

Negotiating the Balkans: regional approach to a negotiated arrangement for the Balkans on the way to Europe

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NEGOTIATING THE BALKANS

A Regional Approach to a Negotiated Arrangement for the Balkans on the Way to Europe

The following concept for a sustainable arrangement for the Balkans may be characterised as process-oriented, regional as well as non-partisan, but driven by basic principles. The normative element concerns the rules of the negotiation process: A partisan stance or the imposition of a final solution to the open questions would run counter to the regional ownership of the process. In this concept the EU would be the international key actor to impose framework conditions for both the negotiation process and resulting agreements as well as to provide mediation and incentives for constructive and responsible participation in the process. Stabilising a region of *functioning* constitutional states has priority in the process, as the relentless assertion of rights of national self-determination would result in ever-more fragile states striving for European alimentation rather than integration. Last, but not least, the issues are linked in political praxis, even if not in terms of international or constitutional law. Therefore, a comprehensive regional process towards a final arrangement should take precedence over issue-by-issue unilateral decisions or separate bilateral agreements.

Premises

Both the international community and the political leaders of the region are obliged to use the current window of opportunity to negotiate a sustainable arrangement for the Balkans. The Balkan Forum's recommendations for this regional negotiation process are based on six premises:

1. The conflicts of the past decade in the Balkan region have their roots to a large extent in the nature of the disintegration process of the Socialist Federal Republic of Yugoslavia (SFRY), which has been neither controlled nor consolidated. Thus, arrangements dealing with open issues of state-building should have stabilising effects for the region.
2. Since the end of the Kosovo War, several events and developments have created an unprecedented window of opportunity for negotiating long-term stability for the Balkan region as well as for progress on integration in Euro-Atlantic structures. This window of opportunity relates to the decision taken at the Helsinki European Council in December 1999 to open accession negotiations with Romania and Bulgaria; the solemn promise of an EU integration perspective for the countries of the region in the form of a Stabilisation and Association Process; and, last but not least, the change of regime in Zagreb as well as in Belgrade one year later.
3. In the circumstances of the incongruency of states and ethnic nations on the Balkans, an absolute priority for national self-determination is bound to end in a downward spiral of state fragmentation and inter-ethnic violence. Thus,

any future-oriented strategy in a framework of regional stabilisation and European integration will have to consider other, non-ethnic motives and interests.

4. The numerous unresolved issues of the region *are* linked in praxis, the intricacies and ambiguities of international or constitutional law notwithstanding. The linkages depend on political activists' ability to make a credible case for such implications and to mobilise a constituency on this basis. Thus, these linkages are constructed rather than essential, but nevertheless constitute powerful factors of unpredictability and obstruction in regional politics.
5. Irrespective of its final status, Kosovo has to be turned into a *functioning* (i.e., responsible and self-governing) state-entity in the short term, to allow for a process of market-reform and democratisation to take shape. Thus, UNMIK would gradually limit its management to key decisions and supervision, while reducing the *de facto* protectorate status of Kosovo in line with UNSC Res. 1244. Provincial elections (as fixed for November 17, 2001) and a corresponding Constitutional Framework for Provisional Self-Government (as proclaimed on Mai 15, 2001) are prerequisites for a process towards Kosovar self-government.
6. Ultimately, the status of Kosovo and Montenegro belongs to the agenda of the regional negotiation process. Initiating a negotiation process in the short term and creating a perspective for a final arrangement does not conflict with the international consensus on longer, concise interim arrangements. At the same time, the option of independence is not incompatible with international policy if current borders are respected (i.e. upgraded to state borders, but not changed geographically) and if independence is the result of a fair negotiation process.

