbia does so.

If Republika Srpska's demands for greater autonomy and even independence had little to do with Kosovo's independence, the question arises as to whether or not Kosovo's independence and the ICJ opinion have increased the odds of the RS becoming independent. Altogether there is little evidence that points in that direction. The ICJ opinion has clearly not opened the door to a more flexible interpretation of self-determination under international law. Thus, the RS cannot count on the ICJ opinion to justify a declaration of independence. On the

24. 'Rezolucija o nepriznavanju jednostrano proglašene nezavisnosti Kosova i Metohije i opredjeljenjima Republike Srpske', 22 February 2008. Available at: http://www.narodnaskupstinars.net/lat/ostalaakta/ostaliakt.php?id_akta=20.

25. '*Dodik razbio tezu unionista o antisrpskoj kampanji*', Oslobodjenje, 13 May 2006, p. 15. Unlike in Serbia, there was broad acceptance of Montenegro's referendum results in the RS. 'Volju građana treba poštovati', Nezavisne novine, 23 May 2006, p. 2.

26. 'Slobodan Šaraba, državni delegat i potpredsjednik Demokratske partije: Dodik *vrši crnogorizaciju* RS-a.,' *Oslobođenje*, 5 February 2010. Available at: http://www.oslobodjenje.ba/index.php?id=5137.

27. Dodik also refered to a referendum on independence during the 2006 election campaign, suggesting that 'whenever you mention the story that the Republika Srpska has to be abolished, you will get a referendum!' Speech in Šekovići, 7 September 2006. *Govori Milorada Dodika u kampnji 2006. Naprijed Srpska* (Banja Luka: SNDS, 2006), p. 58. Available at: http://www.snsd.org/dnn/Portals/0/Dokumenti/Milorad%20Dodik_%20Naprijed%20Srpska%202006%20Govori.pdf.

28. According to the Gallup Balkan Monitor, the number of Bosnian citizens who saw Kosovo as a precedent for the break-up of Bosnia has varied greatly, from 46.7 percent in the RS and 18.4 percent in the Federation in 2008, 43.4 percent in the RS and 34.6 percent in the Federation in 2009, and 59.9 percent in the RS and 25.3 percent in the Federation in 2010. Note that the 2010 survey was carried out before the opinion of the ICJ was issued. See http://www.balkan-monitor.eu/.

29. 'Dodik: Ne treba očekivati velike pomake u ustavnim promenama', *Press*, 3 June 2010.

contrary, the opinion sets the case of Kosovo apart from those in which a declaration of independence has been explicitly prohibited or condemned by the UN Security Council.[30] This was the case for the RS in 1992, when the Security Council affirmed the 'territorial integrity of the Republic of Bosnia and Herzegovina, and … that any entities unilaterally declared or arrangements imposed in contravention thereof will not be accepted'.[31] Even if one argues that after the Dayton Peace Accord Republika Srpska is no longer just a unilaterally declared entity, the burden of the past weighs heavily on ambitions for independence in the sphere of international law.

Of equal importance to legal considerations is the political environment. The case of Kosovo, if anything, proves the difficulty of establishing new countries in the absence of a broad international consensus. Even with strong support from most EU Member States, the US and other key countries (Japan, Turkey), it has struggled for international recognition. An independent RS would have no such support and there are currently few countries that would recognise such a state. In his response to the ICJ opinion, Dodik also drew attention to the case of Northern Cyprus which had failed to gain international recognition due to the lack of political mentors.[32] Even Abkhazia and South Ossetia, which have been supported by Russia in their quest for independence, have been recognised by only four countries (Russia, Nicaragua, Venezuela and Nauru) since declaring independence in 2008. Thus Republika Srpska's chances of international recognition do not appear to be improved by Kosovo's independence or the Court's decision.

A separate issue arises in connection with the possibility of border changes between Serbia and Kosovo. Although the likelihood of such a scenario appears slim, as discussed above, it is worthwhile to briefly consider the impact on Bosnia. It is clear that such a scenario is only plausible if mutually agreed upon by the governments of Kosovo and Serbia. Thus, even if it was interpreted as ending efforts to maintain multinational states in the Balkans, it would not open the door to unilateral secession by Republika Srpska, while a consensual dissolution of Bosnia and Herzegovina is clearly not realistic. Nonetheless, one should not underestimate the 'taboo-breaking' impact of border changes leading for the first time to the creation of new borders that did not exist previously in the form of administrative boundaries between republics or between provinces and republics in Yugoslavia. Such a change might give greater credence to the claim that the intra-Bosnian borders could become international borders. Again, what matters are not so much the practical legal implications as people's perceptions.[33] Nevertheless, the future of Bosnia appears to hinge less on Kosovo's international status than on the degree to which the Bosnian state is able to overcome its domestic challenges and on the level of support it continues to enjoy as compared with all the alternatives.

30. Para. 81, op. cit. in note 8.

31. UN Security Council, Resolution 787 (1992) Adopted by the Security Council at its 3137th meeting, on 16 November 1992, S/RES/787 (1992), 16 November 1992. Available at: http://www.unhcr.org/refworld/docid/3b00f16634.html.

32. Of course he fails to mention that the fact that the TRNC was established through a military intervention and forceful population movements was another key reason for the lack of international support. 'Dodik: Mišljenje MSP razočaravajuće', *Nezavisne novine*, 22 July 2010.

33. The main scenario by which RS could achieve independence would draw less on the Kosovo scenario, but rather on the experience of state dissolution, as occurred in the case of Yugoslavia. Thus the Badinter Committee Opinions pose a much greater threat to the territorial integrity of Bosnia than either the ICJ opinion or Kosovo's declaration of independence.

In what state are the Western Balkan states?

Kosovo's independence and the ICJ opinion have not undermined states across the region or given more credibility to secessionist movements. As with previous domino theories, the conflicts in former Yugoslavia are connected but not intrinsically linked. This does not mean that all is well with the states of the Western Balkans. In a recent commentary, Ivan Krastev noted, rather dramatically, that 'the Balkans still comprises an assemblage of frustrated protectorates and weak states.'[34] The weak states are in part the result of the mismatch between popular aspirations and existing borders. In 2010, the regional Gallup poll found 88.4 percent of RS citizens to be in favour of independence, while 81.1 percent of the population in Kosovo's majority Albanian areas support the establishment of a Greater Albania.[35] It would be misleading to present these numbers as static or given. The opposition to the *status quo* in Kosovo and Bosnia is more a reflection of dissatisfaction with the current state of the two countries than of some unwavering nationalist agenda. Kosovo's independence did not bring about universal international recognition and it remains excluded from the EU integration process and from the numerous benefits along the road to membership, such as visa liberalisation. In Bosnia, the constant blocking of decision-making and the poisonous level of political confrontation has been carefully cultivated by the RS leadership and contrasted with the RS and its more 'efficient' decision-making processes. Thus the fundamental problem of the two 'frustrated protectorates' of Kosovo and Bosnia is that the current states' weakness gives rise to public support for alternative, nation-state projects that in turn further weaken the internationally mediated states. The logical response to those dynamics therefore is not just to support the *status quo*, but also to consider ways and means of strengthening the existing states of the region. In the case of Kosovo, support for Greater Albania is likely to remain strong as long as sovereignty remains contested within the country and international recognition remains limited. Hence Greater Albania remains a tempting shortcut to EU integration, visa-free travel and full international recognition.[36] In Bosnia, an independent RS would hardly be a credible shortcut to the EU, but it could offer an alternative to the current Bosnian state as long as the accession process continues to stall and full EU membership is too far off a prospect to serve as a strong argument for keeping Bosnia together.[37]

The support for alternative states in Kosovo and Bosnia is thus not a priority, but rather a reflection of disappointment with those countries' economic status, corruption, ineffective government and slow EU integration. For now, those issues trump the urgency of any status questions. It would seem that neither the declaration of independence

34. Ivan Krastev, 'The Balkans' New Normal', *Project Syndicate*, 14 December 2010. Available at: http://www.project-syndicate.org/commentary/krastev3/English.

35. The support for Greater Albania has increased in Kosovo and Macedonia since 2008, whereas it slightly declined in Albania but still stood at 63 percent in 2010. See: http://www.balkan-monitor.eu/index.php/dashboard.

36. See the programme of the Vetevendosje party. While it does not propose a full merger in its programme, it suggests pursuing a joint foreign policy with Albania, a unified national sports team and other forms of unification as well as removing the constitutional ban on unification with neighbouring countries: Lëvizja Vetevendosje!, 'State building and socio-economic development'. See: http://www.vetevendosje.org/repository/docs/Programi_i_shkurte_anglisht.pdf.

37. The advisor to the RS Prime Minister Slavko Mitrović thus argued that EU membership for Bosnia is unrealistic due to the EU's unwillingness to enlarge towards the Western Balkans. Slavko Mitrović, 'Razvojne koordinate Republike Srpske', *Argumenti*, vol. 1, no. 1, 2007, pp. 3-4.

nor the ICJ opinion have fundamentally altered that equation. Bosnia and Herzegovina's and Kosovo's success in overcoming the legitimacy crisis will hinge on delivering more and better 'state' services to their citizens. In addition, Kosovo will need to shore up its international legitimacy, a feat which only seems achievable through some form of settlement with Serbia. The ICJ opinion constitutes merely one more chapter in this long drawn-out process.

Chapter 9

A house of cards? Building the rule of law in the Balkans

Alina Mungiu-Pippidi

The EU as a promoter of the rule of law

Although the theoretical definition of the European identity remains the subject of much controversy, for practical purposes that identity consists, in essence, in a body of laws and the commitment to enforce them. A new Member State's capacity to enforce EU law is therefore critical for the success of its EU integration process. The EU's enlargement to include ten post-communist countries meant bridging the differences not only in economic development between the two halves of the continent, but also between two distinct legal cultures. Although the new Member States were eager to adopt all things European in order to gain acceptance, their capacity for implementation and enforcement has always been a source of concern for certain old Member States as well as for the European Commission. In addition to the largely formal process of adopting the *acquis*, the applicant countries also had to engage in a flurry of reforms designed to increase the overall capacity of their legal systems. The European Commission and some old Member States assisted the process through monitoring, coaching and aid, together with a real effort to promote the rule of law.

The EU was not new to the experience of assisting rule-of-law reforms in aspiring Member States, although it had not dealt with former communist regimes before.[1] This chapter briefly reviews the lessons learned from the efforts to build the rule of law during the EU accession processes, particularly in the Eastern Balkans, and applies them to the Western Balkans. Were EU external assistance and conditionality successful in advancing the rule of law in the new member countries? What emerged as the main obstacles to that effort?

