

Secession of States and Self-determination in contemporary International Law

EU Missions and Secessionist Conflicts

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Abstract: The European Union has deployed missions, mostly via the ESDP, in separatist conflicts – from Macedonia to Aceh (Indonesia) and from Kosovo to Georgia or Moldova – as one of the instruments with which to apply its policies in these areas. Except in the case of Kosovo, the EU's activity in these cases, tied to the principle of territorial integrity, has faced a dilemma relating to the impact of its peace missions: non-recognition and engagement. This policy combines the non-recognition of the secessionist entities with the desire to engage with them in a variety of relationships. This work asks whether the EU has ended up contributing to these secessionist conflicts reaching deadlock.

Keywords: EU Missions – Secessionist conflicts – Non-recognition and engagement – Europeanization

(A) INTRODUCTION

The European Union (EU) has come up against a number of conflicts of a secessionist nature, both in Europe and in more distant locations. However, the EU is not exactly a stranger to dealing with conflicts of this type. We do not need reminding of its active participation in the former Yugoslavia's dissolution process. It also seems appropriate to recall the existence of a country within the EU, Cyprus, with its divided territory and community settled in the north of the island —whose recognition is impossible. The Commission attempted to implement various instruments that would assist in the future application of European Law or facilitate trade between the Turkish and Cypriot communities. Even the option of applying a preferential trade agreement was considered, but this was blocked by the Cypriot veto, which argued that this would mean recognising the Turkish Republic of Northern Cyprus.¹ This case raises a dilemma that will create urgency in the EU when dealing with secessionist conflicts, and which is based on a pairing of engagement and non-recognition, a policy that must combine the non-recognition of secessionist entities with the desire to establish a number of different relations in order to mitigate against isolation and the consequences that this can entail.

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¹ D. Bouris and G. Kyris, 'Europeanisation, Sovereignty and Contested Status: The EU in Northern Cyprus and Palestine', 19 *The British Journal of Politics and International Relations*, (2017), N° 4, at 760.

As Nicu Popescu claims, from the Balkans to the Middle East and from the South Caucasus to Western Sahara, the European Union is surrounded by conflicts that affect its security.² Perhaps just as dramatically, the 2003 European Security Strategy,³ the Solana document, already recognized this by arguing that regional conflicts constituted one of the main threats to the Union's security. The document mentioned certain areas, such as Kashmir or Korea, and made less direct references to conflicts that are closer to home, or "violent or entrenched conflicts that also persist on our borders (and) threaten regional stability." The Report on the Implementation of the European Security Strategy of 11 December 2008⁴ was much more explicit; in the chapter on the EU's efforts to contribute to stability in Europe and beyond its borders, it included specific references to some of the secessionist scenarios in which the EU had already been present, mentioning specifically the deployment of crisis management missions. In particular, references were made to the situation in Georgia, in relation to Abkhazia and South Ossetia, given the recent war between the Caucasian country and Russia, and the Transnistria conflict in Moldova. And naturally, Kosovo, with reference to EULEX, the largest civil mission of the ESDP until that date. The EU's enlargement in 2004 had brought some of these conflicts significantly closer to the new European frontiers, making it even more pressing to find a more proactive approach in terms of security. The EU's Global Strategy, the strategic document "Shared Vision, Common Action: A Stronger Europe"⁵, presented in June 2016 by Federica Mogherini, the High Representative of the Union for Foreign Affairs and Security Policy in a political climate quite different from that of 2003 (or in 2008), and noted by the European Council, contains several noteworthy sections.

On the one hand, it expresses the Union's commitment to the solution of prolonged disputes in the Eastern Partnership countries; on the other, when referring to the European security order, which states that the territorial integrity of States and the inviolability of their borders is key, Russia is explicitly targeted as a major strategic challenge for the EU, requiring a consistent and unitary approach as the cornerstone of the Union's policy towards Russia. While it is true that the document was written in the heat of the crisis in Ukraine and the annexation of Crimea by Russia, it should not be forgotten that this country has had some degree of political, and in some cases physical, military presence in most of the secessionist conflicts in which the EU has deployed crisis management missions. However,

² N. Popescu, 'EU and the Eastern Neighbourhood: Reluctant Involvement in Conflict Resolution', 14 *European Foreign Affairs Review*, (2009), at 457.

³ Available here.

⁴ Report on the Implementation of the European Security Strategy – Providing Security in a Changing World, 11 December 2008, S407/08, available here.

⁵ Available here.

the strategic document of 2016 contains specific references to the deployment of military operations and civilian missions, as a reaction to international crises, although these are referred to in general terms, without any indication as to when they would be use in secessionist conflicts. Also mentioned are the need for rapid responses in accordance with the Charter of the United Nations, the requirement to rationalize the institutional structure, strengthening operational planning and constructing close connections between civilian and military missions, when deployed in the same scenario. It can thus be concluded that the EU's strategic vision, both that contained in the 2003 Solana document —produced before the secessionist conflicts that we will examine here— and that expressed in the 2016 Mogherini document, does not include a specific approach by the EU to long-term secessionist conflicts.

Most of the secessionist conflicts with which the EU has been associated share common features, or at least those located near to it geographically. According to Sebastián Relitz⁶, many of these conflicts are long-standing, intergenerational, with various problems associated with their continuation; and feature both phases of relative calm and violent episodes of varying intensity. They also generate an emotional polarization that is reflected in segregation and in the search for reprisals. Lastly several unsuccessful attempts at external mediation have been made. For Dimitris Papadimitriou and Petar Petrov⁷, who use the concept of “contested statehood”, these conflicts share some or all of the following characteristics: an internationally recognized authority that fails to maintain effective control over part of its territory; secondly, a de facto authority that has declared independence on the disputed territory, but has not obtained international recognition, for example by the United Nations admitting it as a Member State; and thirdly, the capacity of the de jure government or de facto government is compromised by the weakness of its state apparatus. This description applies to the conflicts in Transnistria in Moldova, Ossetia in Georgia and Kosovo in Serbia, where the European Union has deployed crisis management missions, and which we will analyse in this paper. To a lesser extent, we will also examine the case of areas of the Albanian presence in the FRYM bordering Kosovo, whose separatist tensions have not crystallized in a region governed by de facto authorities, as in the previous cases. And the same will be done with the Aceh conflict in Indonesia, although in this case the EU is dealing with the final breaths of a secessionist scenario that's on the road to recovery out of respect for this country's territorial integrity.

⁶ S. Relitz, 'De Facto Status in the European Neighbourhood: Between Russian Domination and the European (Dis)Engagement. The Case of Abkhazia'.

⁷ D. Papadimitriou and P. Petrov, 'Whose Rule, Whose Law? Contested Statehood, External Leverage and the European Union's Rule of Law Mission in Kosovo', 50 *Journal of Common Market Studies* (2012), N° 5, at 749.

Secessionist conflicts vary in nature, and have been at differing stages of development at the time of EU intervention. The case of Aceh (Indonesia) —where the EU's involvement and the deployment of its mission occurred when the secessionist conflict was already over, and all that remained was to implement the commitment that the parties had already agreed on— is different from the Georgian conflict, where the EU observation mission aimed to monitor the ceasefire signed by Russia and Georgia after the military intervention of the former in South Ossetia, which has since become a *de facto* State. And, of course, it is vastly different from the case of Kosovo, where the European mission is coupled with the unilateral declaration of independence.

EU missions have been carried out in a number of other scenarios related to secessionist movements to a greater or lesser degree; for example, that of Sahel and, in particular, Mali. The presence of armed jihadist movements like Ansar Dine and Al Qaeda in the Islamic Maghreb (AQIM) combined with the previous Tuareg armed rebellion, piloted by the National Movement for the Liberation of Azawad, which aimed to segregate the north of the country. Ansar Dine, meanwhile, sought to impose Sharia law throughout Mali. In fact, the Tuareg rebellion, which began in early 2012 and succeeded in proclaiming Azawadi independence, ended following confrontations with Islamist militias; the Tuareg were expelled and control of the territory was taken by the jihadist organizations. The conflict, initially separatist, originated with an attempt to establish a branch of the Islamic caliphate in Mali. The Mission deployed by the EU, a military initiative within the framework of the Common Security and Defence Policy, aimed to assist with the training of the Mali armed forces (EUTM Mali), and was approved by the Council through Decision 2013/34/CFSP of 17 January⁸, and thus had no connection with the initial Tuareg separatist attempt in northern Mali. The Decision itself stated that EUTM Mali's ultimate goal was to help the army restore Mali's territorial integrity and reduce the threat posed by terrorist groups, but without the EU mission participating at any time in combat operations. The conflict in which EUTM Mali intervened had thus lost its initial secessionist aspect and, for that reason, we will exclude its analysis in the present work.⁹

However, as Nicu Popescu asserts¹⁰, both the cases in which the deployment of a mission has occurred and those in which the European Union has refrained from doing so are so significant for the correct assessment of the ESDP in this area. One secessionist conflict case

⁸ OJ L 14, 18.1.2013, at 19.

⁹ Regarding EUTM Mali, L. García Martín, 'La PCSD a través de las operaciones de gestión de crisis de la Unión Europea: estudio de caso de la EUTM Mali', Instituto Español de Estudios Estratégicos, Documento de opinión N° 21/2014.

¹⁰ N. Popescu, 'EU and the Eastern Neighbourhood: Reluctant Involvement in Conflict Resolution', *supra* note 2, at 461.

where the EU has opted for non-involvement is that of Nagorno-Karabakh. Here, the ambiguity of the EU's position is well illustrated by the fact respect for Azerbaijan's territorial integrity was included in the EU-Azerbaijan Action Plan¹¹, while respecting the principle of self-determination of peoples was included in the corresponding EU-Armenia Action Plan.¹² In the latter, in priority area 7, contributing to the settlement of the Nagorno-Karabakh conflict, it was stated that "political support to the OSCE Minsk Group" should be increased "on the basis of international norms and principles, including the principle of self-determination of peoples". Azerbaijani scepticism about the role the EU could play in the conflict also grew as Kosovo was recognised by increasing numbers of EU Member States, making the occurrence of a similar process in Nagorno-Karabakh with the support of the EU seem possible. By the same token, Armenia would accept the EU's role if it led to recognition by the enclave's authorities. The lack of a shared commitment that is decided by both sides of the conflict has the effect of repelling the EU's greater involvement.¹³ In addition, from the ranks of the Member States, one of them, France—which has a leading role in the OSCE Minsk Group, which spearheads negotiations for the conflict—is opposed to further EU intervention.¹⁴ For all these reasons, unlike what happens in other secessionist conflicts, including those from the same geographical area, and even with Russia's lesser role and interest, the EU does not press for the deployment of a peace mission.

