



European Security and Defence Assembly
Assembly of Western European Union

DOCUMENT A/2066

16 June 2010

FIFTY-EIGHTH SESSION

The EU and the western Balkans

REPORT

submitted on behalf of the Political Committee
by Piero Fassino, Chairman and Rapporteur (Italy, Socialist Group)

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Report transmitted to: the President of the Council of WEU; the Secretary-General of the WEU; the President of the Council of the European Union; the High Representative of the Union for Foreign Affairs and Security Policy; the President of the European Commission; the EU Commissioner for institutional relations and communication strategy; the Presidents/Speakers and the Chairmen of the Foreign Affairs, Defence and European Affairs Committees of the 39 national parliaments represented in the Assembly; the Presidents of the Parliamentary Assembly of the Council of Europe, the NATO Parliamentary Assembly, the OSCE Parliamentary Assembly, the Baltic Assembly, the Nordic Council, the Parliamentary Assembly of the Black Sea Economic Cooperation, the CIS Parliamentary Assembly; the President of the European Parliament; the Secretaries General of the Parliamentary Assemblies of the Council of Europe, NATO and the OSCE.

*The EU and the western Balkans***REPORT¹**

*submitted on behalf of the Political Committee
by Piero Fassino, Chairman and Rapporteur (Italy, Socialist Group)*

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¹ Adopted by the Committee on 18 May 2010.

RECOMMENDATION 856²
on the EU and the western Balkans

The Assembly,

(i) Considering that:

- 15 years have passed since the signature of the Dayton Peace Accords and 10 years since NATO's military intervention in Kosovo;*
- over this period peace, stability and security have been guaranteed to the whole region as a result of the military and political commitment of the international community;
- the new states to emerge from the Yugoslav Federation have consolidated their democratic institutions;
- notwithstanding, there are still disputes which expose the region to new risks of tension and the resurgence of nationalism;
- full integration of those states into the Euro-Atlantic institutions is essential to promote the definitive stabilisation of the region;

(ii) Considering that:

- with the Thessaloniki Agenda (2003) the European Union promoted a stabilisation and association process, the ultimate aim of which is integration of the western Balkan states into the EU;
- the European Council has repeatedly stated its desire to integrate the western Balkans into the EU and that this was recently reaffirmed by High Representative Catherine Ashton;
- Slovenia is already an EU member which is participating in major European policy achievements, including the eurozone and the Schengen area;
- accession negotiations with Croatia have now entered their final phase and may be concluded before the end of 2010;
- Stabilisation and Association Agreements have entered into force with Albania, Croatia, the former Yugoslav Republic of Macedonia and Montenegro;
- the European Council Ministers during their meeting on 14 June 2010 agreed to submit the Stabilisation and Association Agreement with Serbia to their parliaments for ratification;
- such an agreement has also been signed with Bosnia and Herzegovina but the conditions for its entry into force have not yet been fulfilled;
- Albania, the former Yugoslav Republic of Macedonia, Montenegro and Serbia have applied for EU membership and expressed their willingness to open negotiations;
- the European Union plays a central role in the stabilisation of Bosnia, with its Althea mission, the EU police mission and the EU Special Representative, who is also in charge of the Office of the High Representative;

² Adopted by the Assembly on 16 June at the 2nd sitting.

* Throughout this text, all reference to Kosovo, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

- with the EULEX mission, the European Union plays a central role in the process of stabilisation and capacity building in Kosovo;
 - KFOR, to which there is a considerable European contribution, plays a role in creating and maintaining a secure environment;
 - the European Union has also appointed Special Representatives for the former Yugoslav Republic of Macedonia and Kosovo in order to contribute actively to state building and political stabilisation;
 - the European Union has granted Serbia, Montenegro and the former Yugoslav Republic of Macedonia preferential treatment and has lifted visa obligations in order to facilitate mobility between those countries and the European Union;
- (iii) Considering that:
- most of the western Balkan countries have repeatedly expressed the desire to join NATO;
 - some of them have signed the Partnership for Peace;
 - some Balkan countries contribute to NATO missions in Afghanistan as well as to several CSDP missions;
 - Albania and Croatia participate as associates, and Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro and Serbia as partners in the parliamentary Assembly of Western European Union/European Security and Defence Assembly, through their parliamentary delegations;
 - the inclusion of western Balkan countries in NATO and EU security policies would provide a contribution to stability and security and a bulwark against the occurrence of conflict in the region;
- (iv) Considering that in order to encourage the process of European integration it is essential to arrive at a peaceful solution to the disputes and conflicts between the countries of the region and even within them;
- (v) Welcoming the favourable outcome of the referendum held by Slovenia on the issue of maritime borders with Croatia – an issue to which it is now possible to bring a solution that is satisfactory to both parties;
- (vi) Reaffirming the full validity of the Dayton Agreement and of the state and territorial integrity of Bosnia and Herzegovina, and the urgency of strengthening its state structures, and calling on Croatia and Serbia, the signatories of the agreement, to contribute consistently towards achieving those objectives;
- (vii) Encouraging the former Yugoslav Republic of Macedonia to continue implementation of the Ohrid agreements;
- (viii) Urging the leaders of Bosnia and Herzegovina to implement the constitutional reforms that are necessary for the entry into force of the Stabilisation and Association Agreement which should give that state the increased competences it requires for active participation in the EU accession process;
- (ix) Urging the governments of Greece and the former Yugoslav Republic of Macedonia to accelerate the negotiations that should lead to a mutually acceptable solution regarding the official name of the latter;
- (x) Calling on the authorities in Serbia and institutions in Kosovo to resume bilateral talks aimed at finding an amicable solution to problems of common interest to them and respect the rule of law and the rights of all communities;
- (xi) Stressing that the institutions in Kosovo must guarantee the rights of the Serb minority as well as respect for the Orthodox Church and its religious structures;

- (xii)* Calling on political forces in Albania to overcome mutual prejudice and adopt behaviour making possible a fully functioning parliamentary system, with a majority and an opposition;
- (xiii)* Stressing the value of the declaration of the Serbian Parliament on the Srebrenica massacre and encouraging all countries to make such public demonstrations of reconciliation;
- (xiv)* Urging the authorities of the countries in the region to cooperate with the International Criminal Tribunal for the former Yugoslavia to bring to justice those guilty of horrendous crimes against humanity;
- (xv)* Reaffirming the value of multi-ethnic, multicultural, multi-religious society and calling on all states in the region to adapt their legislations to the essential principles of full civil rights and freedom of expression for members of all communities, irrespective of their cultural, religious, ethnic and national identities;
- (xvi)* Calling on countries in the region to promote and encourage the return of refugees to their lands;
- (xvii)* Stressing the urgency of ensuring an environment of security and legality in the region, of opposing all forms of crime and illegal trafficking; stressing also the need for regional governments to act decisively in this direction;
- (xviii)* Considering it essential for the countries of the region to implement economic reform and calling on the international financial institutions to provide the necessary support;
- (xix)* Considering the stabilisation activities conducted through the EULEX, EUFOR Althea, EUPM and UNMIK missions to be highly valuable and calling on the governments of the region to provide all additional support that may be required;
- (xx)* Welcoming the declared intention of all the Balkan states to join the EU and achieve political convergence with the *acquis communautaire* on the basis of the Copenhagen criteria;
- (xxi)* Stressing the importance of strengthening all regional cooperation institutions – the Central European Initiative, the Adriatic-Ionian Initiative (AII), the Danube Cooperation Process (DCP), the Central European Free Trade Agreement (CEFTA), the Southeast European Cooperation Process (SEECF) – useful in overcoming conflict and creating conditions favorable to European integration proper;
- (xxii)* Confirming its commitment to intensify cooperation with the national parliaments of western Balkan countries;
- (xxiii)* Recalling the strategic interest in integrating the western Balkan countries into the European Union so as to ensure stability, peace and security in the region and throughout Europe,

RECOMMENDS THAT THE COUNCIL INVITE THE WESTERN EUROPEAN UNION MEMBER STATES, AS MEMBERS OF THE EUROPEAN UNION TO:

1. Ask the EU Council to conclude the negotiations with Croatia, now in their final phase, by the end of the year and set the date of accession as soon as possible;
2. Urge the European Council to decide on the commencement of negotiations with the former Yugoslav Republic of Macedonia, taking full account of the conclusions of the EU General Affairs Council of 7 and 8 December 2009;
3. Ask the European Commission to conclude rapidly the formalities for granting candidate status to Serbia, Montenegro and Albania;
4. Call on the EU to extend to Bosnia and Herzegovina and Albania preferential treatment regarding visas and free movement of people;
5. Stress the importance of the EU conference on the western Balkans, held in Sarajevo on 2 June 2010, and that of its final declaration, and reaffirm that the European integration of the western Balkans is a strategic priority for the EU;

6. Invite the EU to define as soon as possible a road map for the integration of the western Balkans into the European structures, setting out the stages of the process, with conditional benchmarks, and a firm and verifiable timetable;
7. Ask NATO and the European defence institutions to give a favourable response to the Balkan countries' aspirations for integration.
8. Support the work of the EULEX, EUFOR Althea, EUPM and UNMIK missions, as well as that of the High Representatives, and provide them with all the necessary assistance and resources.

