

Research Paper

European External Action Service: The EU and the Kosovo Crisis

“This is the hour of Europe, not the hour of the Americans” said Jacques Poos as the president of the Council of the European Union in 1991 at the start of the Balkan crisis.¹ Since the inception of the European Union (EU), its institutions and its involvement in world affairs have constantly been intensified and enlarged following crises. The EU’s international presence has changed immensely since the 1990s, and much of that change was due to the period of unrest in the Balkans. The most recent of those developments was established in the Treaty of Lisbon in 2008 emphasizing the need for a better, more coherent international representation.² The European External Action Service (EEAS), created in 2010 following the instructions of the treaty, was formed to mend past wounds and prevent new ones.³ Considering the current political climate of the EU and how it has been affected by many conflicts at its borders, this paper studies the EEAS, its functionality and its ability to present a united EU front to the world.

In the aim of studying the EU’s foreign policy through the lens of the EEAS, we will briefly present the history of its foreign affairs leading up to the establishment of the latter. We will then review the agency itself, and its role within the EU and the world at large. Furthermore, seeing as much of its development was initiated in the Balkan region, we will study the EEAS’s role in peacekeeping and democracy implementation within the context of Kosovo. This entails a close look at the route leading up to the deployment of

¹ Peter Lang, edit. *Old Frontiers--New Frontiers : The Challenge of Kosovo and Its Implications for the European Union*. (New York:, 2001), 79

² Cathleen Berger. *The European External Action Service : Increasing Coherence in the Crisis Management of the European Union?* (Marburg: Tectum Verlag, 2012), 17-18

³ Berger. *The European External Action Service*, 17-18.

EULEX Kosovo, how it has functioned, and what developments the EEAS has made in Kosovo thus far. As such, the goal is to study whether the EU has successfully implemented a foreign policy of international aid and act as one.

When Jacques Poos made the abovementioned statement, the European Union's foreign policy wasn't as concrete as it is today. In fact, it barely existed. Since Charles de Gaulle's time, when the Union was at the very beginning of its conception and was still the European Economic Community (EEC), France and Germany were seeking a Europe that could defend itself as well as present a united front to the world.⁴ One that would be separate from the North Atlantic Treaty Organization (NATO), namely independent from the security net the United States of America (USA) provided.⁵ While the European countries did not achieve that complete autonomy, they slowly worked towards a common European policy. First through The Hague Summit of 1969 that established the European Political Cooperation program, and later in the 1970s with the Helsinki process, as well as the Single European Act (SEA), they established themselves as not just an economic community, but also a political one.⁶

The turbulences in the Balkans, and indeed many other places in the world, in the late 1980s and 1990s pushed forth the plans for a more concrete foreign agenda for Europe. With the Maastricht Treaty of 1991 came the Common Foreign and Security Policy (CFSP).⁷ Amongst many other things, the Maastricht Treaty created a forum for the discussions on common foreign and security affairs in Europe. Not only was Europe

⁴ Akan Malici. *The Search for a Common European Foreign and Security Policy : Leaders, Cognitions and Questions of Institutional Viability*. (New York: Palgrave Macmillan, 2008), 8.

⁵ Malici. *The Search for a Common European Foreign and Security Policy*, 7.

⁶ Malici. *The Search for a Common European Foreign and Security Policy*, 9.

⁷ Malici. *The Search for a Common European Foreign and Security Policy*, 11.

looking to speak with one voice, it was also hoping to unitedly protect itself and others. The Treaty of Amsterdam in 1997 further developed the CSFP to include more details and responsibilities for the protection of Europe, assigning a High Representative of the European Union tasked with the “formulation, preparation and implementation of policy decisions, and, when appropriate, acting on behalf of the [European] Council at the request of the Presidency.”⁸

Within the CSFP, the European leaders also created the operational Common Security and Defence Policy.⁹ The main aspect, however, was that by the 2000s there was a general agreement that the EU was on the path to greater integration and deeper institutionalization, and thus needed a viable common foreign policy agenda. The enlargement of the Union, with the inclusion of the new members from the former Soviet Block, entailed new expectations, stemming from the idea that the EU was becoming the beacon of democracy promotion in Europe. Nonetheless, the EU had a long history of incoherence when it came to where its individual Member States stood in their international relations and stances on controversial crises. As such, in 2001, the heads of the EU’s Member States met to discuss the role of their Union in the world, through the Laeken declaration they asserted the importance of creating a strong international authority thus making their Union “more present in the world.”¹⁰

However, the changes that followed were still rather institutional, organizing the division of power between the EU’s intergovernmental and supranational institutions and not extending the EU’s international powers. Suggestions of creating a ‘foreign minister’

⁸ Malici. *The Search for a Common European Foreign and Security Policy*, 11.

