

## THE EUROPEAN UNION AND THE FINAL STATUS FOR KOSOVO

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### INTRODUCTION

The European Union's ("EU") position on the final status of Kosovo would have remained vague and secretive had it not been for the March 2004 unrests in Kosovo. The events of March 17 and 18, 2004, are likely to shake up and clarify the determination of the EU position. The reactions of the EU institutions in response to the unrests vary. It seems as if the unrests were the starting point for a new discussion within the EU about Kosovo.

Kosovo still matters for the international community. Determination of the final status for Kosovo is crucial for regional stability in the Balkans, including the prevention of terrorism and organized crime. Kosovo has potential for democratic governance in a largely Muslim context and would serve as an example for other regions in the world. The final status of Kosovo will affect issues such as the viability and cohesion of the North Atlantic Treaty Organization ("NATO"); the credibility of the United Nations and the Organization for Security and Co-operation in Europe ("OSCE"); the future avoidance and alleviation of humanitarian disasters; and the relations between Europe, the United States, and Russia.<sup>1</sup> All of this makes Kosovo important to Europe. But what makes Europe important to Kosovo?

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1. U.S. INST. OF PEACE, SPECIAL REPORT 91, KOSOVO FINAL STATUS: OPTIONS AND CROSS-BORDER REQUIREMENTS 6 (July 2002), available at <http://www.usip.org/pubs/special-reports/sr91.html#about>.

This paper examines the EU position on the final status of Kosovo. Part I describes the importance of the EU for the final status determination, citing concrete reasons for EU involvement. Part II deals with the current EU policy towards Kosovo—"Standards before Status." Part III analyzes the prospective policy of the EU by taking into account the EU foreign policy structure and by reviewing different statuses from an EU perspective. Part IV examines the national positions of four EU member states—Germany, France, the United Kingdom, and Greece. Finally, part V explains the methods the EU could use to influence final status determination.

### I. THE IMPORTANCE OF THE EU FOR THE FINAL STATUS FOR KOSOVO

Analyzing the position of the EU on the final status for Kosovo might seem important and unnecessary at the same time. One might argue that it is important because the EU generally plays an important role in political and economic world affairs.<sup>2</sup> Thus, its support for a final status will be needed in a region that is so close to some of the Union's member states that one could drive there comfortably. The mere fact that Kosovo and the Balkans are so close might inevitably require the examination of the EU position. On the other hand, it seems unnecessary to analyze the EU position because the EU does not have any power to impose a solution. It will have to accept whatever solution on which Serbia and Kosovo agree. Some believe that the United States will play the decisive role in bringing the Kosovar and Serbian side together. Therefore, it could be argued that one should focus on U.S., rather than European, policy.

All these considerations might well be true. They represent, however, only general thoughts about the EU. It is important to analyze the position of the EU for five specific reasons.

First, the EU is geopolitically the closest entity to the Balkans. That territorial proximity creates political and economic ties. Complex problems in Kosovo such as political and economic instability, refugees, military conflict, and organized crime have an impact on other European nations

2. As of May 1, 2004, the EU included twenty-five member states: Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom. European Commission, *The History of the European Union*, at [http://www.europa.eu.int/abc/history/index\\_en.htm](http://www.europa.eu.int/abc/history/index_en.htm) (last visited Oct. 15, 2004). The EU is the biggest trading bloc in the world, representing 450 million people and producing a quarter of the world's Gross National Product. EUROPEAN COMMISSION, A SECURE EUROPE IN A BETTER WORLD: EUROPEAN SECURITY STRATEGY 1, 1 (Dec. 12, 2003) [hereinafter EUROPEAN SECURITY STRATEGY], available at <http://ue.eu.int/uedocs/cmsUpload/78367.pdf>.

that causes them to pay attention to Kosovo.<sup>3</sup> Resolving the final status for Kosovo will just be the first step in resolving a number of problems that the Union faces with regard to Kosovo. Therefore, in order to deal with issues such as economic development, refugees, and crime, European countries will try to be involved in a final status determination. In addition, Europe certainly does not want the recurrence of war in the Balkan region. Therefore, it will try to promote a durable solution to the conflict.

Second, the EU, already an economic heavyweight, has aspirations to become a political and military global player as well.<sup>4</sup> These aspirations will not be realized if the EU cannot even solve problems in its own backyard. It is hard to imagine taking the EU seriously on political and economic issues regarding Afghanistan and the Middle East if no coherent EU policy on problems within Europe exists. Successfully addressing the problem of final status for Kosovo might prove the capacity of the EU to act as a global player and allow it to begin to influence other situations.

Third, the EU can influence development in the region through prospective EU membership. The possibility of EU membership can act as an incentive for political progress. As will be examined below, the incentive of prospective EU membership remains valid even though the mechanism may appear to have failed in the case of Cyprus.<sup>5</sup> It is the declared goal of the EU to integrate the countries of the Western Balkans into the EU structures through its Stabilization and Association Process (“SAP”).<sup>6</sup> The Union clearly has an interest in the future integration of the region.

3. Mr. Harri Holkeri, the Special Representative of the U.N. Secretary-General in Kosovo, in a briefing to the U.N. Security Council on the situation in Kosovo on February 6, 2004, said about Kosovo: “It’s a smuggling route, a trafficking route, for everything . . . money, people, cars.” Betsy Pisik, *U.N. Report: Kosovo Laws Updated*, WASH. TIMES, Feb. 9, 2004, available at <http://www.washingtontimes.com/world/20040208-105646-6639r.htm>.

