CENTRAL EUROPEAN UNIVERSITY

MULTI-LEVEL GOVERNANCE AND EU FOREIGN POLICY: THE EUROPEAN UNION RULE OF LAW MISSION IN KOSOVO

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BY

NENAD MATEJIĆ

SUPERVISOR: PROFESSOR ANNABELLE LITTOZ-MONNET

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Abstract

Recognizing a lack of work which utilizes the multi-level governance approach to EU foreign policy, the thesis seeks to contribute to this field by utilizing the recent European Union Rule of Law Mission in Kosovo (EULEX Kosovo). It seeks to present the multi-level and multi-actor network that exists in EU foreign policymaking. In addition, by recognizing the failure of the multi-level governance approach to include the influence of international level actors to EU foreign policy making, the thesis uses the case study to demonstrate the relevance of such actors and why they should be included in the utilized theoretical approach. The EULEX Kosovo case study demonstrates the importance of the national level (EU Member States) in EU foreign policy making, showing that they can exert significant influence and power. However, EU institutions undertake many of the tasks and authority when it comes to EU missions. The decisions are made at EU level (the Council). The institutions such as the Commission, the European Parliament and the Political and Security Committee play a major role in the preparation and implementation phase. Also, the funding of the mission is placed into the hands of institutions such as the Commission. Thus, the work of the EU level institutions is pivotal for the realization of an EU mission. However, the realization of a mission also greatly depends on the international level actors, who, as in the EULEX Kosovo case, can influence and shape the mission – influencing its deployment and altering its mandate.

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I would like to dedicate the thesis to my parents, Ljiljana and Sava Matejić, and my brother Mile Matejić. Also, I am thankful to Prof. Annabelle Littoz-Monnet for her constant guidance and valuable comments throughout the research and writing process.

Table of contents

Introduction

The European Union has developed and altered considerably since its inception in the late 1950s. It has come to unite numerous interests of its Member States in a wide range of areas. However, one can discern that its efforts to achieve unity in the external relations realm have been less successful. Still, with significant institutional changes and developments throughout the recent decades, the Europeans have demonstrated their will to also achieve unity with regards to foreign policy. A plethora of researchers and experts have noted this in literature of European studies. Thus, there is considerable literature that deals with the Common Foreign and Security Policy of the European Union. However, as one will note in this thesis, one theoretical approach (multi-level governance) has received little attention or utilization with regards to EU foreign policy. Only recently has this approach been applied to this field.

Recognizing the existence of a lack of work which applies the multi-level governance approach to the field of EU foreign policy, the thesis seeks to contribute to this only recently growing literature by utilizing the case study of the European Union Rule of Law Mission in Kosovo. This mission, the largest civilian mission that the EU has ever undertaken,[1] can be utilized to demonstrate the credibility and validity of the arguments that are put forward by those arguing for the multi-level governance approach. In addition, the thesis builds on the arguments put forward by authors such as, amongst others, Liisa Laakso, who recognize that the multi-level governance approach to EU foreign policy has one omission: that it tends to

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[1] EU Council Secretariat Fact Sheet, "European security and defense policy: the civilian aspects of crisis management," June 2008. available online at http://www.consilium.eu.int/uedocs/cmsUpload/BackgroundJPO2008-Civilian_aspects_compressed.pdf

exclude the role and influence of actors that are external to the EU.[2] Recognizing this limitation of the multi-level governance approach, the thesis takes the case study of the European Union Rule of Law Mission in Kosovo to demonstrate that the role and influence of international actors, i.e. actors that are external to the EU, such as non-EU states and international organizations can be significant and pivotal. Therefore, the research questions that the thesis aims to answer are: 1) Why is the multi-level governance approach relevant to EU foreign policy? 2) Why should the multi-level governance approach to EU foreign policy also take into account the actors that are external to the EU? Undertaking the task to answer these questions, it is hoped that the thesis will stimulate more contributions and studies in the field.

In the first chapter, we present a historical account of the Kosovo conflict. This explanatory chapter is a prerequisite for the reader to have a better understanding of the subject matter that is dealt with in the thesis. For the purpose of the thesis and the subject matter, the chapter does not provide a whole historical account of Kosovo. Rather, it presents the part of Kosovo's history and developments that are pivotal for our case study. The first part of the chapter provides a background to the Kosovo crisis of 1999. It presents the context that is necessary for the second part which outlines the international presence in Kosovo, i.e. pointing out the international players that are of importance for our subject matter: the United Nations and the European Union. Following the presentation of these actors, the final part of the chapter introduces the recent developments and outlines the European Union Rule of Law Mission in Kosovo.

The second chapter provides the theoretical framework that is utilized in the thesis. The first part introduces the multi-level governance approach, explaining its origin and development, as well as its main features and elements. The second part ties the approach to

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[2] Liisa Laakso, "A Capability-implementation Gap in the Making? Multi-level Governance and European Crisis Management," in *European Governance: Policy Making between Politicization and Control*, ed. G.P.E. Walzenbach (Aldershot: Ashgate Publishing, Ltd., 2006), 155.

the foreign policy field and also introduces the limitation of the approach with regards to the relevance of international level actors. The third part explains why the multi-level governance approach is applicable to EU foreign policy. This is done within two subsections: the first relating the approach to the EU, and the second pointing out the relevance of the international level actors – providing the missing link.

The final chapter utilizes the case study of the European Union Rule of Law Mission in Kosovo. The case study demonstrates the relevance of the multi-level governance approach to foreign policy, by outlining the multi-level structure within the EU which is composed of Member States as well as EU institutions which interact with one another in the process of foreign policy making. It also demonstrates the importance of the Member States, which with their positions played a pivotal role in the policy-making process through the EU level institution, the Council, which has the decision-making power. However, the EU level actors such as the Commission, the Political and Security Committee, and the European Parliament also had played an important role with regards to planning, funding and implementing the mission in Kosovo. Finally, the case study, by outlining the major international actors involved and the influence that they exerted – ultimately altering its original mandate, demonstrates the need for the multi-level governance approach to also include the actors that are external to the EU with regards to the foreign policy realm.

The thesis uses document analysis methodology. The research for the thesis involved analysis of various policy documents, policy reports, books, journals, newspapers, papers presented at conferences, as well as information gathering from numerous websites which are related to the subject matter and which contain useful data that was included in the thesis. In addition, the thesis utilized official statements and speeches from government officials from the respective states and the European Union as well as the United Nations. The choice for this type of methodology is justified on the grounds that it would be difficult to gather the

necessary information from primary sources, i.e. from each of the relevant institutions, capitals and government officials. Thus, our choice has rested on the utilization of sources mentioned above.

Chapter 1: Historical Background

The Western Balkans has gone through a period characterized by considerable instability and tension. The region and the various peoples have experienced the collapse of the Yugoslav state and the wars that followed, first in Croatia, Bosnia and then finally in the Serbian province of Kosovo. "After the collapse of Yugoslavia, the Balkan countries were plunged into wars stemming from the aspiration of each country to declare its independence by also agitating the ethnic groups which demanded rights for their own society."[3] The explanation of these developments is beyond the scope of this chapter and is not the question addressed in the thesis in general. In this chapter we will present the developments that occurred in Kosovo, presenting developments prior and further to 1999. Moreover, we will present the historical background of the new European Union Rule of Law Mission in Kosovo (EULEX). This introductory component is necessary for one to have a better and clearer understanding of the situation in Kosovo and the involvement of the key actors.

1.1 Historical Explanation to the Kosovo Conflict

It seems rational to argue that "the intensified ethnic conflict of the late 1990s and the subsequent external intervention leading to NATO invasion in 1999 cannot be understood

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[3] Lacin Ydil Oztid, "The EU presence in the Balkan region with particular attention to Kosovo: the evaluation of the future role of the European Union Planning Team," *Turkish Review of Balkan Studies* 12 (2007): 189. available online at http://www.obiv.org.tr/2008/Turkish%20Review%20of%20Balkan%20Studies/Turkish%20Review%20of%20Balkan%20Studies.pdf

unless we have a clear understanding of the historical dimension of the situation."[4] In addition, without providing such an account, it would be difficult to understand the current situation as well as the developments regarding the subject matter we are dealing with in this thesis.

The Kosovo province has, for a considerable amount of time, been the source of dispute between the two ethnic groups (the Serbs and Albanians). Namely, each group holds claims for that small territory in the Balkans. These disputed views would lead to the growing tensions that would intensify in the later years of Socialist Yugoslavia and culminate in the aftermath of the disintegration of the common Yugoslav state. One should note that "since the territory of Kosovo became a part of Serbia and then of Yugoslavia in the early decades of the twentieth century, the Kosovo problem can be described as a problem of continual 'status reversal'."[5] As we have seen, this phenomenon has continued until the present time and, it could be said, still remains an unresolved issue.

It could be said that the problems in Kosovo date back much before the seen tensions that characterized the 1990s. However, the situation reached a peak in instability in the late 1980s. As Oztid explains, "the Kosovo crisis began with the clash between ethnic Albanians and Serbians after the policy of Slobodan Milosević in limiting the autonomy of Kosovo, which had enjoyed a great deal of autonomy until 1989."[6] As a result of this type of policy, characterized by much repression by the central government in Belgrade, the crisis would build up during the 1990s, culminating in open warfare and NATO military intervention in 1999.

Pavlović gives a useful and concise explanation on the Kosovo issue by pointing out the following:

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[4] Pantelis Sklias and Spyros Roukanas, "Developments in Post-Conflict Kosovo," *South-Eastern Europe Journal of Economics 2* (2007): 268.

[5] Momčilo Pavlović, "Kosovo Under Autonomy 1974-1990," *The Scholars Initiative: Research Team Reports* (February 2005): 5.

[6] Lacin Ydil Oztid, (2007), 189.

"Each nationalist group, Serbs and Albanians, based their claims on very controversial arguments and policies. Some Serbs argued that the continuing Albanian drive for an independent Kosovo, more or less intensive at different times, was evident by their disloyalty to the state: rebellions, demonstrations, robbery, attacks on Serbs and their property. At the same time, Albanians continuously tried to present their problem as an international one, i.e. to make the international community believe them to be an oppressed minority in Serbia and Yugoslavia."[7]

During the first decades of Socialist Yugoslavia (1945-1991), Kosovo and its population remained poor and underdeveloped. However, positive changes would take place in the 1960s.[8] As Rogel explains, "in 1963, the Yugoslav government upgraded Kosovo to the status of 'province'; in 1965, with the establishment of a special federal fund for underdeveloped regions, Kosovo was allotted financial assistance (40 percent of the fund) for economic improvement; in 1967 Tito made a notable visit to the province; and in 1968 'Metohija' was dropped from the province's name."[9] Moreover, after the Constitution of 1974, Kosovo obtained the status of an autonomous province of Serbia. However, this alteration would not satisfy the now emancipated Albanians whose elite sought after independence for the territory from Serbia. With the spread and intensity of dissatisfaction increasing in the province and reaching climax in the 1980s, "Kosovo, a province of two million, came under police rule."[10] Indeed, the reaction of the Serbs and the Serbian government in Belgrade towards the rising instability in the Kosovo province was characterized by increased repression towards the Kosovo Albanians. The situation there served well the emergence of anti-Albanian sentiment throughout the country and would serve as the impetus for the emerging and empowering nationalism in Serbia.

