

# Fake, Partial and Imposed Compliance

## The Limits of the EU's Normative Power in the Western Balkans

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### Abstract

This paper examines the EU's external power through the prism of perceptions by non-EU countries of the aims of EU foreign policies, as shown in the Western Balkans. The paper argues that the EU's policy in the Western Balkans lacks a strong normative justification, which affects the degree of compliance with the EU's demands in areas related to state sovereignty. The perceived lack of legitimacy opens up political space for domestic actors to contest the positions taken by the EU on normative grounds. The Western Balkan countries have responded by giving preference to internal sources of legitimacy and asserting domestic reasons for *fake* compliance, *partial* compliance or non-compliance with the EU's conditions, with the latter provoking *imposed* compliance. The EU's transformative leverage in the region has been much weaker to date in comparison with that in Central and Eastern Europe prior to EU accession.

The paper also makes the case for widening the debate about EU foreign policy to include contributions that focus on the external impact of the EU's actions. It links the study of EU foreign policy to the literature on Europeanisation that developed in the context of the EU's enlargement to Central and Eastern Europe.

**Key words:** compliance, Europeanisation, EU conditionality, European foreign policy, legitimacy, 'normative power Europe'

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# **FAKE, PARTIAL AND IMPOSED COMPLIANCE**

## **THE LIMITS OF THE EU'S NORMATIVE POWER**

### **IN THE WESTERN BALKANS**

**GERGANA NOUTCHEVA\***

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#### **1. Introduction**

The growing political weight of the European Union (EU) in international politics has stimulated a lot of discussion about the nature and facets of the EU's external power. The question of "what kind of power" the EU represents (Sjursen, 2006) has generated arguments in support of both the "normative power Europe" (Manners, 2002 and 2006) and the "strategic power Europe" (Youngs, 2004; Hyde-Price, 2006), with the debate as to what drives EU foreign policy remaining inconclusive to date. Academic contributions to the study of European foreign policy have predominantly focused on conceptualising the EU's internal policy processes and institutional relationships while neglecting the external impact of the EU's foreign policy (Smith, 2006).

At the same time, scholars of the EU's enlargement have been studying the effects of the "EU's transformative power" (Grabbe, 2006) on the candidate countries, observing the profound domestic changes that occurred in Central and Eastern Europe in the context of preparations for EU accession. Concerned primarily with the EU's external impact on this specific kind of non-member country, the Europeanisation literature has offered interesting insights into the mechanisms of EU influence on the domestic structures of these countries and the reasons for their compliance with EU conditions (Schimmelfennig & Sedelmeier, 2004 and 2005; Grabbe, 2001 and 2006; Jacoby, 2004; Kelley, 2004; Vachudova, 2005).

These two specific strands of the scholarly debate about the EU's external relations have developed in parallel, notwithstanding the linkages between them. On the one hand, conclusions about the EU's normative power or strategic leverage cannot be drawn without considering the reactions of non-EU countries to the EU's policies or assessing the EU's impact 'on the ground'. On the other hand, evaluations of non-member states' responses to the EU's external actions cannot be credible without taking into account their perceptions of the EU's motivations for pursuing certain policy objectives in the first place.

In an attempt to bridge these two distinct bodies of research, this paper analyses the EU's influence in the Western Balkans by studying the compliance responses of Balkan candidates to the EU's statehood conditions and how these responses have been affected by domestic views of the overall purpose of the EU's actions. The Western Balkans present a good case for the objective of this analysis because they have been on the receiving end of both the EU's common foreign and security policy (CFSP) and enlargement policy. The EU's involvement in the region for the time being

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cannot be clearly categorised under either foreign or enlargement policy. As a result, neither the conceptual tools of foreign policy analysis nor those of Europeanisation are entirely suited to explaining the EU's impact on the state structures in the region.

The paper argues that the EU's policy in the Western Balkans lacks a strong normative justification, which affects the degree of compliance with the EU's demands on sovereignty-related issues. The Balkans' challenge to the EU's normative influence plays out in the politics of compliance and manifests itself in these countries contesting the appropriateness of the EU's pressure on them to undertake specific domestic changes. When Balkan political leaders openly confront the EU about the kinds of conditions being set, they not only question the normative foundations of the EU's policies but also reject the EU's external authority and assert domestic reasons for partial compliance or non-compliance. Compliant outcomes in such cases are more the result of the EU's strategic leverage than of voluntary submission to the EU's normative power and are vulnerable to reversals in the short run.

The argument unfolds in two steps. First, the paper demonstrates that the EU's policy of conditionality vis-à-vis three Western Balkan cases – Serbia and Montenegro during 2002–06, Bosnia and Herzegovina (BiH), and Serbia and Kosovo – has been based on strategic interests rather than normative considerations or moral concerns. Second, the paper shows that domestic actors in the three cases have tried to challenge the normative grounds of the EU's policy and have responded with *fake* compliance, *partial* compliance and non-compliance, respectively, with the latter provoking *imposed* compliance. The paper maintains that the legitimacy of the EU's demands as perceived by domestic political actors is key for explaining the divergent compliance responses of the Western Balkan countries.

## **2. Legitimisation and the EU's policy in the Western Balkans**

What drives the EU's policy in the Western Balkans and how does the EU justify its demands in Western Balkan countries? The scholarly debate on these questions has been rather thin but the literature on enlargement offers insights into possible explanations. Smith (2004) and Vachudova (2005) give primacy to the material interests (both economic and geopolitical) of the EU member states in an undivided Europe as a major explanatory variable for the EU's enlargement decisions. In contrast, Schimmelfennig (2001) holds that rational arguments can only partially explain the EU's enlargement policy. These can account for the EU's offer of association through the Europe Agreements to the Eastern European countries but cannot explain why the EU agreed to share political power through full institutional inclusion of the Eastern European states (Schimmelfennig, 2001). Rhetorical action provides the missing bit of the puzzle according to Schimmelfennig, who argues that reluctant EU member states were “rhetorically entrapped” and shamed into approving enlargement by those member states that championed it. Sjursen (2002) goes a step further and maintains that the EU's Community-based identity is at the core of the EU's motivation to enlarge eastwards. “Ethical-political reasons which testify to a sense of kinship-based duty” are seen by Sjursen as crucial to understanding the shape and substance of the EU's enlargement policy.

Compared with Central and Eastern Europe, the Western Balkans are a special category of accession candidates and the Stabilisation and Association Process (SAP) is a special version of the EU's enlargement policy. While also devised as a pre-accession mechanism by the EU, the separation of the SAP from the enlargement policy signals important differences. First, there is the timetable – the SAP was launched much later than the enlargement process and was perceived from the very beginning as a weaker derivative of the enlargement process. Only in 2000 did the EU

extend the membership perspective to the Western Balkan countries, a decade after making its first steps towards engaging the countries in Central and Eastern Europe. The other important differences between the SAP and the enlargement policy have to do with the conditions attached to the promise of membership. The former Yugoslav republics of the Western Balkans that were involved in the secessionist wars of the 1990s not only had a delayed transition but also the initial conditions from which they started presupposed the resolution of outstanding statehood questions. The EU's conditions with respect to these former war adversaries intervened in these highly sensitive political matters by suggesting a vision for the political map of the region and internal state structures against the promise of EU membership.