The EU operations and missions in secessionist conflicts that we shall explore, which have been deployed since 2003, represent one small part of the total number of missions deployed by the EU since that date, of which there have been more than thirty, be they civil, military or a combination of the two. This work aims to look specifically at this deployment in secessionist scenarios, with a view to identifying the impact it may have on those conflicts, and if they end up having a unifying effect in the country where these "de facto states" have broken off. Or whether their final effect is to legitimize secessionist intentions, as a kind of camouflaged recognition of those paralysed territories. Therefore, we will pay most attention to the conflicts' political circumstances that are brought to the fore in the deployment of the EU mission, to its legal framework as a concerted decision made by the State in whose territory it will be deployed and by the Council of the Union, and to the rules and objectives each of the missions will fulfil. We will give little attention, however, to other aspects of EU missions, such their structure, internal organization, planning or financing issues.

¹¹ Available here.

¹² Available here.

¹³ N. Popescu, 'EU and the Eastern Neighbourhood: Reluctant Involvement in Conflict Resolution', *supra* note 2, at 472.

¹⁴ D. Helly, 'EU's Influence in Its Eastern Neighbourhood: The Case of Crisis Management in the Southern Caucasus', 7 *European Political Economy Review* (2007), 102-117.

The deployment of EU Missions in these conflicts cannot be judged in isolation. Such missions are merely one more method in the instruments available to the EU for managing those international crises in which it seeks to involve itself. It is thus a more general process in which, as indicated by Dimitris Papadimitriou and Petar Petrov¹⁵, among the measures deployed by the EU in secessionist conflicts, other than dispatching civil or military missions to provide security, are the following: firstly, exercising intense diplomatic activity, including mediation efforts for solving the conflict in question; secondly, providing humanitarian aid and generally rebuilding areas affected by the conflict – which may come from European programs associated with larger political initiatives, such as the European Neighbourhood Policy; thirdly, promising EU membership as a means of pacification; and, fourthly, exercising executive powers in the contested territory, as part of the peaceful settlement of the conflict.

Regarding the promise of EU membership, this is not feasible for all states where secessionist conflicts develop, sometimes even when the will of those states is unmistakably integrationist. This is the case in the South Caucasus countries, which since 2009 have had to content themselves with association agreements originating from the Eastern dimension of the European Neighbourhood Policy.

(B) OPERATIONS CONCORDIA, IN THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA
(MARCH-DECEMBER 2003): THE EU'S FIRST MILITARY OPERATION.

It can be argued that the first military operation deployed by the EU, Operation EUFOR CONCORDIA, in the Former Yugoslav Republic of Macedonia (hereinafter FYROM), between March and December 2003, related to separatist tensions—in this case those arising between that country's Slavic majority and Albanian minority.¹⁶ Indeed, at the end of the 1990s, the Albanians of Macedonia felt increasingly that they were being marginalized and discriminated against, which suggested this to be present in the structure of the Macedonian State. Added to this were tensions caused by the crisis in Kosovo, which ended up triggering an influx of refugees into FYROM territory, despite its unpreparedness and lack of capacity for reception. The Macedonian majority, meanwhile, believed that the Albanians were concealing a secessionist agenda. The armed confrontation arose in early 2001 when members of the National Liberation Army (UÇK), the armed wing of rebel Albanians, deployed attacks in the border area between Kosovo and Serbia, and around the city of Tetovo. During the conflict in Kosovo and the Preservo valley in Serbia, many Albanian refugees had moved

¹⁵ D. Papadimitriou and P. Petrov, 'Whose Rule, Whose Law? Contested Statehood, External Leverage and the European Union's Rule of Law Mission in Kosovo', *supra* note 7, 749-751.

¹⁶ C. Mace, 'Operation Concordia. Developing a 'European' Approach to Crisis Management?', 11 *International Peacekeeping*, (Autumn 2004), N° 3, 474-490.

to FYROM, taking advantage of the porosity of its borders; this also included UÇK fighters. The military confrontations lasted until June 25, when NATO's efforts with the UÇK achieved its withdrawal and joint EU-NATO actions with the Macedonian government led to the signing of the definitive peace agreement, the Ohrid Framework Agreement, on August 13, 2001. Both sides were convinced that while the FYROM would not accept any secessionist fickleness by the Albanian side, nor the questioning of its unitary character, it would recognise the Macedonian population's multi-ethnic composition.

Therefore, the Ohrid Framework Agreement¹⁷ established in article 1 as basic principles the need to preserve both the FYROM's sovereignty and its territorial integrity, declaring that there would be no territorial solutions to ethnic issues. Along with this, the agreement affirmed that the multi-ethnic character of Macedonian society should be preserved and reflected in public life. Article 2.1 of the agreement gave NATO authority to monitor the establishment of a clear and unconditional ceasefire and described the armed groups' commitment to a voluntary disarmament. Annex C of the Agreement, regarding implementation and confidence-building measures, expressed the parties' invitation to the international community to facilitate, monitor and assist in the application of its provisions, and specifically references coordination efforts in that area of the European Union. This triggered a swift reaction by the international community: on September 26, 2001, the United Nations Security Council adopted resolution 1371 (2001)¹⁸, which, firstly, welcomed EU and OSCE efforts to contribute to the application of the Framework Agreement and, secondly, supported the establishment of a multinational security presence in the former Yugoslav Republic of Macedonia at the request of its Government to contribute to the security of observers. NATO, meanwhile, deployed up to three operations.¹⁹ The first was "Essential Harvest", in which all Atlantic Alliance member states participated from August 27 to September 2001, and whose objective was the disarmament of the Albanian groups and the destruction of their arsenals.²⁰ The second, "Amber Fox", between September 27, 2001 and December 15, 2002, had the mission to protect EU and OSCE observers who were monitoring compliance with the Ohrid Framework Agreement.²¹ The third, "Allied Harmony", which took place between December 2002 and March 2003, was finally replaced by the EU Concordia operation, following a request made by the FYROM president on January 17, 2003. Allied Harmony, and therefore also Operation Concordia, was tasked with a double

¹⁷ Available here.

¹⁸ Available here.

¹⁹ See M. A. Acosta Sánchez, *La Política Europea de Seguridad y Defensa y la gestión de crisis internacionales. Las operaciones Petersberg*, (Dykinson, Madrid, 2008), 235-236.

²⁰ Available here.

²¹ Available here.

objective: to support international observers and to assisting the FYROM government in maintaining security and order in the country.

The arrival, therefore, of the EU peace mission, which was based upon the Council's Joint Action 2003/92/CFSP of January 27, 2003, aside from government invitation, ended in a sufficiently peaceful scenario. Its contingent comprised 350 lightly armed soldiers from 26 countries, including all EU nations bar Denmark and Ireland. France, with the largest contingent at 145 members, assumed the role of lead nation, and this role which was transferred to EUFOR on September 30, 2003. As a military mission, it had to draw upon NATO's planning and logistics capabilities, which came after the collaboration mechanisms between NATO and the EU known as Berlin plus were concluded; these were adopted in an agreement on March 17, 2003, a few days before the launch of Concordia. The link between NATO and the EU also made Operation Concordia more robust and credible in the eyes of the Macedonians, which guaranteed continuity from previous NATO operations.²²

The operation's duration²³ was initially scheduled for six months, from March 31 to September 15, 2003, but was later extended until December 15 of that year, following the request of the FYROM president and the subsequent Council Decision 2003/563/CFSP, in which NATO also agreed to also prolong its additional resources available to EU. Throughout this period, and as stated in its preamble, the Council Joint Action 2003/92/CFSP, Operation Concordia was complemented by an EU contribution based upon "a broad approach with activities to address the whole range of rule of law aspects, including institutional building programmes and police activities." Thus, it will "contribute to the overall peace implementation in the former Yugoslav Republic of Macedonia as well as to the achievements of the Union's overall policy in the region, notably the stabilisation and association process". This issue was clearly stated by the European Parliament in its resolution of 12 March, 2003²⁴ and indicates that it is difficult to judge EU peace operations separately from the EU's other actions in that same conflict.

Operation Concordia demonstrated the EU's ability to deploy a military mission, albeit a minor one, with the support of the Atlantic Alliance. It also, therefore, served to verify the correct operation of relations between the two organizations. From the perspective of the secessionist conflict, it could also be argued that there has not been a breakthrough, as it had previously been mitigated by the Ohrid Framework Agreement and by the deployment of the three NATO operations that preceded Operation Concordia. On a similar topic, the

²² C. Mace, 'Operation Concordia. Developing a 'European' Approach...', *supra* note 16, at 481.

²³ See the data provided by M. A. Acosta Sánchez, *La Política Europea de Seguridad y Defensa y la gestión de crisis internacionales...*, *supra* note 19, at 239.

²⁴ OJ C 61, 10 March 2004.

Commission's contribution within the framework of the stabilization and association policy, that is, the "Europeanization" of crisis management, should also be assessed.

(C) EUPOL PROXIMA, IN THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA (DECEMBER 2003-DECEMBER 2005)/THE EU POLICE ADVISORY TEAM, EUPAT (DECEMBER 2005-JUNE 2006). Operation Concordia was replaced by EUPOL Proxima, a police operation which was deployed for two years. This action also decreased significantly as the initially secessionist conflict was mitigated by another police mission, the EU Police Advisory Team, EUPAT, which was much smaller.

As Isabelle Ioannides maintains²⁵, in late 2002 the situation in FYROM was still fragile. Weapons proliferation was occurring privately, with an absence of law enforcement in areas dominated by the Albanian minority; as a result, the country's progress towards stability was very slow. The police even had to be redeployed to areas where the crisis had begun in 2001. In this context, improving police relations with the Albanian minority was a top-priority matter. Consequently, once the Concordia period expired, on the request of the FYROM president, formulated on 16 September, 2003, it was replaced by a civilian crisis management mission, the Proxima mission. This was decided through Council Joint Action 2003/681/CFSP.²⁶ Furthermore, an agreement was concluded between the EU and FYROM on the Mission's status and activities, which was annexed to Council Decision 2004/75/CFSP, of 11 December, 2003.²⁷ Article 3 of the Joint Action established that the EUPOL Proxima mission was a composite of several tasks: the consolidation of law and order, including the fight against organized crime, focusing on sensitive areas; the practical implementation of the comprehensive reform of the Ministry of Interior, including the police; the operational transition towards, and the creation of a border police; and the work of the local police in building trust in the population. But, as indicated in the same article 3, the aim was to support through monitoring and mentoring. However, article 8 of the agreement on the status and activities of the Mission gave the right to establish an armed protection element of 30 police officers to manage exceptional cases in order to protect EUPOL Proxima personnel.

