
THESSALONIKI AND AFTER III:

THE EU AND SERBIA, MONTENEGRO AND KOSOVO

I. OVERVIEW

Since the fall of the regime of Slobodan Milosevic in October 2000, the steady normalisation of Serbia's relations with the international community has significantly enhanced the prospects for long-term peace and stability. The European Union (EU) rose to the challenge, providing resources for reconstruction and reforms in Serbia itself, as well as in Montenegro and Kosovo.¹ As part of this assistance effort, it included the three entities in the Stabilisation and Association process (SAP) that it established to build security in the Western Balkans and open perspectives for eventual membership.²

As far as Serbia, Montenegro and Kosovo are concerned, however, Thessaloniki is likely to produce only limited results and not advance long-term stability unless it is harnessed to a clear political agenda to resolve outstanding post-conflict issues and set all three entities firmly on the path of EU integration. For this to happen, the EU must address the status of Kosovo without too much delay. It already plays the key role in promoting the province's economic development, through both the resources it devotes and its leadership of the economic pillar of the UN administration. Amid widespread calls for it to take on an even greater

role, it cannot afford to endanger its substantial political and financial investment because of unreadiness to tackle the underlying causes of instability. The EU should also be ready to help Serbia and Montenegro resolve their relationship in a mutually acceptable way, so that both republics can finally move past the endless debates over statehood that have dominated political life since Milosevic's fall.

In this briefing paper, our basic conclusions with regard to the EU and the SAP are:

- The EU should maintain its assistance at levels commensurate with the seriousness of the challenges facing Serbia, Montenegro and Kosovo provided that they achieve clear, realistic benchmarks along a roadmap whose destination is EU membership.
- The SAP should be adjusted so as to address the specific circumstances in Serbia, Montenegro and Kosovo more flexibly, in particular through creative use of the new European Partnerships which will be drawn up with each country.

With regard to Kosovo,

- The EU should prepare to address the issue of Kosovo's final status, first of all by reaching a common understanding among its member states on their goals.
- Using the European Agency for Reconstruction and in direct liaison with the Provisional Institutions of Self-Government, the EU should develop an integrated approach to delivering targeted assistance, establishing benchmarks and assessing progress on carrying out reforms in line with EU standards.

¹ With the adoption of a new Constitutional Charter in February 2003, Serbia and Montenegro redefined their relationship as a loose State Union of Serbia and Montenegro, replacing the former, defunct Federal Republic of Yugoslavia (FRY). Under UN Security Council Resolution 1244, Kosovo remains legally a part of this state, as successor to the FRY, although under UN supervision.

² The Western Balkan countries covered by the SAP are, in addition to Serbia and Montenegro, Croatia, Bosnia, Macedonia and Albania.

II. EU GOALS

The starting point is to focus on the key goals that the EU should be trying to achieve:

- resolution of outstanding post-conflict issues such as statehood and ensuring adequate guarantees for minorities;
- effectively functioning states, with reformed, efficient public administrations and the rule of law; and
- economic transition and development.

The general aims of building lasting peace and prosperity and bringing Serbia, Montenegro and Kosovo, with the rest of the SAP region, into the EU fold are readily accepted and regarded as mutually reinforcing. The SAP lays out a path for the countries of the region, as potential candidates for EU membership, to integrate ever more closely with the EU, while at the same time strengthening relations with their neighbours. In advance of the 21 June Thessaloniki summit, there has been much sensible talk of the need to "enrich" this process, to re-emphasise the EU's long-term commitment by bringing its development assistance to the Western Balkans into line with what has been offered the countries that have been accepted to join the EU in 2004.³

However, the SAP fails to acknowledge the extent to which Serbia, Montenegro and Kosovo (as well as Bosnia-Herzegovina) are still burdened by issues arising out of the conflicts of the 1990s.⁴ It leaves aside what for the former three is the critical factor perpetuating instability: their unresolved status. As discussed in detail below, the SAP was not designed to cope with complex transitional arrangements such as exist between Serbia, Montenegro and Kosovo. There is a risk that, unless the EU's approach is adjusted, these entities

may simply be unable to qualify for full inclusion in the SAP and will thus be left behind, unable to proceed with EU integration because their status has not been resolved. Yet, it is precisely those states and entities for which questions of statehood and constitutional relations have not been resolved that remain the most unstable and so in greatest need of EU assistance.

This was surely not what was intended when the SAP was inaugurated. No matter how much the EU might wish to postpone it, status is an issue of overriding importance that needs to be addressed if lasting stability is to be achieved. This is not to under-estimate the difficulty involved nor to imagine that a solution could come quickly. But if the EU does not at least begin to clarify its aims and identify options and possible ways forward, there is a risk that it will have to face the issue unprepared, when forced by events in either Belgrade or Pristina, as has happened in too many previous Balkan crises.⁵

This challenge needs to be met by the member states and their High Representative for Foreign and Security Policy, Javier Solana. The SAP represents the European Commission's (EC's) operationalisation of EU policy but it is not for the EC, primarily, to set the parameters of fundamental policy in this area. The Thessaloniki Summit presents an opportunity for the member states to task the incoming Italian presidency, together with the High Representative and the EC, to devise more imaginative ways, within an adjusted SAP, of meeting the needs of those entities that find themselves in the most problematic circumstances.