⁹ Berger. *The European External Action Service*, 31.

¹⁰ Berger. *The European External Action Service*, 56.

position for the union were turned down due to the much too formal names that could breach the Member States' sovereignties.¹¹ This was a general concern at the time when they were writing the Constitutional Treaty, and the treaty as a whole was never acceptable largely due to its name. In the Treaty of Lisbon, the Union's leaders tried to fix those aspects that were too supranational for Europe, and instead of creating a foreign ministry, the role of the High Representative (HR) was changed and the EEAS was created.

Seen as the "face and voice"¹² of Europe, the EEAS was finally created in 2011 as a supporting agency to the High Representative.¹³ Its road there was nonetheless as rocky as that of the EU as a whole. The issue started from the onset with the appointment of the High Representative. Not wanting to introduce someone too powerful who would be a threat to the Member States' interests and who would eventually be able to override their decisions, the Council chose a lesser known public figure: Catherine Ashton. The latter faced many constraints and was shown much "malice" at the start of her job, making it increasingly difficult.¹⁴ The goal of building the EEAS was to have an autonomous agency supporting a High Representative who now double-hatted the role of HR and Vice-President of the Commission. This structure was established as such for many reasons, some of which are practical requirements for a functional agency. Nevertheless, it was also made this way due to the unwillingness of some parties to relinquish control. In other words, there were entities along the way who did not want to give the High Representative

¹¹ Berger. *The European External Action Service*, 56.

¹² Berger. *The European External Action Service*, 11.

¹³ Berger. *The European External Action Service*, 55.

¹⁴ Berger. *The European External Action Service*, 11.

too much authority, some for fear of losing their own power (i.e., the Commission or the Parliament), and others for fear of losing national sovereignty (i.e., Member States).¹⁵

The European Council, the European Commission (EC), and the European Parliament (EP) all managed to retain some control over the EEAS and the High Representative. In fact, Mark Furness describes this process of controversy over the powers of the EEAS as negotiations infamous for the “acrimonious squabbling” and “turf battles” between the actors involved.¹⁶ This became palpable when they realized that they might be creating a force beyond their control as they were writing the treaty.¹⁷ As such, they made sure it would exist somewhere between the Council and the Commission, neither completely supranational nor entirely intergovernmental.¹⁸ Much like other EU institutions, they also made the EEAS and the HR accountable to the Parliament, which desired transparency.¹⁹

The Commission kept control by making it certain that the EEAS would remain an “inter-institutional service,” guaranteeing an overarching control from within the commission on the more important issues such as trade, enlargement, and climate change.²⁰ The control over the operational budget of the agency and the insistence on the HR working close to all the Commissioners related to its field further ensured the EC’s supervision of what the EEAS was doing.²¹ On the other hand, while the parliament has no direct say in the everyday actions of the HR, the Representative must report to and “consult” them.²²

¹⁵ Berger. *The European External Action Service*, 55.

¹⁶ Mark Furness. “Who Controls the European External Action Service? Agent Autonomy in EU External Policy.” *European Foreign Affairs Review* 18 (1): 110.

¹⁷ Furness. “Who Controls the European External Action Service? Agent” 110.

¹⁸ Furness. “Who Controls the European External Action Service? Agent” 110.

¹⁹ Furness. “Who Controls the European External Action Service? Agent” 110.

²⁰ Furness. “Who Controls the European External Action Service? Agent” 112.

²¹ Furness. “Who Controls the European External Action Service? Agent” 112.

²² Furness. “Who Controls the European External Action Service? Agent” 113.

More importantly, they have final say on its budget, just like it does for the Commission, since ultimately the double-hatted HR is part of the Commission as a VP, and therefore EEAS is also somewhat an extension of the Commission.²³ The Member States however tried to steer the HR and the EEAS' responsibilities away from the Commission.²⁴ They even had Ashton travelling between Germany, France, and the United Kingdom, conducting meetings at the highest level in order to get their approvals in the process of building the EEAS. France and Germany even had some concerns over Ashton's reliance on staff from the United Kingdom in her office.²⁵

Regardless, the HR/VP and EEAS created a new kind of diplomacy for the EU Members. The EEAS was forced to "learn by doing" as the Treaty of Lisbon didn't give many guidelines as to how it should operate. It therefore revolutionised how diplomacy works in Europe and the world at large. The EU created a new level of diplomats and diplomacy through the existence of both a national embassy, representing a Member State, and the EU diplomats around the world. The necessity for autonomy in the EEAS's diplomatic delegations is, however, different from that of the nation states, and this is where most of the EU's foreign policy meets its challenges.

