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Beyond the Intergovernmental-Supranational Divide in EU Foreign Policy: Insights from Kosovo

by Maria Giulia Amadio Viceré

ABSTRACT

Because of the intergovernmental nature of EU foreign policy, the role of the European Commission in EU external action is often considered minimal or residual. Providing a systematic review of the case of Kosovo, this paper demonstrates that it is possible to identify different degrees of integration in EU foreign policy. It does so by investigating under which conditions Member States delegate foreign policy competences to the Commission. In the case of Kosovo, integration in EU foreign policy has been conditioned by the level of control Member States have chosen exercise on or delegate to supranational institutions.

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Introduction

The Common Foreign and Security Policy and the Common Security and Defence Policy (CSDP) are generally considered as the areas in which Member States entirely maintain their sovereign decision-making powers. In this regard, Fabbrini highlights the presence of different Unions, namely a supranational and an intergovernmental one.[1] The latter "has been the answer for the need to advance integration in the crucial foreign and security policies."[2] Because of the intergovernmental nature of CSDP, the role of the European Commission in EU external action is often considered minimal or residual. Scholars such as Puetter, Stacey, Dinan and Mèrand et al. argue that the Lisbon Treaty has further weakened the position of the European Commission in EU Foreign Policy.[3]

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[1] Sergio Fabbrini, *Compound Democracies. Why the United States and Europe Are Becoming Similar*, Oxford, Oxford University Press, 2010; Sergio Fabbrini, "Intergovernmentalism and Its Limits: Assessing the European Union's Answer to the Euro Crisis", in *Comparative Political Studies*, Vol. 46, No. 9 (2013), p. 1003-1029; Sergio Fabbrini, "The European Union and the Libyan Crisis", in *International Politics*, Vol. 51, No. 2 (March 2014), p. 177-195.

[2] Sergio Fabbrini, "The European Union and the Libyan Crisis", cit., p. 182.

[3] Uwe Puetter, "The Latest Attempt at Institutional Engineering: The Treaty of Lisbon and Deliberative Intergovernmentalism in EU Foreign and Security Policy Coordination", in Paul James Cardwell (ed.), *EU External Relations Law and Policy in the Post-Lisbon Era*, The Hague, T.M.C Asser Press, 2012, p. 17-34; Jeffrey Stacey, "Informal Governance in the EU: The European Commission versus the European Parliament", in Thomas Christiansen and Christine Neuhold (eds.), *International Handbook of Informal Governance*, Cheltenham, Edward Elgar, 2012, p. 395-411; Desmond Dinan, "Governance and Institutions: Implementing the Lisbon Treaty in the Shadow of the Euro Crisis", in *Journal of Common Market Studies*, Vol. 49, Suppl. 1 (September 2011), p. 103-121; Frédéric Mérand, Stéphanie C. Hofmann and Bastien Irondelle, "Governance and State Power: A Network Analysis of European Security", in *Journal of Common Market Studies*, Vol. 49, No. 1 (January 2011), p. 121-147.

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This paper questions this mainstream view It does so by investigating under which conditions Member States delegate foreign policy competences to the Commission. In particular, I hypothesise that different degrees of integration between the Commission, considered as the supranational engine of the EU, and the Member States can and do occur. Such integration is determined in turn, by the level of control Member States exercise on the Commission acting under the authority of the High Representative for Foreign Affairs and Security Policy in her role as Vice President of such institution.

The paper begins by outlining the analytical model used to explain the delegation of competences to the Commission. Subsequently, it delineates the historical, economic and institutional context, which provided fertile ground for an alignment of preferences among the different actors in EU foreign policy. As said, such alignment allowed for a delegation of competences and thus for integration to take place in the pre-Lisbon era. Finally, the paper will demonstrate how the same alignment of preferences has been present also in the aftermath of the Lisbon Treaty. In the case of Kosovo, and in particular in the lead-up to the Brussels agreement, an alignment of preferences provided the same favourable context for Member States to delegate external action competences to the reshaped figure of the High Representative for Foreign Affairs and Security Policy and Vice President of the Commission (HR/VP), assisted by the newly established European External Action Service (EEAS) and the Commission itself.

1. Integration and the Principal Agent model. Insights on the case of Kosovo

The stabilisation of Kosovo remains a challenge. Among the problems to be solved policy analysts and practitioners identify corruption, organised crime and the refusal of Serbs living in northern Kosovo to recognise Kosovar authorities.[4] Yet, it is undeniable that the Balkan countries have been facing triple transitions in the past decade: from war to peace, from a communist-command economy to a liberal market economy and from a single-party rule to a pluralist democracy.[5] Notwithstanding the divisions regarding the status of Kosovo, the EU, as a whole, is willing to play a pivotal role in supporting such systemic transformations.