Judicial reform and corruption were not the main themes during the 2004 EU accessions, although for certain countries such as Latvia they were more of an issue. Since post-communist Member States reportedly

1. Erik G. Jensen distinguishes between five waves of rule of law promotion since the end of World War II, each following a distinct rationale and attaching different weight to the various dimensions. See Erik G. Jensen, 'The Rule of Law and Judicial Reform', in Erik G. Jensen and Thomas C. Heller (eds.) *Beyond Common Knowledge. Empirical Approaches to the Rule of Law* (Stanford, CA: Stanford University Press, 2003); also Ronald J. Daniels, Michael Trebilcock and Joshua Rosensweig, 'The Political Economy of Rule of Law Reform in Developing Countries', University of Toronto, 2008.

experienced some democratic backsliding after 2004 (reflected in their Freedom House and Transparency International scores), conditionality was made more stringent between the 2004 enlargement wave and the accession of the Eastern Balkan countries in 2007. When Romania and Bulgaria joined on 1 January 2007, the Commission established a Cooperation and Verification Mechanism (CVM) to assess the commitments undertaken by those late entrants in the areas of judicial reform and the fight against corruption and organised crime. During the first three years after accession, the Commission thus had the option of triggering the safeguard clauses included in the accession treaties with those two countries. What was unprecedented was its decision to keep the CVM active after that legal mechanism had expired: 'The CVM ... should only be removed when all the benchmarks it set have been satisfactorily fulfilled. … The CVM is a support tool in this endeavor; it is not an end in itself nor can it replace commitment that … authorities need to make in order to align the judicial system and practice with general EU standards.'[2] That effort also received financial support. Total EU allocations for administrative and judicial capacity reforms between 1998 and 2006 amounted to €452 million for Romania and €260 million for Bulgaria, notwithstanding their considerable domestic expenditure, as their budgets were increased repeatedly.[3]

In 2008, the unprecedented decision was taken – as an alternative to resorting to the special CVM safeguard clauses[4] – to cut EU agricultural and structural funds to Bulgaria following massive fraud, triggering the resignation of key government officials.[5] By 2009, it had become clear that the Commission considered the two countries' progress to be insufficient: 'more needs to be done to deliver convincing results in judicial reform, tackling corruption, and in the case of Bulgaria in the fight against organised crime'.[6] The logical next step was the postponement of Romania's and Bulgaria's accession to the Schengen Area in 2010, following a letter signed jointly by the Interior Ministers of France and Germany deploring the persistence of widespread corruption in the two countries. Even tough conditionality did not deliver in these two difficult cases. Since they bear a closer resemblance to the Western Balkan states than to the first group of post-communist entrants, in terms of the challenges posed, they are worth studying in more detail.

Explaining the evolution of the rule of law

When it comes to defining the rule of law, the different approaches can be located on a continuum ranging from 'thin' or procedural interpretations to 'thick' or substantive definitions.[7] A distinction may

2. Commission of the European Communities, Frequently asked questions about the safeguard clauses included in the Treaty of Accession of Bulgaria and Romania, MEMO/05/396, Brussels, 25 October 2005.

3. Commission of the European Communities, 'Support to Public Administrative and Judicial Capacity in Bulgaria and Romania', Thematic Evaluation Report of the European Union Phare Programme, Brussels, 2006.

4. Commission of the European Communities, Report from the Commission to the European Parliament and the Council on the Management of EU Funds in Bulgaria, COM 2008 (0496), Brussels, 23 July 2008.

5. See Irina Iavnova, 'Reuters Factbox: Seven Scandals from Bulgaria', Reuters, 29 June 2009. Available at: http://www.reuters.com/article/idUSTRE55T02R20090630.

6. Commission of the European Communities, Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Co-operation and Verification Mechanism, Brussels, COM 2009 (402) final, 22 July 2009; Commission of the European Communities, Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism, COM 2009 (401) final, Brussels, 22 July 2009.

7. Jensen, op. cit. in note 1, p. 338.

also be drawn between instrumental approaches on the one hand, whereby the rule of law means having a set of appropriate laws in the statute book, a trustworthy, efficient and independent judiciary and effective law enforcement, and more ambitious, ends-driven approaches, on the other.[8] It is simpler to assist with building the rule of law if it is conceived in instrumental terms, because such an approach provides an easy guide to assistance programming. However, any assessment of the final outcome – the rule of law itself – will invariably impinge on the broader definition. It is also this comprehensive definition of the rule of law, which looks at the quality of a society's overall institutional framework, that has come to dominate alternative explanations of development.[9] In the words of Daniel Kaufmann 'an improvement in the rule of law by one standard deviation from the current levels in Ukraine to those "middling" levels prevailing in South Africa would lead to a fourfold increase in *per capita* income in the long run.'[10] In principle, the EU should pursue mainly the 'thick' or substantive approach, as candidate countries need to satisfy a number of general democratic conditions (the so-called Copenhagen criteria) in order to qualify for membership. However, that approach is more difficult to implement: in addition to the lack of agreement on the essential elements that it entails[11] it is also politically more sensitive. There are also specifically European complications. How is it possible to promote the 'European legal model' when a recent Council of Europe report warns readers that there is no such thing and perhaps never will be?[12]

From 1989 onwards, the process of reinstating the rule of law was similar in all post-communist transition countries. They had to continue to be governed on the basis of communist legislation due to the impossibility of replacing it all overnight. It could have been simply cancelled, but the agreement was that 'the umbrella principle of upholding the law meant that however bad or inappropriate, communist laws should continue to apply until revoked or amended'.[13] The judiciary bore a particularly heavy burden in the context of the 'legal transition'. The statistics show a rising number of lawsuits of all kinds, while judges' pay and the judicial infrastructure remained inadequate. The duration of lawsuits and the courts' backlog increased. Democratisation does not necessarily enhance legal coherence when legislators are inexperienced and frequently pursuing narrow interests: in the *Global Competitiveness Report 2008-2009*, only Estonia is ranked among the top 50 countries according to the 'efficiency of legal framework' indicator, while the majority of Eastern European countries are in the bottom half of the top 50 percent of countries.[14]

The mixed and inconclusive nature of the results achieved thus far by domestic judicial reforms since 1999 is also reflected in the high rate of appeals to the European Court of Human Rights (ECHR), precisely during or after the accession years. East Europeans have come to see

8. Rachel Kleinfeld Belton, 'Competing Definitions of the Rule of Law. Implications for Practitioners', *Carnegie Paper* no. 55, Carnegie Endowment for International Peace, 2005.

9. Dani Rodrik, Arvind Subramanian and Francesco Trebbi, 'Institutions Rule: The Primacy of Institutions over Geography and Integration in Economic Development', *Journal of Economic Growth*, vol. 9, no. 2, 2004, p. 131.

10. Daniel Kaufmann, 'Governance Redux: The Empirical Challenge', in Michael E. Porter et al. (eds.), *The Global Competitiveness Report 2003-2004* (Oxford: Oxford University Press, 2004), p. 145.

11. Jensen, op. cit. in note 1, p. 339.

12. Jean-Louis Bergel et al., 'L'émergence d'une culture judiciaire européenne. Avancées et difficultés d'une culture judiciaire européenne dans l'espace judiciaire européen' [The Emergence of a European Judicial Culture. Progress and Difficulties of a European Judicial Culture in the European Judicial Space], *Synthèse du Laboratoire de Théorie du Droit* (Université Paul Cézanne, Aix-Marseille III, 2009).

13. Frances Millard, *Polish Politics and Society* (London: Routledge, 1999), pp. 89-90.

14. Michael E. Porter and Klaus Schwab (eds.), The Global Competitiveness Report 2008-2009, World Economic Forum, 2008, p. 472.

the ECHR as a sort of Supreme Court, to which they regularly appeal – though frequently their cases are deemed inadmissible – against what they perceive to be unjust rulings by their own courts.[15] In the property area, which all economists deem crucial to the success of economic reform, the situation is particularly difficult in the Balkans (see Table 1).

Table 1. South-East European property cases before the EHCR

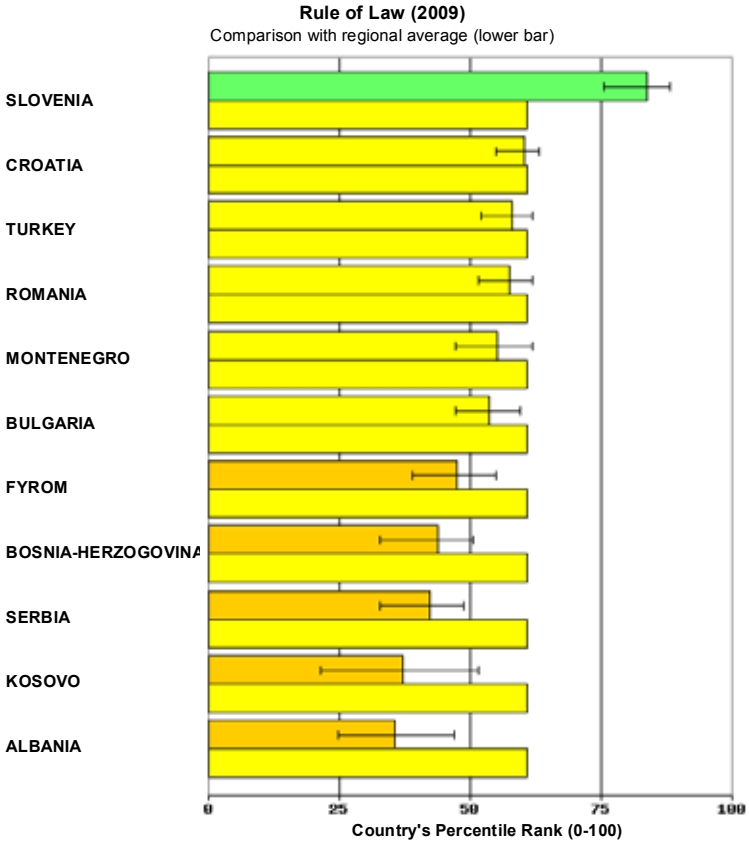
	Total number of applications pending as at 31.12. 2009	Number of applications declared inadmissible	Total number of ECHR judgments	Number of judgments finding violation	Judgments finding a violation of Article 1 of Protocol No. 1 (Right to property)	Systemic problem (Article 46 applied)
Albania	228	139	20	18	9	Yes
Bosnia and Herzegovina	2,071	861	13	13	7	Yes
Bulgaria	2,728	4,164	292	272	35	No
Croatia	979	4,332	170	133	4	No
Romania	9,812	19,417	646	582	372	Yes
Serbia	3,197	2,455	40	38	5	No
Montenegro	430	241	1	1	1	No
FYROM	1,077	1,119	63	63	4	No

15. European Court of Human Rights, *Annual Report 2008*, Registry of the European Court of Human Rights, 2008; European Court of Human Rights, *Annual Report 2004*, Registry of the European Court of Human Rights, 2004.

Romania is the undisputed regional leader in terms of the numbers of lawsuits and property violations, with nearly 10,000 cases admitted (and many more still deemed inadmissible). Serbia takes second place. Bosnia and Herzegovina and Serbia have a relatively high number of pending applications in relation to the size of their populations; Bulgaria and Croatia also have numerous cases of procedural violations. The judgments finding a violation of Article 1 of Protocol No. 1 in cases of property lost during the communist regime are not directly related to the actual nationalisation or confiscation of property by the authoritarian regime, as the Court does not recommend any specific policy in this regard. What they sanction is: the current governments' failure to comply with their own legislation on compensation or the restoration of property; their failure to enforce the domestic courts' final judicial or administrative decisions in the applicants' favour, by restoring property or awarding compensation; their failure to grant the right to a fair trial; the excessive delays due to the lack of efficiency of compensatory legislation and proceedings; problems of access to the courts, and finally the breach of the principle of legal certainty, due to the quashing of final judicial decisions ordering the restitution of property. What those judgments reflect, precisely, is the lack of the rule of law.