The EEAS is made to assist the High Representative in completing her mandates in the Council and Commission. It is supposed to provide the High Representative with the information, intelligence, and services that are required to represent the EU in the world. Nonetheless, some critics argue that since the Council, Commission, Parliament, and Member States have created obstacles to keep the important responsibilities for themselves,

²³ Furness. "Who Controls the European External Action Service? Agent" 113.

²⁴ Furness. "Who Controls the European External Action Service? Agent" 111.

²⁵ Furness. "Who Controls the European External Action Service? Agent" 111.

the EEAS cannot be autonomous and cannot assist the HR.²⁶ The autonomy it requires is one that enables it to do what is best for the whole of the EU, despite the decisions being unappealing to certain states. Article 6 states that “the staff of the EEAS should carry out their duties and conduct themselves solely with the interest of the Union in mind.”²⁷ As such, the autonomy in question is one that will allow its staff to represent the entire people of Europe, and unbind them from the constraints of national interests.

Many have argued, nonetheless, that despite the Union’s perceived role as a “hydra-headed actor for many third-party actors,” it is through the emergence of something like the EEAS that change can possibly happen.²⁸ The EEAS has indeed become an intricate web of agencies, delegations, and departments. The way it is constructed speaks volumes about the development that has taken place in the 7 years it has existed. All reporting to the High Representative (currently Federica Mogherini), the EEAS’s staff is led by a Secretary General and three deputies.²⁹ Its work is divided into departments specializing in different international affair fields (human rights, democracy support, migration, etc.), and geographical locations dividing the world into five main areas (Asia-Pacific, Africa, Europe and Central Asia, Americas, and the Middle-East).³⁰ It further operates based on the CSDP, crisis response departments, and an EU Military Staff.³¹

²⁶ Furness. "Who Controls the European External Action Service? Agent" 103.

²⁷ Berger. *The European External Action Service*, 59

²⁸ Duke, Simon. "Providing for European-Level Diplomacy after Lisbon: The Case of the European External Action Service." *The Hague Journal of Diplomacy* 4. 2009: 212

²⁹ "What We Do - Eeas - European Commission." *EEAS*. Accessed December 4, 2016. /headquarters/headquarters-homepage/2725/what-we-do_en.

³⁰ "What We Do - Eeas - European Commission." *EEAS*. Accessed December 4, 2016. /headquarters/headquarters-homepage/2725/what-we-do_en.

³¹ "What We Do - Eeas - European Commission." *EEAS*. Accessed December 4, 2016. /headquarters/headquarters-homepage/2725/what-we-do_en.

While those departments and offices mainly gather intelligence, the EEAS also has delegations deployed around the world.³² It currently has 139 delegations representing the EU and its values across the globe, as well as military and civilian missions in over ten countries and regions.³³ All these offices and departments are either seconded staff from Member States foreign affairs offices or the old European Commission Directorates General and the various external affairs offices that existed before being centralized into the EEAS.³⁴ Despite some concerns about where the loyalty of the seconded staff – whether to the EU or their nation-states – all staff and officers have as a main goal the promotion of European democracy, humanitarian values, and creating an information database that would enable the EU to be a coherent and powerful international actor.³⁵

Nonetheless, it is this very image they are trying to convey that lies at the heart of the EU's issues. As Simone Duke describes it, the EU: “remains a rather fragmented actor whose main claim to being a diplomatic actor remains its considerable influence in trade, development and assistance issues.”³⁶ The EU's main drive is to be an international superpower, a truly united group, and to get the world to listen.³⁷ Its main strength lies in its assumed diplomatic prowess and democracy promotion, its aid to crisis-ridden regions, and the economic splendour that lures in other countries and extends its influence through sanction threats and aid offers. While the EU has undoubtedly had many successes over the years, and its sheer existence is a miracle – a *tour de force* in itself – many of the

³² “What We Do - Eeas - European Commission.” *EEAS*. Accessed December 4, 2016. [/headquarters/headquarters-homepage/2725/what-we-do_en](https://eeas.europa.eu/headquarters/headquarters-homepage/2725/what-we-do_en).

³³ “Eeas - European Commission.” *Eeas*. Accessed December 4, 2016. https://eeas.europa.eu/headquarters/headquarters-homepage/area/geo_en.

³⁴ Furness “Who Controls the European External Action Service?” 103.

³⁵ Furness “Who Controls the European External Action Service?” 118

³⁶ Duke. “Providing for European-Level Diplomacy after Lisbon”, 212.

