

FRACTURED ACTORNESS AND ITS UNINTENDED CONSEQUENCES:

THE EU'S KOSOVO POLICY

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Abstract European integration has been a force for good throughout its history. The Union has prevented violent conflict between an ever growing numbers of member states. A slowdown in enlargement has thus potentially serious implications for the EU's ability to address conflicts, both in its neighborhood and beyond. This paper explores the effects of the EU's conflict intervention in Kosovo from 1996 to 2009. We suggest that some of the identity elements that characterize the EU as a "civilian power" have detrimental effects on its capacity to stop secessionist conflicts from escalating and to establish legitimate statehood. Based on an augmented actorness concept, we first argue that Civilian Power norms for humanitarian intervention may induce conflicting parties to escalate, so as to trigger a coherent EU military action. Secondly, we hold that the EU's post-conflict policy is prone to moral hazard as well: the delegation of the EU's state-buildings activities to the Commission in Kosovo resulted not only in inefficient governance structures, but also an intra-EU divide with regard to the recognition of Kosovo's independence. The haphazard nature of the Union's EULEX mission reveals the continued ambivalence in the EU's approach towards conflicts of secession. Thirdly, we find that the EU's approach also contributed to the radicalization of Serbia's Kosovo policy. We conclude that these findings warrant additional research in other cases but also reveal significant barriers to effective EU security governance.

1. Introduction

The emergence of the EU's actorness in conflict prevention and management has been analyzed thoroughly in recent years (Kronenberger/Wouters 2004; Merlingen/Ostraukaite 2006; Hansen 2006; Merlingen 2008; Duke 2009; Blockmans 2008; Asseburg 2009). As of late, this ever growing body of literature has been complemented by several in-depth studies on the effects of specific military and civilian missions both in the Balkans (Emerson 2006; Gross 2007; Krause/Schlotter 2007; Friesendorf/Penska 2008) and beyond (Gegout 2005; Martinelli 2006; Brüne 2007; Justenhoven 2008; Gegout 2009; Kempin/Steinicke 2009). What has been missing from this scholarship thus far are testable competitive theoretical hypotheses on how EU actorness - or the lack thereof - affects conflict prevention and management policies.¹

To begin with, there is dearth multitude of propositions that coherence in EU conflict management is vital for effective policy formulation and implementation (Gauttier 2004; Nutall 2005; Hoffmeister 2008). In addition, the actorness scholarship has gone to great lengths in specifying its various dimensions: value, tactical, procedural and output cohesion (Jupille/Caporaso 1998: 218-220; 224-225). At his time, the conventional wisdom has it that the EU's conflict prevention policy suffers from insufficient cross-pillar coordination and a widening gap between rhetoric and institutional capacities (Stewart 2008: 230, 252; Benner/Bossong 2009: 5). Even worse, so the conventional wisdom continues, conflict prevention is becoming de-civilianized (Whitman 2006), with "institutional impediments" forestalling a "structural conflict prevention policy" (Stewart 2008: 230).

We seek to advance this conventional wisdom in two important ways: first, we suggest the evolution of the EU's conflict prevention policy can only be understood by taking member states' willingness to delegate competences to the Union, and the interaction with the conflicting parties into account. Secondly, we propose that EU conflict prevention and conflict management policies should be seen as a policy continuum on which the former sets the stage for the latter both in terms of internal cross-pillar coordination and external interaction with conflicting and third-parties.

Thus, in the following we put forward a two-step argument based on a modified actorness approach rooted in the comparative analysis of foreign policy identities (Stahl/Harnisch 2009). In a first step, we expand the actorness concept by augmenting it with a causal proposition as to when and to which degree EU actorness in conflict prevention/management

¹ For a brief overview of the literature see: Benner/Bossong 2009.

occurs. We posit that the composition of the EU's actorness is the result of the compatibility and convergence of its member states' foreign policy identities. In a second step, we hold that in the face of conflict abroad, EU member states' identities often converge around a civilian power actorness concept stressing peaceful means and economic incentives to ameliorate violence. Drawing on the emerging literature on the dilemmas of peace-building (Paris/Sisk 2009; Barnett/Zürcher 2009; Zürcher 2010), we hypothesize that the EU's distinct actorness concept sends hazardous signals for conflicting parties, both during and after violent conflict. In conflict prevention, the civilian power actorness concept is likely to trigger military intervention when an inferior conflict party threatens to escalate and thereby sets the stage for a humanitarian crisis. In post-conflict situations, the civilian power actorness is likely to use increased material support to ameliorate violence if one of the parties signals its willingness to use force. In addition, we find that "fractured actorness", a situation in which some conflict management policies such as economic reconstruction are delegated to the Commission while the Council remains split on corresponding political instruments, has detrimental effects on the composition and escalatory potential of conflicting parties. Often times, this internal delegation pattern corresponds with an external delegation in which the EU leaves the initiative to other actors, i.e. the US, thereby undermining its own recognition as a player to be reckoned with.

Hence, the unintended consequences of the Civilian power conflict prevention actorness may be grave and disturbing.² High moral grounds may not only trigger for intervention and foster risk-prone behavior in a moral hazard type situation (Kuperman 2008). High normative standards and engagement in post-conflict situation may also be prone to exploitation (Barnett/Zürcher 2009: 31f.). If state or local elites have learned to instrumentalize third parties in their domestic confrontation, then the civilian power actorness of the EU becomes a liability. By triggering violence or stalling political reconciliation, state or local elites may again extract foreign support to tip the domestic balance of power in their favor. Whether these actors use their expanded resources wisely, i.e. legitimately, is an open question. Recent findings on post-conflict management in Bosnia and Kosovo suggest that more often than not, they do not (Paris/Sisk 2009; Zürcher 2010).

The policy implications of our analysis, however, are not as dire as it may seem. While we find that the EU, which started as a force for good in Kosovo, may end up in a prolonged

² There are several other plausible unintended consequences of EU policies that may undermine its emerging conflict prevention capacity, cf. Lagendijk/Seela 2004.

stabilization mission, we hope that the Union and its member states learn to avoid being dragged into the domestic politics of a post-conflict society. In the Kosovo case, one could argue that the EU, and the international community at large, missed the opportunity to prevent violent conflict from 1991-1996 when Ibrahim Rugova led the non-violent Kosovo resistance movement. After the Dayton Accord, which did not tackle the Kosovo problem in earnest, one could plausibly argue that the recognition of the Federal Republic of Yugoslavia (FRY) in 1996 swayed the inferior Kosovo Liberation Army (KLA) to escalate the violence against the superior Serbian forces, thus engaging in a risky and desperate attempt to enlist external military support (see below).

From an EU perspective, the prolonged stalemate at this stage of the conflict cycle in Kosovo (and Bosnia) may well foster the growing domestic discontent in many EU countries with the high costs of foreign interventions. As a result, while domestic support may allow for continuing “stabilization operations”, it is probably insufficient for the provision of political and economic resources to establish legitimate and sustainable governing structures. Ultimately, EU interventions, as in Kosovo, may succeed. But their unintended consequences could well be that the Civilian power actress concept will be grinded and EU interventions will not be undertaken even though they are necessary.

The remainder of this paper is structured as follows: The first section examines the causal nexus between member states’ identities and the EU’s actorness. We then turn briefly to the period of conflict prevention and intervention (1996-1999), explaining in detail how member states’ identities only allowed for a limited EU actorness, thereby triggering escalating behavior. In the third section, we analyze the EU’s post-conflict management after the UN Security Council resolution 1244. We posit that the delegation of state-building activities to the Commission set the stage for ineffective embryonic Kosovarian governing structures, which in turn prodded the Council towards accepting sovereign statehood. We find that some member states’ identities prevented a common recognition of Kosovo by the EU, which again enables third parties in Kosovo, Serbia and beyond to exploit the identity-based split in EU actorness. The conclusion briefly discusses the theoretical and policy implications of our argument.

2. A causal augmentation of the actorness concept

At the core of the actorness concept lies the social-constructivist assumption that the EU’s capacity to act is not given, but must be constituted by legal and political means. Variance in

actorness stems from variation in the legal *authority* vested in EU institutions by law. Thus, institutionalism, the idea that legally binding commitments shape actor's behavior through cost, benefit and legitimacy consideration, is one of the theoretical foundations of the actorness approach. A second source of variation is *autonomy*. It is defined by the degree of institutional independence or separateness of community institutions vis-à-vis national actors. The underlying assumption here is that these common institutions may exert an independent effect, i.e. propose a common goal, on member states and third parties (Jupille/Caporaso 1998: 217). This characteristic represents the core premise of supranational institutionalism and thus puts autonomy into an uneasy balance with authority and the other actorness drivers when it comes to assigning their relative causal effect.