The coming of Milošević to power in Serbia in 1987 would adversely affect the already unstable situation in the province as his policy greatly utilized the nationalist card especially with regards to Kosovo and the Serbian population there. "It was in Kosovo indeed,

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[7] Momčilo Pavlović, (February 2005): 5.
[8] Carole Rogel, "Kosovo: Where It All Began," Studies in the Social History of Destruction: The Case of Yugoslavia, *International Journal of Politics, Culture, and Society* 17, no. 1 (Fall 2003): 171.
[9] Ibid., 171.
[10] Ibid., 168.

back in April 1987, that Slobodan Milošević, Communist apparatchik turned extreme-nationalist leader overnight, made the notorious speech that signaled his conversion to what Edgar Morin would call 'total-nationalism' and Jacques Rupnik 'communist-nationalism'."[11] With Miločević gaining increasing support and power within Serbia and the Serbian population and conducting increased severe treatment of the Kosovo Albanians in an effort to suppress the separatist forces, the Serbian leader would abolish the autonomous status that Kosovo and Serbia's northern province of Vojvodina had enjoyed since the adoption of the 1974 Constitution of Yugoslavia.[12] This move obviously reflected Belgrade's sense that its power and control had to be strengthened in the provinces.

It is interesting to note that during the wars that occurred in the aftermath of the collapse of the Yugoslav state, the situation in Kosovo did not reach such a point of culmination during those years. "The war [which started in 1991] would last until 1995, yet, surprisingly, Kosovo was hardly involved in the story. Little [had] happened there in the war years."[13] What one could say was occurring during this time in Kosovo was the growth of the separatist movement calling for independence from Serbia. Moreover, one should also note that this period was also marked by other important developments. "In 1992 the unofficial parliament organized a referendum which was not recognized internationally but was observed by international organizations. The result of the referendum was 98% in favor of independence for Kosovo."[14] Another significant development was the creation of an organized military group among the Kosovo Albanians. As Sklias and Roukanas explain, "Kosovar Albanians organized the Kosovo Liberation Army (KLA) in 1995 after the Dayton Agreement."[15] This organized military group would direct their forces against the Yugoslav

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[11] Alvaro de Vasconcelos, "Why Kosovo?" *EU Institute for Security Studies Newsletter*, no. 25 (March 2008): 1. available online at http://www.iss.europa.eu/uploads/media/newletter25web.pdf
[12] Carole Rogel, (Fall 2003): 172.
[13] Ibid., 174.
[14] Pantelis Sklias and Spyros Roukanas, (2007): 270.
[15] Ibid., 270.

military and police in Kosovo and would also direct violence against the Serb population, especially in the months leading up to the Kosovo war in 1999. The clashes between the KLA and the Serbian forces would produce horrific consequences with significant casualties. Indeed, "a large number of civilians were also victims during this conflict with 10,000-12,000 ethnic Albanians and 3,000 Serbs believed to have lost their lives mainly due to the conflicts between the Yugoslav military, Serbian police and the Serbian paramilitary forces on the one hand and the KLA on the other."[16]

1.2 International Community Intervention in Kosovo

Given the gravity of the events taking place in the province, with many civilian casualties and the emergence of reports of organizations noting severe human rights abuses, the "international community began to take an interest in what was happening in the region and Serbia was forced to sign a partial retreat and a unilateral cease-fire."[17] While prior events had been a cause for concern, the catalyst for increased and more serious attention on the part of the international community was the Račak massacre conducted by Serb forces. The international community decided to take action. The warring sides were to meet at Rambouillet, France to negotiate a peace agreement. These negotiations were to be moderated by the Contact Group, "a coordination forum of the crisis management efforts of the United States, the Russian Federation, France, the United Kingdom, Germany and Italy (since 1996)."[18] One should note that "the Rambouillet negotiations produced an accord in February, which demanded autonomy for the people of Kosovo, a withdrawal of Yugoslav forces, [the] demilitarization of the KLA forces, a return of refugees, and enforcement of the peace by

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[16] Ibid., 270.
[17] Ibid., 270.
[18] Christoph Schwegmann, "The Contact Group and its Impact on the European Institutional Structure," abstract, *EU-ISS Occasional Paper* 15, (June 2000): iii.

NATO forces."[19] Although the Kosovar delegation accepted the terms and conditions proposed at that conference, the Serbian side rejected it outright. This rejection would lead the Western forces (NATO) to reaffirm that military intervention was necessary as a peace agreement between the warring sides proved impossible to materialize. What followed was a NATO military intervention which would last until early June. Unlike the deployment of the UN forces which would administer the region in the aftermath of the Kosovo war, "NATO's bombing campaign, by contrast, never secured general support, since resolutions authorizing it would have been blocked by Russia and China."[20] The bombing ended the Kosovo war, with the capitulation of Milošević and the signing of the Kumanovo Treaty on 9 June 1999. This "document stipulated the withdrawal of all Serbian forces (military, paramilitary, and police) from Kosovo, a task that was expeditiously completed by 20 June."[21]

1.3 Post-1999: United Nations in Kosovo

With the ending of the bombing campaign and the capitulation of Serbia, the "UN Security Council Resolution 1244 placed the Serbian province of Kosovo under the transitional administration of the United Nations Mission in Kosovo (UNMIK) and authorized the NATO-led Kosovo Force (KFOR) as a peacekeeping mission."[22] The international community and the UN mission had to face an extremely challenging situation on the ground as the consequences of the war were devastating. The then Secretary-General of the United Nations proclaimed: "The task before the international community is to help the people in

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[19] Robert H. Donaldson and Joseph L. Nogee, *The Foreign Policy of Russia: Changing Systems, Enduring Interests* (Armonk, NY: M.E. Sharpe, 2005), 274.
[20] Judith Miller, "Crisis in the Balkans: United Nations; Security Council Backs Peace Plan and a NATO-Led Force," *The New York Times,* 9 June 1999, sec. A, p. 12. available online at http://www.nytimes.com/1999/06/11/world/crisis-balkans-united-nations-security-council-backs-peace-plan-nato-led-force.html
[21] Carole Rogel, (Fall 2003): 180.
[22] Dominik Tolksdorf, "Implementing the Ahtisaari Proposal: The European Union's Future Role in Kosovo," *Center for Applied Policy Research (CAP) Policy Analysis*, no. 1 (May 2007): 5.

Kosovo to rebuild their lives and heal the wounds of conflict."[23] It could be said that this position was reflected in the structure and mechanism of the UN mission. Moreover, it could also be pointed out that, "other than for a brief period in Cambodia in the early 1990s, this was the first time in several decades that the UN had assumed responsibility for governing a territory."[24] The UN mission was envisaged as one that would administer the province, but would gradually transfer power to the locals once that progress and normal conditions had been met.

It is necessary at this point to briefly mention the structure of the UN mission that was deployed in Kosovo. Essentially, "with the involvement of other international organizations, UNMIK consists of four pillars: police and justice, civil administration (both operated by the UN), institution building (led by the OSCE) and economic reconstruction (implemented by the EU)."[25] In addition, it should also be pointed out that the UNMIK administration "has gradually transferred governing competencies to the Provisional Institutions of Self-Government (PISG) in the years since 2001."[26] In other words, as a UNMIK report from July 2007 has explained, "over the eight years since, as Kosovo's Provisional Institutions of Self-Government (PISG) were established and gained capacity to assume more responsibilities, UNMIK has moved back from an executive role to one of monitoring and support to local institutions."[27]

The UN mission in Kosovo, or its work and functioning, have been the target of significant criticism from Belgrade, Priština, as well as the international community. The violence that erupted in Kosovo on 17 March 2004 had demonstrated the inefficiency of the UN forces, as they proved incapable of dealing with the tensions effectively. Moreover, there

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[23] United Nations Interim Administration Mission in Kosovo, *Fact Sheet* (July 2008), 1. available online at http://www.unmikonline.org/docs/2008/Fact_Sheet_July_2008.pdf
[24] William G. O'Neill, *Kosovo: An Unfinished Peace* (Boulder: Lynne Rienner Publishers, Inc., 2002), 31.
[25] Dominik Tolksdorf, (May 2007): 5.
[26] Ibid., 6.
[27] United Nations Interim Administration Mission in Kosovo, *Fact Sheet* (July 2008), 1.

has been criticism "among Kosovo's Albanian majority about the slow progress toward resolving status, and among Serbs and other minorities about UNMIK's failure to secure their rights."[28] The unfavorable situation and the lack of success on the part of the United Nations in improving the situation led many to believe that significant steps had to be taken. In addition, it became apparent that progress had to be made regarding the "status" issue of Kosovo. "The process was set in motion by the Norwegian diplomat Kai Eide, who in his report to the UN Secretary General in October 2005 indicated that it was imperative to resolve the status question."[29] In order to move towards a solution on the status question, "the former Finnish president Martti Ahtisaari was entrusted with the task of working out a compromise with Serbian and Kosovar representatives."[30] The proposal that he would draw up would become know as the Ahtisaari Plan. In short, one can say that this plan "envisages an internationally supervised sovereign entity that is committed to ensuring minority rights and special protection for all minorities in Kosovo but also allows Kosovo to become a functional state."[31] Furthermore, the Ahtisaari Plan contained one also pivotal element. "Apart from providing Kosovo with *de facto* independence, another important aspect of the Ahtisaari proposal is the central role allocated to the European Union within the future setting."[32] However, the plan was discarded after the threat on the use of veto by Russia.

1.4 The European Union in Kosovo

After the abandonment of the Ahtisaari Plan, lengthy and difficult talks followed in hopes of resolving the status of Kosovo. In August 2007, "at the initiative of the Contact

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[28] Human Rights Watch, *Better Late Than Never| Enhancing the Accountability of International Institutions in Kosovo*, no. 2 (June 2007), 1. available online at http://www.eulex-kosovo.eu/training/material/docs/KR/KR_Material/Better_Late_ThanNever.pdf
[29] Johanna Deimal and Armando Garcia Schmidt, "Kosovo 2009: Uncertain Future," *Spotlight Europe* (January 2009): 1.
[30] Dominik Tolksdorf, (May 2007): 4.
[31] Ibid., 4.
[32] Ibid., 5.

Group, the UN Secretary-General launched a fresh round of talks [that were to be led] by a troika compromising the EU, the USA and Russia."[33] However, these talks proved to be futile. In addition, a dramatic political development occurred. "Openly supported by the U.S. and expecting to obtain unanimous approval from the EU, Priština declared itself independent on 17 February 2008."[34] This declaration of independence brought the international community to face a new environment and circumstances.

