

## **“Serbia in the European Union - status of Kosovo”**

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### **Abstract**

The author deals with the integration process of Serbia in the European Union with the special emphasis on the status of Kosovo. After the appraisal of the dissolution of the State Union of Serbia and Montenegro and the Draft Constitution of Serbia with respect to Kosovo, the author describes the Copenhagen criteria as well as the basics of the Stabilization and Accession Process, which the Western Balkan countries must go through. Furthermore, the author examines the decisions and guidelines made at the highest level in the European Union i.e. by the European Council which paved the way for Serbia towards its European integration.

Thereafter, the author focuses on the international status of Kosovo and its legal status in Serbia under the UN Security Council Resolution 1244. The author then presents the basics of the UNMIK and KFOR missions on Kosovo as means of international presence in the region as well as the foundations of the Kosovo autonomy and its self-administration. The author also delves more deeply into the “Standards for Kosovo” whose fulfilment is among the most important conditions for the Kosovo’s EU integration within Serbia.

The author concludes that the EU integration process of Serbia as well as Kosovo is still in its initial stage and that the fulfilment of the following three conditions: (1) full cooperation with ICTY, (2) resolution of the final status of Kosovo, (3) legal, administrative and economic reforms is a rather demanding requirement which all institutions will have to put additional efforts to accomplish.

## KEY WORDS

European integration, Draft Constitution, Copenhagen criteria, Stabilization and Accession Process, Western Balkans, Santa Maria da Feira European Council, Thessaloniki European Council, UNSC Resolution 1244, UNMIK, KFOR, Provisional Institutions for Self-Government, Standards for Kosovo.

## I INTRODUCTION

### 1. Objectives of the paper

The primary objective of the paper is to analyse and lay out the basics of the integration process of Serbia into the European Union ('EU') and discuss the delicate position of Kosovo in this process.<sup>1</sup>

In order to achieve this goal, it is necessary to provide the reader with the most important facts on the current constitutional framework in Serbia so as to understand why Kosovo is often given a separate status in political matters. This requires a summarized as well as critical review of the United Nations Security Council ('UNSC') Resolution 1244 as well as the latest developments concerning the European integration of Kosovo within Serbia.

### 2. Dissolution of the State Union of Serbia and Montenegro

The State Union of Serbia and Montenegro was envisaged in the so-called Belgrade Agreement signed on 14<sup>th</sup> March 2002. This agreement contains the principles for the regulation of the relationship between the republics of Serbia and Montenegro in the State Union. It was, among others, signed by Javier Solana, the High Representative of EU for Common Foreign and Security Policy, as a sign that the moulding of the State Union is targeted at a faster and more efficient European integration of its constituent states.

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<sup>1</sup> It is necessary to point out that Kosovo is only one part of the Autonomous Province of Kosovo and Metohija, but Kosovo is often used to describe the whole province. Similarly, there is also a term "Kosmet" which is an abbreviation for this province.

On 4<sup>th</sup> February 2003, the State Union of Serbia and Montenegro was established by entry into force of its highest legal act - the Constitutional Charter, part of which was also the Charter of Human and Minority Rights and Civil Liberties.<sup>2</sup> The Preamble and Article 2 of the Charter laid down the primary principle of equality between the two member states: the state of Serbia and the state of Montenegro. This assures us in conclusion that the State Union was not devised as a strong federation but rather a loose confederation-like entity.<sup>3</sup>

One of the most essential provisions concerning the future of the State Union is the one providing for the opt-out for both republics after the expiration of the period of three years of existence of the State Union. Moreover, it contains a provision saying that in case Montenegro opts out of the State Union, it is Serbia which shall be the successor country.<sup>4</sup> This constitutional right of the states members of the State Union was realised by Montenegro by way of referendum which took place on 21<sup>st</sup> May 2006. Thereafter, both Serbia and Montenegro became independent states, whose European integration process was finally completely separated.

Lastly, the Preamble of the Constitutional Charter establishes that Serbia includes the Autonomous Province of Kosovo and Metohija and that it is under international administration in accordance with UNSC Resolution 1244.

