

Natan Albahari¹

USING CANDIDACY TO ENTICE FURTHER REFORM

¹ Natan Albahari is the Project Manager of the International and Security Affairs Center (ISAC Fund). The views and opinions expressed in this article are those of the author.

On December 12, 2011, the European Council delayed granting Serbia the status of candidate country until the next meeting of March 2012. This was contrary to the opinion of the European Commission, which had recommended that Serbia be granted candidacy status and even proposed setting a date for the start of accession negotiations if Serbia made further progress regarding Kosovo. Due to specific events which took place between the issuing of the Commission's opinion and the European Council's decision, a unanimous decision on Serbia's candidacy status was not possible. Such a decision is disappointing as Serbia has in fact made considerable progress towards meeting the Copenhagen Criteria, which was recognised by the Commission. This paper will briefly explore why this was a wrong decision within the context of the overall enlargement strategy, particularly within the framework of enticing reform in an aspiring EU state, in this case Serbia.

According to the Treaty on the European Union, any European State may apply to join the Union as long as it respects the principles of liberty, democracy, human rights and fundamental freedoms and the rule of law. Once a State has submitted its application for membership, the European Council needs to decide unanimously, after consulting the Commission, on whether to accept the State as a new member.² This means that it is the Commission which reviews the admissibility of the State involved and provides an opinion to the European Council, but the final decision lies with the European Council, which may or may not heed the opinion of the Commission. For example, when Greece was preparing to join the European Union, the Commission urged caution in its opinion, which was overruled by the European Council.³ Although enlargement policy was overhauled in the 1990s, with much more clear criteria for entry, the final decision for membership still lies with the individual Member States, making accession both a political and a technical process.

In the case of enlargement, the EU uses forms of political and economic conditionality to achieve a desired result, more specifically it imposes the Copenhagen Criteria on those states with a membership perspective, and in return for implementing the desired reforms that the EU considers acceptable, those states receive membership in return. Along the way the EU unlocks certain benefits for aspiring members (such as enhanced pre-accession funding) but the main benefit

² Art. 49, Treaty on the European Union.

³ Ulrich Sedelmeier, "Eastern Enlargement – Towards a European EU?" in Wallace, Wallace and Polack (eds.), *Policy Making in the European Union*, 5th ed. (Oxford: Oxford University Press), 421.

comes only at the end, that of membership and all the rights and privileges which go along with it. This model seems to have worked successfully when it came to the Eastern Enlargement of 2004, in which the Eastern European states saw membership as their ultimate foreign policy goal and accepted the political and economic demands placed on them by the EU to achieve such a goal.⁴

In that regard, one would assume the same enlargement model should be used for Serbia as well. Every time Serbia meets a certain threshold, either in the political or economic field, it should move one step closer to membership. In the case that it fails to meet a certain requirement by a set deadline, its accession progress is slowed or suspended, until such a requirement is met. After all, this method worked well for the Eastern European states and the pressure of compliance would eventually lead to the adoption of the reforms, laws and practices the EU demands. However, Serbia is very much different than the Eastern European states and needs to be treated in the context of its recent (bloody) history as well as the context of the Balkans in general. Therefore it will be argued that Serbia can in fact achieve much more vis-à-vis reforms and the adoption of the *acquis* if its European path is kept open and steadily encouraged. But this should not be taken to mean that Serbia should get some sort of free pass towards membership; on the contrary, the political and economic conditionality which the EU has set out needs to be enforced, but in a manner which will produce positive results and not be counterproductive.

One of the main differences between Serbia and almost all of the other European states which aspired to become members of the European Union, is that Serbia's goal of membership has only recently been entrenched in both the state apparatus and society in general. Serbia does not have a drive towards Europe like many other new members, which came from foreign occupation represented by communism (such as that by the Soviet Union on the Eastern bloc) as the communist system did not represent "hunger, suffering or occupation" in Serbia (Yugoslavia) but rather peace, prosperity and wealth.