A third driver deployed by the actorness approach is *recognition*. It is a political and legal category depicting the degree to which external actors recognize the EU de-jure or de-facto as a legitimate 'Other' for interaction. As far as de-facto recognition is concerned this criterion implies that a foreign actor constitutes the EU's actorness (and thus power) by recognizing it as a legitimate partner for interaction. The constitutive effect of this recognition through language or practices roots the actorness concept firmly in the social constructivist camp, because EU agency hinges upon immaterial rather than material factors. Lastly, Jupille and Caporaso interpose cohesion as a mediating category between the other three. It measures the degree to which the norms and goals of member states and common institutions match (norms/goals coherence), the degree to which the actors concur on the relevant rules and procedures of decision-making (procedural coherence), the degree to which the actors agree on tentative common positions despite disagreement over ultimate goals and procedures (tactical coherence), and finally the degree to which actors' eventual policy choices correspond, despite earlier differences (output coherence).

A detailed examination of this criterion shows that the coherence of norms and goals may be read as an attempt to further specify whether authority, choices taken about the delegation of competences in the past, do match current choices about the actual autonomy of common institutions. Also, the procedural coherence criterion acknowledges that the degree of autonomy in the highly institutionalized legal framework of the Union depends largely upon which rules and procedures apply, e.g. whether the Commission can claim that a policy question affects its competences in the common market.

At this time, we will not join the debate over whether this juxtaposition of factors is warranted by the distinct character of the European Union. But in speaking of inference, both causal and constitutive, we propose to augment the actorness concept with an identity

approach. We affirm that an identity approach can augment the actorness concept because national identities delimit the legitimate room for common action in the European Union. As conceptions of self-hood, identities in discourse provide reasons for action in a purposive and justificatory sense (Reus-Smit 1997: 565). In terms of purpose, identities through arguments in discourse provide goals for action, i.e. to save human lives, to end war in Europe proper etc. In terms of justification, identities include reasoning as to which action can be rationalized, i.e. “as Europeans, Italians must do this...” etc. In both sense, identities are prior to interests, as identities define “who the actor actually is”. Identities are thus relational entities, because they always define a “self” vis-à-vis an “other” (Wendt 1992: 398; Diez 2005).

We assert that identities, analyzed properly, may augment the actorness concept in three important ways: first, identities shape member states’ interests as to how far the delegation of competences to the EU is legitimate. As such identities delimit the authority and autonomy of common and intergouvernemental institutions. If, for example, the Council is not vested with the power to recognize a state, de jure or de facto, member states obviously want to retain this power. Secondly, if identities enable or curtail common authority/autonomy, they send strong signals as to what the likely behaviour of member states will be in the future, thus affecting whether and how far external actors recognize the Union or its common institutions as legitimate partners for interaction. Thirdly, we claim that the degree to which member states’ identities converge or are compatible with each other affects the coherence of EU actions.

The identity approach

In interpretive social constructivism, identities provide reasons for action but identities do not cause action (Checkel 2008: 72). In keeping with the premise of democratically accountable actors, identity approaches tell us “how it became possible in societal discourse” that one course of action appeared more plausible, i.e. reasonable and justifiable than another (Barnett 1999: 10). Identities not only help to reduce uncertainty and prevent collective inaction by providing reasons for common action. Identities, in this interpretive sense, may be also reinterpreted and reconstructed as new links are established between past events and possible futures.

To account for stability and change, we maintain that a discourse approach, which depicts several discursive formations in a given identity rather than ideal-type homogeneous

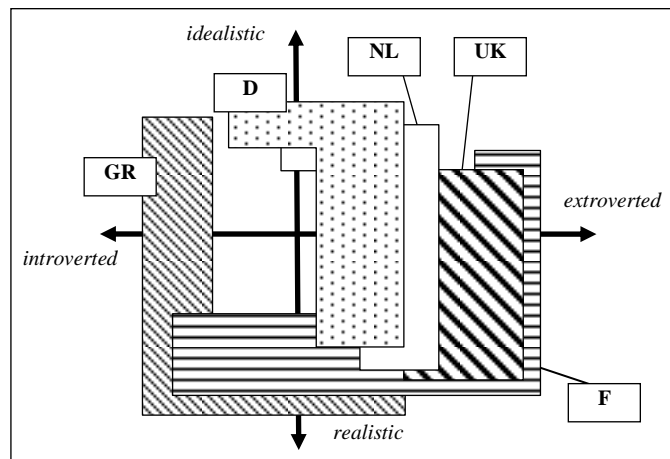
identities, promises considerable theoretical and methodological pay-offs (Larsen 1997: 16-17; Stahl/Harnisch 2009a: 34-40). By identifying discursive formations, i.e. a set of arguments that is rooted in historical experience and held by a group of actors, we allow for several identities to compete for dominance in public discourse, a common feature in most EU member states. By introducing discursive formations, we also provide for the possibility that these discourse formations are not held in accordance with party lines or along an elite-mass split discourse structure. Finally, discourse formations help us to detect new arguments and they help us to identify new linkages between arguments that may legitimize a new course of action.

To be sure, by analyzing how five member states' identities shaped their respective Kosovo policies within and beyond the European Union, we cannot claim to fully understand how and why the Union and its members acted the way they did. To begin with, we did not survey identity formations in community institutions, such as the Commission and the European Parliament, systematically. In addition, we did not cover all international actors concerned with the Kosovo question, the United Nations, the OSCE, NATO, the United States, Russia, Serbia etc., with regard to their "identity politics". Rather, we focused on the question how national identities of the member states under review affected the EU actorness in conflict prevention and post-conflict management.

Our country selection does contain the three most powerful member states, France, the United Kingdom and Germany, as well as two medium countries, Greece and the Netherlands, whose foreign policies were strongly affected by their Balkan experience.

Based on previous discourse studies (Joerißen/Stahl 2003), we suggest a two dimensional vector space of national identities that displays the probabilities of identity convergence and compatibility. In one dimension, we identify whether identities are intro- or extroverted, that is open or closed to external influences, such as international legal norms, alliance commitments, US policies etc. On the other dimension we span a vector space between "idealistic" and "realistic" identities, which root their arguments in the relative distribution of material power or collective values and norms.

Chart 1: Discourse vector space for EU conflict management policies (Harnisch/Stahl 2009: 276)



3. National Identities and conflict prevention (1996-1998)

To uncover the identities underlying the EU’s response to the Kosovo crisis, we observed the evolution of discursive formations in five EU member states. We found that national discourses did not start to legitimize military intervention until early 1998, when the balance started to shift in favour of a pro-Kosovarian conflict interpretation in some member states.

3.1. National discourses as reasons for action

In four of the five societies – the notable exception being Greece - a “Kosovo intervention consensus” developed over time. In the United Kingdom, the new Labour government began propagating an “ethical foreign policy” early on in 1997, which resonated strongly with the evolving norm on humanitarian intervention (Dunne/Wheeler 2000). In the ensuing Kosovo debate, the “ethical-internationalist” discourse formation became dominant by claiming a “right to protect” the Kosovo-Albanians from Serbian persecution. It was augmented by “realist-atlanticist” discourse formation, stressing influence gains on the continent and influence maximization in the special relationship with the US (Swoboda/Weick/Stahl 2009). While the emerging consensus meant a clear break with the past, i.e. British non-intervention policy in Bosnia, it proved to be very stable over time.

In the Dutch discourse, the Srebrenica massacre turned the tide. Rather than spreading risk aversion, both “ethical-internationalist” and “realist-atlanticist” discursive formations came together in legitimizing the use of force, using humanitarian norms and transatlantic solidarity arguments (Swoboda/Klein 2009). In France, the decision to bomb Serbia, a

historical ally, was more contested. Discourse formations started to shift in earnest in February 1999, when French efforts to broker a compromise in Rambouillet failed. The dominant “realist-european” discursive formation (maintaining influence, strengthen the EU’s role) joined forces with the idealistic discursive formation, which demanded military action on humanitarian grounds and appealed to the *mission civilisatrice* of the *nation* (Stahl 2009).

