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Permanent Structured Cooperation as an Institute of the Common Foreign and Security Policy of the European Union and its Significance for Candidate Countries

Mihail Stojanoski

Abstract

Permanent Structured Cooperation is a revolutionary new institute introduced in the European Union framework with the Lisbon reform treaty. It provides member states with a tool to improve the long standing problem of foreign and defence policy passivity and irresponsiveness. Though sounding quite progressive, it yet awaits to be implemented, and the road ahead seems full of obstacles. This paper first explains the essence of the institute, than deals with the problems of implementation of Permanent Structured Cooperation, its rewards and would-be hazards, as well as problems to be expected before and during implementation. Emphasis is being put on the special relation with the NATO alliance that will come to light as soon as Permanent Structured Cooperation comes into existence. The last part consists of an analysis of the impact that Permanent Structured Cooperation will have on candidate countries, especially the Republic of Macedonia, both as a potential reform and a soon - to - be reality.

Keywords: EU Common Foreign and Security Policy, Permanent structured cooperation, EU candidate countries, Macedonia

Introduction

At the dawn of the twenty first century the European Union yet remains a structure difficult to define in legal terms. *Stricto sensu*, the Union is not an international organization, even less a federation. It can only be defined through its founding treaties, as a *sui generis* entity. Using the words of John Ruggie (1993), "the European Union may be the first post - modern political formation." The one thing that makes the European Union differ from any

other political form in existence is the institutions that are endowed with supranational authority. They possess very real power to make very real calls that have a very real impact on the lives of everyday people. The agricultural, monetary, visa and asylum policies leading the way (although not being the only ones) are today led by the Union's institutions instead of those of the member states. The process described here is referred to as 'European integration'.

The process mentioned, being re-emphasized and re-explained over and over again, is a pioneer effort, and that very fact exonerates most of the mistakes made along the way. The Lisbon reform treaty introduced several novelties in the field of CFSP. Three new bodies were introduced; High representative for Foreign Affairs and Security Policy, Permanent president of the European Council and the European Foreign Affairs service. The decision - making process was thoroughly reformed as well as the defense policy, but bearing most symbolism, the Union was given legal subjectivity.

This paper will attempt to argue that:

1) The only way the European Union can assert itself as a worldwide defense factor is through capacity pooling and strengthening of the European Defense Agency;

2) Permanent Structured Cooperation (further on - PSC) is an excellent action plan to achieve the aforementioned and

3) PSC can be a double-edged blade for accession candidate countries, while making the Union to appear more attractive (and thereby, at least in theory, increasing their integration momentum) it makes the Union integration appear a never ending process (through forming a 'Union inside the Union'). The Permanent Structured Cooperation is a CFSP reform that is yet to come, if at all. None the less, its potential is huge, and it is only prudent to go into it in some detail.

What Exactly is PSC?

The efficiency problem of the European armed forces is well known: From around two million men and women in uniform all together, only ten to fifteen percent can effectively be fielded (Biscop, 2008). The reasons for such ineffectiveness are multiple: Unnecessary piling of institutions with overlapping authorities inside the Union, the existence of many small, ineffective capacities rotting in the barracks of member states, lack of

logistical unification and interconnection and so on and so forth. Although the reasons are clear, little is done on the field to correct such issues.

With the introduction of PSC, first introduced in the Lisbon treaty and restated in the Treaty of the European Union, a possibility is left open for a new level of integration of member states that decided they need deepening of cooperation in the field of defense. The beauty of PSC is that it operates from inside existing Union institutions and adds to them, rather than doubling them or minimizing their significance. The member states that choose to participate are given a certain functional autonomy on defense issues, which does not endanger the existence of the Union as a whole.

The PSC protocol to the Lisbon treaty contains two obligations for PSC participant states: One general, incalculable position formulated "To intensify the development of their defense mechanisms" though as proven so far by Union precedent, little hope can be laid in such declarations unless they serve another more explicit goal. Another more precise obligation "by 2010 all participating states must be prepared to take part in e.g. battle groups", following exact plans, deadlines and tasks. The tasks amount to "deployability" and "sustainability" of military units. Such a battle group needs to be able to deploy in thirty days at the latest and to perform its duties for a period of thirty to one hundred and twenty days initially.

The states that intend to participate have an obligation to notify the High representative and the Council, which at the end of a three month period of consultation decides by *qualified majority* whether to allow the formation of PSC, while at the same time confirms the list of participant states. Further on, there is a mechanism to leave PSC or be suspended from PSC without it bearing any consequence on the state of the Union as a whole. This gives PSC the appearance of an 'open club' that is founded on common interest rather than on obligation to participate. Any decisions in PSC are made inside the Council, where all member states of the Union sit and discuss, but only those participating can vote. We believe that this is the key factor that makes PSC a cohesive factor for the Union rather than a destructive force.

What Makes Permanent Structured Cooperation so Significant?

The *prima facie* advantage of PSC, when compared to similar, current and past proposals such as European Political Cooperation, the Western European Union, the Fouchet plan, and the Closer cooperation institute

among others, is that it can actually solve the problem of dichotomous ideas on further integration. Although some criticize the proposal as being opposed to the "general idea of European Integration" (Biscop, 2008; Santopinto, 2007), most agree that progress for some is still better than stagnation for all (Lellouche, 2001).

Launching such a partial integrationist project could create rifts between member states, and herein lies the main reason why PSC hasn't been launched yet. Therefore, the implementation of PSC has to represent a careful balance between effectiveness and inclusiveness - a problem which will be the biggest thorn in the foot for European leaders if one day PSC is to be brought forward.

Another significant advantage of PSC is its flexibility. The list of participating member states is not closed, states can opt in or out, and there is no minimum threshold for creation. PSC leaves the option for every member to choose how exactly it will participate. So, it can be said that the case present is a case of 'partial participation in a partial project' - essentially, everyone does what they want. The significance of this possibility is that it solves the problem of diverse views inside the Union on how defense integration should proceed.

The task of conducting PSC is to be taken by the European Defense Agency. Its mission is to coordinate all efforts and to oversee reform progress. Let's not forget that the European defense agency is *prima facie* a supranational body, and although participating states have the last say in PSC matters, empowering a supranational agency in such a way at least symbolically gives a direction in which European defense is to develop in the future.