III. THE STABILISATION AND ASSOCIATION PROCESS

The SAP was developed by the EC during 1999-2000. Central to the process are the Stabilisation and Association Agreements (SAAs) that each country in the Western Balkans should sign, thus entering into a contractual relationship with the EU

³ See the companion ICG Balkans Briefing, *Thessaloniki and After: The EU's Balkan Agenda*, 20 June 2003. See also the European Stability Initiative, "Western Balkans 2004: Assistance, cohesion and the new boundaries of Europe, a call for policy reform", 2 November 2002, and "The Road to Thessaloniki: Cohesion and the Western Balkans", 12 March 2003.

⁴ For the relationship between the EU and BiH see the companion ICG Balkans Briefing, *Thessaloniki and After (II) The EU and Bosnia*, 20 June 2003.

⁵ For a detailed discussion of the status issue for Kosovo and ways in which it might be addressed, see ICG Balkans Report N°124, *A Kosovo Roadmap: 1. Addressing Final Status*, 1 March 2002. On the relationship between Albanians and Serbs in Kosovo, see ICG Balkans Report N°143, *Kosovo's Ethnic Dilemma: the Need for a Civic Contract*, 28 May 2003.

in an up-dated version of the Europe Agreements that had earlier been signed by the candidate countries of Eastern Europe.⁶

1. Status complications

As already noted, the application of the SAp to Serbia, Montenegro and Kosovo is complicated by the unresolved status of the three entities. Brussels asserts that it is only possible for the EU to enter contractual relationships with sovereign states, not with entities within states. For example, if there is not a clearly defined negotiating partner, with a single voice and a single set of tariff rates, then it is, according to the EC, impossible to negotiate an SAA. This has proved problematic for Serbia and Montenegro, given that Montenegro had, in recent years, lowered its average tariff rate well below that of Serbia (in fact lower even than that of the EU).

Kosovo, under UN supervision, is left even more out on a limb. While officially it still a part of the new joint state of Serbia and Montenegro (a point consistently recognised by the EU)⁷, in fact Belgrade cannot realistically be held responsible for any aspect of its Kosovo system of government. Any SAA with Serbia and Montenegro would, therefore, have to be "suspended" with respect to Kosovo as long as UN Security Council Resolution 1244, which mandated UNMIK rule, remains in force. So long as Kosovo's status remains unresolved, it cannot be covered by an SAA though the EC itself describes such an agreement as the cornerstone of the SAp.

During 2001 and 2002, EC representatives held a series of meetings with counterparts from the then FRY under the aegis of a "Consultative Task Force", envisaged as a technical working group for discussion of progress on implementing reforms in line with EU standards.⁸ However, the process was skewed by the EC's focus on the federal level in Belgrade, even as Serbia and Montenegro, under considerable EU pressure, were redefining their relationship and

consigning the FRY to history. Officials from Montenegro and Kosovo (represented by UNMIK) were present. However, to Montenegrin officials the exercise appeared to be primarily about pressuring their republic to come into line with Belgrade, rather than with the EU. The representatives from Kosovo were little more than spectators.⁹

This process was not tailored to the particular needs of Serbia, Montenegro and Kosovo, and the vaunted flexibility of the SAp was not in evidence. Rather, the peculiar nature of the relationships of Montenegro and Kosovo to the federal state was treated as an inconvenience to be overcome (in the case of Montenegro) or avoided (in the case of Kosovo), allowing the EC to deal with Belgrade as it preferred.

Following the February 2003 adoption of the Constitutional Charter that replaced the FRY with the new state structure of Serbia and Montenegro, the way appeared open for that joint state to negotiate an SAA if outstanding issues concerning economic harmonisation could be settled. For such a state, with very weak central institutions and a decision-making process dependent upon reaching a consensus between the constituent republics, negotiating, not to mention implementing, an SAA would inevitably be fraught with difficulty.¹⁰ Only EU pressure could overcome the lack of enthusiasm in Serbia and Montenegro to implement an arrangement that neither was really happy with. For the EC, dealing with such a complex state and accommodating the SAp to it was always bound to be a severe challenge.

Since UN-supervised Kosovo could not in any case be covered by any SAA negotiated by Serbia and Montenegro, international officials in Pristina urged the EC to find a way to include it at least in the SAp. In response, the Commission established what it called the SAp Tracking Mechanism (STM) for Kosovo. The first EU-Kosovo meeting under the STM took place in March 2003.¹¹ The STM was envisaged as a means of monitoring progress on

⁶ For a summary of the approach developed by the EC to implement the SAp, see the Commission's web page: http://europa.eu.international/comm/external_relations/see/actions/sap.htm.

⁷ For example, the conclusions released by the EU General Affairs and External Relations Council title the section on Kosovo "Serbia and Montenegro/ Kosovo".

⁸ Such task forces had previously been set up in both Croatia and Bosnia-Herzegovina.

⁹ ICG information from local and international participants in the meetings.

¹⁰ For a discussion of the constitutional set-up of the new union of Serbia and Montenegro, see ICG Balkans Report N°142, *A Marriage of Inconvenience: Montenegro 2003*, 16 April 2003.