In Germany, the dominant discourse formation in favour of “restraint” (or “reticence”) split over the Kosovo issue (Swoboda 2009). A majority, led by the incoming foreign minister Joschka Fischer, re-framed the lessons learned from Germany’s Nazi past. Re-framers argued that the postulate to prevent genocide - “Never again Auschwitz” - now demanded intervention on behalf of the victims in Kosovo rather than forestalling it, as the pacifist minority held

The differing conflict interpretations in the four member states started to coalesce after the massacres in the Drenica valley (1998) and Racak (1999), and when Serbian negotiators stalled the Rambouillet Peace talks (February 1999). In some countries, e.g. the Netherlands, alliance solidarity with the United States as an early and strong supporter of Kosovo Albanians played a key role in shifting the discourse on the legitimacy of military force in the face of Russian opposition to a UN Security Council Resolution (Swoboda/Klein 2009: 124). In most countries, the argument that the Kosovo conflict merely repeated the pattern of aggression in Bosnia reverberated powerfully. “Continuous appeasement”, so the argument went, would breed even more Serbian expansionism. By March 1999, most EU member states thus favoured air strikes.

Chart 2: Change of Identities and conflict intervention patterns (Harnisch/Stahl 2009: 281)

Actor	Identity (change/continuity)	Conflict pattern
United Kingdom	Change (summer 1998); compromise on intervention hardly contested	Demanded air strikes; proposed ground troops; Recognized Kosovo’s independence
Netherlands	Continuity; compromise on intervention hardly contested	Hesitant concerning OSCE verification mission; active participation in bombing campaign; Recognized Kosovo’s independence
Germany	Change (autumn 1998); compromise on intervention hardly contested	active diplomacy; participation in bombing campaign; Recognized Kosovo’s independence
France	Change (early 1999); compromise on intervention contested	active diplomacy; participation in bombing campaign; Recognized Kosovo’s independence
Greece	Continuity; compromise on non-intervention, not challenged	active diplomacy; against air strikes; no Veto; no recognition of Kosovo’s independence
European Union	Continuity; acted consistently as civilian power; majoritarian change to „humanitarian intervention discourse“ 1998/99	Fractured actorness; consistent state-building; retarding status issue; incoherent on recognition

3.2. The escalation of the Kosovarian conflict strategy

The slow and uneven convergence of identity-driven intervention discourses in the various EU member states clearly made its mark on the conflict strategy of some of the political groups jockeying for societal support in Kosovo. From 1990 onwards, Ibrahim Rugova had been the unchallenged leader of the peaceful resistance movement. At first, his movement called for a republic, with Albanians being the constituent people, within the Yugoslav Federation, but continuous oppression and Serb violence led to the call for independence by 1991. However, after the Dayton Agreement, which did not address any of the Albanian concerns, and after the recognition of the FRY by the European Union 1996, the Kosovo Liberation Army (KLA) gained considerable domestic and foreign support (by the Albanian diaspora in Western Europe and the United States) for its violent resistance (Wolff 2009: 19).

In 1997, the KLA initiated a full-blown if lightly armed rebellion and superior Serbian forces responded with indiscriminate violence, including the aforementioned massacres in the Drenica valley and Racak. As Alan Kuperman has convincingly argued, the KLA attacks were well funded and coordinated, but they were never expected by KLA leaders to defeat the superior Serbian forces. Rather, these assaults were planned to trigger “a ruthless Serbian retaliation against our people” (Hacim Thaci as cited in Kuperman 2008: 225). By putting Serbs on the edge, so that they could be expected to violate the emerging humanitarian norms against ethnic cleansing and genocide, the KLA consciously tried to invoke the inconsistencies between the normative pretensions of the EU and other Western countries and their noncommittal behavior. As one of the Albanian negotiators in Rambouillet, Dugi Gorani, explained “the more civilians were killed, the chances of international intervention became bigger” (ibid).

From the perspective of our augmented actorness approach, these risk-prone strategies did not “cause” the shifts in the identity-driven Kosovo discourses. In our social constructivist reading, information about “massacres” had to be socially contextualized, i.e. laden with values (and historical analogies from Bosnia and Pre WWII history). Only under these normative conditions the massacres and violent acts “enabled” certain participants in EU member states discourses to back their claims for action with additional prove for the viciousness of the “other”. In this sense, social practice, violence, constituted the EU and its member countries as an actor which claimed legitimacy for its military intervention despite an unequivocal mandate by the UN Security Council.

Theoretically speaking, the KLA elite thus engaged in a “strategic construction” of EU member states’ identities, using humanitarian norms to redefine what should be considered in their view as appropriate EU behaviour. By appealing to the normative sympathizers in EU countries, the KLA, as a “norm entrepreneur”, consciously exerted “socialization pressure” on the fractured civilian power actorness. In this sense, the KLA targeted two criteria of the actorness concept, recognition and coherence, to change the normative incentive structure for EU member states. This “inroad” to the national identities was made possible by the extroverted foreign policy identities of the four pro-interventionist member states, because their identity are more prone to external events and behavioural change of others (see Graph 1 above). The images of on-going violence in Kosovo resonated strongly with the ethical, idealist and restraint discursive formations. Thus, if the EU member states’ governments wanted to be recognized as legitimate, that is normative actors in the escalating conflict, then they would have to protect the victims from their perpetrators by way of military intervention. The ongoing violence despite frantic diplomatic efforts also nourished the impression of regional and institutional destabilization. This resonated with the realist-orientated discourse formations, which pressed to keep NATO and “transatlantic solidarity intact”.

Once the EU had been constituted as a conflict manager, its crisis manager actorness and the identity attached to it exerted significant normative socialization pressure of its own. The values that were brought to bear on the identity shift in member states in 1999 now inclined EU members to reinterpret their normative interests on this basis. In this identity-driven interpretation of EU actorness, the EU as a conflict management institution does not merely provide additional “information” and safeguards against cheating. Rather, it gives rise to purpose, that is a common understanding of appropriate behaviour of EU members in the face of ethnic violence.

4. The EU and Kosovo (1999-2009)

The emerging EU actorness as a crisis manager stimulated the Kosovorian elites’ interest in EU support during their postwar domestic struggle for power and resources. Whereas the EU and other peacebuilding institutions sought stability and liberalization in the political process, local elites used their respective need for public support by leveraging their ability to deliver “domestic support” for economic and political reforms (Narten 2009a). In the case of Kosovo’s security sector reform, this mechanism led to an “ethnicized Kosovo Security

Force”, which is manned by former KLA officers and thus a constant obstacle for cooperation with both Kosovo Serbs and Serbian security forces (Narten/Zürcher 2009)³.

We argue that the EU, with its hybrid system of delegation, is more prone to exploitation than other international actors. We claim that member states’ identity-based delegation patterns provided the EU Commission with substantial authority to use material incentives for economic transformation without the delegation of corresponding competences to establish a legitimate Kosovarian political authority. While this fractured actorness allowed Greece to rejoin the EU as a peacebuilder in Kosovo, it also fostered the ethnicized (and often corrupt) nature of Kosovo’s Provisional Institutions for Self-government (PISG). Hence, the success of the EU’s three conflict resolution strategies, state-building (Kosovo), support for the pro-European forces in Serbia and the membership perspective for both, hinged upon the cooperation of local elites to deliver political stability in Kosovo and domestic legitimacy for its international administrators.

4.1 From autonomy to recognition: The EU as a state-building actor

On 10 June 1999, the UN Security Council passed Resolution 1244, marking a dramatic shift for the commitment of the international community and thus the EU. Both initiated a long-term plan to pacify and stabilize Kosovo and to re-build the shattered province economically, politically and socially. More specifically, the EU launched the “Stability Pact for Southeastern Europe”.⁴ The pact marked a fundamental change in Western European thinking about the region, because ideationally it turned Southeastern Europe from a ‘region in the near abroad’ into a constitutive part of Europe. EU Council meetings in Feira, Zagreb (2000) and Thessaloniki (2003) consistently reaffirmed the new approach (Altmann 2005: 8-9).