In autumn of 2007, Javier Solana proclaimed that "the European Union must be ready to take over from the United Nations mission in Kosovo (UNMIK) once talks on the province's future status end."[35] As the talks on the status issue continued it was apparent that little progress was going to be made. There were little hopes that the outcome of these talks would provide the solution to the status question.

1.4.1 The European Union Rule of Law Mission in Kosovo (EULEX KOSOVO)

Two weeks before Priština declared independence from Serbia, the European Union Member States agreed on the deployment of a civilian mission that would replace the UN mission that has been administering the province since the end of the war in 1999. The new mission of the European Union was established on 4 February 2008 with the adoption of Council of Europe's Joint Action Plan.[36] This allowed for the EU to dispatch its civilian mission and to gradually replace UNMIK.

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[33] Ibid., 2.
[34] Ibid., 2.
[35] "EU must be ready to replace UN in Kosovo in December: Solana," *EUbusiness*, 3 October 2007.
[36] Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo

It could be said that Kosovo and the Balkans in general have been a testing ground for the instruments and tools of EU's ESDP (European Security and Defense Policy).[37] Indeed, the crisis in the former Yugoslavia was an impetus for the Union to develop and improve its foreign and security policies. Indeed, this sector has developed significantly since the troubles experienced in the 1990s when the EU demonstrated itself as being weak, disunited and incapable of replying efficiently to the conflicts. As one report points out, "ESDP has expanded its action far and wide (from the Western Balkans to the South Caucasus, Africa, the Middle East, and Asia), and it has greatly diversified in the substance of operations (strengthening actions in police and the wider rule of law sector, monitoring borders and peace agreements)."[38] The EULEX Kosovo mission is not the first endeavor taken by the European Union in the region. Through its ESDP, the Union has been present in Bosnia (EUPM – EU Police Mission and EUFOR-Althea) as well as FYROM (EUPOL PROXIMA). However, the European Union Rule of Law Mission in Kosovo (EULEX) is the largest civilian mission ever launched under the European Security and Defense Policy."[39] At this point it would be useful to discuss the main components and elements of this ESDP mission, which has been described by some as being one of the most difficult ESDP missions to date and one which will be a real test for the foreign and security policy of the EU.[40]

First of all, one should note that "the objective of EULEX Kosovo is to support the Kosovo authorities by monitoring, mentoring, and advising on all areas related to the rule of law, in particular in the police, judiciary, customs and correctional services."[41] Furthermore,

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[37] Liisa Laakso, "A Capability-implementation Gap in the Making? Multi-level Governance and European Crisis Management," in *European Governance: Policy Making between Politicization and Control*, ed. G.P.E. Walzenbach (Aldershot: Ashgate Publishing, Ltd., 2006), 157.
[38] EU Council Secretariat Fact Sheet, "European security and defense policy: the civilian aspects of crisis management," June 2008, 1. available online at http://www.consilium.eu.int/uedocs/cmsUpload/BackgroundJPO2008-Civilian_aspects_compressed.pdf
[39] Fact Sheet "EULEX Kosovo: EU Rule of Law Mission in Kosovo," April 2009, 2. available online at http://ue.eu.int/uedocs/cms_data/docs/pressdata/EN/declarations/107144.pdf
[40] Thomas Zehetner, "Waiting in the Wings – The Civilian ESDP mission in Kosovo," *European Security Review*, no. 33 (May 2007): 1.
[41] Fact Sheet "EULEX Kosovo: EU Rule of Law Mission in Kosovo," April 2009, 2.

in line with its civilian character, "the mission, with an authorized maximum strength of 1850 international police officers, judges, prosecutors and customs officials and up to 1100 local staff, is deployed throughout Kosovo and working under the general framework of UNSCR 1244."[42] What is also important to note is that the EU presence in Kosovo would be triple: EULEX - replacing the EU Planning Team (EUPT), International Civilian Office (ICO) and the European Commission Liaison Office to Kosovo.[43]

The European Union mission in Kosovo was to face considerable challenges. These challenges could be seen in two ways. First, the deployment of the mission would be delayed due to pressures from Serbia and its traditional ally who rejected any EU mission that did not have the backing and authorization of the UN Security Council. Thus, it was a matter of legality. The initial date for deployment was 15 June 2008 – the day the Kosovo government adopted the Kosovo Constitution. However, the deployment of the mission occurred months later, i.e. in December 2008. In addition, with regards to the objections from the Serbian side, an agreement on a compromise seemed unlikely. Communication between the United Nations and the European Union on the deployment of the mission would also prove to be rather weak and vague. As a consequence, there has been confusion over the responsibilities of the EULEX mission and UNMIK, or rather how and what responsibilities should be transferred from UNMIK to EULEX. .

Second, the EULEX mission had to deal with a situation on the ground that was new and difficult, not only because of the new political circumstances. The EU had to deal with an area that was previously administered by UNMIK which, one could safely say, was characterized by numerous failures. As Eric Scheye points out in his critique of UNMIK, "the UN has been unsuccessful in supporting the further development of the Kosovo justice and security sector as the UN system in Kosovo and in New York did not possess the skills,

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[42] Ibid., 3.
[43] Sophie Dagand, "The prospects for a future Kosovo: the role of Security Sector Reform," *European Security Review*, no. 38 (May 2008): 2

expertise, and managerial capacity effectively and efficiently […].”[44] Sophie Dagand of ISIS Europe has commented on UNMIK's functioning in Kosovo. According to her, "if any progress has been made, the many shortcomings within the wide spectrum of the rule of law have been identified by both the locals and the international presence."[45] Moreover, this lack of success and dissatisfaction within the population of Kosovo has led the population to call upon "the EU to support their efforts in maximizing the past and present efforts in institution building, to pave the way for the establishment of a solid legal system that will serve and protect all people of Kosovo."[46]

As we have noted, the European Union has been attaining increasing responsibilities in Kosovo in recent years. Due to its lack of success in the 1990s, the EU now seems determined to become an active and major player in Kosovo. The region is of significant importance for the EU as it seeks to achieve and ensure peace and stability in its neighborhood and beyond. "Kosovo, an important geographical an historical pivot, serves as the important test-case for EU success in being a global player for stability."[47] Through its missions, and especially now with its largest ever civilian mission, the EU can demonstrate to the international community and the world that it has the capacity to take up responsibilities and play a pivotal role in maintaining peace, stability and prosperity. "By effectively conducting the mission in Kosovo and proving that it can contribute added value to international crisis management, the EU can demonstrate its maturity as a capable foreign policy actor."[48] The EULEX Kosovo mission shows the EU's readiness in this regard. However, as the EULEX deployment saga demonstrates, the actions and activities of the EU in the world depend on and are considerably shaped and influenced by other non-European actors, i.e. other external/international actors. In the next chapter we will explain the

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[44] Ibid., 2.
[45] Ibid., 5.
[46] Ibid., 5.
[47] Ibid., 1.
[48] Dominik Tolksdorf, (May 2007): 13.

theoretical framework that is utilized for the purposes of this thesis. Namely, we will deal with the multi-level governance approach to foreign policy. This theoretical chapter is necessary and is a prerequisite for the section in which we will relate the utilized approach with the EULEX Kosovo case.

Chapter 2: Multi-level Governance Approach To Foreign Policy: A Theoretical Overview

Research and studies of the European Union have developed and evolved in the last decades. Indeed, a plethora of researchers, experts and authors have dealt extensively with the European Union, an entity that has undergone many changes and which constantly continues to develop and alter. As result, one can see a range of theories and concepts that have emerged and that have produced much debate as well as criticism. To discuss the development and thoroughly explain the theories that exist in the field and study of the European Union is not necessary for the purpose of this chapter and the thesis in general. Rather, what we shall deal with in this chapter is the multi-level governance approach. This approach is chosen as it has the potential to capture well the complex multi-level and multi-actor structure of the European Union, particularly in the foreign policy area. One should note that while the multi-level governance approach is established in the literature, it has not been explored as much in the field of foreign policy. This chapter aims to outline the multi-level governance approach and explain why it seems to apply well in the field of foreign policy of the European Union. In addition, it highlights the need to expand the approach to include also the external actors.

2.1 Multi-level Governance – The Concept and its Origins

As we have already noted, there are numerous theoretical approaches and concepts that have been applied to the study of the European Union. The approach that we are utilizing (the multi-level governance approach) can be seen as an alternative to the dominant

approaches that deal with the issue of European integration. As Ian Bache and Matthew Flinders explain, prior to the development of the multi-level governance approach (MLG), "most of the theorizing about the EU had been dominated by approaches derived from the study of international relations (IR)."[49] Indeed, one can see that "from the IR tradition of pluralism, Haas (1958) and Lindberg (1963) developed neofunctionalism, while from state-centered realism, Hoffmann (1964, 1966) applied intergovernmentalism."[50] Essentially, the views of these two contrasting camps focused or sought to analyze and explain European Union integration with focus on the role and relevance of the state and the supranational level actors. "Intergovernmentalists emphasized the centrality of states in the process, developing the concept of governments as 'gatekeepers' able to resist unwanted consequences of integration. Neofunctionalists claimed that governments were increasingly caught up in a web of interdependence that provided a role for supranational actors and organized interests in shaping integration."[51]

It was in this context that the multi-level governance approach would emerge as "part of a new wave of thinking about the EU as a political system rather than seeking to explain the process of integration."[52] The new approach would come in the aftermath of the changes that the Community would undergo in the 1980s. It can be said that "the origin of the concept of multi-level governance is directly related to the establishment of a more integrated European Union in the early 1990s."[53] However, the question of who should be credited for its formulation is a matter of debate. As Stein and Turkewitsch point out, "there have been several different political analysts who have been cited as originators of this concept."[54] Indeed, the answer to the question of who is to be credited for the formulation of the multi-

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[49] Ian Bache and Matthew Flinders, eds., *Multi-level Governance* (Oxford: Oxford University Press, 2004), 2.
[50] Ibid., 2.
[51] Ibid., 2.
[52] Ibid., 2.
[53] Michael Stein and Lisa Turkewitsch, "The Concept of Multi-level Governance in Studies of Federalism" (paper presented at the 2008 International Political Science Association (IPSA) International Conference, Montreal, Canada, May 2, 2008), 7.
[54] Ibid., 7.

level governance concept varies among scholars and authors of European studies. Stein and Turkewitsch explain that "Jachtenfuchs, for example, attributes the 'symbolic reference point' (but not the terminological origin) of multi-level governance to an article that Fritz Scharpf published in 1988 on 'The Joint-Decision Trap'."[55]

However, with an examination of literature on the subject matter, one can say that the majority of scholars and authors tend to view the formulation and the development of the multi-level governance concept as being the result of the works of two authors, Gary Marks and Liesbet Hooghe. Ian Bache and Matthew Flinders hold that "Gary Marks (1992) first used the phrase multi-level governance to capture developments in EU structural policy following its major reform in 1988."[56] The studies conducted by Marks and Hooghe revealed that "regionalization, i.e. shifting powers from the national to the sub-national level, parallels the increasing transfer of competences to the European level."[57] This view, offering a contrasting perspective from those who hold a more state-centric approach, i.e. intergovernmentalists, would provide a certain challenge to the latter. Put simply, one can say that "the core presumption of state-centric governance is that European integration does not challenge the autonomy of nation-states."[58] This intergovernmentalist approach does recognize the existence of supranational actors. However, it holds that these "supranational actors exercise little independent effect"[59] in the realm of policymaking.