³⁷ Berger. “*The European External Action Service*”, 55.

previous statements have been constantly contested. Not only is the extent of the success in democracy promotion in Central Europe's post-communist states been the cause of many doubts, the EU's track record in several of the world crises has been tainted with inconsistencies amongst its Member States' reactions. This is largely due to the "involvement of a multitude of different actors, [with] their different preferences, and political convictions."³⁸

While the EEAS was founded to breach exactly that problem of inconsistency, and has succeeded to some extent in its short history, the EU's foreign policy still retains many contradictions. This was made apparent in the Member States' reaction to crises like those of the Arab Spring and Ukraine. One of its major successes however was the agreement of 2013 between Serbia and Kosovo. Yet, before delving into this development, and studying whether it was truly a positive step, we need to backtrack and look at their history with the European Union. Both the role Kosovo has had in the advancement of the EU's foreign policy framework, as well as the EU's role, or lack thereof, in the Kosovo crisis of the 1990s is vital to this study. There is countless literature based on exactly this topic – the way the international community failed in the Balkans, what the EU's role could have or should have been at the time, and more importantly how the events of the 90s shaped EU's future foreign policy.

According to Akan Malici, "the Kosovo crisis represented the first security challenge to the EU since the ratification of the Amsterdam Treaty in 1997."³⁹ In fact, the Treaty had created a CFSP that was supposed to aid in exactly that scenario. While Jacques Poos had set a very high standard for the Europeans by declaring this their time to prove

³⁸ Berger. *The European External Action Service*, 31.

³⁹ Malici. *The Search for a Common European Foreign and Security Policy*, 37.

themselves before the Bosnian war had escalated, the existence of a CFSP set the bar even higher for the Europeans in the Kosovo crisis. It was unknown to him and many of the European actors that this crisis was going to be far deeper and more complicated than was expected. Both at the beginning of the 90s, with the so called “capabilities-expectations gap,”⁴⁰ and later, with the failure of negotiations and sanctions in 1998-99, the EU had for itself very high expectations that were undermined by the circumstances and its own members’ inability to agree on a common strategy.

This all began with the start of Yugoslavia’s collapse. The conflict over the region in question, that is ‘Kosovo’, started many decades ago, and according to some myths/historical accounts it even originated centuries earlier.⁴¹ Disagreements over ancestral land heritage, stemming from the period of Ottoman rule in the region, renders it a very deep and complicated struggle.⁴² The conflict and stigma between the two groups increased every decade with the different leaderships and occupations of the territories, each of them holding onto their assumed culture and perceived rights.⁴³ With the rise of the Yugoslav federation and the fall of the Ottomans after the Great War, the governance in the area became largely Serbian.⁴⁴ When Josip Broz Tito overtook Yugoslavia after the Second World War, he gave Kosovo an autonomous status in his general attempt to keep the Federal Yugoslavia together.⁴⁵ While Tito gave the Albanian Kosovars several freedoms and rights, he did not go as far as declaring it a Republic. Nonetheless, this entire process proved to be too much for the Serbian population of Kosovo, and too little for the

⁴⁰ Lang, *Old Frontiers--New Frontiers*, 79.

⁴¹ Malici, *The Search for a Common European Foreign and Security Policy*, 37

⁴² Malici, *The Search for a Common European Foreign and Security Policy*, 38.

⁴³ Malici, *The Search for a Common European Foreign and Security Policy*, 38.

⁴⁴ Malici, *The Search for a Common European Foreign and Security Policy*, 38.

⁴⁵ Malici, *The Search for a Common European Foreign and Security Policy*, 39.

Albanians, creating in its footsteps a bigger divide than that which Tito had attempted to curb.⁴⁶

Kosovo was also known for being the “poorest region of Yugoslavia,” which meant it was a burden on the rest of the Yugoslavian territories that, by the 1980s and 1990s, wanted out (such as Croatia and Slovenia).⁴⁷ Kosovo’s demographic was also changing, as it was becoming largely ethnically Albanian, which put the Serbs at a disadvantage and reportedly turned them into victims of harassment.⁴⁸ The dissatisfaction of the Serbians in Kosovo provided Slobodan Milosevic with the perfect platform to advance his nationalist agenda and plans to make Kosovo Serbian.

In 1988, Milosevic attended a rally in Belgrade and fuelled a crowd of “350,000 people, [declaring] ‘every nation has a love, which eternally warms its heart. For Serbia, it is Kosovo.’”⁴⁹ He further fuelled the Serbs in 1989 declaring that: “we [the Serbians] shall win the battle for Kosovo regardless of the obstacles facing us inside and outside the country.”⁵⁰ This initiated fear and anger in the region, instigating the Albanian Kosovars to create their own counter structures that were led by the Democratic League of Kosovo’s Ibrahim Rugova.⁵¹ While the Albanians voted Rugova as their president in several unofficial elections, none of it was strong enough to subdue Milosevic and halt his plans.⁵² In 1989, he revoked the Kosovar autonomy, implemented Serbian control over finance, security, and justice systems, and commenced an overall Serbian control of the territory.