EXPLANATORY MEMORANDUM

submitted by Piero Fassino, Chairman and Rapporteur (Italy, Socialist Group)

I. Introduction

1. Following the dissolution of the Federation of Yugoslavia and the creation of newly independent states, the countries of the western Balkans have undergone radical change and transition over the past two decades. After the years of war and instability following the fall of the Berlin Wall, a period of uncertainty ensued, with some countries of the region looking to the West for their future and some to the East, while others looked inwards, aiming to become regional powers. Today the majority of these countries have set their sights on achieving integration into the Euro-Atlantic structures.

2. No one can doubt that the EU's role and influence in the western Balkans during the past decade has been determinant. There can be a stable future for the region provided that the right action is taken and the right choices are made. Indeed, the region is no longer at war, there is growing political stability and ethnic tensions are gradually being eliminated largely through international efforts. Progress towards economic stability was also being made until the global financial crisis hit the region. All the countries of the region have signed Stabilisation and Association Agreements (SAA) with the EU and all have applied for accession to the EU. The EU is at last opening up its borders to Balkan citizens by means of visa liberalisation schemes. One western Balkan country is an EU member and three belong to NATO, while a number of other states are either well on their way to EU accession or are comfortably taking their first steps towards Euro-Atlantic integration.

3. Despite the undeniable progress, challenges remain to be tackled before it can be claimed that the western Balkans is completely stable. Most importantly, the failures of the recent past must become lessons learned. For the moment, despite countless efforts, bilateral disputes persist and political and ethnic tensions have not been entirely eliminated, whilst organised crime and corruption continue at unacceptable levels in the region as a whole. Furthermore history teaches us that unless this region is clearly and firmly anchored within Europe, all the international community's efforts to stabilise the region could be called into question. And European integration is the only option in order to guarantee stability, peace and security in the western Balkans.

4. At present, relations between the EU and the western Balkans take place mainly within the framework of the Stabilisation and Association Process which was established in 1999 with the objective of helping these countries in their transition towards stable democracies based on a market economy, with the ultimate goal of full integration into the EU.³

5. This report examines the EU's role in the western Balkans as well as the challenges still facing the region at present as it endeavours to distance itself from its sombre past and follow the same path that its western neighbours have taken.

6. The report examines, in particular, the Union's current action in the region, focusing mainly on the EU missions and operations in Kosovo and in Bosnia and Herzegovina (BiH), but also on the development and aid programmes designed to shape and guide the western Balkan countries so that they can become members of the "club". It addresses the current bilateral disputes between Greece and the former Yugoslav Republic of Macedonia and between Slovenia and Croatia and examines the tense relations between Serbia and Kosovo. Particular attention is paid to the political and ethnic situation in BiH that currently poses the most delicate challenge for the western Balkans and the international community and which, if not dealt with in an appropriate way, could potentially unravel everything achieved in the region to date. Finally, the report examines the European integration prospects of the countries of this region.

³ The current state of play in this process is as follows: SAA with Albania entered into force on 1 April 2009; SAA with BiH was signed on 16 June 2008; SAA with Croatia came into force on 1 February 2005; no SAA with Kosovo; SAA with the former Yugoslav Republic of Macedonia entered into force on 1 April 2004; SAA with Montenegro entered into force on 1 May 2010; SAA with Serbia was signed on 29 April 2008.

II. Principles and procedures for enlargement

7. In principle, any country wishing to accede to the EU must meet the criteria set in Copenhagen in 1993. However, developments in the EU since then have led a number of member states to plead for stricter application of the rules than was the case in the 2004 and 2007 enlargement rounds. Officially, the Copenhagen criteria are still valid in their original formulation:

“Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate’s ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union”.⁴

8. Reference to those conditions was again made by the Council in June 2003 when it adopted the “Thessaloniki Agenda for the Western Balkans”⁵ which clearly stated that “the future of the Western Balkans is within the EU”.⁶ However, the 2004 and the 2007 enlargement rounds and subsequent “enlargement fatigue” in some member states, along with the debate on institutional reform that resulted in the Lisbon Treaty, gave rise to serious criticism of the handling of the criteria.⁷ Acting upon the experience with the eastern enlargement, the European Council, while confirming the Copenhagen criteria, adopted a new approach in which it declared explicitly that future accession negotiations were to be considered “an open-ended process, the outcome of which cannot be guaranteed beforehand”.⁸ Furthermore, for new candidate countries, a negotiating framework would be created, establishing an overview of the negotiation chapters, which would include clear benchmarks as guidelines. On the eve of the accession of Romania and Bulgaria, the European Council adopted some improvements with regard to accession negotiations, including an intention to “refrain from setting any target dates for accession until the negotiations are close to completion”.⁹

III. Croatia’s path to the EU

9. The past year has wrought major changes in the political situation in Croatia. Following the unexpected resignation of Prime Minister Ivo Sanader in July 2009, Jadranka Kosor became Croatia’s first female prime minister. Both are members of the Croatian Democratic Union (HDZ). Presidential elections were held in December 2009, followed by a second round in January 2010. The centre-left opposition Social Democratic Party of Croatia candidate, Ivo Josipovic, was elected president on 10 January, with 60.2% of the vote,¹⁰ and inaugurated on 18 February. Although the Croatian Presidency is largely a ceremonial post, it is hoped that Mr Josipovic will encourage better relations between the ruling coalition, led by the Christian Democrats, and his own Social Democrat Party which is currently in opposition. Both the government and president have defined the fight against corruption as their first priority, in view of the various indications from the EU that the functioning of the judicial system is an area in which Croatia must make further progress.

10. Mr Josipovic’s election also offered Croatia a further opportunity to improve cooperation with the ICTY. Indeed, in December 2004 the European Council had made full cooperation by Croatia with the ICTY a precondition for the opening of accession negotiations. On the date set for the start of

⁴ <http://www.consilium.europa.eu>

⁵ This document was drafted by the European Commission in order to support the preparation of the western Balkan countries for future integration into the European structures.

⁶ European Council, Presidency Conclusions, Brussels, 20 and 21 March 2003. <http://www.consilium.europa.eu>

⁷ A remarkable development in this regard is the French decision to include in its Constitution a provision that France can only ratify the accession treaty of a new member state after a referendum (Article 88-5 of the French Constitution).

⁸ European Council, Presidency Conclusions, Brussels, 16 and 17 December 2004. <http://www.consilium.europa.eu>

⁹ European Council, Presidency Conclusions, Brussels, 14 and 15 December 2006.

<http://www.consilium.europa.eu>

¹⁰ <http://www.izbori.hr>

negotiations, however, there was no unanimity within the Council on proceeding to this next phase: the condition of full cooperation had not been met, the main problem – according to certain EU member states – being the insufficient effort on the part of the Croatian authorities to secure the arrest and transfer to The Hague of General Ante Gotovino. The then ICTY Chief Prosecutor Carla Del Ponte gave an assessment of Croatia's cooperation, which she deemed insufficient, leading to a postponement of the accession negotiations. A new assessment in October 2005 deemed that there was full cooperation, whereupon the Council decided to start negotiations. The opening of the judicial chapter (chapter 23) of the accession negotiations was initially blocked by the Netherlands on the grounds that Croatia's results in this area were insufficient. In February, however, the Dutch Ministry of Foreign Affairs lifted its veto. Given the many indications from the EU that the functioning of the judicial system is one of the remaining issues in which Croatia still need to advance considerably; this chapter is likely to be the most difficult one.

11. The efforts of the ICTY, combined with a more cooperative attitude on the part of the Croatian authorities, led in December 2005 to General Ante Gotovino's arrest in the Canary Islands. However, the Office of the Prosecutor complains that from 2007 onwards Croatia has failed to hand over key documents needed for the trial, in particular the military documents said to explain the intentions behind Operation Storm in 1995, in which the Croatian army defeated Serbian forces in Krajina.¹¹ There are suspicions that this operation had not only strategic aims but was also for the purpose of carrying out ethnic cleansing in Krajina. Croatia's inability thus far to locate and hand over these important documents was mentioned in the European Commission's latest progress report in October 2009 – although it was also acknowledged that in general Croatia continued to cooperate with the ICTY.