Multi-level governance views the EU policy-making process as one where "authority and policy-making influence are shared across multiple levels of government – subnational, national, and supranational."[60] Thus, the issue of control and power is viewed differently by

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[55] Ibid., 7.

[56] Ian Bache and Matthew Flinders, eds., *Multi-level Governance* (Oxford: Oxford University Press, 2004), 2.

[57] Arthur Benz and Christina Zimmer, "The EU's competences: The 'vertical' perspective on the multilevel system," *Living Reviews in European Governance* 3, no. 3 (2008), 17. available online at http://europeangovernance.livingreviews.org/Articles/lreg-2008-3/download/lreg-2008-3BW.pdf

[58] Gary Marks, Liesbet Hooghe and Kermit Blank, "European Integration from the 1980s: State-Centric v. Multi-level Governance," *Journal of Common Market Studies* 34, no. 3 (September 1996): 342.

[59] Ibid., 342.

[60] Ibid., 342.

MLG scholars. As Marks and Hooghe put it in one of their works, the multi-level governance approach involves "the reallocation of authority upwards, downwards, and sideways from central states."[61]

One should note that the multi-level governance approach "is best understood as a natural evolution of an increasingly complex pattern of policy-making and authoritative decision-making in today's more tightly integrated and globalized world."[62] Indeed, the approach is viewed by some as being able to address and explain these patterns and processes in an appropriate manner, something that previous or other concepts have failed to do successfully. As Stein and Turkewitsch have explained,

> "its [MLG] proponents maintain that it is capable of encompassing the broader scale and scope of current decision-making, the marked increase in numbers and types of decision-makers (including private sector actors such as corporations and unions, non-governmental organizations, members of social movements, and individuals in civil society), and the multiple levels and tiers of decision-making."[63]

Since we have explained the multi-level governance concept above, presenting its development and describing what it essentially entails, it is now necessary to present the relevance of the concept to the study of foreign policy.

2.2 Multi-level Governance and Foreign Policy

The MLG approach has been used in areas such as, EU Structural Policy or EU Environmental Policy, to name only a couple of examples. However, Liisa Laakso notes that "the multi-level governance (MLG) approach has not received much attention within research

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[61] Liesbet Hooghe and Gary Marks, "Unraveling the Central State, But How? Types of Multi-Level Governance," *Political Sciences Series* 87, Institute for Advanced Studies Vienna (March 2003): 5.
[62] Michael Stein and Lisa Turkewitsch, "The Concept of Multi-level Governance in Studies of Federalism" (paper presented at the 2008 International Political Science Association (IPSA) International Conference, Montreal, Canada, May 2, 2008), 8.
[63] Ibid., 8.

on European foreign and security policy."[64] While this appears to be the case, one should not be surprised with this phenomenon. Indeed, much of the research on the foreign and security policy of the European Union has focused on the issues that deal with questions relating to its functioning and even existence, posing questions such as: 'Why the EU should have a common foreign and security policy?' and 'Why it has experienced problems and hindrances in these endeavors?' Considerable literature exists on this subject matter. Michael E. Smith, in his work 'Europe's Foreign and Security Policy: The Institutionalization of Cooperation', asks questions such as: "why should a regional economic organization struggle for so long to develop its own foreign policy?"[65] However, the literature that utilizes the multi-level governance approach is modest in comparison. Laakso explains that "this is not surprising, as in the past researchers instead concentrated on the lack of such a policy, which was not difficult to explain within the traditional international relations frameworks"[66] and that "due to the central position of security apparatuses for modern nation states, integration within this sector was seen as a threat to the statehood of member states of the European Union (EU)."[67] Although the MLG approach has not been utilized as much thus far, one can deduce that with the growing research and literature, it has been "expanded to emphasize the role of the actors involved in EU foreign policy and the way in which they interact with each other."[68]

The multi-level governance approach can be viewed as a useful and different approach that could help us understand the foreign policy of the European Union. However, one can discern, as Bagoyoko-Penone has pointed out, that "most of the research using a multi-level

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[64] Liisa Laakso, "A Capability-implementation Gap in the Making? Multi-level Governance and European Crisis Management," in *European Governance: Policy Making between Politicization and Control*, ed. G.P.E. Walzenbach (Aldershot: Ashgate Publishing, Ltd., 2006), 147.

[65] Michael E. Smith, *Europe's Foreign and Security Policy: The Institutionalization of Cooperation* (Cambridge: Cambridge University Press, 2004), 3.

[66] Liisa Laakso, "A Capability-implementation Gap in the Making? Multi-level Governance and European Crisis Management," in *European Governance: Policy Making between Politicization and Control*, ed. G.P.E. Walzenbach (Aldershot: Ashgate Publishing, Ltd., 2006., 147.

[67] Ibid., 147.

[68] Niagale Bagayoko-Penone, "Multi-level governance and security: the European Union support to security sector reform (SSR) processes," Institute of Development Studies, University of Sussex, 1. available online at http://erd.eui.eu/media/bagayoko-penone.pdf

governance approach to study the foreign policy of the EU is primarily focused on the decision-making processes in EU circles, between the institutional actors of the CFSP/ESDP, and national constituencies within the member-states."[69] Thus, it can be said that there is a lack of work in which the multi-level governance approach is utilized to analyze the interactions of actors on the global or international level, such as international organizations and states. In addition, little has been done with regards to analyzing the interactions of EU and other actors from this perspective. "This approach has been little used in the study of the relationships between the EU institutional actors and their non-European partners or in the study of governance in other regions or other polities."[70] As already known, this thesis aims to expand the multi-level governance approach, arguing that it should also be "placing emphasis on the international interactions between institutional actors who are geographically/territorially situated at different levels of the decision-making process in different places around the world, thus suggesting ways to grasp multi-actor and multi-sited governance processes."[71] This novel way of using the MLG model will be explored in the case of the EULEX mission in Kosovo. As we shall see in the next chapter, both the national and EU level actors had a pivotal role in the shaping of the mission, in the formulation and implementation phase. However, what we seek to demonstrate is the importance of the international factor, i.e. external actors such as international organizations (e.g. UN) and non-EU states such as Russia, Serbia and self-declared independent Kosovo.

2.3 The Need for a Multi-level Governance Approach to Foreign Policy

The world has undergone many radical changes in the last decades, or since the end of the Second World War. The same could be said for Europe which has altered and developed

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[69] Ibid., 1.
[70] Ibid., 1.
[71] Ibid., 1.

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beyond recognition since its inception in the late 1950s. With the process of globalization, the world has become increasingly interdependent and interconnected, more than ever before. This process has also brought about the issue of nation-state relevance and the power and authority of non-state actors in the world, a topic that has seen much debate and a plethora of literature. The world has seen a significant rise in the number of non-state actors that have become rather powerful and influential. Hence, in such an increasingly interdependent world system with an increased number of actors, the multi-level approach for analyzing foreign policy making processes seems appropriate.

2.3.1 Multi-level Governance in the European Union

The need for such an approach is even more pivotal for the study and analysis of European Union foreign policy. There are a number of reasons for this. Elke Krahmann has pointed out in an excellent book that deals with the subject matter, that "European foreign policy making has become more and more fragmented – both in terms of actors and levels of analysis."[72] However, what has caused this fragmentation of foreign policy of the European Union? One can say that it is the result of a certain phenomenon that has occurred in the sphere of foreign relations. Krahmann explains that "international organizations such as the European Union, NATO and the OSCE have expanded their role in the making of foreign policy in the region."[73] However, there is also another trend that is taking place. This trend involves the emergence of other actors that have become influential in the policymaking process. Indeed, one can recognize that "public and private actors at the national and subnational levels increasingly engage directly in European foreign policy through a network

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[72] Elke Krahmann, *Multilevel Networks in European Foreign Policy* (Aldershot: Ashgate Publishing, Ltd., 2003), viii.
[73] Ibid., viii

of transnational relations."[74] Obviously, as a result of these trends, the utilization of a multi-level approach is needed.

Michael E. Smith sheds light on this subject, by devoting attention to the relevance of the multi-level governance to the European foreign and security processes. He makes a number of pivotal points. First of all, he stresses that "the analysis of multi-level governance in EU foreign policy must begin with the broader context in which that governance is embedded."[75] Smith points out the numerous characteristics of the EU system and its Member States, such as the commonality that exists between them in many ways and forms.[76] Hence he makes the argument:

"Among the states of Western Europe, the EU is now the primary frame of reference for more policy decisions than any other international/regional organization, and it is for this reason that any discussion of multi-level governance must focus primarily, though not exclusively, on the EU. For in the realm of foreign policy, even EU decisions must show some sensitivity to decisions taken elsewhere, particularly the UN and, to a lesser degree, NATO."[77]

Michael E. Smith, who argues for a multi-level governance approach to European foreign policy, makes a fundamental contribution by describing the multi-level governance structure. He asserts that "this structure of CFSP governance now involves four major elements."[78] According to him, they are:

- "greater *coherence of the policy sector and rationalization of the policy process*;"[79]

- "the CFSP is *legally binding on EU member states*;"[80]

- "the CFSP includes several *authoritative decision-making rules*, in form of qualified majority voting (QMV);"[81]

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[74] Ibid., viii.

[75] Michael E. Smith, "Toward a theory of EU foreign policy-making: multi-level governance, domestic politics, and national adaptation to Europe's common foreign and security policy," *Journal of European Public Policy* 11, no. 4 (August 2004): 742.

[76] Ibid., 742.

[77] Ibid., 742.

[78] Michael E. Smith, "Toward a theory of EU foreign policy-making: multi-level governance, domestic politics, and national adaptation to Europe's common foreign and security policy," *Journal of European Public Policy* 11, no. 4 (August 2004): 743.

[79] Ibid., 743

[80] Ibid., 743.