### **3. The 2006 Draft Constitution of Serbia**

Immediately after the confirmation of independence by the Serbian Parliament, the competent state institutions began a thorough preparatory

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<sup>2</sup> These documents are available on the following website:

<http://www.gov.yu/start.php?je=e&id=34>

<sup>3</sup> We are prone to argue that the State Union was a unique state creation since, inter alia, the member states did not have a single currency, thus Serbia having Serbian Dinar as a currency and Montenegro having the Euro. It is important to make clear that this is the same Euro used in any of the Eurozone states, but since Montenegro is not a member of the EU this distinction is worth taking notice of.

<sup>4</sup> Art. 25 Constitutional Charter of the State Union

work on the new Constitution with several important implications on the status of Kosovo. The new Serbian Constitution was adopted at a referendum on 28-29<sup>th</sup> October 2006 and represents a fresh democratic impetus and a contemporary platform for Serbia's further European affairs.

Namely, the Constitution confirms that there are two autonomous provinces in Serbia: (1) Vojvodina – in the north, and (2) Kosovo and Metohija – in the south.<sup>5</sup> The very Preamble itself also emphasizes that Kosovo is part of Serbia and that it enjoys the status of *substantial autonomy*, the meaning of which shall be regulated by separate law.<sup>6</sup> The Preamble also lays down the constitutional obligation for all state organs to pursue and protect the interests of Serbia in Kosovo in all internal and external political affairs. This constitutional approach represents an essentially twofold development:

A) Since the UNSC Resolution 1244 requires, *inter alia*, the establishment of the substantial autonomy for Kosovo, this Constitution has implemented it thereby giving it the force of the highest legal act in Serbia.<sup>7</sup> It also represents determination of Serbia to fulfil its international obligations, whose postulates and principles need to be protected at all times.

B) This is a compromise legal solution which safeguards both national interests with respect to the preservation of the territorial integrity of Serbia as well as the interests of the people living in Kosovo, thereby securing a higher level of its autonomy than for the Province of Vojvodina. We should emphasize that this novelty will provoke vivid discussions among the negotiators with the EU and UN representatives.

Finally, the Constitution establishes that the sovereignty is vested in its people who have cast their final vote.<sup>8</sup> The legal solutions adopted in the Constitution are valuable since they give us an overview of the resolute position adopted by the single Serbian constituency – its citizens. It remains

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<sup>5</sup> Art. 182 (2) Serbian Constitution

<sup>6</sup> Art. 182 (3) Serbian Constitution

<sup>7</sup> See Operative clauses 10 and 11(a) and Annex II clause 5 and 8 of the UNSC Resolution 1244

<sup>8</sup> Art. 2 (1) Serbian Constitution

an unresolved question what implications such a constitutional solution will produce and how it will affect the negotiations on the final Kosovo status.

## II MAIN BODY

### 1. Pre-EU integration period

For a better understanding of the obstacles and difficulties which Serbia is facing on its way to the EU, it is essential to make a short outline of the most pertinent events in the pre-EU integration period.

Firstly, we should start with the basic conditions for the EU membership laid down in the Copenhagen criteria by the European Council in June 1993.<sup>9</sup> These conditions are the following:

- 1) *Political* – stable institutions guaranteeing democracy, rule of law, human rights and protection of minorities;
- 2) *Economic* – market economy capable to compete within the EU single market;
- 3) *Acquis Communautaire* – adoption of obligations of the EU along with political, economic and monetary integration.

Secondly, in 1999 the EU proposed the Stabilization and Association Process ('SAP'). It is a progressive approach currently involving six countries of the Western Balkans, which takes into account the individual situation of each country allowing them to progress faster than the others with the particular emphasis on regional cooperation. The key segment of SAP is the so-called "conditionality policy" based on Copenhagen criteria. The states included in this process are the following:

- Albania,
- Bosnia and Herzegovina,
- Croatia,

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<sup>9</sup> See George&Bache, "Politics in the European Union", Oxford University Press, 2001, p. 413

- Former Yugoslav Republic of Macedonia,
- Montenegro and
- Serbia.<sup>10</sup>

The condition imposed for Yugoslavia at the time was, essentially, a democratic government. Yugoslavia fulfilled this condition on the famous 5<sup>th</sup> October 2000 which signifies the date of the crucial turnover for the future of this country. This is when the democratic opposition won the federal presidential elections<sup>11</sup> against the socialist regime led by Slobodan Milosevic.<sup>12</sup> Consequently, Yugoslavia rejoined international organizations such as UN and the Organization for Security and Cooperation in Europe ('OSCE') and the new President of Yugoslavia Vojislav Kostunica, in his address to the European Parliament, expressed strong aspirations for Yugoslavia to join the EU as soon as possible. This is the point of departure from which Serbia has made significant efforts towards EU integration and from which we shall continue our analysis.