The Western Balkans area has long been particularly important to the EU, and the prospect of enlargement to such region, formalised in 2003, represents the key policy framework for engagement with the region. As pointed out by Christopher Hill in 1993, the EU had prime responsibility to act as a "regional pacifier" and

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[4] See, for instance, European Council for Foreign Relations (ECFR), *European Foreign Policy Scorecard* of 2010/11, 2012, 2013; 2014, http://www.ecfr.eu/scorecard.
[5] Rosa Balfour and Corina Stratulat, "The democratic transformation of the Balkans", in *EPC Issue Papers*, No. 66 (November 2011), http://www.epc.eu/pub_details?cat_id=2&pub_id=1363.

conflict mediator in the Balkans.[6] As Gross and Rotta point out, the "Western Balkans represents the only theatre of activity where the EU explicitly claims a political and operational lead in a dense international field where the EU, NATO, and the US work towards common goals."[7] Yet it is only since NATO's intervention in Kosovo in 1999 that the EU has played an increasingly important role in the region, well aware that the EU could not afford another foreign policy failure in its backyard. Whilst the Union was unable to prevent the outbreak of an armed conflict in this territory, it did prove capable of dealing with post-conflict economic reconstruction within the framework of the United Nations Interim Administration Mission in Kosovo (UNMIK) and through economic aid.[8] With regard to the latter, the EU provided more than 2 billion euro in aid to Kosovo, roughly two-thirds of the sum provided by the international community.[9]

Such unity of purpose over the stabilisation of Kosovo between Member States and the Commission has created fertile ground for instances of delegation of competences from the former to the latter. According to the Principal Agent model, collective agents – Member States – prefer not to delegate competences in delicate policy areas, such as foreign policy.[10] This is because in cases of non-aligned preferences between actors, any policy chosen by the executive agent – in this case the Commission – would lead to an outcome inevitably distant from the ideal point of the principal – the Member States. Yet, in certain conditions, principals might choose to delegate.[11] Franchino highlights that delegation might be convenient for Member States in order to reduce the amount of work or to face technically complex matters.[12] Whereas, Fiorina points out that delegation might also serve as a successful tool for "blame shifting"[13] whenever unpopular

[6] Christopher Hill, "The Capability-Expectations Gap, or Conceptualizing Europe's International Role", in *Journal of Common Market Studies*, Vol. 31, No. 3 (September 1993), p. 305-328.

[7] Eva Gross and Alessandro Rotta, "The EEAS and the Western Balkans", in *IAI Working Papers*, No. 11|15 (June 2011), p. 2, http://www.iai.it/pdf/DocIAI/iaiwp1115.pdf.

[8] Isabel Lirola Delgado, "The European Union and Kosovo in the Light of the Territorial Issue", in Peter Hilpold (ed.), *Kosovo and International Law. The ICJ Advisory Opinion of 22 July 2010*, Leiden, Nijhoff, 2012, p. 157-180.

[9] Stefano Valentino, "Cold case: EU spending in Kosovo", in *European Voice*, 7 July 2011, http://www.balkanpeace.org/index.php?index=article&articleid=16120.

[10] Mattia Guidi, "Delegation and Varieties of Capitalism: Explaining the Independence of National Competition Agencies in the European Union", in *Comparative European Politics*, Vol. 12, No. 3 (May 2014), p. 343-365; Stephen A. Ross, "The Economic Theory of Agency: The Principal's Problem", in *The American Economic Review*, Vol. 63, No. 2 (1973), p. 134-139, https://www.aeaweb.org/aer/top20/63.2.134-139.pdf; Gary J. Miller, "The Political Evolution of Principal-Agent Models", in *Annual Review of Political Science*, Vol. 8, No. 1 (2005), p. 203-225.

[11] Mattia Guidi, "Delegation and Varieties of Capitalism", cit.

[12] Fabio Franchino, "Efficiency or credibility? Testing the two logics of delegation to the European commission", in *Journal of European Public Policy*, Vol. 9, No. 5 (October 2002), p. 677-694, http://users2.unimi.it/fabiofranchino/wp-content/uploads/Article%20downloads/JEPP%202002/Franchino_JEPP_2002.pdf.

[13] Morris P. Fiorina, "Legislative Choice of Regulatory Forms: Legal Process or Administrative Process?", in *Public Choice*, Vol. 39, No. 1 (1982), p. 33-66.

measures need to be adopted.[14] In the case of the five non-recognisers of Kosovo's independence, participating in or not obstructing Commission action could be interpreted as a form of "blame shifting", insofar as it would allow them to take part in the stabilisation of the Balkans without having to recognise Kosovo.

In the case of Kosovo, the policy preferences of the Member States and the Commission have been close ever since the first phases of the post-conflict reconstruction of the country. As such, Member States have been keen on delegating to the Commission. Indeed, in Kosovo, most EU policies have been conducted by the Commission with the political and financial support of the Member States. Kosovo's path towards integration has been largely managed by the Commission through the establishment and monitoring of instruments such as the Stabilisation and Association Process (SAP), the Stabilisation and Association Process Tracking Mechanism (STM) and the European Partnership for Kosovo. Last but not least, the largest EU CSDP mission, both in size and scope, was deployed in Kosovo, with the unanimous approval of all Member States. Likewise, normalisation of the relationship between Pristina and Belgrade has been constantly linked to EU enlargement policy. Interestingly, such an alignment of preferences occurred notwithstanding the divisions among Member States on the recognition of Kosovo's independence.

