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EU Actorness in International Affairs: The Case of EULEX Mission in Kosovo

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ABSTRACT *This article discusses one of the missions of the European Union Security and Defence Policy (ESDP) and, so far, the biggest EU mission in the area of conflict management: the rule of law mission in Kosovo, dubbed EULEX Kosovo. Its conceptual framework is built on the EU's international role and notably on the EU actorness thesis. The article explores several important aspects of the EULEX mission in Kosovo. In doing so, it looks at the following issues: (a) the first instance of the EULEX mission based on the comprehensive Ahtisaari proposal for the future status of Kosovo; (b) the launch of EULEX and, through this, EU cohesion in the mission itself; (c) the difficult process of EULEX deployment in Kosovo, which resulted in a 'compromised authority' and 'ambiguous recognition' of the mission itself; and (d) EULEX autonomy in view of its relations with other international actors (notably UNMIK) and other EU entities involved in Kosovo. In addition, the article examines the implications that the handicapped actorness of EULEX might have for its current and future input, through analyzing briefly the initial results and failures of EULEX in Kosovo. Thus, the article examines the process of establishing EULEX in Kosovo and sheds light on the EU's policies in Kosovo and in the western Balkans.*

KEY WORDS: EULEX mission, Kosovo, EU's international role, EU actorness

I. Introduction

The European Union's role in international affairs has evolved substantially in recent years. In essence, its developing international relations include the processes of state-building, conflict management, and peacekeeping missions. One of the missions of the European Union, set in the context of the European Security and Defence Policy (ESDP) and so far the biggest EU mission in the area of conflict management, is the rule of law mission in Kosovo, dubbed EULEX Kosovo. The purpose of this article is to analyze several important aspects and dimensions of the EULEX mission in Kosovo. In addition, this article tackles briefly the remainder of the EU agencies in Kosovo.

Hence, the first part of this article addresses the conceptual framework through a short consideration of the EU's international role and elaborates on this as it relates

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to the EU actorness thesis. The second part is concerned with the first instance of the EULEX mission based on the comprehensive Ahtisaari proposal for the future status of Kosovo. Additionally, this part discusses the launch of EULEX and, through this, EU *cohesion* in the mission itself. The next part discusses and elaborates the difficult process of EULEX deployment in Kosovo, which resulted in a *compromised authority* and *ambiguous recognition* of the mission itself. This section also discusses EULEX *autonomy* in view of its relations with other international actors, notably the United Nations Interim Administration Mission in Kosovo (UNMIK) as well as its relations with other EU entities involved in Kosovo.

In addition, in line with these components of EU actorness, the article scrutinizes the implications that the *handicapped actorness* of EULEX might have for its current and future influence, through analyzing briefly the initial results and failures of EULEX in Kosovo. Finally, the last part points out the empirical findings with regard to the conceptual framework set out at the beginning of this article.

II. The EU's International Role

Since the formation of European Union its member states have tried through various initiatives and mechanisms over different periods to unify their policies on a range of matters in the international arena. However, considering the complexity of the EU as a political entity, in a majority of these cases they achieved consensus only at the level of satisfying the lowest common denominator.

For instance, as Filtenborg et al. (2002, p. 391) claim, 'during the Cold War period, the European Community (EC) abstained from developing any common policies towards its Northern and Eastern periphery owing to the constraints imposed by the bipolarity of the world system'. In fact, the 'neutrality' of the European Community in terms of foreign policy lasted more or less until 1992. Then, as Ginsberg (1999, p. 430) asserts, 'by trumpeting a new Common Foreign and Security Policy (CFSP) for the EU in the Maastricht Treaty (1993), the EU raised expectations for a collective diplomacy'. Moreover, 'in December 1998, France and the United Kingdom released a joint declaration at St. Malo calling for the EU to possess the power of autonomous action and the appropriate military resources, a groundbreaking step forward' (Algieri, 2006–2007, p. 109). Consequently, this kind of philosophy followed the decision of the Cologne European Council in June 1999 to develop the European Security and Defence Policy as a part of the Common Foreign and Security Policy. In other words, as Keukeleire (2003, p. 37) underlines, 'the member states decided in Cologne that the Union must have the capacity for autonomous action backed up by credible military force, ... and the readiness to act in order to respond to international crises'.

As the above discussion shows, the European Union in recent years and notably since the Maastricht Treaty (1993) has created various mechanisms such as CFSP and ESDP as a result of deepening and widening processes within EU. Similarly, for the first time, the EU appointed a High Representative of the CFSP, who in a sense is a symbol of the EU's member states' commitment to a common foreign and security policy. Ultimately, it is assumed that the intention of the EU decision makers with all of these new mechanisms has been to make the EU a more consistent

actor in international relations and to strengthen its role and influence in the international arena.

The EU deployed several missions in different parts of the world, starting in the Balkans – Former Yugoslavia Republic of Macedonia (FYROM), Bosnia and Herzegovina and Kosovo – and spread to the missions in Chad, Darfur, and the Congo. It is clear that with such a significant presence in so many countries, other actors cannot neglect the EU's presence in international relations.

Nevertheless, as Smith (2008, p. 25) emphasizes 'the EU is not always able to translate presence into "actorness", that is, the ability to function actively and deliberately in relation to other actors in the international system'. In addition, he claims that 'the EU member states and institutions must be able to agree on external actions, maintain those positions, and mobilize the resources necessary to pursue them' (ibid.). Similarly, Maull (2005, p. 791) suggests, '[that] a truly *common* foreign and security policy, ... requires that national and European policies ... be effectively aligned around the same objectives, and that all available resources ... be channelled into their realization'. However, as the practice of international affairs has shown, the EU is not always a unified actor over various issues.

Moreover, Smith (2008, p. 27) suggests that 'the tension between the drive to act collectively on the world stage and the desire to retain national autonomy has shaped the institutions ... , as well as the outcomes produced by them'. For instance, these types of conflicts appear at the UN, chiefly by the desire of EU member states to act independently at this international organization (Smith, 2006). In essence, this is also related to the claim of Maull (2005, p. 791), who argues that 'the EU is ... a complex political entity ... of sovereign nation-states and ... foreign and security policies represent powerful bastions of national sovereignty, and are therefore, particularly difficult to transform into truly supranational "common" policies'.