12. In the presentation of his report to the UN Security Council on 13 November 2009, ICTY Prosecutor Serge Brammertz again underlines the urgency of finding these documents, since the trial is nearing completion. On several occasions Prime Minister Kosor has insisted that Croatia currently considers cooperation with the ICTY of the utmost priority and that her country continuously reports to the Chief Prosecutor in an effort to be as cooperative as possible. Mr Brammertz's next report is expected in May 2010.

Border dispute

13. At the time of the last ESDA report on the Balkans the key issue in relation to Croatia was its border dispute with Slovenia. In Recommendation 838 of June 2009 the Assembly called on the member states to “encourage Slovenia and Croatia to find a mutually acceptable solution to their border dispute on the basis of the Enlargement Commissioner's recent recommendations in order to allow EU accession negotiations with Croatia to be resumed”.¹² The recommendation by the then Enlargement Commissioner, Olli Rehn (who is now the Commissioner for Economic and Monetary Affairs), to which the report refers was for the creation of a five-judge arbitration committee to make a final determination of the land and sea borders.

14. Between December 2008 and June 2009, the European Commission tried to encourage the countries to find a breakthrough and put an end to Slovenia's continuing to block the opening of new chapters of the accession negotiations. During the Czech EU Presidency in the first half of 2009 no new chapters were opened, due mainly to Slovenian objections.

15. In June 2009, the European Commission stepped aside from the discussions, with Commissioner Rehn stating that: “After six months of intensive efforts, and after having consumed even the injury time, it is now up to the two neighbouring countries to talk to each other and find a solution”.¹³ During the press conference at which he presented the programme of the incoming

¹¹ ICTY annual report 2009.

¹² Recommendation 838, 3 June 2009, Document 2039.

¹³ European Commission, Olli Rehn, EU Commissioner for Enlargement, Opening of photo exhibition “Zagreb”, SPEECH/09/307, 23 June 2009. <http://europa.eu>

Swedish Presidency, Swedish Foreign Affairs Minister Carl Bildt said that it was not the EU's responsibility but that of the countries concerned to take action to resolve the stalemate.¹⁴

16. However, during the course of the Swedish Presidency of the EU, important steps were taken by the countries themselves. At a meeting in Ljubljana on 11 September 2009, Croatian Prime Minister Jadranka Kosor and her Slovenian counterpart Borut Pahor reached an agreement that paved the way for the settlement of the bilateral border dispute. Following that major step forward Slovenia lifted its veto on the opening of 11 new chapters in the accession negotiations. This breakthrough was set out in a formal arbitration agreement signed on 4 November in Stockholm by Prime Ministers Kosor and Pahor and by Swedish Prime Minister Fredrik Reinfeldt, on behalf of the EU Presidency. The agreement provides for the establishment of an arbitration tribunal with the task of determining the two countries' land and maritime borders and Slovenia's access to the high sea.

17. Croatia ratified the agreement on 20 November 2009. In Slovenia, the political opposition pleaded successfully for a ruling by the Constitutional Court on the constitutionality of the document before ratification went ahead. The Constitutional Court gave its opinion in March 2010, declaring the agreement to be in accordance with the Slovenian Constitution, after which parliament put ratification to the vote. However, the opposition boycotted the vote and pressed for a referendum. This was expected to be held on 6 June 2010. If the result goes against the arbitration agreement, this might delay the implementation of any proposal by the arbitration commission.

18. Initially it seemed that the border dispute would affect Croatia's accession not only to the EU, but also to NATO. Although Croatia had received the go-ahead to join the Alliance at the Bucharest summit in April 2008, it took the Croatian Parliament until 27 March 2009 to ratify the decision. One Slovenian opposition party (the Slovenian People's Party or SNN) had threatened to call for a referendum on the subject, but failed to collect enough signatures. Croatia was therefore able to accede to the Alliance at the Strasbourg-Kehl Summit on 3-4 April 2009.

19. Although Slovenia has lifted its veto on most chapters of the EU accession negotiations, it continues to veto opening that on foreign, security and defence policy. It withdrew its objection to opening the chapters on fisheries and the environment in the margins of the informal European Council meeting on 11 February. As of 24 April, Croatia had opened 30 of 35 chapters, and 18 had been provisionally closed.¹⁵

20. The progress in the negotiations was accompanied by support in the form of a "financial package", adopted by the Commission on 29 October, estimating, for several community sectors, the financial aid that Croatia would be entitled to upon its accession, with an accession date foreseen for 2012. In its October 2009 Enlargement Strategy, the European Commission had recommended setting up a technical working group to draft the Accession Treaty for Croatia. This group started work in December 2009.

21. In the light of the progress report contained in the October 2009 Enlargement Strategy the European Parliament, at its February 2010 plenary session, adopted a resolution on the status of Croatia's accession preparations, expressing the hope of seeing the negotiations completed in 2010 and acknowledging that Croatia had achieved a good degree of alignment with the *acquis communautaire*.¹⁶ The General Affairs Council concluded in December 2009 that the negotiations were "entering their final phase"¹⁷ and this was endorsed by the European Council in its December 2009 Presidency Conclusions.¹⁸

¹⁴ Council of the European Union, Programme of the future Swedish Presidency – presentation to the press, 22 June 2009. <http://video.consilium.europa.eu>

¹⁵ <http://www.eu-pregovori.hr>

¹⁶ European Parliament Resolution of 10 February 2010 on the 2009 progress report on Croatia.

¹⁷ Press Release, 2984th Council meeting, General Affairs, 7 December 2009, 17217/09 (Presse 370).

¹⁸ European Council Presidency Conclusions, Brussels, 10-11 December 2009. <http://www.consilium.europa.eu>

22. Moreover, in March, the then Belgian Prime Minister Yves Leterme expressed the hope of seeing the accession negotiations successfully completed under the Belgian Presidency during the second half of 2010.¹⁹ He made it clear that Belgium would encourage such an outcome.

The ICJ and Croatian and Serbian genocide claims and counterclaims

23. In addition to its bilateral dispute with Slovenia, Croatia also faces difficulties in its relations with Serbia. Since 1999, the International Court of Justice (ICJ) has been working on a case filed by Croatia condemning Serbian aggression against Croats between 1991 and 1995. Croatia alleges that Serbia's behaviour was in violation of the Genocide Convention and is claiming "reparations for damages to persons and property, as well as to the Croatian economy and environment".²⁰

24. Only weeks after submitting its application for EU membership, Serbia announced it would file a counter-memorial to the ICJ, requesting the Court to rule that Croatia had committed genocide during Operation Storm. This was submitted by the Serbian authorities on 4 January 2010. Croat-Serb relations came under further pressure as a result of statements made in early 2010 by outgoing President Stjepan Mesic to the effect that Croatia would intervene militarily if Republika Srpska decided to break away from Bosnia and Herzegovina. A third source of tension was Mr Mesic's decision to reduce the jail sentence of a convicted war criminal.²¹ President Jospovic's election gave hopes of improved relations with Serbia.

25. Nonetheless, Serbian President Boris Tadic made clear from the outset that he hoped it would be possible to find a political solution to the two countries' differences that would enable Serbia to withdraw its counter-memorial. The Croatian and Serbian presidents met twice in March: first in Croatia, at a meeting that was kept secret until the day before, then during a conference on EU-US relations. The first meeting brought about a major breakthrough, with the two prime ministers examining the possibility of an out-of-court settlement. At later meetings in April the two prime ministers discussed the shape that such a settlement might take. The importance the political leaders currently attribute to the matter raises hopes for a solution, with withdrawal of the complaints as the best option.

Croatian participation in EU missions

26. In addition to its participation in several UN- and NATO-led operations, Croatia has also become involved in several EU missions in the CSDP framework. Following its agreements with the EU, it was accepted as a contributor state to EU operations, and has made small contributions of personnel to EUFOR Tchad/RCA, EUPOL Afghanistan, EULEX Kosovo and EU NAVFOR Atalanta off Somalia. Moreover, Croatia is currently preparing to join the EU battlegroups in the second half of 2012.

IV. The situation in Albania

27. Since the parliamentary elections of 28 June 2009, Albania has found itself in a political crisis. These were the first elections to be conducted under the new electoral code, with a new system for generating voter lists. Another important issue that had been addressed before the elections was the introduction of a new ID card, giving citizens without passports the right to vote. The election campaign had been polarised. The elections were monitored by an OSCE Election Observation Mission which found that "these elections did not fully realize Albania's potential to adhere to the highest standards of democratic elections",²² in particular because of irregularities in the counting of votes. Four days after the elections there was still no result, and when the results were eventually announced publicly, they turned out to be extremely close. Sali Berisha's Democratic Party of Albania (PD) won 68 out of a total of 140 seats, while Edi Rama's Socialist Party (PS) won 65.²³ In September

¹⁹ Press Release, Croatian Mission to the EU, 11 March 2010.