2. From post-conflict reconstruction to European integration: What role for the Commission?

2.1 From post-conflict reconstruction to enlargement

The Commission's expertise was crucial in supporting reforms in Kosovo, especially in the first phase of economic institution building. The Commission contributed to the work of the United Nations Interim Administration Mission in Kosovo, headed by the Special Representative of the UN Secretary-General (SRSG) and comprised of four different components called "Pillars".[15] Such pillars were directed by Deputy SRSGs and sustained by other organisations. Pillar I originally coordinated refugee return under the guidance of the UN Refugee Agency (UNHCR). Pillar II managed civil administration. Pillar III included the Organization of Security and Co-operation in Europe (OSCE) Mission in Kosovo and was responsible for democratisation and institution building. The fourth UNMIK Pillar, was, notably, referred to as the "EU Pillar",[16] and dealt with economic development. The EU's contribution went beyond

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[14] Mattia Guidi, "Delegation and Varieties of Capitalism", cit.

[15] Michael Karnitschnig, "The United Nations and the European Union in Kosovo: The Challenges of Joint Nation-Building", in Jan Wouters, Frank Hoffmeister, Tom Ruys (eds.), *The United Nations and the European Union: An ever stronger partnership*, The Hague, T.M.C. Asser Press, 2006, p. 323-351.

[16] It is important to remember that UNMIK's "EU Pillar" has never been an EU agent, for it is an integral part of a UN mission, but with financial input and political support from the EU.

supporting financially UNMIK. EU institutions and Member States also provided experts to UNMIK and funded workers contracted locally.[17] Moreover, from 2000, Kosovo became part of the Stabilisation and Association Process. Such policy envisages a wide range of tools, among which are trade preferences, financial assistance, contractual ties and policy advice. As EU membership is envisaged as the final goal of this process, the SAP entails far-reaching reforms on the rule of law, economic reforms and regional cooperation. Trade also occupies a prime role in the process with the prospect of signing a Stabilisation and Association Agreement. The SAP's second component,[18] for instance, regards EU autonomous trade measures (ATMs) and provides unlimited and duty-free access to the EU of nearly all products originating in Kosovo. Such ATMs consider Kosovo as a separate customs territory, conducting its own trade policy independently from Serbia.[19]

In order to support Kosovo's ongoing state building, the Commission established further mechanisms as years went by. These included the Kosovo SAP Tracking Mechanism and the European Partnership for Kosovo, inspired by the Accession Partnership used for the candidate countries.[20] Kosovo has also been covered by pre-accession assistance since 2007, aimed at bolstering institutional capacity, cross-border cooperation, economic and social development and rural development.[21]

2.2 The declaration of independence and EU-Kosovo relations

On 17 February 2008, Kosovo unilaterally declared its independence from Serbia. In Brussels, the Council recognised such declaration "underlin[ing] its conviction that in view of the conflict of the 1990s and the extended period of international administration under [UNSC Resolution] 1244, Kosovo constitutes a *sui generis* case."[22] Such uniqueness does not however call into question "the UN Charter and the Helsinki Final Act, *inter alia* the principles of sovereignty and territorial integrity and all UN Security Council resolutions."[23] As a response, Serbia and

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[17] Michael Karnitschnig, "The United Nations and the European Union in Kosovo", cit.

[18] The SAP components are: the contractual relationships (bilateral Stabilisation and Association agreements, SAA); trade relations (autonomous trade measures); financial assistance (the Instrument for Pre-Accession Assistance, IPA); and regional cooperation and good neighbourly relations. See European Commission, *Enlargement policy Glossary: Stabilisation and Association Process*, last updated 7 September 2012, http://ec.europa.eu/enlargement/policy/glossary/terms/sap_en.htm.

[19] Maria Giulia Amadio Viceré, "L'UE e i Balcani: l'impatto politico dell'Europa in Kosovo (Parte I)", in *Gli Euros*, 5 May 2013, http://www.glieuros.eu/L-UE-e-i-Balcani-l-impatto,5986.html; Michael Karnitschnig, "The United Nations and the European Union in Kosovo", cit.

[20] Michael Karnitschnig, "The United Nations and the European Union in Kosovo", cit.

[21] IPA's components are listed in the European Commission website: *How IPA works*, last updated 4 December 2014, http://ec.europa.eu/regional_policy/thefunds/ipa/works_en.cfm.

[22] Council of the European Union, *2851st Council meeting General Affairs and External Relations*, Brussels, 18 February 2008, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/gena/98818.pdf.

[23] Ibidem.

Russia protested, but France, Italy, Germany, the US and Turkey supported Kosovo's declaration. Of the 27 member states of the EU, 22 recognised Kosovo in 2008. Three of the five EU states that have refused to do so were motivated in their rejection by the controversial status of their internal minorities. Whilst Romania and Slovakia are worried about ethnic Hungarians, Spain has to deal with secessionist Basques and Catalonians, the other two, Greece and the Republic of Cyprus are concerned about the prospects of northern Cyprus' secession. However, beyond the *strictu sensu* recognition of Kosovo, tied to domestic considerations, there has not been a visible cleavage between Member States on how to handle Kosovo's transition.