Furthermore, regarding division in the EU foreign policy on these various issues, Gray & Hart (1998, p. 3) has pointed out 'the impotence of established and emerging institutions of the European Union to prevent civil war in the former Yugoslavia, or handle its consequences'. In this sense, Van Selm-Thorburn and Verbeek (1998, p. 175) argue that 'it has often been claimed that this Yugoslav crisis provided a concrete and perversely "ideal" opportunity ... of a common European foreign policy'. Moreover, Luxembourg foreign Minister, Jacques Poes in 1991 famously stated that the crisis in Yugoslavia is 'the hour of Europe not the hour of US'. Nevertheless, unfortunately the European Union failed to manifest its ability in this case. In fact, it was not the hour of Europe but might more properly have been considered the hour of the US in that it was United States' initiative and leadership, (and not that of the EU) which managed to intervene and to solve in a way all the conflicts that emerged from the dissolution of the former Yugoslavia. Similarly, another failure of the EU's foreign policy, as Gordon mentions (1997/1998, p. 88), is 'Italy's April 1997 decision to organize a peace enforcement mission to Albania outside the context of either the EU or WEU, because of a lack of consensus or ability to compel joint action in those organizations'. Some additional fresh examples of failure of the EU foreign policy are the following: 'its inability to end ethnic cleansing in Kosovo without the assistance of the United States, the unresolved policy towards the Israeli–Palestinian conflict and the political rift between particularly the larger EU Member States on the war in Iraq' (Groenleer &

Van Schaik, 2007, pp. 969–970). In addition to this, as Peterson and Smith (2003, p. 213) maintain, ‘the EU cannot realize its external ambitions without agreeing on division of labour with a range of other international organizations, including the United Nations, NATO, the OSCE, the WTO, and others’ (also including the US). Indeed, as the above discussion pointed out, without the initiative and leadership of the US (notably in conflicts involving the former Yugoslavia), EU common foreign policy would be a fiasco.

In brief, this discussion highlights the divisions that existed and continue to exist between EU member states in relation to EU foreign policy, particularly in regard to Kosovo and the former Yugoslavia. To this end, we have given several examples of the EU’s failure to act as a unified actor in international affairs. Various theoretical approaches have analyzed this phenomenon through a number of different viewpoints and perspectives. The current article evaluates this overall situation in light of the concept of EU actorness.

II.1 EU Actorness Thesis

In order to conceptualize EU actorness, this article will elaborate essentially on the approach developed by Jupille and Caporaso (1998). In addition to this, we will focus on the relationship that exists between the work of Jupille and Caporaso, and Bretherton and Vogler (1999, 2006) and other scholars on the issue of EU actorness.

In essence, Jupille and Caporaso (1998) highlight four components of actor capacity in global politics: *recognition*, *authority*, *autonomy* and *cohesion*. For instance, regarding *recognition* they point out that ‘recognition [is] understood as acceptance of and interaction with the entity by others’ (Jupille & Caporaso, 1998, p. 214). Moreover, concerning this component, they contend, ‘recognition by others . . . is the sine qua non of global actorhood’ (ibid., p. 215). Therefore, the first question for the current study is as follows: did the other actors and notably the local and regional ones in post-independence Kosovo recognize the EULEX mission?

The second component that they define is the *authority*. In fact, they link *authority* notably with the sense of legal competence to act. In essence, ‘authority . . . means, in particular, the EU’s legal competence in a given subject matter’ (ibid., p. 216). Therefore, the second question that needs to be addressed is as follows: what was the EULEX legal competence to act (*authority*) in the post-independence Kosovo?

The third component is *autonomy* and, according to Jupille and Caporaso (1998), it reflects the institutional distinctiveness and independence of an actor from other actors. In addition, they explain that ‘an international organization, to be an actor, should have a distinctive institutional apparatus, even if it is grounded in, or intermingles with, domestic political institutions’ (ibid., p. 217). The idea of *autonomy* is similar to the feature of *opportunities* for the EU actorness developed by Bretherton and Vogler (1999, 2006). Thus, Bretherton and Vogler (1999) claim, concerning the *opportunities* of EU actorness, ‘opportunity-encapsulates factors in the external environment which enable or constrain actorness’ (Bretherton and Vogler 1999, 5). In their later study Bretherton and Vogler (2006, p. 24) point out that ‘opportunity denotes the external environment of ideas and events – the context

which frames and shapes EU action or inaction'. Consequently, in the current study, the above discussion and notably the idea of *autonomy and/or opportunities* raises the following question: does the EULEX mission have an institutional distinctiveness separate from other involved actors in post-independence Kosovo, and what are the EULEX opportunities in this context?

The last component for the capacity of an actor in global politics is *cohesion*, which means the degree to which an entity can formulate and articulate internally consistent policy preferences. In this context, Jupille and Caporaso (1998) identify four separate dimensions or forms of *cohesion*: value (goal) cohesion, tactical cohesion, procedural cohesion and output cohesion. According to Jupille and Caporaso (1998, p. 219) '*value cohesion* simply refers to the similarity or compatibility of basic goals'. In addition, 'if goals are somewhat different but can be made to fit with one another . . . , we speak of *tactical cohesion*' (ibid., p. 219). In contrast, '*procedural cohesion* implies some consensus on the rules and procedures used to process issues where conflict exists' (ibid.).

The final dimension or level of cohesion is the *output cohesion*. This suggests that 'if member states succeed in formulating policies, . . . more cohesion is said to exist . . . [and] output cohesion will be affected by the level of agreement on goals and procedures as well as the degree to which it is possible to link issues tactically' (ibid., p. 220). Finally, Jupille and Caporaso note the fact that both horizontal conflicts (those at a given level of authority) and vertical conflicts (those across levels) might undermine all these forms of cohesion. By horizontal conflicts, they refer to disagreements between member states and disagreements between EU-level institutions. In contrast, by vertical conflicts they refer to the conflicts 'between the EU level and the member states, although national-sub-national conflicts are not excluded' (Jupille & Caporaso, 1998, p. 220). To this end, they conclude that where such conflicts are present, the EU is less able to act. In fact, this is closely related to the argument of Holland (1995, p. 557) that the lack of a clear central authority and sometimes divergent interests between national and European interests create difficulties in EU actorness. The subsequent question that needs addressing is as follows: what was the level or the form of EU cohesion on EULEX in post-independence Kosovo? In brief, according to Jupille and Caporaso (1998, p. 214) 'the EU's capacity to act, then, is a function of its recognition by others as well as its authority, autonomy and cohesion'. This conclusion is also similar to the Hill's (1993) idea of the 'capability-expectation gap' on the EU actorness: that 'it was intended to provide a yardstick by which the process of change in European foreign policy might be measured' (Hill, 1998, 18).