Considering the specificities of the domestic contexts in the Western Balkans, how does the EU justify its conditionality policy in the framework of the SAP and in particular its demands in relation to sovereignty issues? Sjursen and Smith (2004) suggest three ways of legitimising the EU's foreign policy: a logic of consequences, a logic of appropriateness and a logic of moral justification. The first approach is based on a rational model of action and it justifies policy outcomes with reference to efficient problem-solving. The second approach employs normative arguments identified with a community of values to legitimise foreign policy positions. The third approach rests on universal principles of fairness and justice and validates foreign policy choices on moral grounds, irrespective of actors' interests or identities (Sjursen & Smith, 2004).

Applied to the EU's policy in the Western Balkans, these logics yield different interpretations of what the EU does and the motivation behind its particular stances. More importantly, the EU puts different emphasis on the way it justifies its policy of conditionality to domestic actors in the various Western Balkan countries – a differentiation closely linked to the specificity of each case. Yet, the security rationale for the EU's demands on sovereignty issues appears overarching across the Western Balkans, as illustrated below with evidence from Serbia and Montenegro, BiH, and Serbia and Kosovo.

## 2.1 Serbia and Montenegro

The experiment with building a State Union of Serbia and Montenegro, one of the very first EU-supported state-building projects in the Western Balkans, ended with a 'velvet divorce' after three years of existence, during which the common state failed to capture the imagination of its population. A sizable majority of Montenegrin citizens (about 55%) voted in favour of independence in a referendum in May 2006, thus putting an end to the precarious state-like formation (Friis, 2007). The event was celebrated by some as a success of the EU's soft power, mainly owing to the peaceful and democratic separation of the two constituent republics of the common state (Batt, 2006). Yet, many saw it as a failed attempt to propose and force upon domestic actors a ready-made solution from the outside, which did not enjoy the critical mass of domestic support necessary to stand a chance of surviving.

Between 2001 and 2006, the EU's policy towards Serbia and Montenegro clearly favoured the preservation of a common state for the two republics. The EU demanded the reconstitution of the international legal sovereignty of Serbia and Montenegro as a single subject under international law and the continuation of a (thin) layer of common institutions and policies. High Representative for

the CFSP Javier Solana mediated the negotiations between the two republics and signed the Belgrade Agreement on behalf of the EU as guarantor and arbiter in March 2002.<sup>1</sup>

The domino theory of spillover effects from further disintegration in former Yugoslavia is most frequently invoked by EU officials to explain the EU's policy towards Serbia and Montenegro in the period mentioned.<sup>2</sup> In the words of EU representatives themselves, regional stability and the EU's interests in it are most often cited as the drivers of the EU's involvement in the constitutional impasse between Serbia and Montenegro. The reference to the EU's security concerns is important in this context. Heavily engaged politically, financially and militarily in the stabilisation and consolidation of BiH and Kosovo, the EU has been cautious not to upset the fragile peace reached in the Balkans at the end of the 1990s. The fear of yet another wave of violence overpowered any argument favouring a scenario other than that of a single state solution for Serbia and Montenegro.<sup>3</sup> Thus, a decision acquiescing to Montenegro's independence in 2001 (and thereby indirectly encouraging latent secessionist sentiments in the region) was not one the EU was prepared to take at that time.

Norms and rules of efficient governance could not be easily used by the EU to explain why harmonisation and policy coordination between Serbia and Montenegro was better from an economic point of view. In fact, in economic terms there was a strong logic supporting the continued separate management of the two very different economies (Gros et al., 2004). With divergent trade policies, reflecting structural differences between the service-oriented, outward-looking Montenegro and the industrial, inward-looking Serbia, and separate monetary regimes, resulting from the unilateral introduction by Montenegro of the Deutsche Mark in 1999 and then the euro in 2002, the case for reintegrating the Montenegrin and Serbian economies was rather weak and open to challenge.

In addition, there was no moral case to be made as to why the other former Yugoslav republics (Slovenia, Croatia, Macedonia and Bosnia) could go their separate ways whereas Montenegro was required to stay with Serbia in a re-created mini Yugoslavia. One could argue that there was a strong moral imperative to try to avoid another Balkan tragedy following the European failure to prevent and then stop the Balkan bloodshed of the 1990s. Moral arguments undoubtedly weighed heavily on the EU's decision to extend the membership perspective to the whole Western Balkan region in 2000.<sup>4</sup> Compared with the Eastern European enlargement, however, where the theme of historical reunification of the Continent and the moral obligation of Western Europe to integrate Eastern Europe was prevalent in official discourse,<sup>5</sup> the EU's responsibility with respect to the Western Balkans was uncomfortably articulated, mostly in private and mainly with reference to Europe's disappointing behaviour during the Balkan wars of the 1990s.<sup>6</sup> Yet, moral justifications

<sup>1</sup> See the text of the Belgrade Agreement, reprinted in *CEPS Europa South-East Monitor*, No. 32, CEPS, Brussels, March 2002 (available from <http://www.ceps.be>).

<sup>2</sup> Derived from interviews with EU officials, May 2002–September 2004.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> In virtually every official speech on enlargement by senior EU representatives in the late 1990s and the 2000s, enlargement was referred to as a 'historic opportunity'.

<sup>6</sup> Derived from interviews with EU officials, May 2002–September 2004.

cannot explain why a common state outcome was deemed superior to a two-state solution, irrespective of the overall context in which the EU decided to step up its engagement with the Western Balkans in 2000.

In short, rational calculations rather than norms or moral duties seem better at explaining the EU's initial insistence on establishing the State Union of Serbia and Montenegro. The security interests of the EU member states overwhelmingly dominated the political thinking of EU policy-makers when the decision to push for a common state between Serbia and Montenegro was made.<sup>7</sup> Attempts at persuasion were unsuccessful in changing the hearts and minds of domestic elites who were opposed to the EU's vision of state frontiers and state authority in the region.

In fact, the EU itself was reluctant to apply negative conditionality when faced with non-compliance, knowing the unintended effects of its intervention and fearing destabilisation of the region as a consequence of its indirect support for nationalist and illiberal political forces (Noutcheva & Huysseune, 2004). It subsequently relaxed its sovereignty conditionality on two occasions. First, when the EU's economic demands met firm resistance particularly by the authorities in Podgorica, it agreed in autumn 2004 to conduct separate 'twin-track' trade talks with the two republics in the framework of negotiating a single Stabilisation and Association Agreement (SAA) with the State Union.<sup>8</sup> Second, when Montenegro declared its intention to call a referendum on independence, a right enshrined in the Belgrade Agreement, the EU worked with the political parties in the government and opposition to find a consensus on the conditions under which a positive vote would be considered legitimate and would earn the republic international recognition. In the aftermath of the referendum, the EU was quick to acknowledge the result and to call on its member states to recognise the new state on the European map.<sup>9</sup>

## 2.2 Bosnia and Herzegovina

If there is a single feature that captures the essence of the state structure of BiH, it is decentralisation in extreme forms (Bose, 2002).<sup>10</sup> The state of BiH is a federation consisting of two entities, one that is a unitary state-like structure, the Republika Srpska (RS), and another that is a decentralised federation itself, the Federation of Bosnia and Herzegovina, comprising 10 cantons. The institutional structure emerged as a compromise among the warring parties in 1995 when the Dayton Peace Accords were signed under heavy international pressure and mediation. Its principal objective was putting an end to the violent conflict between the Serbs, Croats and Bosnians.

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<sup>7</sup> Ibid.

<sup>8</sup> See the General Affairs and External Relations Council (GAERC), Council Conclusions on the Western Balkans, 2609<sup>th</sup> Meeting, Luxembourg, 11 October 2004.