## 2. EU integration process

The conclusions of the *Santa Maria da Feira European Council* held in June 2000 in Portugal provide for a new encouraging declaration. Serbia became a *potential candidate* for EU membership.<sup>13</sup>

The Zagreb Summit held on 24<sup>th</sup> November 2000 in Croatia confirmed, in its final Declaration, the European perspective for the SAP countries and

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<sup>10</sup> At the time of the adoption of the SAP, it was the Federal Republic of Yugoslavia and afterwards the State Union of Serbia and Montenegro instead, whereas now we have two independent countries.

<sup>11</sup> The elections were actually started on 24<sup>th</sup> September 2000 but finished with a huge strike before the Federal Parliament in Belgrade attended by more than 500.000 supporters of the democratic opposition.

<sup>12</sup> Being indicted by the International Tribunal for Crimes committed in the former Yugoslavia in The Hague, Slobodan Milosevic was apprehended and extradited on 28<sup>th</sup> June 2001.

<sup>13</sup> Chapter V, Heading D, point 67 of the Conclusions of the Presidency of the Santa Maria da Feira European Council, 19-20 June 2000, [http://www.europarl.eu.int/summits/fei1\\_en.htm#](http://www.europarl.eu.int/summits/fei1_en.htm#)

the necessity of regional cooperation.<sup>14</sup> The Annex to this Declaration contains the decision according to which Yugoslavia is to set up a "FRY-EU consultative task force" while the Commission is to work on a feasibility study concerning negotiating directives for a Stabilization and Association Agreement ('SAA'). This was followed by the "FRY-EU Framework Agreement for the Provision of Assistance and Support by the EU to the FRY" which Yugoslavia signed with the President of the European Commission, Romano Prodi at the time, in Belgrade on 25<sup>th</sup> November 2000.<sup>15</sup> As decided at Zagreb Summit, the Consultative Task Force was set up in July 2001.<sup>16</sup>

In order to meet the economic criterion, a whole set of new laws concerning the process of transformation of property relations were brought in 2001.<sup>17</sup> This has initiated the rapid and growing transition process under the auspices of the Privatization Agency which was then established.

The results of the *Thessaloniki European Council* held in Greece from 19-20<sup>th</sup> June 2003 and the Thessaloniki EU-Western Balkans Summit held on 21<sup>st</sup> June 2003 represent a start of the new phase in relations between Serbia and the EU by affirming the full support for the efforts of SAP countries in meeting the conditions for the EU membership. The Council also adopted the "Thessaloniki Agenda for the Western Balkans",<sup>18</sup> a document containing a wide set of tasks for the successful completion of SAP, out of which we should single out the so-called "European Partnership" which is intended to put these tasks into operation.<sup>19</sup>

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<sup>14</sup> The full text of "Declaration of the Zagreb Summit" is available on the following website: <http://www.eudelyug.org/en/documents/24-11-2000-zagreb-declaratione.htm>

<sup>15</sup> This document was ratified on 31<sup>st</sup> March 2003.

<sup>16</sup> The Consultative Task Force format was replaced with the Enhanced Permanent Dialogue format in July 2003.

<sup>17</sup> The most important of these are the Law on Privatization and the Law on the Privatization Agency, both published in Official Gazette of the Republic of Serbia No. 38/2001

<sup>18</sup> For the critical analysis of the Thessaloniki Agenda see more in Van Meurs, W. "The next Europe: South-eastern Europe after Thessaloniki", *South-East Europe Review* No.3, 2003, page 10

<sup>19</sup> European Partnership documents are adjusted to the individual needs of each SAP country i.e. the results it has achieved in the process of the EU approximation. Those documents are based on the assessments contained in the Commission reports.

In the implementation of the decisions of the Thessaloniki Summit, a Joint Declaration on the Political Dialogue was adopted in September 2003. The adoption of the said Declaration, as one of the crucial segments of the "European Partnership", paved the way for the institutionalization of the regular bilateral political dialogue between Serbia and the EU Troika.<sup>20</sup> The dialogue is expected to prepare Serbia for its future participation in the Common Foreign and Security Policy of the EU and to encourage the process of Serbia's faster EU integration.