- and finally, there is a *"greater degree of autonomy for EC organizational actors* in European foreign policy."[82]

The foreign policy of the European Union, in recent times, can be characterized in the following manner. Namely, as Smith describes, the developments in the foreign policy realm "can be described in terms of a greater consolidation of authority at the EU level (which consists of both national and EU organizational inputs), and a greater degree of national adaptation to EU foreign policy norms (procedural and substantive, or 'Europeanization'."[83] While the foreign policy realm of the Union can be said as being decentralized, "opportunities still exist for member states to undermine the process."[84] However, Smith's attempts at utilizing the multi-level governance approach (he takes the case of the policy of the EU towards South Africa) show that EU institutions can have authority to influence and shape foreign policy. Indeed, according to Holland, the Commission "fully utilized its power of initiative and was the leading player throughout 1993-94 in structuring the Union's contemporary policy, fulfilling a role of at least *primus inter pares*."[85]

Before discussing the relevance of international actors, it is necessary to pose the following question: Who are the actors involved in the process of foreign policy of the European Union? In other words, who shapes the decisions? This process "involves various European institutions, in particular the Commission, the European Parliament (EP), and the Council of the EU."[86] It must be noted that "while the Commission, responsible for different aspects of external relations, enlargement, association and development policies, is 'fully associated' with the CFSP the ultimate power in this policy field rests with the MS."[87]

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[81] Ibid., 743.
[82] Ibid., 743.
[83] Ibid., 741.
[84] Ibid., 755.
[85] Martin Holland, "Bridging the Capability-Expectations Gap: A Case Study of the CFSP Joint Action on South Africa," *Journal of Common Market Studies* 33, no. 4 (1995): 566.
[86] Rudi Guraziu, "European Union Foreign Policy Making Towards the Western Balkans: Lessons Learned?" (MA thesis, Middlesex University, 2008), 22.
[87] Ibid., 22.

However, it would be irrational to argue that other actors (for instance, institutions) are not pivotal in the foreign policy making process. Indeed, institutions such as the Commission, the Political and Security Committee and also figures such as the High Representative for CFSP can be important actors.

In addition, one should also note that the foreign policy decision-making process has a certain ingredient of flexibility. This comes from the move of the EU "which introduced Qualified Majority Voting (QMV) with the dual safeguards of 'constructive abstention' (i.e. an abstention which does not block the adoption of the decision) and the possibility of referring a decision to the European Council if a member state resorts to a veto."[88] This has been experienced in the issue of EULEX deployment within the circles of the EU. Also, the same occurred in the case of signing the Stabilization and Association Agreement with Serbia. "The EU on both occasions was able to agree under the 'joint action' and the 'constructive abstention' principles giving MS such as Cyprus the possibility of not agreeing to send a mission to Kosovo and the Netherlands of not concurring to the signing of the SAA respectively without obstructing it."[89] This 'constructive abstention' feature was created with the Treaty of Amsterdam and it could be argued that it demonstrates that authority is in fact shifting away from national governments towards the EU level.

However, what about actors external to the EU? What about their role in the foreign policy realm? There is a list of other actors that tend to make the picture even more complicated. The list includes "other intergovernmental organizations (IGOs), some third states, and increasingly some non-governmental organizations (NGOs) which have been coopted or forced their way into the network of consultations."[90] All of these actors are in some way involved in the process and shape the foreign policy of the European Union. Such

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[88] Ibid., 24.
[89] Ibid., 24-25.
[90] Christopher Hill, "Convergence, Divergence and Dialectics: National Foreign Policies and the CFSP," in *Paradoxes of European Foreign Policy*, ed. Jan Zielonka (The Hague: Martinus Nijhoff Publishers, 1998), 43.

complex networks of multiple actors that interact at multiple levels make it rather difficult to analyze foreign policy. Such a complex network with all of its characteristics makes it "difficult to know who is shaping 'European' foreign policy."[91] Also pivotal to note is that this complexity makes the response of the Union towards external needs in forms of crises and conflict which require swift and efficient responses difficult to formulate and undertake. In the next section we will discuss the relevance of the international level actors.

2.3.2 Multi-level Governance and the Relevance of International Actors

It would be irrational for any scholar within the study of the European Union to deny that the EU is independent of other actors in the international arena, i.e. that its foreign policy is not influenced and shaped by such actors.[92] Of course, it would be difficult to imagine any analysis of foreign policy that would fail to include the actors from the international stage. In the same way it would be difficult to imagine any analysis of EU foreign policy that excludes the impact of those actors. Krahmann supports this view as she states that "European foreign policy cannot be fully understood without consideration of Europe's relations with the United States and other international organizations engaged in Europe, such as the North Atlantic Treaty Organization (NATO), the Organization for Security and Cooperation in Europe (OSCE) or the United Nations (UN)."[93] The reason for this is simply due to the fact that these international actors influence and shape the foreign policy of the European Union. There is a plethora of examples that can demonstrate the extent to which the decisions of the European Union within the realm of foreign policy can be influenced and shaped by its relations with other actors. Just as during the Cold War, during which the European Community had been

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[91] Ibid., 45.
[92] Elke Krahmann seeks to demonstrate this argument in her book "Multilevel Networks in European Foreign Policy" by utilizing case studies that show the interdependence character of the European Union foreign policy.
[93] Elke Krahmann, *Multilevel Networks in European Foreign Policy* (Aldershot: Ashgate Publishing, Ltd., 2003), 1.

conditioned by and functioned in between the two contending camps that characterized the bipolar system of the second half of the twentieth century, the European Union is today obviously influenced by the changing international environment. This constantly changing international sphere cannot be ignored.

As Michael Smith asserts, "from the beginning, the European Communities and now the EU have had to exist in a changing international context; indeed, many treatments of the history of European integration place great weight on the international dimension of both the foundation and the development of the phenomenon."[94] Its policies can be shaped by other non-EU actors, by countries such as Russia and the United States, but also by international organizations such as the United Nations. As we have already noted, in the thesis we aim to demonstrate that actors such as the ones mentioned above can have influence on the activity of the European Union, i.e. its activity on the international level.

As a result of all of these circumstances that we have described above, the multi-level approach seems rather necessary for the study of foreign policy. "The consensus that foreign policy decision-making cannot be adequately grasped by single-level analysis builds on a broad range of studies observing changes in the nature of the political process over the past decades."[95] Krahmann makes a valuable contribution by arguing that "these studies widely agree that contemporary foreign policy decision-making processes in Europe and, more broadly, in the transatlantic community are characterized by three features: the increasing multiplicity, diversity and interdependence of foreign policy actors."[96]

Let us first take a look at the *multiplicity* feature. The term itself is pretty straightforward and easy to grasp. "The notion of multiplicity commonly refers to the observation that the number of actors which are able to influence the foreign policy process

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[94] Michael Smith, "The EU as an International Actor," in *European Union: Power and Policy-making*, ed. Jeremy Richardson (London: Routledge, 2002), 284.
[95] Elke Krahmann, *Multilevel Networks in European Foreign Policy* (Aldershot: Ashgate Publishing, Ltd., 2003), 4.
[96] Ibid., 4.

and its outcomes has steadily grown over the past 50 years."[97] This refers to what we have pointed out above early on at this section of the chapter. One can see the rise and even expansion of responsibilities of international organizations such as, for example, NATO, OSCE and the UN. However, this trend is not only limited to actors such as international organizations. Indeed, the world has experienced the emergence of transnational and multinational corporations, a feature of the phenomenon of the globalization process, which have become so powerful as to have a marked influence on policymaking processes of states.

The second feature pointed out by Krahmann is that of *diversity*. This notion is also rather easy to understand. It refers to the fact that "the actors which participate in contemporary foreign policy decision processes are located at the national, transnational and international arenas."[98] The existence of such actors at these different levels has brought about new characteristics and conditions. "As a consequence of functional differentiation within and across national borders, a broad range of actors have become affected by, and able to influence, authoritative decision-making with regard to foreign relations."[99]

Finally, the foreign policy decision-making processes are characterized by *interdependence*. This is a characteristic of the ever more integrated and globalized world that we are heading towards at an increasingly rather fast pace. However, on should note that "those who believed that world interdependence was accelerating have to admit that nation-states have gone to considerable lengths to reshape the economic, technological, and ecological forces acting upon them, seeking to reduce interdependence."[100] What does this mean for foreign policy? Krahmann asserts that this interdependence in the foreign policy realm means that "actors within and across national boundaries depend to a larger degree on

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[97] Ibid., 5.
[98] Ibid., 6.
[99] Ibid., 6.
[100] Richard Rosecrance and others, "Whither Interdependence?" *International Organization* 31, no. 3 (Summer 1977): 426.

each other's resources for the fulfillment of their needs and functions."[101] This implies that a process such as "decision-making and implementation has come to rely on contributions from a larger number of actors."[102]   This section and the three features mentioned above demonstrate the relevance of the MLG approach to foreign policy and why it is important to also focus on the role of international actors.

In the next chapter we will utilize the case study of the EULEX mission in Kosovo by using the theoretical framework that we have dealt with extensively in this chapter. We seek to test the MLG approach with this EU mission, showing the importance and relevance of the national and EU level actors. However, recognizing the lack of focus of the MLG approach towards the international level (above EU-level) as an omission of the approach to foreign policy, we will emphasize the importance of the actors that are beyond the EU-level.

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[101] Elke Krahmann, *Multilevel Networks in European Foreign Policy* (Aldershot: Ashgate Publishing, Ltd., 2003), 7.
[102] Ibid., 7.

Chapter 3: Case Study – The European Union Rule of Law Mission in Kosovo (EULEX)

Having laid down the necessary foundation in the previous two chapters by providing the historical developments and the context of the issue at hand (EULEX mission) and also by providing an extensive outline of the theoretical framework this thesis is testing with the EULEX case study (MLG approach), this final chapter will utilize the EULEX mission. It will demonstrate what is essentially its main goal, i.e. that the multi-level governance approach to foreign policy should be extended from its form thus far by going beyond the national and EU level actors. It will be demonstrated that while the Member States of the EU are very relevant and pivotal in the foreign policy realm and EU missions abroad, the role of the EU institutions is also significant. Moreover, the case study of the EULEX mission in Kosovo will also demonstrate that the international level actors are also considerably important and can have great influence in the formulation and implementation of EU missions. Thus, our case study can serve as evidence for our argument that the multi-level governance approach to foreign policy should be extended and not limit itself only to the national and EU level. In order to successfully achieve this, this final chapter will provide an analysis of the main actors involved, both on the national and EU level and how these actors influenced and shaped the EULEX Kosovo mission. Furthermore, it will also discuss the international level actors and show that they can exercise considerable influence on the formulation and implementation of the EU mission.