<sup>9</sup> See the General Affairs and External Relations Council (GAERC), Council Conclusions on Montenegro, 2737<sup>th</sup> Meeting, Luxembourg, 12 June 2006.

<sup>10</sup> Article 3.1 of the Constitution of Bosnia and Herzegovina assigns the following policy areas to the common state level of governance: foreign policy, foreign trade policy, customs policy, monetary policy, immigration, refugee and asylum policy, international and inter-entity criminal law enforcement, establishment and operation of common and international communications facilities, regulation of inter-entity transport, and air traffic control. All other competencies are the exclusive prerogative of the entities.

The Dayton Agreement proposed an institutional set-up that aimed at providing maximum guarantees to the three ethnic communities to prevent future conflict by assuring their equality and avoiding ethnic domination in the state structures.<sup>11</sup>

Efficiency, rationality and financial sustainability were clearly not among the guiding principles in devising the institutions of political representation in BiH. The country's population of 3.8 million is governed by no fewer than 14 governments – 1 at the state level, 2 at the entity level, 10 at the cantonal level and 1 for the district of Brcko.<sup>12</sup> For a country with a GDP per capita of \$2,425,<sup>13</sup> the financial consequences of the multi-tiered governance system are serious. Many analysts estimate that the cost of the multiple levels of public administration is not affordable for a country with BiH's level of development.<sup>14</sup>

The EU was not responsible for achieving the initial conflict settlement in BiH, nor was it involved in direct mediation between the conflict parties. With the inception of the SAP in 2000, the EU offered incentives to BiH politicians to strengthen the central level of government as a pre-requisite for integration with the EU. In essence, the reforms demanded by the EU as conditions for establishing contractual relations with BiH link its membership prospects to changes in the internal state structure of BiH. The long-term objective of building democratic institutions, securing the rule of law, encouraging the creation of a professional public administration and an efficient judicial system are certainly high on the EU's pre-accession agenda. Yet, in the BiH context, the goal of state-building and state consolidation is dominant and identifiable in the insistence on passing state-level legislation and strengthening the state-level institutions in all spheres of reform.

Examples from two policy areas illustrate the latter point – police reform and reform of the indirect taxation system. Regarding the first example, the EU requirement of "tackling crime, especially organized crime, and building state-level enforcement capacity"<sup>15</sup> has meant a thorough restructuring of the police sector in BiH. In particular, the Commission has laid out three core principles for police reform in the country, the respect of which would satisfy the pre-SAA requirements: "1) exclusive police competence at the BiH level, but operational control at the local level; 2) police areas drawn up on the grounds of operational efficiency, not political control; and 3)

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<sup>11</sup> See Council of Europe, European Commission for Democracy through Law (Venice Commission), Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative, CDL-AD(2005)004, Strasbourg, 11 March 2005 (available from <http://www.venice.coe.int>).

<sup>12</sup> See Freedom House, *Nations in Transit 2004: Bosnia – Herzegovina*, Freedom House, Washington, D.C., 2004 (retrieved from <http://www.freedomhouse.org/research/nattransit.htm>).

<sup>13</sup> See European Bank for Reconstruction and Development (EBRD), *Transition Report 2006*, EBRD, London, 2006 (data are for 2005).

<sup>14</sup> For details on BiH's public finances, see European Stability Initiative (ESI), *Governance and Democracy in Bosnia and Herzegovina: Post-Industrial Society and the Authoritarian Temptation*, ESI, Berlin and Sarajevo, 2004 (available from <http://www.esiweb.org>).

<sup>15</sup> See European Commission, *Report from the Commission to the Council on the preparedness of Bosnia and Herzegovina to negotiate a Stabilization and Association Agreement with the European Union* (Feasibility Study) COM(2003) 692 final, Brussels, 18 November 2003.

no political interference in policing".<sup>16</sup> Compliance with the police reform requirements goes through to entrusting the state with more competences in law enforcement and institutional build-up beyond the entity level.

Reform of the indirect taxation system, through the creation of a single customs administration and the establishment of tax collection at the state level,<sup>17</sup> has involved ceding competences to the state by the entity governments and has resulted in a more integrated decision-making system for economic policy. The internal redistribution of power between the centre and the entities has in essence shifted the locus of authority and restructured the power relations within the country. The stated final goal of the reform is economic – improving the efficiency of the public finance system of BiH. The attainment of this objective, however, is inherently political in nature and has serious consequences for the distribution of power among the various layers of authority within the state.

The EU has justified its demands vis-à-vis BiH on efficiency grounds and has repeatedly pointed to deficiencies in the governing structures of BiH in order to press for change. If BiH is to become an EU member state, so the EU's argument goes, it has to achieve European standards of domestic governance. Thus, to persuade BiH politicians and the public at large of the necessity of police reform, the EU has highlighted the benefits of rationalising the police forces in the country.<sup>18</sup> The fragmentation of police authority in BiH allows for the easy escape of criminals among compartmentalised police jurisdictions with no central oversight. To fight crime more effectively and ensure law and order for all citizens, a single police structure is essential.<sup>19</sup> In this way, the EU has pragmatically appealed to the common sense of domestic political leaders, trying to make them see the virtues of undertaking the reforms themselves rather than presenting the reforms as a sacrifice they have to accept in order to be admitted to the club.

Similarly, to push forward reforms of the taxation system, the EU has exposed the magnitude of fraud to which the unreformed BiH structures were prone. To convince BiH politicians to sign up to the tax reform proposals, the EU has repeatedly made the point that such reforms would result in the state and the entities generating more revenue for the budget and having more money for public spending.<sup>20</sup> Only a radical reform of the system could prevent the massive losses of revenue, which in 2002–03 stood at more than 4% of the national GDP.<sup>21</sup>

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<sup>16</sup> See the speech by High Representative Paddy Ashdown to the RS National Assembly reminding RS parliamentarians of these principles (Office of the High Representative and EU Special Representative, "High Representative Calls for Agreement on Police Reform to Enter Europe", Press Release, Sarajevo, 21 April 2005 (available from <http://www.ohr.int>).

<sup>17</sup> See the Law on the Indirect Taxation System in Bosnia and Herzegovina adopted in December 2003, after intensive domestic negotiations under international supervision in the framework of the Indirect Taxation Policy Commission chaired by Jolly Dixon.

<sup>18</sup> See documents under the heading "Police Restructuring in Bosnia and Herzegovina" on the website of the Office of the High Representative and EU Special Representative (available from <http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/>).

<sup>19</sup> Derived from interviews with EU Commission officials, Brussels, May–July 2005.

<sup>20</sup> Derived from interviews with EU Council officials, Brussels, April–May 2004.

<sup>21</sup> See International Monetary Fund (IMF), *Bosnia and Herzegovina: Selected Economic Issues*, IMF Country Report No. 05/198, IMF, Washington, D.C., June 2005.

The logic of consequences is clearly discernible in the arguments used by EU representatives in trying to coerce BiH politicians to comply with the EU's pre-accession requirements. By interjecting incentives and disincentives in the rational cost-benefit calculus of BiH political elites, the EU has primarily sought to justify its demands as a reaction to the problems identified in the country's domestic structures.