⁴⁶ Malici, *The Search for a Common European Foreign and Security Policy*, 39.

⁴⁷ Malici, *The Search for a Common European Foreign and Security Policy*, 40.

⁴⁸ Malici, *The Search for a Common European Foreign and Security Policy*, 40.

⁴⁹ Malici, *The Search for a Common European Foreign and Security Policy*, 40.

⁵⁰ Malici, *The Search for a Common European Foreign and Security Policy*, 40.

⁵¹ Malici, *The Search for a Common European Foreign and Security Policy*, 41.

⁵² Malici, *The Search for a Common European Foreign and Security Policy*, 41.

Milosevic's focus was not solely on Kosovo, as he also increased Serbian control in the rest of Yugoslavia. Demands for independence spread across the lands, the republics, Croatia, Slovenia, and Bosnia-Herzegovina as Milosevic's agenda "drove Yugoslavia into the abyss."⁵³ As the other people fought for their independence, the oppression of the Albanians of Kosovo became state-sponsored.⁵⁴ Houses were being raided, thousands were being arbitrarily arrested and abused, and extra-judicial killings were on the rise.⁵⁵

This gave rise to Kosovo Liberation Army (KLA) that was increasingly dissatisfied with Rugova, who had failed to give Kosovo the independence that was granted to Bosnia in the Dayton Agreement.⁵⁶ The KLA instigated a chain of counter-aggression, paving the way to the crisis of 1998 as Milosevic declared them a terrorist organization and legitimized their persecution.⁵⁷ When, in the same year, Milosevic refused to recognize the Albanian Kosovars' political figures and had them physically dispersed by the police, the KLA decided it was time to aggressively fight back through a "series of insurgent operations against Serb officials."⁵⁸ The leader of Serbia responded by instigating a massacre in March 1998, bringing about the official start of the crisis that finally necessitated and attracted international intervention.⁵⁹

At that point in history, the EU was supposedly readily equipped with its newly drafted CFSP. There were many lessons learned from earlier in the decade through the Bosnian crisis. Three main issues arose during that period that weakened the EU

⁵³ Malici, *The Search for a Common European Foreign and Security Policy*, 41.

⁵⁴ Malici, *The Search for a Common European Foreign and Security Policy*, 41.

⁵⁵ Malici, *The Search for a Common European Foreign and Security Policy*, 41-42.

⁵⁶ Malici, *The Search for a Common European Foreign and Security Policy*, 41.

⁵⁷ Malici, *The Search for a Common European Foreign and Security Policy*, 41-42.

⁵⁸ Malici, *The Search for a Common European Foreign and Security Policy*, 42

⁵⁹ Malici, *The Search for a Common European Foreign and Security Policy*, 42

significantly: Firstly, the aforementioned very high standard created by Poos' statement that was accentuated by the EU's "only grudgingly [accepting] the need for UN involvement at all."⁶⁰ The second was Germany's choice to unilaterally recognise Slovenia and Croatia, going against the rest of the EU's Member States and disregarding the ongoing investigations on the case.⁶¹ Thirdly, the initiation of the Contact Group, comprised of France, Germany, UK, USA, and Russia eliminated the EU's unified voice as its three main countries joined a group on their own, making its own separate decisions.⁶²

These three had established that in order for the EU to have an effective political presence on the international scene during crises, it had to have the capability to speak with one voice and enforce peace if all else failed. There were, however, many external factors, beyond the immediate problems within the EU at the beginning of the decade that affected the way the Kosovo situation was handled. The collapse of the Soviet Union, the reunification of Germany, the Maastricht Treaty, and the recovery from the Bosnian crisis all had received more attention than Kosovo. Milosevic's methods made it an increasingly difficult situation to handle since it was ultimately a national conflict, the first of its kind at the EU's (then the European Community) border.⁶³ It was also a cause for many unsettling discussions, as some of the Member States had their own secessionist minorities who could see the Kosovo situation as a precedent and demand their own autonomies.⁶⁴ The way it escalated was, therefore, more overlooked than a surprise.

⁶⁰ Lang. *Old Frontiers--New Frontiers*, 84-85.

⁶¹ Lang. *Old Frontiers--New Frontiers*, 84.

⁶² Lang. *Old Frontiers--New Frontiers*, 84.