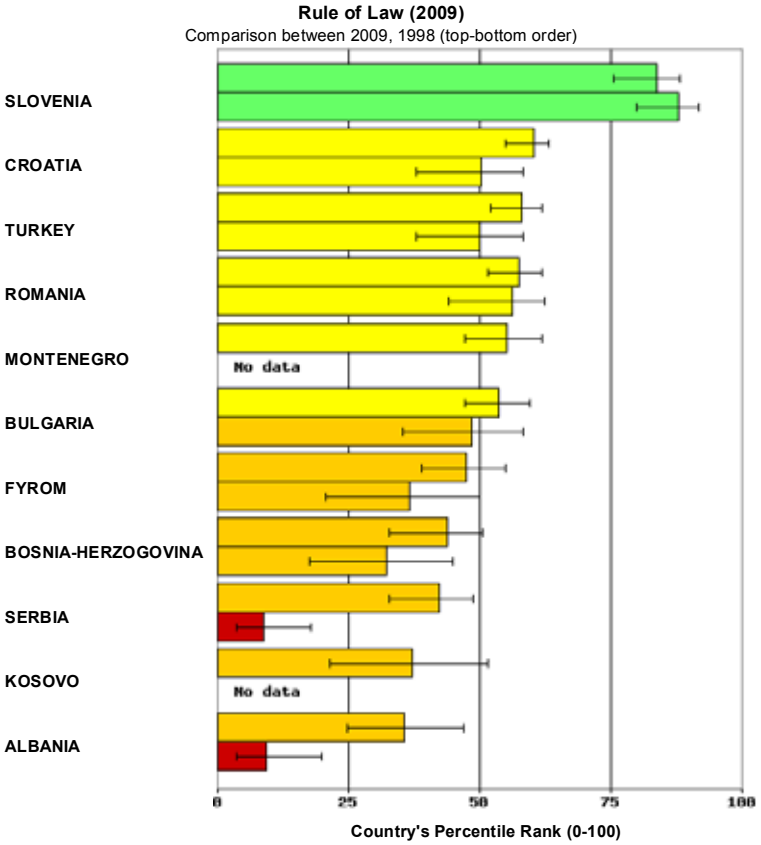
These hard facts are confirmed by the World Bank Institute scores showing the aggregated perception ratings for the rule of law. Unlike Romania and Bulgaria, which show little evolution between 2004 and 2010, Serbia and Albania register significant progress, although since they started out from the lowest level in the region (see Charts 1-2) it is still insufficient. All four remain below the regional average. Only Slovenia has an above-average score and Croatia is average. However, even in Slovenia there was some backsliding after 2004. EU conditionality as applied to the new Member States and Eastern Balkan applicants does not seem to work very well.

Chart 1. Comparison of each SEE country with the regional average according to the World Bank Rule of Law aggregate indicator



Source: D Kaufmann, A. Kraay, and M. Mastruzzi, *The Worldwide Governance Indicators: Methodology and Analytical Issues* (2010).
Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

Chart 2. Evolution of the World Bank Rule of Law indicator, 2004-2009



Source: D Kaufmann, A. Kraay, and M. Mastruzzi, *The Worldwide Governance Indicators: Methodology and Analytical Issues* (2010).
Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

To understand why the EU's influence was so limited, we have to look both at the supply side (the EU's rule-of-law promotion efforts) and the demand side (national circumstances and factors in the recipient countries). The supply side – EU efforts – was not without problems. One problem was the speed and timing of the process: the time factor. In the effort to grasp the political opportunity while at the same time not allowing any real room for negotiation with the newcomers (who had to adopt the *acquis* in full), the whole accession process became a bureaucratic exercise. The European Commission's detailed requirements and the related issue of conditionality created a relationship in which the Commission (as opposed to the domestic constituencies or their representatives) became the sole principal and the governments its agents. Reforms were not geared to policy feedback or impact evaluations, but instead to the need to satisfy the pressing bureaucratic requirements of the Commission's regular monitoring reports, creating a sort of 'prescription-based' evaluation mechanism with perverse incentives. Thus countries were judged in the monitoring process not by the effectiveness of their reforms or even by their real potential for change, but by the number of 'prescription pills' taken. The more advice a 'patient' or assisted country accepted the higher it was rated, with little checking of the 'symptoms'. Latvia was rated as an anti-corruption success (though it soon showed itself not to be) not because it had managed to curb corruption, but because it had adopted all the EU recommendations. This phenomenon is particularly true of the so-called 'Helsinki group' of countries which had been invited only in 1999 and were keen to do whatever was suggested in order to catch up with the first and more advanced group of countries (the Czech Republic, Hungary, Poland and Slovenia). The European Council ordered an international audit of Romania's whole anti-corruption strategy in order to assess whether or not the accession treaty could be signed in 2005. Freedom House International, which conducted the audit, delivered a critical report whose recommendations were fully incorporated into revised strategies for the reform of the judiciary and anti-corruption agency, and in March 2005 Romania signed the treaty with the EU. But the Romanian government was never able deliver half the measures included in the strategies. In June 2005, the Constitutional Court took most of the teeth out of the proposed legislative changes. An integrity agency inspired by the US Office for Government Ethics (OGE) and supposed to be created by the end of the year only came into being after Romania's accession in 2007, and in 2010 the Constitutional Court stripped it of the few powers it had. In other words, due to the tight accession calendar, conditionality had to rely on promises: the content and general impact of the proposed action could not be checked in time and later frequently proved to be disappointing.

The second problem on the supply side was the performance-based approach adopted on the assumption that the political will existed and that the problem was entirely one of capacity, which could be built regardless of the judiciary's motivation for change if only certain organisational steps were followed. The Commission having perceived, correctly, that the rule of law varied from one country to another, it pushed for reform, mostly along the lines of 'one size fits all' organisational changes. It is easy to deduce from the European Commission for the Efficiency of Justice (CEPEJ) data on the organisation of the judiciary in post-communist Europe that progress is not related to a certain form of organisation. Although several West European legal models existed and had produced equally positive outcomes in their respective states of origin, by 2004 the French-Italian Judicial Council model was the main one being exported by both the World Bank and the European Commission in order to ensure judicial independence.[16] Yet the evidence from Latin America had already shown that independence is a complex phenomenon and that the introduction of self-regulatory Judicial Councils does not solve the problem. Even though judges may be independent of direct political control, they may become dependent on other forces such as senior judges in a judicial hierarchy, or they may become plainly unaccountable and corrupt.[17] Reforms in Romania and Bulgaria frequently had to be pushed through against the will of the very people who were supposed to implement them.

The third problem, precisely, was that there was no unitary rule-of-law model on offer. Frequently there would be clashes on the ground between the German 'twinning' expert, the French constitutional lawyer and the British prosecutor sent to assist anti-corruption, over the question of what the European 'standards' actually were.[18] The wide variety of administrative and judicial practices that exist across the EU did not simplify the task of those assisting the accession countries.[19] Moreover, aid is disbursed from different sources with little coordination between the Commission and member countries, despite a constant effort to communicate. Furthermore, the fact that the three experts described in the abovementioned anecdote are paid from three different budgets (two from member countries' 'twinning' programmes and one from the European Commission) leads in practice to a situation in which they are actually competing with their respective solutions for the attention of the national policymaker, further weakening consistency.

Fourthly, the Commission had to act blindly, as instruments to monitor progress were not yet quite in place. Judicial statistics were meaningless, as the monitoring categories were a legacy of the communist era; corruption is notoriously difficult to measure, the impact of anti-corruption even more so in the absence of thorough research. The timeframe, with six-monthly intervals between monitoring reports, left little alternative but to rely on input indicators and to set performance targets as qualitative

16. Linn Hammergren, 'Do Councils Further Judicial Reform? Lessons from Latin America', Carnegie Rule of Law Series Working Paper, 2002, p. 28.

17. Owen M. Fiss, 'The Right Degree of Independence', in Irwin Stotzky (ed.), *The Role of the Judiciary in the Transition to Democracy in Latin America* (Westview Press, 1993), p. 55; Nuno Garoupa and Tom Ginsburg, 'The Comparative Law and Economics of Judicial Councils', *Berkley Journal of International Law*, vol. 27, no. 1, 2009, p. 52.

18. This particular example is from 2007 in Romania, but such examples abound.

19. Open Society Institute, *Monitoring the EU Accession Process: Judicial Independence* (Budapest: Central European University Press, 2001), p. 20; James Anderson and Cheryl Gray, 'Transforming Judicial Systems in Europe and Central Asia, January 2006, p. 333. Available at: http://siteresources.worldbank.org/EXTECAREGTOPJUDREF/Resources/ABCDE.pdf.

'benchmarks'. A systematic effort to develop a comprehensive set of impact indicators for Europeanisation was never made. Designing governance and rule-of-law benchmarks is also a difficult art, especially if it is not anchored in a sound, evidence-based policy understanding. For instance, if Judicial Councils are in fact unable to deliver the expected goods (an accountable magistracy), creating further benchmarks in relation to such Judicial Councils risks becoming irrelevant, even though their monitoring may be both accurate and regular.

Bulgaria and Romania having embarked on the transition from the most disadvantaged starting-point, their lack of progress during accession mattered far more for them than for the other countries. Romania progressed in 2005-2006 after the anti-communists returned to power, but then lapsed back into the old practices. Bulgaria started to show goodwill only in 2009. Not only politicians proved to be reluctant 'Europeanisers'. In both Romania and Bulgaria, Judicial Councils and judges in general were not supportive of reform. Magistrates had been promoters of reform as long their independence from political intervention was at stake; however, once they became completely independent their *esprit de corps* flourished and there was no more incentive to pursue self-improvement. In both Romania and Bulgaria the conservatives in the judiciary managed to exploit their administrative positions as heads of the courts in order to be elected to the Judicial Council or Constitutional Court. They then used their office to oppose substantive reforms to the judiciary's *modus operandi*. The magistrates' pay was increased to stimulate performance and curb corruption, but all attempts to set up any serious performance checks failed and accountability came to be the salient problem.[20] By 2007, evidence to that effect was pouring in from more than one country, so much so that the World Bank agreed that the most pressing issue had become 'ensuring judicial accountability, given newfound independence'.[21] The European Commission then upgraded its benchmark, calling for a Judicial Council that was accountable as well as independent. But, unlike the governments, which could lose elections for under-performing on EU accession, the Judicial Councils had no EU accession stakes. The judiciary's disregard for any interests other than its own became blatantly obvious during the unprecedented strike by the Romanian judiciary in 2009, when the judges sued for and ruled on a substantial pay-rise in their own favour, with reference to a bonus that had been legally cancelled years before at a time of dramatic budget deficit. Bulgaria's judiciary took top position in the 2008 Gallup Corruption Barometer, a global survey by Transparency International, which rated it as the world's most corrupt judiciary.[22]

20. Freedom House, 'The Anticorruption Policy of the Romanian Government', Assessment Report. Commissioned by the Romanian Ministry of Justice. Bucharest, 2005.

21. James Anderson and Cheryl Gray, 'Transforming Judicial Systems in Europe and Central Asia', 2006. See: http://siteresources.worldbank.org/EXTECAREGTOPJUDREF/Resources/ABCDE.pdf, at 333.