Without EU support, the financial sustainability of Kosovo's interim administration would have been unmanageable. Only six months after Kosovo's declaration of independence, a Donor Conference was held on 11 July 2008, hosted by the Commission in Brussels. Kosovar authorities had presented a Mid-Term Expenditure Framework 2009-2011, which estimated a financial gap of 1.1 billion euro for Kosovo's socio-economic development for the next three years. In response to the Council's demand to use community instruments to promote Kosovo's economic and political development, a total of 1.2 billion euro was pledged by the international community, including 100 million euro for a stabilisation fund. The Commission alone pledged 508 million euro, while EU Member States pledged 286 million euro from their bilateral assistance budgets.[24] The Commission's organisation of the donor's conference in response to the Council's request could be understood as a typical case of delegation from the Member States to their executive agent, against the background of an alignment of preferences between the two.

2.3 The European Union Rule of Law Mission in Kosovo

The EU deployed a CSDP mission, which was de facto designed to supervise Kosovo's independence.[25] Notwithstanding the inability of Member States to reach a common position on the status of Kosovo, the deployment of the EU Rule of Law Mission (EULEX) was nonetheless approved by all 27 Member States at the time. The format chosen – civilian operation – implied a considerable role for the Commission in the implementation, the financing and the monitoring of the operation in the field.

Kosovo's relevance for the EU is reflected also in the size and ambition of the EULEX. It is the largest civilian mission ever launched under the European Security and Defence Policy. At full strength, the mission was foreseen to have 1900 international

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[24] EEAS, *Kosovo and the EU. Political and economic relations*, http://eeas.europa.eu/delegations/kosovo/eu_kosovo/political_relations/index_en.htm.

[25] Giovanni Grevi, "EULEX Kosovo", in Giovanni Grevi, Damien Helly and Daniel Keohane (eds.), *European Security and Defence Policy: The First 10 Years (1999-2009)*, Paris, EU Institute for Security Studies, 2009, p. 366, http://www.iss.europa.eu/publications/detail/article/esdp-the-first-10-years-1999-2009.

staff and 1100 local staff.[26] The mission had an all-encompassing operational mandate, aimed at assisting Kosovar authorities in the rule of law area. Indeed, it was the first fully integrated rule-of-law mission, embracing the fields of justice, police and customs. The centralisation of a spectrum of crucial horizontal responsibilities at the missions' headquarters in Pristina was another distinguishing characteristic of the EU mission in Kosovo. Such horizontal tasks included "programming, procurement, personnel, training and best practices, human rights and gender policies, the anti-corruption unit and the bodies responsible for communication and outreach to civil society and NGOs."[27]

3. Delegation of foreign policy competences to the EU in the post-Lisbon era: The 2013 Brussels Agreement

Beyond playing a prime role in Kosovo's transition, the EU also stood at the forefront in brokering talks between Belgrade and Pristina. The effectiveness of the EU's mediation was largely linked to the conditioning of an agreement between Serbia and Kosovo to the former's accession process to the EU. Here too, notwithstanding different Member State positions on the recognition of Kosovo and the persisting intergovernmental nature of EU foreign policy in the post-Lisbon era, the Member States delegated to the High Representative for Foreign Affairs and Security Policy/ Vice President of the Commission the task of mediating the normalisation of relations between Serbia and Kosovo.

3.1 What basis for negotiation? EU-Kosovo bilateral relations

What emerges from EU-Kosovo bilateral relations is the willingness, shared by the vast majority of Member States, for Kosovo to be widely recognised as an independent state. Some Member States have worked for the normalisation of relations between Pristina and Belgrade through their national diplomatic services and, at times, even through their national heads of state and government. As anticipated, the non-recognition of Kosovo on behalf of five Member States has not impeded the delegation of foreign policy competences on the issue of Kosovo. Shortly after Samuel Zgobar, the EU Special Representative appointed by the HR, arrived in Kosovo in January 2012, Cecilia Malmström, then European Commissioner for Home Affairs, launched talks that could lead to the lifting of EU visa requirements for citizens of Kosovo.[28] At that time, Kosovo was the only country in the Western Balkans whose citizens still needed visas for short-term visits to the EU's Schengen

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[26] The mission's mandate has been extended up until 14th June 2016 and the authorised maximum strength is now 800 international staff and 800 local staff. For more information on EULEX see, for instance, EEAS, *EULEX Kosovo. EU rule of law mission in Kosovo*, last updated October 2014, http://www.eeas.europa.eu/csdp/missions-and-operations/eulex-kosovo/pdf/factsheet_eulex_kosovo_en.pdf.

[27] Giovanni Grevi, "EULEX Kosovo", cit, p. 360.

[28] Toby Vogel, "EU starts visa talks with Kosovo", in *European Voice*, 17 January 2012.

area. Later on in 2012, Greece and Slovakia, although not recognising Kosovo's independence, started accepting passports issued by Pristina. Such recognition brings further evidence to the above-mentioned "blame shifting" aspect of the delegation of competences from Member States to the Commission.