Appeals to European standards of governance as the justification for the EU's conditions have also featured strongly in the EU's strategy for BiH. While serving as High Representative (HR) of the international community (who is also an EU special representative) between May 2002 and January 2006, Paddy Ashdown frequently referred to the 'Europe argument' to convince domestic actors to acquiesce to the institutional and policy changes sought by the EU. His message was simple but powerful – that the EU will not water down its norms of what is appropriate from a domestic governance standpoint and it is up to BiH to live up to EU standards.<sup>22</sup> Paddy Ashdown thus repeatedly reinforced the legitimacy of EU conditionality by arguing that the EU's conditions are an absolute must for BiH's return to the European mainstream. He also publicly shamed those BiH politicians who stood for narrow political interests and obstructed BiH's progress towards EU membership.

The rationale of moral justification does not directly explain the EU's concrete demands with respect to BiH. The moral responsibility of the EU member states with regard to the future of BiH may well account for the EU's commitment to integrate the country but is a weak basis for justifying the internal institutional rearrangement of key power relationships within a candidate state as a requirement for joining the club. Even the reference to European Community values is stretched in this context since there are no common rules concerning the internal institutional set-up within countries and the EU member states are very diverse in their organisation, with both highly decentralised (Belgium) and highly centralised (France) states equally eligible for participation in EU decision-making.

In short, the utility justification seems most authoritative in the case of BiH, with regard to both 'selling' EU policy to domestic actors in BiH and defending the EU's position within the EU member states. A resurgence of violence reminiscent of the Bosnian war of the early 1990s is certainly not a scenario anyone in Europe would like to see repeated, and in this sense the policy of state consolidation in BiH is seen by the EU as a security measure.

### **2.3 Serbia and Kosovo**

So far, the EU has not been directly responsible for the state-building efforts of the international community in Kosovo since the province became a UN protectorate in 1999. Although the EU's direct financial contributions to Kosovo's reconstruction and development have represented the largest external donation by far, totalling over €1.1 billion in the period 1999–2006,<sup>23</sup> the EU has kept a low profile when it comes to the sensitive issue of Kosovo's final status. Instead, it has emphasised its secondary role in a UN-led political process.

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<sup>22</sup> See, for instance, Office of the High Representative and EU Special Representative, "New Year's Message to the People of Bosnia & Herzegovina from Paddy Ashdown, High Representative and European Union Special Representative", Sarajevo, 31 December 2003 (available from <http://www.ohr.int>).

<sup>23</sup> See the European Commission's website page, "EU – Kosovo Relations" (retrieved from [http://ec.europa.eu/enlargement-serbia/kosovo/eu\\_kosovo\\_relations\\_en.htm](http://ec.europa.eu/enlargement-serbia/kosovo/eu_kosovo_relations_en.htm)).

Remaining ambiguous about the final settlement, the EU heads of state and government have outlined the parameters of what would constitute an acceptable solution in a special Declaration on Kosovo adopted by the Brussels European Council in June 2005. Listing the objectionable solutions from an EU point of view such as “partition of Kosovo, [or]...union of Kosovo with another country or with part of another country”,<sup>24</sup> the Declaration does not exclude independence from the menu of acceptable outcomes.

While avoiding taking a direct, official position on Kosovo’s final status, the discussion among member states in the Council has leaned towards emphasising the *sui generis* features of the Kosovo case.<sup>25</sup> One of the unique characteristics argued to have no parallels with other ‘frozen conflicts’ is the UN’s presence on the ground since 1999 as a direct consequence of NATO’s intervention to stop the violence against the Albanian population instigated by the late Milosevic regime. Following the years-long rule of the province by the UN in denial of the official sovereignty of Serbia over Kosovo, there is no conceivable alternative to independence, as the argument goes (Patten, 2007; ICG, 2007).<sup>26</sup>

Furthermore, the perpetuation of underdevelopment in Kosovo owing to its undefined status has increasingly been seen as an argument in favour of speeding up the final settlement of the province’s statehood. Kosovo will remain a black hole in the Balkan region breeding criminality and poverty and thus a problem for European security unless there is clarity about its future direction. In short, pragmatic reasons have contributed to the emerging consensus that the time has come to acknowledge realities on the ground and accept what has become the only possible solution to the problem, namely the legal separation of the two sides and eventually the recognition of a new state on the map of Europe.

In addition, the high degree of popular support for full independence in Kosovo itself (90% of the population favour this outcome), coupled with the extensive mobilisation of Kosovar society backing this cause as evidenced by the riots in Pristina in March 2005, has been a serious factor in evaluating the sustainability of any status outcome. Irrespective of whether independence is a right or just solution, the threat of revolt by the local population against a different final result, possibly targeting the international presence in the province, has enhanced the growing international consent to Kosovo’s eventual independence.<sup>27</sup>

The EU’s security approach to the Kosovo question is also evident in the intense preparations for the EU’s post-settlement role in Kosovo even before its final status has been decided. An EU Planning Team has been deployed there following a Council Decision in April 2006 to make arrangements for a future European security and defence policy operation focusing on the judicial sector and the police.<sup>28</sup> The EU is also to take over considerable responsibilities related to the

<sup>24</sup> See the Declaration on Kosovo (Annex III) in European Council, Presidency Conclusions of the Brussels European Council of 16-17 June, SN 10255/1/05, Brussels, 18 June (retrieved from <http://www.consilium.europa.eu/uedocs/cmsUpload/DeclarationKosovo.pdf>).

<sup>25</sup> See also the speech by European Commissioner for Enlargement Olli Rehn, “Introductory Remarks on Western Balkans”, SPEECH/07/170, delivered at the European Parliament, Foreign Affairs Committee, Brussels, 21 March 2007(a) (available from <http://www.europa.eu>).

<sup>26</sup> Derived from interviews with EU member state officials in Brussels, October 2006–March 2007.

<sup>27</sup> Ibid.

<sup>28</sup> See European Council, “EU Prepares for Resolution to Kosovo’s Political Status”, *ESDP Newsletter*, No. 3, Brussels, January 2007.

international civilian presence after the decision on the final settlement (Papadimitriou, Petrov & Greiçevci, 2007). The future international civil representative is expected to be an EU special representative as well, similar to the situation in BiH.

The plan to grant Kosovo a sort of ‘supervised independence’ is hard to reconcile with universal principles. The big dilemma underpinning Kosovo’s independence bid is whether to give precedence to the right to self-determination or to the principle of territorial integrity. The latter, also known as respect for state sovereignty or the inviolability of state borders, is a fundamental principle enshrined in the UN Charter and as such forms the basis of the international system of governance. From an international legal viewpoint, therefore, supporters of Kosovo’s independence are potential violators of an important norm of the international system. In the same vein of argumentation, the acknowledgment of Kosovo’s right to self-determination may open a ‘Pandora’s box’ of secessionist claims within or outside the EU.

This position has been vehemently supported not only by Serbian interlocutors who oppose Kosovo’s independence but also by Russian President Vladimir Putin, who sees Kosovo as a potential precedent-setting case that could be applied to other secessionist entities in the post-Soviet space such as Transnistria, Abkhazia, South Ossetia and Nagorno Karabakh (Socor, 2007). Given that Russia has shown interests in backing the secessionist entities in its ‘near abroad’ and reasserting itself as a player to reckon with on the international scene, it may have specific instrumental reasons for adopting such an attitude with respect to Serbia and Kosovo (Headley, 2007). In fact, Russia has made it clear that it will block any solution that has not been approved by the authorities in Belgrade, prompting Western diplomats to suspect that it could demand a price from the US and the EU in exchange for its eventual abstention in the UN Security Council vote on Kosovo’s independence (Peel, 2007).