²⁰ Application instituting proceedings filed with the Registry of the Court on 2 July 1999. <http://www.icj-cij.org>

²¹ Balkan Insight, "Tadic, Jospovic meet today...", 24 March 2010.

²² OSCE/ODIHR Election Observation Mission, Final Report, Republic of Albania, Parliamentary Elections, 28 June 2009. <http://www.osce.org>

²³ Keesing's Record of World Events 2009.

the new government was formed with Sali Berisha as Prime Minister and Ilir Meta of the Socialist Movement for Integration, a coalition partner of the Democrats, as Foreign Affairs Minister. However, the opposition, led by Edi Rama of the Socialist Party, continued to contest the election results and decided to boycott all parliamentary activity. The opposition is calling for a recount of the vote before it will return to parliament. The mediation efforts by President Bamir Topi and the Council of Europe have so far proved fruitless. Before his first visit to Albania in March 2010, where he was to meet the main political leaders, including opposition leader Edi Rama, the new EU Enlargement Commissioner, Stefan Fuele, called for cooperation between the coalition and the opposition. At a party meeting in early April, Mr Rama called a series of protests which culminated in a demonstration on 30 April. The demonstration indeed brought together tens of thousands of participants, but did nothing to change the situation.

28. As for the other western Balkan countries, Albania's status as a potential EU candidate was confirmed at the Thessaloniki European Council in June 2003. Since then, its relations with the EU have been strengthened, inter alia by the signing of a Stabilisation and Association Agreement (SAA) in June 2006, followed in December 2006 by the entry into force of an Interim Agreement providing for trade cooperation. Once the Interim Agreement had brought the Albanian economy closer to that of the EU as a whole, with the EU accounting in 2007 for almost 75% of Albania's total trade, the Council decided to allow implementation of the SAA, which entered into force on 1 April 2009.

29. Following this important development, Albania submitted its application for EU membership to the Czech Presidency on 28 April 2009, a step criticised by the Albanian opposition as an electoral ploy given that parliamentary elections were to take place on 28 June 2009. The Commission had in fact recommended that the Albanian Government postpone its application until after the elections. Because of the objection from the opposition, the Council was unable to address Albania's application during the Czech Presidency. During the Swedish Presidency that followed, the Council took the next step, which was to invite the Commission to submit an opinion on Albania's application. The Commission received Albania's response to a questionnaire comprising 2 883 questions on 14 April, which it will use for drafting its opinion, including whether or not to recommend granting Albania the status of candidate country. After the handover to Mr Berisha, Enlargement Commissioner Stefan Fuele said that the Commission would certainly bear in mind the functioning of the Parliament, which he felt "does not comply with EU standards and democratic institutions".²⁴

30. The confirmation at the 2003 Thessaloniki Council of Albania's future membership prospects opened the way for the EU to include Albania in the CFSP. Albania was thus able to make a contribution to the military missions in Chad and Bosnia and Herzegovina (EUFOR Althea).

31. As regards NATO, Albania occupied an important position for NATO operations in the former Yugoslav Republic of Macedonia and Kosovo. The result was that it developed good relations with the Alliance and the United States in particular. It was allowed to start accession talks as from April 2008. Since by that time it was already linked to NATO by a Membership Action Plan and could count on strong support from the United States, those talks led relatively quickly and smoothly to the signing of an accession protocol in July 2008. Albania officially joined the Alliance in April 2009. It takes part in ISAF (with a troop contribution varying between 140 and 245 military personnel).

32. Aside from the problems for the functioning of its parliament caused by the opposition boycott, Albania faces many serious rule-of-law issues. In its progress report released in October 2009 the European Commission emphasised the importance of full parliamentary scrutiny being exercised over the executive branch, which was not yet the case. This was especially important in view of the control formerly exerted by the government over theoretically "independent" institutions, including the judiciary. Other important conclusions of the report related to the need to implement legislation to combat corruption and organised crime. Albania was in 95th place in the ranking of Transparency International's Corruption Perception Index 2009 and the European Commission also pointed to organised crime as an issue of serious concern.

²⁴ Balkan Insight, 15 April 2010.

V. The situation in Bosnia and Herzegovina

33. The most decisive question for the future of Bosnia and Herzegovina is to determine when the political situation has improved sufficiently to allow the international community to proceed to the closure of the Office of the High Representative (OHR) and hand over its powers to the EU Special Representative (EUSR). For the moment the BiH authorities are in a very unfavourable situation and are far from ready to take on the responsibility of running the state by themselves, in application of the Dayton peace agreements adopted in 1995. The political situation, far from improving, rather has deteriorated further since the previous report adopted by the Assembly during its June 2009 plenary session.

34. The OHR/EUSR reports on a regular basis to the United Nations Security Council. In his report of 12 November 2009 Valentine Inzko briefed the Security Council on developments in the period from May to October. He drew attention in particular to the “ongoing attacks against State institutions (...) mainly by the Government of the Republika Srpska, as well as continued challenges to the authority of the High Representative” and described a climate of “increasingly divisive rhetoric”.²⁵

35. In January 2010 Mr Inzko made the following remarks to the western Balkans working group of the European Parliament’s Foreign Affairs Committee: “In the last four years Bosnia has been in a political stalemate ... not a single new reform has been adopted that would give the state increased competences needed for active participation in the EU accession process”.²⁶ A month later, the EU Foreign Affairs Council extended Mr Inzko’s mandate until 31 August 2010.

36. As long as the OHR continues to function, BiH lacks a major prerequisite for a functioning state: the ability to govern with full sovereignty. This is why the Peace Implementation Council (PIC, responsible for ensuring implementation of the Dayton Peace Agreements) has been aiming for the closure of the OHR at the earliest possible date in order to hand over its main executive powers to the BiH authorities and transfer some of its international responsibilities to the EUSR. The OHR was established as an ad hoc body, while the EUSR is meant to have a more institutionalised but less influential position in a multilateral context. Furthermore, a handover of the OHR’s international responsibilities to the EUSR would be in accordance with the role that the EU wants to play in the Balkans and with Bosnia and Herzegovina’s EU integration prospects.

37. In February 2008 the PIC formulated five objectives and two conditions (5+2)²⁷ for the closure of the OHR and decided to extend the mandate of the OHR indefinitely until such time as those benchmarks had been fulfilled. The OHR’s mandate is much more powerful than that of the EUSR. The so-called Bonn powers allow the High Representative to take the lead in decision-making whenever the local leaders obstruct the Dayton Peace Accord, in the most extreme cases by imposing laws or dismissing officials. Although the Bonn powers have been used sparingly by Mr Inzko and his predecessor Miroslav Lajčák, the closure of the OHR would deprive the international community of much of its influence on political developments in the country. The developments in BiH in the period from December to February showed that the Bonn powers were still required as a political instrument for ensuring the unity of the state and stability. It is therefore highly desirable that the OHR should only be closed when the political situation allows the BiH Government to fulfil the full range of its tasks.

²⁵ United Nations Security Council, report from the High Representative, S/2009/588, 12 November 2009.

²⁶ Balkan Insight, “Inzko Calls on EU to Maintain Focus on Bosnia”, 27 January 2010.

²⁷ The five objectives are the following: acceptable and sustainable resolution of the issue of apportionment of property between state and other levels of government; acceptable and sustainable resolution of defence property; completion of the Brcko Final Award; fiscal sustainability; entrenchment of the rule of law. In addition to those objectives, the following two conditions have been set: signing of the SAA (completed 16 June 2008) and a positive assessment of the situation in BiH by the PIC Steering Board based on full compliance with the Dayton Peace Agreement. For an evaluation of the state of affairs regarding the 5+2 conditions, see Communiqué of the Steering Board of the Peace Implementation Council, Office of the High Representative, 25 February 2010.

38. Unfortunately, however, political stability has deteriorated over recent months. In particular, Republica Srpska's efforts since May 2009 to undermine the legitimacy and powers of the OHR are placing the country's stability at risk. In order to meet the conditions set for the closure of the OHR, radical constitutional reforms are required, but the leaders of the different communities have thus far been unable to reach agreement. In October 2009 the EU and the United States jointly organised two rounds of high-level discussions at Camp Butmir (headquarters of the international peacekeeping mission) with a view to meeting the criteria for the closure of the OHR. The leaders of Bosnia's Entities refused to accept the proposals for a better functioning state presented at Camp Butmir by US Deputy Secretary of State Jim Steinberg and Swedish Foreign Minister Carl Bildt. The Bosnian Serbs rejected the proposal as they considered the reforms too drastic, while the Bosnian Muslims and Bosnian Croats felt they did not go far enough.