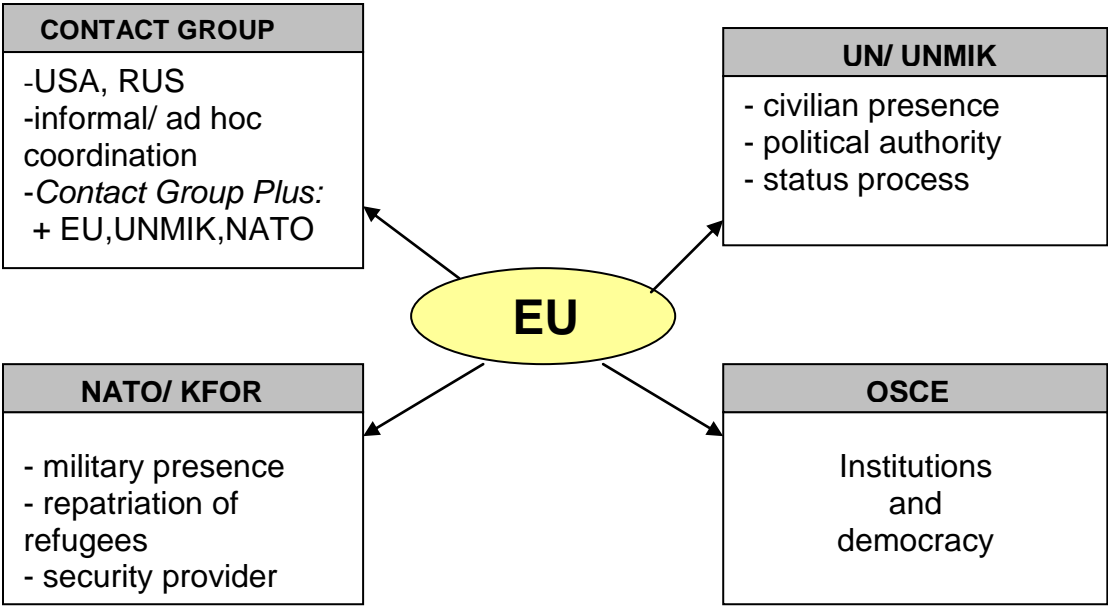
Institutionally, the decision for a conflict resolution strategy based on a pre-enlargement meant that the Commission would hold considerable authority to devise and implement policies. The trend for Commission autonomy was further strengthened when the international community hastily agreed upon a very complex institutional framework for the administration of Kosovo (Hopkinson 2006: 169). Within the framework, NATO is the

³ The liberal peacebuilder’s dilemma, to ultimately depend on domestic public consent for (temporary) foreign rule, does, of course, affect all international institutions involved in the reconstruction of Kosovo. And it may be argued that the dilemma grows as state and local elites may exploit differences between the parties concerned.

⁴ Stability Pact for South Eastern Europe: *SCSP Constituent Document*, Cologne, 10 June 1999, <http://www.stabilitypact.org/constituent/990610-cologne.asp> [11/11/2007].

prime security provider through KFOR – the US, Germany, Britain, France and Italy being the most important troop contributors. The UN (i.e. UN Mission in Kosovo, UNMIK) heads the political administration which is divided into four pillars, with the UN in charge of the police and the law system (I) and the civil administration (II). Pillar III, institutions and democracy, falls into the OSCE’s competence. The EU is responsible for Pillar IV, reconstruction and development.⁵

The institutional setup suggests that the EU is a minor actor, dominated by UNMIK. But the EU and its member states provide are key players in the institutions administrating the other pillars (see graph below).



Graph 3: The EU in the Kosovo administration

While the Commission heads pillar IV, EU member states are pro-active members of the UNO (pillar I and II). They also constitute the majority of OSCE (pillar III) and NATO (KFOR) participating countries. In addition, Germany, Italy, France and Britain are members of the contact group which serves as the prime international “trouble-shooting” institution, additionally comprising both Russia and the US.

Within the international framework, the EU Commission was the central player in reconstructing economic institutions in Kosovo in the eight years to come, establishing an external tariff regime, a tax system, the privatisation of previously state-owned companies, a monetary system based on the DM (later to become the Euro), a banking system and

⁵ United Nations Security Council: *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, 12 July 1999, Para . 101-102.

measures securing energy supply. The EU also contributed substantially to the creation of the Kosovar Ministries for Economics as well as for Trade and Industry (Kramer/Džihic 2005: 30-33; Benkő 2001: 55-60). Most importantly, however, the EU started early on to treat Kosovo as a “quasi-state” by integrating it into the Stabilization and Association Process (SAP). *De jure* Kosovo was represented by UNMIK in the SAP, but *in praxi* Kosovo was treated as a „fully-fledged partner in many [...] regional processes“ (Kuehne 2007: 10).

With regard to the delegation of competences, it is important to note that the EU acted not only within the UNMIK framework, but also beyond. The Community also provided substantial financial resources here. A first track was represented by the European Community Humanitarian Aid Office (ECHO), which spent 165, 4 Mio. € between 1999 and 2001 alone (European Commission 2002: 9). In the years that followed, the European Agency for Reconstruction and Development (EAR) became the most important EU-institution in Kosovo. The EAR’s main task was to streamline community means into concrete projects and coordinate the various projects granted by different donors.⁶ Implicitly, Kosovo was also treated as a state in this mechanism, considering that the funds stemmed from CARDS, which exclusively targets countries in the SAP.

In terms of concrete policies, the Commission initially concentrated on funding energy and economic sector project, but over time, efforts spilled over to other sectors, namely security and civil society.⁷ As a result, the Commission spent more than 1 Bil. € in Kosovo between 1999 and 2007, becoming its most important donor. Following the first democratic elections on a local and municipal level in 2001/2002, this explicit and substantial state-building policy, however, increasingly clashed with the EU member states position on Kosovo’s status.

4.3 On Standards and Status: the EU’ as a captured peacebuilder

International support allows local and state elites to retain the gains of international cooperation and distribute them among their (s)electorate. When international cooperation does not provide sufficient fungible benefits, then local elites may stall cooperation or resort to coercive tactics. In turn, international peacebuilders are likely to change their tactics and

⁶ European Commission: *European Agency for Reconstruction. Annual Report 2001 to the European Parliament and the Council*, http://ear.europa.eu/publications/main/pub-reports_annual_2001_de.htm [16.12.2007].

⁷ KFOR and UNMIK resource were cut in 2002/2003 substantially, as the attention of the international community turned to Iraq and Afghanistan.

strategies, if state elites, aware of the risks of substantial reforms and full compliance, adopt a strategy of “ceremonial conformity” to satisfy their international obligations superficially (Barnett/Zürcher 2009: 35). In Kosovo, this dynamic ensued from 2001/2002 onwards.

On the future political status of Kosovo, the central political goal of all Kosovar factions, Resolution 1244 was ambiguous.⁸ Resolution 1244 stated that the province “*should gain substantial autonomy in the Yugoslav Republic*”, thus remaining de jure under Serbian jurisdiction. De facto, however, as Kosovo was put under an international administration and thus separated from the Serbian heartland. The resolution’s preamble foresaw that the final status should be fixed later in negotiations of the conflict parties (Art. 11e), thus reflecting the ambiguity in the UN Security Council (SC) at the time (Alfons 2006: 14-15). To gain some time for a political solution, the international community postponed any final decision on Kosovo’s status in order to avoid further conflicts (ICG 2002, 1-2). It thus held back a central political resource for gaining domestic support by all Kosovar factions.

Indeed, while building up state functions, and thus the need for public consent, the EU remained silent on the status question between 1999 and 2002. Then, in November 2002, UNMIK chief Michael Steiner shifted gears to hasten the establishment of local governments. Only if certain standards of good governance were met – he claimed - the status question would be addressed. Steiner, under pressure from Kosovo-Albanian elites for self-determination, thus turned the tables and argued that legitimate domestic government had to be rules based (Narten 2009: 140). It imposed eight benchmarks to be fulfilled by the PISG (without their effective consultation) before the future status of Kosovo could be determined. The EU supported the junctim by linking Kosovo to its association strategy formulating a „Stabilisation and Association Tracking Mechanism“ (STM).

At the same time, the EU offered ever more linguistic benefits when asserting the province’s “European perspective“:

*“Kosovo is a part of Europe and together with the rest of the region aspires to become a full member of the European family. [...] Our commitment to help Kosovo to get closer to the EU is therefore beyond doubt”.*⁹

With the implementation of the STM Kosovo was also set on a track to Brussels. In the following years, the Commission monitored draft laws and administrative directives of Kosovo’s institutions and evaluated their fit with the *acquis communautaire* (Peci 2005: 28). Formally, however, the STM carefully avoided prejudicing any status change (Alfons 2006:

⁸ United Nations Security Council: *Resolution 1244*, New York, 10 June 1999, para. 10.

⁹ Council Secretariat: *Interview with Javier Solana for Zeri*, 17 December 2002, p. 2.

357). While the Commission acknowledged the interdependence between empirical and juridical statehood – calling it “constructive ambivalence” (Peci 2005: 26).