22. See: http://www.transparency-bg.org/?magic=0.5.0.2&year=2007.

Explaining the control of corruption

European conditionality was strongest in the area of anti-corruption, where EU Member States were seriously concerned and were pressing for drastic action by the Commission. At the time of embarking on their EU accession path the post-communist countries' Transparency International scores were below the lowest level in Western Europe and their culture was frequently described as entirely corrupt.[23] Surveys on bribery cannot fully capture the systemic nature of Eastern European corruption, which can best be defined as 'governance by particularism',[24] the systematic discretionary use of authority for the benefit of particular groups or individuals. Political parties, even in the most advanced countries of the region, seem to engage in 'runaway state-building', achieving party capacity and mobilisation primarily through clientelism and exploitation of the state.[25]

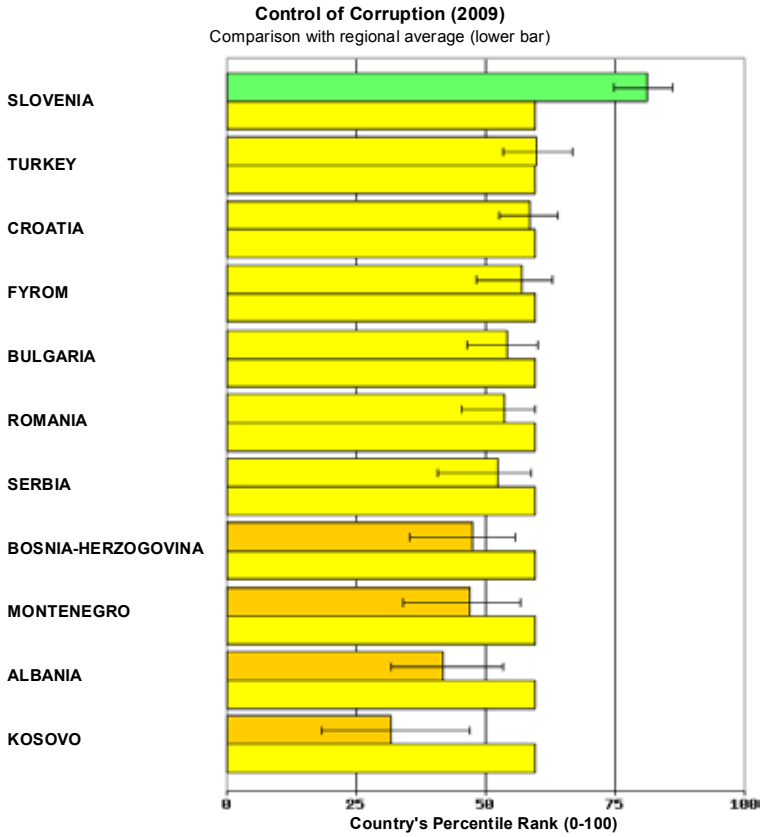
The World Governance Control of Corruption Indicator shows some evolution when it comes to the Balkans (2004-2009), but again little of it is significant or sufficient. Only Albania and Serbia show any significant progress, but since they started from the bottom of the heap they remain well below average: only Slovenia is close to the OECD average and Croatia trails behind it (See charts 3-4).

23. William L. Miller, Åse B. Grødeland and Tatyana Y. Koshechkina, *A Culture of Corruption? Coping with Government in Post-Communist Europe* (Budapest: Central European University Press, 2001).

24. For a full description of particularism see Guillermo O'Donnell, 'Illusions about Consolidation', in *Journal of Democracy*, vol. 7, no. 2, 1996, pp. 34-51.

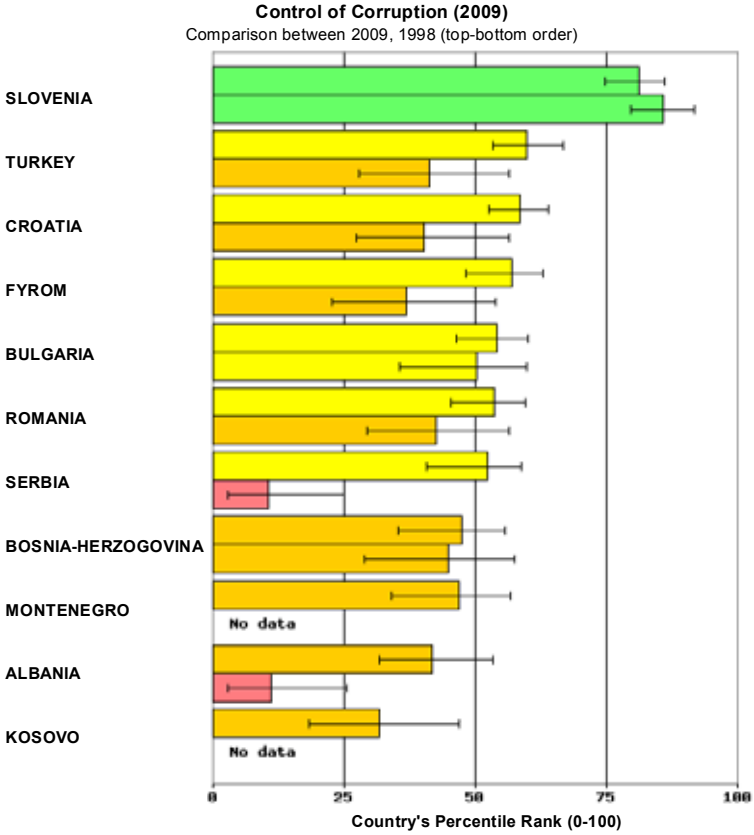
25. Conor O'Dwyer, *Runaway State-Building: Patronage Politics and Democratic Development* (Baltimore: Johns Hopkins University Press, 2006); Anna Grzymała-Busse *Rebuilding Leviathan: Party Competition and State Exploitation in Post-Communist Europe* (Cambridge, New York: Cambridge University Press, 2007).

Chart 3. Comparison of each SEE country with the regional average according to the World Bank Control of Corruption aggregate indicator



Source: D Kaufmann, A. Kraay, and M. Mastruzzi, *The Worldwide Governance Indicators: Methodology and Analytical Issues* (2010).
Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

Chart 4. Evolution of Control of Corruption indicator 2004-2009



Source: D Kaufmann, A. Kraay, and M. Mastruzzi, *The Worldwide Governance Indicators: Methodology and Analytical Issues* (2010).
Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

A World Economic Forum survey of governance conducted in 2009 did not find any major differences across the post-communist region, suggesting that differences are of scale rather than kind. The Czech Republic is in 110th position for government favouritism, Hungary 112th and Romania 113th, worse than the Kyrgyz Republic or Kazakhstan. In other words, neither the transition nor EU accession has managed to restrain the government's capacity to distribute benefits in a particularistic manner. Public opinion surveys provide additional evidence of the definition of party politics in post-communist societies as a competition for state spoils; the regimes could be described as being based on 'competitive particularism'.

The spoils can be divided into four basic categories:

a. public jobs: the public sector is highly politicised and each winning party fills not only the political posts but also many civil service positions with its own people;

b. public spending: for instance, the commissioning of public works, but also preferential bailouts, subsidies and loans from state banks;

c. preferential concessions and privatisations of former state property; and

d. market advantages in the form of preferential regulation.

The discretionary nature of such allocations in post-communist countries is not news to the consultants assisting with those countries' transformation and EU accession processes. The European Commission, following OECD Support for Improvement in Government and Management (SIGMA) advice, has long been pressing for the creation of policy management units within governments to take charge of the planning and impact evaluation of new legislation, in the hope that this will provide a more objective and transparent basis for policy formulation. Periodic reviews by SIGMA or the World Bank have shown that decision-making on the allocation of funds has continued to go through informal channels like ministers' cabinets, completely bypassing the management units. There have also been strategic errors. The EU has spent a lot on inefficient anti-corruption awareness campaigns and allocated the bulk of anti-corruption funds to governments to enable them to pass legislation and set up institutions, even when it was clear, as the public was perfectly aware, that it was precisely the governments that needed watching.[26] The underlying philosophy is that particularism is a natural calamity, like a volcanic eruption, rather than a vicious systemic form of distribution perpetuated by individuals to further their own interests or those of their group. Thus in order to reduce the risk it is deemed sufficient to inform people – including the

26. Martin Tisné and Daniel Smilov, 'From the Ground Up. Assessing the Record of Anticorruption Assistance in Southeastern Europe', *CPS Policy Studies Series*, 2004.

civil servants who profit from the system – by distributing booklets and posting up a few flyers. This 'win-win' approach is based on the assumption that anti-corruption activists are like missionaries, with the task of spreading the word of good governance to pagans who have not yet had the luck to stumble on it by themselves. But some people are bound to lose out due to anti-corruption measures: exposing and targeting predators is essential for success.

The import *en masse* by these countries of 'good governance' legislation prompted by the EU has not yielded the expected results. During their accession, Romania, Bulgaria and Former Republic of Macedonia (FYROM) became the world leaders in terms of anti-corruption regulation, according to the Global Integrity Index, yet their systemic particularism was barely affected. A compilation of anti-corruption laws and regulations[27] shows that dozens of laws have been adopted since 1998, not only by candidate countries, but also by countries like Albania, which overtook some of the new EU Member States, actually increasing the distance between the 'real' country (practices) and the 'legal' one (regulation) A combination of awareness campaigns and top-down corruption-prosecuting agencies did not succeed in changing an allocation mechanism for public funds entrenched in particularism.

In Bulgaria, Slovakia, Serbia and Romania, civil society compensated in part for governments' lack of will, pushing through freedom of information acts through grand coalitions and monitoring them. Freedom of information legislation, which scarcely exists in Western Europe, was part of the conditionality for NATO accession, later adopted by the EU as a recommendation. Together with Estonia's e-government it has proved to be the most effective tool for good governance in Eastern Europe so far.[28] Estonia remains the only great success in all of Eastern Europe in terms of good governance policies, but it can hardly be called an EU success: liberal governments and an assertive civil society have managed to create the 'cleanest' post-communist society in barely ten years by drying up the resources for corruption and increasing normative constraints (Georgia is the other positive example, but despite having evolved the most it is still behind all Central European countries in World Bank scores). Normative constraints on public corruption remain low in the region, as courts are hesitant to sentence influential people even when the prosecution manages to charge them, and the efforts by civil society watchdogs are sporadic, underfunded and reliant on only a handful of committed activists.[29] The EU seldom funds any grassroots frontal attacks on corruption: a review of anti-corruption projects in the new Member States and EU accession countries found that only 8 percent of total projects dealt directly with corruption (monitoring, ranking, naming and shaming) and that none of them were EU-funded (although a handful were financed by individual EU Member

27. Monica Dorhoi, 'Anticorruption Assessment Index. A Comparative Review of Anticorruption Strategies', Paper presented at Midwest Political Science Association, Palmer House Hilton, Chicago, Illinois, 15 April 2004.

28. According to www.against cooruption.eu, a civil society watchdog portal.

29. Ibid.

States: the Netherlands and Scandinavian countries).[30] If the input into building normative constraints is close to zero, the output can hardly be greater. A balanced anti-corruption formula:

Corruption = Resources (Power discretion + Material resources) – Constraints (Legal + Normative)

would address both diminishing resources and increasing costs, as systemic corruption is the state of equilibrium reached by the interaction between those two factors.

Under resources we must consider power discretion (the privileged access to and discretionary use of power that comes not only from a monopoly, as in the classic formula of Klitgaard,[31] but also from other privileged power arrangements such as party cartels) and material resources (investment or procurement budget, foreign aid, EU funds, natural resources, state-owned assets, public jobs). Under constraints we must consider legal ones (an autonomous and effective judiciary able to enforce legislation), but also normative ones (existing societal norms that endorse ethical universalism, whereby any deviance from those norms is effectively sanctioned by public opinion, the media, civil society, voters).

Thus donor-driven anti-corruption strategies are often inefficient, mainly because they are forged in developed countries where corruption is the exception to the norm of ethical universalism, and not the other way around. They therefore tend to focus mostly on one term of the equation, for instance prosecuting bribery, which is unlikely to work in the absence of the others. *They are norm-infringement projects, when they should be norm-building ones*.