Yet, it is not only Russia that is alarmed by the potential infringement of the state sovereignty rule. In fact, the hesitation of some EU member states in supporting Kosovo’s independence<sup>29</sup> stems from the same concern about the potential violation of the established international norm of safeguarding state borders. It is hardly surprising that countries with sizable domestic minorities such as Spain, Slovakia and Romania have had the greatest tendency to be lukewarm about accepting Kosovo’s eventual independence and apprehensive about the broader repercussions of a possible precedent (Rettman & Krasniqi, 2007). Unlike the republics of the former Yugoslav Federation, which were deemed eligible for independent statehood by the Badinter Commission in 1992, Kosovo only had the status of an autonomous province within the Republic of Serbia and as such was not granted the right of secession, despite enjoying large autonomy on domestic governance issues comparable to that of the republics within the Federation (Woodward, 1995). Yet, from a strictly international legal view, it is the Republic of Serbia’s borders that are protected by the international principle of territorial integrity.

The point at which Kosovo’s bid for independence wins the sympathy of the international community rests on the threat of genocide to its population in 1999 by the Milosevic regime. Indeed, it was the threatened expulsion of the ethnic Albanian citizens living in the province and the massive scale of the violation of their human rights that legitimised the NATO-led Western intervention in defence of Kosovo. While this fact alone is not sufficient to justify secession from a

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<sup>29</sup> For differences among the EU member states, see D. Dombey and N. MacDonald, “Europe Divided over Kosovo”, *Financial Times*, 7 March 2007.

recognised state, it is a key criterion for supporting an independence claim.<sup>30</sup> Related to it are the grievances of the Kosovar population and the almost unanimous rejection by the Kosovars of any institutional or other link with the authorities in Belgrade.

These moral considerations are certainly at the back of EU policy-makers' minds. It is possible that some of them are more strongly inclined to give precedence to moral arguments whereas others are more tuned to pragmatic reasoning about finding a feasible and sustainable solution to what the EU as a whole sees as a security problem. Nevertheless, where EU member states converge on the Kosovo question is on securing stability on the Continent, through embedding a final settlement of the conflict into the broader EU framework – a utility rationale that cannot be seriously challenged by the arguments of appropriateness or moral justification.

### **3. Legitimisation and compliance responses by the Western Balkan countries**

Deciphering the drivers of the EU's policy towards the Western Balkans is important because it provides interesting insights into the reasons that motivate Balkan political leaders to comply with the EU's demands. The literature suggests two possible explanations for compliance (Checkel, 2001; Featherstone & Radaelli, 2002). One is based on rational-choice assumptions, assigning primary importance to actors' cost-benefit calculations in making compliance decisions. The other focuses on norms and values, and accords higher explanatory power to normative considerations as a driver of behavioural change. A great number of studies have provided considerable evidence demonstrating the rational motives behind the compliance responses of Central and Eastern European (CEE) countries to the EU's conditional offer of membership (Kelley, 2004; Schimmelfennig & Sedelmeier, 2005; Vachudova, 2005; Schimmelfennig, Engert & Knobel, 2006). A few studies have shown that normative dynamics are also important in understanding the overall context in which the EU-CEE pre-accession relationship evolved, although these dynamics cannot always account for the substance and timing of specific domestic changes that occurred in these states prior to EU accession (Jacoby, 2004; Grabbe, 2006). In short, the logic of consequences has often prevailed over the logic of appropriateness.

The weak effects of socialisation on domestic elites have primarily been attributed to specific institutional and historical contexts, which can restrict the causal power of the social interaction process (Checkel, 2001). Many scholars studying the effects of international norms on state policy emphasise the salience of domestic receptivity to externally defined standards of appropriate behaviour. Checkel (1999), for instance, maintains that the success of norm diffusion in a certain context depends on the "degree of cultural match" between international norms and domestic practices. It may well be that the conditions in the Western Balkan countries are not very conducive to the socialisation of their political elites to European ways of governance and state behaviour. Such an analysis, however, misses an important aspect of the dynamics of EU conditionality – Balkan compliance, namely the perceptions of the political elites in these countries of the motivation behind the EU's policy and the related impact on compliance decisions. In other words,

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<sup>30</sup> Scholars have put forward the following criteria to examine the legitimacy of claims to secession: "just cause", "right intentions", "legitimate authority", "likelihood of success", "proportionality" and "last resort". See B. Coppieters and R. Sakwa (eds), *Contextualizing Secession – Normative Studies in Comparative Perspective*, Oxford: Oxford University Press, 2003.

the softer mechanisms for inducing compliance may be less effective for reasons to do with the agent of socialisation, the EU in this case, rather than with the object of socialisation, the Balkan countries in this case.

What is demonstrated in the remainder of this paper is that domestic understandings of the sources of legitimacy for EU conditionality affect whether or not local political leaders are receptive to normative arguments and persuasion by EU interlocutors. The argument here is that when the legitimacy of EU conditions is openly questioned by political players in the domestic context, one would expect them to assert more vigorously both their rational motives and distinctive identities in defiance of the EU's demands. As a result, resistance to changes demanded by the EU and opposition to EU-compliant outcomes can be anticipated. And because in the Western Balkans the question of whether the EU is genuinely concerned about spreading its norms or is merely serving its own security interests has been more prominent in the political thinking on the receiving end of EU conditionality, compliance with conditions tied to sovereignty has been either *fake* or *partial* or *imposed* by external actors. When the EU's policy lacks strong normative foundations, political leaders in non-EU countries tend to reject EU-sponsored ideas about what is right and appropriate for the governance and external relations of their states and tend to revert to domestic sources of legitimacy, no matter whether these are based on efficiency or identity. Their assertion of rational or normative reasons depends on the specific domestic context, which is shown in the cases of Serbia and Montenegro, BiH, and Serbia and Kosovo. The main point, however, is that the EU's transformative leverage can be expected to be much weaker in such cases.

### **3.1 Serbia and Montenegro**

Serbia and Montenegro's compliance record with the EU's conditions on a common state structure can be regarded as an example of *fake compliance*. The two republics simulated EU-compliant institutional and policy reforms between 2002 and 2006, which were rolled back once the Montenegrin referendum on independence succeeded. The legitimacy of the EU's policy stance was seriously contested by domestic actors in both contexts as measured by the political mobilisation against the EU's demands. The EU itself could not produce convincing arguments to persuade the Montenegrin and Serbian leaderships that a State Union of Serbia and Montenegro was better for the faster integration of the two republics into EU structures. In the absence of a strong normative justification for the EU's demands, local players in both republics advanced strong rational arguments against the union backed by the EU.

Seen from Podgorica, Montenegro was a victim of the EU's larger geo-strategic concerns about security in the Balkans. In particular, the Montenegrin question was often put in the context of Kosovo's undefined status and the ensuing reluctance to encourage further secessionist ideas in the Balkan region. From the EU's standpoint, acquiescing to Montenegrin demands for independence in 2001 would have sent the wrong signal to Kosovo, which, under UN administration and de facto separated from Serbian control, harboured its own ambitions about independent statehood.<sup>31</sup> The Montenegrin leaders, in turn, tried to use international sensitivities regarding Serbia's unsettled relationship with Kosovo to press the case for an independent Montenegro. Arguing that

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<sup>31</sup> Derived from interviews with EU officials, May 2002–December 2003.