¹¹ Reported in *VIP Daily News Report*, "Kosovo at a Glance", 26 May 2003.

reforms and ensuring that they would be in line with EU standards. It was also hoped that the exercise would prove useful in bringing Kosovo officials into contact with the EU, helping them gain familiarity with its workings and the requirements of EU integration.

While the STM was generally greeted positively within Kosovo, its success will depend on its being taken seriously in Brussels as well. However, EC officials tend to regard the STM as a very inferior alternative to the kind of contractual relationship on offer to the sovereign states of the region.¹² This is understandable; the STM lacks a clear outcome and appears to be more a stalling tactic than a real preparation for a full SAA. In addition, the STM should be harmonised with the standards or benchmarks set by the UN administration in Kosovo (UNMIK); Kosovo's elected Provisional Institutions of Self-Government (PISG) need one set of standards to meet – not two. Finally, it should go without saying that technical assistance from the European Agency for Reconstruction (EAR) should be deployed in a manner that complements the STM.

2. Economic disharmony

A key pre-requisite for Serbia and Montenegro to sign an SAA was the EC's insistence on the harmonisation of the two republics' trade regimes. Both Serbia and Montenegro argued that they had a strong economic interest in maintaining their divergent tariff rates. Belgrade, with its largely decrepit communist-era industry and its relatively significant, although, by European standards, highly inefficient, agricultural production, asserted that it could not afford, for the present, to lower its tariff rates. Podgorica argued that, with its small and predominantly service-based economy, it made sense for it to opt for maximum openness, with low tariffs, and that to raise its tariffs to Serbian levels would damage its economy.¹³ A few specific tariffs, such as those on textiles, agricultural and metal products, were also highly contentious.

Podgorica asserted that it would be prepared to raise its rates to those of the EU, but not to those of Serbia. To Montenegrin officials, this appeared to be in line with the goal of EU integration, especially as Serbia, too, would eventually have to lower its tariffs to EU levels. They reckoned that their position was supported by the March 2002 Belgrade Agreement, which had laid the foundation for the establishment of the union of Serbia and Montenegro.¹⁴ That document states that: "Harmonisation of the economic systems of the member states [i.e. Serbia and Montenegro] with the EU economic system shall overcome the existing differences, primarily in the spheres of trade and customs policies". Javier Solana had signed the agreement as a witness, thus giving it the EU's stamp of approval.

Following the signing of that agreement, Belgrade and Podgorica set to work on an Action Plan for economic harmonisation. This proved to be a long and arduous task. The EC insisted that unless it was based on a convergence of tariff rates, it could not proceed with a Feasibility Study on negotiating an SAA for the new joint state.¹⁵ Further, EC officials sided with Belgrade in urging Montenegro to harmonise tariff rates at levels closer to those of Serbia.¹⁶ To Podgorica, it seemed as though Brussels was now renegeing on the formula for harmonisation with the EU that was contained in the Belgrade Agreement.¹⁷

To some in Belgrade, too, it seemed that Brussels was going back on promises. The former FRY Deputy Prime Minister, Miroljub Labus, was a signer of the Belgrade Agreement and, until that state was superseded by the union of Serbia and

¹² Discussions with EC officials.

¹³ The Montenegrin view was lent support by, among others, the Centre for European Policy Studies (CEPS). See Daniel Gross, "Establishing the Common Market between Montenegro and Serbia", CEPS, *Europa South-East Monitor*, issue 41, December 2002.

¹⁴ Proceeding Points for the Reconstruction of Relations between Serbia and Montenegro, signed Belgrade, 14 March 2002. On the Belgrade Agreement, see ICG Balkans Report N°129, *Still Buying Time: Montenegro, Serbia and the European Union*, 7 May 2002.

¹⁵ For example, remarks by an official of the EC reported in *VIP Daily News Report*, 14 April 2003.

¹⁶ EC officials asserted that, while they recognised the economic arguments on both sides, it was unreasonable given Serbia's much greater size to expect it to accept compromises that would risk severe short-term hardship. ICG interview with EC officials, April 2003.

¹⁷ A Montenegrin official reported that when it was objected that Montenegro was being required to bring itself into line with Belgrade, rather than with EU standards, an EC official responded that that was indeed the purpose. ICG interview, May 2003.

Montenegro, a key counterpart of the EC. He had never been happy with the agreement, which he felt did not provide for a functional state.¹⁸ As negotiations over the Action Plan dragged on, he expressed his dissatisfaction with the EU, which he felt had failed to honour promises that Montenegrin recalcitrance (as he saw it) would not be allowed to hold up Serbia's progress on EU integration.¹⁹

The Belgrade Agreement stipulated that: "The EU shall guarantee that, if other conditions and criteria for the Stabilisation and Association Process are fulfilled, the agreed principles of constitutional organisation shall not be an obstacle to a rapid conclusion of the Agreement on Association and Stabilisation". It further stated that if either republic was not living up to its commitments concerning the common market and trade harmonisation, the other could raise the matter with the EU "in the context of the Stabilisation and Association Process", with a view to adopting appropriate measures. To Labus, among others in Belgrade, it seemed that Serbia was after all being held back, as Montenegro's resistance to harmonising its economy with Serbia's held up the Feasibility Study, and the EU had not, in their view, taken sufficient measures (i.e. applied firmer pressure) to force Montenegro into line.