On 10 September 2012 Pieter Feith's term of office as International Civilian Representative in Kosovo ended. Feith had been appointed by twenty-five states, including the US and the majority of EU Member States, to assist Kosovo's government in the implementation of the plan proposed by Marti Ahtisaari. Thus, the states supporting such mandate declared Kosovo a fully independent state. The International Steering Group, the organisation supervising Kosovo's independence, stated that Kosovo had successfully satisfied all the required conditions. The latter included the protection of ethnic minorities and decentralisation of power. At the ceremonial ending of the international supervision of Kosovo's independence, then-Commissioner for Enlargement Stephan Füle declared, for the first time, that Kosovo was on the path to eventual membership.[29] The underpinning logic of the statement was reflected in the 2012 Commission's annual progress report, which affirmed that the EU should start talks on a Stabilisation and Association Agreement (SAA) with Kosovo. The non-recognition of five Member States was not considered as a legal obstacle to the signing of an SAA, as claimed by the feasibility study for a Stabilisation and Association Agreement between the European Union and Kosovo launched at the beginning of 2012.[30] The official document stated clearly that the Union could legally conclude an association agreement with Kosovo, as per Article 217 and 218 of the Treaty on the Functioning of the European Union (TFEU). The main argument underpinning such argument was that the possibility for the EU to conclude international agreements is not restricted to generally recognised independent states or international organisations. Furthermore, from a legal perspective, the SAA could be concluded in a way that could respect the positions of Member States on the status of Kosovo. As the study states: "the legal basis for an agreement with Kosovo, does not constitute recognition of Kosovo by the Union as an independent state nor does it constitute recognition by individual Member States of Kosovo, provided that an express reservation to that effect is made. Equally, it does not constitute a reversal of recognition by the Member States which have already recognised."[31]

3.2 EU role in promoting the Belgrade-Pristina talks

On 22 July 2010 the International Court of Justice (ICJ) in The Hague affirmed, in a non-binding opinion, that Kosovo's declaration of independence from Serbia

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[29] Toby Vogel, "Marathon man", in *European Voice*, 20 September 2012.

[30] European Commission, *Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo* (COM(2012)602), 10 October 2012, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52012DC0602.

[31] Ibidem, p. 3.

on 17 February 2008 did not violate international law.[32] HR/VP Catherine Ashton welcomed the ICJ's judgment without commenting on the five EU Member States that still did not recognise Kosovo. "The advisory opinion opens a new phase," she said. "The future of Serbia lies in the European Union. The future of Kosovo also lies in the European Union."[33] Indeed, such reference to Serbia's future was a strategic one for, a month before, in June 2010, the EU's foreign ministers decided to ratify the main pre-accession agreement with Serbia. Such a clear connection between the normalisation of the status of Kosovo and the enlargement process to Serbia was of crucial importance.

Indeed in September 2010, Boris Tadić, the President of Serbia, agreed to soften the language challenging Kosovo's independence from a draft resolution Serbia had submitted to the United Nations.[34] Tadić's shift occurred after discussion with Ashton and was considered a major negotiating success for the HR/VP. Interestingly, the issue had been of crucial importance to both William Hague, the UK foreign minister, and Guido Westerwelle, the German foreign minister, who had been in Belgrade the week before to push Serbia for a change in its draft resolution.

Since Serbia, the original sponsor of the UN resolution, removed the language challenging Kosovo's independence, EU Member States agreed to co-sponsor the document, which "welcomes the readiness of the European Union to facilitate a process of dialogue between the parties."[35] The resolution called for a new dialogue between Belgrade and Pristina and, most interestingly, it welcomed mediation efforts by the EU to enhance dialogue between the two. Whilst Tadić stressed that the removal did not imply a change of Serbia's position on Kosovo, Kosovo's government affirmed that it was willing to discuss any issue with Belgrade with the considerable exception of matters related to its independence. Yet, the co-sponsored resolution set the basis for talks on technical matters such as trade, transport, energy, interconnections and air controls. As a reward, Brussels agreed to refer Serbia's application for membership of the EU to the European Commission for an opinion.

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[32] ICJ, *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*, Advisory Opinion of 22 July 2010, http://www.icj-cij.org/docket/index.php?p1=3&p2=4&case=141&p3=4.

[33] HR/VP, *Declaration by High Representative Catherine Ashton on behalf of the European Union on the ICJ advisory opinion* (12516/10 Presse 213), 22 July 2010, http://europa.eu/rapid/press-release_PESC-10-213_en.htm.

[34] HR/VP, *Statement by EU High Representative Catherine Ashton on the next steps at the UN concerning the advisory opinion on Kosovo* (MEMO/10/396), 8 September 2010, http://europa.eu/rapid/press-release_MEMO-10-396_en.htm.

[35] UN General Assembly, *Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law* (A/RES/64/298), 9 September 2010, http://undocs.org/A/RES/64/298. See Toby Vogel, "EU and Serbia at odds over joint resolution on Kosovo", in *European Voice*, 30 September 2010.