39. That fruitless round of talks was followed in April by a new EU-US initiative to bring the parties closer together, which also failed. It involved a visit by the Spanish Foreign Minister Miguel Angel Moratinos and Mr Steinberg, aimed at the adoption of a renewed declaration by the Bosnian leaders to confirm their commitment to Euro-Atlantic integration.

40. The political struggle that took place over the election of a new mayor in Mostar is a local example of the stalemate in the reform process and at the same time underlines the need for institutional reforms. After the elections in October 2008, the city council was unable to elect a new mayor for 14 months because of the ethnic division of the city. As a result the city was left in an almost ungovernable state and it proved impossible to adopt the municipal budget, causing an extreme delay in the disbursement of salaries to civil servants. Using the Bonn powers, the High Representative decided on 14 December 2009 to change the voting procedure, after which the Bosnian Croat Ljubo Beslic was elected mayor. Following this long-awaited step forward, Mr Inzko announced on 18 March that the local Office of the High Representative in Mostar would be closed at the end of June 2010. He emphasised that the international community was not in a position to manage the city as the population wished, and that elected officials had to assume their responsibilities.²⁸

ICTY, war crimes and consequences

41. Once BiH regains full sovereignty after the closure of the OHR, progress towards EU membership should be one of the authorities' main priorities. In addition to the Copenhagen Criteria, the EU has defined full cooperation with the ICTY as an essential condition for accession. Overall, according to the European Commission's 2009 progress report, Bosnia's cooperation with the ICTY last year was deemed satisfactory. This was confirmed by ICTY Chief Prosecutor Brammertz during his December 2009 briefing to the United Nations Security Council, but he also expressed concern about the possible departure of international staff working for the Bosnian authorities' special war crimes department. If they were unable to continue their work due to the lack of political will on the part of the Bosnian leaders to renew their mandate, this could jeopardise the ongoing trials and war crimes investigations: their mandates were due to expire at the end of 2009. The Peace Implementation Council endorsed those concerns and decided unanimously that the HR must intervene, in view of the state parliament's inability to reach a decision on extending the mandates. On 14 December therefore, Mr Inzko ordered the mandates of the international judges and prosecutors to be extended until the end of 2012.²⁹ However, that decision did not extend the mandate of the international staff working on organised crime and corruption.

42. Those events were used by the Bosnian Serb leaders to further legitimise their opposition to the OHR, with Prime Minister Dodik calling the presence of international staff in the Bosnian judiciary "unconstitutional". With the start of the campaign for the October general elections, the political parties once again adopted a hard line, focusing on ethnic differences. In a meeting with the OSCE Parliamentary Assembly at the end of March, Mr Inzko referred to a "concerted campaign from

²⁸ Statements by HR/EUSR Valentin Inzko at a press conference in Mostar, Press Office, Office of the High Representative, 18 March 2010.

²⁹ There are 12 international judges and six judges from BiH in the War Crimes Chamber, while there are eight national and five international prosecutors working in the State Prosecutor's Office, EUISS Chaillot Paper 116, pp. 93-94.

some politicians to increase inflammatory and nationalistic rhetoric at the expense of much needed reform in this election year”.³⁰ A clear example of this type of political behaviour was the reaction of the Republika Srpska regional parliament, which, on 10 February, submitted a draft law on the organisation of referendums. With that law in force Republika Srpska could hold a referendum giving people the opportunity to vote in favour of secession from the BiH Federation. Initially the Bosniak representatives requested that the referendum law be dismissed by the Republika Srpska’s constitutional court, but within a few weeks, the court endorsed the law. In its policy briefing of November 2009 the International Crisis Group deemed the chances of secession by the Republika Srpska to be unrealistic, as it would lose its extensive autonomy if it were to execute such controversial legislation. Other reasons why a breakaway was not considered realistic were the lack of support from Russia and Serbia and the division of the Republika Srpska into two areas, with the Brcko district as a border zone. However, the Republika Srpska leaders did not seem very impressed by those arguments. Prime Minister Dodik planned to call a referendum in the spring, in which the population would be given the possibility of rejecting the HR’s decision to extend the mandate of the international staff.

43. Another example of the hardening rhetoric of electoral propaganda was the instruction by the entity’s leaders in April, only weeks after the adoption by Serbia of the “Srebrenica resolution” (described in paragraph 50 below), to the Republika Srpska War Crimes Research Centre to reinvestigate the events in Srebrenica in July 1995 and question especially the number of victims of the genocide.

44. However, the Bosnian Serb authorities are not the only ones taking an increasingly hard line. Recent months have seen a growing desire among Bosnian Croats for a higher level of autonomy, amounting almost to a desire to form a third entity outside the Dayton-guaranteed Bosnian-Croat Federation. Bosnian Serb and Bosnian Croat intentions of breaking out of the constitutional framework are not, however, supported by either Croatia or Serbia. The Presidents of Serbia and Croatia at their first meeting after Mr Josipovic’s inauguration stressed that the integrity of BiH must not be called into question. Serbian President Tadic said that everything agreed upon between the three nations in BiH was acceptable to Croatia and Serbia.³¹

45. A second major issue in recent months in connection with post-war reconciliation and relations with the ICTY has been the trial of Radovan Karadzic. Karadzic was arrested and extradited in July 2008 and his trial commenced in October 2009. For the purpose of his defence, he requested a long list of documents from all kinds of authorities in the Balkans and called 409 witnesses. The Bosnian Government did not send a representative to the February hearing, organised by the ICTY, in order to question Bosnia and Herzegovina and five other countries about their reasons for not giving Mr Karadzic the requested documents. Among them are documents referring to the number of dead in the Srebrenica area. The ICTY has since asked Bosnia, through the Bosnian Embassy in The Hague, to clarify its reasons for not attending.

46. It is expected that the election campaign will hold up any major reforms until October. Meanwhile, the economic crisis – which has affected BiH severely – requires the government to take radical decisions immediately, in particular concerning the introduction of measures to reduce significantly the levels of income support to war veterans. (Welfare benefits account for 40% of the budget of the Muslim-Croat federation, and are also high for Republika Srpska).³² A 1.2 billion euro loan sought from the IMF has been made contingent upon such a reduction, but the final decision remains a very sensitive issue. Although any reduction in the benefits awarded to veterans would mean losing public support, the need for such measures is very great and the influence brought to bear by the World Bank and the International Monetary Fund could bring the parties in government together on that issue.

³⁰ OHR press releases, 24 March 2010.

³¹ Balkan Insight, “Tadic, Josipovic announce new phase...”, 25 March 2010.

³² El País, “La herencia de la Guerra todavía ahoga a Bosnia”, 10 March 2010.

VI. Serbia and Kosovo, progress in a climate of strained relations

47. The 2008 elections confirmed Serbia's desire for a more pro-western orientation, above all because the consequences of the 1998 war were gradually becoming a more distant memory. Both the presidential elections (in January and February) and the May legislative elections after the fall of the government, following the declaration of independence of Kosovo, resulted in a victory for the For a European Serbia party. This paved the way for the installation of a pro-western government for which European integration was a key priority. Those pro-western leanings are embodied in the attitudes of President Boris Tadic, Foreign Affairs Minister Vuk Jeremic and also the Socialist Party of Serbia under its new leader, Ivica Dacic. Notwithstanding their strong support for Serbia's integration into the EU, their views on the future of Kosovo are not compatible with the majority view of the EU member states. Indeed the Serbian Government is still finding it hard to come to terms with the new reality.

EU accession process

48. As for several other western Balkan states, Serbia's potential candidate status was confirmed at the Thessaloniki European Council in 2003. After some years of negotiations, which were blocked from 2006 until 2007 due to Serbia's failure to cooperate fully with the ICTY, a Stabilisation and Association Agreement was signed on 29 April 2008. This was accompanied by an Interim Agreement on trade and trade-related issues. The documents included a number of references to the prerequisite of full cooperation with the ICTY. The SAA had to be ratified by the national parliaments of the EU member states and, at the Netherlands' insistence, the implementation of the Interim Agreement was made contingent upon an EU Council decision confirming Serbia's full cooperation with the ICTY. The Interim Agreement on trade and trade-related issues generally enters into force immediately after the signing of an SAA. Full cooperation by Serbia with the ICTY is a particularly essential criterion as far as the Netherlands is concerned as for many Dutch political parties Serbia's recognition of its role as an aggressor during the 1992-1995 war remains a highly sensitive issue. In particular, the fact that Ratko Mladic, held responsible for the genocide in Srebrenica, remains at large 15 years after the crime explains the Netherlands' strong reluctance to allow the Serbian accession process to be brought forward.