3. EU perspectives

The disagreements over the need to harmonise tariff rates in large part arose out of a difference of emphasis between Solana on the one hand and the European Commission on the other.²⁰ The former, who was the key figure on the EU side in negotiating the Belgrade Agreement, was primarily interested in reaching a political understanding that preserved the principle of the joint state, in line with the policy articulated by the EU's foreign

ministers (General Affairs Council).²¹ In order to achieve that goal, he was prepared to be flexible about details. In fact, the Agreement was short on precision and in numerous respects open to interpretation.

It is the EC that has the responsibility for overseeing the detailed implementation of the SAp. It had developed the SAA, which it saw as the cornerstone of the SAp, along essentially similar lines to the Europe Agreements with the Eastern European accession countries, which had involved detailed negotiations with sovereign states and a strong emphasis on trade matters. For the EC, the ambiguity in the Belgrade Agreement over trade harmonisation was unsatisfactory and out of line with its concept of the SAA. In effect rejecting the notion contained in the Agreement that harmonisation between Serbia and Montenegro could be achieved through integration with the EU, the Commission insisted that EU integration, through an SAA, could not proceed unless Serbia and Montenegro first harmonised their economies.

For the EC, the key was that Serbia and Montenegro should be at least as integrated as any two EU member states.²² The EC could, however reluctantly, live with the continued circulation of separate currencies in the two republics (the Dinar in Serbia, the Euro in Montenegro) and with the operation of separate banking systems, just as not all EU member states fall within the Euro zone. But the two republics needed a single market and a single customs regime in order for a Feasibility Study to yield a positive assessment of readiness for an SAA.

Although the EC's position contained a clear logic, in some EU quarters it appeared excessively rigid. In particular, fears were raised that if the criteria for signing an SAA were immutable, and Serbia and Montenegro proved unable to meet the criteria, the

¹⁸ On dissatisfaction with the Belgrade Agreement and with the union that it spawned, in Podgorica as well as Belgrade, see ICG Report, *A Marriage of Inconvenience*, op. cit.

¹⁹ For example, Labus's comments reported in *VIP Daily News Report*, 15 January 2003, that he had made a mistake in trusting in assurances by Solana and the head of the EC office in Belgrade, Geoffrey Garrett, that there would be no delay in the SAp.

²⁰ Solana is not a member of the European Commission; as High Representative for the EU's Common Foreign and Security Policy (CFSP), he is accountable to the European Council, i.e. the member states. (He also holds the office of Secretary-General of the Council.)

²¹ The EU's General Affairs Council meeting of 21 November 2001 affirmed its preference for the joint state to be maintained and dispatched Solana to the FRY to halt moves towards separation. For a discussion of Solana's mission, see ICG Report, *Still Buying Time*, op. cit.

²² For example, this view was expounded by Jan Willem Blankert of the EC delegation in Belgrade in a lecture on the Belgrade Agreement and the SAp, delivered at a UNDP conference on "Governance Transition in the Federal Republic of Yugoslavia - Serbia and Montenegro", Belgrade, 19-20 July 2002.

whole project for preserving the joint state might be placed in jeopardy. As the haggling over economic harmonisation dragged on, the difference in perspective within the EU emerged at a meeting of the General Affairs Council in early 2003 at which the EC's External Affairs Commissioner, Chris Patten, declared that the Commission could not compensate for a lack of political will in Serbia and Montenegro.²³ For some officials from member states, this was a wakeup call that all was not well with the new state, and that more imaginative ways of dealing with it might be needed if all of the effort invested by Solana in keeping it together was not to go to waste.

The EC's attitude is in large part shaped by its perception that while the member states of the EU set the policy parameters, it is the Commission that oversees implementation. Its officials consider themselves, therefore, more sensitive to questions of practicality. They were from the outset concerned about whether the Belgrade Agreement provided for a functioning state. Thus in negotiations in the Consultative Task Force and over the Action Plan for economic harmonisation, they sought to insert some of the content into the new union that they felt was wanting in the Belgrade Agreement and in the Constitutional Charter.

Besides economic harmonisation, EC officials also pushed for joint Serbia and Montenegro institutions to have real decision-making powers, rather than being little more than forums for coordination between the two republics' governments and "letter boxes" for communication with the outside world. The very thin central institutions envisaged in the Constitutional Charter appeared to lend weight to the latter interpretation, and that is how it was widely understood in both Podgorica and Belgrade, to the chagrin of those who had wanted a more substantial joint state.

The EC has been every bit as determined to preserve the joint state between Serbia and Montenegro as Solana and those member states whose voices prevailed in the General Affairs Council. It has persistently laid great stress on rebuilding joint state competencies and rolling back

the near-complete autonomy that Montenegro had acquired in the last years of Milosevic. It has been keenly aware that even in helping institution-building in Montenegro through the assistance programs of the EAR, it risked contributing to expanding that republic's autonomous capacity, to the possible detriment of the broader interest in reintegrating the joint state.²⁴

The EC's two annual Stabilisation and Association Reports on the FRY/Serbia and Montenegro while notionally technical documents assessing progress in implementation of reforms in line with EU standards, were infused with the state-reconstructing agenda. The first, the 2002 Stabilisation and Association Report, was seriously unbalanced, notably as regards its portrayal of Montenegro.²⁵ The second, published in March 2003, was in general fairer, but the preoccupation with rebuilding joint state competencies was again strong.²⁶ For example, both republics were scolded for taking over competencies that the EC felt belonged with the joint state.