Since 2002, the European Commission ('Commission') has been publishing annual reports on the results achieved by the countries of the Western Balkans in SAP. The reports referring to Serbia have mostly been positive, which assured the EU of significant effort that being put every year. Following the Third Annual Report, "The European Partnership for Serbia and Montenegro including Kosovo" was adopted at the meeting of the European Council on 14<sup>th</sup> June 2004. At the end of 2004, the Action Plan on the implementation of the short-term priorities contained in the European Partnership was adopted.<sup>21</sup>

Perhaps the most interesting issue is the twin-track approach to SAP adopted in October 2004. The reason for the adoption of this pragmatic solution is the fact that the State Union was lagging behind the other SAP countries of the Western Balkans due to the difficulties in the harmonization of the economic systems of the two State Union member states. This meant that the SAA to be signed with the EU would include two annexes. Thus, the General Part of the SAA would have four areas which were to remain within the competences of the State Union: the political dialogue with the EU, regional cooperation, protection of human and minority rights and conclusion of international agreements other than those related to trade. The areas within the competence of the State Union member states, such as trade, customs,

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<sup>20</sup> EU Troika represents the EU in foreign affairs and consists of the representatives of the member state holding the Presidency of the Council of the European Union, the representatives of the following Presidency and the representatives of the European Commission.

<sup>21</sup> The Action Plan was presented to the Commission in December 2004.

economy, agriculture and justice and home affairs would be dealt with in the annexes.

The next phase of integration was commenced on 12<sup>th</sup> April 2005 when the Commission adopted a positive *Feasibility Report* concerning the preparedness to enter into negotiations on SAA with the EU.<sup>22</sup>

### 3. Status of Kosovo under UN resolution 1244

The NATO bombing of Serbia ended on 10<sup>th</sup> June 1999 by the adoption of UNSC Resolution 1244.<sup>23</sup> This resolution regulates the international status of Kosovo and brings us a number of very important decisions which require a critical analysis so as to find out more about the legal basis for the present situation in Kosovo. It comprises the opening clauses, the operative clauses with SC decisions and two annexes.

To begin with, in its opening clauses, the Resolution confirms that Kosovo is part of Yugoslavia and reaffirms the sovereignty and territorial integrity of the Yugoslav Federation.

Furthermore, in its operative part, the Resolution provides for the deployment of international civil and security presences, which was realized by the establishment of the United Nations Mission in Kosovo ('UNMIK') as the international civil presence and Kosovo Force ('KFOR') led by NATO as the international security presence. But, other organisations are present in Kosovo as well.

Thus, UNMIK has brought together four pillars to implement its mandate:

- Pillar I – Justice and Police led by the UN,<sup>24</sup>
- Pillar II – Civil Administration led by the UN,

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<sup>22</sup> This decision was confirmed by the General Affairs and Foreign Relations Council of the European Union on 25<sup>th</sup> April 2005.

<sup>23</sup> The bombing started on 24<sup>th</sup> March 1999 and lasted for 78 days.

<sup>24</sup> Initially, in the emergency stage, this pillar referred to humanitarian assistance led by the United Nations High Commissioner for Refugees, but with the end of this stage it was transformed to nowadays functions of justice and police.

- Pillar III – Democratization and Institution Building, led by the OSCE, and
- Pillar IV – Reconstruction and Economic Development, led by the EU.

Moreover, the Resolution calls for the establishment of *substantial autonomy* and *meaningful self-administration* for Kosovo by the establishment of the transitional interim institutions. This decision was implemented by UNMIK in May 2001 by the adoption of the new Constitutional Framework of Kosovo. On 28<sup>th</sup> February 2002, this Framework established the following Provisional Institutions for Self-Government ('PISG'):<sup>25</sup>

- President,
- Prime Minister,
- Government,
- Assembly,
- Courts, and
- Ombudsman.<sup>26</sup>

In addition to this, the Resolution demands two following actions:

- Withdrawal of all Yugoslav military, police and paramilitary forces after which only an agreed number of military and police personnel will return to perform certain activities.<sup>27</sup> The details of withdrawal have been laid down in the Military Technical Agreement signed with KFOR.