3.3 The beginning of the Belgrade-Pristina talks

In 2011 the involvement of German Chancellor Angela Merkel brought further impulse to the Belgrade-Pristina talks, which had begun in March of the same year under the brokering of the European External Action Service. At that time, it had become clear that Serbia would not be accepted as an EU member state unless a normalisation of its relationship with Kosovo had taken place.[36] Eight rounds of technical talks between Serbia and its former province gave birth to agreements on freedom of movement, civil registry and recognition of university diplomas, customs stamps and the administration of border crossings to Serbia. Although it was included among the technical agreements, border crossings was a highly politicised subject, particularly considering that in 2011 violence on Kosovo's border had partially hampered the EU-mediated negotiations between Kosovo and Serbia.[37]

In September 2011, Stefan Füle, the European Commissioner for Enlargement, told Božidar Djelić, Serbia's deputy prime minister, that a normalisation of Serbia's relations with Kosovo was a requirement for Serbia to advance its request for EU membership, but that recognition was not a precondition for joining the EU.[38] Shortly after, in its annual progress report, the European Commission recommended that Serbia be recognised as a candidate for EU membership.[39] Yet, the annual report suggested that whilst recognising Kosovo was not a formal precondition for joining the EU, Serbia should, like any aspirant, establish and maintain good relations with all its neighbours.

Notwithstanding the European Commission's recommendation on Serbia's candidacy, Germany, supported by Austria, the Netherlands, Finland and the UK blocked progress, arguing that Belgrade should have done more, especially on the removal of barricades set up by Kosovo Serbs in northern municipalities, and on finding a compromise, which would have allowed Kosovo to participate in regional institutions. Given the need for unanimity amongst Member States in the granting of candidacy, the December 2011 European Council rejected Serbia's bid for recognition as a candidate country. Formally, the decision was only postponed[40] and the HR/VP and the European Commissioner for Enlargement and Neighbourhood Policy, Füle, stated they were both "confident" Serbia would be able to soon make the final progress to gain such status.[41]

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[36] Maria Giulia Amadio Viceré, "L'UE e i Balcani: l'impatto politico dell'Europa in Kosovo (Parte II)", in *Gli Euros*, 12 May 2013, http://www.glieuros.eu/L-UE-e-i-Balcani-l-impatto,5995.html.

[37] Ibidem.

[38] Toby Vogel, "So near, yet so far", in *European Voice*, 6 October 2011.

[39] European Commission, *Enlargement Strategy and Main Challenges 2011-2012* (COM(2011)666), 12 October 2011, par. 23, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52011DC0666.

[40] European Council, *European Council Conclusions*, 9 December 2011, par. 13, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/126714.pdf. See also Toby Vogel, "Serbia's candidate status postponed", in *European Voice*, 15 December 2011.

[41] European Union, *Joint Statement by Catherine Ashton, High Representative of the Union for*

3.4 More than a name: Kosovo's nameplate in diplomatic meetings

Negotiations between Serbia and Kosovo were also held in Brussels to find a compromise on how reference should be made to Kosovo in international meetings. Whilst Serbia wanted to prevent Kosovo's participation in such meetings unless clear reference was made to the United Nations Security Council Resolution 1244 of 1999,[42] which describes Kosovo as part of Serbia until a final status agreement, Kosovo wanted to be represented as the "Republic of Kosovo" and therefore considered as an independent country. In order to get Kosovo's compliance, Commissioner Füle, proposed to begin preparations for a pre-accession agreement between the EU and Kosovo.[43] In this case as well, the Commission took the initiative in light of the Member States' acquiescence.

Under intense diplomatic influence, Kosovo renounced the term "republic" and accepted reference to UNSCR 1244, as long as a similar reference was going to be made to the 2010 advisory opinion of the International Court of Justice. The latter stated Kosovo's unilateral declaration of independence in 2008 was, in fact, legally valid. Kosovo's nameplate in diplomatic meetings contains now a footnote making reference to both UNSCR 1244 of 1999 and to the ICJ's ruling of 2010. According to the footnote, the designation "Kosovo", is "without prejudice to positions on status and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence." According to a statement of the Council of Ministers, the new agreement would allow Kosovo "to participate and sign new agreements on its own account and to speak for itself at all regional meetings."[44] Previously, agreements regarding Kosovo had been signed by the UNMIK.

The HR/VP and the Commissioner for Enlargement and Neighbourhood policy described the deal as "a major step forward," arguing that it would allow further progress on contractual relations with the EU.[45] Along such reasoning, the Commission proposed to launch a feasibility study for a Stabilisation and Association Agreement between Kosovo and the EU. Even though the Commissioner for

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Foreign Affairs and Security Policy and Vice-President of the Commission and Stefan Füle, EU Commissioner for Enlargement and European Neighbourhood Policy on Serbia (MEMO/11/894), 9 December 2011, http://europa.eu/rapid/press-release_MEMO-11-894_en.htm.

[42] UN Security Council, *Resolution 1244* (S/RES/1244), 10 June 1999, http://undocs.org/S/RES/1244(1999).

[43] Maria Giulia Amadio Viceré, "L'UE e i Balcani: l'impatto politico dell'Europa in Kosovo (Parte II)", cit.