Yugoslavia was considered the most economically open of all the communist countries in Europe and its living standards were comparable to even some members of the European Economic Community. And yet after Yugoslavia's collapse and civil war, instead following the path of other former European communist states, which

⁴ Ibid., 412-417.

became democratic and oriented towards the EU, Serbia remained authoritarian and became much more nationalistic and isolated. This further complicates matters as countries which are authoritarian and nationalistic, thus less inclined to liberalism, are much more difficult to convince to conform to conditionality as envisioned for EU enlargement.⁵ Even when Serbia became democratic after the overthrow of the Milosevic government in 2000, much of its political scene was dominated by nationalist political parties, without a clear consensus regarding European integration. In this case, Frank Schimmelfennig argues that there is a “stop and go pattern of norm conformance” of European integration conditions, which can be observed in Serbia for the past decade, but “thanks to lock-in effects, however, which led the nationalist-authoritarian parties to adapt to the requirements of Western integration, reinforcement by reward has eventually been successful.”⁶ In Serbia this process has begun, with the split of the ultra-nationalist opposition (splitting of the Serbian Progressive Party from the Serbian Radical Party) and cementing of democratic institutions, but such progress needs to continue. As Schimmelfennig stated, reinforcement by reward has been a successful model in “combating” nationalist-authoritarian parties, and societies as whole, to turn towards a more acceptable democratic-liberal ideology. Thus, for Serbia this would mean granting it candidacy status and even the date for accession talks, due to the progress made so far as analysed in the Commission’s most recent progress report.⁷

Furthermore, there is also a limit in what the EU can hope to achieve via conditionality at this step of integration. The EU uses various methods and techniques to effect institutional and policy transformation, with the most effective conditionality tool being access to candidate status and negotiations.⁸ In Serbia’s case this can be seen with the amount of laws passed, amended and implemented, as well as taking unpopular steps such as extraditions of suspected war criminals to the Hague Tribunal, all in the past two years trying to get the country ready for candidacy. Yet as

⁵Frank Schimmelfennig, “Strategic Calculation and International Socialization: Membership Incentives, Party Constellations, and Sustained Compliance in Central and Eastern Europe”, *International Organization*, Vol. 59, No. 4, (Autumn, 2005), pp. 827-860.

⁶ Ibid.

⁷ Commission (2011), *Communication from the Commission: Commission Opinion on Serbia’s application for membership of the European Union*, COM (2011) 668 final.

⁸Heather Grabbe, “European Union Conditionality and the ‘Acquis Communautaire’”, *International Political Science Review*, Vol. 23, No. 3, (Jul., 2002), pp. 249-268.

this is a long term process, which for Serbia is expected to last at least until 2018, the demands made of it at this stage must be proportional to that time frame.

The reason for this is that the reward of accession will only occur in a “distant” future while membership benefits are “not disaggregated to reward partial readiness” (the intermediate rewards, such as aid and trade liberalization are minimal); thus, it becomes difficult to use EU membership conditionality “as a scalpel to sculpt individual policies during the accession process” but as Heather Grabbe argues, it is rather a “mallet that can be used only at certain points in the process to enforce a few conditions at a time.”⁹ This “mallet” was applied successfully in Serbia’s accession process when it came to three major fields – cooperation with the Hague Tribunal, regional cooperation, and enhancing democratic institutions. At the same time, none of these conditions required Serbia to change its official policy, because cooperation with the Hague Tribunal was always officially a priority for each government since the democratic changes of 2000, as well as improving relations with neighbours and strengthening the foundations of a democratic state. The EU conditions in Serbia only pressured the governments (at least the pro-European ones) to hasten the reforms undertaken and to eventually meet the necessary criteria.

The problem which now beholds Serbia is that of Kosovo. Serbia’s candidacy, and especially the date for opening accession negotiations, depends on not only concluding successful talks with Kosovo, but taking steps to remove Belgrade’s influence and parallel structures in the Serbian majority area of northern Kosovo. That would require a complete overhaul of Serbia’s current Kosovo policy, including both domestic and foreign policy, as well as changes to the Serbian Constitution, which in the preamble declares Kosovo as an integral part of Serbia. On top of that, to do a complete turnaround of a policy defended by both pro-European and nationalist parties several months before parliamentary elections would be political suicide. This especially holds true because actual membership is so far away and “giving up” on Kosovo to only get candidacy status and open accession negotiations which will last for many years would not make sense to the average voter. Furthermore, as Grabbe states several times in her article, conditionality is not a “precise instrument that ensures complex changes in policy or institutional frameworks; rather it is a blunt

⁹Ibid.

weapon that is used for priority areas only.”¹⁰ Those priority areas (Hague cooperation, regional cooperation, etc.) which the Commission pushed for, have been used up at this stage; Kosovo is a whole different issue over which several wars have been fought and over which many in Serbia would not give up to become members of the EU, let alone only a candidate member. The complexity which surrounds Kosovo cannot be expected by European leaders to be solved under the pressure of “conditionality” and especially not in the span of only several months.