- Demilitarization of the Kosovo Liberation Army ('KLA') and other armed Kosovo Albanian groups.

The Resolution also stresses the necessity of full cooperation with the International Criminal Tribunal for the former Yugoslavia ('ICTY'), which we will address later on in the paper.

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<sup>25</sup> The seats of these institutions are in Pristina, the capital of Kosovo.

<sup>26</sup> We should note that both the President and Prime Minister of Kosovo are of Albanian nationality, that the collective bodies consist of delegates of mostly Albanian nationality as well, that there is no involvement of Serbian authorities in the administration of Kosovo, that finally both KFOR and PISG are under UNMIK control, and that these might be seen as an encroachment on the sovereignty of the Republic of Serbia and the misapplication of the imperative of *meaningful* self-administration as foreseen in the Resolution.

<sup>27</sup> Clause 6, Annex II UNSC Resolution 1244

Besides, it is essential for a clear image of the situation in Kosovo to note that UNMIK is issuing special identity cards and travel documents which serve as passports in countries which accept to recognise them as such and that even a Constitutional Framework has been passed by the Kosovo Assembly. Even more serious is the fact that Serbs cannot go to Kosovo freely since their safety cannot be guaranteed despite the presence of KFOR.

Finally, Kosovo is recognized internationally as part of Serbia. The international community is reluctant to see Kosovo become independent, since its independence without Serbia's consent would violate international law principles of territorial integrity and non-interference in internal affairs.

#### **4. Kosovo in the EU**

Although part of Serbia, Kosovo is frequently referred to separately but this is only because it is under UN administration in accordance with the mentioned UNSC Resolution 1244, not because it has a separate EU perspective.

First of all, as an administrative part of UNMIK Pillar IV, the Office of European Integration has been established as a facilitator between the PISG, UNMIK and the Commission. The main field of action of this Office is the provision of support for the SAP in order to ensure that UNMIK and the PISG follow EU-compatible practices in the political, economic and sectoral reform process. To achieve these ends, on 6<sup>th</sup> November 2002, the Commission commenced the so-called "Stabilisation and Association Process Tracking Mechanism". This mechanism constitutes a parallel track to the EU's regular SAP and is intended to help the authorities in Kosovo to prepare for reinforced policy-making relations within the framework of the SAP.

As one of the first steps towards EU integration of Kosovo within Serbia, we shall single out a document named "*Standards for Kosovo*" ('Standards'). The Standards have been drafted by the Kosovo government and UNMIK after the endorsement of UN and EU. They were published on

10<sup>th</sup> December 2003. The Standards represent eight areas in which Kosovo needs to make progress in order to be able to start negotiations on its final status as a prerequisite for EU integration. These areas are as follows:

- 1) Functioning democratic institutions,
- 2) Rule of law,
- 3) Freedom of movement,
- 4) Sustainable returns and right of communities and their members,
- 5) Competitive market economy,
- 6) Property rights enforcement,
- 7) Dialogue between the officials of Serbia and Kosovo, and
- 8) Kosovo Protection Corps.<sup>28</sup>

However, meeting these standards is not an easy task without the cooperation of all ethnic groups and authorities within the province. The most tragic event, with the paralysing effect on the process of development of Kosovo, was the outburst of violence over Serbs and other non-Albanians, which happened on 17-18<sup>th</sup> March 2004. During this tragic event around 30 people were killed, several hundreds wounded, more than 4000 Serbs have been exiled from Kosovo, 35 Serbian churches and monasteries have been destroyed or damaged. It led to a "Resolution on Kosovo and Metohija" passed by the Serbian Parliament on 26<sup>th</sup> March 2004 pursuant to which it passed the "Plan for the political solution to the situation in Kosovo and Metohija" in which decentralization of Kosovo and more efficient institutional protection of Serbs and other non-Albanians is requested.

After the settlement of this conflict, full attention was paid to the fulfilment of the Standards by adopting the "Kosovo Standards Implementation Plan" on 31<sup>st</sup> March 2004 as a detailed plan of actions needed to meet the Standards.

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<sup>28</sup> According to the Constitutional Framework, the KPC is a "a civilian emergency organization, which carries out in Kosovo rapid disaster response tasks for public safety in times of emergency and humanitarian assistance" and it should represent the entire population of Kosovo.