Anti-corruption driven by EU conditionality has proved not only to be a poor fit, but also difficult to sustain. Once the countries had joined and the accession pressure was over, the whole range of EU-sponsored anti-corruption institutions came under assault, with reformers being dismissed in Romania, Latvia, Slovenia and Slovakia. According to GRECO, the Council of Europe's anti-corruption programme, the anti-corruption budgets in most new EU member countries were reduced beyond the limit of survival.[32]

What to do next?

While corruption and the rule of law are two distinct concepts, in the presence of the systemic corruption described in this paper they can hardly be disentangled. Anti-corruption must therefore be seen

30. Alina Mungiu-Pippidi, 'The Experience of Civil Society as an Anticorruption Actor in East Central Europe', Romanian Academic Society and Hertie School of Governance, September 2010. Available at: http://www.againstcorruption.eu/uploads/rapoarte_finale_PDF/The-Experience-of-Civil-Society-as-an-Anticorruption-Actor-in-East-Central-Europe.pdf.

31. Robert Klitgaard, *Controlling Corruption* (Berkeley, CA: University of California Press, 1988).

32. President of GRECO Drago Kos' statement at the Berlin workshop on trends in anticorruption, Hertie School of Governance, 18 November 2008.

as part of a general effort to establish equality before the law and a rule-based system of governance. Leaving aside the practical difficulties of putting a concept as general as the rule of law into practice and assessing its short- or medium-term evolution, the evidence indicates that the Balkans has not yet achieved the evolution by one standard deviation that the EU has pushed for. A widely quoted Carnegie Endowment review of rule-of-law assistance efforts issued somewhat pessimistic warnings a few years ago: 'Rewriting constitutions, laws, and regulations is the easy part. […] Rule of law reform will succeed only if it gets at the fundamental problem of leaders who refuse to be ruled by the law.'[33] Another recent review sees the solution not in abandoning rule-of-law promotion efforts, but rather in applying more rigorous conditionality to assistance from the West.[34] Timing also matters: the pre-accession phase lends itself better than the post-accession phase to such efforts, and predetermined accession dates have proved to be an error. Historians of corruption also find evidence that major breakthroughs towards good governance are helped by financial crises. In Italy, it was only when the judicial campaign against corruption coincided with a severe budgetary crisis, depriving political clients of their spoils, that the equilibrium changed and the whole cartel of old parties collapsed.[35] The current crisis could thus be seen as an opportunity. However, let us not forget that in the other famous EU example, that of Greece, the state went bankrupt before the political system did.

The EU has far more instruments for new and aspiring member countries than it had for Greece or Italy. But so far it has been reluctant to put them to intelligent use. Doubt was cast recently on the efficiency of the CVM for Romania and Bulgaria. Yet the mechanism has not been totally ineffective: a simulation of where the countries would be today without it shows that it did play a positive, albeit limited, role. *But it has become like an arrow without a bow, as conditionality only works in the field of governance in combination with domestic grassroots pressure from civil society, which was never strong and which diminished after EU accession*. The EU has come to rely too much on its own conditionality, which only works when empowering the forces of change in such societies and is ineffective when they are weak or absent. Identifying the drivers of change requires a shift from the prescription-based approach described in this paper (based on 'medicines' that all patients have to take) to a political economy-minded approach, which seeks to understand who stands to gain from challenging this undesirable *status quo* and uses both rewards and sanctions in order to empower promoters of change to challenge the existing equilibrium and establish a new one.

33. Thomas Carothers, 'Rule of Law Revival', *Foreign Affairs*, vol. 77, no. 2, March/April 1998), pp. 95-106.

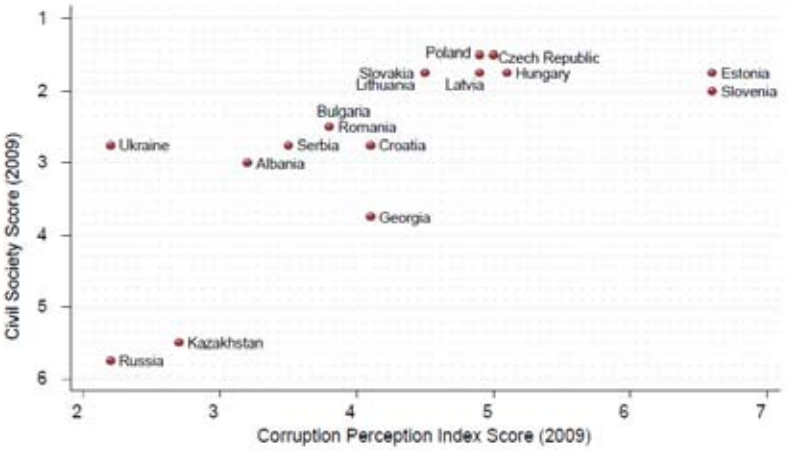
34. Ronald J. Daniels and Michael J. Trebilcock, 'The Political Economy of Rule of Law Reform in Developing Countries', in *Michigan Journal of International Law*, no. 26, Fall 2004, pp. 99-140..

35. Stefano Guzinni, 'The "Long Night of the First Republic": years of clientelistic implosion in Italy', in *Review of International Political Economy*, vol. 2, no. 1, 1995, pp. 27- 61.

Appendix 1.

The association between civil society and control of corruption

Freedom House Nations in Transit 2009 scores recoded (stronger civil society has higher scores); CPI 2009 from Transparency International (higher scores indicate more corruption).



Chapter 10

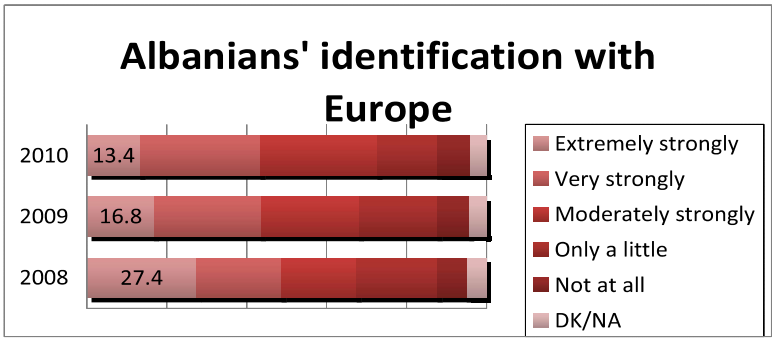
Balkan public opinion and EU accession

Robert Manchin

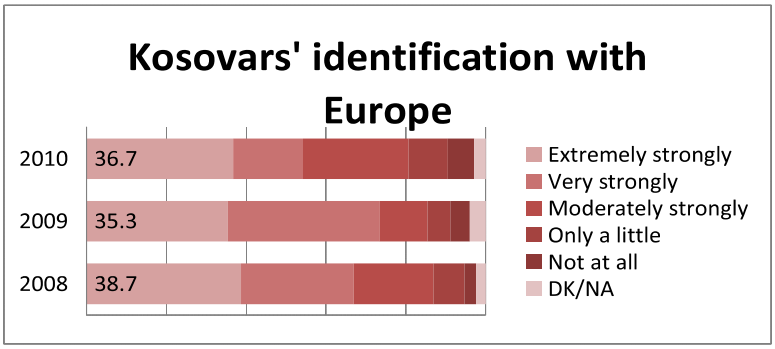
The citizens of all the Balkan states are closely monitoring the signals concerning their country's relationship with the European Union. According to a series of opinion surveys conducted by Gallup over the last five years in all the countries of the region, EU-related issues engage the public. People of all ages and from all walks of life have an opinion that they freely express on the desirability of a future within the EU, on the most likely date for their country's accession and the degree to which being European forms part of their personal identity. Public opinion with regard to the EU is not only an important yardstick for measuring the progress achieved by a society, but also an indicator of the kind of future the country is facing: it is a sensitive barometer of societal successes and failures. The level of public engagement with the EU accession project allows us to gauge the availability of emotional resources that can act as a driving force for the transition processes.

Before examining citizens' accession expectations in each of the Western Balkan countries, in order to see how united or divided public opinion is in its assessment of the advantages or disadvantages of EU membership, it is useful to look at the degree to which the citizens of the different states identify with Europe.

NB All tables and graphs featured in this chapter are from the Gallup Balkan Monitor, 2006-2010. See: http://www.balkan-monitor.eu.

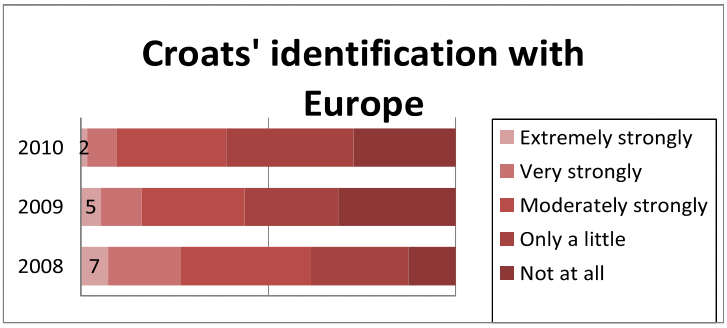


Kosovo scores even higher – indeed, the Kosovars are by far the most stable and committed in their identification with Europe.



The definition of 'extremely strong' identification with Europe depends largely on the context. For Kosovo, and to a certain extent for Albania, identifying with Europe is an important element of how the society defines itself. Following the recognition of Kosovo, its citizens accept that they must now wait until accession; however, they already define themselves as European, with a majority identifying 'extremely strongly' or 'very strongly' with Europe.

It is the population of the country with the highest chances of early accession – Croatia – that distances itself the most vehemently from being identified with the Balkans (only 3 percent identify extremely strongly and a mere 6 percent very strongly). Yet although the population rejects a Balkan identity, the closer the country gets to a possible accession date, the less strongly it is able to identify emotionally with Europe.



This lack of emotional attachment is reflected in the large number of Croatians who are undecided about the advantages of EU accession, resulting in the lowest level of support for EU membership.

The long years of waiting for accession and the perceived loss of control over the eventual outcome have increased scepticism in precisely those societies that have made the most progress on the road toward accession.

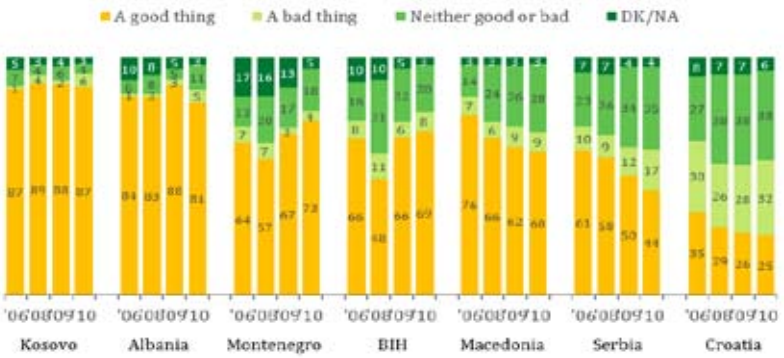
EU accession still supported – but not so fervently

Although overall EU accession is viewed positively, the pattern is different for each of the Balkan states. For example, while support for the EU has continued to increase in Montenegro (from 67 percent in 2009 to 73 percent in 2010), the downward trend in the other two countries that now enjoy visa-free travel has continued: the share of people who take the view that EU accession would be a good thing for their country has fallen from 62 percent to 60 percent in the Former Yugoslav Republic of Macedonia (FYROM) and from 50 percent to 44 percent in Serbia since 2010.