49. The Netherlands has, however, let itself be guided in its evaluation of Serbian cooperation with the ICTY by the reports of the ICTY Chief Prosecutor. In his 13 November report to the UN Security Council, Chief Prosecutor Brammertz said he was "satisfied with the current level of cooperation efforts being made by the authorities of Serbia".³³ In his address at the United Nations Security Council hearing in December, he added that the "most critical aspect of Serbia's cooperation is the need to apprehend the fugitives".³⁴

50. In the light of that opinion the Netherlands deemed new steps in the Serbian integration process to be justified. This change paved the way for the General Affairs Council's decision (on 7 December 2009) to proceed rapidly with the implementation of the Interim Agreement, which Serbia had meanwhile started to apply unilaterally. That agreement, which provides for the establishment of a free trade area between the EU and Serbia, entered into force on 1 February 2010. The Netherlands did not, however, give the green light for the application of the SAA itself, which still remains to be ratified by the national parliaments. The decision to ask the national parliaments to ratify the SAA was postponed for another six months: the Council will thus examine the issue at its first meeting following Mr Brammertz's next report to the Security Council on Serbia's cooperation with ICTY, which will be submitted in the first half of 2010.

51. Aware of the importance of dealing with the past in a manner acceptable to other countries, the Serbian Parliament on 31 March 2010, adopted a resolution condemning "the crime committed against the Bosnian population in Srebrenica in July 1995".³⁵ Additionally, the resolution extended "condolences and apologies to the families of the victims that everything possible had not been done

³³ UNSC, S/2009/589.

³⁴ UNSC, S/PV.6228.

³⁵ Declaration of the National Assembly of the Republic of Serbia Condemning the Crime in Srebrenica.

to prevent the tragedy". The long-awaited declaration followed intense debate in the National Assembly, and was adopted by a very narrow majority (only 127 out of 250 deputies).³⁶

52. Amongst the Bosniak community, the resolution was criticised on the grounds that it did not describe the facts as genocide, and Serbia was suspected of having only adopted it out of self-interest, to further its European aspirations. The President of the "Mothers of Srebrenica" association stated that "if they [the Serbs] really regretted what happened in Srebrenica they would have arrested Mladic".³⁷ Conversely, during the debate in the Serb Parliament, some nationalist politicians referred to Ratko Mladic in the debate as a "Serbian Hero" and questions were raised about the number of victims, underlining the strong polarisation of the reconciliation debate.³⁸ In Serbia and Republika Srpska, many stressed that it was pointless to focus only on war crimes committed by Serbia in Srebrenica, without mentioning the crimes committed against Serbs by other communities.³⁹ Indeed, the day after the resolution was adopted, it was announced that the Speaker of the Serbian Parliament was working on a declaration condemning crimes committed against Serbs in the former Yugoslavia.⁴⁰

Formal application

53. On 22 December, only weeks after the Council's decision to proceed with the Interim Agreement, President Tadic submitted Serbia's official application for membership. He promised that Serbia would do everything in its power to arrest MM Mladic and Hadzic and said that the accession issue should not be linked with the Kosovo question, since Serbia intended to resolve the latter by legal means. In the application document itself Serbia envisaged that its accession to the EU would "contribute to regional stability and strengthening of the area of peace and security in Europe".⁴¹ The step of applying for full membership was strongly backed by Serbian citizens, 71% of whom, according to a survey published in November by the daily newspaper, Blic, would vote in favour of EU accession were there to be a referendum on the subject.⁴²

54. In his first reaction to the application, the then Enlargement Commissioner Olli Rehn said he hoped that the Council would ask the Commission to prepare an opinion on Serbia's membership application within months. However, in a statement appended to the text of its decision to proceed with the Interim Agreement, the Council had implicitly made it clear that this would only happen if Serbia fully complied with its obligations under the Interim Agreement: "a country's satisfactory track-record in implementing its obligations under the Stabilisation and Association Agreements, including trade-related provisions, is an essential element for the EU to consider any membership application".⁴³

55. Compared to neighbouring countries, Serbia takes a different attitude towards Euro-Atlantic integration. 10 years after the NATO bombing of Belgrade during the Kosovo crisis, the people of Serbia are still reluctant to support the country's accession to NATO, while the desire for it to join the EU attracts much the same level of support as in the other western Balkan countries. Leaving aside public opinion, relations between the Serbian Government and the Alliance have improved considerably in recent years. Serbia is planning to open a Permanent Mission to NATO in Brussels in June. The first visit to Belgrade of the Supreme Allied Commander Europe, Admiral James Stavridis, in February 2010 was another important step in this respect.

Kosovo

56. More than 10 years have passed since the UN Security Council adopted Resolution 1244 (1999) allowing the deployment of an international civilian and security presence in Kosovo, to avoid renewed hostilities there, and to provide an interim administration for Kosovo, without determining its

³⁶ The Economist, "Serbia and its neighbours, Patching things up", 3 April 2010.

³⁷ Balkan Insight, "Adoption of Srebrenica Declaration Draws Mixed Reactions", 31 March 2010.

³⁸ International Herald Tribune, "E.U. finds Serbia's apology lacking", 1 April 2010.

³⁹ Balkan Insight, "Mixed Reaction in Serbia, Bosnia to Srebrenica Resolution", 1 April 2010.

⁴⁰ Balkan Insight, "Serbian MPs Discuss Second Resolution", 1 April 2010.

⁴¹ Serbian membership application memorandum. December 2009.

⁴² Bulletin Quotidien Europe No. 10 014, 10 November 2010.

⁴³ 2984th Council meeting, General Affairs, 7 December 2009.

future status. Since 1999, NATO and the UN have been present in Kosovo with their respective KFOR and UNMIK missions.

57. Negotiations to achieve consensus among the parties involved and the international community on the future status of Kosovo failed, leading in the end to the unilateral declaration of independence by the Kosovo authorities on 17 February 2008. Whereas, in the case of BiH, the EU member states remained strongly committed to the principle of territorial integrity, the large majority of them proved supportive of an independent status for Kosovo. So far all but five EU member states have recognised Kosovo as a sovereign state and almost 70 UN states have recognised its independence.

58. Notwithstanding their lack of a common vision on the final status of Kosovo, EU member states have always felt it their collective responsibility to contribute to the future of Kosovo. On several occasions, the EU has confirmed that Kosovo would be included in the group of countries regarded as prospective EU members.⁴⁴ More concretely, the EU undertook to accompany Kosovo in its efforts to acquire the capability to govern itself. To this end, in February 2008, the Council appointed a Special Representative and set up a civilian ESDP (now CSDP) mission, EULEX Kosovo. The EUSR, Pieter Feith, also acts as the International Civilian Representative (ICR) for Kosovo, a function comparable to that of the High Representative in BiH, but at the invitation in this case of the Kosovo authorities. During the planning phase of EULEX, which started in 2006, there was a general expectation that by the end of that year or the beginning of 2007 the future status of Kosovo would have become clear, which would pave the way for the withdrawal of UNMIK and the EU taking over the core of the responsibilities of that mission. As no agreement was reached, there was no consensus in the Security Council to replace UNMIK by an EU-led operation either. Nevertheless, the EU member states decided to go ahead with the mission, shortly before the declaration of independence. Given that context, EULEX had to deal with a highly complicated situation at its launch and because of the dilemma the mission faced, it took until December 2008 to reach initial operational capability.

59. In April 2009, EULEX had arrived at full operational capability (total staff of 2 707), but the real reconfiguration (scaling down) of UNMIK had not advanced sufficiently by then, while the legal framework for both missions remained UNSC Resolution 1244 (1999). EULEX was originally conceived in order to support the state-building process for the situation post-Resolution 1244.

60. From a security point of view, the state of affairs in Kosovo in recent years has been relatively stable, allowing a further reduction of KFOR troops.

61. However, at present, the authorities do not exercise complete control over the country. Although Serbia was forced to make a complete withdrawal of its troops from Kosovo's territory, it still had opportunities to exercise control over areas with a Serb majority. The area north of the river Ibar, including part of the city of Mitrovica, can in fact be considered a Serb-controlled zone. The Serbs have set up parallel structures in that area, and recently held local elections there. The EULEX mission cannot, for example, fulfil the tasks of its mandate in this region, a circumstance acknowledged by EU Special Representative Feith in his address to the Foreign Affairs Committee of the European Parliament on 1 September 2009.