As a consequence, in early 2004 the EU had established itself as the dominant actors regarding state-building. The rising authority and growing autonomy of community institutions fostered its recognition as a “serious security provider” in Kosovo, thus nurturing its infant ESDP. But time and again, the EU denied any responsibility to reassess the status question. When Milosevic was purged in October 2000, Serbia’s peaceful transition to democracy gave additional credence to the argument not to raise the I-Word (ICG 2002: 15). In this period, several European Councils explicitly stressed the non-violation of borders, territorial integrity and sovereignty in SEE.¹⁰ In November 2001, the Belgian Presidency declared: „*We have not changed our minds. We are not in favour of independence*“ (cited in ICG 2002: 2 [4]). In April 2002, the Commission stated that her association strategy was not meant to further splitting-up the region.¹¹ In February 2001, a European Parliament’s resolution recalled to respect existing borders.¹²

4.4 The March 2004 riots: turning towards confrontational peacebuilding

The Kosovo Albanian elites started to resist the “standard before status”-imposition by the SRSG and the EU in earnest in early 2004. Members of the State élite had constantly been criticising the uncertain status of the province (Ward/Hackett 2004; Kramer/Dzihic 2005: 173-175). In their opinion, the doctrine was the prime obstacle on the road to independence (Hajrullahu 2007: 207). Then, in March 2004, thousands of people in the province looted some 800 Serbian houses and 30 churches also expelling Kosovo Serbs from their former homeland enclaves in central and eastern Kosovo. 19 people died in the turmoil, including

¹⁰ European Council: *Schlussfolgerungen des Vorsitzes*, Stockholm, 23-24 March 2001, Paragr. 65, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/de/ec/ACF191B.html [14.11.2007]; vgl. auch Europäischer Rat: *Schlussfolgerungen des Vorsitzes*, Nizza, 07.-09.12. 2000, Abs. 60, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/de/ec/00400.%20ann.d0.htm [18/01/2008].

¹¹ European Commission: Report of the *Commission. The Stabilization and Association process for SEE. First Annual Report*, Brussels, 03/04/2002, p. 10, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0163:FIN:DE:PDF> [18/01/2008].

¹² European Parliament: Resolution on the situation in *Kosovo*, Strasbourg, 15/02/2001, paragr. 8, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P5-TA-2001-0097+0+DOC+XML+V0//DE> [11/11/2007].

several members of UNMIK. KFOR could neither prevent nor stop the violence.¹³ As a consequence, UNMIK's then-head Harri Holkeri resigned.¹⁴

With these riots cooperative peacebuilding came to an end as Kosovo-Albanian elites could now put the EU and UNMIK under constant pressure of renewed violence (Narten/Zürcher 2009: 15). The riots did not only change the international community's perception on the status question immediately. Shortly thereafter, the UN Secretary General's special envoy to Kosovo, Karl Eide, proclaimed in two reports (in August 2004 and October 2005) to reverse course and water down the standards' requirement. Eide made very clear that UNMIK's strategy had failed and Kosovo's stability was in danger. Only an immediate clarification of its status could pacify the province. Eide recommended to exclude further territorial changes be it a unification with Albania or a division of the province.¹⁵ By so doing, he rejected the Serbian proposals for a "cantonization" of the province (Judah 2004: 20-22).

The March 2004 riots also changed the policies of the US and the EU respectively. The Bush administrations re-activated the "Contact Group for the Balkans", now meeting as „Contact Group Plus“ involving representatives from UNMIK, NATO and the EU-Troika (Kramer/Dzihic 2005: 191). As a consequence, the agenda-setting role shifted from UNMIK to the contact group and the UN-Security Council significantly eased its "standards-policy" while leaving the doctrine formally in place. Also, UNMIK, which had suffered from a growing dissatisfaction by Kosovo-Albanians (approval went down from 65% in November 2002 to 20% in July 2004), started to prepare for the end of its mission (King/Mason 2006: 210-211).

In the EU, the riots exacerbated the split on the status questions between the member states, the Commission and the European parliament (Toshev/Cheikameghuyaz 2005: 281). While members states remained reluctant to even address the status, in fear of domestic ramifications with their own minorities, the Commission and even more so the EP supported a resolution of the question under precise deadlines. In fact, Doris Pack, German EP member, argued that without a clear signal on the future status, the unrest would continue,

¹³ One parliamentarian of the Kosovo Assembly went so far as to publicly call the riots a "legitimate revolt by the Albanian population" and "lesson for the international community", cited in Narten 2008: 273.

¹⁴ On the incidents during the riots of Human Rights Watch 2004 and ICG 2004.

¹⁵ United Nations Security Council: *Report on the Situation in Kosovo*, New York, 06/08/2004, pp. 3-7, <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/kos%20S2004%20932.pdf> [09.01.2008]; United Nations Security Council (2004): *Report*; United Nations Security Council: *A comprehensive Review of the Situation in Kosovo*, New York, 07/10/2005, pp. i-iv, <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kos%20S2005%20635.pdf> [09/01/2008].

thereby explicitly linking the conflict escalation in the province to the status strategy of the EU (Toshev/Cheikameghuyaz 2005: 283). Consequently, the EP adopted a resolution that pressed the Council to finally begin the debate on the final status of the province.

Also, recall that the EU had become the most important statebuilder up until 2004. Therefore, the riots did not induce critical evaluation on the premises of the standards before status-doctrine.¹⁶ Rather, the EU and the Commission in particular intensified its state-building efforts. In September 2004, the Commission opened a „*European Commission Liaison Office to Kosovo*“ in Pristina and installed a special department in the Prime Minister’s office of the Kosovo self-administration (Papadimitriou/Petrov/Greicevci 2007: 230-231). In June 2004, the Council launched a “*European Partnership for Serbia and Montenegro*” which dealt with Kosovo in a separate chapter. In November 2005, the Commission published for the first time an entirely specific progress report on Kosovo (Peci 2005: 26-27). This informal up-grading was complemented by a change of responsibilities in Brussels: Kosovo went from the DG External Relations to DG Enlargement (Alfons 2006: 357).

In the aftermath of the 2004 escalation, the EU inherited more and more competences from UNMIK. For instance, in 2006, UNMIK’s standards were incorporated in the EU’s association strategy, which turned the EU into the prime monitor for reforms in Kosovo.¹⁷ Also after 2004, with the US heavily engaged in Iraq, an international consensus emerged that the EU should lead all civilian missions in Kosovo after the status question would have been settled. Therefore, the EU began preparing itself for this task and set up a “*European Union Planning Team for Kosovo*“ (EUPT) as well as an “*International Civilian Office*“ (ICO). The latter was meant to prepare the ground for an incoming ESDP-mission (EULEX) which was planned to assist the Kosovar administration in police and juridical affairs (Szemler et al. 2007).

The status question did not only challenge the EU’s internal coherence but also led to a persistent split among members of the Contact group. As early as 2005, the Bush administration had called for concrete status talks which were supposed to lead to a

¹⁶ It seems fair to suggest that the fulfillment of standards by Kosovo Albanian elites makes less sense when the realization of the reward, independence, is in doubt. Hence, symbolic compliance with international standards becomes a rational hedging strategy by local elites that depend on public support by a majority of citizens that is in favor of independence, cf. Narten 2008: 266.

¹⁷ *Summary Note on the Joint Report by Javier Solana, EU High Representative for the CFSP, and Olli Rehn, EU Commissioner for Enlargement, on the future EU Role and Contribution in Kosovo*, Brussels, 09/12/2005, pp. 1-2, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/EN/reports/87565.pdf [09/01/2008].

definitive decision one year later (Woehrel/Kim 2007: 20). Russia, by contrast, argued against any quick start of status talks and openly rejected independence in any future settlement. The Putin government obviously feared negative consequences for the region's stability and sought to avoid any "precedence" for secession movements in other regions (Smith 2006). However, despite Russian objections, in 2005 the CG-Plus gave green light for the opening of status talks between the Kosovo-Albanians and the Serbian government. Following Karl Eide's recommendations, the international community also released "10 guidelines", prescribing that Kosovo should neither "return to a pre-March 1999 situation", nor be divided, nor be acceded to another country. The prescriptions strongly limited the room for diplomatic manoeuvre in the upcoming negotiations and thus again left the conflicting parties with small win-sets.

Against this background, the UN Security Council, on 10 November 2005 mandated the former Finnish President Martti Ahtisaari to serve as a mediator in the status talks.¹⁸ During the talks, UN special envoy Karl Eide and the Bush-administration proved to be frontrunners with the EU sitting on the side lines. To be sure, the European Parliament had claimed a leading role for the EU in the status talks as early as in April 2004. The resolution wanted the EU member states „to embark on detailed consideration of the final status of Kosovo [...], with a view to defining a time-frame and finalising specific options”.¹⁹ The resolution also, surprisingly outspoken, rejected any return to Serbia and Montenegro.²⁰ By so doing, the Parliament went even further than Eide and indirectly supported independence. Also, the EU's High Representative Javier Solana at least intended to follow suit. He tabled a non-paper in the Council which aimed at putting the status question on the Council's agenda.