A similar picture emerges for Croatia: support for the EU decreased further in 2010 with roughly a third (32 percent) of respondents expressing the opinion that EU accession would be a bad thing, compared to only 28 percent in 2009. Furthermore, the Gallup Balkan Monitor – for the third time in a row – reported that a relative majority of Croatians remain indifferent to EU integration, with 38 percent seeing it as neither a good nor a bad thing.

In Albania, which has shown high levels of support for the EU since 2006, results were also noticeably different from the previous year, with the share of respondents who think that EU accession would be a good thing dropping from 88 percent to 81 percent in 2010. In Kosovo, another country with traditionally high support for the EU, the level of support has remained roughly unchanged.

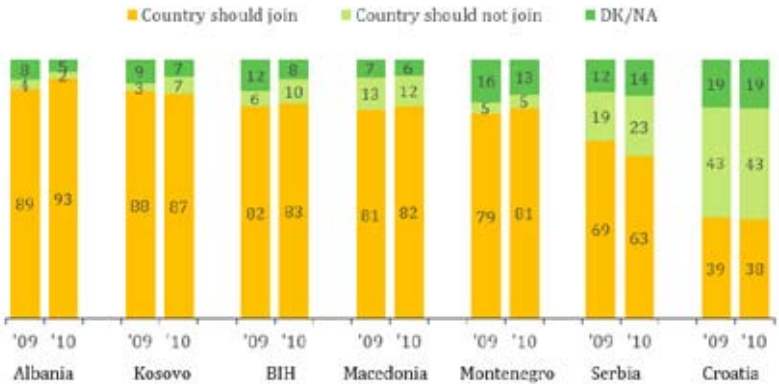
No consistent pattern in the level of EU support – increases in BiH and Montenegro, but decreases elsewhere



Generally speaking, do you think that [country]'s membership of the European Union would be a good thing, a bad thing, or neither good nor bad?

The responses to the question about voting intentions in the event of an EU accession referendum remained consistent between 2009 and 2010: in all the Balkan states, except Croatia, a majority (ranging from 63 percent in Serbia to 93 percent in Albania) said it would vote 'yes'. In Croatia – in line with the low level of support for the EU in that country – the proportion of those who said they would vote 'no' remained higher than those who said they would vote 'yes' (43 percent vs. 38 percent). Here a fairly stable one-fifth of the population (the highest in the whole region) remains to be convinced both about participating in a possible referendum and about which of the two options to choose.

Virtual EU referendum would be pro-EU accession in all countries except Croatia



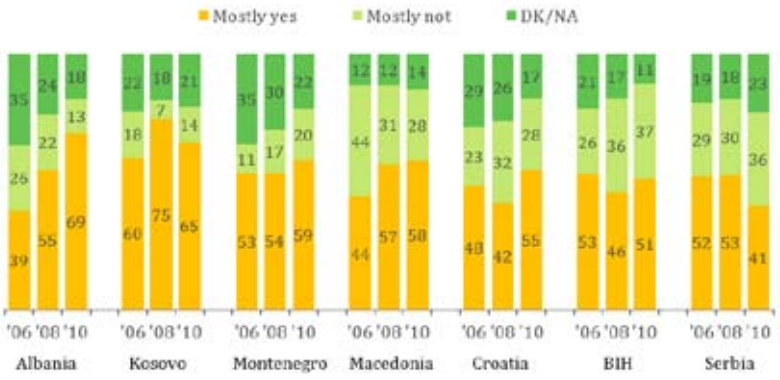
If there was a referendum on Sunday on whether [country] should join the European Union, which way would you vote?

The way people think their country's prospective membership is perceived by public opinion in the EU varies more widely from one Balkan state to another. In 2010, respondents in Albania and Kosovo (69 percent and 65 percent respectively) were the most confident that EU citizens were supportive of their accession to the Union. Yet a study of the actual results of opinion polls in the EU Member States shows that these are precisely the two countries that enjoy the least support among EU citizens for their membership aspirations. They are the ones with the largest proportion of households in which one member of the immediate or extended family is working or living temporarily in an EU Member State, yet this does not affect their perceptions – in fact families with a member working abroad are even more likely to believe that they are welcomed by EU public opinion than those without such ties.

Serbs have become less confident than the citizens of the other Balkan states, with about 4 out of 10 (41 percent) of respondents expressing the belief that people in the EU are sympathetic to Serbia's EU integration (a decrease of 12 percentage points since 2008).

At the same time, despite their negative stance towards EU accession, an increasing number of Croats perceive EU citizens to be in favour of Croatia's prospective membership: the proportion of respondents taking that view has increased by 13 percentage points since 2009. This could be a direct consequence of the fact that Slovenia's blockade of Croatia's EU integration efforts ended in September 2009, following intensive negotiations on the Slovenian-Croatian border dispute.

Serbs and Kosovars feel that EU citizens' support for their membership is declining



Do you think that the people in the European Union want [country] to join the European Union?

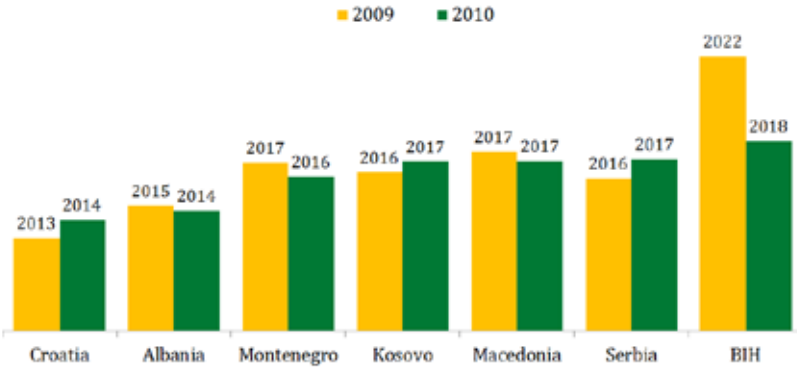
Little change in expectations concerning the dates for EU accession – except in Bosnia and Herzegovina

Despite the developments in Croatia's relations with Slovenia and the removal of a major obstacle on its path towards EU integration, Croats have not become more optimistic with regard to their accession date. While in 2009, 2013 was on average the date given by Croatian respondents for their country's expected entry into the Union, the common belief in 2010 was that accession would not take place until 2014. Paradoxically this was also the date given on average by Albanians for their country's expected accession, notwithstanding the fact that Albania has not yet achieved official candidate status.

In most Balkan countries, expectations concerning the speed of EU accession have remained relatively unchanged over the last few years: the average expected accession date for Montenegrins is 2016, but 2017 for the citizens of Kosovo, FYROM and Serbia. The only country where expectations have shifted significantly over the past year is Bosnia and Herzegovina, where the date has moved closer, from 2022 to 2018. A likely explanation for peoples' increasing optimism with regard to the EU integration process is the visa liberalisation issue. After being denied visa liberalisation during the first round in 2009, Bosnia and Herzegovina has made great progress on the roadmap towards visa-

free travel to the Schengen zone. As the Gallup Balkan Monitor results show, this has not gone unnoticed by the country's residents, who now believe that EU accession is coming closer.

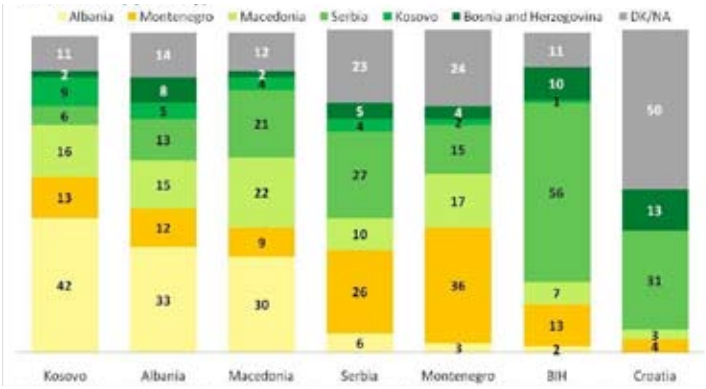
Bosnians becoming more optimistic about EU accession, Albanians perhaps too optimistic



When, in which year do you think [country] will be a part of the European Union?

Since most people in the Western Balkans are convinced that Croatia will be the first to join the European Union, we asked the citizens of all the countries which state they expected to be next in line for EU accession.

The next Western Balkan country to join the EU: according to respondents in the Western Balkan states (by country)



After the EU accession of Croatia which, do you think, will be the next Western Balkan country to join the EU?

The chart – perhaps even more than for some of the other questions – reflects a kind of collective projection of the perceived reality. Croatians

keep their distance: half of them are not willing even to think about which country might soon find itself in the same position as that already achieved by Croatia. Those who do pick a country point to Serbia as most likely to be next in line. Serbia also appears to be the obvious candidate to the majority of respondents in BiH, but less so to the Serbs themselves, who are divided in equal proportions between those who think it will be their turn, and those who opt for Montenegro.

The same is not true of Montenegro, where a far larger proportion of respondents expect to acquire EU membership ahead of Serbia than believe it will be the other way round.

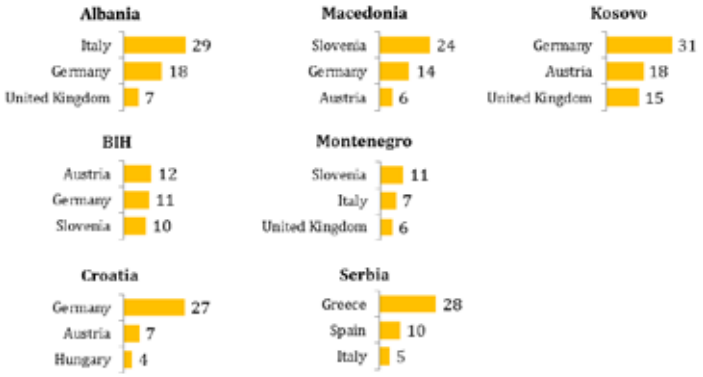
Finally, the countries with an Albanian population form a common front: even in FYROM, which has official candidate country status, more people believe that Albania will be next in line after Croatia than believe it will be their own country. In Kosovo and also Albania itself, a relative majority opt for Albania as the most likely second Western Balkan country to achieve EU membership.

Looking at the external conditions, we also asked respondents which EU Member State they perceived as being the biggest supporter of their country's EU accession. A majority of respondents in Kosovo and Croatia said they felt most supported by Germany (31 percent and 27 percent, respectively). Slovenia was the country named by the people of FYROM and Montenegro (24 percent and 11% percent respectively) as their biggest supporter, while the country chosen by roughly 3 out of 10 respondents in Albania was Italy.

38 percent of Serbs, on the other hand, perceived the biggest supporter of their accession to the EU to be Greece. These perceptions are also rooted in the historical ties between individual states and of course in the line-up of their supporters during the various recent conflicts in the region. Another country where a significant number (10 percent) of Serbs believed there was considerable support for their EU membership was Spain, a country which has not recognised Kosovo either.

Unlike the respondents of most of the other Balkan states, those from Bosnia and Herzegovina did not opt overwhelmingly for one favourite patron: Austria, Germany and Slovenia were mentioned by similar numbers of respondents (10 percent-12 percent) as being the biggest supporters of their EU membership.