Negotiating a Regional Arrangement

The lesson of recent Balkan history is that neither an unrelenting implementation of the principle of national self-determination and the ideal of ethnically homogeneous nation-states, nor a dogmatic defence of the status quo of states offers a long-term perspective for regional stability. As long as conflict parties strive uncompromisingly for their preferred solution and insist on a corresponding *finalité* to the nation and state building processes, regional stability will remain a chimera. The plurality of conflicting and incompatible claims – both current and potential – in the region defies any “solution” in a strict sense. Protracted processes of disintegration would be bound to create ever-new claims and revitalise conflict potentials. The only real option is a pragmatic combination of responsive long-term diplomacy and a concise negotiation process. Regional stability as a prerequisite for the realisation of the long-term perspective of integration in Euro-Atlantic institutions has to be based on an “arrangement” rather than a “solution”. Any “arrangement” implies compromises and suboptimal results for all parties involved and requires *a priori* the respect for the legitimacy of other claims and interests. Thus, the involvement of the major democratic political parties in each state and state-like

entity in the negotiations is key to the sustainability of the arrangement, as they implicitly accept responsibility and ownership of the resulting bi- and multilateral agreements.

In a dual sense, a regional approach is the only consistent strategy: The current consensus in the region concerning the priority objective of integration in Euro-Atlantic structures, first and foremost the European Union, implies acceptance of regionality. The regional approach is at the heart of the Stability Pact and informs the EU's Stabilisation and Association Process too. At the same time, the multitude of complex links between the controversial issues of nation and state building – both current and potential – in the region defies any unilateral, bilateral solutions. Thus, in order to prevent the destabilisation of the region by the emergence of ever-new issues and arcane package deals or by irresponsible and uncommitted elites, a comprehensive (both in terms of issues and in terms of political actors involved), regional negotiation process should be initiated.

Domestic Transparency and Responsibility

Any meaningful and effective negotiation process requires equal participation and mandated representatives of all states involved. Depending on the agenda-setting in the pre-negotiation phase, all former republics of the SFRY (including Slovenia) ought to participate or, conversely, Albania should be included from a regional perspective.

In the case of the Federal Republic of Yugoslavia, the basic requirement of equal representation poses a threefold problem:

1. The representatives of Kosovo and Montenegro as non-independent entities would have to accept both the federal and the Serbian governments as negotiating partners. Non-acceptance of either the Yugoslav or the Serbian representation would invalidate the negotiation process. This can only be achieved if all parties publicly confirm that this acceptance for the sake of negotiations does not prejudice any decision on the status issues.
2. The negotiation process also depends on the provincial elections in Kosovo, scheduled for November 17, 2001, and the subsequent installation of a democratic parliament and a provincial government as well as on the proclamation of an Interim Statute defining the competencies of these Kosovar provincial authorities.
3. The Yugoslav and Serbian authorities in Belgrade would have to accept their counterparts in Podgorica and Prishtina equal negotiating parties, but not as independent entities. This can only be achieved if both sides publicly confirm that this acceptance for the sake of negotiations does not prejudice any decision on the unresolved status issues. Consequently, the negotiation process precludes unilateral steps pertaining to the status of Kosovo and Montenegro.

These issues cannot be resolved satisfactorily by a legal approach, as the constitutions in/of the FRY are contradictory and disputed. The Federal Republic of Yugoslavia has lost much of its authority in current state praxis, albeit not its

prerogatives in terms of constitutional rights and international status. Therefore, without prejudicing the outcome of negotiations, the international community has a special commitment towards the FRY in mediating between the parties. Overall, the issue of representations requires political (good)will rather than legal arguments.

Having democratically elected governments of all states and state-like entities represented at the negotiation table as equal partners may not suffice for a robust and durable arrangement. (Radical) changes of government within the window of opportunity and the general exclusion of major opposition parties or ethnic-minority parties concerned would invalidate the results of the negotiations. Some of the issues on the negotiation table and subsequent arrangements are bound to have the status of a referendum issue or constitutional amendment. Thus, preferably, each state or state-like entity would be under the obligation to include all relevant domestic parties in the delegation (with the proviso that each party explicitly rejects violence as a policy instrument, accepts the other delegations as equal negotiating counterparts, and pledges to respect their legitimate interests as a basis for negotiations). One option would be to choose the presidium of the respective parliaments as the appropriate broad democratic basis for a delegation to the negotiations.