Montenegro could not be held hostage to domestic problems solely pertinent to Serbia, Montenegrin Prime Minister Milo Djukanovic sought to expose the injustice done to his republic by having been forced into a precarious union with Serbia.<sup>32</sup>

While the EU had difficulties justifying its position on a common state on normative grounds, the Montenegrin pro-independence bloc was able mobilise appealing arguments in favour of its preferred option, although these were to evolve over time. In 1997, when Slobodan Milosevic was still in power in Belgrade, Prime Minister Djukanovic used political arguments to defend the Montenegrin pro-independence case, affirming the democratic credentials of his republic and pointing to the authoritarian trend in Serbian politics (Darmanovic, 2003). But with the initial democratisation steps taken in Serbia after the fall of Milosevic in October 2000 and the ensuing shift of policy by the international community, this line was no longer sufficient to win international support for an independent Montenegro, not least because the democratisation processes in the republic itself fell short of international standards.

The strongest Montenegrin objections to the common state had an economic foundation. Economic estimations had indicated that adoption by Montenegro of customs tariffs close to Serbian levels would translate into higher domestic prices for most goods in Montenegro owing to trade diversion effects and as such would constitute a very high cost for Montenegrin consumers (Gros, 2002).<sup>33</sup> Economic re-integration with Serbia was consequently presented as harmful to the economic wellbeing of Montenegrin citizens and on these grounds it was blocked by the Montenegrin government. The EU subsequently dropped its demands on customs tariff harmonisation and adopted a twin-track approach towards the State Union, which applied particularly to trade matters.

Identity arguments dwelling on Montenegro's distinctive character as rooted in its independent historical path never gained credibility with EU representatives because of internal societal division on the question of independence, which manifested itself in an almost even divide or at most a tiny majority favouring an independent Montenegro.<sup>34</sup> Faced with an internally divided society, the EU interlocutors could not accept identity-based arguments in favour of separation from Serbia and dissolution of the State Union.<sup>35</sup>

Rather than blatantly defying the EU, Mr Djukanovic signed the Belgrade Agreement, which he never intended to implement in full. After the common state came into existence on paper, the tactic was quietly to sabotage the common state institutions. By disrupting the normal day-to-day functioning of the common structures, the whole initiative appeared flawed from the very start – a project that was impossible to implement from a technical standpoint. The Montenegrin opposition to the common state then switched to an institutional rationale and employed arguments that dwelled on the suggestion that the EU was backing an inefficient institutional solution, for which Montenegro could not be held accountable for not putting into practice.

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<sup>32</sup> Derived from interviews with senior Montenegrin officials, June–July 2003.

<sup>33</sup> Gros (2002) estimated the potential loss for the average household in Montenegro solely in the textile sector as €150 per year and for the Montenegrin economy as a whole in the region of €45 million annually.

<sup>34</sup> Numerous opinion polls conducted in Montenegro prior to the referendum showed a very narrow margin in favour of independence. See the public opinion polls in Montenegro published by the Centre for Democracy and Human Rights (CEDEM) in Podgorica on its website (available on [www.cedem.cg.yu](http://www.cedem.cg.yu)).

<sup>35</sup> Derived from interviews with EU officials, May 2002–December 2003.

There were strong objections to the EU-backed common state from the Serbian side too, although these were of a different nature. Prior to signing the Belgrade Agreement, the major Serbian political actors were united in their insistence on a strong federal state with Montenegro. During the negotiations, the Serbian side maintained that a viable arrangement required a higher degree of centralisation of decision-making authority and a clear division of competences between the federal and the republican layers of government. Serbian interlocutors contended that a loose institutional structure like the State Union would not be efficient or lasting and would slow down both Serbia and Montenegro in meeting the EU's pre-accession requirements.

The political mobilisation against the common state gathered pace with the increasing disappointment in Serbia over the dysfunctional State Union and mounting criticism of the EU for not fulfilling its obligations under the Belgrade Agreement to mediate and arbitrate disagreements between the two parties in the implementation phase. With the launch in May 2003 of the anti-State Union platform<sup>36</sup> by a newly established political party, the G17 Plus, the arguments against EU conditionality on a common state became part of the political process and a matter of public debate. Advancing very concrete, rational arguments against the common state, the G17 Plus contested the State Union formation on four accounts:

- 1) the ineffectiveness of the administrative structures for common policy coordination;
- 2) the formula of equal political power-sharing, which was considered disproportionate to the size and economic weight of the two constituent units (a 50–50 ratio of political power-sharing despite the 95–5 ratio of economic weight of Serbia and Montenegro, respectively);
- 3) the cost of financing the common institutions, largely relying on Serbia's financial backing; and
- 4) the overall slowing effect on Serbia's transition.<sup>37</sup>

Not only did the G17 Plus openly question the legitimacy of the EU's political and economic demands, but also the party's political positions translated into an 11.5% share of public support in the December 2003 early parliamentary elections in Serbia, after only a year in existence and several months of political campaigning.

In both Serbia and Montenegro, the EU's conditions have been very divisive and the domestic political space highly fragmented. Notably, political formations with good reform credentials favouring democratisation and market-oriented economic policies made the case against the EU's sovereignty conditions and were able to mobilise substantial constituencies in support of their position. These political parties did not identify their domestic political interests with the changes demanded by the EU nor did they see the benefits offered by the EU as exceeding the costs of complying with the EU's conditions, regardless of the initial submission to EU pressure.

Softer mechanisms of argumentation and persuasion after the initial period of strong pressure to sign up to the deal failed to convince political actors in Serbia and Montenegro of the merits of rebuilding a single market and common institutions. The ruling elites regarded the EU's intervention as lacking legitimacy, for varying reasons. This perception in turn fuelled hopes that a change of EU policy was possible and, if the right arguments were employed, EU policy-makers

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<sup>36</sup> For further information, see the G17 Plus website (available from <http://www.g17plus.org.yu/english/index.html>).

<sup>37</sup> Ibid.

could be convinced to soften the conditionality policy, if not completely reverse it. International socialisation could not take place given the perceived strategic behaviour of the EU in the wider Balkan region.

### 3.2 Bosnia and Herzegovina

BiH's reform track to date can be regarded as *partially compliant* with the EU's demands. Progress on domestic changes required by the EU has been painfully slow, and bold initiatives aimed at state consolidation and reinforcement of the central level of government have been driven by external actors in most cases, although progressively with the consent of domestic political elites (Hayden, 2005). By the end of 2006, the two 'to-do' lists of conditions that BiH had received from Brussels in 2000 and 2003 respectively had been largely fulfilled with the exception of police restructuring, public broadcasting reforms and full cooperation with the International Criminal Tribunal for former Yugoslavia (European Commission, 2007). In light of its expectations of compliance with these requirements and its assessment of the overall state of affairs in the country, the European Commission did not judge BiH sufficiently prepared to sign an SAA in the first half of 2007, although the technical negotiations had been concluded by the end of 2006.

Has the EU policy line been seen as legitimate from a domestic point of view? The political scene in BiH has not been consensual on the question of acquiescing to the specific reforms requested by the EU. The (Bosniak) Party of Democratic Action (SDA) considered the principal expounder of Bosniak ethnic interests is in favour of abolishing the entities and cantons and rationalising the governance structure of BiH, by introducing a two-tier system with a stronger central government and a substantively empowered municipal level of governance (ICG, 2003). The SDA has always stood for an independent, united and strong Bosnian state with its own history, traditions and cultural heritage. The Croat community, represented by the long-time dominant Croatian Democratic Union (HDZ BiH),<sup>38</sup> has held a shifting position on the Dayton entity structure, from advocating a third (Croat) entity in the late 1990s, through supporting the elimination of the entities altogether in the early 2000s (ICG, 2003, pp. 19–21), to favouring a federal structure with three 'national-majority' units in the 2006 round of domestic talks on constitutional reform.<sup>39</sup> In principle, however, the EU's demands for reinforcing the mandates of the state institutions are not against the political platforms of the SDA or HDZ BiH, notwithstanding the differences in their motives. These two parties are, in this sense, more receptive to arguments exposing the inefficiencies of the Dayton institutional setting and justifying the necessity of change. The EU's explicit conditionality only adds an additional layer of legitimacy for the institutional and policy reforms they support.