3.1 Actors within the European Union

As we have already noted in the first chapter, the European Union has been active in Kosovo since NATO expelled the Serbian army after a bombing campaign in 1999. During the 1990s it proved incapable of responding effectively and this highlighted the disunity in the Union. EU Member States failed to act together. After its failure in the 1990s and its weak position during the 1999 Kosovo War, the EU has sought to become more active in a region whose stability obviously must be also in the interest of its Member States. This change in policy marked an increased engagement of the Union with programmes for development and economic assistance. However, while the EU was indeed playing a more active role in the province, the UN administration remained the main authority there. One should also remember that a plethora of other international organizations were also present. "The international presence also includes an international military presence provided by NATO (KFOR), an OSCE mission, and major capacity building efforts by the World Bank, UNDP, the Council of Europe and other partners."[103]

With the recognized need for the resolution of the status of the province as highlighted and urged by the Kai Eide report in 2005, the European Union would be given greater responsibility after the formulation of the Ahtisaari Plan. With the realization that the extensive and tiresome negotiations between Pristina and Belgrade were proving fruitless, the European Union increased its efforts to establish itself a more leading role in the post-status period. "The Brussels European Council of 14 December 2007 underlined the readiness of the EU to play a leading role in strengthening stability in the region in line with its European perspective and in implementing a settlement defining Kosovo's future status."[104] In addition,

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[103] Council of the European Union Press, "The EU in Kosovo" (February 2008), 2. available online at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/gena/98770.pdf
[104] Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo, 42/92 available online at http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/lawmission/lawmissionen.pdf

one should also note that the Council had previously also agreed on one important establishment. Namely, "on 10 April 2006, the Council adopted Joint Action 2006/304/CFSP on the establishment of an EU Planning Team (EUPT Kosovo) regarding a possible EU crisis management operation in Kosovo in the field of rule of law and possible other areas in Kosovo."[105] Certainly, these decisions can be interpreted as a move of the EU to play a more significant and active role in the region. Also, they can be perceived as the efforts of the EU to act as an important actor internationally. All of these efforts were projected through the EU level, through institutions such as the Council (with its decision-making power), the Commission (with its role in the implementation and funding of the mission), The Political and Security Committee (with its task of directing the mission), and other actors within the multi-level network in Brussels. The point to be made is that while the Member States play a crucial role in CFSP and EU missions, most of the activity takes place at EU level, through the various Brussels-based institutions who act out most of the tasks.

3.1.1 European Union Member States

Member States (especially the big and powerful ones) had played an important role in the development of the mission. As Raube points out, "in December 2007, France, Germany and Italy pushed for an active role of the EU in Kosovo."[106] It appears that the Member States had accepted and "embraced the idea of the Ahtisaari Report that the EU had to play a key role in Kosovo."[107] However, as we shall see, not all of the Member States shared this position.

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[105] Ibid., 42/92
[106] Kolja Raube, "The Constitutionalization of the European Union as an International Actor –Different Concepts and Accommodating Differences: A Case Study of the Making of Treaty-Change in CFSP/ESDP and Kosovo Independence" (paper presented at the 2008 Garnet Conference: The EU in International Affairs, Egmont Palace, Brussels, 24-26 April, 2008), 20.
[107] Ibid.,20.

As we have noted in the first chapter, prior to the unilateral declaration of independence of Kosovo on 17 February 2008, the Council adopted the Joint Action 2008/124/CFSP on 4 February. "It was unanimously agreed to dispatch the EULEX rule of law mission and an EU special representative for Kosovo."[108] However, it should be noted that there were Member States, such as Cyprus and Romania, who were against the deployment of the EU mission. These states would also not recognize Kosovo's declaration of independence. Essentially, these states were against an EU mission that did not have the approval of the UN Security Council. During the voting on the deployment of the mission, Cyprus used the 'constructive abstention' option.[109] This allowed for the mission to be deployed even though states such as Cyprus did not wish to pursue it. It is important to note that the states that would not recognize the self-declared independence of Kosovo had concerns that minorities and their movements within their own borders could follow the Kosovo example. Hence, they "were only willing to agree to an EU involvement in Kosovo on the basis that this would not have any consequences for minorities claiming more autonomy or independence in their territories."[110] Raube argues that one can view what would occur as "a process built on the expertise and willingness of a Brussels-based administration in the Council, PSC [Political and Security Committee], Commission et al., which is able to make and enforce policy decisions well beyond a lowest common denominator."[111]

The agreement to dispatch the EULEX mission shows one crucial element in the CFSP of the EU. It demonstrates that the EU can show maturity as well as the ability to act on important issues. However, it should be noted that this case study also demonstrates that this

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[108] Johanna Deimal and Armando Garcia Schmidt, "Kosovo 2009: Uncertain Future," *Spotlight Europe* (January 2009): 2.
[109] Willem F. van Eekelen and Sebastian Kurpas, "The Evolution of Flexible Integration in European Defense Policy: Is Permanent Structured Cooperation a Leap Forward for the Common Security and Defense Policy," CEPS Working Document no. 296, June 2008, 10.
[110] Kolja Raube, "The Constitutionalization of the European Union as an International Actor –Different Concepts and Accommodating Differences: A Case Study of the Making of Treaty-Change in CFSP/ESDP and Kosovo Independence" (paper presented at the 2008 Garnet Conference: The EU in International Affairs, Egmont Palace, Brussels, 24-26 April, 2008), 19.
[111] Ibid., 19.

is possible in situations and cases in which the Member States recognize common interests as well as threats. Indeed, the security risks and the stability in the Balkans, particularly in Kosovo, are of significant interest for the Member States. It can be argued that "when the government level actors recognize common security threats and develop common capacities to respond to these threats, they are protecting their national interests but also empowering the EU level actors."[112] In the case of the EULEX mission, the Member States were of significant importance and influence. Due to their positions, it was possible to come to agreement on the mission. In addition, the pressure from the states that would not support the mission unless it received UN backing also played a role in the way the mission was to come into being. This seems to work in favor of the intergovernmentalist approach. However, while the Member States did exercise an important role, the relevance and the importance of the EU level actors cannot be overlooked and excluded.

3.1.2 EU Level Actors

In line with the statement made above in the previous section, i.e. that Member States tend to delegate competence to the EU level when they recognize common threats, this phenomenon has occurred in the case of the EULEX mission and can provide evidence for the MLG approach. As we will see in this section, this can be seen in regards to the role of the institutions in the planning and implementation of the mission, as well as the issue of authority or control over personnel that are involved in the mission on the ground. Neil Dillon explains that when the EU managed to reach consensus on the EULEX mission, "the official line from the European Council was that it was up to Member States to determine their own relations with Kosovo, whilst it was down to the EU to fulfill its longstanding commitment to

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[112] Liisa Laakso, (2006), 148.

the stability of the Western Balkans region."[113] According to him, "in this way, the Council passed the political questions to the Member States, who in return left the operational issues to the Council."[114] Moreover, it can be argued that "this particular division of tasks is certainly nothing new in EU external relations."[115]

The EU has been active in Kosovo helping it achieve progress and eventual EU membership. "The EU is the largest donor to Kosovo, having already spent 1.8 billion Euros and envisioning some 200 million Euros for the development of Kosovo's institutions and advancement toward regional integration from 2007-2009."[116] The Community has been present in Kosovo through bodies such as the European Commission who has its Liaison Office there since 2004[117] and which "provides significant project funding to strengthen institutions, develop the economy and realize European standards; supports the Stabilization and Association process."[118] Also pivotal for the EULEX mission has been the establishment of the EU Planning Team (EUPT Kosovo) in 2006 which was to "act as the main planning and preparation element for EULEX Kosovo."[119] It is important to note that this planning team would develop the plans in partnership with the local counterparts.[120]

In addition, before discussing the role and relevance of the EU institutions, one element should be noted as it tends to confirm the MLG view, i.e. that the national level is important but not exclusive, even in the field of CFSP. "According to the targets set by the Feira European Council, member states should provide police officers, judges, prosecutors

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[113] Neil Dillon, "Beyond Recognition: Europe's Real Challenge in Kosovo Begins Now," *Madriaga – College of Europe Foundation*, 23 June 2008, 1. available online at http://www.madariaga.org/publications/articles/49-2008/100-article-3?format=pdf (accessed May 28, 2009).

[114] Ibid., 1.

[115] Ibid., 1.

[116] Tia Trueblood, "Kosovo and Serbia: Serbia's Balancing Act," *Newsletter of the European Union Center of Excellence at Indiana University* 2, no. 3 (August 2008): 2.

[117] EULEX Kosovo, http://www.eulex-kosovo.eu/?id=7 (accessed May 28, 2009).

[118] Ibid., (accessed May 28, 2008).

[119] Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo, 42/92 available online at http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/lawmission/lawmissionen.pdf

[120] EUPT Kosovo – Handout on EUPT Kosovo Update on EULEX Rule of Law Mission, 4 March 2008, available online http://www.dz-rs.si/predsedovanje/fileadmin/dz.gov.si/pageuploads/predsedovanje/SI/Odbor_za_obrambo/govor.pdf

and penal experts for joint missions."[121] This target is certainly also present in the EULEX mission. As laid out in the Council Joint Action 2008/124/CFSP, "EULEX Kosovo shall consist primarily of staff seconded by Member States or EU institutions."[122] Laakso explains that states "can decide whether they will provide personnel to the joint missions, but when deployed, this personnel will be controlled by EU level actors."[123] Again, according to the previously mentioned Joint Action, the personnel are under the control and authority of the Head of Mission.[124] This feature can be used in the argument of our approach.

As already noted, the European Commission has been active in Kosovo. Its activity there is perceived as reflecting the "reform-driving commitment"[125] of the EU towards Kosovo. It can be said that its reports on the situation and progress had played an important role in shaping the EULEX mission by highlighting the crucial areas that must be addressed (e.g. the rule of law). The Commission also has a pivotal role in the implementation phase of an EU mission.[126] In the Mission Statement of EULEX it is stated that "the mission, in full cooperation with the European Commission Assistance Programmes, will implement its mandate through monitoring, mentoring and advising, while retaining certain executive responsibilities."[127] One example of the Commission's role at the implementation phase may be seen in the area of training, where the "Secretariat and the Commission have worked closely to deliver harmonized European civilian training requested by the Member States."[128]

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[121] Liisa Laakso, (2006), 158.
[122] Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo, 42/95.
[123] Liisa Laakso, (2006), 158.
[124] Council Joint Action 2008/124/CFSP, 42/95
[125] "EU Presences and Partnership with the Kosovo Government," lecture by Pieter Feith at the Kosovo School for European Integration, April 16, 2009, available online at http://www.eusrinkosovo.eu/en/news15.html (accessed May 29, 2009).
[126] Michael E. Smith, "Toward a theory of EU foreign policy-making: multi-level governance, domestic politics, and national adaptation to Europe's common foreign and security policy," *Journal of European Public Policy* 11, no. 4 (August 2004): 744.
[127] Council Joint Action 2008/124/CFSP, 42/93
[128] Gabriele Visentin. "The Training Efforts for European Union Missions / The Role of the European Commission in Enhancing Cooperation and Coordination of the Existing EU Training Capacities." at the EGT Conference: Building EU Training Capacities: Sharing Resources and Experience in the Field of Civilian Crisis Management, Jable Castle, Slovenia, 28-29 May, 2008, 27.

In addition, the Commission, along with the European Parliament, also has a significant role to play in the funding of the mission. In the Financial Arrangements clause of the Joint Action it is stated that "the Head of Mission shall report fully to, and be supervised by, the Commission on the activities undertaken in the framework of his contract."[129] The funding aspect has been important in the EULEX case. Namely, due to the disagreements which delayed the deployment, the European Parliament in early November 2008 threatened to block funding for the mission if it was not deployed throughout Kosovo.[130] This caused considerable pressure for the EU to achieve an agreement with Serbia and at the UN Security Council. This shows the ability of the Parliament to act and use its powers.