EC officials justify this stress on building up joint state structures by the need to ensure that what emerges is a government, capable of entering into contractual relations with the EU. The EC's concern to ensure the functionality of joint state institutions is understandable, and its doubts as to whether the institutions envisaged in the Constitutional Charter will in fact be able to function are reasonable.²⁷ However, the very loose arrangement that was agreed reflected the conclusion, implicitly acknowledged by Solana, that it was the most that could be achieved in the circumstances; flexibility over the detail was the price for a deal. The stricter EC approach risks unravelling the whole project. Belgrade may lose patience at the interminable wrangling with Podgorica and, for the sake of its own more rapid integration with the EU, pull the plug on the joint state and strike out alone. That

²³ Reported to the ICG by several EU sources. Solana is said to have reacted defensively to the inference that the prospects for the union in whose creation he had played such a key role might be poor.

²⁴ Information from EC officials.

²⁵ For a highly critical assessment of the 2002 Stabilisation and Association Report, see ICG Report, *Still Buying Time*, op. cit.

²⁶ Commission Staff Working Paper, "Serbia and Montenegro, Stabilisation and Association Report 2003", 26 March 2003.

²⁷ For an assessment of the functionality of joint state institutions, see ICG Report, *A Marriage of Inconvenience*, op. cit.

would by no means be a disaster, but it would be unwelcome in Brussels and in several EU capitals.

Some in the EU have come to the view that while preventing a split between Serbia and Montenegro may have been desirable in 2001, the alleged risks of destabilising consequences (greatly exaggerated even then²⁸) have diminished to the point that the EU can be relaxed about a peaceful separation at the end of the three-year moratorium specified in the Belgrade Agreement. But having invested so much effort in preserving the union, they would be loath to see that happen sooner.

In the meantime, it would make sense for the EC, in the context of the SAp, to find ways of accommodating the peculiar nature of the new joint state rather than insisting on a dogmatic approach to an organisation that may within three years become irrelevant. To repeat, the objective of EU engagement is stabilisation and integration with the EU. The EC should find ways to include all. The risk of rigid insistence on the priority of an SAA is that some or all will be left behind. Some EC officials share the position of many in Belgrade that Serbia could proceed more rapidly alone, unburdened by the difficult relationships with Montenegro and Kosovo. Even if that were so, the EU can no more afford to cast Montenegro and Kosovo adrift from the SAp than it can afford to leave all three outside.

4. Mixed signals from Belgrade and Podgorica

All important political factors in Serbia and Montenegro see their future in EU integration. For the time being, the authorities in Belgrade and Podgorica express their commitment both to trying to make the union work and to working towards EU integration within the framework of the SAp. However, they are sending mixed signals.

The ruling Montenegrin parties maintain that after the three-year moratorium in the Belgrade Agreement, they will hold a referendum on independence.²⁹ For the present, a key concern is to

appear to work constructively within the joint state and on preparations for the SAA. The experience of EU pressure before and since the Belgrade Agreement has taught Montenegro's leaders to do all they can to avoid, as far as possible, being blamed by Brussels for any failure. Nevertheless, Podgorica resists giving any more content to joint state structures than is absolutely necessary and continues to see the present arrangement as transitional.

By the end of May 2003, there were finally encouraging signs of progress on economic harmonisation. This was a welcome surprise to EC officials, among whom there had been much hand-wringing during the preceding weeks about whether compromise over tariffs could be achieved. Their concerns had been fuelled by the negative assessments coming from senior Serbian figures who had been among the EC's closest partners in Belgrade – Labus and the governor of the National Bank of Serbia, Mladjan Dinkic, the most prominent figures in the new opposition political party G-17 Plus that the former leads – and who were now calling for Serbia and Montenegro to have separate SAAs.³⁰

This idea was discouraged by the EU. Commission officials regard dual SAA's as technically feasible, but politically highly undesirable.³¹ Some member states began to question whether in fact tariff rates needed to be harmonised at once. If separate SAp tracks were ruled out, an alternative flexible approach might be to set a future date by when tariffs should be harmonised, and in the meantime press ahead with other aspects of the SAA. Given that EU membership is in any case a number of years away, there is an argument for saying that Serbia and Montenegro has little to gain from harmonising trade regimes immediately. This argument is all the stronger considering that it

victorious candidate, Filip Vujanovic, as well as by other officials of Prime Minister Milo Djukanovic's ruling Democratic Party of Socialists. See, for example, *Vijesti*, 5 May 2003.

³⁰ Despite appeals from EC officials not to prejudge the outcome of the negotiations on the Action Plan, at the end of April 2003 Dinkic declared that to continue trying to harmonise the economies was a waste of time. *VIP Daily News Report*, 30 April 2003.

³¹ The head of the EC delegation in Belgrade, Geoffrey Barrett, said that negotiations on an SAA could start only with a country as a whole. *VIP Daily News Report*, 23 May 2003.