Yet, the EU's capacity to act upon the status question again suffered from the missing consensus among its member states: only three out of 25 member states could agree on the Solana initiative (Hungary, Luxemburg, Slovenia). Interestingly, even the EU members of the CG-Plus (UK, F, I, D) publicly stated that there was no need for immediate action (Toshev/Cheikameghuyaz 2005: 295-298). In private, some EU key member states already agreed that some sort of independence would be the only viable outcome (Alfons 2006:

¹⁸ United Nations Security Council: *Letter dated 10 November from the President of the Security Council addressed to the Secretary-General*, New York, 10/11/2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/597/68/PDF/N0559768.pdf?OpenElement> [09/01/2008].

¹⁹ European Parliament: *European Parliament Resolution on the Situation in Kosovo*, Strasbourg, 01/04/2004, paragr. 12, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P5-TA-2004-0271+0+DOC+PDF+V0//EN> [18/01/2008].

²⁰ European Parliament: *Entschließung des Europäischen Parlaments zum Stand der regionalen Integration im Westbalkan*, Strasbourg, 06.04.2005, Abs. 26, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P6-TA-2005-0131+0+DOC+PDF+V0//DE> [11/08/2008].

370).²¹ Others, such as the Dutch Foreign Minister Bot rejected this position, stressing KFOR's continuing role in protecting Kosovo's minorities (ibd.). Also, German officials argued for patience in order to avoid a further destabilization of Serbia (Ker-Lindsey 2009: 52).

In terms of policy, this period ended when the EU in February 2005 stated that a pre-1999 situation should be prevented by all means.²² Finally, on 17 June, one year after UN Special Representative Eide's initial report, the Council agreed to follow UNMIK's and CG-Plus policy shift when it released a "*Declaration on Kosovo*" which adopted Eide's recommendations and the CG's guidelines.

In sum, the EU as a consequence of the March 2004 riots pursued a bifurcated conflict management policy from 2002 to 2006: on the one hand, the EU Council, in public, held fast to the UNMIK's "standards-before-status doctrine" as some member states privately and the EP openly acknowledged the unavoidability of a future status based on "some independence"; on the other hand, EU Commission executed a de-facto state building strategy, thereby cooperating oftentimes with local elites which used EU/international support for their own private or clan gains or even turned them into potential "political spoilers". In effect, the EU from 2004 onwards pursued a "symbolic compliance policy" with the status doctrine of UNMIK by signalling that it privileged "stability over democratic reform in Kosovo" (Montanaro 2009).

4.5 The EU's statebuilding dilemma: The failure of the status talks

From January 2006 the UN's Special envoy (UNOSEK) Ahtisaari led a total of 15 rounds of direct talks between negotiation teams from Belgrade and Prishtina with a agenda mostly imposed by UNOSEK. With the positions hardening over the course of 2006, the UN mediator Ahtisaari declared in March 2007 that a compromise was not in reach and cancelled further negotiations: „*Belgrade would agree to almost anything but independence, whereas Pristina would accept nothing but full independence.*”²³ Following his mandate, he

²¹ E.g. French President Chirac had told the Serbian President Tadic when he visited Paris in December 2005 (Ker-Lindsey 2009: 29). In March 2006, UK Foreign Secretary Jack Straw called independence nearly unavoidable when the EU Council met in Salzburg (NZZ, 12 March 2006).

²² Council of the EU: *Mitteilung an die Presse. 2641. Tagung des Rates Allgemeine Angelegenheiten und Außenbeziehungen*, Brüssel, 21.02.2005, p. 11, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/de/gena/83888.pdf [22.01.2008].

²³ UNOSEK Press Release: *High-level delegations of Serbia, Kosovo hold first status talks in Vienna*, Wien, 24. Juli 2006, http://www.unosek.org/pressrelease/UNOSEK-PR-11-High-Level_delegations_from_Serbia,_Kosovo_hold_first_Status_talks_in_Vienna.pdf [03.02.2008]; UNOSEK Press Release: *Vienna*

set a draft proposal for an agreement to the Security Council which foresaw a „*conditional independence*“ for Kosovo.²⁴ As Russia threatened to block any declaration with a veto in the UN Security Council a new round of direct talks ensued in the late half of 2007 under the guidance of a troika (EU, US, Russia). After another five different resolutions drafted by the US, France, and Britain (ICG 2007b: 2; Dzihic 2007b: 4), the mediation reached a final deadlock in December 2007. Already in March 2007, UNOSEK Ahtisaari had issued a final report which described how the de facto statebuilding had created its own dynamics and changed the situation on the ground:

„For the past eight years, Kosovo and Serbia have been governed in complete separation. The establishment of the UNMIK [...] has created a situation in which Serbia has not exercised any governing authority over Kosovo. This is a reality one cannot deny; it is irreversible. [...] Kosovo institutions have been created and developed and have increasingly taken on the responsibility of managing Kosovo’s affairs. This has set into motion a dynamic political process, which has reinforced the legitimate expectations of the Kosovo people for more ownership in, and responsibility for, their own affairs.”²⁵

At this time, US President Bush had already declared that the US would recognize Kosovo’s independence even without a Security Council approval (BBC, 10 June 2007). Thus, it came as no surprise when the US administration recognized Kosovo one day after it had declared its independence on 18 February 2008.²⁶

During the status talks, the EU experienced the full weight of its internal conflict management dilemma. To be sure, the Union was held to hold some leverage over Serbia and Kosovo as both were aiming at membership (ICG 2006a: 12 and 5; 2007b: iii). Also, if the EU was able to speak with one voice, it might also have motivated Russia to move on the status issue (ICG 2006c: 5-6). Moreover, the EU and its member states whole-heartedly backed the Ahtisaari mission. And yet, after he had had tabled his report in March 2007 the unity disaggregated immediately.

High-level meeting concludes 14 months of talks on the future status process for Kosovo, Vienna, 10 March 2007, http://www.unosek.org/pressrelease/UNOSEK-PR-19-Vienna_High-level_meeting_concludes_14_months_of_talks_on_the_future_status_process_for_Kosovo.doc [29.08.2008].

²⁴ United Nations Security Council: *Report of the Special Envoy of the Secretary-General on Kosovo’s future status*, 26/03/2007, <http://daccessdds.un.org/doc/UNDOC/GEN/N07/272/23/PDF/N0727223.pdf?OpenElement> [03.02.2008].

²⁵ United Nations Security Council (2007): *Report*, pp. 2-3.

²⁶ The White House: *Text of the Letter from the President to the President of Kosovo*, 18/02/2008, <http://www.whitehouse.gov/news/releases/2008/02/20080218-3.html> [29/08/2008].

To begin with, the European Parliament early on reaffirmed the argument of „new realities“ in Kosovo which had established state-like structures.²⁷ The Commission, too, signalled concurrence with Ahtisaari’s main findings while refraining from public calls for independence. At the same time Commissioner Rehn had already sent word in March 2006 to Belgrade that „[...] *there can be no return for Kosovo to Belgrade’s rule [...]*.”²⁸ In addition, after the Ahtisaari-plan had failed, the President of the Commission, Barroso, warned Belgrade that „*(f)or Serbia [...] can be no role in the EU if it does not cooperate for a Kosovo solution*” (ICG 2007b: 10 [68]).²⁹ Consequently, the Commission had no objections when Kosovo finally declared its independence.³⁰

In contrast, the EU Council remained cautious. At a Council meeting in Bremen in April 2007, it could not find any consensus on Ahtisaari’s report and delegated the issue to the Security Council. It held Ahtisaari’s report only as a „basis“ for further negotiations in the Security Council and avoided any statement on independence.³¹ In contrast to the US position, various member states – including Germany – were unprepared to accept any unilateral declaration of independence. With the EU split and the conflicting parties in deadlock, France’s President Sarkozy proposed another round of negotiations limited to 120 days in order to offer a final chance for compromise, both within the EU and beyond, at the G8 meeting in Heiligendamm (Weller 2008: 58; Ker-Lindsey 2009: 75f.).