To sum up the above discussion, the following four questions have been identified, as key to the analysis:

1. Did the other actors and notably local and regional actors in post-independence Kosovo *recognize* the EULEX mission?
2. What was the EULEX legal competence to act (*authority*) in the post-independence Kosovo?
3. Does the EULEX mission have an institutional distinctiveness (*autonomy*) separate from the contribution of other involved actors in post-independence Kosovo, and what are the EULEX opportunities in this context?

4. What is the level or the form of EU *cohesion* on EULEX in post-independence Kosovo?

The answers to these questions should elucidate the overall ability of the EU to function or not as a consistent actor in Kosovo.

III. First Reference of EULEX Mission in Kosovo: Ahtisaari's Proposal

After more than six years of international administration by UNMIK in Kosovo, the international community agreed to open the issue of the future political status of Kosovo. In essence, the Contact Group, an informal grouping of six countries (USA, Russia, United Kingdom, Germany, France and Italy) in the second part of 2005, agreed to open the issue of the future political status of Kosovo.

Subsequent to this, on 14 November 2005 the UN Secretary General appointed Marti Ahtisaari as the Special Envoy of the Secretary General of the United Nations for the process regarding Kosovo's future status (UNOSEK, 2007a). Additionally, he had the support of his deputy appointed by the UN and two deputies appointed by the EU and US respectively. In practice, the mandate of the Special Envoy consisted of facilitating the negotiations between Pristina and Belgrade that took place in Vienna for around 14 months (November 2005–March 2007). The Office of Special Envoy arranged several meetings between the Pristina and Belgrade teams, covering a variety of issues, from decentralization and cultural heritage to the issue of minority rights and the future political status of Kosovo. Afterwards, in March 2007, the Special Envoy reached the conclusion that the potential for negotiations had been exhausted and further negotiations would not change the position of any of the parties on the future status of Kosovo. Consequently, he decided to back a proposal based on the negotiations which took place during the Vienna process. Afterwards, he submitted a comprehensive proposal on the status issue to the Secretary General of the UN and respective parties in Pristina and Belgrade. He suggested independence for Kosovo with temporary international supervision.

In addition, as Pond (2008, p. 99) suggests, 'the heart of this plan, laid down in more than 90 percent of its provisions, consisted of protection of minority (Serb) rights, over proportional minority seats in parliament, and other positive political discrimination, all to be guaranteed by EU supervision'. For instance, the Serbian language is an official language in the entire territory of Kosovo and enjoys the same level of legitimacy as the Albanian language, regardless of the fact that the Serb minority represents only 8% of the whole population of Kosovo. The Kosovo Assembly consists of 120 Members of Parliament in total. Of this number, 20 seats are automatically apportioned to minority representatives prior to and completely outside of the electoral process. Additional seats in the Kosovo parliament can be acquired by the minority through electoral participation. In other words, in Kosovo – a country with a substantive majority of 90% Albanians – the Parliament could potentially have representation by the minority communities of up to 30–35 %, which is a clear sign of positive discrimination. Similarly, Ahtisaari's proposal suggested that new municipalities would be created (and this has since happened successfully, excluding Northern Mitrovica municipality) through the decentralization process to accommodate the Serb community in different parts of Kosovo.

Additionally, Ahtisaari's proposal covered the structure of the future international presence in Kosovo, including here the ESDP mission (EULEX) in the field of the rule of law.

However, only the Pristina authorities accepted the proposal presented by the Special Envoy of the UN Secretary General; the Belgrade authorities rejected the proposal, relying on Russian support. The permanent members of the UN Security Council had different views over the issue at stake. On the one side, the US, the UK and France supported the proposal and, on the other, Russia threatened to veto the proposal with China responding in an ambivalent manner. Therefore, after several months of discussions the permanent members of the council failed to reach an agreement on this issue. Nevertheless, they did agree to begin a follow-up process. Consequently, they supported the Secretary General of the UN to appoint a troika of the 'US–EU–Russia' delegation that would conduct additional negotiations between the parties for a period of 120 days. To this end, the follow-up process of negotiations started in August 2007. Then, at the end of their mission the 'troika' concluded that 'after 120 days of intensive negotiations, however, the parties were unable to reach an agreement on Kosovo's status' (Report of the Troika, 2007, p. 3). Following this failure of the troika, there was no impetus to bring back the possibility of putting the issue before the UN Security Council again, considering the fact that the permanent members of the UN Security Council had not changed their views.

In addition, the Special Envoy pointed out in his report that 'resolution of this fundamental issue is urgently needed' (UNOSEK, 2007c, p.2); the international community, notably the US and the majority of the EU member states, in cooperation with the Kosovo government decided to proceed through a different channel. The Kosovo government (elected in the parliamentary elections of November 2007) in coordination with the western countries (US and majority EU member states) decided to declare Kosovo's independence on 17 February 2008. Subsequently, the United States, the majority of the EU member states and other western democracies quickly recognized Kosovo's independence. It should be noted that this coordinated declaration of independence reflected full compliance with the Comprehensive Proposal of Mr. Ahtisaari.

The EU's statement of its official position regarding the Kosovo declaration of independence noted that 'member states will decide, in accordance with national practice and international law, on their relations with Kosovo' (Council of the EU, 2008d). Nonetheless, as the subsequent developments proved and as Weller (2008, p. 74) correctly points out, 'in reality, however, the statement only confirmed the inability of the EU to act as a unified entity in the matter of recognition'. According to the definitions of Jupille and Caporaso (1998) on the issue of *cohesion*, at this point cohesion between EU member states existed merely as *procedural cohesion*. In essence, they reached some consensus on the rules and procedures to be followed on the issue of Kosovo's independence, whereas clearly the 'horizontal conflicts' which exist continued to take precedence, preventing the EU from taking a more substantive cohesive stance. In this respect, problems included division between EU member states on the advisory opinion of the International Court of Justice (ICJ) on the case of Kosovo's declaration of independence. On the one side, the majority of the EU member states that did recognize Kosovo as an independent country

submitted their declarations in support of Kosovo at the ICJ. In contrast, the four out of five member states that did not recognize Kosovo – Cyprus, Spain, Romania and Slovakia – submitted their statements at the ICJ against Kosovo's independence, and Greece remained neutral at this point.