It was, therefore, a civil and crisis management mission involving some 200 members, coming from all EU Member States, except Malta and Ireland, as well as Bulgaria, Romania, Turkey, Norway, Ukraine and Switzerland. The legitimacy of the mission, which was not only a continuation of Operation Concordia, but only in time, since its nature changed from

²⁵ I. Ioannides, 'EUPOL PROXIMA/EUPAT (FYROM)', G. Grevi, D. Helly and D. Kehoe (eds.), *European Security and Defence Policy. The first 10 years (1999-2009)*, (EU Institute for Security Studies, Paris, 2009), at 189.

²⁶ OJ L 249, 1 October 2003, at 66.

²⁷ OJ L 16, 23 January 2004, at 65.

military to civilian, coming, of course, from the Ohrid Framework Agreement. It was not the first, but the second EU police operation within the ESDP framework; the EU Police Mission (EUPM) had previously been deployed in Bosnia and Herzegovina between January 1, 2003 and December 31, 2011. As María Julia Barceló argues²⁸, the objectives set by the mission were very ambitious, since it was not only about contributing to the consolidation of the rule of law and public order in the country, but also developing of an effective, professional, democratic and multi-ethnic police force. One sign that it has had some success is the extension of EUPOL Proxima to another, much smaller, mission.

That other mission was formed by the European Union's Police Advisory Team, which was the result of consultations between the EU and the FYROM government when EUPOL Proxima's operation drew to a close. It was created through Council Joint Action 2005/826/CFSP, with the aim of further supporting the development of an efficient and professional police service (Article 1.2), and lasting from December 15, 2005 to June 14, 2006. There were 29 EU police experts, contributed by 16 Member States: Germany, Austria, Belgium, Cyprus, Denmark, Spain, Finland, France, Greece, Hungary, Italy, Latvia, Slovakia, Slovenia, United Kingdom and Sweden. The experts supervised and apprehended the police on priority issues in the areas of border police, public peace and order and accountability, and the fight against corruption and organized crime. Supervision focused on high-ranking officers and officers.

Through the various missions it has developed in Macedonia, the EU has manifested its success. There is no doubt that Macedonia has made substantial progress in areas of conflict and the country's security since its deployment, although the crucial contributions made by further operations carried out by NATO before the deployment of EUFOR Concordia should not be forgotten.²⁹ Also, the decreasing sequence of the three missions' mandates supports the idea of an improvement to the situation, and that the conflict has not become entrenched or reached the levels of those that will be examined further down. Contributing to this are not only the EU missions, with their limited mandates in the police sector, but also Macedonia's objective of Europeanization: this country has been a candidate for EU membership since December 2005.

(D) SEPARATISM IN ACEH (INDONESIA): THE EU'S ACEH MONITORING MISSION

²⁸ M. Julià Barceló, *Las misiones de paz de la Unión Europea. Fundamentos jurídicos, origen y desarrollo, sistema organizativo, procedimiento de creación y seguimiento y acuerdos internacionales de ejecución*, (LLM thesis on file at the Universidad Oberta de Catalunya), Barcelona, 2012, p. 442.

²⁹ I. Ioannides, 'Police Mission in Macedonia', M. Emerson and E. Gross (eds.), *Evaluating the EU's Crisis Missions in the Balkans*, (Centre for European Policy Studies, Brussels, 2007), at 114.

Another of the scenarios in which the European Union has deployed a peace mission, in this case one of a civil nature, has been in Indonesia, with regard to the separatist conflict in Aceh. The Aceh Monitoring Mission (AMM), approved on September 9 2005 by Council Joint Action 2005/643/CFSP, was the result of the Memorandum of Understanding reached by those party to the conflict, the Indonesia government and the Free Aceh Movement (GAM), on August 15, 2005. This Memorandum ended a conflict that had developed three decades earlier and whose peaceful culmination contributed to the country's recovery from the devastating tsunami in 2004, leading all sides of the conflict to work towards peace and reconstruction.³⁰ Part 5 of the aforementioned Memorandum contemplated the creation of the AMM, which would be established by the European Union and by the ASEAN countries with a view to implementing the commitments derived from the Memorandum itself.

How and why had the EU's arrival and the configuration of its first peace mission taken place in such a distant land as Asia? The EU's presence in the area had already been felt, prior to the AMM action, and not only with reconstruction tasks in Aceh. Through its member states, the EU has been the largest direct investor in Indonesia, and is the country's second largest trading partner after Japan. In addition, the EU considers Indonesia as a key player in the Asia-Pacific region, a favourable ground for promoting democracy, good governance and respect for human rights, and a constructive partner in the fight against transnational terrorism.³¹

This facilitated the EU's path, given that, in the end, it was the only organization that attracted a consensus from the conflict's two sides. The Indonesian government preferred ASEAN, while rejecting the United Nations because of experiences from the East Timor case. The GAM, meanwhile, wanting to ensure the maximum internationalization from the conflict, opted for the EU, while not seeming to fully support the ASEAN, at least as the only organization intervening in the conflict's resolution. The ASEAN also seemed to be lacking in the necessary capabilities to develop the mission alone. As Kirsten E. Schulze says³², ties were made with the EU because the peace process that had previously been launched, the Helsinki Process, which involved the Finnish NGO Crisis Management Initiative, included

³⁰ S. Anderson, 'Why EU promotion is at odds with successful crisis management: Public relations, news coverage, and the Aceh Monitoring Mission', EU Centre in Singapore, Working paper N° 10, September 2012, at 2.

³¹ Gunaryadi, 'The EU in the peace process for Aceh', *Asia Europe Journal*, (April 2006), Vol. 4, Issue 1, 89-90.

³² K. E. Schulze, 'Mission Not So Impossible: The AMM and the Transition from Conflict to Peace in Aceh, 2005-2006', S. Rajaratnam School of International Studies, Working Paper n° 131, 29 June 2007.

the former Finnish president Martti Ahtisaari. It was he who suggested that it might be appropriate for the EU and ASEAN to intervene in managing the crisis.³³

In line with the view the EU had developed of Indonesia as a preferred trading partner, its status as an ASEAN reference country and trusted partner in the fight against transnational terrorism, its choice for Indonesia's territorial integrity and its non-support of the GAM's secessionist claims in Aceh were clear. In this line, and as is traditional in the CFSP, the position of the Member State that best knew Indonesia, the Netherlands—which supported the need for stability in the region and of having an Indonesian partner with a strong government—was followed.³⁴

But within the EU, not all the Member States were clear about the benefit of deploying a mission in such distant lands. As Giovanni Grevi³⁵ maintains, at the beginning, faced with a silent majority that did not consider it to be a priority, only countries like Finland, Sweden, the Netherlands and France pressed for the mission's deployment. The others understood that the EU would be better off concentrating its efforts on the stability of the Balkans or on providing security to its immediate surroundings. Finally, when the mission was favourably decided, among the reasons were that tested the functioning of the ESDP's crisis management mechanism and that it contributed to the EU's perception as a global player that was able to provide security beyond the immediate circle of its neighbouring countries.

On July 12, 2005, the Indonesian government addressed the EU to formalize the invitation to participate in the Aceh Monitoring Mission, while also requesting this from certain ASEAN countries, specifically governments from Brunei, Malaysia, the Philippines, Singapore and Thailand. Support for EU participation was likewise expressed by the Free Aceh Movement (GAM). The legality requirement of obtaining the consent of the State of the territory in order to be able to deploy this non-coercive mission was thus fulfilled. The mission was approved by Council Joint Action 2005/643/CFSP of 9 September³⁶, which expressed interest in a united, democratic, stable and prosperous Indonesia and the EU's respect for the Asian country's territorial integrity, expressing satisfaction at the intention voiced by the Indonesian president to grant special autonomy to Aceh.

The European Union's Observation Mission in Aceh, called the Aceh Monitoring Mission (AMM) and its first mission in Asia, expressed its mandate in article 2 of its Joint Action. In

³³ S. Anderson, 'Why EU promotion is at odds with successful crisis management: Public relations, news coverage, and the Aceh Monitoring Mission', EU Centre in Singapore, Working Paper N° 10, September 2012, at 2.

³⁴ Gunaryadi, 'The EU in the peace process for Aceh', *supra* note 31, at 97.

³⁵ G. Grevi, 'The Aceh Monitoring Mission: towards integrated crisis management', P-A. Barud and G. Grevi, *The EU mission in Aceh: implementing peace*, European Union Institute for Security Studies, Occasional Paper, n° 61, December 2005, at 22.

³⁶ OJ L 234, 10 September 2005, at 13.

accordance with this, the AMM was to supervise the implementation of the commitments between the Indonesian government and the GAM, as specified in the Memorandum of Understanding that both parties signed. The mandate was included in paragraph 2 of article 2, following exactly what was already laid out in the Memorandum. The AMM's commitments were to: a) monitor the demobilization of GAM and the decommissioning of its weapons; b) monitor the relocation of "non-organic" military forces and police troops; c) monitor the reintegration of active GAM members; d) monitor the human rights situation and provide assistance in this field; e) monitor the legislative change process; f) resolve controversial amnesty cases; g) investigate and rule on the complaints and alleged violations of the Memorandum; and, h) establish and maintain of liaison and good cooperation between the parties.

Participating in this mission—which was of a civil nature but included experts with military training in order to perform the weapons decommissioning and confiscation tasks—were all EU member countries, plus Norway and Switzerland, as well as the five aforementioned ASEAN member states. Although these countries contributed to the mission with a large number of members—95 ASEAN countries for the EU's 125 at the mission's most active point³⁷ the leading role was assumed by the EU, and this was also perceived on the ground. Deployment took place on September 15, 2005, for an initial period of six months, which was subsequently extended until December 15, 2006.