Perhaps the one feature of PSC that will make most difference is the possibility for resource and capacity pooling. Today, all of the Union's member states strive to maintain a huge pallet of diverse military and defense capacities without really taking into consideration the needs or advantages of the European Union or NATO, for that matter. One could say that when we are talking about defense, essentially it is still 'every man for himself'. Such maintenance of "mini mass armies" (Pilegaard, 2004) results in resource fragmentation, having multiple institutions doing the same things and huge expenses while at the same time limited efficiency.

PSC offers the possibility of institutional pooling, thereby cutting down on expenses made on behalf of inefficient national armies. Pooling

possibilities are virtually endless: common requisitions, joined research projects, joined training facilities etc. Such experiences already exist, and they can be used as a foundation which PSC can expand on. Namely, France and Belgium already have a joint program for the training of pilots and a European airlift command center is already in function in which Belgium, France, Germany and the Netherlands take part. Such programs under PSC are expected to develop further and gain in significance. We also expect a strong spillover effect on other defense projects such as intelligence or airspace monitoring. Furthermore, considering the fact that many European countries already have their troops serving together on away missions, the creation of joint training programs is only a step away. Such pooling projects do not necessarily have to include all PSC participant states. Projects can be partial, and participation will be decided according to interest or capability. PSC will serve as a framework under whose coordination such projects will take place under supervision of the European Defense Agency (See Appendix 1).

Pros and Cons - What PSC Lacks

One obstacle standing in the way of PSC, at the same time being the common obstacle in European Integration is the fear of losing sovereignty. This fear is a generational problem and is slowly dissipating, but will remain a factor to be considered in years to come. We consider such a fear to be irrational for several reasons (regardless of its irrationality, however, the fear is no less real): First, due to enormous costs of defense technology research, many small countries are simply unable to follow technological development. By pooling together, even such small countries will be able to participate in larger research projects which will in time allow them access to new technology, which will consequentially, through implementing defense technology advancements grant them an advantage in the field of defense, thus providing more, instead of less sovereignty. Second, as things stand right now, for those states who are unsatisfied there is always a way out of PSC.

A problem which really stands in the way of PSC is the improbability for European leaders holding office for a limited time span to see a broader picture for European stability, or put better, their hesitancy. As a theoretical concept, the PSC project won the heart of Great Britain and its Prime Minister, as well as from several other European leaders. However, since the

Lisbon treaty is in force, PSC, notably, is being kept under the carpet. As an explanation, we believe that the Union suffers from reform fatigue as well as from expansion fatigue. Put simply, this generation of European citizens simply has had enough change.

Another truism is the fact that right now, the Union is preoccupied with the economical crisis as well as a very real bankruptcy of a few member states lurking in the dark, shaking the very foundations of the alliance. Common interests are fading away, and it remains questionable whether present mechanisms for crisis remedy are satisfactory.

Although the abovementioned is undoubtedly a fact, it is also true that integrationist efforts, seen through the prism of history are never easy. So, it can be subsumed that although now is not the right moment to talk about deepening of defense integration, for such a reform there might never be a right moment. So why wait? At the least, the PSC concept should be kept alive. This can be done through statements, non-obligatory declarations of the European Parliament and the High Representative. Otherwise, a brilliant idea might be forgotten, as though it never happened.

A serious flaw of the PSC concept is the lack of measurable criteria by which progress will be measured. Still, it is reasonable to predict that measures in this context will be developed if the proposal becomes active. Still, initial deadlines are necessary at this point if the PSC proposal is ever to become a reality.

Another reasonable fear in context of PSC is the dissatisfaction that will ensue inside the wider European Union. The division between 'those inside' and 'those unwilling to be inside' might result in fatal negotiations on other European Union issues where leverage for support for PSC decisions will be taken into account. A proposal to remedy a part of this problem is to launch the PSC initiative at the level of the European Council and to maintain involvement of non-participating member states to discuss PSC issues without the right to vote (Biscop & Coelmont, 2010).

Permanent Structured Cooperation and the NATO Alliance

An issue that is fearfully being addressed in the Lisbon treaty is the relation between a potential PSC in existence and NATO. PSC is a project that is intended to be independent and which can be used to the benefit of both NATO and the United Nations. If the specific goals of PSC are examined

it is obvious that their major parts overlap with the goals of NATO. Furthermore, any NATO member state that also participates in PSC could only benefit from it by increasing its military preparedness and technological advancement, thus contributing to overall NATO prestige and capacity. Essentially, the United States and Western European countries share much of the same values, such as free market economy, democracy and human rights. So, in the foreseeable future the relative increase in power of a European Union represented by a core of PSC states does not present a threat for the interests of NATO worldwide. Furthermore, a joint NATO mission where PSC states would participate actively would have an increased degree of legitimacy to take charge of missions that fall inside the scope of the United Nations, or even outside of it.

The only change that is anticipated inside the North-Atlantic alliance as a result of PSC is a possible creation of a two-pillar NATO where both parties share the same values and most of the same interests. Still, this would result in a relative drop in influence on the side of the United States, but from what is obvious so far, the US seems to approve the creation of a unified Europe on every level, defense included. This position is explained by the US needing someone to share the burden of responsibility for worldwide military action, now more than ever (Smith, 2003).

Impact of Permanent Structured Cooperation on Candidate Countries

PSC primarily is an institute of the Common Foreign and Defense Policy of the European Union, and as such, it is deemed to have a very small, if any at all, impact on accession countries and the expansion process of the European Union as a whole. Two separate models need to be examined: one where PSC is up and running, and one where PSC is a plan for the future or is *in statu nascendi*. Assuming that PSC is a reform that is yet to come, its impact comes down to being merely symbolic. In this scenario accession countries would focus on immediate general and country specific accession criteria, while taking a stand on PSC would only potentially complicate the accession process, most likely in the shape of being forced to make a choice between a group of member states that support the creation of PSC and those against.

Furthermore, the very fact of taking a stand might be looked upon as 'dealing with issues that are way over your head', and even as going into insider issues of the Union.