When the troika mission had finally failed on December 14 2007, the Union had found a working compromise.³² Among the larger member states, Germany was now also willing to recognize Kosovo’s independence without the UN’s consent (Ker-Lindsey 2009: 89). The EU Council also agreed upon an ESDP mission meant to replace UNMIK while mandating

²⁷ European Parliament: *Entschließung zur Zukunft des Kosovo und der Rolle der Europäischen Union*, Buchstabe H, 29.03.2007, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0097+0+DOC+XML+V0//DE> [11/11/07].

²⁸ Cf. Krasniqui, Ekrem: *EU says Serbia can’t rule Kosovo again*, in: EU-Observer, 09/03/2006, <http://euobserver.com/24/21096/> [15/03/2006].

²⁹ The Serbian government interpreted this as an endeavour to create a trade-off between Serbia’s way to the EU and Kosovo. In November 2006, the Commission’s allusions had gone in the same direction. See European Commission: *Communication from the Commission to the European Parliament and the Council. Enlargement Strategy and Main Challenges 2006-2007*, Brussels, 08/11/2006, p. 14.

³⁰ Enlargement Commissioner appreciated the „climate of dignity“ in which the Kosovar Parliament had declared independence; Rehn, Olli: *European Institutions’ reactions on Kosovo independence*, Speech in the European Parliament, Strasbourg, 20/02/2008, p. 2, <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/08/91&format=PDF&aged=1&language=EN&guiLanguage=en> [28/08/2008].

³¹ *Council Conclusions on Western Balkans*, Luxemburg, 18 June 2007, pp. 1-2, http://www.consilium.europa.eu/uedocs/cmsUpload/Western_Balkans-18/06/07.pdf [09/01/2008].

³² Judah, Tim: *Kosovo Talks Unlikely to Come to Anything*, Balkan Investigative Reporting Network, 10/08/2007, <http://kosovo.birn.eu.com/en/1/70/3845/> [29/08/2008]; *Brussels European Council. Extract from the Presidency Conclusions*, Brussels, 14 December 2007, http://www.consilium.europa.eu/uedocs/cmsUpload/071214-Extract_from_EUROPEAN_COUNCIL.pdf [20/08/2008].

the High Representative to prepare for the EULEX-mission. Subsequently, Solana succeeded in convincing the non-recognizing member states – in particular Cyprus - to agree to EULEX.³³

The compromise also foresaw to circumvent the obvious international legal problem of a missing legitimising Security Council for EULEX (de Wet 2009). In legal terms, the Council referred to UNSC 1244 and relied on the general principle to protect civilians in Kosovo.³⁴ The Common Actions agreed upon by the Council did not mention independence, nor did they refer to the Ahtisaari plan, nor to the troika process. When Kosovo declared itself independent, the Council delegated the question of recognition to the member states: „*The Council notes that Member States will decide, in accordance with national practice and international law, on their relations with Kosovo*”.³⁵

4.6 The EU's statebuilding dilemma and Serbian domestic politics

The EU's fractured actorness also left its mark on the dynamic of Serbia's domestic politics. In terms of power politics, Serbia's domestic scene was characterized by a “cohabitation”: President Tadic represented a more pro-European part of the centre whereas Prime minister Kostunica stood for the national-conservative clientèle. Early on, in April 2004, Serbia's government launched an initiative for a division of territory. But it was rejected by Kosovo-Albanians and the international community with reference to the CG's common guidelines (DAN, 29 November 2004). In the ensuing power struggle Premier Kostunica used the Kosovo question as his core theme in the election campaigns in 2006 and 2007, forcing President Tadic to respond by calling for a “national consensus on Kosovo”. Consequently, Tadic closed the ranks with Kostunica's DSS, the Socialists and the Serbian Radicals. The President agreed to a new Serbian constitution³⁶ which hailed Kosovo as an integral part of Serbia. He also sought support for the Serbian position in Moscow.

In early 2006, the Serbian government issued a resolution on Kosovo in which Serbia agreed to start talks on the autonomy of the region. At the same time, Kostunica's chief adviser

³³ Council Joint Action 2008/124/CFSP of 4 February 2008 on the EU Rule of Law Mission in Kosovo.

³⁴ Council of the EU (4.2.2008b: preambel).

³⁵ Council of the EU: Council Conclusions on Kosovo, Brussels, 18/2/2008, p. 1, <http://www.consilium.europa.eu/uedocs/cmsUpload/98807KOSOVO.pdf> [12/09/2008].

³⁶ Since the fall of Milosevic in 2000, the work on the constitution has been pending. In a sudden enterprise, it was rushed through parliament when amended by the Kosovo stipulation. Remarkably, for the referendum on the constitution, the government erased the Kosovo-Albanians from the election register (DW-world 26/10/2006). This clearly indicates that the slogan “Kosovo is Serbia” only alludes to the territory but not to the Kosovo-Albanians.

Simic made clear that these talks would not touch upon independence since this had been excluded by Resolution 1244 (B92, 18 January 2006). At this time it became obvious that the EU's incentive based approach had led nowhere. In hindsight, the EU's identity-based ambiguity on status had missed the window of opportunity provided by the Djindjic government between 2001 and 2003. In 2004 then, after the March riots had forced the EU to react, the Union had ruled out any territorial changes. While this (dogmatic) position perfectly reflected the common ground of the EU's national identities, i.e. the national vetoes by member states with an unresolved minority problem, it also marginalized the pro-European faction under Tadic in Serbia. Given the US' general pragmatism on this issue and Russia's yet undecided stance, the EU had the opportunity to pursue this option in the upcoming negotiations.³⁷

The EU not only missed a chance for further conflict resolution. The decision to exclude territorial changes from the talks created a zero-sum game situation in Serbia's domestic discourse and radicalized the Serbian position. The EU's stance confronted the pro-integrationists with an "all-or-nothing" choice. Recognizing that it lacked sufficient public support, the Tadic faction opted for "unity" and locked in the domestic discourse on Kosovo, a situation which remains valid until today. Consequently, even the (pro-European) Serbian government has ruled out any recognition of Kosovo for our times. In terms of identity politics, the EU approach was also ripe with unintended consequences. The Kosovo status question proves as an endless resource for the discourse on "Serbia as a victim". It thus deepens the Serbian society's loss of reality and fosters "politics of denial"³⁸. In nuce, in terms of Serbia's domestic politics, the international community and the EU in particular pay a heavy price for Kosovo's independence: a locked-in non-cooperative discourse hegemony on Kosovo in Serbia.

The EU's fractured actorness also impacted negatively on its own (future) recognition, because *de facto* the EU from 2006 on delegated responsibility to the other great powers, i.e. the US. For the Bush administration, the Balkans represented a second rank region and a quick decision on Kosovo's status promised an earlier US disengagement and a forceful pro-muslim position, two important policy goals at a time when the US' position in Iraq disaggregated.

³⁷ As described above, the EU mediator Ischinger tried this once, but his initiative came too late and was opposed by several key actors, among others Commissioner Olli Rehn.

³⁸ The "politics of denial" alludes to the societal characteristic that Serbs tend to deny all present and passed crimes committed by Serbs. Instead, crimes committed by others are emphasized. For Serbia and the ICTY, see, for instance, Obradovic-Wochnik (2009): 34.

To be sure, the early and determined US position had unintended consequences as well: It not only angered Russia but also encouraged some Kosovo-Albanians groups to organize violent demonstrations in November 2006 and February 2007 (Narten 2009a: 275). The radicalization of the Serbian position, both in Serbia and the Mitrovica region, also triggered a hardening of the Russian government's by the end of 2006 (Antonenko 2007: 91-92). The EU's fractured actorness in 2005 and 2006 diminished its recognition and made it an unattractive partner for Moscow. As a consequence, the Kosovo issue became part of the bilateral agenda between Moscow and Washington which included, at the time, such controversial themes as regional missile defence in Europe and the Iran issue.

Serbian intransigence on the status question did not effectuate a critical review of the EU's strategy. Rather, the EU attempted to change the domestic dynamics in Serbia through increasing the benefits, i.e. accession to the EU (Stahl 2010). The idea of a "grand bargain" - granting fast-track integration into Euro-Atlantic structures in exchange for the Serbian recognition of Kosovo - was popular not only in Brussels but also in Washington. The process started when NATO, in November 2006, invited Serbia to its Partnership for Peace programme. In June 2007, the EU seconded, when Enlargement Commissioner Rehn lifted the SAA suspension for Serbia which had been realized due to Serbia's lack of cooperation with the ICTY and offered the new Serbian government an ease of visa-restrictions (EU-Observer, 11 May 2007). The Commissioner even declared that Serbia's candidate status would be possible for 2008, triggering some disbelief on behalf of the member states.