62. To improve its functioning in Northern Kosovo, the EU has set up a special office in Mitrovica known as the "EU House", with the Italian Ambassador to Kosovo, Michael Giffoni, as the EU's Facilitator for the North.

63. Serbia has so far refused to accept full independence for Kosovo. At the same time it is clear that the Kosovars will never again bow to the authority of the Belgrade government. Hence the international community's main objective is to promote an agreement between the two sides. In the final analysis, the rights of the Serb population in northern Kosovo must be guaranteed, as well as respect for the Orthodox Church and its religious structures.

64. Serbia questioned the legitimacy of Kosovo's unilateral declaration of independence before the UN General Assembly, which asked the ICJ for an advisory opinion in October 2008. The Court is

⁴⁴ European Commission, IP/05/450, A European Future for Kosovo, 20 April 2005.

currently deliberating and is due to issue its opinion next November. However, it is unlikely that the ICJ ruling will eventually bring the parties together. The ICJ will give its opinion, which will not be binding, and will probably choose a vague form of words which both parties can interpret differently. Even if the ICJ decided that the declaration of independence was not legitimate, the current political situation leaves no room for backtracking on Kosovo's original decision. The political issues concerning Kosovo's future cannot be solved by legal means. This leaves the political actors as the only ones that can find a solution.

VII. *The situation in the former Yugoslav Republic of Macedonia*

65. A first round of voting in the presidential elections was held on 22 March 2009, followed by a second round on 5 April, resulting in a victory for Gjorgje Ivanov, candidate of the Internal Macedonian Revolutionary Organisation – Democratic Party for Macedonian National Unity (VMRO-DPMNE). OSCE observers reported an improvement on the legislative elections of the year before. Mr Ivanov was sworn in as president on 12 May 2009, replacing Branko Crvenskovski.

66. Although the general situation in the former Yugoslav Republic of Macedonia still falls short of all the targets set by the Copenhagen Criteria,⁴⁵ the main reason why the EU has not yet opened accession negotiations with that country is the bilateral dispute over its name with Greece.

67. The Assembly's previous report on the Balkans referred, in the explanatory memorandum, to the failure to find a mutually acceptable solution to the naming dispute, which led Greece in April 2008 to block the former Yugoslav Republic of Macedonia's accession to NATO.⁴⁶ Notwithstanding the ongoing high-level political and diplomatic efforts to resolve the deadlock, a solution has yet to be found. In November 2008 the former Yugoslav Republic of Macedonia took the case to the ICJ, calling on the Court to declare that the Greek veto was a violation of Greece's commitment under the Interim Agreement "not to object to the application by or the membership of the Party of the Second Part [the former Yugoslav Republic of Macedonia] in international, multilateral and regional organisations and institutions of which the Party of the First Part [Greece] is a member".⁴⁷ Currently, the parties are still in the phase of preparing their pleadings, with 9 June 2010 and 27 October 2010 as the respective deadlines for the written pleadings to be filed.

68. The dispute now also plays a role within the context of EU enlargement. In its Communication to the European Parliament and the Council on the Enlargement Strategy, dated 14 October 2009, the Commission recommended "that negotiations for accession to the European Union should be opened with the former Yugoslav Republic of Macedonia".⁴⁸ The Commission stated in the same document that "maintaining good neighbourly relations, including a negotiated and mutually accepted solution to the name issue, under the auspices of the UN, remains essential".

69. In previous cases such a recommendation by the Commission had always been immediately followed up by a Council decision setting a date for the opening of accession negotiations. In the case of the former Yugoslav Republic of Macedonia, however, no such date was set at the subsequent meetings of the Council. Instead, the Council took note of the recommendation and announced that it would revisit the matter during the next presidency.⁴⁹

70. The incoming Spanish Presidency indicated in its programme of work that Spain would, in the event of accession negotiations being launched, endeavour "to ensure they advance in a sustainable

⁴⁵ The most recent progress report of the European Commission indicated that in many fields legislation is nearing EU standards, but that implementation needs to be guaranteed. The latest development – heavily disputed by member states, MEPs and NGOs – was the adoption of a new anti-discrimination law in April 2010, which, not having been harmonised with EU legislation, failed to include sexual orientation as grounds for discrimination.

⁴⁶ See Document 2039 adopted on 3 June 2009: "ESDP and the future of the western Balkans – reply to the annual report of the Council", report submitted on behalf of the Political Committee by Pedro Agramunt Font de Mora, Rapporteur (Spain, Federated Group).

⁴⁷ Art. 11, Interim Agreement.

⁴⁸ COM (2009)533, Conclusions and Recommendations, point 8.

⁴⁹ Press Release 2984th Council meeting, General Affairs, 7 December 2009.

and steady fashion”.⁵⁰ It appears then that Spain was not planning to take the lead in calling for the opening of negotiations. On the other hand, the European Commission foresees the need to find a breakthrough during the course of this presidency, now that following its recommendation to open negotiations the naming dispute has been addressed at prime-ministerial level for the first time. Indeed, if these delegations at the highest level are unable to reach agreement during the UN-mediated talks, then the situation will revert to a stalemate, further delaying the EU accession process.

71. During the European Parliament plenary session in February, the Parliament adopted a resolution on the aforementioned 2009 progress report in which it called “on the Council to confirm the Commission’s recommendation without further delay at the summit in March 2010”.⁵¹ At subsequent Council meetings, however, the subject was not discussed.

72. The first visit made by the new Enlargement Commissioner, Stefan Fuele, following the inauguration of the new Commission, was to the former Yugoslav Republic of Macedonia. During that visit on 19 February, he expressed his support for the countries’ endeavours to discuss the issue. Mediation talks were to continue the following week under the auspices of the UN mediator in the naming dispute, Matthew Nimetz. The meetings led by Mr Nimetz only deal with the name issue, not with other identity matters. However, there were delays in resuming the talks, posing a threat to a successful outcome before the end of the Spanish Presidency. The EU should in any case urge the parties to arrive at a mutually acceptable solution as soon as possible.

VIII. The situation in Montenegro

73. Montenegro separated, quite smoothly, from Serbia and became a sovereign state on 3 June 2006. The Montenegrin Government led by the Democratic Party of Socialists of Montenegro made EU integration one of its main priorities. Montenegro easily obtained international recognition by the EU member states: even Serbia formally recognised the act of secession, and the new state, within a month. In June 2006, the EU Council reaffirmed that Montenegro’s future lay within the EU. The EU opened a delegation office in Montenegro in November 2007, shortly after the signing of a Stabilisation and Association Agreement (SAA) and an Interim Agreement on trade issues in October of the same year. The Interim Agreement entered into force at the start of 2008 and, as it has now been fully implemented, the SAA itself became valid on 1 May 2010.

74. Parliament’s pro-European stance led in June 2008 to the adoption of a National Programme for Integration into the EU, which was a preparatory step for the application for formal membership that was submitted to the French EU Presidency on 15 December 2008. The European Commission responded by issuing the Montenegrin authorities with a questionnaire in July 2009, the answers to which would serve to assess Montenegro’s readiness to meet its membership commitments. Montenegro completed its answers in December and its additional questions in April, allowing the European Commission to start drafting its opinion on membership. This opinion is expected to be published in the autumn and could lead to Montenegro being granted candidate status.

75. Montenegro held parliamentary elections on 29 March 2009. The elections resulted in a victory for the ruling Coalition for a European Montenegro, the grouping dominated by Prime Minister Milo Djukanovic’s Democratic Party of Socialists (DPS). Mr Djukanovic had called the elections 19 months early, saying that he wanted a new mandate to enact various reforms and bring the country closer to membership of the EU and NATO.⁵² Mr Djukanovic’s new government was sworn in on 10 June 2009.

76. The European Commission’s annual reports on Montenegro highlight the level of corruption and the worrying presence of organised crime.⁵³ In its conclusions to the Enlargement Strategy in October 2009, the Commission underlined the need to pursue the fight against both these phenomena

⁵⁰ Spanish Presidency Programme, p.20.

⁵¹ European Parliament Resolution of 10 February 2010 on the 2009 progress report on the former Yugoslav Republic of Macedonia.

⁵² Keesing’s Record of World Events 2009.

⁵³ European Commission, Montenegro 2009 Progress Report, Document SEC (2009) 1336, Brussels, 14 October 2009.

with determination. Although there has been some progress in setting up anti-corruption bodies, there are concerns about the inadequate implementation of legislation in this field. The Commission also claims that the overall effectiveness of the country's public administration is threatened by corruption and structural weaknesses, as well as a lack of human and financial resources. During a visit to Montenegro in March 2010, Enlargement Commissioner Fuele said that concrete results were necessary in the fight against corruption and organised crime. The ineffectiveness of state institutions in combating organised crime was the reason for the opposition's call for a vote of no confidence in April 2010. However, this was not supported by a majority in parliament.