The above discussion elucidates the powerful 'horizontal conflicts' that existed and do exist with regard to Kosovo's independence. In addition, it clarifies that the first reference of the EULEX mission is Ahtisaari's proposal. This also highlights the fact that EULEX was meant to be a status-committed mission (in line with Kosovo's independence) and not a neutral-oriented mission, as it were, for the time being. In spite of this fact, and as the subsequent sections will explore, the process of launching and more particularly deploying the EULEX mission in Kosovo became more complex and difficult than was initially anticipated.

III.1 Launching the EULEX Mission in Kosovo: EU Cohesion on EULEX

To begin with, it is worth noting the plans for the EU presence in post-independence Kosovo. The following are the three main EU entities which were planned to be deployed in post-independence Kosovo:

- 1) A political entity in an International Civilian Office/European Union Special Representative (ICO/EUSR), that will oversee a settlement;
- 2) An operational entity in the European Security and Defence Policy (ESDP) mission, that will support the Kosovo authorities in the area of Rule of Law;
- 3) A reform driving entity in the European Commission office that will assist Kosovo in its long-term reform efforts, economic development, and assist in fostering Kosovo's regional integration and help it realize its EU perspective. (ICO, 2007, p. 3)

Additionally, it was planned that the international military presence of the KFOR would continue in Kosovo. The first and the second entity of the above structure were also in full compliance with the Comprehensive Proposal for the Kosovo Status Settlement (see further UNOSEK, 2007b, pp 52–58). Even so, the third entity – the European Commission – was present before the status resolution in Kosovo, and had to absorb the workload of the European Agency for Reconstruction. Furthermore, an intention existed to transform the EC liaison office in Kosovo into the EC delegation, as is the case with EC delegations elsewhere in the world. In spite of this intention, because of the lack of consensus/*cohesion* between EU member states on the independence issue, this became an impossible mission, at least for the time being. Regarding a full deployment of the ICO, a 'modus operandi' found the difficulty rested with deployment of the EULEX mission. Hence, the full deployment of ICO turned out to be easier, since the small ICO planning team in Kosovo was transformed into the future International Civilian Office.

Consequently, a group of states that recognized Kosovo's independence, dubbed the International Steering Group (ISG),¹ appointed the first International Civilian Representative (ICR) in Kosovo, Mr. Pieter Feith, on 28 February 2008. Similarly, 'the ISG charged the ICR, and through him the ICO, ... of ensuring implementation by the Government of Kosovo of the Comprehensive Proposal for the Kosovo

Status Settlement' (ICO, 2008). In this respect, 'Pieter Feith was appointed European Union Special Representative (EUSR) in Kosovo on 4 February 2008' (Council of the EU, 2008a).

The mandate of EUSR in Kosovo 'includes offering the EU's advice and support in the political process and promoting overall EU political coordination in Kosovo' (EU Factsheet, 2008, p. 3). Moreover, 'the EUSR will be in the lead for ... implementing a settlement defining Kosovo's future status, with the aim of a stable, viable, peaceful democratic and multi-ethnic Kosovo' (ibid.).

The situation regarding EULEX appeared to be more complex. In essence, the process started, with a Joint Action dated 4 February 2008, stating 'the Council has decided to launch the European Union Rule of Law Mission in Kosovo – "EULEX Kosovo"' (Council of the EU, 2008b). Its mission statement was as follows:

EULEX KOSOVO shall assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognized standards and European best practices. (Ibid.)

The initial Council Joint Action on EULEX was amended and the only substantial change was an increase of financial means for the mission in order to cover its expenditures more efficiently (Council of the EU, 2009). Similarly, on 7 February 2008, 'Mr. Yves de Kermabon ... appointed Head of Mission of the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO' (Political and Security Committee of the Council, 2008). It was planned that the 'the mission's operational phase is foreseen to start after a 120-day transition period from the decision to launch' (Council of the EU, 2008c). Clearly, all these legal acts of the EU institutions, in one way or another, referred to Ahtisaari's proposal. This comprised the complete legal infrastructure of the international presence, as shown previously, in full compliance with Ahtisaari's proposal.

Even though the launch of the EULEX mission encountered some difficulties, the *cohesion* of the EU with regard to it appeared to be a *procedural cohesion*. In essence, it emerged as *procedural* because all EU member states, with the exception of Cyprus which remained silent, agreed on launching the EULEX mission at the time that the EU Council Joint Action of February 2008 entered into force. However, in relation to the EULEX actions, 22 EU member states agreed to work and strengthen the state institutions of Kosovo and the remaining five did not recognize the independence of Kosovo with four of them actively opposed the newest state; this was shown in the Kosovo case at the ICJ.

In addition to the launching of EULEX by the EU institutions, the Kosovo government, in its coordinated declaration of independence (article 5), invited the international presence in Kosovo as follows: 'we invite and welcome an international civilian presence ... , and a European Union-led rule of law mission' (Kosovo Assembly, 2008a). Subsequently, Kosovo's President officially invited the international presence in Kosovo in keeping with Ahtisaari's proposal. Moreover, in the

Constitution of the Republic of Kosovo (Kosovo Assembly, 2008b, p. 55) it notes that ‘the provisions of the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007 shall take precedence over all other legal provisions in Kosovo’. Thus the Kosovo authorities welcomed the international and the EU presence in Kosovo. Ultimately, the *authority* of EULEX – or its legal competence to act with its presence in post-independence Kosovo – has been guaranteed by the legal and political documents already mentioned. These documents provided in a sense for the launching of EULEX by the EU institutions. However, the deployment rather than the launching of EULEX turned out to be the point at which the major problems began to arise. The next section discusses the difficult EULEX deployment in Kosovo and the consequences of this process.