Looking ahead, it would be best if accession countries, the Republic of Macedonia included, would lead their defense policy independently, or as part of NATO or the partnership for peace. The possibility for an existing PSC at the moment of accession of a candidate country (a realistic scenario for the Republic of Macedonia) entails several different opportunities. One possibility is that candidate countries would lose their integrationist momentum due to the existence of another level of integration once they accede to the Union. The existence of PSC can even be seen as added criteria for membership, something that can only have a negative impact on the integrationist process.

An added problem is the perceived collision of PSC interests with those of NATO. Candidate countries might seek to balance, or believe that a choice has to be made between the two. Although at a global scale the interests of both organizations do not collide, at a micro level the whole ordeal might be seen as a 'zero sum game'. Considering the aforementioned, the stand taken by NATO (or the United States) regarding the accession of a single country might play a crucial role. None the less, initial signals seem encouraging (Nuland, 2008).

Another scenario is the one where a functional PSC makes the Union appear even more attractive for candidate countries. This scenario is way more likely for countries that do not look keenly on NATO, or represent a factor in regional security themselves and have enough leverage not to depend on NATO integrationist processes for the near future, i.e. Turkey and Serbia.

We need to stress that choosing PSC as an alternative to NATO might prove a hazardous political move. Firstly, we believe this because at this point, there is no clear reason for making a choice between the two integrationist processes. Furthermore, the European defense system, however promising, remains untested. Another alternative needs to be examined: that PSC will make the Union appear more attractive for all candidate countries. Those with greater defense ambitions will see it as a forum for development, while those with lesser ambitions as added security. However optimistic, we choose to give this scenario less probability.

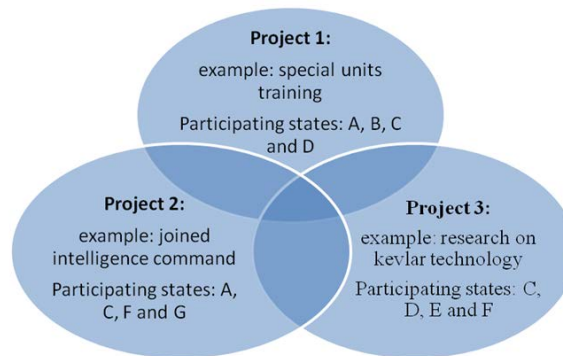
Conclusion

The issue at hand is not whether the European Union in the future will act together with NATO, the United Nations or unilaterally. That is a decision that will always be made in context. The issue is how far do European military ambitions go? So far the Union has proven an invaluable partner when it came to post-conflict reconstruction, conflict prevention (somewhat) and peace building, but it is nowhere to be seen when it comes to using brute force. Apparently, the Union has big ambitions when it comes to defense (bearing in mind the Petersburg tasks), but the appropriate strength or willingness to act seems to be lacking. However ambitious, PSC does not offer an answer to all the questions. It is merely a project to improve military capacity inside the Union (De Flers, 2008), but it does not necessarily reform the process of defense decision-making. The rule remains consensus. Even now through consensus it can be decided that consensus is needed no more. So, no improvement there.

Whether the willingness for reform shown in the Lisbon treaty continues, remains a question unanswered. So far, it seems that the momentum has come to a halt, even though reduced expenses through pooling are more than wanted.

When it comes to relations with the NATO alliance, the initial appearance of interest collision seems faulty. Both blocks have overlapping interests and it seems that collision is highly unlikely. When it comes to accession and candidate countries, first of all the Republic of Macedonia, the issue seems clear. Wait and see. If nothing happens, keep quiet. If, however, something does happen (e.g. PSC is put into motion) the Republic of Macedonia should none the less focus on its accession criteria. Defense reforms are already being carried out under supervision of NATO, and it seems adequate that such reforms will also prove sufficient to fulfill any PSC requirements. If the day comes to make a clear choice on whether to enter a commitment such as PSC, we do not see any reasons why the Republic of Macedonia should pass. PSC would give the Republic of Macedonia a seat which brings a lot of leverage, influence and prestige.

Graph 1 - An example of PSC where different participating states take part in different projects



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Accession Conditionality as a Tool for Achieving Compliance Regarding Minority Protection Policy – A Rationalist Bargaining Approach

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Abstract

After a relatively long period of neglect, the EU finally put minority protection policy on its agenda in the early 1990s, as the CEECs were now making their way towards accession and minority issues could therefore have posed a destabilizing threat to the Union as a whole. The importance of ethnic conflicts and their devastating potential for violence became all the more clear during the years of the Balkan Wars, making a commitment to protection and non-discrimination of minorities a vital security interest. The EU therefore made the protection of minorities part of its Copenhagen accession criteria, creating a gap between “old” member states (who often had very neglectful minority policies, e.g. France and Greece), and new members and candidates, who were now under pressure to change their approach in order not to endanger their accession. This paper therefore argues – in accordance with Schimmelfennig & Sedelmeier’s (2002) External Incentives Model – that accession conditionality and the promised advantages are what entices states to comply, and that candidates make a rational cost-benefit calculation, in which they often decide to accept the EU’s desired policies to profit from the assets of membership. Social learning processes offer much less explanatory capacity – if the adoption of the most appropriate rules was the case, the neglectful “old” member states would have adapted their policies to those publicly endorsed by the EU by now. In order to illustrate these hypotheses, a comparison between Greece as a long-time member and Croatia as a candidate and their respective policy development will be drawn.

Keywords: EU accession conditionality, minority protection policy, rational approach, Greece, Croatia, Macedonia

Introduction: EU and its Approach to Minority Issues – Past and Present

The EU has played a prominent role in advocating minority rights over the past few years, but this strong commitment has only been made recently. In its early years, the EU steered clear of going into the touchy subject of minorities, which in an ethnically very fragmented Europe could also always represent threats to state-sovereignty. Instead, the Council of Europe stepped up to the role of human rights champion in post-war Europe, presenting its *Convention for the Protection of Human Rights and Fundamental Freedoms* as the first European document on human rights in 1950. A general non-discrimination article was already present in this version, amended in 2000 by Protocol No. 12:

1 The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, *association with a national minority*, property, birth or other status.

2 No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1. (Council of Europe, Protocol No. 12 to the *Convention for the Protection of Human Rights and Fundamental Freedoms*; emphasis mine).