The reform-minded political forces in BiH that formed the core of the Alliance for Change coalition that was in power between 2000 and 2002 – the Social Democratic Party (SDP) and the Party for BiH (SBiH) – do not oppose the rationalisation of the institutional framework of BiH. In fact, they keenly support the strengthening of the competences of the state and see no rationale for the existence of an expensive and cumbersome multi-tier system of governance that is more concerned with ethnic representation than with the provision of public services to the average citizen.<sup>40</sup> While

<sup>38</sup> A breakaway faction of HDZ BiH – HDZ 1990 – has been gaining prominence in Bosnian politics and challenging the dominant position of HDZ BiH as the principle Croat party in BiH.

<sup>39</sup> See Office of the High Representative, *31<sup>st</sup> Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations*, Sarajevo, 16 May 2007 (available from <http://www.ohr.int>).

<sup>40</sup> Derived from interviews with party officials, Sarajevo, December 2003.

they were in government together with eight small parties as coalition partners, they pushed forward the reform agenda with the firm support of the Office of the High Representative, but were too weak and fragmented to make radical and lasting changes in many policy domains (Vachudova, 2006). The EU is a natural ally for them, not least because the EU conditionality implies the gradual phasing-out of the HR's 'Bonn powers' through insistence on self-governance (domestic sovereignty) as a basic prerequisite for BiH's eligibility for EU membership.<sup>41</sup>

The EU's conditions are viewed differently in the RS, however. Seen from Banja Luka, the changes sought by the EU would erode the sovereign competencies of the entity government and constitute a threat to the very existence of the RS. This is the line that has been taken by most political parties in the RS, which have traditionally obstructed any changes to the Dayton system owing to fears of marginalisation in a more centralised system of governance and which have been hiding their interests in the status quo behind nationalist slogans. Not only the hard-line, nationalist Serb Democratic Party (SDS) that dominated RS politics until the October 2006 elections, but also the moderate political groups in the RS, such as the Party of Democratic Progress (PDP) and the Alliance of Independent Social Democrats (SNSD), have defended the status of the RS within the overall constitutional setting of BiH, although the latter two have been more pragmatic with regard to reforms that improve domestic governance.<sup>42</sup> Thus, the political power of the ruling elites in the RS is directly at stake when decisions on complying with the EU's conditions are made. The EU's demands for the centralisation of public authority at the state level clash with the vested interests in the status quo of those political parties holding the levers of power at the entity level.

It is not surprising that the appropriateness of the EU's conditions was only questioned by the ruling parties in the RS, which repeatedly invoked the Dayton provisions to argue that the reforms demanded by the EU were unconstitutional (Skrbic, 2005; Stanimirovic, 2005). Needless to say, for them the refusal to reform meant the continuation of the system of political patronage. With the transfer of power to the state level, the responsibilities for managing public funds and public sector employment would shift from entity- to state-level institutions as well. Considering the long-term refusal by the RS to give up its entity competences, compliance with the EU's conditions is seen by the RS as a major surrender of its power. Irrespective of this rationale, the message of the RS to the Bosnian Serb population has had distinctive nationalist overtones, systematically reviving the idea of holding a referendum on independence, if not reunification with Serbia, as seen in the political campaigning prior to the October 2006 general elections. This rhetoric, however, has further undermined their standing vis-à-vis the EU and the international community at large, which has not hesitated to condemn any resurgence of nationalism in the region. In essence, the nationalists' room for manoeuvre has been narrowing down.

That is not to say that external legitimacy alone explains some of the compliance decisions taken by the same nationalist political formations. The transfer of sovereignty to the BiH state level as a result of compliance with EU conditionality is not perceived as an absolute loss by RS politicians. Regaining domestic sovereignty is an additional incentive for them to comply with the EU's conditions as they have the promise of graduating permanently from the HR's policy direction and supervision. The EU membership prospect is thus providing a convenient way out of the Bonn powers of the HR. In fact, soon after the RS's nominal endorsement of police reform in October 2005, the Bosnian Prime Minister Adnan Terzic appealed to the EU to put an end to the mandate of

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<sup>41</sup> See European Commission (2003), op. cit.

<sup>42</sup> Derived from interviews with party officials, Banja Luka, December 2003.

the HR and strengthen the office of the European Commission in Sarajevo (Beunderman, 2005). Conversely, following a U-turn on police reform and difficult talks among domestic actors on a new deal in the course of 2006, the international community decided to extend the mandate of the Office of the High Representative for one year, reversing a previous agreement to close it down by mid-2007 (Palmer, 2007).

Persuasion and argumentation have played an important role in winning domestic popular and political support for the reforms sought by the EU. The EU has had the backing of important political allies in the domestic context who have viewed its demands as legitimate and authoritative. It has also had good reasons to stand firm and play tough with domestic opponents to its conditionality, the majority of them coming from the least reform-minded groups, some with hard-line nationalist inclinations. It has been difficult for these obstructionist groups to counter the 'Europe argument', which in the case of BiH has had strong references to European standards of domestic governance and powerful messages against the politics of according privileges to private political interests and nurturing patronage networks. As a result, the EU has been more successful in advancing its policy objectives, although the record is mixed to date.

### **3.3 Serbia and Kosovo**

The way Kosovo's final status negotiations have unfolded so far suggests that an imposed settlement for the province's statehood is in the making, which may ultimately lead to *imposed compliance*. UN Special Envoy Martti Ahtisaari's plan for granting Kosovo 'supervised independence' has been firmly rejected by Serbia, with Russia opposing any solution that has not been negotiated with and approved by Belgrade. Kosovo's authorities have backed the proposal, although they have expressed reservations about the unspecified timeframe of the international presence in the province. With the UN special envoy pronouncing the two sides' positions as unbridgeable in March 2007, the final verdict is now in the hands of the UN Security Council, where power politics is the name of the game, but reaching an agreement among its permanent and non-permanent members on this matter is not straightforward. The EU member states, while not completely consensual on the proposed settlement by Martti Ahtisaari, have so far managed to speak with a united voice and have been rather consistent in their backing of the UN-led status process and Martti Ahtisaari's personal role in it.

What have been the drivers behind domestic reactions in both Serbia and Kosovo to the international proposal about the province's final status? The EU's problem-solving approach is certainly not convincing for the majority of the Serbian political leadership and population, for whom the issue is very emotional and closely linked to symbolic elements in Serbian identity. Not only have the radical nationalists of Vojislav Seselj (the Serbian Radical Party or SRS) and the socialists of the Milosevic regime (the Socialist Party of Serbia or SPS) opposed independence for Kosovo. So too have the moderate nationalists of Prime Minister Vojislav Kostunica (the Democratic Party of Serbia or DSS) and the pro-Western reformers of President Boris Tadic (the Democratic Party or DS), although some more fervently than others. In fact, the Kostunica-led coalition government pushed through a new constitution in a referendum in October 2006, which reaffirmed Kosovo as an integral part of Serbia (ICG, 2006).