⁶³ Lang. *Old Frontiers--New Frontiers*, 85

⁶⁴ Lang. *Old Frontiers--New Frontiers*, 86

The EU did nonetheless act, albeit without great effects. From 1997 until 1999, the EU issued various statements and resolutions, sent aid, and made declarations.⁶⁵ However, many of those were largely ineffective. Milosevic did not waver and, like he had stated a decade earlier, he was planning on surmounting all obstacles. Since the EU was largely an economic organization, much of its statements and declarations went unnoticed by Milosevic, and its sanctions did little to unnerve him. It was therefore up to individual Member States, the Contact Group, and NATO to make the biggest difference.⁶⁶ Nonetheless, no negotiations worked, not even in the infamous Rambouillet Agreement which NATO had drafted, which later justified NATO's military intervention led by the US.⁶⁷

The operation led by NATO ended in June 1999 with the withdrawal of the Yugoslav forces and the signature of the "Military-Technical Agreement."⁶⁸ Right after the signature, the United Nations Security Council (UNSC) created the Resolution 1244 which brought about the "international security presence" in Kosovo along with the civilian one.⁶⁹ The Resolution 1244 and the United Nations Interim Administration in Kosovo (UNMIK) were made to work in cohesion to establish an international presence in Kosovo and transformed any active authority of any Serbian government over Kosovo into a mere nominal one.⁷⁰ The civil and military presences in Kosovo were to be led by UN entities to "[Establish] and [oversee] the development of provisional democratic self-governing institutions to

⁶⁵ Lang. *Old Frontiers--New Frontiers*, 88

⁶⁶ Lang. *Old Frontiers--New Frontiers*, 88-89

⁶⁷ Lang. *Old Frontiers--New Frontiers*, 89

⁶⁸ Martina Spornbauer. *EU Peacebuilding in Kosovo and Afghanistan: Legality and Accountability*. (Boston: Martinus Nijhoff Publishers, 2014), 49.

⁶⁹ Spornbauer. *EU Peacebuilding in Kosovo and Afghanistan*, 49.

⁷⁰ Spornbauer. *EU Peacebuilding in Kosovo and Afghanistan*, 50

ensure conditions for peaceful and normal life for all inhabitants of Kosovo.”⁷¹ UNMIK was thus tasked with a civil presence unlike any international one before it, one which had to ensure the creation of an autonomous government within Kosovo.⁷²

The establishment of international presence in the region enabled the actors to grant members of the KLA “*de facto* amnesty”⁷³ which in turn made the process of bringing about peace much more doable. A Constitutional Framework was put into effect in 2001, taking over from Resolution 1244 and establishing “Provisional Institutions of Self-Government” (PISG), transferring in the process some of the powers to Kosovars.⁷⁴ The PISG however had very little effective powers while UNMIK kept much of the “civil and political authority” to itself.⁷⁵ Nonetheless, in 2005, negotiations to “determine Kosovo’s status under international law” were initiated.⁷⁶ Led by Martti Ahtisaari, the former Finnish President, the negotiations proved to be a failure despite Ahtisaari’s well thought out plans.⁷⁷ In the dawn of the negotiation’s failure, a troika made of the USA, UK, and Russia tried its luck at negotiating a settlement and also failed.⁷⁸ The last attempt before the eventual transfer of responsibilities to the EU was an International Steering Group that tried once again to establish the Ahtisaari Plan and was once again rejected by Serbia.⁷⁹

Upon the Parliamentary Assembly of Kosovo’s declaration of independence, Serbia requested that the International Court of Justice (ICJ) consider the legality of such a

⁷¹ Spornbauer. *EU Peacebuilding in Kosovo and Afghanistan*, 51

⁷² Spornbauer. *EU Peacebuilding in Kosovo and Afghanistan*, 52

⁷³ Rustemi, Arlinda and Moritz Baumgärtel. "Shooting in the Dark: Evaluating Kosovo’s Amnesty Law and the Role of International Actors." *Hague Journal on the Rule of Law* 6 (2) 2014: 130

⁷⁴ Spornbauer. *EU Peacebuilding in Kosovo and Afghanistan*, 58

⁷⁵ Spornbauer. *EU Peacebuilding in Kosovo and Afghanistan*, 61.

⁷⁶ Spornbauer. *EU Peacebuilding in Kosovo and Afghanistan*, 61.

⁷⁷ Rustemi, Arlinda and Moritz Baumgärtel. "Shooting in the Dark", 117.

⁷⁸ Rustemi, Arlinda and Moritz Baumgärtel. "Shooting in the Dark", 118.