Pre-negotiations should clarify the agenda, solve the issue of representations and determine the procedures. Procrastination in the pre-negotiation phase would have to be curbed by the conditionality of international assistance and the political leverage of EU and US to provide positive and negative incentives. Key precondition for opening the actual negotiations is the signing of a formal declaration including the authorisation of the international mediators and a catalogue of binding principles along the following lines: All negotiating parties must

1. ... renounce violence as a instrument of solving political conflicts and pledge to isolate those propagating and using violence to promote their political views.
2. ... refrain from unilateral steps pertaining to the status of Kosovo and Montenegro.
3. ... recognise and respect the (conflicting) interests and positions of the other negotiating parties as equal, legitimate and a basis for negotiations.
4. ... be committed to full co-operation with the International War Crimes Tribunal in The Hague.
5. ... respect the norms of the Helsinki Process and the basic criteria of the Stability Pact and the Stabilisation and Association Process: human and minority rights, inviolability of borders (both international borders and republican/provincial borders within the FRY), reforms towards pluralist democracy and market economy.

The normative preconditions listed above are based on the following consideration: The sum of the preconditions makes for negotiations on the basis

of the regional status quo rather than inviting arcane package deals and the assertion of specific interests in an inextricable process with all options open.

The interest of all parties is in a robust and transparent negotiation process as regional stability contributes to economic development and regional trade co-operation. It also contributes to the strengthening of functioning governments contending with militant nationalists or belligerent rebels.

The Role of the International Community

Regional ownership of the negotiation process does not argue against a key role for the international community. International interference in processes of nation and state building is not an exception, but the rule and, in contrast to 19th and 20th century precedents, the international community should now act as guarantor of regional stability and accepted principles rather than great power interests. The concept of an indigenous, regional negotiation process determines and limits the role of the international community as an external actor. Without forcing any final status solutions in the open-ended negotiation process, the international mediators nevertheless play a key role in setting the framework conditions for the negotiations and providing incentives for a constructive dialogue.

The increased profile of the EU as guarantor of security and stability in the Balkans and the perspective of a long-term integration process preordain the European Union's leading role in the negotiations. The assistance and advantages offered by the Stability Pact and, most of all, the Stabilisation and Association Process towards EU integration constitute key incentives for constructive negotiations. Therefore, the envisioned negotiation process for the region should be institutionally affiliated with the EU as a norm-setting organisation. Democratic representatives, moreover, should have ownership of the regional negotiation process. With the EU as operative lead-organisation in the mediation process, the UN and the International Contact Group with its wider membership would be in the role of guarantors of the negotiation process as international acceptance of the resulting arrangements requires the involvement of the USA, the Russian Federation, the EU and the key European states. A high-profiled negotiator or a small negotiation team of international repute with experience and prestige in the region should be authorised to lead the actual mediation. A mandate by the UNSC, although not an absolute prerequisite, would substantially enhance the authority of the international mediators and the process as a whole. A *regional* negotiation process does not imply *multilateral* negotiations on each issue: Rather, each bilateral dialogue on an issue with implications for the whole region should be transparent to all parties and whenever appropriate, parallel bilateral negotiations should be cross-linked. Transparency is guaranteed by the broad parliamentary basis of each delegation as well as by the international authorisation of negotiated agreements. Confidence-building measures and symbolic gestures at an early stage of may enhance trust in the negotiation process.

Apart from setting the preconditions and framework for negotiations and providing mediation, the international community also contributes incentives and disincentives to bolster the authority of the mediators and to encourage

constructive negotiations. The key challenge is to apply sanctions and incentives for the sake of the negotiation process, not for a partisan position concerning the result of negotiations. This requires a consensus of the international community in advance and close co-ordination during the process.

The sanctions and (dis)incentives available to the international community should be applied in consensus and in conformity with transparent guidelines. Overall, positive incentives in terms of substantial and reliable international assistance under the Stability Pact, IFI credits and progress on the SAP trajectory towards EU membership should be ranked higher than negative sanctions.