Besides this general prohibition of discrimination, no international commitments to minority protection were made in Europe, and the matter remained a purely internal state affair. A prominent case of a minority problem being internationalized was the German- and Ladin-speaking minorities in the province of Bolzano (South Tyrol), Italy. They had been granted certain rights (education in their mother tongue, e.g.) in the Treaty of Paris signed by Italy and Austria in 1946, but Italy was disregarding the commitments made. Due to the promised minority rights having been recorded in an international treaty and with the help of Austria acting as a kin-state, the case was brought to the U.N. in 1960. However, no solution was found, and the U.N. General Assembly told Italy and Austria to find an acceptable compromise on their own. This again shows that no international body was willing to get involved in

issues that could possibly pose imminent threats to state sovereignty. Therefore, having minority protection policies was also not an issue the EU took interest in when rating a possible new member's application. The matter was left completely to member states' decency, and if a country chose to opt for neglectful or even hostile minority policies, there was not much more than possible criticism from the Council of Europe to be expected as a consequence. This explains how one of the "engines" of the EU, France, could get away with very neglectful behavior, even denying the existence of minorities on its territory. To this day, France still has not ratified some of the most important international documents on the matter (see below); the same is valid for Greece, which will be investigated in more detail later on in my paper. In 1981, when the country of Greece joined the Union, no demands were made regarding minority protection standards.

Commitments to minority protection on the European level only really began to be made at a much later date: after the downfall of communism in the CEECs and the Baltic States, and especially after the Balkan Wars and their horrible instances of genocide that had sprung from ethnic conflict. In 1995, the Council of Europe drafted a specific document for minority policy, namely the *Framework Convention for the Protection of National Minorities*. Along with key documents by the OSCE, the *Framework Convention* is also nowadays used by the EU as a benchmark to rate applicants regarding their minority protection policies. The *European Charter for Regional or Minority Languages* was drafted in 1992, giving the Council of Europe a tool to protect minority languages but not minorities as such, as the Charter does not offer any kind of group rights.

As can be noted by the dates on which these new documents were made, progress in minority protection began to advance at a much faster pace after the downfall of communism in the CEECs and after the Balkan Wars. Strong ethnic tensions had led to these conflicts, and it became clear that issues relevant to ethnic groups and minorities could lead to a significant destabilization of the Union as a whole. From a security-policy point of view, action needed to be taken to prevent such outbursts in the future, and reducing conflict potential could only be achieved by dealing with ethnic questions, such as minority issues. In 1993, the OSCE created the High Commissioner for National Minorities' mandate. This new position was installed to enable direct involvement in conflict areas, using an approach of "quiet diplomacy": before publicly putting pressure on countries and maybe

even creating resentment or a backlash against the minorities present, the High Commissioner aims to find compromises and solutions through discrete talks with the parties concerned. The High Commissioner co-operates closely with the European Commission, especially with the DG Enlargement, and provides evaluation of minority situations in applicant and candidate states.

The EU itself has not established any kind of protection regime giving group rights, as this would fall beyond its competences. However, minorities can expect protection through various pieces of EU legislation that prohibit discrimination. Article 13 of the Treaty Establishing the European Community (TEC) establishes the Commission's right to "take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief disability, age or sexual orientation. This article constitutes the basis for the "Racial Equality Directive", adopted in 2000, and demanding equal treatment for people irrespective of racial or ethnic origin. "Membership of a national minority" was also included in Article 21 of the *Charter of Fundamental Rights*. The EU's approach therefore remains focused on human rights based on outlawing discriminatory behavior; this is underlined by the fact that out of the four Copenhagen accession criteria, only minority protection still remains merely a political and not a legal prerequisite for accession.

Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union (Copenhagen Presidency Conclusions, 1993).

All other demands made in this statement are now part of the *acquis*, while minority protection was too sensitive a topic to be included. This of course reduces the EU's leverage on the matter (Schwellnus 2004). However, accession conditionality has still proven to be a valuable tool for achieving compliance on the minority protection policy sector, and norm adoption or rule transfer without the use of conditionality is much less likely.

This paper therefore argues that before the EU had access to the tool of accession conditionality, applicants had no incentive to adjust neglectful minority policies to official EU standards and still to this day lack this kind of stimulus. Where conditionality is absent, rule adoption is less likely to occur

and develops at a much slower pace, if at all. A rationalist bargaining approach, like the one presented by Schimmelfennig and Sedelmeier in their *External Incentives Model* (2004) thus offers a more comprehensive explanation for this problem than social learning or lesson drawing models (Schwellnus, 2004). Without the often quoted “carrot and stick”, a change in policies is very difficult to achieve. As the case of Greece shows: a member for over 30 years, the country still preserves a hostile approach to the minorities present on its territory, denying their existence in most cases. Comparatively, I will shortly investigate the case of Croatia, where changes on the field of minority protection policies have gradually been made since the accession perspective for the Western Balkans was given. However, there are also internal factors that may hinder compliance, such as national identity functioning as a bias.

Divergences in Minority Protection Policies: A New Field for Research?

The gap between some of the “old” and “new” member states regarding minority protection has not been very thoroughly investigated yet; research has been carried out by Sasse (2008) regarding differences between the EU's “internal” and “external” approach to minority protection. The main focus regarding European Integration and minorities has been on minority situations in the CEECs over the last few years, e.g. research on minority protection in Romania, Hungary and Poland (Schwellnus, 2004), a single case study on the effectiveness and limits of EU conditionality in Slovakia (Fedorová, 2011) and a theoretical analysis of Europeanization in the CEECs (Grabbe, 2006), or comparisons of political conditionality in Slovakia and Latvia (Pridham, 2008). Latvia and Slovakia have been the most investigated cases in recent literature, as they offer two prominent examples of conditionality: Slovakia's change from the neglectful Meciar government to a more minority friendly executive was arguably influenced by EU conditionality, and Latvia faced considerable problems with its russophone community. The EU intervened using conditionality, but it also turned a blind eye to the shortcomings still present.