²⁸ For a discussion of the alleged risks associated with a split between Serbia and Montenegro, see ICG Balkans Report N° 107, *Montenegro: Settling for Independence?*, 28 March 2001.

²⁹ This was stated during the campaign for the 11 May 2003 election for the Montenegrin presidency by the

already enjoys preferential access to EU markets.³² This might not appeal to the EC, which sees trade matters as constituting the core of an SAA, and the SAA as the core of the EU's policy, but it could appeal to member states anxious not to see the joint state unravel over what some officials regard as technical details.

However, in the middle of May 2003, a breakthrough was announced. From the Montenegrin perspective, it appeared that the process had been to a considerable degree unblocked by what they saw as the more reasonable approach of Deputy Prime Minister Cedomir Jovanovic, who had taken responsibility for the negotiations on the Serbian side.³³ Hopes were revived that a Feasibility Study for the SAA could proceed soon.

In other areas, too, economic harmonisation made progress. In April 2003 agreement was reached on the joint state's representation with the international financial institutions. Essentially, it was a division of responsibilities between the Serbian and Montenegrin authorities: the National Bank of Serbia (as the National Bank of Yugoslavia had become) would, in cooperation with the Central Bank of Montenegro, represent the new union as fiscal agent with the IMF; the reverse would be true with the World Bank.³⁴

This was a practical solution to the problem of how to operate the thin union envisaged in the Constitutional Charter but it highlighted what an unusual state Serbia and Montenegro had become. As in other areas, the model being adopted was coordination and cooperation between essentially separate entities. As it began to appear that the saga of the tariff rates might be about to end, EC officials stepped up the offensive for a stronger joint state, stressing their view that the joint institutions should have real responsibilities in order to be able to function. Not for the first time, it appeared to Podgorica that EC officials were raising the bar and trying to alter the nature of the union that they believed had been negotiated.

In Belgrade, meanwhile, doubts about the future of the union had not diminished. On 28 May 2003 G-17 Plus launched a campaign for Serbian independence, arguing that Serbia's reform efforts and EU integration were being held hostage by the dysfunctional union with Montenegro and the unresolved status of Kosovo.³⁵ For the opposition party, whatever progress there was was simply too slow. It also expressed the widely felt resentment in Serbia at Montenegro's disproportionate weight in joint state structures and concluded that since Montenegro had no real will to make the union work, it made no sense for Serbia to accept continuous wrangling and delays.

Montenegro's concept of the union as a very loose, transitional arrangement between essentially separate states may be impossible to square with the EC's wish to have as a partner a strong, functioning state. While the governing coalition in Serbia has not yet gone as far as G-17 Plus and given up on the joint state, concerns about the benefits of the arrangements for Serbia are widely shared. Belgrade and Podgorica agreed to the terms of the joint state only under severe EU pressure. It would be unreasonable and unproductive now to continue blocking their path towards EU integration because the resulting arrangement is after all not to the EC's liking.

³² In November 2000 the EU extended autonomous trade measures to the Western Balkan countries. See Report from the Commission: "The Stabilisation and Association process for South East Europe", Second Annual Report, 26 March 2003, Annex 1.1.

³³ While details of what had been agreed remained incomplete, it seemed that Belgrade had been willing to compromise over tariffs for fuel oil, while Podgorica had earlier compromised over textiles. Regarding agricultural products, Montenegro had reportedly agreed to raise its rates to Serbian levels for many products. For some products which Montenegro does not produce, or hardly produces, it was reportedly agreed that Montenegro would apply preferential quotas, effectively keeping rates at their hitherto levels, different from those of Serbia. In such cases, if products were sent on to Serbia, Serbian tariff rates would be collected there. Brussels is in general against preferential quotas and has urged Montenegro to remove existing ones. It was, therefore, unclear whether it would accept this solution, particularly as key parts of the agreement have been kept confidential. Information from officials in Podgorica; *Vijesti*, 15 May 2003; and statement by Serbian agriculture minister, Dragan Veselinov, reported in *Vijesti*, 27 May 2003.

³⁴ *VIP Daily News Report*, 16 April 2003.

³⁵ *VIP Daily News Report*, 29 May 2003. G-17 Plus adopted a "State Program of a European Serbia" on 25 May 2003.

IV. NEW SAP INITIATIVES

If the SAP framework remains as currently conceived by the Commission, the EU might be left with some unpalatable options:

- continuing to deny the joint state of Serbia and Montenegro an SAA, which would increase Serbian impatience with the joint state and likely lead to an early split;
- proceeding with separate SAAs for Serbia and Montenegro, thus make the joint state appear redundant; and
- fudging the criteria and so undermining the SAP's integrity throughout the region.

None of these would seem to be satisfactory (nor, of course, solve the problem of the SAA's irrelevance for Kosovo). What makes most sense is to redefine the SAP so as to endow it with the flexibility that was originally intended and enable it to be applied more effectively to the various states and entities concerned.

Central to the proposals the Greek EU Presidency has put forward for reinvigorating the SAP is that it should be enriched with "knowledge drawn from the enlargement process, in order to strengthen the accession-oriented dimension". In the view of Athens, this means strengthening the concept of economic and social cohesion – well-trying in EU member states and candidate countries – with respect to the Western Balkans.³⁶ The Greek Presidency also argued that a Western Balkans state should not be required to enter into an additional contractual relationship with the EU once it had successfully fulfilled an SAA – that is, the next step could be accession itself.