⁷⁹ Rustemi, Arlinda and Moritz Baumgärtel. "Shooting in the Dark", 118

claim.⁸⁰ Serbia claimed that the declaration was in violation of the Resolution of 1244. The ICJ ruled that the Assembly of Kosovo acted as representatives of their people and thus did not belong within the jurisdiction of the Resolution, and that, by extension, they did not violate international law.⁸¹ This was followed by a constitution of the Republic of Kosovo, which came into effect in 2008, creating a Kosovar government.⁸²

The Kosovo Constitution (KC) ended the role of UNMIK in its territory, but nonetheless welcomed a UN presence that would “carry out [...] limited residual tasks.”⁸³ The Ahtisaari Plan had already suggested that the civilian mission mandated in the Resolution 1244 be transferred to the EU.⁸⁴ As such, between 2006 and 2008 the EU and UNMIK had started planning a transfer of power. Regardless of the fate of the Ahtisaari Plan, the Troika, and the Steering Group, the EU was bent on deploying its team.⁸⁵ In 2007, the European Council decided that it would deploy its rule of law mission in Kosovo, thereby “the EU would play a leading role in strengthening stability in the region.”⁸⁶ Due to many bumps in the road, the European Union Rule of Law Mission in Kosovo (EULEX), was not deployed before the declaration of independence, which made its existence in Kosovo a much more controversial topic.⁸⁷

EULEX was nonetheless deployed in 2008, and despite the lack of an official transfer of power that would have taken place under the Ahtisaari Plan, an informal transfer happened.⁸⁸ However, the hand-over of official documents required an agreement between

⁸⁰ Spornbauer. *EU Peacebuilding in Kosovo and Afghanistan*, 67.

⁸¹ Spornbauer. *EU Peacebuilding in Kosovo and Afghanistan*, 67.

⁸² Spornbauer. *EU Peacebuilding in Kosovo and Afghanistan*, 68.

⁸³ Spornbauer. *EU Peacebuilding in Kosovo and Afghanistan*, 68.

⁸⁴ Spornbauer. *EU Peacebuilding in Kosovo and Afghanistan*, 196.

⁸⁵ Spornbauer. *EU Peacebuilding in Kosovo and Afghanistan*, 196-197.

⁸⁶ Spornbauer. *EU Peacebuilding in Kosovo and Afghanistan*, 196-197.

⁸⁷ Spornbauer. *EU Peacebuilding in Kosovo and Afghanistan*, 198.

⁸⁸ Spornbauer. *EU Peacebuilding in Kosovo and Afghanistan*, 198.

the UN and Serbia in November 2008, which eventually allowed the EU to have a presence in the region despite Russian and Serbian initial objections.⁸⁹ In April 2009, EULEX Kosovo was in full operation and was officially the international presence that provided “justice, police and custom’s sector.”⁹⁰

This was all taking place parallel to the implementation of the Lisbon Treaty, the creation of the new positions of the High Representative/VP, and the emergence of the EEAS. By that time, the EU had established itself as an international actor, many of its countries had joined the European Monetary Union, the Union was becoming a 27 Member State Union, and the Lisbon Treaty was consolidating all these factors. The deployment of the EULEX Kosovo amongst other EU civil presences around the world demarked the change in the EU’s foreign policy. In 2010, Christopher S. Chivvis declared EULEX Kosovo as the “most ambitious civilian mission the EU has undertaken to date.”⁹¹ The Kosovar question once again had reshaped the EU’s foreign activity.

EULEX functioned under the mandate of the European Council with the purpose of strengthening the rule of law in Kosovo.⁹² Its many tasks included “monitoring, mentoring, and advising Kosovo Authorities”, “ensuring that judicial system is independent of political interference”, and “fighting corruption,” both within Kosovo’s perceived borders and at custom control.⁹³ Much like the EEAS, the majority of the staff are seconded from Member States, but many of them had previous experience working in the Balkans.⁹⁴ The

⁸⁹ Spornbauer. *EU Peacebuilding in Kosovo and Afghanistan*, 198-199.

⁹⁰ Spornbauer. *EU Peacebuilding in Kosovo and Afghanistan*, 199.

⁹¹ Christopher Chivvis. *EU Civilian Crisis Management : The Record so Far*. (Santa Monica, CA: RAND, 2010), 31.

⁹² Chivvis. *EU Civilian Crisis Management*, 31-33.

⁹³ Chivvis. *EU Civilian Crisis Management*, 33.

⁹⁴ Chivvis. *EU Civilian Crisis Management*, 34.