Issues Open to Negotiation

The catalogue of negotiable issues consists of three categories: (1) unresolved issues related to the Yugoslav disintegration process of the past ten years; (2) issues directly and inseparable linked to the status questions; and (3) prospective non-status issues related to the processes of regional integration and integration in Euro-Atlantic structures. Evidently, the distinction between status and non-status issues is subjective and may shift during the negotiation process (e.g., confidence-building measures might induce the relevant parties to acknowledge that negotiations/agreements on specific issues do no prejudice status issues). Consequently, other issues belong to the internal affairs (4) of the states/entities involved, but remain open to international supervision or dialogue.

The international community would be party to the various bilateral and multilateral agreements, acting as guarantor and monitor, both in international and internal issues. The negotiation process were to produce basic treaties: internal agreements between majority and minorities of the states as well as external agreements between each state or state-like entity and its neighbours. Minority legislation (and its implementation) would be scrutinised for its adherence to European standards by benchmarking rather than prescription by the international community.

Not to act would leave the field wide open for strategies of violence as well as for secret negotiations and questionable deals with a high potential for destabilisation. Moreover, next to all regional actors have come to accept that the status quo of state structures and sovereignty in the FRY is *de facto* dysfunctional, if not *de jure* defunct. Therefore, the preferred set-up and outcome of negotiations rather than the need for a negotiated rearrangement as such is the matter of dispute.

(1) Issues of Disintegration

The uncontrolled and violent disintegration of the Yugoslav Federation has left a legacy of conflict potentials:

The most basic issue is the legal succession of states with all resulting obligations and rights. This may include access to harbours, natural resources or religious or historic sites. It also concerns the serving international debts and the sharing out of state property and other assets.

One of the most relevant unresolved issues in this category with a high conflict potential is the absence of full border demarcation between the former Yugoslav republics and provinces. Typically, on the premise of the inviolability of borders, border demarcation agreements do not impinge on the status questions as the future status of the respective borders may change irrespective of its demarcation. Demarcation contributes to the elimination of grey zones and the consolidation of stable relations.

In a process of state restructuring, international security guarantees as accompanying measures contribute to the stabilisation of the process. Guarantees would concern not only borders and inter-state conflict, but also other armed threats to the legal order in recognised states and entities. Thus, international security guarantees would release budgetary and human resources absorbed for national and regional reform priorities by reducing security threats.

The return of refugees is a key issue for which case-by-case pragmatic solutions have to be found. Bilateral agreements to support a process of reintegration or a concerted policy of resettlement may both be monitored by neighbouring home-states and/or international organisations such as the OSCE.

(2) Status Issues

Acceptance of the fact that the Yugoslav Federation exists as a state in terms of international law (albeit to a much more limited extent as a functioning state) implies that the issues of the final status of Kosovo and Montenegro are interdependent. A unilateral Montenegrin declaration of independence would mean the end of the Yugoslav Federation and turn the question of the future of Kosovo into a Serbian-Kosovar issue.

The **final status of Montenegro** now becomes a pivotal issue: In the April 2001 elections pro-independence forces won by a small margin, too small a margin for a declaration of independence to become an domestic consensus. Unilateral independence is bound to create regional and internal conflict and instability. Therefore, serious negotiations should be opened on the basis of the two platforms. From a Montenegrin perspective, a federation of two states as unequal as Montenegro and Serbia (without Kosovo) in population and geographic size would be hard to imagine and even harder to implement in a meaningful way.

In the case of **Kosovo's final status** the positions of Belgrade and Prishtina are much more incompatible than in the case of Montenegro. A return to the status quo ante (i.e. 1974) is as unacceptable to any Kosovar leader as full independence would be for Belgrade, while the international community insists on the inviolability of borders and thus rejects exchanges of territories (e.g. Preshevo Valley for the Mitrovica region). Nevertheless, the Montenegrin case might offer a model as the two platforms representing the starting positions and a commitment by each side for negotiations contribute to a constructive and in-depth dialogue. A dialogue on functional divisions of competencies and areas of co-operation might create new options for an arrangement on the issue of sovereignty.

From the perspective of the current status quo, negotiations for a new arrangement for Montenegro and/or Kosovo might realistically probe two different paths. One option would be negotiated separation followed by a negotiated agreement on new forms of delegated sovereignty in a (con)federal or loose framework. Alternatively, a new framework might be agreed upon before the admittedly dysfunctional FRY is dissolved.