Critical to the argument for building the cohesion concept into the EU's approach to the region is that, as the immediate post-war reconstruction effort winds down, greater attention needs to be given to promoting development. Serbia, Montenegro and Kosovo, like other parts of the Western Balkans, face a double economic challenge of transition from

communism and overcoming the economic dislocation of a war. With much of their industry moribund, their administrative structures weak and inefficient, their legal systems overwhelmed, corruption rife, and criminal interests entrenched, most of these countries offer little prospect either to their own citizens or to potential foreign investors.³⁷

In May 2003 the Commission published a "Communication" laying out a vision of how the SAP could be enriched³⁸ that stressed the need to go beyond reconstruction and also sought to apply lessons learned from the accession process. The EC proposed introducing so-called "European Partnerships",³⁹ which it envisaged as a joint endeavour with recipient countries to identify reform priorities. The partnerships would aim to identify needs better but also to provide realistic benchmarks for assessing progress.

Prominent in the EC's Communication is a point much emphasised in the second SAP annual report, that increased commitment is also required from the countries of the region. The annual report lamented a lack of real will for change. Areas where the EC judges that greater commitment is needed include the building of administrative capacity and the rule of law, and the fight against organised crime and corruption. It fairly observes that "advancement in the process of European integration will depend mainly on each country's own commitment and capability as fully functioning states to political and economic reforms..."

The clear message from the EC is that the European Partnerships can be the mechanism by which to adjust and enhance the SAP but that the onus is on Belgrade and Podgorica to establish joint state structures in line with EC preferences in order to proceed down the integration path. Once again, for Serbia and Montenegro the implication seems to be that if they are not able or willing to tighten up their very loose joint state and make it a much stronger union, their

³⁶ The argument that a central place in EU assistance to the Western Balkans should be given to economic and social cohesion policies has been forcefully argued by the European Stability Initiative in its reports, "Western Balkans 2004" and "The Road to Thessaloniki", both op. cit.

³⁷ The exception in the SAP region is Croatia, whose economic performance and success in attracting foreign investment is more in line with the accession countries.

³⁸ "Communication from the Commission to the Council and the European Parliament", 21 May 2003.

³⁹ Originally "European Integration Partnerships" in the Commission's 21 May Communication; the EU's General Affairs and External Relations Council renamed them "European Partnerships" on 16 June 2003.

possibilities within the SAp are severely limited. And Kosovo again is out in the cold.

V. A FLEXIBLE APPROACH TO THE SAP

5. The need for flexibility

The Greek and EC proposals indicate some of the ways in which the SAp could be adapted to the particular circumstances of Serbia, Montenegro and Kosovo but they do not go far enough. As long as outstanding issues of status are unresolved, none of the three fits into any neat definition of a fully functioning state. The situation is unusual, but the EU should adjust its approach accordingly, rather than trying to force this complicated arrangement, partly of its own making, into a suit designed for simpler, more familiar, and for the Commission more convenient, state structures. Indeed, this is essential in order to avoid a situation in which the most problematic cases – those where the security risks would be greatest – are left further behind. The more difficult the circumstances, the more imaginative needs to be the EU response, rather than just hammering away with an "off-the-peg" approach.

Nothing new needs to be invented. The elements of a more flexible approach are already in the SAp and the Greek and EC proposals. The SAp Tracking Mechanism points the way to a process that could prove very effective in helping states or entities not yet ready for a full-blown SAA make significant progress in adopting reforms in line with EU standards and big strides towards EU integration. This could be further developed within the framework of the European Partnerships proposed by the EC. But the process must be seen to have real value, not be just a second-best option for those unready for an SAA.

6. The limitations of the Stability and Association Agreement

The signing of an SAA should not be seen as the overwhelmingly important cornerstone of the process that it has tended to become. What the new joint state and Kosovo alike need is to achieve development goals such as a market economy, sound administration and the rule of law. Emphasis on an SAA as such is not the best way to accomplish this, not least because of the negative message that emphasis sends to those who, as

discussed, cannot meet the SAA criteria for reasons wholly or at least substantially not of their making.

The EU should unambiguously reassert at Thessaloniki a clear commitment that the countries of the Western Balkans will be able to join once all the criteria are met, but development assistance tied to strict conditionality is the preferred tool with which to meet the challenges of satisfying those criteria – a graduated approach, with multiple milestones for assessing progress, clear benchmarks and regular assessments rather than a single go/no go event.

The SAA would retain a useful place in the SAp for Serbia, Montenegro and Kosovo but its kind of contractual arrangement, with stress on trade matters, need not be at the beginning. Policies for development and transition, which should be key to the EU's engagement in the Western Balkans for the present, are not always identical with the requirements of imminent EU accession. Preparing for accession involves actions that can be burdensome in the short run.⁴⁰ The issue of tariff harmonisation has been a case in point. Serbia and Montenegro will have to converge with EU tariff rates before accession but insisting that they do so at once served no purpose, except with respect to the questionable political agenda of re-centralising the joint state that itself was not inherent to EU integration.