During the difficult negotiations over the deployment of the mission between Brussels, Belgrade and New York, the European Parliament exerted considerable pressure on Serbia to change its stance towards the mission. The Foreign Policy Committee of the European Parliament would "debate on a draft resolution text that states that the Serbian government's opposition to the EU mission is detrimental to the well-being of the Serbs in Kosovo and is not compatible with Serbia's aspirations for EU membership."[131] In this way, again through pressure, the EU institution contributed in the negotiation process that would end with Serbian approval.

Another EU level actor has been important in the EULEX case. The Political and Security Committee – "a central Brussels-based body comprising one representative (of ambassadorial rank) from each of the twenty-seven member states, plus one representative from the Commission"[132] – has played an important role in shaping the mission by monitoring

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[129] Council Joint Action 2008/124/CFSP., 42/97
[130] "EP might block EULEX funding if not deployed throughout Kosovo" – EMportal, 3 November 2008, available online at http://www.emportal.rs/en/news/serbia/67910.html (accessed May 29, 2009).
[131] "EC: Serbian EULEX conditions accepted," B92, 7 November 2008, available online at http://www.b92.net/eng/news/politics-article.php?yyyy=2008&mm=11&dd=07&nav_id=54810 (accessed May 29, 2009).
[132] Jolyon Howorth, "The Political and Security Committee," (paper presented at the Connex Workshop - How Much Is Known About the 'Community Method', Sciences Po, Paris, 29 November 2007), 4.

the situation in Kosovo and assisting to delineate the policies,[133] as well as "exercising political control and strategic direction"[134] of the mission. It has also made a number of decisions: appointment of the Head of Mission - Yves de Kermabon, as well as the appointment of the Head of the EUPT.[135]

In this section we presented the relevance of both the national and the EU level in the foreign policy realm. In line with the MLG approach, we can see that the Member States do exercise considerable authority in the area of EU foreign policy and EU missions abroad. The approval by the Member States to dispatch the mission was crucial. Moreover, the positions of the opposing Member States were also important. The Member States exercise significant authority of EU missions and influence the substance and the decision-making process. Much depends on the Member States. While the positions of the Member States are crucial, they are projected to EU level forums such as, for example, the Council, which has decision-making authority. Thus, the importance of the EU level should not be excluded. Indeed, EU level actors, as we have seen, can demonstrate initiative and activity and also contribute in shaping the mission. These institutions play a pivotal role in the implementation phase of a mission by, amongst other things, monitoring and coordinating the process. As in the case of EULEX Kosovo, they have an important role in the financing of the mission and also in the planning phase. Thus, taking into account the roles of the EU level actors in our case, one can discern the validity of the MLG approach.

3.2 The Role of International Level Actors

So far, we have discussed the relevance of actors which are located at two levels: the national level (Member States) and the EU level (EU institutions). However, as we have

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[133] Ibid.,
[134] Ibid., 7.
[135] Council of the European Union, EULEX Kosovo, http://ue.eu.int/showPage.aspx?id=1459&lang=en

already noted, the actors located at the international level have been highly influential with regards to the EULEX mission establishment and deployment. In this section of the chapter we seek to demonstrate the importance of these actors which are external to the European Union and which, essentially, were to have a considerable impact on the mission (however, mostly in the implementation phase). In order to achieve this, this section will be divided into separate subsections, each of them dedicated to the various actors located at the international level. As already noted on a number of accounts throughout the thesis, this section can provide for the argument that the multi-level governance approach has the omission of failing to account for the role and influence of the international level actors.

3.2.1 The Role of Serbia

After the NATO military campaign in 1999 had expelled the Serbian troops, Serbia had lost its hold over Kosovo. Since then, with the increased resolution within the international community to solve the status question of Kosovo, Serbia has undertaken significant (diplomatic) efforts to ensure that Kosovo, which seeks independence, would remain within its borders. "In March 2007 Ahtisaari presented a plan which contains fundamental guarantees for the Serbian minority in Kosovo and envisages conditional independence for Kosovo under international supervision."[136] Serbia rejected this proposed plan. With the rounds of talks and negotiations between Priština and Belgrade failing to reach an agreement or a compromise, the resolution of the status question appeared impossible. Since Kosovo unilaterally declared independence, Serbia has been on a diplomatic course to prevent or at least to slow down the recognition process by other states. In addition, and more

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[136] Johanna Deimal and Armando Garcia Schmidt, "Kosovo 2009: Uncertain Future," *Spotlight Europe* (January 2009): 2.

importantly, it had opposed and rejected the deployment of the EULEX mission. "It simply refused to cooperate with the European EULEX rule of law mission and the International Civilian Office (ICO), which were set up on the basis of the Ahtisaari plans after the Declaration of Independence."[137] This opposition from the Serbian side was to have a significant impact on the form of the mission.

Serbia opposed the deployment of the EU mission as it viewed it as being in violation of the principles of international law. This position would be shared also by Russia and other states who opposed Kosovo's self-declared independence. The position of Serbia was explained well by its Foreign Minister Vuk Jeremić: "Serbia will not accept solutions that violate the international laws and it opposes [the] transfer of responsibilities from the UN mission in Kosovo to other organizations such as the European Union's planned EULEX mission in the region."[138] The official position of Serbia emphasized that only UNMIK could be recognized and allowed to continue its presence in Kosovo. This position would prove to be a hindrance for the deployment of the mission, as the EU would have to negotiate over the issue of legality of its mission at the UN. In addition, this would also prompt the UN Secretary-General Ban Ki-Moon to negotiate with the EU in order to give it a UN mandate. This would prove difficult as a result of the pressure from Russia and its threat to use its veto power unless the position and the conditions of Serbia were taken into account. Serbia set a condition that the mission could be deployed only in the parts of Kosovo that was populated by the Albanians, i.e. it opposed deployment in the northern parts of Kosovo that were populated by the Serbian minority. This was "leaving EULEX in a situation where it could be

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[137] Ibid., 3.
[138] "Serbia Opposes EULEX Mission in Kosovo, Says UN Must Keep Control," *Sofia News Agency*, 12 March 2008, *Novinite*. http://www.novinite.com/view_news.php?id=91220 (accessed May 25, 2009).

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unable to control certain Serb enclaves in Kosovo, despite the fact that in theory its mandate covers the whole of Kosovo."[139]

The position of Serbia and its ally in the UN Security Council, Russia, created a situation in which the UN Secretary-General, together with the Western powers and Russia, had to negotiate and draw up a compromise solution that would be accepted by all sides. While the EU mission was initially meant to replace UNMIK in Kosovo, due to the new circumstances, the new word became 'reconfiguration'.[140] In order to achieve a compromise and an approval from the Serbian and Russian side, which would allow for the deployment to proceed, Ban Ki-Moon "proposed a six-point compromise plan that would clear the way for the EU mission to begin."[141] In short, this plan allowed for the EU mission to be deployed in the Albanian areas of Kosovo, while the areas in the north inhabited by Serbs would continue to be administered by UNMIK.[142] One can deduce that the plan altered the original form of EULEX. While the plan received approval from the Serbian side, and later from the Kosovo Albanians who at first rejected it, "it substantially weakened the EULEX mandate, proposing that its access be limited in Serbian-majority regions and that it remain officially 'neutral' on the question of Kosovo's independent status."[143] Certainly, this can be seen as an example of how international actors, in this case states such as Serbia, can influence and shape the external activities of the European Union. In the EULEX Kosovo case, Serbia significantly influenced the implementation phase of the mission.

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[139] "EU Mission in Kosovo Up in the Air," *EurActiv.com*, published April 16, 2008, http://www.euractiv.com/en/enlargement/eu-kosovo-mission-air/article-171662 (accessed May 25, 2009).

[140] "EU, UN in Talk to Share Leadership of Kosovo Mission," EurActiv.com, published May 29, 2008, http://www.euractiv.com/en/foreign-affairs/eu-un-talks-share-leadership-kosovo-mission/article-172819 (accessed May 25, 2009).

[141] Daisy Sindelar, "EU Launches, But Devil is in the Details," *Radio Free Europe/Radio Liberty*, December 9, 2008, http://www.rferl.org/content/EULEX_Set_To_Launch_But_Devil_In_Details/1357414.html (accessed May 20, 2009).

[142] Key elements of the Six-Point Plan available online at http://www.kosovocompromise.com/cms/item/topic/en.html?view=story&id=1571&sectionId=1 (accessed May 24, 2009).

[143] Daisy Sindelar, "EU Launches, But Devil is in the Details," *Radio Free Europe/Radio Liberty*, December 9, 2008, available online at http://www.rferl.org/content/EULEX_Set_To_Launch_But_Devil_In_Details/1357414.html (accessed May 20, 2009).

3.2.2 The Role of Russia

The role of Russia in the issue of the realization of the EULEX mission in Kosovo has been significant. As we shall see in this section, the country was to play a pivotal role in the international arena and contribute to the alteration of the form of the mission. As we have already noted in the previous section, Russia would share the position of Serbia regarding the self-declared independence of Kosovo and the deployment of the EULEX mission. Hence, Russia's argument was that the deployment of the mission would be illegal and, therefore, unacceptable without UN approval.

Russia has been an active player in the issue regarding the status of Kosovo. Being one of the three players of the Troika (the European Union and the United States being the other two), which mediated the talks between Belgrade and Priština, Russia, can, indeed, be seen as an important player regarding the issue of Kosovo's status. One should note that even before Kosovo unilaterally declared independence from Serbia on February 17, 2009, Russia stressed that "any solution is possible on the basis of agreement by both sides involved."[144] This stance and argument would put considerable pressure on the EU, as well as the UN, to reach a solution that would be acceptable and approved by the contending parties. The issue of *Spotlight Europe* of January 2009, which provides useful information regarding the issue of Kosovo's independence and the EULEX mission, states Russia's stance in a rather critical manner.

> "Russia, which until the middle of 2006 still supported the views of the Balkans Contact Group (Germany, France, the United Kingdom, Italy, U.S. and Russia) on the negotiations under Ahtisaari, is using Kosovo to further its global political ambitions. Despite the fact that it has counteracted its own arguments based on international law by its recognition of

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[144] Mark Tran, "Russia Dismisses Kosovo Statehood without Serb Agreement," *The Guardian*, 9 July 2009, available online at http://www.guardian.co.uk/world/2007/jul/09/balkans.unitednations (accessed May 26, 2009).

South Ossetia and Abkhazia in the United Nations Security Council, Moscow has blocked all attempts to re-order the legal framework for the international presence in Kosovo."[145]

Judging from Russia's activity in the past few years, one could argue that it has been attempting to re-establish itself as an important actor in the international arena. Its take on Kosovo could be seen as an example of this. It certainly managed to project its weight with the issue of EULEX deployment. It exerted considerable pressure within the UN and also on the Secretary-General. The threat to use its veto power in the UN Security Council pushed for Brussels to negotiate with the contending parties and the UN in order to achieve credibility for its mission. Its position, supporting and backing a solution that had the approval of Belgrade, contributed in changing the initial mandate of the mission which now meant that the "matters relating to customs, police, justice, transport, telecommunications, and religious and cultural heritage [in north Kosovo] would continue to be dealt with under the aegis of UNSCR 1244, whereas EULEX would operate under the umbrella of the United Nations, that is, of UNMIK."[146] In this crucial way, Russia managed to influence the implementation of EU's mission to a considerable extent.