III.2 EULEX Deployment in Kosovo: A ‘Compromised Authority’ and ‘Ambiguous Recognition’ of EULEX

Clearly, several obstacles existed that prevented the EU from moving forward with the deployment of the EULEX mission throughout Kosovo. Firstly, the UN Security Council did not reach an agreement on this issue (although the UN Secretary General did support the Special Envoy’s proposal), and this became a problem which hindered the deployment of EULEX in Kosovo, in accordance with Ahtisaari’s proposal. An additional obstacle to deployment was the division between EU member states on the issue of Kosovo’s independence. In this sense, if Kosovo’s independence had been recognized by all EU member states then the reaction of Russia at the UN and the position that Serbia took would have been different. It was, in particular, the division between EU member states which motivated Serbia and Russia to consistently pursue their negative course of action. In addition, UNMIK, which had the responsibility for rule of law issues, could not hand over those responsibilities to the EULEX mission without a decision from the UN Security Council. This further complicated and inflamed the situation. Similarly, the Secretary General of the UN could not bypass the UN Security Council in the process of reconfiguring UNMIK, since the latter was launched in accordance with the UN Security Council Resolution 1244/1999. The newly formed Kosovo government, concerned about its international image, could not take any measures or ask UNMIK to finish its mission and open the door for EULEX deployment. This delay created a real stalemate for EULEX deployment.

This delay was also reflected in Brussels circles. For instance, the High Representative of the CFSP, Javier Solana, had to take direct action on this matter through daily contact with the Secretary General of the UN and by meeting him in person to ‘discuss this issue ... in Stockholm on the 29 May 2008’ (EurActiv, 2008). A few weeks later, after this meeting, the deadlock situation on the EUELEX mission deployment appeared to be resolved according to the Report of the Secretary General of the UN to the Security Council. It was, however, only the beginning of the resolution process, and a very difficult beginning indeed.

After a fact-finding mission by the UN peacekeeping chief Jean-Marie Guehenno in Belgrade and Pristina, and his meetings with key leaders in both countries, the Secretary General of the UN issued his quarterly yearly report on Kosovo. In his June 2008 report, he highlighted ‘that the objectives of the United Nations would be

best obtained through an enhanced operational role for the EU in the field of the rule of law under the UN “umbrella”, headed by my Special Representative’ (UNMIK, 2008a, p. 4).

Subsequent to this report, two different reactions emerged. On the one side, the EU welcomed this report and its conclusions, while the Russian reaction was to oppose the conclusions. The High Representative of the CFSP expressed the EU position on the matter by welcoming the report, and stressing that the ‘reconfiguration of the civilian presence will allow for the EULEX mission, in the framework of the UNSC 1244, to intensify its deployment and to move towards assuming its operational functions’ (Council of the EU, 2008e).

On the contrary, the Ministry of Foreign Affairs of the Russian Federation (2008) stressed that it considered as illegal any attempt to alter the international presence in Kosovo without authorization of the UN Security Council and the approval of Serbia and the Kosovo Serbs. The Belgrade authorities aligned with the Russian position in this matter. Nevertheless, in spite of the rough terrain, this was the beginning of implementation of the report, at least on the issue of physical infrastructure. For instance, one move in this direction became the technical agreement between UNMIK and EULEX which, as EULEX spokesperson Karin Limdal said, ‘gives UNMIK ... the green light for transferring assets to us’ (Balkan Insight, 2008a). However, the rejection by Serbia and Russia of the mandate for the full operational deployment of the EULEX mission remained a problem. Negotiations between the parties involved in the process continued, as is evidenced by the following statement made by the High Representative of the CFSP, Javier Solana. In November 2008 Solana claimed, ‘in Kosovo our top priority is the deployment of EULEX throughout the territory of Kosovo ... [and] we have a very intense dialogue with Belgrade’ (EU at UN, 2008).

Because of this intense dialogue in October 2008, the Belgrade authorities underlined three conditions for their support of EULEX:

First, the plan must be approved by the UN Security Council. Second, it must be neutral regarding Kosovo’s status. And, third, it must take no measures to implement the proposal of former Finnish President Martti Ahtisaari, which are regarded by Belgrade as the basis of Kosovo’s independence bid. (Radio Free Europe/Radio Liberty, 2008)

Belgrade also pushed for the implementation of the so-called ‘six-point plan’ agreed to by the Belgrade authorities and the cabinet of the UN Secretary General. In essence, these three conditions of Serbia and the ‘six-point plan’ related to the intentions of Belgrade to continue promoting confusion over the status of Kosovo and to try and delay full international recognition of Kosovo’s independence as long as possible. The lack of consensus between EU member states on Kosovo’s independence again appeared to be the factor that Belgrade authorities used and are still using.

The ‘six-point plan’ covered the following issues: Police, Customs, Justice, Transportation and Infrastructure, Boundaries and Serbian Patrimony (UNMIK, 2008b, pp. 8–11). Essentially, all these six issues were resolved by Ahtisaari’s proposal on the status issue. As a reaction, Kosovo authorities compiled

a ‘four-point plan’ in which they rejected the ‘six-point plan’. Additionally, the ‘four-point plan’ recalls EULEX to deploy as planned under Ahtisaari’s proposal, Kosovo’s Constitution and Declaration of Independence, the invitation by Kosovo’s institutions and the EU Council Joint Action.

Afterwards, faced with this situation, the UN Secretary General sought to find a compromise between parties. He added as an annex to his report (November 2008) the ‘four-point plan’ of the Kosovo authorities (the Serbian ‘six-point plan’ had already been included in his report). Consequently, with a Presidential Statement, the UN Security Council finalized the deal for UNMIK reconfiguration and EULEX deployment. This also happened to be the last legal act, despite those mentioned above, that established EULEX’s *authority* or legal competence to act in Kosovo. Following this agreement, the EU French Presidency (November 2008) issued a statement clarifying that ‘in the implementation of its mandate, the EULEX Kosovo mission will fully respect UNSC Resolution 1244 (1999) and will operate ... within the status neutral framework of the UN’. This agreement opened the door for EULEX deployment in the entire territory of Kosovo, including the problematic area of northern Kosovo, on 9 December 2008. This has also been stressed by the EULEX spokesperson, Victor Reuter, who claimed that ‘[EULEX officials] are out taking their posts ... going to police stations, court and the border’ (MINA Breaking News, 2008). In essence, EULEX deployment in the entire territory of Kosovo and the *procedural cohesion* for the mission by the EU member states appeared at last to be a success story. On 6 April 2009, EULEX assumed full operational capability.