The mission proved successful, playing an important role in the management of the secessionist crisis. However, that crisis had already been substantially weakened, and the Helsinki Process, which culminated with the Memorandum of Understanding, had simply taken its course in a situation combining the 2004 tsunami catastrophe, a traditionally weak GAM and an Indonesian government with renewed democratic credentials. In this sense, the EU emphatically supported the principle of Indonesian territorial integrity from the outset, and collaborated in settling a secessionist conflict that was at its terminal phase. The EU's participation was inclusive and agreed by both parties from the beginning, and sought by the GAM. The Mission's success was also linked to its impartiality during the development and implementation of its mandate, and both parties' commitment to the process and its functions. And yet, as Xira Ruiz Campillo³⁸ warns, for the people of Aceh, the AMM played a vital role in the promotion and strengthening of peace, focusing primarily on security issues such as: monitoring the amnesty of GAM prisoners, confiscating and destructing their

³⁷ K. E. Schulze, 'The Aceh Monitoring Mission', G. Grevi, D. Nelly and D. Keohane (eds.), *European Security and Defence Policy. The First 10 years (1999-2009)*, (European Union Institute for Security Studies, Paris, 2009), at 267.

³⁸ X. Ruiz Campillo, *Las misiones civiles de la Política Europea de Seguridad y Defensa: Evolución 2003-2006*, (LLM thesis on file at the Universidad Complutense de Madrid), 2007, p. 389.

weapons, redeploying of Indonesian forces and reintegrating fighters. In addition, the AMM was responsible for overseeing the political process, which included the first direct elections. One area which lacked progress was that of human rights; the mission ended without Indonesia establishing a Human Rights Court or a Truth and Reconciliation Commission.³⁹

(E) THE BORDER ASSISTANCE MISSION TO MOLDOVA AND UKRAINE
AND THE TRANSNISTRIAN CONFLICT

The conflict in Transnistria arose in the heat of the USSR's break-up and the creation of Moldova, when separatists in the region proclaimed their independence in 1990, and ending up fighting with the Moldovan army in 1992. Although a ceasefire was agreed that same year, the conflict later became entrenched, with the territory transformed into a "de facto State" with Russia's support but without international recognition. Russia was heavily involved from the start, as it had troops in the region from before the conflict – the 14th Army – which have remained stationed in Transnistria until the present time. In addition, it was not devoid of economic interest and investment in the region, where Russian businessmen took advantage of the different customs procedures between Moldova and Transnistria, having introduced goods over the border. Because of its heavy involvement, Russia participated in not only the mediation leading to the ceasefire, but in the subsequent settlement process, known as the "Permanent Conference for Political Questions in the Framework of the Negotiating Process on the Transdnistriean Settlement", or 5+2 process. In it, together with Russia, were Moldova, Ukraine, the OSCE and the Transnistria region itself, plus the EU and the United States as observers. This process, which has been marked by fluctuations and has languished at times, was reactivated in 2011 on the occasion of the Russian-German initiative, which focused on the Meseberg Memorandum⁴⁰, but which has not, however, managed to move the process towards an agreed solution.

We are thus dealing with a secessionist conflict where the action or, as the case may be, the inaction of the European Union and its Member States is strongly mediated by Russian interests and even by the presence of armed contingents of that country, that support the separatist ambitions. However, such a sticking point appears as a result of progress towards the East due both to enlargement and to the European Neighbourhood Policy, that is, the projection of the European model and Russia's perception of this fact as a threat to its hinterland.

³⁹ K. E. Schulze, 'The Aceh Monitoring Mission', G. Grevi, D. Nelly and D. Keohane (eds.), *European Security and Defence Policy*, *supra* note 37, 270-271.

⁴⁰ S. Wolf, 'The Transnistrian Issue: Moving Beyond the Statu quo', Directorate –General for External Policies, European Parliament, 2012, at 6.

Against this backdrop EU's Border Assistance Mission, the EUBAM Moldova-Ukraine, was developed, which was not created until the end of 2005. The EU's involvement in the Transnistria conflict was, in fact, minimal until 2003. At that time, as Marius Vahl⁴¹ points out, the possibility was discussed of the EU organizing a post-conflict operation in Transnistria within the framework of the European Common Security and Defence Policy. It was discussed by the Political and Security Committee on several occasions, who had made proposals to both the European Union Institute for Security Studies and the Dutch OSCE Presidency. But there was no progress in that regard.

Ukraine and Moldova engaged in mutual negotiations that year, with the aim of securing customs control on Transnistria's long border, in light of the high levels of smuggling that occurred there. In March of that year, the Commission joined the negotiations, whose objective was twofold: a ban on the export of goods originating in Transnistria that did not bear a Moldovan customs stamp and customs control regarding this matter at the border. The formal request to the EU was delayed until 2005, when on 2 June, the presidents of Moldova and Ukraine addressed a joint letter to the President of the Commission and the High Representative for the CFSP. This requested technical assistance for a customs control agreement and an effective customs control mechanism on the Transnistrian section of the Ukrainian-Moldovan border. Following a fact-finding mission from the European side, it concluded that both countries needed to agree on the mission's mandate and role. For that reason, the Memorandum of Understanding on the EU Border Assistance Mission was agreed between the Commission and the governments of Ukraine and Moldova on 7 October, 2005.⁴² The Memorandum established that the Mission would provide practical advice on matters relating to the border, customs and revenue, but that it would be authorised to enforce the Moldovan or Ukrainian legislation, abstaining from any action not compatible with its consultative nature. The objectives, described in the Annex to the Memorandum, aimed to build up appropriate operational and institutional capacity in both countries to ensure effective border control and surveillance and to improve transnational cooperation on border management. But, in addition, the Mission was entrusted with another overall objective: to contribute to settling the Transnistria conflict "by strengthening border control and border surveillance in Moldova and Ukraine, thus reducing possible security threats originating from this region." Among the specific objectives, one added the Mission's involvement in this task, confirming that it should make a positive contribution towards the settlement of the conflict in Transnistria and, if this were achieved, to promote the consolidation of the settlement.

⁴¹ M. Vahl, 'The Europeanisation of the Transnistrian Conflict', CEPS Policy Brief, N° 73/March 2005, at 2.

⁴² Available here.

What makes this matter unusual is that the contribution to the conflict's solution was not based on the Mission's political involvement in the negotiation process, but arose precisely from the consequences of its border control management, thus reducing possible security threats, due the presumption that the elites of the secessionist territory had ties with and were benefitting from illegal smuggling across de facto borders. By combatting smuggling, the EU Mission sought to reduce these elites' interest in maintaining the separatist status quo.

Therefore, the Mission's configuration meant its nature was twofold; it was a hybrid mission involving both technical assistance and security-related political matters. On the one hand, the Commission was responsible for the Mission's financing, management and execution, although this in close cooperation with the political supervision from the Council and the contribution of the Member States.⁴³ It was not, therefore, a mission within the ESDP framework, despite having a minor component relating to security, which ultimately proved to be absolutely residual. As Madalina Dobrescu maintains⁴⁴, in this sense, EUBAM should be considered as a novelty within the toolkit available to the EU for civil administration, rather than an ESDP mission – although the Council is assured of the exercising of political supervision – or an exclusively Commission-managed operation, due to the participation of the Member States. Of them, only Ireland, Luxembourg, Malta, Spain and Sweden have not participated. By contrast, countries have been added, with members sent to the Mission from Georgia, Kazakhstan and Tajikistan. What did occur, with the CFSP's own instruments, was that the EUSR's mandate for Moldova was amended, through Joint Action 2005/776/CFSP, to include the objective of enhancing “the effectiveness of border and customs controls and border surveillance activities in Moldova and Ukraine along their common border, with a particular focus on the Transnistrian section, notably through an EU Border Mission”.⁴⁵

In theory, the Mission's work has ensured international cooperation between Moldova and Ukraine in their approach to customs standards and European legislation. In a first phase, this has translated to contributing to the facilitation of economic relations between Moldova itself and Transnistria. In this regard, it can be assumed that the EU Mission's role, which in that phase has normalized the customs regime between Moldova and Transnistria, could effectively have guaranteed interpretable steps to bring closer a solution to the conflict. But

⁴³ G. Dura, 'EUBAM Moldova.Ukraine. The EU Border Assistance Mission to the Republic of Moldova and Ukraine', G. Grevi, D. Nelly and D. Keohane (eds.), *European Security and Defence Policy. The First 10 years (1999-2009)*, (European Union Institute for Security Studies, Paris, 2009), 279-280.

⁴⁴ M. Dobrescu, 'EU security practices in Eastern Europe: Extending European risks or managing risks?', Discussion Paper, Europa-Kolleg Hamburg, Institute for European Integration, 2015, N°2/15, at 7.

⁴⁵ OJ L 292, 8 November 2005, at 13.

circumstances changed when the Moldova-EU Association Agreement, which included the creation of a free trade area, came into operation, because the Transnistrian authorities had opposed the agreement, probably through fear of the Russian reaction and its retaliatory measures if they agreed to join the free trade area. From this moment onwards, the EU Mission's activity, aimed at facilitating the implementation of the Moldova-EU Association Agreement, assisting this country in strengthening the control of its internal border with Transnistria, helped achieve the opposite effect of that in the previous stage, where the undertaking had been to guarantee the porosity of the border, and therefore contact between the opposing sides. Therefore, as Madalina Dobrescu warns, Moldova's requirement to strengthen its internal border in order to comply with the free trade area deriving from the Association Agreement, combined with the tasks of the EU Mission on the border between Moldova and Ukraine for the same purpose "showed how one of the EU's civilian missions deployed in the Eastern Neighbourhood has inadvertently contributed to promoting the status quo in the Transnistrian conflict and in some cases even fuelled growing tensions."

Being a Mission, not so much of the ESDP, because the political activities in the negotiation process were alien to it, and only its contribution to the conflict solution seemed to come from the consequence of contributing to fiscal harmonization and customs checkpoint at the frontier, it seems that the negative effect on settling the secessionist problem is more a result of the EU's Europeanizing ambition through its European Neighbourhood Policy.

(F) SECESSION IN KOSOVO AND EU MISSION: EULEX KOSOVO (FEBRUARY 2008-JUNE 2018)

In theory, other EU Missions have had to deal with separatist conflicts to which the EU position has been guarantor of the principle of the States territorial integrity where such secessionist attempts were lodged, but in the case of Kosovo the situation U-turns. In effect, the position of the EU and of most of the Member States will make a major contribution to giving acceptance to independence in a secessionist conflict without maintaining the Serbian state's territorial unity. And the EU Mission EULEX Kosovo will be key to achieving that goal. In addition, the EU's decisions in this conflict will give little respect to the international community agencies' position, particularly the Security Council, whose resolution 1244 (1999), of 10 June, forms the background for international legality. Kosovo had been under international administration since 1999, established through the United Nations Interim Administration Mission in Kosovo (UNMIK) after the NATO bombing of Serbia. Resolution 1244 (1999) had given the United Nations mission a mandate on Kosovo's administration, including matters relating to justice and the police. These it remained responsible for, including granting functions to the self-government authorities following the

adoption of the Constitutional Framework for self-government on 15 May, 2001⁴⁶, which was passed by the Special Representative of the United Nations Secretary-General. Under this Framework, some powers were transferred to Kosovo's provisional self-government institutions, which included a parliament, a president responsible for foreign affairs, a government—including a prime minister—a judicial system and thirty municipalities.⁴⁷ As stated by Dimitris Papadimitriou and Petar Petrov⁴⁸, the Kosovan authorities were limited by their inability to perform their functions in the northern area of the Serbian minority, because that minority organized their own self-government, in close connection with Serbia.