EULEX's main activities have been in policing, justice, and in customs. Most of the staff working in either of the three categories comes from the EU. The policing units have been successful implementing security, dealing with organized crime, and managing small scale demonstrations.⁹⁵ The justice department has seen many challenges due to the several judicial codes in Kosovo remaining from UNMIK, Yugoslavia, Kosovo itself, and other older ones.⁹⁶ Both the judges and the police forces have been present on both an advisory and active basis.⁹⁷ The customs control has been vital both to Kosovo's finances and security. With the help of EULEX it was set up once more and, despite some challenges, it has been functioning well.⁹⁸

The EULEX is still implemented, monitoring, and mentoring in Kosovo until this day. The EEAS, however, has arguably made larger strides in the two years following its creation in the Kosovo-Serbia conflict than any other entity has thus far. The EEAS's achievement has been as both "a clear-cut and resounding diplomatic success for the EEAS, enabling it to dispel some of this recent criticism," and "the 'most positive example' of the EEAS arousing interests for its activities."⁹⁹ The EEAS not only got both Serbia and Kosovo at the negotiation table, a task that had proved very hard in the past, but it also "concluded the 'First Agreement on Principles Governing the Normalisation of Relations'" in 2013.¹⁰⁰ In general, the EEAS therefore accomplished the unimaginable, which gave Ashton the strong win that her agency needed to prove itself and the EU's new united foreign policy.

⁹⁵ Chivvis. *EU Civilian Crisis Management*, 34-37.

⁹⁶ Chivvis. *EU Civilian Crisis Management*, 37.

⁹⁷ Chivvis. *EU Civilian Crisis Management*, 34-38.

⁹⁸ Chivvis. *EU Civilian Crisis Management*, 38.

⁹⁹ Rrustemi and Baumgärtel. "Shooting in the Dark" 137

¹⁰⁰ Rrustemi and Baumgärtel. "Shooting in the Dark", 115.

Upon a closer look, however, much of what went into the agreement echoes the EU's earlier problems of discrepancy and incoherence, along with an overlooking of what the implications of the agreement would be. The authors of "Shooting in the Dark" study this phenomenon in depth in their work, arguing that the amnesty law that derived from the agreement presents many risks on the ground in Kosovo.¹⁰¹ What should be highlighted from this study is that much of what went into the creation of the amnesty laws might bring many security threats to Kosovo as opposed to safety.¹⁰² This is largely due to the vagueness of the law, and the ability that it gives to war criminals to roam free, thus dismissing the criminality of what they did.¹⁰³ The authors explain that the construction of this agreement saw many challenges due to the still existing disagreement amongst the EU's Member States. One of the things that peaked the others interests was the priority given to having the EEAS bring about a success rather than an effective policy that would truly guarantee safety.¹⁰⁴ They conclude that: "with the international political stakes being high, domestic factors shrunk in importance, leaving space only for a narrow debate on the legality of the measure."¹⁰⁵

The role of the EEAS in the context of Kosovo provides a success story on the outside, and a rehash of the European Union's discrepancies on the inside. The paper attempted to provide a thorough study of the EEAS and the EU's foreign policy development. By going through the EU's history *en route* to the EEAS, we have demonstrated that most of the additions made to the treaties and the new policies that were

¹⁰¹ Rrustemi and Baumgärtel. "Shooting in the Dark", 115.

¹⁰² Rrustemi and Baumgärtel. "Shooting in the Dark", 130.

¹⁰³ Rrustemi and Baumgärtel. "Shooting in the Dark", 116-117.

¹⁰⁴ Rrustemi and Baumgärtel. "Shooting in the Dark", 140.

¹⁰⁵ Rrustemi and Baumgärtel. "Shooting in the Dark", 139.

created were, almost always, in response to international crises where the EU had failed to implement itself as a major actor. Its role in Kosovo provided both instances of the EU's failures and successes, making Kosovo's role in the EU's history extremely influential. By studying Kosovo's history leading up to the conflict and going through its struggles with international control of its territories, we are able to show how the EU mended its past mistakes. The developments that the EU was able to bring about with the agreement were nowhere in sight a decade ago; and, despite the controversy over some of the clauses of the agreement, its very existence is a step forward.

The EEAS thus is the agency that, like many predicted, could bring about immense change if given the autonomy it needs to make the EU a united actor in foreign affairs. A true unanimous front is, however, still inconceivable, as the Member States have been growing further apart in their political and foreign policies. Much of the literature used in this paper was before the British and the Italian referenda, and the many elections that took place around the world. The reality is that in order for the High Representative to do her job successfully and the EEAS to provide her with the intel necessary to do so, the Member States need more coherence. This very coherence is now questionable as the European Union enters new territory with the countless international and Union related conflicts that arise every day.

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