3.2.3 The Role of Kosovo

As already noted, Kosovo had been administered by the UN mission since the ending of the NATO campaign against Serbia in June 1999. With the status question remaining unresolved even after five years, the international community started showing determination to make progress on the issue, on the ground that there was "increasing awareness that the current situation in Kosovo is unsustainable and that renewed violence may reignite if the

[145] Johanna Deimal and Armando Garcia Schmidt, "Kosovo 2009: Uncertain Future," *Spotlight Europe* (January 2009): 2-3.
[146] Ibid., 3.

status question is not addressed quickly."[147] The international community would mediate talks between Kosovo and Serbia with the hope of attaining agreement between the two and resolving the status. The two sides, however, failed to reach an agreement. "Openly supported by the U.S. and expecting to obtain unanimous approval from the EU, Priština declared itself independent on 17 February 2008."[148] As already known, the EU had already prepared and voted for the deployment of its mission.

The Kosovo authorities welcomed the potential presence of the EU with its rule of law mission. Certainly, the Kosovo Albanians viewed the EU's presence as highly pivotal and necessary for ensuring efficiency of the young Kosovo institutions. However, its views would change as a result of the modifications that would occur in relation to the format of the deployment of the mission. Namely, this would occur as a result of the negotiations between Brussels, the UN and Serbia which would produce the six-point plan. Although the Plan was accepted by Belgrade, Priština rejected it.[149] According to the Kosovo Albanians, "acceptance of the six-point plan would have been tantamount to undermining its sovereignty."[150] Moreover, the Kosovo authorities rejected the plan as they believed that it "would create two parallel chains of authority, hampering Priština's efforts to bring the whole country under its governance."[151] However, it should be noted that Priština did in the end tune down its opposition to the altered EULEX mandate that came as a result of the Ban Ki-Moon's plan. Many reports that were published in the days after Serbia agreed with Ban Ki-Moon's plan and prior to deployment of the mission in early December of 2008 stated that "despite having major objections to the UN Secretary-General's plan, officials in Priština also welcomed the EU mission, viewing it as the end of parallel Serb structures in northern Kosovo and an

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[147] Kurt Klotzle, "Kosovo: Critical Questions on the Road to Final Status," *Center for Applied Policy Research (CAP)*, (March 2005): 1. available online at http://www.cap.lmu.de/download/2005/2005_Kosovo.pdf
[148] Johanna Deimal and Armando Garcia Schmidt, "Kosovo 2009: Uncertain Future," *Spotlight Europe* (January 2009): 2.
[149] Ibid., 4.
[150] Ibid., 4.
[151] Ibid., 4.

extension of the Ahtisaari plan."[152] The point to be made is that the position of Priština, like that of Serbia and Russia, contributed in influencing the deployment process, i.e. implementation. With its rejection of the UN plan and the reconfiguration of UNMIK, it managed to postpone and delay the passing of Ban Ki-Moon's plan at the Security Council and the deployment of the EULEX mission.

3.2.4 The Role of the United Nations

As noted in the first chapter, the UN has been active in Kosovo since NATO ended its bombing campaign on Serbia.[153] However, with the status of the province remaining unresolved and with the new political circumstances on the ground (Priština increasingly moving towards declaring independence), a downsizing and withdrawal of the UN mission was envisioned. Namely, the UN mission was to be replaced by the EU rule of law mission. It is important to note that the UN at first favored such moves and this was reflected in a statement made by the Secretary-General Ban Ki-Moon after the EU had agreed on deploying its mission. The Secretary-General stated that "Kosovo is a 'European issue' and primarily a responsibility of the EU."[154] However, the UN would become hesitant to transfer authority to the EU due to a number of reasons.

Due to the pressure exerted by Russia, who holds a seat at the UN Security Council, the UN would prove unable to give a green light for the EU mission. While the UN at first positively viewed the transferring of authority to the EU, it would, however, "become reluctant to hand over cars, equipment, and offices to the EU, which the two sides had

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[152] Igor Jovanović, "EULEX, for a New Kosovo," *International Relations and Security Network – Security Watch*, 16 December 2008, available online at http://www.isn.ethz.ch/isn/Current-Affairs/Security-Watch/Detail/?lng=en&id=94764 (accessed May 27, 2009).

[153] United Nations Interim Administration Mission in Kosovo, *Fact Sheet* (July 2008), 1. available online at http://www.unmikonline.org/docs/2008/Fact_Sheet_July_2008.pdf

[154] Patrick Moore, "Are UN, EU Part of the Same Problem in Kosovo?" *Radio Free Europe/Radio Liberty*, May 28, 2008, available online at http://www.rferl.org/content/article/1144508.html (accessed May 27, 2009). 20.

previously discussed informally."[155] The situation within the UN (whose approval was needed for the EU to dispatch its mission) significantly influenced the deployment phase. "By agreeing on the Kosovo engagement the EU showed that it was willing to take on its role in Kosovo without a further 'new' mandate of the United Nations Security Council."[156] However, due to the circumstances already mentioned above, the EU would still have to seek approval from the UN. As Raube points out, what occurred as a result "indicates a rather complex actor constellation in which the UN Special Representatives, the EU Brussel-based administration and influential Member States have worked on a possible solution."[157] These negotiations and the "disagreements in the UN Security Council slowed down the EULEX Kosovo mission deployment as well as it affected the transfer of tasks, personnel, infrastructure and equipment from UNMIK."[158] In this way, it is safe to argue that the UN had played an important role in shaping the EU mission, i.e. in the implementation phase.

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[155] Ibid., (accessed May 27, 2009).
[156] Kolja Raube, "The Constitutionalization of the European Union as an International Actor –Different Concepts and Accommodating Differences: A Case Study of the Making of Treaty-Change in CFSP/ESDP and Kosovo Independence" (paper presented at the 2008 Garnet Conference: The EU in International Affairs, Egmont Palace, Brussels, 24-26 April, 2008), 20.
[157] Ibid., 20.
[158] Ibid., 20.

Conclusion

The thesis is built on the realization that there is a plethora of literature that is devoted to the study of European foreign policy. However, and more importantly, it is built on the realization that there is a lack of work within the study of European foreign policy that utilizes the multi-level governance approach. While this field has recently seen an increasing number of studies being undertaken, it was the aim of the thesis to contribute to this trend by utilizing the multi-level governance approach to the case study of the European Union Rule of Law Mission in Kosovo which has recently started its operations. This case study was used to demonstrate the relevance and validity of the multi-level governance approach by analyzing the roles of both the national (EU Member States) and the EU level (EU institutions) actors in the foreign policy-making process. In addition, the case study also provided evidence for our criticism of the multi-level governance approach (that it fails to take into account the influence and roles of international actors) by emphasizing the influence of actors such as Serbia, Russia, Kosovo and the United Nations. As we have seen, the positions of these various international actors significantly shaped the EU mission, altering its mandate and delaying its deployment. However, these actors were only influential in the implementation phase of the mission. Nevertheless, their influence provides evidence for our argument that the importance of international level actors should not be excluded.

The EU mission case study demonstrated that when the EU decides to act internationally, through its missions such as EULEX Kosovo, a plethora of actors at different levels are involved in the process. While this area of the CFSP has often been described as

being rather intergovernmental,[159] our case study shows that, although the Member States exert considerable authority, they do delegate certain power and control to the EU level actors. The positions of the Member States are crucial for the EU to act out its missions. Demonstrated in the EULEX Kosovo case, certain Member States actively pushed for an EU presence in Kosovo, as envisioned by the Ahtisaari proposal. In addition, the positions of the Member States (Cyprus and Romania) who opposed deployment of the mission without UN backing also played a role, by emphasizing the need for the EU mission to receive UN approval. However, the positions of these states did not hinder the passing of the Joint Action, as they refrained from blocking it during the voting. By reaching consensus, the Council was able to decide on deploying the mission by adopting the Council Joint Action 2008/124/CFSP. Although the Member States exercise an important role, most of their efforts are projected not individually but rather through the various Brussels-based institutions. Their positions are represented at the Council and there they exercise an important role in the decision-making process.

However, while the role of the Member States is important, one should not exclude the importance of the EU level actors which tend to exercise certain authority in a number of areas at certain policy phases.[160] In our case study, EU institutions such as the Commission played an important role in the formulation of the mission, by previously putting forward reports and documents which were to highlight the critical issues that need to be addressed in Kosovo (e.g. the rule of law), thereby setting the preparations for the mission. The Commission also played an important role in the implementation phase, in the field of personnel training. Moreover, together with the European Parliament, the Commission manages the budget of the mission, financing most of the mission's expenses. Thus, the two EU level actors exercise important tasks in EU missions, mostly in the preparation and

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[159] Liisa Laakso, (2006), 148.
[160] Niagale Bagayoko-Penone, "Multi-level governance and security: the European Union support to security sector reform (SSR) processes," Institute of Development Studies, University of Sussex, 5.

implementation phase. The Political and Security Committee, which involves a representative from the Commission has certain decision-making powers and this was reflected in our case study. It has the authority to appoint the Head of Mission as well as other top officials that lead the mission. The case study has shown that the phenomenon of EU missions involves a number of actors, both on the national and EU level. Their interaction is crucial. While the national level remains important, it projects numerous tasks to the EU level actors who, however, mostly have important roles to play in the preparation and implementation phase of a mission.

Most importantly, our case study has demonstrated that the multi-level governance approach, while providing an appropriate lens for explaining EU foreign policy, must also take into account the influence of actors that are located beyond the EU circle. As was shown, international actors such as third states (Serbia, Russia, and self-declared independent Kosovo), as well as international organizations (UN) can exert considerable influence on the external activities of the EU. This influence, however, has been wielded mostly in the implementation phase. The differing views of the contending parties (Belgrade and Priština), the pressures from Russia, and the hesitation of the UN to give a mandate for the EU mission, were all important factors that influenced how the mission was to be implemented.

The findings of the thesis tend to support the arguments of the pioneers in the field, such as Michael E. Smith, who argue for the relevance of the multi-level governance approach to EU foreign policy. The findings support the arguments by demonstrating that a network of actors located at different levels interact and exercise certain roles at different phases of policymaking.[161] This interaction between the national and institutional EU level is crucial and produces the policy outcomes. Both the national and EU level actors perform influence at different phases. Much still depends on the Member States and their interests.

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[161] Niagale Bagayoko-Penone, 2.

Their participation is pivotal in an EU mission. However, most of the authority with regards to the planning, financing and the implementation of a mission rests with the EU level actors. It is there that they exercise significant authority in the policymaking process. In addition, the findings also demonstrated that international actors should not be excluded when analyzing EU foreign policy making, as has been argued by Laakso. Having this in mind, it is hoped that this study will stimulate researchers in the future to contribute to this small but growing field and also expand the existing theoretical framework.

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