Therefore not granting Serbia candidacy or conditioning the opening of negotiations based on achievements made vis-à-vis Kosovo would be a mistake because the EU would not be able to use its instruments of conditionality to make any more progress than it already has. More harm than good would be caused by withholding candidacy status, especially if Kosovo was the reason behind it. It is important to note here, and as it will be argued further below, that once the next step in the integration process is taken, receiving candidacy and the opening of accession negotiations, the instruments of conditionality will have again a positive effect in terms of reform in Serbia, and can even be used as a way of furthering progress in finding an acceptable solution for Kosovo.

In many instances, the European Commission has noted that Serbia has a strong administrative capacity to carry out reforms, as well as the technical capacity to carry out the needed negotiations with the European Union. For example, during the negotiations of the Stabilization and Association Agreement, the representatives of the Commission stressed that the performance of Serbia in the negotiations “was very near to that of the candidate countries, and even of some of the new members.”¹¹ But the problem with Serbia’s state administration is that it requires direction and motivation, in the sense of clear goals and benchmarks which need to be met in a specified timeframe. That way each ministry and department would know what it would be expected of them and what they specifically need to achieve.

There are two good examples of how Serbia’s administration committed to carrying out reforms once clear goals and requirements were set, with specific benefits laid out. The first concerns the placement of Serbia on the white Schengen list, which allowed Serbian citizens to travel to the Schengen zone without a visa. The

¹⁰Ibid.

¹¹J. Minić, “Reforms, Democratization and European Integration of Serbia”, *International Issues & Slovak Foreign Policy Affairs* Vol. XVI, No. 2/2007, pp. 75 – 92.

European Commission in this instance provided a specific list of measures, laws and procedures (Roadmap for Visa Liberalisation) that needed to be adopted by Serbian institutions which would allow Serbia to be placed on the white Schengen list.¹² The Roadmap was presented in May 2008 to Serbian authorities requesting reforms in the areas of document security, illegal migration, public order and security. The Serbian government, just like with current efforts in seeking candidacy status, established an action plan for visa liberalisation which proved successful as one year later the Commission recommended the placing of Serbia on the white Schengen list, resulting in the abolishment of visas at the start of 2010. By putting forward to the Serbian administration “rewards” which can be quickly realised, such as the liberalisation of visas, the administration then seems to bring about the necessary changes within the specific time limit, which are also demanded by the citizens, and act as further pressure for the government to act. As the European Commission noted, “the experience of visa liberalisation for the Western Balkans shows how much can be achieved by combining rigours conditionality with the delivery of specific benefits, linked to progress towards EU membership.”¹³ And if these specific benefits are attainable, then the administration will work harder in achieving them.

This can also be considered the case regarding candidacy status. Once the Commission submitted to Serbia the list of issues which need to be addressed in order to gain candidacy status, the state apparatus completely switched gears in trying to meet those requirements. The tempo of reform was greatly increased, especially on the technical level, such as departmental readiness and the drafting of various laws and acts. Giving Serbia candidacy status would only accelerate that pace, as all of the work completed so far would be recognised, and the current methodology of reform strengthened. Opening negotiations with Serbia would further entice the state apparatus to pursue what was required of it, especially for the opening and closing of each specific chapter, as a clearly set road would exist between Serbia and the EU. Because the process then becomes more technical and less political, the pace of reform further increases, as the bureaucracy becomes more accustomed in dealing with the EU and the harmonization of some 90,000 regulations, directives and decisions.

¹² *Europa*, “Roadmap on visa free travel opens EU doors to Serbia,” Brussels, May 7, 2008, IP/08/717.

¹³ Commission (2010), *Communication from the Commission: Enlargement Strategy and Main Challenges 2010-2011*, COM (2010) 660 final.

On the other hand, if there was a lack of real progress towards the EU, in the terms of not gaining candidacy status, then it would become “difficult to persuade Serbian institutions to adopt, implement and harmonize with EU norms, legislation and practices.”¹⁴ What would be the point of carrying out reforms, spending political capital and having an overworked civil service, if nothing comes out of it? The enhanced administrative capacities, which have now been much more successful and efficient, would also be endangered both from a technical and political perspective.