Perceptions about the biggest supporters of the Balkan countries' EU accession

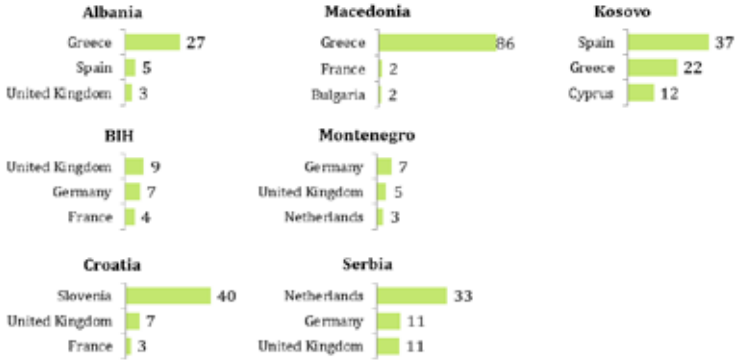


In your opinion, which EU Member State is the biggest supporter of [country]'s EU accession?

People's responses to the question about which EU Member State was most strongly opposed to their country's accession also reflect the current state of relations between the different countries. For example, 4 out of 10 Croatians identified Slovenia, with which Croatia has had a border dispute that has not yet been fully resolved, as the main opponent of their EU membership. Similarly, the Serbs were most critical of the Netherlands, possibly because it makes Serbia's EU accession contingent upon its full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). In the same vein, respondents in Kosovo named Spain (33 percent), Greece and Cyprus (11 percent each), none of which have recognised Kosovo, as the main opponents of their EU membership.

Finally, the Gallup Balkan Monitor results reflect the obvious fact that a strong majority of Macedonians (86 percent) see Greece as the EU state most strongly opposed to their country's membership, due to the unresolved name dispute between the two countries, which has led Greece to threaten to halt FYROM's EU membership negotiations.

Perceptions about the main opponents to the Balkan countries' EU accession



And which EU Member State is most opposed to [country]'s EU accession?

Chapter 11

The US and the EU in Balkan Kabuki

Morton Abramowitz

Introduction

Americans and Europeans have not always spoken the same language in the Balkans. Today things are improving, but it is not always clear what exactly they want to achieve and how they intend to go about it.

The main unfinished business as regards state-building in the Balkans revolves around Serbia. Serbia is central to the futures of Bosnia and Kosovo. The region will not be stable until Serbia makes up its collective mind on these two countries, especially Kosovo. It is a difficult decision both politically and emotionally, and in terms of Belgrade's domestic politics. It does not appear to be close to the moment of decision. The former Yugoslav Republic of Macedonia (FYROM) is another piece of unfinished business, but in the short term this has more to do with Greece; perhaps later its own ethnic divisions and developments between Kosovo and Serbia will come into play.

The major differences in the West are over whether Serbia has really made up its mind on Kosovo. Is Serbia really more concerned about EU admission than about the domestic political constraints posed by the Serbs of Bosnia and Kosovo? And will it ultimately find a way to accept the present political configuration in the region? The majority of Serbs probably believe some sort of resolution to the dilemma will be found; but when will the Serbian elite, including its current president, be prepared to trade a formal and platonic relationship with the Bosnian and Kosovo Serbs for EU membership? Most EU governments apparently also believe this will happen one day and the US government now seems to be thinking along the same lines.

Now both the European Union and the United States constantly talk up Serbia's goal of EU membership, the beginning of accession talks, and the importance of stepping up negotiations between Serbia and

Kosovo in the apparent hope that over time a transformation will take place in the way the contending parties see their differences. As long as the Kosovo issue remains unresolved, the question of Serbia's EU admission is presumably left hanging. This wait-and-see approach, based mostly on intense EU encouragement of Serbia's membership destiny, obviates the immediate need for difficult choices in the West regarding Serbia and Kosovo. It has provided the basis of the improved relationship between the West and Serbia. Underlying this gradualism in the West is also the belief that 'money will out': that the peoples of the Balkans no longer want to jeopardise their new-found prosperity, substantial foreign aid and promises of a better future, and return to the bad old days of violent ethnic hatreds. Time, so they believe, is on the EU's side. This view also supposes that prosperity is fairly distributed and that fewer people are prone to dance to the nationalist tune.

Lessons of the past

After numerous ups and downs and mutual public and private criticisms – the private put-downs will likely never end – the European Union and the United States have drawn closer in their approach to the Balkans. Presumably that is good. But before that benediction is pronounced, here are some personal conclusions or lessons drawn from Western experience in the Balkans since the end of the Cold War, which may help illuminate Western choices today.

From the very beginning Western countries have miscalculated the situation in the Balkans. For whatever reason – ignorance, domestic politics, national differences, sloth, fear of war, misunderstanding of ethnic nationalism, half-hearted humanitarianism, inadequate peace efforts and oversight, or just plain hubris – from the early stages of the breakup of Yugoslavia to the present day, Western policy has resembled a Jackson Pollock painting with occasional big splotches.

Violence works. Violence, rather than diplomacy, has often changed the map of the Balkans. Early in the Bosnian war of the 1990s many Americans held the view that much of Europe hoped that Milosevic would move quickly and decisively to impose a solution and end all the 'unpleasantness'. But Milosevic was afraid to do so and, importantly, non-Serb peoples refused to give up their lands. Given Bosniak tenacity coupled with the fact that outside forces were increasingly arrayed against him, Milosevic accepted the new map at Dayton: it at least provided him with the rump Serbian state he needed politically. And for a time the West, particularly the United States, saw Milosevic's continuing political durability as critical to preserving Dayton.

The ragtag Kosovo Liberation Army (KLA) also saw the utility of violence in Kosovo. Several hundred men fighting Serb forces in the Kosovo hinterland achieved what an American negotiator said would never happen: a Western air force put an end to Serbian control of Kosovo. However, it took another act of violence to launch the fledgling Kosovo state. Fearful that their independence might slip away amidst poor economic growth and Allied indifference, in 2004 the radical elements of the Kosovar population rose up against the country's remaining Serbs, scaring the inattentive West, particularly the United States, into establishing a process that would lead to Kosovo's independence. Seven years of relative quiet seems to have convinced the West that violence, at least on a large scale, is now a thing of the past in the Balkans, that the warring parties have reached burnout and that people want their lives back. That may well be true; history can be too great a burden. But it is a perspective that produces complacency; it may also run up against what might become a rising tide of dissatisfied Albanians spread across a number of Balkan states.

Western policy has largely consisted of half measures which appear to solve current difficulties but end up perpetuating them or creating new ones. Dayton, however necessary, is an obvious case in point. The devastating and bloody war in Bosnia had to come to an end, but the Dayton Accord simply ratified the *status quo* at the end of the war – two *de facto* states – and gave the main perpetrator of violence the job of enforcing the agreement. Politically little has changed in Bosnia's ethnically divided universe, but there is no violence and there has been growth thanks to significant and continuing amounts of aid, and many people are more hopeful for the future. Bosnia even assumed the Presidency of the UN Security Council in January. Politically the West has allowed the Office of High Representative (OHR), established under the Dayton Agreement, to lose its effectiveness as part of an effort to change Dayton; that has not had the anticipated results and the central government remains weak and compromised by its disparate elements.

The end of the Kosovo war did not produce a new state as such, but (for whatever practical reasons) UN Security Council Resolution 1244, which provided Serbia with a means to muddy the status of Kosovo and postponed resolution of the Kosovo issue to an uncertain date in the future. After the ICJ decision on Kosovo's independence in August 2010, the West did little to enhance the fledgling state by securing more recognitions (only four, to add to a relatively meagre sixty-nine), thus encouraging the energetic Serbian diplomatic offensive aimed at ensuring that no progress should be made on the Kosovo issue for years to come. Apart from a few recent and very modest efforts, neither the United States nor the EU (which remains divided over Kosovo's status) has made any serious attempt to challenge Belgrade's domination of Northern Kosovo.

The West's political and economic management of the area has been costly and less than impressive. Admittedly there have been some positive developments in Kosovo: at least for now the Serb minority is protected and there is some measure of democracy. But there has been little economic growth; what growth has occurred is largely the result of many years of extraordinary levels of aid to both Bosnia and Kosovo, and, in the case of Kosovo, large remittances from the Albanian diaspora – all of which continue. There has been little change in the workings of the economy and society. Kosovo became something of a colony, and the United Nations Mission in Kosovo (UNMIK) failed to find the levers of social change or help generate new economic and political forces. The United States – Kosovo's best friend – opted for stability, abetted the status quo, and did nothing to help a new leadership develop. Washington's guidelines to its mission in Pristina were to keep the place quiet. Western countries gave the impression that serious change was taking place while countenancing widespread corruption. Unlike the other Balkan countries, there was some doubt in Europe that Kosovo was actually in the neighbourhood. It has received little consideration for an EU future and is the only state in the region not to have been accorded visa-free travel in Europe. In practice, the West's management method has been mostly to choose the least troublesome approach to the basic issues.

A new era of Western policy cooperation under EU leadership

Some will say that it is tendentious to rake over the past or argue that it has been overtaken by events: the situation in the Balkans has changed significantly, particularly in Belgrade, and democracy has grown, if unevenly, in all three countries. We can now take a longer-term, more relaxed approach to the remaining Balkan issues. Indeed some would assert we should all take pride in how far we have come in 15 years and many, many billions of dollars later. The EU can now assume the long-awaited task of managing the final stages of transition in the Balkans. Moreover, after years of decision-making turmoil, EU and US policy is finally converging. Others, however, might prefer to sound a note of caution against believing that this might lead to better decision-making; and point out that given the history described above, it would be unwise to take developments in the Balkans for granted even now.

Despite all denials and visits by Vice President Biden and other high-level officials, the most noticeable policy development has been the slow and steady decline of American involvement in the Balkans. Given that the United States has been caught up in two protracted wars, it

is understandable that it is happy to accept junior partner status in the Balkans. The US government made a major commitment to the region, in large part for humanitarian and domestic political reasons, and clearly still wants its once sizeable effort to come to final fruition. But the American public pays almost no attention to Bosnia or Kosovo and does not believe the United States has any major national security interest there. Moreover, as Western military forces keep declining in the area, Europeans – who have the money and a vested interest – should have another opportunity to wear the mantle of leadership, although there is a lingering doubt among some Americans that the EU is capable of exercising that leadership.

The last time the United States took the lead in the Balkans was in Kosovo. The US government was woken from its relative slumber by the 2004 riots which led to the establishment of the Ahtisaari effort and ultimately the creation of an independent Kosovo. Now, as negotiations of some kind are soon to begin between Serbia and Kosovo under EU auspices, the Americans are apparently not interested in leading the talks but will attend most if not all meetings. Indeed, the United States has ceased to be inventive. In Bosnia the US effort has been a holding effort. The major difference between the United States and the EU has been the former's insistence on maintaining the Office of the High Representative (OHR) in the face of European interest in doing away with it. Richard Holbrooke never lost interest in Bosnia and was instrumental in ensuring US support for the OHR for fear that it would be more difficult to keep Dayton intact if the OHR were to be abolished. The United States also remains concerned that Bosnia is the only place in the Balkans where mass violence could still occur – should Republika Srpska attempt to secede from Bosnia – and the few Western forces remaining in Bosnia (consisting mostly of trainers) would not constitute much of a deterrent.