According to resolution 1244 (1999), the presence of the UNMIK in Kosovo, which was still bearing on the majority of the responsibilities, including exercising police functions and rebuilding the judicial system, was joined by other organizations: the OSCE dealt with areas such as democratization and human rights; the UNHCR coordinated humanitarian assistance to the displaced and the European Union was involved with economic reconstruction. However, the ultimate decisions on all issues rested with the United Nations Special Representative.⁴⁹

As early as October 2005, the need for the continued presence of an international police force with executive powers, as well as international judges and prosecutors to deal with cases involving war crimes, organized crime, corruption and interethnicity, was still clear.⁵⁰ This especially in the wake of the interethnic disturbances that had occurred in March 2004.

Moreover, negotiations on Kosovo's final status began on 20 February, 2006, which sought a new Security Council resolution to replace resolution 1244 (1999) and establish a definitive solution to the situation in Kosovo. Previously, in November 2005, a representative of the United Nations had been appointed as United Nations envoy on Kosovo's status for that purpose: Martti Ahtisaari. The cornerstone of the dissent in the international community regarding Kosovo was the "Comprehensive Proposal for the Kosovo Status Settlement," also known as the Ahtisaari Plan⁵¹, presented on March 26, 2007, which fostered an internationally supervised Kosovan independence. The Plan was supported by the Kosovo authorities and rejected by Serbia. It was never accepted by the Security Council – despite the support of the United States, France and Great Britain – because of Russia and China's reluctance to

⁴⁶ UNMIK/REG/2001/9, 15 May 2001.

⁴⁷ Ibid.

⁴⁸ D. Papadimitriou and P. Petrov, 'Whose Rule, Whose Law? Contested Statehood, External Leverage and the European Union's Rule of Law Mission in Kosovo', *supra* note 7, at 754.

⁴⁹ E. de Wet, 'The Governance of Kosovo: Security Council Resolution 1244 and the Establishment and Functioning of EULEX', 103 AJIL, N° 1, (Jan. 2009), at 84.

⁵⁰ Report on the situation in Kosovo, dated October 7, 2005, by Kai Eide, Special Envoy of the Secretary General of the United Nations, in UN Doc. S / 2005/635, at 40.

⁵¹ S/2007/168/add. 1.

support this path towards Kosovan independence, despite it being internationally supervised. It's worth noting that the Ahtisaari Plan was already in favour of an ESDP mission for Kosovo, under the direction of the EUSR, with powers in the rule of law field, including in particular judicial, police, border control and customs matters.⁵²

During discussions within EU institutions starting in February, 2005 about their contribution to Kosovo's case, it was decided that a relevant role must be played, that such a role should not be identical to that deployed by the UNMIK, that such a role should be deployed in the field of the rule of law and that it should be done as soon as possible.⁵³ The EULEX Kosovo Mission had prior preparation, consisting of the deployment of an advance team, the EU Planning Team (EUPUT Kosovo) whose objective, according to its instrument of establishment, Council Joint Action 2006/304/CFSP⁵⁴, was to "ensure a smooth transition between selected tasks of UNMIK and a possible EU crisis management operation". The dispatch of EPUT Kosovo had previously been suggested by the Special Representative of the United Nations Secretary-General in a letter to the High Representative of the CFSP dated 4 April, 2006.⁵⁵ In addition, the Kosovo's self-government authorities not received the EPUT Kosovo favourably but also agreed to the future possibility of an ESDP mission in the field of the Rule of Law.⁵⁶ In the Joint Action (recital 13), the Council took care to specify that "the establishment of an EPUT Kosovo will not in any way or form prejudice the outcome of the future status process or any other subsequent decision by the EU to launch an ESDP mission in Kosovo". But this care was disregarded at the time of determining its functions because, as Araceli Mangas Martín⁵⁷ has warned, EPUE Kosovo's acknowledged purpose was to displace UNMIK, either by advising on transferring powers to local authorities, or planning the transfer of UNMIK's tasks to "a future EU crisis management operation, in the field of the rule of law and other areas that might be identified by the Council in the context of the future status process" (Article 2.3 of the Council Joint Action 2006/304/CFSP). However, that the EU's intention was to acquire a leading role in Kosovo, even at the expense of the UNMIK's presence, could be interpreted in two ways. Firstly, that such willingness to increase its visibility was independent of the decision on Kosovo's future status, in line with the contents of recital 11 of Joint Action 2006/304/CFSP. Secondly, that

⁵² Annex IX, art. 2, point 2.3 of the Ahtisaari Plan.

⁵³ D. Papadimitriou and P. Petrov, 'Whose Rule, Whose Law? Contested Statehood, External Leverage and the European Union's Rule of Law Mission in Kosovo', *supra* note 7, at 755.

⁵⁴ OJ L 112, 24 June 2006.

⁵⁵ As mentioned in recital 11 of Joint Action 2006/304 / CFSP.

⁵⁶ Recital 12 of Joint Action 2006/304 / CFSP.

⁵⁷ A. Mangas Martín, 'Kosovo y Unión Europea: Una secesión planificada', *REDI*, vol. LXIII (2011), I, at 115.

the deployment of EPUT Kosovo was in that sense not innocent, and was intended to facilitate the secessionist option: Kosovo's independence.

What was the EU's position on Kosovo's international status when EPUT Kosovo was approved and deployed? As Araceli Mangas Martín has noted⁵⁸, the European Council and the Council's pronouncements, at least until November 2006, had rejected recourse to a unilateral solution such as that which would eventually apply in Kosovo. This author makes references specifically the Council Decision of 30 November, 2006 which grants exceptional financial assistance to Kosovo from the Community, the preamble of which included a mention of Security Council Resolution 1244 (1999), stating that it was on track, "pending a final settlement, of a substantial degree of autonomy and self-government in Kosovo."⁵⁹ But, months before, the Joint Action that created EPUT Kosovo, despite containing an extensive preambular reference to resolution 1244 (1999) had been purged of any position regarding Kosovo's status, which should be assessed as a landslide that abandoned the arguments supporting territorial integrity. Why was this Joint Action not used to express the EU's faith in this principle for the future of Kosovo? Its failure to do this can only be interpreted as a settling of dissent from member states on Kosovo's international status. There was, of course, an express mention of support for Martti Ahtisaari, as the Council had declared on 12 December, 2005. Given that the United Nations Envoy was already developing his mandate, can we presume that his choice to conceive Kosovo as a special case and to give it the solution of independence under international control was already known in the EU, and assumed by the majority of its member states?

That the Ahtisaari Plan was known to its last extremes is shown by the fact that the EU combined EPUT Kosovo with the deployment of another team, mentioned in the Plan. This was the ICM/EUSR Team, or EU team, which contribute to the establishment of a possible International Civilian Mission in Kosovo, including the EU Special Representative (EUSR) component. This Team was approved through Joint Action 2006/623/CFSP, of 15 September.⁶⁰ It was intended to work in cooperation with the international community, and therefore in close collaboration with UNMIK, and with the Kosovan authorities. Sometime later, when the initial action was up for renewal on 31 July, 2017, the name International Civil Mission was changed to International Civilian Office, which put it one step further in line with the Ahtisaari Plan, which also used this term. In fact, in the recital of Joint Action 2007/517/PESC, of July 16⁶¹, which carried out the said change, the Ahtisaari Plan, which was

⁵⁸ Ibid. 105-112.

⁵⁹ OJ L 339, 6 December 2006, at 36.

⁶⁰ OJ L 253, 16 September 2006, at 29.

⁶¹ OJ L 190, 21 Julio 2007.

never accepted, was openly recognized as a rationale. As Araceli Mangas Martín warns⁶², this International Civil Office —which never had the Security Council's support, and which remains outside resolution 1244 (1999)— had no other legal basis than the Constitution of Kosovo, which was moreover a true reflection of the Ahtisaari Plan.

In a scenario that continued to be marked by the lack of agreement on the final status of Kosovo, given the blockade that was the Security Council on that issue, the EU approved the development of EULEX Kosovo just days before the unilateral declaration of independence was adopted, on February 17, 2008. Joint Action 2008/124/CFSP, of February 4, was adopted, as Araceli Mangas maintains, “knowing for sure that this (the unilateral declaration of independence) would take place without authorization from the United Nations”⁶³. The declaration was not exactly agreed unanimously, given the absolute opposition from five Member States —Cyprus, Slovakia, Spain, Greece and Romania. Despite this, the Joint Action was adopted thanks to the constructive abstention of the five countries mentioned in article 27.3 TEU. Why was EULEX Kosovo still deployed? There is no doubt that, among the majority of the Member States that supported independence, the whole idea was that not doing so would show the EU to be incapable of acting, and acting with one voice, in the face of a crisis that was developing on European soil.⁶⁴

Kosovo declared its independence unilaterally by adopting the Ahtisaari Plan as the basis of its Constitution. And, in the same vein, the foundation and the mandate of EULEX Kosovo draw from the provisions in that Plan that referred to the development of the EU mission. Indeed, as to its foundation, Joint Action 2008/124/CFSP could not take shelter under the protection of a new Security Council resolution, given that it was never adopted, so had to continue using resolution 1244 (1999). In its recitals, it therefore simply recalled the paragraphs of the United Nations resolution which authorized the Secretary General to establish – with the assistance of the competent international organizations – an international civil presence in Kosovo, and in which it welcomed the work initiated by the EU in the framework of economic development and stability in the region affected by the Kosovo crisis (paragraphs 10 and 17). But were those mentions enough to legitimize EULEX Kosovo as a mission authorized by the Security Council? EULEX Kosovo was not, of course, a mission established by the United Nations Secretary-General but by the EU itself. Without the endorsement of a Security Council resolution, EULEX Kosovo would need the consent of all the parties involved in the area it was to be deployed. This required the consent of the

⁶² A. Mangas Martín, ‘Kosovo y Unión Europea: Una secesión planificada’, *supra* note 57, at 116.