[44] European Union, *EU facilitated dialogue: Agreement on Regional Cooperation and IBM technical protocol* (5455/12 Presse 9), 24 February 2012, http://europa.eu/rapid/press-release_PRES-12-9_en.htm. See also Toby Vogel, "What's in a name?", in *European Voice*, 1 March 2012.

[45] European Union, *Joint statement of High Representative/Vice President Catherine Ashton and Commissioner Štefan Füle on the agreements reached in the latest round of Belgrade-Pristina dialogue* (MEMO/12/133), 24 February 2012, http://europa.eu/rapid/press-release_MEMO-12-133_en.htm.

Enlargement effectively has the authority to launch a feasibility study without the consent of the five EU member states, which still do not recognize Kosovo, he assured through his spokesperson this would not happen without their consent.[46] On 28 February 2012 national ministers for European affairs unanimously recommended granting Serbia the status of candidate for EU membership.[47] On 1 March 2012 the European Council, in response, granted such status to Serbia.[48]

3.5 The 2012 presidential elections

Before elections were held in May 2012, Serbian President, Tadić, had agreed to exclude Serb-controlled parts of Kosovo from Belgrade's parliamentary voting.[49] Yet, in the spring of 2012, the Serbian government had pushed to let Serbs in north Kosovo cast their vote for local assemblies in Serbia.[50] This was, according to Serbian authorities an obligation to respect Serbia's constitution, which defines Kosovo as a Serbian province.[51] By May, through talks mediated by the European Union, Serbia and Kosovo agreed that Serbs living in north Kosovo would have been able to vote in Serbia's general elections under the umbrella of the Organization for Security and Co-operation in Europe (OSCE). EULEX was mandated to control the security of the voting. According to the same compromise, Serbs would have not voted in Serbian local elections. Kosovo's government, dominated by ethnic Albanians, in fact considers local administrations in the north as "parallel institutions" violating Kosovo's sovereignty.[52] In the end, ethnic Serbs in north Kosovo were able to vote in the general and presidential elections under the conditions agreed through EU mediation. Even though the turnout was very low – around 32 percent – the elections proceeded without any major incident.

After the elections were held, Serbia's new president, Nikolić, told EU leaders that he intended to stick to EU mediated deals with Kosovo. However, the new president also affirmed he would have to learn the "*details*" of such agreements before "making a final judgement."[53] After a meeting with the new Serbian president, European

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[46] Toby Vogel, "Serbia and Kosovo strike name deal", in *European Voice*, 24 February 2012; Toby Vogel, "What's in a name?", cit.

[47] Council of the European Union, *Council conclusions on Enlargement and the Stabilisation and Association Process, 3150th General Affairs Council meeting*, Brussels, 28 February 2012, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/genaff/128255.pdf.

[48] European Council, *Serbia is granted EU candidate status* (EUCO 35/12 Presse 84), 1 March 2012, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/128445.pdf.

[49] Toby Vogel, "Tadic excludes Serb controlled parts of Kosovo from elections", in *European Voice*, 15 March 2012.

[50] It should be noted that the Serbian 2012 presidential elections were held in parallel with the provincial and local elections.

[51] Toby Vogel, "Tadic excludes Serb controlled parts of Kosovo from elections", cit.

[52] Maria Giulia Amadio Viceré, "L'UE e i Balcani: l'impatto politico dell'Europa in Kosovo (Parte II)", cit.; Toby Vogel, "Nationalist wins Serbian election", in *European Voice*, 21 May 2012; Toby Vogel, "Nikolic pledges to implement Kosovo agreements", in *European Voice*, 14 June 2012.

[53] Toby Vogel, "Nationalist wins Serbian election", cit.; Toby Vogel, "Nikolic pledges to implement

Council President Herman Van Rompuy affirmed that the "further normalisation" of ties with Kosovo remained a "key requirement" for the start of negotiation. "We expect Belgrade to implement the agreements it has entered into in the dialogue with Pristina, in particular on regional cooperation and crossing points."[54] In the Commission's 2012 annual progress report, the Commissioner for Enlargement affirmed Serbia should be allowed to open accession talks only if there is "visible and sustainable improvement in relations with Kosovo."[55]

3.6 The Brussels Agreement

The brokering of technical talks between Pristina and Belgrade paved the way for the two parties to reach the Brussels Agreement in April 2013 under the mediation of the EU. Such a deal represents a major development in the stabilisation of the northern part of Kosovo. The Serbian communities living in the northern part of the former Serbian province will be, from now on, integrated into Kosovo, but granted a wide range of autonomy in the fields of police, healthcare, town planning and justice. Ideally, such an arrangement would create an ensemble of four Serbian municipalities (North Mitrovica, Zvečan, Zubin Potok and Leposavić) establishing a sort of urban district within Kosovo's administrative construction.[56] In terms of security, Kosovar police forces will be deployed in the north. Yet as the forces will have to reflect the ethnic composition of that regional setting, the regional commander of such security forces will be a Serb.[57] Interestingly, both Pristina and Belgrade have agreed, as part of the deal, not to hinder their respective efforts to become an EU member.