77. The then Belgian Prime Minister Yves Leterme expressed the view that Montenegro would be in a position to launch accession negotiations by the time negotiations with Croatia had been completed. According to Mr Leterme the EU still has "absorption capacities".⁵⁴

78. In March the EU Council took a decision allowing Montenegro to join EU NAVFOR as a third country. Its inclusion in CSDP missions, albeit with limited numbers of personnel, would be a significant step towards Montenegro's Euro-Atlantic integration. Regarding progress towards NATO membership, Montenegro was invited to participate in the Membership Action Plan in December 2009.

IX. Visa liberalisation for the countries of the western Balkans

79. The 2003 Thessaloniki Agenda established a link between the prospects of visa liberalisation for the western Balkan states and their making progress in the fields of rule of law, combating organised crime and corruption, and migration. All those states (with the exception of Croatia) figured on the "negative list" of countries whose citizens are not allowed to travel to the Schengen area without a visa. In 2007, however, a visa facilitation agreement was concluded with the five countries concerned: Albania, BiH, Serbia, Montenegro and the former Yugoslav Republic of Macedonia. In its Enlargement Strategy, the Commission expressed its intention to move gradually towards visa liberalisation, for which the facilitation agreement and additional dialogue would pave the way. This led to the drawing up of a road map setting out the conditions (relating essentially to document security, illegal immigration, public order and security) for the transfer of countries to the "positive list" of states whose citizens may enter the EU freely.⁵⁵ According to the European Commission's spring 2009 evaluation, the former Yugoslav Republic of Macedonia met all benchmarks, while Serbia and Montenegro were very close to doing so. The Commission therefore proposed in July 2009 that those three countries be transferred to the positive list. It deemed, however, that Albania and BiH needed to take further measures in order to meet the benchmarks. The Commission also proposed that Kosovo, which until then had not been mentioned in either list, be included in the negative list.

80. In November 2009 the European Parliament voted by an overwhelming majority⁵⁶ in favour of amending the proposal in order to allow the proposed visa exemption regime to apply also to Albania and Bosnia and Herzegovina and to enter into force immediately after confirmation by the Commission of those countries' compliance with all the benchmarks.⁵⁷ The Commission did not take that advice, but took note of the Parliament's desire to treat any progress by Albania and BiH as a matter of priority. In the end the Council adopted the Commission proposal, allowing holders of a biometric passport from the former Yugoslav Republic of Macedonia, Montenegro and Serbia to enter the Schengen area without a visa from 19 December 2009 onwards. The visa requirement was upheld for citizens of Kosovo (including holders of Serbian passports issued by the Serbian authorities in Kosovo) and recently the European Commission proposed that the EU visa exemption regime should be extended to cover Albania and BiH. The European Commission's April 2010 assessment on

⁵⁴ Press Release: Croatian Mission to the EU, 11 March 2010.

⁵⁵ European Commission, COM (2009) 366, Proposal for a Council Regulation, amending Regulation (EC) No. 539/2001.

⁵⁶ Adopted by 550 votes to 51, with 37 abstentions.

⁵⁷ European Parliament legislative resolution of 12 November 2009 on the proposal for a Council regulation amending Regulation (EC) No. 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

progress on this issue indicated that both Albania and Bosnia and Herzegovina had met the “majority of benchmarks for the road map”, with illegal immigration now the remaining issue of concern.⁵⁸

X. Conclusions

81. The countries of the western Balkans, the last to fall victim to the series of violent and devastating conflicts that broke out in 1991, are now on the road towards stabilisation and reconciliation. But it is a rough and tortuous road nevertheless.

82. The European Council officially earmarked the countries of the western Balkans as “possible candidates for EU accession” as far back as its meeting in Feira, Portugal, on 19-20 June 2000. It defined the accession strategy at its meeting in Thessaloniki in 2003. Every European Council in the seven years since then has confirmed the EU’s desire to integrate the western Balkans. This objective was again confirmed when, in December 2009, the Spanish, Belgian and Hungarian governments put forward the aims of their respective presidencies for the 18-month period starting in January 2010.

83. These stated that the EU would continue to strengthen the prospects of European integration for the western Balkan states through the Stabilisation and Association Process and the Thessaloniki Agenda, as decided in 2003, and would actively contribute to the stability and prosperity of the region through all the instruments at its disposal. The new High Representative of the Union for Foreign Affairs and Security Policy, Mrs Ashton, has also reaffirmed that objective and the EU conference on the western Balkans held in Sarajevo on 2 June 2010 officially confirmed that European integration of the region was a priority for the EU.

84. The Thessaloniki Agenda proposed a series of initiatives with the aim of supporting and improving the process of European integration, including increased interparliamentary cooperation, partnerships, town-twinning and exchanges and secondment of officials, technical assistance, cooperation in the area of foreign and security policy, participation in EU programmes and cooperation in the fight against organised crime.

85. Stabilisation and Association Agreements have now entered into force with Croatia, the former Yugoslav Republic of Macedonia and Albania; agreements have also been signed with Montenegro, Bosnia and Herzegovina and Serbia, and are in the process of being ratified.

86. It is considered too early as yet to sign an agreement with Kosovo, although it too is concerned by EU accession prospects.

87. The visa waiver for citizens of Serbia, Montenegro and the former Yugoslav Republic of Macedonia – soon to be extended to Albania and Bosnia and Herzegovina – is a significant step towards bringing the western Balkans that little bit closer to the European Union.

88. For all the countries mentioned, organised crime and corruption are probably the most serious problems they have to contend with.

89. The EU is making determined efforts to help all these states along the difficult path of institution-building, but most of the effort will have to come from the countries concerned themselves.

90. In particular, Bosnia and Herzegovina still needs to make considerable progress in order to meet the political criteria set by the EU. The internal political climate is characterised by inflammatory and divisive rhetoric and threats to the efficient functioning of its institutions. The leaders of the different ethnic communities have diverging views on the radical constitutional reforms which are needed to give the central state institutions the increased competences required for active participation in the EU accession process.

91. The other problem in relations between the EU and Bosnia and Herzegovina is the continuing debate over the possible closure of the Office of the High Representative and the handover of its powers to the EU Special Representative. To date, too little progress has been made in meeting the conditions and objectives set by the EU, particularly regarding democracy and the rule of law. There is clearly a political stalemate which will not be resolved easily.

⁵⁸ Balkan Insight, “EU: Bosnia, Albania Need to Work More”, 22 April 2010.

92. The start of accession negotiations by the former Yugoslav Republic of Macedonia remains contingent upon the issue of a new name for the country. It can only be hoped that a solution will be found in the near future. That would be an important step towards further stabilisation.

93. The security situation in Kosovo is stable, but fragile. At present, the authorities do not control the north where the Serbian Government supports parallel structures and where parallel local elections were held by the Serbian minority.

94. On the one hand, the Kosovo authorities should better integrate the different ethnic communities, in particular the Kosovo Serbs, but on the other hand it is also up to the Serbian community in Kosovo and to the Serbian state authorities to establish a more constructive relationship with Kosovo's institutions to enable them to derive maximum advantage from the EULEX mission and benefit from European prospects. In any case it is essential for Belgrade and Pristina to arrive at an agreement and the EU must encourage both parties to achieve that.

95. Serbia is a stable state with a mature political culture and administrative experience. Both the government and the majority of the population have now come round to the view that Serbia's future is as an EU member state. But its membership application can proceed only if the country meets two conditions. It must capture Ratko Mladic, regarded as responsible for the Srebrenica massacre, and Goran Hadzic, the former political leader of the Serbs in Croatia, and deliver both to the ICTY in The Hague. Secondly, Serbia must change its policy towards Kosovo and be prepared to cooperate in finding a lasting solution.

96. In conclusion, it seems fair to say that all the western Balkan countries have made progress towards integration into the European institutions, although there are differences in the level of that progress between the different countries concerned. They must in any event be encouraged to implement all the necessary policies and convergence measures. And each country will be judged on its individual achievements. The EU is determined to help them, but if they want to succeed, they will have to make additional and sustained efforts to meet the EU's benchmarks.

97. At the same time, it is essential for the European Union to issue clear positive signals regarding its real desire to integrate the countries of the western Balkans. The EU conference in Sarajevo sent a clear and encouraging message. To that end it would be most useful for the EU to present a road map at the earliest possible date setting out the timetable and the different stages in the process of integrating the western Balkans.

98. Lasting peace, stability and prosperity can only be achieved through democracy, the rule of law and respect for human rights.

APPENDIX
Map of the Balkans



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