⁶³ *Ibid.*, at 117.

⁶⁴ R. Muharremi, ‘The European Union Rule of Law Mission in Kosovo (EULEX) from the Perspective of Kosovo Constitutional Law’, 70 *ZaöRV* (2010), at 366.

territorial state of the United Nations which was still Serbia – inasmuch as it had assumed the administration of Kosovo, and of the Kosovar authorities themselves.

And most importantly, for that reason – because it lacked legal basis – it could not affect UNMIK and its competence deployment that was made on the basis of resolution 1244 (1999). Quite the opposite occurred: the reality of the EULEX Kosovo mandate affected both UNMIK's competences and its mandate, which had to be restructured. The mandate of EULEX Kosovo, as determined in article 2 of Joint Action 2008/124/CFSP was to “assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices”. Regarding the nature of its tasks, the same article explained that EULEX Kosovo would fulfil its mandate through monitoring, mentoring and advising, while retaining certain executive responsibilities. Among the functions set out in article 3 for the fulfilment of the mandate included in article 2, some would lead to the displacement of UNMIK. As Robert Muharremi argues⁶⁵, the “legalization” of EULEX Kosovo did not take place until months after its initial deployment, when in November 2008 the United Nations Secretary-General informed of Serbia's acceptance of certain conditions – the six-point plan – for the reconfiguration of UNMIK and for the EU Mission to go ahead.⁶⁶ These were: that the Mission had to respect resolution 1244 (1999)'s framework, act under the authority and according to the United Nations' neutrality status and inform it of its activity. The Secretary-General's six-point plan, which the Kosovo authorities initially rejected but later accepted, included the fact that the Kosovar authorities would not deploy police, judicial or customs powers in the area where the Serbian minority was located, and that these would remain under United Nations control.

In theory, therefore, following six-point plan's acceptance, EULEX Kosovo was forced to play a neutral role in Kosovo's situation and international status, whose unilateral declaration of independence had already been made. This situation contrasted with the paradox that loomed over the EU Special Representative for Kosovo —named as per Joint Action 2008/123/CFSP of 4 February⁶⁷— which also combined the role of International Civilian Representative, a proposal included in the Ahtisaari Plan and received by the Kosovo Constitution, but never endorsed by the United Nations. As EUSR, this individual provided

⁶⁵ Id., at 370.

⁶⁶ E. Milano, ‘Il trasferimento di funzioni da UNMIK a EULEX in Kosovo’, 91 *Rivista di Diritto Internazionale* (2008) 967-990.

⁶⁷ OJ L 42, 16 February 2008, at 88.

local political guidance to EULEX Kosovo, and was to remain neutral; while the role of International Civilian Representative was geared towards consolidating independence. Somewhere between those two plains sat, to a certain extent, EULEX Kosovo, whose own mandate was that it would assist the institutions of Kosovo “in their progress towards sustainability and accountability”, which did not stop meaning making contributions to consolidate state structures after the unilateral declaration of independence. But the greatest opposition to the commitment that placed EULEX Kosovo under the UN mandate came, as Erika de Wet suggests⁶⁸, from the Albanian-Kosovar community represented by its government, which made cooperation between UNMIK and EULEX Kosovo very difficult and facilitated the replacement of the former by the latter. However, the Serbian minority’s persistent opposition in northern Kosovo led to EULEX Kosovo’s failure to operate there in the early days of the mission’s deployment.

Going beyond our judgement of how effective EULEX Kosovo was in its achieving its goals, among other things, if it has contributed to the conflict’s prevention and appeasement, what matters is whether its presence and subsequent deployment has contributed to legitimizing Kosovo’s secessionist yearnings. Some have argued that one of its primary political objectives was to find a way of displacing UNMIK and thus create a mission that would point to an independent Kosovo, which corresponded with the idea of Western European aspirations.⁶⁹ Tasked with fulfilling the Ahtisaari Plan, the EU mission would have served, therefore, as a support for avoiding an uncomfortable and neutral United Nations’ presence and, once the displacement of UNMIK was achieved, and without due regard to the promised “neutrality”, to deepen the path towards Kosovo’s independence, as desired by the United States and most EU Member States, even despite of the opposition of the five countries that ended up accepting its deployment as a lesser evil.

(G) THE EUROPEAN UNION MISSION IN GEORGIA (SEPTEMBER 2008–DECEMBER 2018)

The war in Georgia started on 7 August, 2008, and was triggered by this country’s attempt to recover the secessionist territories of South Ossetia and Abkhazia. In Abkhazia, the Georgian military operation was not carried out, given its failure in South Ossetia. The war ended in five days, following a hasty reaction from Russia, who since the ceasefire of 1992 had stationed troops in those territories, under the umbrella of CIS peace operation. It is in this context that the EU, mediator in the task of reaching a ceasefire and peace agreement

⁶⁸ E. de Wet, ‘The Governance of Kosovo: Security Council Resolution 1244 and the Establishment and Functioning of EULEX’, *supra* note 49, at 96.

⁶⁹ R. Zupancic, N. Pejic, B. Grilj and A. Peen Rodt, ‘The European Union Rule of Law Mission in Kosovo: An Effective Conflict Prevention and Peace-Building Mission?’, *Journal of Balkan and Near Eastern Studies*, (2017), at 6.

developed, at Georgia's request, a mission to observe the ceasefire. On the basis of a proposal by the EU Presidency, held by France, the six-point Ceasefire Agreement, was accepted by Russia and Georgia on 12 August, 2008. The plan referred plainly to the cessation of hostilities on all sides, to the guarantee of access to humanitarian aid and to the withdrawal of Georgian and Russian troops to their positions before the conflict. The fifth point, referring to the withdrawal of Russian troops, included the following: "While awaiting an international mechanism, Russian peacekeeping forces will implement additional security measures". There was no mention in the agreement of Georgia's territorial integrity.

The EU mission, EUMM Georgia, was approved by the Council on 3 September, 2008, in accordance with Joint Action 2008/736/CFSP of 15 September, and was deployed on 1 October of that year. Its mandate extends until 14 December, 2018. EUMM was not the only mission deployed in Georgia by the EU. Previously, in 2000, the EU was already involved in border issues, when the Council approved, at the request of the Georgian President Shevardnadze, on 10 April 2000, Joint Action 2000/456/CFSP.⁷⁰ This aimed to facilitate assistance for strengthening the capacities of the Georgian authorities to, through their Border Guard, provide support and protection to the Observation Mission that the OSCE deployed on the border between Georgia and the Chechen Republic of the Russian Federation. The material requirements of the Georgian Border Guard led to this European Union measure, which was implemented by the Commission and subsequently renewed several times.⁷¹ Later, on 28 June, 2004, the ESDP EUJUST THEMIS mission was launched—the European Union's Rule of Law Mission in Georgia—following Joint Action 2004/523/CFSP.⁷² This Mission, the first on this issue deployed by the EU, aimed to support the transition process in Georgia and prevent the security situation there, which the Council considered stable at that time, from deteriorating. It focused its intervention on reform to the criminal justice process in Georgia. It had no connection with the Georgian secessionist territories of Abkhazia and South Ossetia. Its tasks drew to a close on 14 April, 2005.

The EU's presence in Georgia had been fluctuating considerably since 1992. As Maria Raquel Freire and Licínia Simao⁷³ maintain, throughout the 1990s relations were underdeveloped and low on both parties' agendas in terms of security, with Georgia more closely linked to both the United States and NATO. Of course, the EU was one of the main contributors of all types of aid (e.g. technical and humanitarian), and at the end of the decade,

⁷⁰ OJ L 183, 22 July 2000, at 3.

⁷¹ See Joint Actions 2001/568 / CFSP, of July 26 (in OJ L 202, of 27 July 2001) and 2002/373 / CFSP, of 21 May (in OJ L 134, of 22 May 2002).

⁷² OJ L 228, 29 June 2004, at 21.

⁷³ M. Raquel Freire y L. Simao, 'The EU in Georgia: Building Security?', Janeiro de 2013, oficina nº 396, Centro de Estudos Sociais, Universidade de Coimbra, at 6.

began to establish close contractual relations with Georgia. Among these were the Partnership and Cooperation Agreement in 1999, to the Association Agreement which entered into force in 2016 and implemented a free trade area. All this within the European Neighbourhood Policy launched in 2003, with its more specific 2009 initiative, the Eastern Partnership.⁷⁴ The inclusion of the Caucasus countries in the European Neighbourhood Policy and the window of opportunity opened by 2003's Rose Revolution, the events engendered a shift in the area of security in relations between the EU and Georgia.

However, the EU's involvement in resolving the conflicts in Abkhazia and Ossetia, which was not via Europeanization, but through direct intervention in matters of security and defence, was not so decisive, before the outbreak of the 2008 war, despite the willingness of the Georgian authorities, in particular after the Rose Revolution of 2003, to achieve a greater degree of European presence.⁷⁵ In any case, on 7 July, 2003, the Council appointed an EU Special Representative for the South Caucasus through Joint Action 2003/496/CFSP⁷⁶, whose mandate included preventing conflicts peacebuilding in the region and assisting the various organizations and processes in the area (particularly the United Nations and the OSCE). A year later, after Russia had vetoed the continuation of the OSCE's Border Monitoring Operation (BMO) between Russia and Georgia, it invited the EU to take over. But the EU's fear that Russia considered this an affront prevented the initiative from crystallizing, which showed the clear division between Member States in favour of greater involvement in resolving the Georgian conflicts—the Baltic countries, Sweden, the Netherlands, the United Kingdom and Ireland—and those preferred not to upset Russia or not delve into the eastward projection of the EU—France, Germany, Portugal, Spain, Italy, Greece and Austria.⁷⁷

However, after considering several options, it was decided that a Border Support Team be created within the structure of the EUSR for the South Caucasus. This team was made up of three members when the deployment took place in April 2005, although subsequently its number was increased to thirteen. As regards its mandate, Joint Action 2005/582/CFSP of 28 July⁷⁸, which modified that of the EUSR for the South Caucasus, mentioned the support team and the tasks to be addressed. Among these were: “provide the European Union with reporting and a continued assessment of the border situation and to facilitate confidence-building between Georgia and the Russian Federation”, “assist the Georgian Border Guard” and “work with the Georgian authorities to increase communication between Tbilisi and the

⁷⁴ To gauge the dimensions of the EU's relations with Georgia, see here.

⁷⁵ N. Popescu, ‘EU and the Eastern Neighbourhood’, *supra* note 2, at 465.