Thus, more can be achieved from a technical and reform oriented perspective with candidacy status, and especially with the start of accession negotiations. If there are areas which still need improvement at this stage of integration, then those chapters can be opened at a later date, while those chapters in which Serbia has excelled and made good progress should be quickly opened and closed. That way those segments of the state administration which are slower and less efficient can be encouraged by the progress of their colleagues and resources can be re-deployed to areas which are lagging behind. This would also allow a more transparent view of accession to the Serbian public, which would then precisely know which ministry or party is partly to blame if negotiations are suspended or slowed down, thus exerting more pressure on the entire state administration to be more efficient and adequately paced on the way towards membership.

One last point needs to be made regarding Kosovo and how candidacy (and European integration overall) can help to overcome the current problems which exist today. As regional cooperation is one of the requirements for candidacy, aspiring member states are “forced” to at least develop a working relationship with their neighbours. Because regional cooperation is a key element in the EU’s policy towards the Western Balkans, a great deal of attention is centered around that area. The EU wishes to use the need for regional cooperation as a way to heal old ethnic rivalries and have all the former Yugoslav states come to terms with the past. But this requires states, like Serbia, and her politicians to at times take foreign policy decisions which are not supported by a large number of citizens, such as President Tadić apologising in Croatia and Bosnia about any war crimes committed in Serbia’s name. That is not to say that such acts are not sincere, rather they are encouraged and indirectly pushed by the EU to take place.

¹⁴J. Minić, “Reforms, Democratization and European Integration of Serbia”.

The same is being asked for Kosovo, notwithstanding the dispute regarding its status. Serbia has made progress in starting a dialogue with the government in Kosovo, even though it still does not recognise Kosovo as an independent state. The EU has threatened that candidacy status and the opening on negotiations now depend on how actively Serbia takes part in those discussions and that agreements reached are fully implemented. Yet more can be achieved with candidacy and the opening of accession negotiations than without it for two reasons: the current government's position over Kosovo, that it needs to engage with it through dialogue, will be strengthened; and future governments in Serbia will realise that negotiating with Kosovo will be the only solution possible.

The government's position will be strengthened via public opinion because it will be able to say that by talking with Kosovo's government it has lost very little but helped both Serbs living in Kosovo (stable access of goods from Serbia) and those living in Serbia (moving closer to the EU and receiving benefits of candidacy, especially in terms of pre-accession funding and market liberalisation). The EU will be seen as recognising the difficulties which Serbia faces and that the benefits associated with integration will be forthcoming when Serbia takes courageous steps in the right direction. Thus the government will be able to continue the dialogue and even take more concrete measures, such as accepting the reality that Serbia has lost sovereignty over most of the territory of Kosovo, and start proposing options ranging from partition to special autonomy for the Serbs who live in Kosovo. They will be more willing to accept EU proposals, fully cooperate with EULEX and refrain from any nationalist rhetoric, knowing the EU will keep its word when it comes to integration and at the same time requiring only incremental changes in Serbian policy, keeping history and public opinion in mind. By the time Serbia would be ready to join the EU near the end of the decade, more of its citizens and the ruling elite would be ready to accept the fact that the majority population in Kosovo will never accept the return of Serbian sovereignty over its territory.

It has been argued that the conditionality tool of the European Union has been nearly exhausted at this stage of integration and it is questionable whether any more progress would be made in any of the criteria by denying Serbia candidacy. Halting the integration process could in fact take Serbia backwards, in terms of both the rise in Euro-scepticism and the possibility of anti-European parties coming to power in the next elections. Instead, by granting Serbia candidacy status and setting a date to open

accession negotiations, the EU would encourage a new drive towards European integration, both within the political elite and the state apparatus which they run. This would allow for more rigorous efforts towards the completion of the Copenhagen Criteria, including the necessary reforms and adoption of the remaining EU laws and regulations. With more pre-accession funds available, the increased “pains” of reform would be easier to subdue and with the country firmly oriented towards Europe, more foreign investments would follow, giving a much needed boost for Serbia’s economy and lagging production.

Furthermore, Kosovo would no longer be a “taboo” topic in Serbian politics and society because the progress Serbia makes towards reconciliation and a status solution, albeit slowly, would be recognised as bringing rewards. The Serbian government will be able to state that its policy had been correct and that it has paid off, limiting the possibility of a future government backing away from such commitments and engagement. At the same time the EU would be seen as a more respected and neutral player because it would understand Serbia’s hardship in dealing with Kosovo, and would not require of Serbia to give up too much too fast. This will allow the EU to come out as a trusted facilitator of the dialogue between Serbia and Kosovo, which means an acceptable solution will come about more quickly. And an agreed solution between Kosovo and Serbia means more stability and peace in the Balkans – something the European Union has been trying to accomplish and maintain during the past twenty years.