On 14<sup>th</sup> June 2004 the European Council adopted the “European Partnership for Serbia and Montenegro including Kosovo” pursuant to UN resolution 1244. This confirms the statement that Serbia and Kosovo have a common way to the EU. The PISG have proposed an “Action Plan for the Implementation of the European Partnership” on 25<sup>th</sup> February 2005 and this document forms the current working basis between the EU and the Kosovo authorities.

On 20<sup>th</sup> April 2005 the Commission adopted the Communication on Kosovo named “A European Future for Kosovo”, a document in which the Commission highlights its contribution to Kosovo’s European perspective.<sup>29</sup> It emphasizes that the long-term goal to be achieved in Kosovo is a secure, stable and multiethnic society in which there is respect for democratic principles, human rights, protection of minorities, rule of law, economic reform and the values on which the EU is founded.

At last, significant progress of Kosovo is evident and the UN has confirmed it by allowing the new phase of Kosovo’s EU integration to begin.

### III CONCLUSION

#### 1. Future of Kosovo – recent events

The most crucial question of EU integration of Kosovo and Serbia is the resolution of the final status of Kosovo. It was only on 24<sup>th</sup> October 2005 that the UN Security Council endorsed the beginning of these negotiations, for which purpose Marti Ahtisaari, the former Finnish President, was appointed the Special Envoy of the UN Secretary General. Serbian Prime Minister Kostunica stated, in his speech in the UN, that Serbia is fully prepared to assume its share of responsibility in the process of resolving the Kosovo issue, in accordance with the fundamental principles of international law and the

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<sup>29</sup> This document is available on the following website:  
[http://europa.eu.int/comm/enlargement/docs/pdf/COMM\\_PDF\\_COM\\_2005\\_0156\\_F\\_EN\\_ACTE.pdf](http://europa.eu.int/comm/enlargement/docs/pdf/COMM_PDF_COM_2005_0156_F_EN_ACTE.pdf)

democratic values of the contemporary world. He stressed that, within this general framework, Serbia favours a compromise solution and is willing to ensure substantial autonomy for Kosovo as part of Serbia, which was all implemented in the 2006 Draft Constitution.

To sum up, legally Kosovo was and remains to be part of Serbia within which it shall pursue its European aspirations. On the other hand, de facto, Serbia has a low level of prerogatives of state powers in Kosovo. This means that the final resolution of the status of the Serbian southern province will be reached in political and diplomatic fora in which all interested parties have to be fully involved.

## **2. Prospects of EU membership of Serbia**

Pending the resolution of the status of Kosovo, Serbia continues its efforts on its way to the EU. Thus, on 24<sup>th</sup> October 2005, Serbian Deputy Prime Minister Miroljub Labus at the time started the talks with the representatives of the Commission in Brussels on the preparations for the beginning of negotiations on the conclusion of SAA with the EU. These talks have so far resulted in the agreement on the most parts of the SAA, whereas these talks have several times been called off due to the inefficiency of the state organs to fulfil the requirement of extradition of indictees to the ICTY. When the time will be ripe, the future SAA will encompass all three EU pillars (European Communities, Common Foreign and Security Policy and Police and Judicial Cooperation in Criminal Matters).

Following the conclusion of the SAA, Serbia will enter a new stage in its EU integration in which it will go through the following three phases:

- Application for the Candidate status,
- Negotiations of the full membership, and
- Signing of the Accession Agreement.

However, before these steps can be taken, there still are a number of conditions to be met and they can summarily be outlined as following:

- 1) Full cooperation with ICTY,<sup>30</sup>
- 2) Resolution of the final status of Kosovo, and
- 3) Legal, administrative and economic reforms.

In the end, we shall conclude that Serbia still has to go a long way in joining the EU. Some informal discussions led and their results indicate the year 2013 as the possible date of Serbia's accession. Anyhow, the invisible hand of future will make its moves and will unveil the secret of the time to come, but until then, we shall all do our best to contribute to the development of Serbia so as to accelerate the process of the, so warmly expected, EU integration.

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<sup>30</sup> The present situation is that Serbian authorities are still trying to apprehend and extradite the former military General Ratko Mladic.

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<http://www.eudelyug.org/en/documents/24-11-2000-zagreb-declaratione.htm> , accessed on 26<sup>th</sup> October 2005

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