At the popular level, a majority of Serbian citizens is believed to be in favour of preserving a link with Kosovo, although it is difficult to say the exact balance of the anti-independence camp and the group willing to put the past behind and look forward to Serbia's European future, even if this means accepting an independent Kosovo. In July 2006, the British journal the *Economist*

entertained the idea of ‘two Serbias’: “one is conservative, nationalist, and backward-looking; the other is liberal, modern, and progressive”.<sup>43</sup> The majority of Serbian political leaders avoid taking the political risk of declaring openly that they would sign up to Kosovo’s eventual independence even though there is not much they could do to avert such a scenario. Indeed, accepting an imposed solution may well save them the political negatives of voluntarily surrendering what Serbs see as 15% of the country’s territory. The two parties whose political platforms are most flexible on the Kosovo issue are the Liberal Democratic Party and the G17 Plus, receiving respectively 5.3% and 6.8% of the popular vote in the parliamentary elections in January 2007 (Dombey, Macdonald & Wagstyl, 2007).

There are good rational arguments as to why Serbia is better off in the long run without Kosovo but they have not been put forward forcefully by any Serbian actor. The political programme of G17 Plus comes closest to acknowledging that from an economic standpoint it would be very costly for Serbia to hold on to an underdeveloped province such as Kosovo. Furthermore, the demographic projections play against the ethnic Serbs in a common state, with Kosovo’s young and rapidly growing population promising to challenge the Serbian majority in the medium to long term.<sup>44</sup> In short, from a Serbian perspective, rational reasons for backing an independent Kosovo are not lacking but Serbia’s position has not been defined exclusively by rationality. Identity considerations play a crucial role in determining the Serbian official line.

In addition, there is a deeply entrenched perception among Serbia’s political establishment that through the imposition of Kosovo’s independence from the outside, present-day democratic Serbia is being ‘punished’ for the wrongdoings of an authoritarian regime in Belgrade that belongs to the past.<sup>45</sup> Certainly, the EU and the international community at large have been very careful not to play into the hands of the radical political groups and not to empower the nationalists through the expected popular backlash when announcing the plans for Kosovo’s conditional independence (Burgis, 2006). In fact, this is the argument the Serbian democratic leaders have used extensively to try to delay, if not totally prevent the announcement of Kosovo’s future independence.<sup>46</sup> To avoid such a worst-case scenario, UN Special Envoy Ahtisaari, who was due to release his proposal on Kosovo’s status by the end of 2006, waited strategically for the results of the parliamentary elections in Serbia on 21 January 2007 before publicly presenting his ideas. In the run-off to the elections, various EU political leaders openly expressed their support for the democratic parties, thus rendering further credibility to their electoral campaigns, while promising deeper ties with the EU (Rettman, 2006).

On Kosovo’s side, all the political formations and the majority of the ethnic Albanian population (around 90%) have openly claimed their right to self-determination since 1999. From their point of view, full independence is the only legitimate outcome. They are unlikely to challenge the plans for eventual independence of the province although the provisions constraining its domestic sovereignty for an unspecified period have caused unease among Kosovo’s political leadership.

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<sup>43</sup> See the article, “Serbia’s New Nationalism”, *Economist*, 20 July 2006.

<sup>44</sup> See the G17 Plus political programme on its website (available from <http://www.g17plus.org.yu/english/index.html>).

<sup>45</sup> Derived from interviews with Serbian government officials, November 2006–January 2007.

<sup>46</sup> Derived from interviews with EU officials, November 2006–January 2007.

Focused on securing their external sovereignty first, the Kosovars have so far mostly objected to the slow pace of the status process by pointing to the detrimental effects on Kosovo's economy and society of the protracted uncertainty surrounding its future.

On the whole, the political establishment in Pristina, with the exception of the Serbian minority leadership, has been consensual in defending a common position vis-à-vis Serbia and the rest of the world. Identity reasons as well as appeals to moral justice have been at the core of Kosovo's quest for independence, although the political interests of the leadership in governing a state rather than a province of a larger entity are also well served by such an outcome. The latter considerations, however, would not have had resonance with the international community. The mass human rights violations against Kosovar Albanians by the Milosevic regime have represented the strongest foundation of legitimacy for defending the right of the Kosovar population to self-determination (Rehn, 2007b).

#### **4. Conclusions**

This paper has argued that the EU's policy in the Western Balkans has been driven by the security interests of the member states and that it has not been easy to explain and validate the EU's demands with reference to its own internal norms and rules of governance or to universal principles of fairness and justice. This situation has opened up political space for domestic actors who are reluctant to comply with the EU's conditions to contest EU policy positions on normative grounds. Exposing the strategic calculus of some of the EU's demands has turned into a political tool in the hands of unwilling players, who have challenged the EU line and given preference to domestic sources of legitimacy. The EU has had more success when its more coercive means have supported a policy goal that is easy to explain by normative considerations. But when the EU has tried to exercise its influence against what it stands for as a community of values and as a system of governance, the EU's efforts have been less productive.

The three case studies have illustrated a range of reactions by domestic actors to the perceived strategic intentions of the EU. Serbia and Montenegro went their separate ways, thus rejecting the EU's proposed formula for a single sovereign entity (the State Union of Serbia and Montenegro) after a three-year period of simulating compliance. Montenegro in particular mobilised domestic support against the external vision of its statehood and fought an intelligent battle to achieve international recognition as an independent state. Rational reasons helped Montenegro to win the argument in favour of dissolving the common state.

Bosnia and Herzegovina is going through a very slow and difficult process of redefining its statehood, with the EU's incentives and disincentives intervening in the strategic thinking of key political players. Efficiency arguments play an important role in the interface between EU and BiH politics, and in providing the legitimacy base for reconstituting the sovereignty of the country in a way that is acceptable to a critical mass of domestic political actors and is compatible with the EU's vision.

Kosovo is likely to emerge as a new state judging by the way that the negotiations on its final settlement have unfolded, no matter what the exact details of its final status are. In its formation, external pragmatic factors and internal identity issues are converging on an outcome that is considered legitimate from the viewpoint of a large majority of Kosovars and illegitimate from the viewpoint of a large majority of Serbs. The Serbian leadership has strongly objected to the EU's problem-solving approach, and has defied any attempt to disconnect from what it sees as its

territory protected by international law and the UN Charter. Non-compliance in this case, justified on identity grounds, is likely to lead to an imposed solution from the outside, with the EU's help.

The paper has shown an alternative way of explaining the effects of international socialisation on EU accession candidates. Far too often, the conditions for successful socialisation have been attributed to domestic receptiveness towards external normative claims, while assuming the normative foundations of that influence. This study has suggested that the legitimacy of the EU's external actions has to be closely examined before assessing the potential of the EU as an agent of socialisation and 'a force for good'.

The paper has thus offered a different approach for examining the normative and strategic dimensions of the EU's foreign policy. It has proposed studying the EU's power to influence non-EU countries through the prism of how they perceive the motivation of the EU's actions. As such, it has made the case for widening the debate about the EU's foreign policy to include contributions that focus on the external impact of the EU's actions. In so doing, it has tried to link the study of EU foreign policy to the literature on Europeanisation that developed in the context of the EU's enlargement to Central and Eastern Europe. More empirical research on other geographical areas is needed to complement the analysis of the EU's leverage in the Western Balkans before further general arguments can be advanced about the nature and facets of the EU's external power.

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