However, the ambiguity that followed the EULEX deployment and its compromised founding approach and *authority* turned out to have negative implications for the further contribution of the mission in terms of its *recognition*. Thus, as Shepherd (2009, p. 526) points out, ‘for Pristina, EULEX is working in line with its March 2008 mandate to work towards the Ahtisaari plan, respecting Kosovo’s constitution’. In contrast, ‘for Belgrade, the deployment was made possible by a reconfiguration of UNMIK, which sees EULEX as status-neutral, deployed under UN auspices and not entitled to implement the Ahtisaari plan’ (ibid., pp. 526–527). This is an ‘*ambiguous recognition*’ of the EULEX mission by the various different actors. At the same time, this is the last stage of the implementation of EULEX *recognition* by all actors in Kosovo. Nonetheless, as suggested, this *ambiguous recognition* from various actors cannot be considered a positive outcome.

This problem of *ambiguous recognition* had implications for the daily work of EULEX as well. For instance, in the documents of EULEX, the use of double denominators is currently a standard approach that reflects its status-neutral perspective. For example, the use of both terms – border/boundary – is reflected in the EULEX Programme Report (EULEX, 2009c) as well as in the EULEX Protocol with Serbia in Policing Issues. EULEX has also changed its procedural terms, i.e., EULEX needs to provide quarterly reports to the UN Secretary General. This had not been originally planned at the beginning of the mission with Ahtisaari’s proposal or even with the EU Council Joint Action. However, this is again a reflection of *ambiguous recognition*, and its links with the ‘UN umbrella’. Furthermore, to some extent, this *ambiguous recognition* on the EULEX deployment generated confusion even among the EULEX officials. For instance, the head of the EULEX, noted that

'EULEX, is technical in nature and will not get involved in matters of Kosovo's status' (Balkan Insight, 2008b). Moreover, he added, 'the legal basis of the mission is joint action, a document which 27 member states of the EU accepted, also includes states that did not recognize Kosovo's independence' (ibid.). Even so, the reality implies that in each of the fields of its activities EULEX has to carry out certain laws. Considering the fact that EULEX has to implement laws, this implies the implementation of either Kosovo laws or former UNMIK regulations. This has political implications and illustrates the fact that Kosovo's status influences the EULEX input and therefore it cannot be claimed that EULEX is simply a technical mission.

Likewise, while interviewing EULEX officials in Pristina the author of this article found these officials expressed ambiguity and confusion on the status of their mission. Thus, some of the officials claimed that EULEX works under Resolution 1244 of the UN, while others suggested that the mission recognizes the reality in Kosovo and works based on the Joint Action of the EU Council (4 February 2008) and Ahtisaari's proposal. In addition, a third group held the opinion that the EULEX mandate is in between Resolution 1244 and Ahtisaari's proposal for independence. Similarly, from the citizen's point of view, the confused manner of the EULEX deployment cast a negative reflection on its image. For instance, in Pristina immediately after the approval by the Secretary General of the UN report on this matter, huge demonstrations took place against this plan and notably against the 'six-point plan'. In essence, a majority of the people of Kosovo perceived international policy on the issue as an additional negative compromise to Serbia from the international community. Moreover, according to the UNDP (2010) 'Early Warning Report' in October 2008, only 21–22% of Kosovo citizens were satisfied with or supported the EULEX mission. Therefore, it is clear that the public perception regarding the compromises that were made during the process of the EULEX deployment was very negative. In essence, these compromises may have transformed the very benign aim of the mission – to help Kosovo authorities in the field of the rule of law – into something perceived by the public in a negative light. Thus, it can be assumed that EULEX to some extent became a 'hostage' of the compromises agreed upon by those who launched the mission.

IV. EULEX *Autonomy* in Kosovo

The last component of the conceptual framework of this article is the issue of *autonomy*. Before considering the issue of *autonomy*, it is important to discuss some basic facts on EULEX *per se*. In essence, the EULEX mission consists of the EU member states (excluding Cyprus), Canada, Croatia, Norway, Switzerland, Turkey and the United States. The EULEX mission is supposedly an EU mission in the field of the rule of law and yet non-EU member states are part of this mission. The EULEX mission consists in total of 2900 staff members. Of these, 1700 staff members are internationals and 1200 are locally recruited (EULEX, 2010a).

However, concerning the issue of EULEX *autonomy*, it should be pointed out that this issue is related to EULEX relationships with other international actors, notably with UNMIK and other EU entities present in Kosovo.

IV.1 EULEX vs. UNMIK

In essence, the relationship between UNMIK and EULEX has been notable with regard to the issue of the transfer of power and files from UNMIK to EULEX in the field of the rule of law. This process of transfer from UNMIK to EULEX took place on the initial operational day of EULEX – 9 December 2008. According to the EULEX report delivered to the UN on 17 June 2009, the handover of case files from UNMIK to EULEX was successfully completed. Moreover, this report (EULEX, 2009a) indicated that EULEX conducted initial investigations for some of the priority cases (files) transferred from UNMIK. Similarly, in terms of matters of justice, this report (*ibid.*), asserts that there was a handover of approximately 300 cases to the EULEX judges and prosecutors from their UNMIK counterparts. In fact, several officials who were interviewed for this article confirmed having observed a cooperative and smooth transfer from UNMIK to EULEX. The same smooth transfer of power from UNMIK to EULEX was also reported in the customs component of the EULEX mandate.

A further interesting factor on the ‘transfer’ from UNMIK to EULEX is the issue of staff. In spite of the very cooperative transfer of power and files from UNMIK to EULEX, unfortunately in a rather cynical manner UNMIK also transferred some of its staff. According to some EULEX officials, in June of 2009 there were still 300 former UNMIK police officers within the EULEX mission.

In brief, the discussion so far highlights that the transfer of power and files from UNMIK to EULEX happened in an efficient and cooperative manner. Although UNMIK had been an obstacle for the EULEX before its deployment, UNMIK did not attempt to hinder the transfer of power at the time of the actual deployment of the EULEX mission.

In contrast, there are some overlaps between UNMIK (specifically the SRSG²) and the EUSR. Thus, considering the fact that the EUSR, as mentioned, represents and promotes the political coordination of all EU agencies in Kosovo, it can be said that there is some overlap between UNMIK and the EU presence in Kosovo, although the EU is not directly linked with EULEX. Moreover, considering the fact that the role of the SRSG nowadays remains a symbolic one, this issue does not have any substantial implications for the daily work of EULEX.