In 2007, the ongoing Kosovo negotiations resonated badly in the Serbian public. When Ahtisaari launched his plan for the province, Premier Kostunica called his plan being "*an act of legal aggression*" (EU-Observer, 27 March 2007). In November then, the Commission announced the finalization of the SAA just before the Serbian presidential elections although the initial requirement of "*full cooperation with the ICTY*" has not been achieved. Among member states, only the Dutch government - for identity reasons related to the massacre in Srebrenica- did not follow suit and rejected to sign the SAA before the Serbian government had delivered the main suspect for the Srebrenica genocide, Ratko Mladic. To offer something, the EU thus created an "*Interim agreement on trade issues*" (ITA) and raised the prospect of visa-free access to the Schengen space for Serbian citizens. Now Italy proposed to grant Serbia the candidate status in exchange for Kosovo's independence (NZZ, 24 September 2007). Yet, as critics such as former RELEX Commissioner Patten argued at the time, all these incentives would undermine the conditionality principle (Frankfurter Rundschau, 11 October 2007).

With a locked-in domestic discourse, SAA and other accession incentives by no means softened the Serbian position. A furious Prime Minister commented on the declaration of independence: *“It has to be legally annulled the moment it has legally proclaimed by leadership of convicted terrorists”* (BBC, 12 February 2008). Accordingly, Serbia’s government did not protect Western Embassies when riots broke out in Belgrade and demonstrators looted the American Embassy. Prime Minister Kostunica even praised the Serbian youth for its commitment and wisdom (B92, 27 February 2008). Some sources also suggest that the government in Belgrade orchestrated attacks on a border check-point in Northern Kosovo held by the UN (BBC, 18 March 2008).

Instead of accepting EU incentives, Serbia now launched a diplomatic lobbying campaign against Kosovo’s independence. In October 2008, Serbia won the UN Assembly’s approval for bringing the Kosovo issue to the International Court of Justice for clarification. By so doing, the EU countries were pressed to legally justify their position on Kosovo’s independence. In early 2010, Western power thus complained openly in a letter to Serbia’s foreign minister Vuk Jeremic that their incentive based approach had been exploited by Pro-European factions (waz.euobserver, 9 February 2010):

“We have tolerated until now the Serbian aggressive rhetoric regarding Kosovo, because we believed that with time passing it could be taken off the agenda. Our partners in Belgrade have told us that the statements of minister Jeremic about Kosovo aimed to protect President Tadic from attack by Serbian nationalists, and the initiative to ask the ICJ for an advisory opinion on the Declaration of Independence was just a manoeuvre to remove Kosovo from the political agenda in Serbia. None of this seems to be the case (...).”³⁹

Now, in 2010, the EU recognized that their peacebuilder’s dilemma in Kosovo triggered a hardening position in Serbia. Even after Kosovo’s declaration of independence in February 2008, all Serbian parties agreed on a “united state policy” on Kosovo (B92, 12 February 2008).

A second unanticipated consequence of the EU’s policy ensued when the coalition split in the election campaign 2008 over the issue of Kosovo and its repercussions on Serbia’s accession. For one, Prime Minister Kostunica had refused to sign the ITA, arguing that Kosovo cannot be part of a deal even if this would mean blocking accession: *“Belgrade will not bargain on Kosovo”* (EU-observer, 20 September 2007). Kostunica also insisted that the EULEX mission would prejudice state-hood. The EULEX mission would help to establish a

³⁹ Diplomatic note by the foreign ministries of Germany, France, Italy, the United Kingdom and the United States to the Serbian Foreign Minister, Vuk Jeremic, cited in: waz.euobserver, 9 February 2010.

“puppet state” on Serbian soil, “*the most dangerous precedent after WW II*” (BBC, 14 December 2007). By contrast, President Tadic opined that EULEX would be “status-neutral” so that Serbia’s position on Kosovo would by no means jeopardize its EU integration.

As a result, the coalition split on EULEX and Europe in the Serbian election of May 2008. Tadic’s coalition “Serbia for Europe” gained 39% and declared itself the winner of the elections. But pro-European forces still did not hold the majority in parliament and so Tadic formed a coalition with the Socialists – the party of the former dictator Milosevic – thus a possible blocking force regarding serious moves towards the EU.

In sum, Serbia’s domestic dynamics make clear that the EU’s state-building dilemma in Kosovo feeds two distinct but interrelated domestic discourses that put severe strains on the EU’s ability to act. While the EU’s fractured actorness sometimes brings about short-term gains, temporary concessions by local elites, it also feeds the respective discourses with a new political cleavage: the EU. Accession to the EU is thus not a given in Serbia and Kosovo’s accession prospects. The problems surrounding EULEX are a prime example of the EU’s twin state-building dilemma: When the EU negotiated a deal for EULEX to operate in Northern Kosovo, formally under the UNMIK umbrella, the Kosovo self-government protested and violent demonstrators burnt EULEX vehicles, mirror-imaging the 2008 events in Serbia against Western embassies (NZZ, 17 November 2008; DW, 27 November 2008). Moreover, at this time it is plausible suggest that the Kosovo problem will spill-over into the accession process. Having the Cyprus experience in mind, it seems hard to imagine that Kosovo and Serbia will join the EU without recognizing each other. In addition, based on their national and identity-driven recognition policies, EU member states are already split on whether or not recognition should be made a pre-condition for Serbia’s accession.⁴⁰

5. Conclusion

Conflict management and state-building is a necessary instrument of the EU’s foreign relations and many pundits believe that its success depends on the EU’s coherence. We have shown that the EU’s ability to act – its actorness – and its success depends on two distinct but interrelated conditions: first, the identity-based willingness of its member states to delegate policy competences to the Union and second, conflict strategies of conflicting

⁴⁰ The Belgian Minister for European Affairs seems to be in favour (waz.euobserver, 9 March 2010) whereas the British Ambassador to Serbia claimed the opposite (B92, 24 June 2008).

parties who engage the EU's emerging conflict management actorness. Even if EU actorness exists, we suggested, it may be prone to instrumentalization by conflicting parties.

To be sure, the statebuilders dilemma must be faced by all intervening parties, including nation states, international organizations as well as transnational and non-governmental organizations. However, as we have shown, the EU's proclivity for norms over coercion and institutions over direct responsibilities makes it far more vulnerable than others to the dilemmas of statebuilding.

Even though successful conflict intervention and state building is possible, it is far more demanding for the EU than for other actors. Why? In terms of military intervention in violent conflicts, the EU, because of its own history, does not commit troops early or easily, thus setting the stage for conflicting parties to induce EU action via conflict escalation. Third-party behaviour, the US's in particular, is an important part of the decision to delegate military competences to the EU in general and in crisis interventions in particular. The same is true for delegation to NATO and/or a group of willing and able great powers, including France and the UK. Indeed, our identity based argument shows that only those two members have the identity and the capacity to forego the EU's risk averse strategic culture by intervening plurilaterally. That does mean that these interventions will be more effective or efficient. It implies, however, that conflicting parties are less likely to exploit those foreign powers for military reasons.

In this paper we have also emphasized the challenges the EU faces when engaging in state building. Again, the analysis revealed a remarkable, laudable, and dynamic emergence of the EU in conflict resolution. There has been an explosion of EU policy capacity, strategies, instruments and expertise in this field. Less frequently, however, this state building capacity is described as particularly vulnerable to exploitation. Our study of the EU's state building performance in Kosovo suggests that the EU's fractured actorness, with a strong and autonomous Commission willing to act – may be more prone to threats of non-cooperation by local elites than other actors or institutions. By delegating statebuilding competences unequally between the Council and the Commission, the member states leave considerable room for local spoilers to “divide and coopt” the various EU institutions. By helping local elites to garner domestic support, the EU, as other state builders, makes itself depend on the good will and conduct of those very elites. But if the EU lacks the capacity to coerce these elites or to elicit domestic political support at home and abroad more frequently than others, then it is more ripe for attack by exploiters and spoilers.

These theoretical and empirical claims deserve more rigorous testing across both cases and actor constellations. And yet, our findings indicate that variance in the EU actorness and variance in state building interaction should prevent us from drawing quick and easy explanations: more coherence does not lead to more effectiveness and less engagement will not dissolve the dilemmata of state builders. As our augmented actorness concept suggests, attention has to be turned to how and in what way identity shapes EU actorness and EU actorness generates exploitation and spoiler problems. The role of national identities in shaping the EU's actorness is thus a promising venue for future research in both conflict and EU studies.

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