In a paper that has been very influential for accession conditionality research, Schimmelfennig and Sedelmeier (2004) provide two different accounts for how rule adoption occurs regarding the EU and new member

states: the External Incentives Model and the Social Learning Model. *The External Incentives Model* takes up a rationalist bargaining approach, arguing that states will adopt EU rules if the benefit of EU rewards will exceed the domestic adoption costs. If this is the case or not depends on the determinacy of the conditions and on the size and speed of the rewards that can be expected – the strongest reward possible is obviously being granted membership. Other important factors include the credibility of threats and promises, meaning that if accession could occur in the near future, the EU's leverage again increases; as well as the size of domestic adoption costs, and if they go against the preferences of the applicant states' government or other significant internal veto-players.

The second explanation is referred to as the *Social Learning Model*, taking a more constructivist approach. According to the *Social Learning Model*, countries are motivated by internalized values and norms, and when faced with alternative courses of action choose the most appropriate or legitimate one. The process of rule transfer is therefore not characterized by bargaining, but by persuasion, and by complex learning instead of behavioral adaptation. Rules are more likely to be adopted if a state identifies with the EU, and if the state's internal norms and preferences do not differ significantly from those of the EU. The EU is seen as a community of shared values and norms, and the adoption of these rules ensues because countries realize that the provided norms are the most appropriate ways of handling issues (Schimmelfennig & Sedelmeier, 2004).

As this paper was written in 2004, the theories present have mostly been applied to the CEECs until now. I would like to test if the *External Incentives Model* also offers explanatory capacity for the Western Balkans, Croatia in this case, and if external incentives and conditionality are indeed the strongest methods for achieving compliance. If, contrary to my assumptions, Greece presented signs of rule adoption, this would function as a case in point for social learning models, since conditionality and external incentives have been absent in this case.

In a comparative paper dating back to 2003, Schimmelfennig, Engert and Knobel introduce the notion of "reinforcement by reward" regarding conditionality. This refers to "the expectation that, after a certain time, the actors subjected to reinforcement will stick to a pro-social behavior in order to avoid punishment and continue to be rewarded" (Schimmelfennig, Engert and Knobel, 2003, p. 496). Also noting the strong leverage that conditionality

possesses, Schimmelfennig and Lavenex (2009) carried out a study on rule adoption and found that norm transfer is more likely when a hierarchical mode of governance is chosen.

Freyburg & Richter (2010) make an important contribution to research on the limits of conditionality, saying that national identity needs to be taken into account as a constructivist factor in rationalist bargaining models. National identity acts like a filter through which governments look at EU policy guidelines: “it biases choices so that certain behavior is discounted as inappropriate for national identity” (Freyburg & Richter, 2010, p. 266). As national identity plays an important role in the Western Balkans, as well as in my cases of Croatia and Greece, an in-depth analysis of how this may have impeded compliance and rule transfer represents an interesting field for future research.

The Western Balkans will provide the future main area of interest for conditionality research, as they are the next countries who will join the Union. Croatia has already been given an accession date (July, 2013) and in December 2011, the accession treaty was signed by the EU member states. A referendum was held on January 22, 2012, with the result of 66% of voters being in favor of joining the Union. Croatia has ratified the treaty in March 2012. Serbia has been granted candidate status on March 2, 2012, and as the Serbs constitute the largest ethnic minority in Croatia, it will be especially interesting to witness the impact of EU accession on this situation. The Republics of Macedonia and Montenegro also hold candidate status. Macedonia's road to EU accession will also offer many possibilities for research on the minority sector, because of the country's ethnic diversity and because of the ongoing conflict about names and national symbols with Greece. The predominant prediction in literature so far (e.g. Sedelmeier, 2008) is that compliance with EU norms will be more difficult to achieve in the Western Balkans than in the CEECs, due to higher adoption costs and because more salient issues such as state sovereignty and national identity are at stake.

Case Studies

Croatia

Croatia became an independent country in 1991, after being part of the Socialist Federal Republic of Yugoslavia. The first democratic elections were held in 1990, and saw the predominant Communist Party replaced by the Croatian Democratic Union (HDZ), who endorsed Croatian sovereignty. The Serb population, to the day this the strongest national minority in Croatia, did not benefit from the country's independence: its status was reduced from a constituent nation to a national minority, and many Serbs working in the public service sector were forced to leave their posts in the shadow of the Yugoslav Wars in the early 1990s. Under-representation and discrimination were especially high in the police force, the judiciary and in education (Petričušić, 2004, p. 6). According to the 2001 census, the Serbs are still the largest minority in the country, even though the ethnic conflicts have reduced its population by a large margin and refugee return is only occurring slowly. They are at one third of their 1991 strength, numbering 201,631 ethnic Serbs and making up 4.25% of the country's total population. The downfall of Yugoslavia and the nationalist policies that ensued in Croatia have in fact seen a very significant decrease in minority population overall: it went from 22% in 1991 to 8% in 2001, rendering it very interesting to see which direction this development has taken in the last 5 years. The second largest minority are the Bosniaks with a population of 20,755, followed by the Italians in Istria (19,636), Hungarians (16,595), Albanians (15,082), Slovenes (13,171), Czechs (10,510) and Roma (9,463). The Italian minority is very active and well-protected, as it had already been under the Yugoslavian rule – having a Western European kin-state surely helped in achieving protective measures (Minority Rights Group International 2008: Croatia).

Croatia had already installed minority protection legislation shortly after its independence, but most measures lacked actual implementation. The first law on minority protection was the Constitutional Law on Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia. The passing of this law was mentioned by the international community as a prerequisite for the recognition of Croatia as an independent state (Petričušić, 2004, p. 8). This provides a first instance of conditionality and the country complying with the demands made. As non-

compliance would have led to unacceptable consequences, e.g. the country becoming marginalized as a state not even existent in the eyes of the Western world, Croatia complied and implemented the Constitutional Law. Despite this step in the right direction, discrimination especially against the Serb population continued in the country, fueled by the Tudjman government and its strong focus on ethnic identity.

The parliamentary elections of 2000 marked a turning point in the country's approach to minority protection policy, new laws regarding education in minority languages were implemented and compliance with the ICTY started to take place. In 2002, Croatia drafted the *Constitutional Law on National Minorities*, which granted minority language education, non-discrimination and participatory rights. The OSCE High Commissioner on National Minorities positively commented on this law, saying it was in line with the *Lund Recommendations* the organization had issued (Minority Rights Group International, 2008: Croatia).