IV.2 EULEX and other EU Entities in Kosovo

In this respect, as highlighted earlier, the division of labour between EU agencies in post-independence Kosovo appears to be very clear. In fact, three EU entities are in place in post-independence Kosovo, each of them with separate tasks. The interviewees from the three main EU entities in Pristina and their counterparts in Brussels confirmed the finding of clear mandates for each of these three entities. However, there are still challenges remaining with their work. For instance, EULEX is the largest mission of the ESDP, and the EU had no such experience in the past. Consequently, this causes some problems with internal communication. Another challenge facing the EU contingent is that the EU agencies in Kosovo report to different EU institutions in Brussels, and this causes additional problems for their coordination and for the efficient functioning of the EU in general in Kosovo.

This might sometimes be interpreted as suggesting that Europe cannot speak with one voice in Kosovo. A particularly difficult challenge remains regarding the double-hatted nature of the International Civilian Representative/EU Special Representative. Thus, the ICR (EUSR) represents countries that have recognized Kosovo's independence, and also represents the EU as a whole, including the member states that did not recognize Kosovo's independence. In essence, this creates a great deal of confusion. When this representative speaks as the ICR he is status-committed, in line with Kosovo's independence. But when he assumes his role as the EUSR he must speak as a status-neutral representative. This is a reflection of the division between EU member states on the recognition of Kosovo's independence. Therefore, the EULEX *autonomy* as defined by Caporaso and Jupille (1998) 'as institutional distinctiveness and independence from other actors' is well established in Kosovo, with one exception. Clearly, this exception has to do with the double-hatted ICR/EUSR; however, it is important to note that this does not involve EULEX directly, as has been previously explained.

In brief, the four components of an actor capacity in global politics as defined by Caporaso and Jupille (1998) (*recognition, authority, autonomy and cohesion*), in the current study, might be regarded as follows: EULEX had a clear *autonomy* and *authority* (although a compromised one) to act in Kosovo. Consequently, the *compromised authority* from the report of the UN Secretary General generated an *ambiguous recognition* by relevant factors involved in the process (Pristina and Belgrade). Finally, the level of EU *cohesion* on EULEX became *procedural cohesion*, and the EU division on the issue of Kosovo's independence had negative implications in this respect.

Bearing in mind these findings, it might be concluded that EULEX has a handicapped capacity to act as a consistent actor in Kosovo. Hence, in this line of argument, the section below will show how this *handicapped actorness* has already been reflected in the very beginnings of the EULEX mission, and explore what could be the implications for future prospects as a result.

V. EULEX in Kosovo: First Results and Failures

In essence, the EU started initial EULEX operational capability on 9 December 2008. The period until April 2009 (linked to the period at which EULEX appeared to be a fully deployed mission) essentially served as a transitional period for the transfer of power from UNMIK to EULEX. The real input of EULEX in Kosovo cannot be assessed earlier than from April 2009 and onwards. Certainly, this is not a long period of assessment for a mission of the magnitude, complexity and importance of EULEX. However, some initial points can be made and possible future prospects can be inferred. This is most notably true with regard to the idea of *handicapped actorness*.

According to the EULEX Programme Strategy (2010b, p. 1) there are six overall aims which EULEX intends to achieve in helping Kosovo with rule of law institutions: 1. progress toward sustainability; 2. progress toward accountability; 3. multi-ethnic organization; 4. freedom from political interference; 5. recognized standards; 6. European best practices. These aims have been established with the long-term prospect of Kosovo's potential for possible accession to the EU.

In order to achieve these objectives, EULEX has identified two additional principles. The first of these is the working technique of Monitoring, Mentoring and Advising (MMA) Kosovo institutions in the field of the rule of law. The second principle is that Kosovo institutions are to be in the drivers' seat. The key to implanting this important concept is local ownership and accountability. Nevertheless, this has not turned out to be the case in practice in northern Kosovo. Somehow in northern Kosovo EULEX remains authorized to do the job which should be under the direction of Kosovo authorities. However, what are the EULEX results in achieving its objectives until recently?

In addition to the confusion that *handicapped actorness* has generated in the daily functioning of EULEX, and EULEX officials as well, *handicapped actorness* has been similarly reflected in the initial results of EULEX. In essence, the *handicapped actorness* of EULEX had a negative impact on its initial results. Three examples are given below to illustrate this negative impact on the results related to the areas that EULEX covers in Kosovo: customs, police and justice.

The prime example has been the failure of EULEX to install operational customs to collect taxes in the northern part of Kosovo. In spite of the fact that one of the reasons for delaying EULEX deployment in Kosovo was the importance of deploying in the entire territory of Kosovo, which was accomplished, EULEX failed to introduce functional customs in northern Kosovo. Because of this failure, as mentioned in the Progress Report of the European Commission on Kosovo (Commission of the EC, 2008, p. 36), 'since the destruction of the two border posts in northern Kosovo in February, smuggling activities have increased'. Clearly, this situation has a negative implication for the Kosovo budget, since it implies a substantial loss of revenues for Kosovo.

The reason behind this EULEX failure is that operational and functional customs in northern Kosovo have been perceived by Serbia and the Serbs of northern Kosovo as evidence of implementation of Ahtisaari's proposal for independence. This illustrates the *handicapped actorness* of the EULEX mission in Kosovo and its negative consequences.

The second example is related to the police component of the EULEX. In essence, it is closely linked to the EULEX failure to get approval from the Kosovo authorities and citizens for the arranged and signed 'Protocol of cooperation on policing issues' with the Serbian authorities. In contrast, there is strong support from the Belgrade authorities. The rationale behind the rejection of this protocol of cooperation by the Kosovo authorities is that this protocol is seen to be in accordance with Serbia's 'six-point plan'. In addition, this protocol triggered huge demonstrations in Pristina. This also exemplifies an additional problem, and a kind of policy of double standards. For instance, EULEX can to some extent impose its decision (e.g. the issue of the protocol with Serbia) on the Kosovo authorities and the majority of people in Kosovo. In contrast, it cannot install functional and efficient customs in the northern part of Kosovo. This further elucidates the problems that are caused as a result of the *handicapped actorness* of the EULEX in Kosovo.