⁷⁶ OJ L 169, 8 July 2003, at 74.

⁷⁷ N. Popescu, ‘EU and the Eastern Neighbourhood’, *supra* note 2, 465-466.

⁷⁸ OJ L 199, 29 July 2005, at 92.

border”, excluding Abkhazia and South Ossetia. As Nicu Popescu maintains⁷⁹, over time the EUSR Border Support Team in the South Caucasus has ended up becoming comparable in personnel and involvement to ESDP missions elsewhere, the only difference being that this has been an invisible mission. Nicu Popescu⁸⁰ also referred to the controversial but highly significant initiative, the attempt to extend the EUSR Border Support Team’s mandate to perform work in Abkhazia and South Ossetia. Greece vetoed this for two years—with the veto lifted in early 2008—given the possibility that such activity would be troublesome for Russia. The EU’s intention was a minor preview of the policy later deployed by the EU and known as “non-recognition and engagement” to the secessionist territories. In effect, it was intended to internationalize some areas of cooperation with the strongly Russia-dependent “de facto” states, to decrease Russia’s influence and increase the EU’s, bypassing international recognition and therefore without the need to question Georgia’s territorial integrity.

It was the war of 2008 and the Georgian request which made possible the creation and deployment of EUMM Georgia, because both cases looked to the EU to play bigger role in resolving the conflict. But that was not all; as it has been argued⁸¹, the consensus among the Member States that swift action should be taken, which led to EUMM Georgia being approved without delay and in record time, was due to a combination of factors: firstly, the clear perception that it was a full-scale crisis on EU soil; secondly, the French presidency’s decisive action; thirdly, relations with Russia, which the conflict was affecting, enabling this country to accept the EU’s role in a conflict located in the post-Soviet space for the first time; and, fourthly, that the United States was unable to act as mediator. In this way, the EU’s role as security provider in Georgia was confirmed. In cooperation with the OSCE, a platform was created for the Geneva negotiations, in which the EU, the OSCE, the United Nations and the United States took part, together with Georgia and Russia. At Russia’s request, Abkhazia and South Ossetia were included in the negotiating framework, with occurred despite reluctance from Georgia, if only because the EU and the OSCE agreed to it.⁸²

EUMM Georgia is a civil mission, of consolidation and peace-building, to observe and supervise the aforementioned six-point Agreement of August 12, 2008 and the subsequent Implementation Agreement on 8 September, 2008. The Mission’s mandate was specified in article 2 of Joint Action 2008/736/CFSP, under which civil monitoring of the parties’ actions

⁷⁹ N. Popescu, ‘Europe’s Unrecognised Neighbours. The EU in Abkhazia and South Ossetia’, CEPS Working Document N° 260/March 2007, at 12.

⁸⁰ N. Popescu, ‘EU and the Eastern Neighbourhood’, *supra* note 2, 467-468.

⁸¹ M. R. Freire y Licinia Simao, ‘The EU in Georgia: Building Security?’, *supra* note 73, at 14.

⁸² N. Mikheilidze, ‘The Geneva Talks over Georgia’s Territorial Conflicts: Achievements and Challenges’, *Documenti IAI*, 2010, 10 (25), at 10.

was to be provided, including full compliance with the six-point Agreement and the subsequent implementing measures “throughout Georgia”. This raises some interesting questions, and on the secessionist territories too. Neither of the authorities in Ossetia or Abkhazia stepped in to grant consent for the deployment of the EU Mission. Should they have? Since the EU was in favour of the principle of territorial integrity in Georgia, as no other option was possible, seeking the consent of these countries to implement deployment and perform the Mission’s activities in the territories that were not controlled by the Georgian government, and which had been recognized by the Russian Federation as independent republics straight after the end of the war, would have given those with secessionist ambitions the green light. This doubt has been raised⁸³, with mention also to the precedent of the EU Monitoring Mission in Aceh (Indonesia). But this case, which we examined earlier, does not have a clear parallel with that of Georgia, because in Indonesia, the Aceh separatist conflict was settled and the EU Mission was set to contribute to this settlement, with the consent of both the separatists and the Indonesian government. This was not, of course, what happened in Georgia, where the situation in Abkhazia and South Ossetia was that of secessionist territories where *de facto* authorities had control, with the support of Russia and excluding the presence of the Georgian authorities. While in Aceh, the Free Aceh Movement (GAM)’s consent to the EU’s presence had permitted its demobilization and decommissioning, within the framework of the Memorandum of Understanding – which in its own preamble recognized the unitary nature of Indonesia as a state – a hypothetical consent from the secessionist authorities to the EU Mission would have had the Georgian six-point Agreement as a framework, precisely that whose compliance the EU had to monitor, in which there was no mention of maintaining Georgia’s territorial integrity. As the EU itself states, except in specific cases, the *de facto* authorities of Abkhazia and South Ossetia have not authorized EUMM access to the territories under their control.⁸⁴ It has been logically argued that this was a reaction to the EU’s refusal to recognize the two secessionist entities.⁸⁵

In addition, Joint Action 2008/736/CFSP specified that the EU Mission was to act in close coordination with the United Nations and the OSCE which, at the time of the outbreak, and in the case of the former, from back in 1992, both had missions in the area. Indeed, the United Nations had deployed the United Nations Observer Mission in Georgia

⁸³ This is what María Julià Barceló considers in her excellent work ‘La Misión de observación de la UE en Georgia: ¿Instrumentos para el reconocimiento de territorios secesionistas?’, en 18 *Revista Electrónica de Estudios Internacionales*, (2009).

⁸⁴ See further information available [here](#).

⁸⁵ B. Gaweda and M. Siddi, ‘No settlement without a proactive policy: The European Union and the secessionist conflicts in the post-Soviet space’, IEP Policy Briefs on Enlargement and Neighbourhood, N° 5/2012, Institut für Europäische Politik, at 5.

(UNOMIG) in 1993, while the OSCE Mission in Georgia had been in existence since 1992. Neither of them survived the political pressures resulting from the 2008 conflict and, most importantly, the Russian objective of recognizing the independence of Abkhazia and South Ossetia.⁸⁶ The OSCE Mission ended on 30 June, 2009, without accepting the Russian request for it to be split into two missions—one for Abkhazia and the other for South Ossetia—which would entail the recognition of these “de facto states”.⁸⁷ Fifteen days before, the Security Council had failed to extend the UNOMIG mandate and thus, in the Georgian context, the EU was the only Mission left on the ground.

It is also interesting to note that the European Parliament, which had supported EUMM Georgia’s creation in its resolution of 3 September, 2008, required “a UN or OSCE mandate for an ESDP peace mission” (paragraph 20).⁸⁸ Of course, no mandate from these organizations ratified the EU Mission’s presence, but this was not strictly speaking required in terms of international legality, since it was a post-conflict operation without the use of armed force which, in addition, was deployed in a country whose government had not only consented, but requested, it. The six-point Agreement between Georgia and Russia certainly mentioned an international mechanism that would replace the forces of a country that had been deployed in the secessionist territories since 1992 as CIS peacekeeping forces, but for various reason the EUMM Georgia was not such a mechanism – the most relevant being the scantiness of his mandate.

The most visible component of the EU Mission’s stabilization work, irrespective of its command structure, headquarters and offices, is the patrolling of the areas adjacent to the administrative boundary lines of the secessionist regions. But beyond its success, which must, of course, be measured in light of its limited mandate, it is worth highlighting its relationship with the persistent continuation of the status quo and the lack of progress towards a political solution that would lead to those territories being reintegrated into Georgia’s sovereignty. Should such a diagnosis fall on the duty of the EUMM Georgia? Would this mean admitting that its very existence and the fulfilment of its functions have contributed to steps only being taken in the direction of maintaining those “de facto states”? We cannot judge this contribution without looking at the overall context of Georgia’s secessionist conflicts, as well the EU’s position in that country and its policy, which should also be considered in its entirety. Firstly, it is worth remembering Russia’s position in these conflicts: this country accepted the proposed ceasefire once all its objectives had been achieved, including territorial

⁸⁶ R.G. Whitman and S. Wolf, ‘The EU as a conflict manager? The case of Georgia and its implications’, 86 *International Affairs* (2010), 1, at 93.

⁸⁷ M. Julià Barceló, ‘La Misión de observación de la UE en Georgia...’, *supra* note 83, at 8.

⁸⁸ European Parliament resolution of 3 September 2008 on the situation in Georgia, P6-TA-2008-0396.

control of the secessionist enclaves. It maintained its military presence, even if it was as CIS peacekeeping forces. It achieved, with time, the withdrawal of other non-EU peace missions and accepted EUMM Georgia's very limited presence and activity, which in Abkhazia and South Ossetia was prevented by the *de facto* authorities because of not proceeding with international recognition, which Russia *had* done. It interpreted Kosovo's unilateral declaration of independence and its early and swift recognition by most EU Member States as a precedent that legitimized – in terms of the self-determination of peoples and against the territorial integrity presented by Georgia – the independence of “*de facto* states”. In addition, its strong control over the secessionist territories' political elites, based on a deep economic dependence, kept the status quo.

Faced with this situation, the EU's capabilities, including its Mission, would have struggled to change the status quo. Starting with the internal divisions among its Member States, whose heavily divided countries did not, for a variety of reasons, wish to disturb Russia, or suspected that France's agenda would dominate in terms of the policy to follow in Georgia. It is little wonder that although there was a European Union Special Representative for the South Caucasus, in September 2008, in a clear concession to the French position in the conflict, the French diplomat Pierre Morel, who was then acting as the EU Representative for Central Asia, was appointed as EU Representative for the crisis in Georgia, adding this mandate to the one already held.

However, the EU's political orientation towards Georgia's separatist regions shifted in December 2009 when the Council approved the non-recognition and engagement policy for these enclaves, with the aim of de-isolating these communities – an isolation to which Russia had contributed through its acts and omissions. The basis of the proposal was in a nonpaper that was never publicised, so as not to raise the public profile of the newly adopted policy and, in addition, it had also been the idea of the EUSR for the Caucasus South, whose broad mandate allowed it to carry out interactions with the authorities of Abkhazia and South Ossetia.⁸⁹ It was, as Sabine Fischer maintains⁹⁰, to develop a policy based on two cornerstones that would open a political and legal space where the EU could interact with the separatist entities without compromising its adherence to the defence of Georgia's territorial integrity. Elements of the aforementioned policy allegedly outlined in the non-paper, which Sabine Fischer reports, are, aside from the firm commitment that Georgia's territorial integrity and sovereignty provide the framework for the measures that the EU adopts with respect to the separatist entities, the EU's interest in contacting these territories' *de facto* authorities to

⁸⁹ T. de Waal, 'Enhancing the EU's Engagement with Separatist Territories', Carnegie Europe, 2017.