In each case the new framework might be considered “work in progress:” The central level of the tripartite framework might start as a consensus of minimal (representative) functions and competencies - not based on the precedent of the FRY. Depending on the interests and consensus of the three sovereign partners, the framework might gradually gain in substance and sustainability. A tripartite framework would be more balanced in terms of relative weights and would be readily accepted by the international community to prevent a new destabilising *va-banque* of nation and state building. Such a “three plus zero” federation might be a robust interim arrangement, allowing for functional states and regional co-operation without prejudicing any option for the final status. Such an arrangement would leave open the options of both a velvet divorce - full independence after a “probation period” - and a gradual, functional strengthening of the shared institutions by consent.

(3) Issues of Integration

The regional consensus prioritising integration in Euro-Atlantic structures should help to convert issues of SFRY disintegration into issues of regional and European integration. A key issue for the Balkans is enhancing co-operation along functional lines in policy areas relevant for regional stabilisation, the transformation process and the fulfilment of EU and NATO criteria.

Stimulating regional trade flows and economic co-operation requires installation of free-trade regimes, harmonisation of legislation and co-ordination among the relevant institutions of states and state-like entities.

Regional co-operation also requires transparent and uniform visa and border regimes. Conversely, co-operation in Justice and Home Affairs with the corresponding harmonisation of procedures and legislation would contribute to EU pre-accession. At the same time, the fight against corruption and organised crime is an absolute priority in view of the socio-economic disparities and conflict potentials in the region.

For a region of at least five small to medium-size states, co-operation in foreign representation as well as foreign-policy co-ordination in relevant international organisations would contribute to an effective use of resources and maximise regional influence on international policy-making. The same applies to regional co-operation in military affairs ranging from army procurement to joint initiatives for peace keeping or crisis management. Foreign policy co-ordination among the states of the region would simulate a future EU membership, as regional co-operation would be the only option for a meaningful say in policy making in a future European Union with 32 or more members.

(4) Internal Affairs

By setting the rules and limits of the negotiations, the international community essentially fixes the line between domestic and international/regional issues. That is to say, legal and other arrangements for ethnic and religious minorities or regions within the borders of each of the seven states and entities of the Western Balkans are within the competence of the democratic regimes of these states and entities and have to be solved within those borders. Thus, the procedures of minority protection, regional decentralisation, language rights or interethnic dialogue are left to the elected parliaments and governments: The quality and implementation of these commitments, however, are subject to international monitoring and scrutiny (e.g. in the framework of the SAP).

This distinction between negotiable and internal affairs, evidently, does not preclude cross-border-co-operation agreements among co-nationals or a special relation of a minority to a neighbouring homeland. Such arrangements are appropriate, but not obligatory for typical cases of a mismatch of nation and state: Serbs and Muslims in Sandzak, Albanians in Northern Macedonia, Serbs in the Republika Srpska, Hungarians in the Vojvodina, Albanians in Preshevo Valley, etc.

Similarly, the *Vergangenheitsbewältigung* – coming to terms with the national and regional past as a process of social catharsis rather than criminal justice – clearly belongs to the national prerogatives. Again, however, a regional dialogue might contribute substantially to the process.

Negotiating the Balkans

As the objective of stability on the Balkans cannot be achieved by the selective application of either the principle of national self-determination or the principle of state sovereignty, regional stability has to be declared the key principle. A regional approach for stabilisation of the Balkans forbids a choice between Albanians and Serbs as stabilising power and (thereby) preferred partner of the international community. Only *functioning* states (in terms of market economy and good governance) can counter nationalist conflicts and erode the trend of state fragmentation along ethnic lines. New dynamic arrangements for competencies and sovereignty would replace the FRY structures.

After a decade of regional conflict and with the long strenuous process towards EU membership ahead, neither regional frameworks alone nor the European framework alone can stabilise the Balkans. The only viable option to achieve progress in building functioning state structures is a robust combination of regional and European integration.

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