The third example is chiefly related to the justice sector in Kosovo. In fact, immediately after the declaration of independence followed by the Serb riots in northern Kosovo, the judicial system in this part of Kosovo became essentially non-functional. The EULEX attempted to re-establish a working judicial system by

initiating processes through a local court in Mitrovica, but it failed. In essence, the argument behind this failure is that Serbian judges aimed to carry out their work based on Serbian laws and Albanian judges aimed to implement the Kosovo law. In other words, the issue is purely political and the EULEX appeared impotent to resolve this. This example of failure regarding implementation of continuity in the justice sector is yet another major problem resulting from the *handicapped actorness* of the EULEX.

Conversely, the EULEX has obtained some positive results. For instance, 'EULEX closely monitored the reintegration into the Kosovo Police of 318 suspended Kosovo Serb police officers . . . and discussed with the Kosovo authorities the re-employment of approximately 60 Kosovo Serb correctional officers' (EULEX, 2009b). Moreover, 'EULEX judges presided in numerous trials, including several ethnically motivated and war crime trials' (ibid.). Furthermore, some progress has been achieved in advising Kosovo rule of law institutions in general, but this is still not in line with the expectations of Kosovo's people and perhaps the EULEX officials *per se*.

In brief, the *handicapped actorness* of EULEX has had a negative impact on its influence and effectiveness in Kosovo. Nonetheless, it remains to be seen if the *handicapped actorness* of the EULEX will continue to be an obstacle to its ability to meet the goals of its mission for Kosovo in the future.

VI. Conclusions

This article has pointed out several important aspects of the EU's rule of law mission in Kosovo, dubbed EULEX Kosovo. The first part addressed the conceptual framework and identified four issues related to EULEX actorness in Kosovo: *recognition, authority, autonomy* and *cohesion*.

The second part focused on the EULEX background based on Ahtisaari's proposal. Additionally, it discussed the launch of EULEX and the issue of EU *cohesion* with respect to this. The following part covered the difficult process of EULEX deployment, which ended up with a *compromised authority* and *ambiguous recognition* of the mission itself. The article went on to stress the relations of EULEX with other international actors and EU entities involved in Kosovo and how this relates to the issue of *autonomy*. Finally, the last part discussed the very first results and failures of EULEX in the field of the rule of law, conditioned by its *handicapped actorness*.

To sum up, it could be said that EULEX has a clear *authority* (although a compromised one) and *autonomy* to act in Kosovo. On the other hand, there is a problem with *ambiguous recognition* by other actors involved in the process, i.e. Pristina and Belgrade authorities. Regarding the level of EU *cohesion* on EULEX, there has only been a *procedural cohesion*. This form of EU *cohesion* on EULEX has been undermined by 'horizontal conflicts' as defined by Jupille and Caporaso (1998). These conflicts are the result of deep-seated disagreements between EU member states on Kosovo's independence. Furthermore, in this respect, Jupille and Caporaso (1998) underline that where such conflicts are present the EU is less able to act effectively.

Therefore, as a reflection of the findings on the issues of *authority, autonomy, ambiguous recognition, cohesion* and 'horizontal conflicts' of the EU on Kosovo's

independence, it can be concluded that the EULEX had and is having a 'limited capacity' and is less able to act consistently in Kosovo. This situation also had a negative impact on the first input of EULEX in Kosovo. In addition, but only, to some extent, as it appeared from the empirical findings, this situation is a reflection of constellations of power politics in international relations. Nonetheless, as pointed out, if the 'horizontal conflicts' between EU member states had not existed, the implications of international power politics on the EULEX mission might have been less significant than they turned out to be into practice.

Notwithstanding, if the EU intends to have a successful mission in the field of the rule of law in Kosovo, and consequently to make Kosovo a viable and self-sustaining state, it needs to take the following three steps:

First, the EU should try and resolve its 'horizontal conflicts', i.e. to speak with *one voice*, even though, as the literature review at the beginning of this article underlined, this is always a difficult task for the EU. In this case, this involves the process of convincing the last five members of the club to recognize Kosovo's independence. In this context, the ICJ ruling on Kosovo's independence, which stated clearly that Kosovo's independence does not violate international law, should be an additional argument for encouraging the important move of the last five EU member states to recognize Kosovo's independence.

Second, the EU should attempt to prevent Serbia from interfering in the internal issues of Kosovo, using the mechanisms of 'stick and carrot' in traditional European integration processes.

Third, at the point that the EU finally speaks with *one voice*, it should strengthen political support for the EULEX mission and make it more effective and efficient. In other words, after the first and second steps are complete, EULEX needs to change its stance from a status-neutral mission and take on the significant increase in responsibility necessary to become a status-committed mission. In this context, the timing has a great deal of importance. In essence, if this does not happen soon and the EULEX continues to be inefficient and ineffective, its image may suffer irreversible damage leading to permanent failures from which it cannot recover. Consequently, it is crucial to the EULEX mission that there is no further degradation of the trust of the people of Kosovo toward the EULEX mission, as this could potentially reduce any prospects for the EULEX mission per se.

Nevertheless, bearing in mind the facts below, it should be expected that the EU decision-makers would not allow the failure of EULEX in Kosovo:

- a) The Kosovo intervention in 1999 in some way appeared to be an additional factor or stimuli for the EU decision-makers to create the ESDP and to appoint for the first time the High Representative of the CFSP. In other words, even in symbolic terms, EULEX failure in a place that at least had some symbolic importance for the ESDP creation; it is not a good sign for the EU.
- b) The intervention in Kosovo in 1999 also, to some extent, returned the attention of the international community, and notably of the EU, to the western Balkan countries.
- c) Finally, considering the fact that EULEX Kosovo is the biggest mission of the ESDP, if this mission fails it will not send a positive signal for the smaller ESDP missions deployed elsewhere in the world.

It remains to be seen if the EU has learned its lessons from the past. Nevertheless, a EULEX failure in Kosovo would be a failure of the European project in Kosovo, and potentially in the entire region of the western Balkans.

Consequently, this should be an alert to the EU decision-makers, and notably to those member states that refuse to recognize Kosovo's independence. Clearly, the time is now, because tomorrow it will be too late, for the success of the European project in Kosovo and the wider implications for the west Balkans. Ultimately, the success or failure in the case of the EULEX and Kosovo in general is one of the key tests of EU actorness in international affairs.

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Notes

¹ The International Steering Group comprises states that support the full implementation of the Comprehensive Proposal for the Kosovo Status Settlement.

² The Special Representative of the Secretary General of the UN in Kosovo.

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