In the meantime, the EU had made progress towards the future rounds of enlargement. The 1993 Copenhagen Presidency Conclusions mentioned the protection of minorities as a prerequisite for joining the EU, and the Santa Maria da Feira Council in 2000 opened the membership perspective for the Western Balkans: "The European Council confirms that its objective remains the fullest possible integration of the countries of the region into the political and economic mainstream of Europe through the Stabilization and Association process, political dialogue, liberalization of trade and cooperation in Justice and Home Affairs. All the countries concerned are potential candidates for EU membership" (Presidency Conclusions, Santa Maria da Feira, 2000). Croatia therefore knew that compliance was necessary to achieve its goal of joining the Union, and in October 2001 a Stabilization and Association Agreement was signed. However, the EU retained the right to suspend the agreement if demands made on the human rights sector were not fulfilled (Miller, 2004). Besides granting incentives, the main one of course being future membership, the EU also made arrangements to be able to withdraw already granted perks based on non-compliance, using both "carrot" and "stick".

In 2003, Croatia applied for EU membership, and was granted candidate status in June 2004. In its Opinion on Croatia's application for membership, the Commission honored the commitments made so far, but also noted that improvement still needs to be made, especially regarding

representation of ethnic minorities in the judiciary and in administrative bodies. It also criticized the lack of minority media, and ongoing societal discrimination particularly against the Serb and Roma minorities (European Commission: Opinion on Croatia's Application for Membership of the European Union, 2005).

Croatia therefore seemed to be on a stable road towards membership, but the 2005 Progress Report issued by the Commission slowed the present enthusiasm down. The Commission criticized the slow implementation of the 2002 *Constitutional Law on the Rights of National Minorities*, especially regarding minority representation in local bodies. It also noted that minorities were still under-represented in the public sector, and that no numbers were available regarding how many civil servants and judiciary workers belonged to national minorities (Progress Report on Croatia, 2005, p. 20-21). Progress was made in the sector of Roma inclusion, where the country signed an action plan. This supports the findings of Rechel, who carried out his analysis for the CEECs: "One of the main concerns for the EU was the potentially destabilizing role the large Roma population could play for the enlarged EU and it aimed to put their integration onto the agendas of candidate countries" (2012, p. 11). However, the main shortcoming was lack of compliance with the ICTY regarding the arrest of war criminal Ante Gotovina, leading the Chief Prosecutor to note that Croatia was no longer fully cooperating. The EU reacted to this development, and on March 16, 2005 the Council decided to postpone the start of accession negotiations (Progress Report on Croatia, p. 24).

Faced with the EU's strongest possible leverage, the withdrawal of potential membership, Croatia implemented an Action Plan to hasten progress on the matter. ICTY compliance is not directly related to the minority sector, but it is closely connected to the problems of national identity and ethnic conflict, making it a comparably delicate issue. Willingness to comply on the ICTY sector might indicate that if a credible threat regarding possible loss of membership perspective is made, Croatia will consider responding with compliance even on highly salient issues. Cooperating on the arrest of a war criminal that was still considered to be a hero by a considerable proportion of the population was certainly an endeavor with high costs, especially on the internal level, but the benefits of EU membership being at stake prompted the country to comply. In October 2005, the Chief Prosecutor noted that cooperation was now making sufficient progress, and in December 2005 Ante Gotovina was arrested in Spain.

In 2010, Croatia amended prior laws made with the *Constitutional Act on the Rights of National Minorities*. The main target area was the political representation of minorities, especially regarding seats in local-self government entities. As this had been one of the EU's main points of criticism, and therefore represented a possible hindrance on the way to EU accession, it seems logical that Croatia would take action on the matter. Political representation particularly concerns the Serb minority groups, who tend to be under-represented and discriminated against in local ethnically Croatian-dominated entities. Serbia was granted candidate status on March 2, 2012; it is therefore now officially on its way towards membership, and minority situations need to be settled between the two countries in order to avoid possible conflicts during the accession process.

It is important to note the big part conditionality has played in inducing Croatia to establish changes regarding minority protection policies. Without the goal of EU membership and the obligations that came with it, Croatia would not have implemented minority protection measures like the ones present today. The credibility of both threats and promises was high: the EU would deny membership in case of non-compliance, and as the membership perspective for the Western Balkans was open since Santa Maria da Feira in 2000, it was likely that the Union would honor compliant behavior with further steps towards membership. Croatia's progress on the minority policy sector clearly coincides with its rapprochement towards the EU, as the country was given an incentive to correct its neglectful course and to adopt a more minority-friendly approach. The Union also reprimanded Croatia for non-compliance, making it clear that this was an important topic regarding its progress towards accession. It can therefore be concluded that without the EU membership perspective, the advancement of minority protection in Croatia would have happened at a slower pace; arguably, it would not have ranked high on the political agenda to implement minority protection measures, as issues of high salience such as national identity are affected by this topic. However, when EU accession is at stake, even high internal adoption costs are often overcome by the foreseen benefits of future membership.

It can therefore be concluded that accession conditionality is a very powerful tool to achieve policy adoption. But as the case of France and its recent neglectful or even hostile treatment of the Roma population shows, once a country has entered the Union, there is not much to be done to force a

member state to change its minority policies, even if they are quite openly discriminatory. Even in fields that are part of the *acquis*, such as general anti-discrimination regulations, countries may find a way to circumvent the law: in France, financial benefits were promised to Roma who would return to their home countries – rendering it a repatriation based on “free will”. It will be very interesting to witness the unfolding of Croatia's way into the EU, and particularly to track if the way towards favorable minority policies continues or if progress slows down once membership is reached. The Western Balkans will probably prove to be a very fruitful area for future research on ethnic and minority issues; as EU membership is also seen as a means to stabilize the region and prevent further conflict, minority issues will need to be put on the agenda and settled in a European context.