Managing affairs in Kosovo is clearly a burden to the EU: the Union remains divided with five Member States still refusing to recognise Kosovo. This inevitably entails searching for positions to which all the Member States can agree, whether they are the wisest positions to take or not. The same divisions also complicate dealings with Serbia. For many EU members Serbia has always been the heart of the Balkans, whatever Orthodox Belgrade might be doing to the Muslims in the region. Many have now apparently concluded that the Serbian government will renounce its long-standing nationalist aspirations and overcome domestic political constraints, and that Belgrade can be helped, coaxed and bribed into pursuing the EU connection. And they have found a Serbian political leader – Boris Tadic – who promotes Serbia's EU aspirations, while expressing his willingness to work something out with Pristina. It is therefore important for the West that Tadic should remain in office. So far, however, Mr. Tadic has not shown any public interest

in recognising an independent Kosovo or in relinquishing Belgrade's rule over Northern Kosovo. Pinning hopes on one individual can be dangerous. At the time of writing, the Serbian government appears to be divided and in trouble. Some people in Belgrade believe and some EU countries may have conveyed the notion that somehow Serbia could proceed to EU membership with a critical territorial issue unresolved, much as happened with Cyprus; the issue would be resolved at some later date, when the Kosovo/Serbia situation might have changed radically. Whether Tadic or other Serbs really believe this is another matter. Both the West and Serbia are adept at putting on a facade and seem to accept each other's pretences.

This year the Kosovo issue will reach another critical juncture: when Kosovo and Serbia begin new negotiations over issues yet to be determined. It appears that the EU has tried to avoid any discussion of Kosovo's final status: partition and recognition are presumably out. That, of course, may change depending on events and what unfolds in the negotiations. The focus will be on the numerous practical economic, commercial and legal issues between the two states. The hope is that serious negotiations and the resolution of practical problems will contribute to changing the climate of opinion in both states. This approach should appeal more to Serbia because it supports the present indecision on the Kosovo issue. For the Kosovo side there may be some practical benefits, but it does nothing to end their political limbo which would indeed seem to be reinforced by the failure to discuss final status. Both sides are precluded from breaking off negotiations.

Kosovo's negotiating position has become even more uncertain because of the charges recently levelled against Prime Minister Thaci regarding the alleged harvesting and selling of organs during the Kosovo war – charges which are sufficiently serious to warrant further inquiry. These charges (while yet to be proved) have affected Thaci's political position, although he succeeded in forming a coalition and retaining his position as prime minister. Many in Kosovo fear that his weakened political position will restrict his room for manoeuvre in even limited negotiations in an effort to cater to Western desires. However, the charges have cast a pall over Kosovo, roiled the political environment and at least momentarily diminished public confidence in Kosovo's future. They have also had a negative impact in Europe, further deepening dismissive attitudes towards Kosovo, while lending weight to other Serbian allegations of misconduct during the Kosovo war. Kosovo has lost significant political ground. Today the reasons for the Kosovo war seem more and more remote.

In Bosnia, Prime Minister Dodik persists in his efforts to preserve Republika Srpska's autonomy and continues to evoke the prospect of a formal separation. The EU and the Obama administration have jointly

undertaken several high-level efforts over the past two years to try to bridge the constitutional divide in Bosnia through talks with the main players. So far such talks have led nowhere. The OHR is unable to change the political situation. The EU and outside observers believe that, whether the OHR stays or goes, what is needed is a robust EU mission, more aid, and the promise of accession, which will help transform the Bosnian political scene and produce greater political cooperation. The EU mission in Bosnia has been around a long time and has changed very little. Apparently it has not been sufficiently robust or its mandate is inadequate; that at least is the sceptical view of many concerned Americans both in and out of government. Whether or not a new, more dynamic EU mission in Bosnia can change the political situation, it certainly can help and should be welcomed. One might wonder why Mr. Dodik and many of his constituents would give up their virtual independence for a promise that would take a decade or more to be fulfilled. As one observer pithily put it: 'Bosnia is Belgium without the money.'

More significantly, the EU treats Belgrade as if it has no influence over Republika Srpska and can do nothing to make Dodik more cooperative. For the West it is apparently enough for Belgrade to voice its support for Dayton, which mostly divides the country, and its opposition to Republika Srpska's independence. There is some belief that as Kosovo recedes as part of Serbia in the popular Serb mind, nationalists in Belgrade are likely to focus increasingly on keeping Srpska independent and ultimately part of Serbia. The United States and the EU apparently think that patience and more focused EU involvement will produce more positive results in negotiations among the Bosnian parties.

Finally, as for Serbia itself, there is little point in the West putting any serious pressure on Serbia regarding any key issue, perhaps until after Serbian elections. The US government has basically adopted the EU perspective, depicting the Serbian government's role both domestically and regionally as constructive and essential, and the pursuit of EU membership as key. Perhaps the only difference lies in the periodic high-level American admonitions to Belgrade to finally recognise the reality of the Kosovo state.

The hope of continued 'progress' in resolving major Balkan problems through closer EU/American joint policy supposes that everything is basically moving in the right direction, largely because Serbia is moving in the right direction, that its leadership is focused on EU admission and its public is increasingly more interested in its future than in its past and in a better standard of living. There is apparently no insistence that Serbia should try harder to resolve the basic issues of Kosovo and Bosnia. Nor is there any prospect of a trade-off between Serbia and Kosovo regarding Northern Kosovo and Kosovo's admission to the United Nations. Nevertheless, such a trade-off could ultimately

emerge as the principal issue in negotiations between Serbia and Kosovo, much to the West's discomfiture. It is hard to believe that any Serbian government would want to disengage from Kosovo without some form of territorial recompense.

How could such a policy bring about changes in the Balkan scene? In Bosnia a better functioning central government could emerge as a result of Western pressure, continued aid, sound political advice, and the lure of EU accession. Even if it does not, nothing untoward is likely to happen in the short term. As for Kosovo, it too can carry on with its uncertain status as long as outside aid keeps flowing in and EULEX, or its replacement, is still on the ground. Presumably, such an approach by the West will also ensure success for Mr. Tadic in the next elections in Serbia and further commitment to Serbia's EU future.

Hopefully this strategy will work and the problems of the Balkans will continue to recede. But there are many uncertainties and it is important to recall another lesson from the Balkan experience: the West's addiction to half measures. The Serb electorate might continue to support Mr. Tadic's rule, but there will come a time when a Serbian government must make a real choice regarding the recognition of Kosovo. Perhaps over time Mr. Dodik will give up his incessant talk of independence. But what if the central government continues to be mired down?

The greatest uncertainty and most likely danger lies in Kosovo. Its stability is fragile and violence can all too easily erupt. The recent fraudulent elections revealed the lack of unity in the country and a massive distrust in government. The accusations against Mr. Thaci have severely weakened him, and it is unclear how the political dynamic will play out in Kosovo and when talks with Serbia will commence. It should also be noted that the politician considered most honest in Kosovo, namely Albin Kurti, got an impressive 13 percent of the vote without resorting to fraud. He advocates an Albanian nationalism that transcends Kosovo. To what extent such a movement spreads is largely dependent on how the West deals with Kosovo in the upcoming negotiations. It could be reinforced by fears that Kosovo is losing its close, and psychologically important, ties with America. Large-scale violence may only be a remote possibility, but political turbulence of a transforming nature may not.

The West cannot resolve everything; but if the basic issues in the Balkans are left to fester, a whole host of new problems might arise as well as a recrudescence of violence. Coordination between the EU and the United States seems closer than at any time since the end of the conflict, but it may not be enough. A little more candour would be helpful.

Annexes

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Abbreviations

BiH	Bosnia and Herzegovina
CEFTA	Central European Free Trade Agreement
CFSP	Common Foreign and Security Policy
CoE	Council of Europe
CVM	Cooperation and Verification Mechanism
DOS	Democratic Opposition of Serbia (*Demokratska opozicija Srbije*)
DPS	Democratic Party of Socialists of Montenegro (*Demokratska Partija Socijalista Crne Gore*)
DS	Democratic Party (*Demokratska stranka*)
DSS	Democratic Party of Serbia (*Demokratska stranka Srbije*)
DUI	Democratic Union for Integration (*Demokratska unija za integracija*)
ECHR	European Court of Human Rights
EUSR	EU Special Representative
FBiH	Federation of Bosnia and Herzegovina
FDI	Foreign Direct Investment
FRY	Federal Republic of Yugoslavia
FYROM	Former Yugoslav Republic of Macedonia
GDP	Gross Domestic Product
HDZ	Croatian Democratic Union (*Hrvatska demokratska zajednica*)
HDZ 1990	Croatian Democratic Union 1990 (*Hrvatska demokratska zajednica 1990*)
HoP	House of Peoples
HoR	House of Representatives
HR	High Representative
ICJ	International Court of Justice
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally Displaced Person
IMF	International Monetary Fund
IPA	Instrument for Pre-Accession Assistance
JUL	Yugoslav Left (*Jugoslovenska Levica*)
KLA	Kosovo Liberation Army
MAP	Membership Action Plan
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
NOVA	New Serbian Democracy (*Nova srpska demokratija*)
OECD	Organisation for Economic Cooperation and Development
OHR	Office of the High Representative

OIDHR	Office for Democratic Institutions and Human Rights
OSCE	Organisation for Security and Cooperation in Europe
PIC SB	Peace Implementation Council Steering Board
PR	Public Relations
PZP	Movement for Changes (*Pokret za promjene*)
RS	Republika Srpska
SAA	Stabilisation and Association Agreement
SDA	Party of Democratic Action (*Stranka demokratske akcije*)
SDP	Social Democratic Party of Bosnia and Herzegovina (*Socijaldemokratska partija*)
SDSM	Social Democratic Union of Macedonia (*Socijaldemokratski sojuz na Makedonija*)
SIGMA	Support for Improvement in Government and Management
SNP	Socialist People's Party (*Socijalistička narodna partija*)
SNS	Serbian Progressive Party (*Srpska napredna stranka*)
SNSD	Alliance of Independent Social Democrats (*Savez nezavisnih socijaldemokrata*)
SPS	Socialist Party of Serbia (*Socijalistička partija Srbije*)
SRS	Serbian Radical Party (*Srpska radikalna stranka*)
UN	United Nations
UNGA	UN General Assembly
UNMIK	United Nations Mission in Kosovo
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
VAT	Value-Added Tax
VMRO-DPMNE	Internal Macedonian Revolutionary Organisation-Democratic Party for Macedonian National Unity party (*Vnatrešna makedonska revolucionerna organizacija – Demokratska partija za makedonsko nacionalno edinstvo*)

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Today, more than fifteen years after the end of the wars that accompanied Yugoslavia's dissolution, the 'Balkan question' remains more than ever a 'European question'. In the eyes of many Europeans in the 1990s, Bosnia was the symbol of a collective failure, while Kosovo later became a catalyst for an emerging Common Foreign and Security Policy (CFSP). In the last decade, however, the overall thrust of the EU's Balkans policy has moved from an agenda dominated by security issues related to the war and its legacies to one focused on the perspective of the Western Balkan states' accession to the European Union.

This *Chaillot Paper*, which features contributions from authors from various parts of the region, examines the current state of play in the countries of the Western Balkans with regard to EU accession. It brings together both views from the Balkans states themselves and overarching thematic perspectives.

For the first time the European Union has become involved in the formation of new nation-states that also aspire to become members of the Union. The EU's transformative power has proved effective in integrating established states; now it is confronted with the challenge of integrating new and sometimes contested states. Against this background, this paper makes the case for a concerted regional approach to EU enlargement, and a renewed and sustained commitment to the European integration of the Western Balkans.

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