As the 2013 European Council on Foreign Relations (ECFR) *Scorecard* highlights,[58] notwithstanding some disorders in Northern Mitrovica during the election for local councillors at the end of 2013, the deal reached in April 2013 seemed to have passed its first test. Needless to say, Serbian candidates scored major successes among the Serbian northern and southern communities.

Kosovo agreements", cit.

[54] European Council, *Statement by the President of the European Council Herman Van Rompuy, following his meeting with President of Serbia Tomislav Nikolić* (EUCO 116/12 Presse 268), 14 June 2012, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/130978.pdf.

[55] European Commission, *Serbia 2012 Progress Report* (SWD(2012)333), 10 October 2012, p. 19, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52012SC0333.

[56] See, for instance, South East European Studies at Oxford, *Serbia/Kosovo: The Brussels Agreements and Beyond*, Workshop Report, March 2014, http://www.sant.ox.ac.uk/seesox/publications/SerbiaKosovoWorkshopReport.pdf.

[57] Piotr Smolar, "Serbia and Kosovo sign historic agreement", in *The Guardian*, 30 April 2013, http://gu.com/p/3fdzb.

[58] European Council for Foreign Relations (ECFR), *European Foreign Policy Scorecard 2013*, http://www.ecfr.eu/scorecard.

The normalisation process is linked to progress on EU enlargement. The European Council rewarded Belgrade for the deal with Kosovo by taking a conditional decision to open membership talks by January 2014. The EU offered Kosovo, in turn, the opportunity to begin negotiations for a Stabilisation and Association Agreement which was successfully concluded in 2014.[59] What emerges from such events is that, even in this last case, notwithstanding divisions among Member States on the recognition of Kosovo's independence, the EU managed, as a whole and in an integrated manner, to foster the stabilisation of relations between the two parties. This was done linking the conclusion of the Brussels Agreement to the launch of negotiations for a SAA with Kosovo. Indeed, notwithstanding the divisions among Member States on Kosovo's independence such launch was legally feasible. As mentioned above, the Lisbon Treaty allows the EU to conclude an SAA without the agreement of all Member States.

Analysing the effectiveness of the agreement goes beyond the focus of this paper. It is worth mentioning, however, that, more than a year after the agreement was concluded, in a report presented to show the progress in the implementation of the Brussels deal, Edita Tahiri, acting deputy prime minister of Kosovo and head of the delegation to the EU mediated talks, strongly accused the Serb side of constant intervention in Kosovo's internal affairs. Among the tensions between the two parties, disorders in the north of Mitrovica at the beginning of June 2014 have brought back to the spotlight the issue of barricades on the Iber River. What appears relevant for this analysis is that such criticisms were issued while acknowledging the undeniable progress made through the EU mediated talks.[60]

Conclusions

Only 22 EU member states have recognised Kosovo so far. Still, the EU has managed to have significant political impact and act in a truly integrated way in Kosovo, especially through the brokering of talks between Belgrade and Pristina and the linking of Serbia's accession to the EU to the normalisation of the relations between Serbia and Kosovo.

Despite the intergovernmental nature of EU foreign policy, this success was not only the result of strong efforts by key Member States, such as Austria, Germany, Italy and the UK. The European Commission and the EEAS played a pivotal role in such progress. A general agreement between Member States and institutions exists on the fact that the Balkans should be part of the Union in the near future and that enlargement should be the main EU policy to be used towards them. Thanks to such alignment of preferences, the institutional separation between

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[59] EEAS, *Stabilisation and Association Agreement successfully completed*, 2 May 2014, http://eeas.europa.eu/delegations/kosovo/press_corner/all_news/news/2014/20140502_03_en.htm.
[60] Elton Tota, "Dialogue. Serbia doesn't implement the agreements reached with Kosovo", in *Independent Balkan News Agency*, 14 October 2014, http://wp.me/p3kkVt-8zG.

an intergovernmental and a supranational Union were overcome. A consensus on the European integration of the Balkans, including Kosovo, is particularly interesting considering the non-recognition of Kosovo by several Member States. Notwithstanding this potential cleavage, in practice, Member States have agreed to delegate to the Commission and the High Representative for Foreign Affairs and Security Policy in view of their general alignment of preferences regarding the normalisation of ties between Kosovo and Serbia.

As risk-adverse actors, Member States delegated to the Commission to reduce the amount of work on technically complex issues, particularly in the initial post-reconstruction phases in Kosovo. On that occasion Member States strongly relied on the Commission's technical expertise. Thereafter, the Member States have agreed to link the prospects of European integration of both Serbia and Kosovo to the normalisation of relations between the two. In addition, the five non-recognisers have been ready to delegate to EU institutions as a result of a "blame-shifting" attitude. Delegating to the EU institutions enabled them to support the stabilisation of the Balkans without having to concede recognition of Kosovo and face the implications this might have with their own secessionist movements. Notwithstanding the intergovernmentalism of EU foreign policy and the apparent cleavages between Member States, the case of Kosovo highlights how integration as well as effectiveness in the foreign policy domain is still possible.

Updated 9 January 2015

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