Greece

Greece has been a member of the European Union since 1981. Due to the country having been part of the Ottoman empire until 1827, a Turkish minority population is present; it mostly resides in the area of Western Thrace. In 1923, a population exchange was established in the Treaty of Lausanne, making for the exchange of almost 2 million people between their respective kin-states Greece and Turkey. The Treaty also to this day remains the most important document for minority protection, as it establishes the presence of a largely Turkish Muslim minority in the country. The Muslim minority is the only officially recognized minority in Greece. It must also be noted that Greece only accepts a religious minority – ethnic diversities are not acknowledged or even denied. This becomes apparent in the official stance on the Macedonian question: speakers of Slavonic languages are seen as ethnic Greeks speaking a different language (Minority Rights Group International, 2011: Greece).

Like Spain and Portugal, Greece also has a history of dictatorship. In 1967, the Colonels tempted a first coup d'état, forcing king Constantine to flee the country. In 1973, kingship was abolished and dictator Papadopoulos declared himself president. The junta subsequently wanted to invade Cyprus, then run by Archbishop Makarios. The Greek invasion prompted Turkey's reaction, who in turn occupied the North of the island. The Greek-Turkish conflict in Cyprus has not been settled to this day, and will prove to be a major obstacle on Turkey's way into the EU. In 1974, the dictatorship was

overthrown, and Greece became a republic in 1975. Accession negotiations to the then EEC began in 1976, and the accession treaty was signed in 1979.

A report compiled in 1982 as an official EU document shows that minority policies were not on the agenda during negotiation and accession. Greece was promised help and special measures on agricultural policy and industrialization, as the EU noted that it lagged behind on these instances. There was also a section on human rights present; however, it only evaluated general constitutional human rights, and did not comment on the minority situation at all. The report strongly focuses on agricultural and economical evaluation, providing detailed lists of the country's produce and monetary outcomes. Social policy only plays a minor role, and it is not scrutinized in the domestic context, but more regarding possible large workforce movements from Greece to EEC countries that the Community wanted to prevent.

As the Greek census does not ask about belonging to an ethnic minority, the minority populations present in the country can only be estimated, and the sources cited differ significantly according to the political side they are used by (the Greek government tries to downplay the number, while minority organizations are likely to overestimate it, especially regarding those speakers who actually identify themselves as ethnic Macedonians and not just as speakers of another language). The biggest minority present in Greece today are the Albanians (4.28 % of the population – counting those who are not yet Greek citizens), a group who has largely come into the country because of economic immigration (Minority Rights Group International, 2011: Greece).

Discrimination is reported as being a frequent phenomenon in Greece, especially regarding the Roma and Albanian minorities, who are not seen as ethnic Greeks. Besides the above mentioned Turks in Western Thrace, none of the other minorities present in the country receive publicly funded education in their mother tongue (Minority Rights Group International, 2011: Greece). The neglect of specific policies for ethnic minorities seems to be defining the official policy line; by simply disregarding the existence of minorities on its territory, Greece is free from constraints to take action in any kind of way. The EU does not possess any kind of leverage regarding the minority question if the country is already a member. As minority protection is not part of the *acquis*, no treaty infringement procedure can be run against the country, and besides general non-discrimination rules, protecting minorities remains in the discretion of the member state alone. However, other

international organizations such as the Council of Europe and the OSCE expressed their concerns on the situation of minorities in Greece.

In 1999, there was considerable discussion in Greece about the government's recent adherence to the Copenhagen Document, drafted by the OSCE in 1990. The Copenhagen Document provides extensive articles about the protection of minorities, noting that "to belong to a national minority is a matter of a person's individual choice" and that "persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will" (OSCE Copenhagen Document, 1990). The Document also specifically underlines the group rights dimension by stating that "Persons belonging to national minorities can exercise their rights individually as well as in community with other members of their group". Discussions in Greece revolved mainly around this granting of group rights, seen by many as paving the way for minorities to demand their right to self-determination and maybe cause losses of territory.

The second point that caused arguments was the fact that each person was free to decide if they belonged to an ethnic minority or not. This rendered state recognition unnecessary; a minority was present if people declared themselves to belong to it. The OSCE High Commissioner for National Minorities, Max van der Stoep, explicitly stressed this in a statement issued after the polemics in Greece: "A second misunderstanding is that in order to acquire or enjoy the rights mentioned in the Copenhagen Document a minority will have to be formally recognized by the State. The Copenhagen Document makes it clear that this is not necessary" (Statement by the HCNM on minorities in Greece, 1999).

The question on minorities in Greece had been brought to the forefront by 13 members of Parliament belonging to minorities, who had raised a Parliamentary Question to the Greek minister of foreign affairs regarding the ratification of the *Framework Convention for the Protection of National Minorities*. Greece had signed the Convention in 1997, but has to this day not ratified it. The Minister's response was that the ratification was a matter of time, and that:

All Council of Europe states that have to this date ratified the Framework Convention, among which Germany, have made interpretative 'declarations', on the basis of which they either limit the Convention's application to specific minority groups, which they name in the text of their declaration; or determine particular criteria on the basis of which they will identify the national minorities present on their territory and to which, as a result, this Convention will apply. (Parliamentary Question, 1999).

In regard of more than 10 years having passed since this statement was issued, a commitment to ratifying the Convention in the near future seems unlikely. Also, the assumption about the declarations made by other states is incorrect: only 11 states have issued such statements or made reservations regarding the minorities the Convention applied to in their territory. However, even the small concession made by the Minister that ratification of the Convention was under way created outrage among the Greek media. This indicates that social learning processes have not been present or at least have not had much impact on the way public opinion in Greece sees the minority question. Even though the country had already been an EU member for almost 20 years when this discussion took place, no signs of rule adoption or adhering to norms promoted by the EU can be noted. The *Framework Convention* functions as the main benchmark that applicants are measured by before joining the EU; Greece not ratifying the Convention therefore means that it refuses to implement minority standards that the Union demands from its new members.