⁹⁰ S. Fischer, 'The EU's non-recognition and engagement policy towards Abkhazia and South Ossetia', European Union Institute for Security Studies Seminar Reports, December, 2010.

develop measures that promote trust, conflict resolution and humanitarian assistance; contacts with civil society and the population of both enclaves to overcome their international isolation, through confidence-building measures, particularly in the spheres of human rights, civil society and economic integration; contact with the Georgian authorities on Abkhazia and South Ossetia when necessary, and also contact with the Russian forces stationed in the separatist territories, to the extent that they are responsible actors in the application of International Humanitarian Law.

From the perspective offered by the development of the EU's non-recognition and engagement policy, viewed with suspicion by the Georgian authorities as an activity that tending towards a growing recognition of such entities – which is denied by the respect of the EU towards its territorial integrity – the value judgment about whether the EUMM Georgia's activity participates in that same collateral effect that legitimizes the recognition of Abkhazia and Ossetia is diluted somewhat. Certainly, Russia permits the EU's presence because of its weakness and the shallow depth of the negotiating mandate. But this, in principle, has nothing to do with the return of the secessionist entities to Georgia's obedience. It cannot be argued that the EU's non-recognition of secessionist entities has taken steps backwards. In contrast, there is no limit to changing a situation in which these two projects of national construction, protected by Russia, show no signs of weakening: two “de facto states” whose fortune can hardly change an operation like EUMM Georgia. To this operation's credit, it appears to have contributed to the stabilization of the situation that was created after the war between Georgia and Russia, to the withdrawal of Russian troops, to the demobilization around Ossetia's administrative boundary lines and the return of those displaced by the conflict. In short, it did what was asked of it. As with the rest of the Missions, even with their success or failure to carry out their mandates, the presence of an EU Mission is not only not a substitute for politics, but cannot even be interpreted as such, unless it contains an instrument for guaranteeing security.

(H) CONCLUSION

The five conflicts that we have examined, and in which the EU has deployed civil or military missions, all corresponding to the ESDP —except in the case of EUBAM Moldova— are secessionist. They involving States with territories conceived as “de facto states” in three cases —Moldova, Georgia and Kosovo— while in the other two, Macedonia and Indonesia, secession has not been achieved. Does the EU have a comprehensive strategy to follow when faced with this type of conflict? It might seem that, at a minimum, this would be based on respect for the states' territorial integrity and, therefore, on the non-recognition of secessionist entities that persist as “de facto states”. The 2003 European Security Strategy,

still referring to regional conflicts as the main threat to security, did not state specifically a position of EU support for territorial integrity as it did not give full detail of the type of conflict or take the side of those of a secessionist nature. The EU Global Strategy, however—the Mogherini document—did go into greater detail and confirmed that the States' territorial integrity and the inviolability of borders was one of the key elements of the European security order. We must remember that the Action Plans of Moldova, Azerbaijan and Georgia do incorporate the principle of territorial integrity in their respective countries, and the inviolability of their borders, as a basis for the solution of their secessionist conflicts and that the Armenian Action Plan, however, invokes the principle of self-determination of peoples. With regard to Macedonia, the Ohrid Agreement, which instituted in its article 1 the need to preserve the FYROM's territorial integrity, was endorsed by the EU in the Council Decision of 18 February, 2008, on the principles, priorities and conditions contained in the Accession Partnership for membership with the FYROM.⁹¹ As for Indonesia, Council Joint Action 2005/643/CFSP recalled that on 11 October, 2004, the Council had reiterated its interest in a united, democratic, stable and prosperous Indonesia and had restated its respect for the Asian country's territorial integrity.⁹² However, the repeated description that, for the EU, Kosovo has been a special case seems to be an exception to other case of unshakeable faith in the principle of territorial integrity.

But a strategy is more than just a mention of a principle, however relevant it may be. It requires, at least, a position to be taken on the relations with the State affected by the secessionist process and a principled position on how to treat the community that seeks secession and, in three of our cases, behaves as “de facto state”. It requires, therefore, a previous decision on whether the non-recognition of such a political community, which results from a respect for the State's territorial integrity, should be accompanied by a lack of any other type of relationship. Or whether you opt for providing aid and establishing political and economic relations, a policy that risks ending up legitimizing the secessionist community and perpetuates the status quo. Bruno Coppieters⁹³ supports the theory that, when faced with this type of secessionist conflict, the EU has lacked a strategy. He recalls, for example, CFSP High Representative Javier Solana playing an active role in facilitating the agreement between Serbia and Montenegro that allowed the referendum on Montenegro's independence in 2006. Although he argued that it would not constitute a precedent for the EU, two years later, the *sui generis* case of Kosovo, did also not seem to set any precedent, as

⁹¹ OJ L 80, 19 March 2008, at 35.

⁹² OJ L 234, 10 September 2005, at 13, recital 2.

⁹³ B. Coppieters, ‘The EU's Policies towards Contested States’, D. Muro and E. Woertz (eds.), *Secession and Counter-secession. An International Relations Perspective*, CIDOB, Barcelona, 2018, at 38.

proclaimed by the European Council on 14 December, 2007.⁹⁴ In sum, the EU's reaction in these incidences and, thus, the deployment of missions – including the decision on the type of mission – has not been the result of a studied and previous strategy, but of contingent political options. And the same should apply to cases in which, as in the case of Nagorno-Karabakh, the will to not engage in the secessionist conflict has prevailed.

However, in a broader sense, and with reference to the deployment of monitoring missions, the EU has had a Concept for such missions since 2003.⁹⁵ It features heavily a trait that can be drawn from the EU's involvement in these secessionist conflicts; the intentional choice of understanding that deploying missions is just another instrument among a wide range of intervention possibilities. And that this instrument must be accompanied by other measures. The EU Concept thus suggests that the mission is part of a larger EU effort to prevent or resolve a conflict. In a stricter sense, the EU has opted for integrated crisis management, as Giovanni Grevi⁹⁶ suggests that it must, of which its intervention in the Aceh conflict is a good example. However, in secessionist conflicts on European soil, the integrated crisis response has gone much further, to the point of drawing up a policy of deliberate Europeanization to be applied in States with secessionist territories. This policy, derived from the European Neighbourhood Policy, is specified in its eastern dimension and applies to Moldova and Georgia, among other countries.

This policy has brought about two consequences, one related to the formulation of the policy to be developed with the secessionist enclaves and the other in relation to Russia. The two matters are evidently interconnected. Not including, for obvious reasons, the case of Aceh (Indonesia), and also that of the FYROM, the other secessionist episodes have a common feature that has irreversibly obstructed the position of the EU and its Member States: Russia's involvement. If Russia viewed with suspicion the Europeanist drift of the former republics of the Soviet Union in Eastern Europe and the Caucasus, it did so to an even greater extent after the deployment of the European Neighbourhood Policy and its corollary to the east. Not disquieting Russia has been a position of quite a few EU Member States, which explains both their actions and some of their abstentions. If Russia has accepted an EU mission in Georgia, it has been because of its strong position of power after the ceasefire of the 2008 war and because EUMM Georgia's mandate was so lightweight. Relations have been deteriorating in this area, something which has been exacerbated by the conflict in Ukraine.⁹⁷

⁹⁴ See Presidency Conclusions, European Council, Brussels, 14 December 2007, par. 69.

⁹⁵ Available here.

⁹⁶ G. Grevi, 'The Aceh Monitoring Mission...', *supra* note 35, at 33.

⁹⁷ M. Isabel Nieto, 'Rusia y la estrategia global de la Unión Europea', 42 *Revista UNISCI*, (octubre, 2016), 197-216.

Regarding relations with the secessionist entities, apart from the case of Kosovo, the non-recognition and engagement policy, deployed in Georgia as of 2009, and before in Transnistria, also raises doubts, both about its effectiveness and about the persistence of conflicts. The objective may well be to resolve the conflicts on the basis of territorial integration, but nothing was advanced in the cases indicated. And this regardless of the deployment of EU missions, especially since they are one further instrument of EU policy in the area.

Why has the EU intervened through its missions, and no other organizations, in the crises we have examined? Why has the EU been formally invited, but not the other organizations? In the cases at hand, and as Hadewych Hazelzet⁹⁸ maintains, a combination of two reasons justifies the EU's comparative advantage. Firstly, because the United Nations and other organizations such as the OSCE either do not show willing, or are not politically capable of acting at a specific moment in the secessionist conflict. This was the case for the United Nations following Kosovo's unilateral declaration of independence and of the OSCE in Georgia after the 2008 war. Secondly, because the EU is perceived as being especially entitled to help in resolving the conflict (Macedonia, Georgia or Kosovo) or because it is considered more neutral than the United Nations in the eyes of the State of the territory. This is the case for the Aceh case in Indonesia. But also, because it is considered weaker and less legitimate than the other organizations, as the Georgia case shows.

Considering the strategic objectives and associated expectations, Russia's presence and, mainly, the EU missions' exiguous mandates, what impact have the missions we have examined had on separatist conflicts? From a general perspective, it may be useful to follow the opinion of Thierry Tardy⁹⁹ here, for whom, except EULEX Kosovo, civilian missions have provided limited support to third countries, which has diminished their strategic impact. Again, Kosovo is a separate case, because EULEX Kosovo is a relevant instrument on the path towards strengthening independence, and towards implementing the Ahtisaari Plan. In the case of the FYROM missions, with the situation affecting security in the Albanian minority areas to a larger extent resolved by operations deployed by NATO, the EU missions, with their limited mandates in the police sector have not helped to halt the secessionist demands. The same can be said of the successes of the EU Mission in Aceh, although the secessionist conflict, at the time of its deployment, had lost much of its meaning, which has contributed to its settlement. The most compromised cases are those of Moldova and Georgia, because in both of these it has been argued that, although indirectly, the two

⁹⁸ H. Hazelzet, 'The added value of CSDP operations', European Union Institute for Security Studies, Brief Issue N° 31/2013, September 2013, at 2.

⁹⁹ T. Tardy, 'Civilian CSDP: What next?', European Union Institute for Security Studies, Brief Issue N° 32/2016, November 2016, at 2.

missions have been able to contribute in some way to the maintenance of the secessionist status quo. However, this is probably due more than anything to the Europeanization policy game and the application of the non-recognition and engagement policy towards these enclaves.