VI. THE EU AND KOSOVO

A. ADDRESSING STATUS

As long as Kosovo's status is not addressed, Albanians and Serbs will not be able to put the traumas of war fully behind them and set their relations on a normal footing.⁴¹ The EU has supported the "Standards before

⁴⁰ This point is made by Heather Grabbe in "The Effects of EU Enlargement on the Countries Left Outside", in The Economist Intelligence Unit, *Economies in Transition: Eastern Europe and the Former Soviet Union - Regional Overview*, June 2001.

⁴¹ ICG has discussed the issue of the future relationship between Serbia, Montenegro and Kosovo in a number of reports. See ICG Balkan Report N°143, *Kosovo's Ethnic Dilemma: the Need for a Civic Contract*, 28 May 2003; ICG Report, *A Kosovo Roadmap: I. Addressing Final Status*, op. cit.; ICG Balkans Report N°125, *A Kosovo Roadmap: II. Internal Benchmarks*, 1 March 2002; ICXG Report, *A Marriage of Inconvenience*, op. cit.; ICG Report, *Still Buying Time*, op. cit.; and ICG Report, *Montenegro: Settling for Independence?*, op. cit.

Status" policy adopted by UNMIK, which puts off the status issue until Kosovo has demonstrated a certain level of capacity to govern its own affairs, including with respect to such core matters as ensuring the rule of law and minority rights.

The achievement of such standards is indeed vital.⁴² It is, however, a mistake to link it directly with the resolution of status, understood as the relationship with Serbia. Given the low level of development and the institutional exclusion of Kosovo's Albanian majority throughout the 1990s that led to a lack of local capacity, the achievement of standards in many areas is bound to be slow. On the other hand, the absence of clarity over Kosovo's future relationship with Serbia is a basic factor complicating relations between the Albanian majority and the Serb minority in the province. Delay in tackling the status issue thus both retards Kosovo's internal stability and leaves Kosovo at risk of again becoming a source of instability for its neighbours, notably Serbia and Macedonia.

ICG has consistently argued, therefore, that standards and status should be dealt with in parallel.⁴³ The resolution of Kosovo's relationship with Serbia is too critical to stability in the province and in the wider region to remain unaddressed. While clarity on the status issue is necessary, until Kosovo demonstrates that it can run its own affairs, respect its minorities and play a constructive role in its neighbourhood, it should not attain the full attributes of sovereign independence, and UNMIK and the NATO security presence (KFOR) should remain.

The UN should retain the central political role in Kosovo until status is resolved, with the EU bearing the main responsibility for assistance. Similarly, the responsibility for security should remain with NATO for the time-being. As long as the wider international community is unready, however, it is unrealistic to expect the Special Representative of the UN Secretary-General (SRSG) to take a meaningful initiative. That will require the involvement of the United States, as well as the EU, and any solution will have to be ratified by the UN Security Council. But for the international community to work together effectively on status, the EU needs to prepare itself, first of all by reaching a common understanding

among its member states on their goals regarding Kosovo. The divisiveness of the issue is no excuse for ignoring it by hiding behind a mantra that is little more than a slogan to cover indecision.

Indeed, a better slogan would be "Standards before EU Integration" since achievements should be assessed through the SAp Tracking Mechanism, within the framework of the European Partnerships. In the medium term, the EU should take over the key role in Kosovo, as it is the Brussels perspective that is critical to the province's future. That perspective should be the incentive for Albanians and Serbs alike to adopt EU standards and respect EU values, including, crucially, mutual tolerance. Any tendency to withhold resolution of status as leverage over the province's Albanians should be rejected as a dangerous gambit that would simply perpetuate an inherently unstable status quo. The promise of EU assistance and integration, on the other hand, so long as conditionality is strictly applied, constitutes powerful leverage in both Pristina and Belgrade.

Until the status issue is resolved, the UN will remain the lead international organisation dealing with Kosovo. The EU must prepare to assume that role thereafter. It is already responsible for UNMIK's economic pillar (Pillar IV) and for providing assistance through the EAR. The latter has proved effective in channelling aid more quickly and efficiently than had hitherto been the EU's custom but its functions must now change in order to meet the new challenges of cohesion and restructuring. In fact, as the post-war reconstruction phase is left behind and powers are transferred to the PISG, the EU's role is in any case being transformed. Pillar IV is being cut back, and EAR has already, if perhaps a bit tardily, begun to switch to development-oriented assistance.

Within the framework of the European Partnerships, the EU itself should develop an integrated approach to delivering targeted assistance, establishing benchmarks and assessing progress on carrying out reforms in line with EU standards. As Pillar IV downsizes, the EU should develop its partnership with the PISG through the kind of liaison office that is found in Eastern European capitals, including Belgrade. Such a liaison office would need to work closely with a revamped EAR, whose work would be directed towards assisting the PISG in meeting the benchmarks.

**Belgrade/Podgorica/Pristina/Brussels,
20 June 2003**

⁴² ICG made detailed proposals for the adoption and implementation of benchmarks in its Report, *A Kosovo Roadmap: II. Internal Benchmarks*, op. cit.

⁴³ See ICG Report, *A Kosovo Roadmap: 1. Addressing Final Status*, op. cit.