Among the minorities most strongly demanding recognition is the Macedonian group, represented by the Rainbow coalition in the Greek parliament. However, the relations with this minority remain very frail, as do the general relations between Greece and Macedonia. Macedonia declared independence in 1991, and its official name is Republic of Macedonia. Greece saw this choice of name as a threat for its territorial integrity, because of the Northern Greek provinces that also run by the name of Macedonia. It argued that the Former Yugoslav Republic of Macedonia, by choosing the name Macedonia, was making demands to include these provinces in its territory. After Macedonia's independence, Greece prevented the country from joining the U.N., and it imposed an embargo that brought Macedonia close to economic breakdown. In 1995, a truce was reached under the leadership of

Cyrus Vance: Greece forced Macedonia to change its name to Former Yugoslav Republic of Macedonia, to write an article in its constitution that it would not threaten Greek territorial integrity or interfere in Greek internal affairs, and to change its flag. The Macedonian flag had been displaying the sun symbol used by Alexander the Great, showing its nation as descending from a statesman claimed by Greece as one of its main national symbols. The constitution article prohibiting any interference in inner-Greek politics also makes it very difficult for Macedonia to act as a champion and kin-state for the Macedonian minority in Greece. Macedonia holds candidate status, but it is likely that Greece will try to counteract accession, as it is still doing regarding Macedonia's accession to NATO. Regarding this case, hearings for the lawsuit filed by Macedonia against Greece took place before the International Court of Justice in 2011. Macedonia accuses Greece of violating the 1995 agreement, which stated that Macedonia can enter international organization as long as it goes by the name of Former Yugoslav Republic of Macedonia. Greece's refusal of Macedonian NATO accession in 2008 stands against this principle (SETimes, 2011). In December 2011, the ICJ ruled that Greece had indeed violated the principle present in the treaty, and warned the country not to repeat this action. As long as this hostile background between the two countries is present, any kind of recognition for the Macedonians in Greece remains unlikely. Social learning processes would have led to a more favorable climate for minorities. If the country accepted the EU's norms as most appropriate and chose to follow suit, the door would be open for at least a gradual process towards recognition of ethnic and not only religious minorities. However, with a conflict so salient for national identity taking place, rule adoption processes will not occur. It will be very interesting to witness how this situation evolves as Macedonia makes its way towards the EU.

These recent developments show that if social learning processes are present in Greece, they are certainly not strong enough to bring about change in society and rule adoption. Greece has signed the benchmark document, the *Framework Convention for the Protection of National Minorities*, but as long as it is not ratified this commitment remains an empty shell. International organizations like the Council of Europe and the OSCE, along with NGOs like Human Rights Watch, have spoken out about the minority situation in the country, noting that improvements need to be made. However, none of these organizations possess any leverage to provide consequences in case of non-compliance; the credibility of threats is not maintained. Greece has no reason

to change its policy on minorities, as continued neglect will not lead to any worsening of the country's stand in the EU. Demands made by the EU mainly concern the financial situation and the aid given during the financial crisis, and minority protection is not ranked among the provisions the country has to fulfill.

Conclusions

In the present paper, I have tried to show that without EU conditionality, compliance with official EU norms regarding minority protection policy is very difficult to achieve. This accounts for the large discrepancies still present between some of the "old" and the "new" member states who joined in more recent rounds of enlargement. Since it has made the protection of minorities part of the accession criteria, the Union demands that applicants fulfill certain standards before achieving membership; one of the benchmarks used to evaluate candidates' performance is the Framework Convention for the Protection of National Minorities, drafted by the Council of Europe. If a candidate does not comply on certain measures, the EU can withhold the membership perspective or at least slow down or suspend the accession process, giving it a tool with high credibility of threat that in most cases successfully reaches compliance. Faced with the threat of not being accepted into the Union, countries will make a rational cost-benefit calculation and consider their options (Schimmelfennig & Sedelmeier, 2004); in most cases, the benefits of EU membership will outweigh the domestic costs of complying on a particular matter. The EU has made a credible promise by opening an accession perspective, and it is therefore likely that the country will indeed be granted its promised reward if it acts according to EU norms. Depending on what the consequences of non-compliance could be, accession conditionality may also force countries to change their policy on issues of high salience, such as subjects concerned with national identity. The case of Croatia and the ICTY shows that as the EU delivered a credible threat (the suspension of accession negotiations), the country considerably increased its efforts to cooperate, despite the fact that the treatment of General Gotovina as a war criminal was a very contested issue among the Croatian public. Denying accession is the strongest leverage the EU possesses, and it represents a very useful tool when dealing with issues that are strongly connected to national identity and ethnic conflicts. Even though the protection of minorities

remains a purely political criterion, the EU is able to force considerable progress by the use of conditionality during the accession phase. Laws and concessions made regarding minority protection in Croatia would have happened at a slower pace, if at all, without EU involvement. EU membership functions as a very strong pull-factor, and it is able to overcome domestic concerns even on issues of high salience such as national identity. Croatia represents a very interesting field for research on this problem, as identity and sovereignty issues rank highly among the internal political priorities, and any further developments now that the accession date has been given will also prove to be a fruitful field for ongoing investigation. Once the new member state has entered the Union, achieving compliance on the matter could be a considerably harder task, as minority protection is not part of the *acquis* and no legal measures can be taken to enforce it. However, it has to be noted that even though conditionality has proven to be a viable measure, it does have its limitations. The main concern is that while legislation may be installed on paper, the implementation may not be sufficient.

When a country has already joined the Union, compliance regarding minority protection is much less likely. As the case of Greece shows, a country that is already a member state does not have many incentives to comply, because no credible threats can be made. Without the possibility to deny accession, the EU's leverage decreases considerably, and since minority protection is not part of the *acquis*, no other consequences can arise for the member state. International organizations such as the OSCE, the Council of Europe and NGOs may express their evaluation of the matter, but they also do not possess the capability to make a credible threat. The only possibility is to attempt a procedure of "shaming", e.g. inducing the country to comply by publicly noting its non-compliance with recognized protection standards. However, this is only viable when the country desires to adhere to a community of values and norms and wants to be seen as a member of said community. If this is not the case, "shaming" loses its power, as the country does not care about its reputation on this particular matter, framing it as one of only internal importance. Looking at Greece, it is unlikely that social learning processes have occurred at a larger level: the reactions regarding the Macedonian minority's demands prove that rule transfer has not taken place, and that EU-promoted measures are not seen as the most appropriate way to handle the minority issue. When dealing with an issue so important for national identity, countries are very reluctant to make any commitments that

could weaken their position, or even pose a threat to territorial identity. Without an incentive from the EU, both in form of “carrot” and “stick”, and the following cost-benefit calculation that usually favors the adoption of EU norms, compliance regarding minority protection policies is unlikely and very difficult to achieve.

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