4. As part of these efforts, the EU is trying to strengthen its global security policy. On December 12, 2003, the European Council adopted a new Security Strategy aiming to better face problems such as terrorism, weapons of mass destruction, regional conflicts, state failure, and organized crime. EUROPEAN SECURITY STRATEGY, *supra* note 2, at 3–4. In the report, the EU declared that it needs to be more capable to face these threats. *Id.* at 11–14. In order to achieve that goal, the EU took concrete steps such as the plan for the development of rapidly deployable battle groups by 2007, the creation of a Defense Agency, and the establishment of an EU cell in NATO. European Commission, *Summary of the Remarks by Javier Solana, EU High Representative for the Common Foreign and Security Policy* (Apr. 5–6, 2004), at the *Informal Meeting of Defence Ministers*, available at [http://ue.eu.int/ueDocs/cms\\_Data/docs/press-data/EN/dis-cours/79815.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/press-data/EN/dis-cours/79815.pdf).

5. On April 24, 2004, the northern and southern parts of Cyprus voted on a referendum for reunification, which was rejected by the Greek-dominated South. *Cyprus ‘Spurns Historic Chance’*, BBC NEWS, Apr. 25, 2004, available at <http://news.bbc.co.uk/1/hi/world/europe/3656753.stm>. Consequently, EU law and benefits will only apply to the southern part. *Id.* The original incentive for the South to gain EU membership apparently did not work, as it was clear that the South would join the EU in any case, independently of the outcome of the referendum.

6. The SAP is “designed to encourage and support the domestic reform processes” in the countries of southeastern Europe. European Commission, *The EU’s Relations with South Eastern Europe*, at

Fourth, the EU already has a vital role in the economic reconstruction of Kosovo. The EU is the single largest donor to the reconstruction process.<sup>7</sup> Through the SAP, Kosovo and the region enjoy trade preferences.<sup>8</sup> Most importantly, the EU leads the United Nations Interim Administration Mission in Kosovo (“UNMIK”) Pillar IV, making it responsible for Reconstruction and Economic Development.<sup>9</sup> All this makes Kosovo economically dependent on the EU. This economic relationship gives the EU political say in the determination of final status.

Fifth, the EU includes two permanent Security Council members: the United Kingdom and France. Because the current status of Kosovo has been created by a Security Council resolution, each new status determination will require a new Council resolution.<sup>10</sup> Necessarily, the vote of France and the United Kingdom will be required. The treaty establishing the EU obliges the EU member states to coordinate their vote at the Security Council in accordance with EU policy.<sup>11</sup> In practice, however, that does not really seem to happen. The obligation also is not enforceable through the European Court of Justice.<sup>12</sup> Recent events, such as the war in Iraq, have shown that this obligation could be nothing more than a theoretical construct.<sup>13</sup> However, it is far from clear that the EU member states will not

[http://www.europa.eu.int/comm/external\\_relations/see/index.htm](http://www.europa.eu.int/comm/external_relations/see/index.htm) (last updated Oct. 2003). It is based on “aid, trade preferences, dialogue, technical advice and, ultimately, contractual relations.” *Id.*

7. *Id.*

8. *Id.*

9. UNMIK, *UNMIK at a Glance*, at <http://www.unmikonline.org/intro.htm> (last visited Oct. 15, 2004).

10. The current UNMIK administration of Kosovo was established by Security Council Resolution 1244. S.C. Res. 1244, U.N. SCOR, 54th Sess., 4011th mtg. ¶¶ 5, 6, 10, U.N. Doc. S/RES/1244 (1999).

11. Article 19 of the EU Treaty says:

(1) Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the common position in such forums. . . . (2) . . . Member States which are also members of the United Nations Security Council will concert and keep the other Member States fully informed. Member States which are permanent members of the Security Council will, in the execution of their functions, ensure the defence of the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

CONSOLIDATED VERSIONS OF THE TREATY ON EUROPEAN UNION AND OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY, Dec. 24, 2002, O.J. (C325) 17 (2003), available at [http://www.europa.eu.int/eur-lex/en/treaties/dat/C\\_2002-325EN.000501.html#anArt11](http://www.europa.eu.int/eur-lex/en/treaties/dat/C_2002-325EN.000501.html#anArt11) (last visited Oct. 15, 2004).

12. DR. KLAUS-DIETER BORCHARDT, EUROPEAN COMMISSION, THE ABC OF COMMUNITY LAW 21 (5th ed. 2000), available at [http://europa.eu.int/eur-lex/iv/about/abc\\_en.pdf](http://europa.eu.int/eur-lex/iv/about/abc_en.pdf).

13. In March 2003 the U.N. Security Council was deeply divided on the issue of the use of force against Iraq, with EU member states finding themselves on both sides of the issue. Felicity Barringer, *U.N. Split Widens as Allies Dismiss Deadline on Iraq*, N.Y. TIMES, Mar. 7, 2003, at <http://www.nytimes.com/2003/03/07/international/middleeast/07CNDIRAQ.html?ex=1084248000&en=9ceec0c15da124af&ei=5070>.

coordinate their action—even at the U.N. Security Council—in the case of Kosovo. As will be argued below, Kosovo is not an issue so controversial as to split the EU member states. Therefore, there will not be an open division among the EU member states over the issue of Kosovo; rather, the EU is likely to craft a common position on Kosovo.

Certainly, the EU is not able to impose any solution on the final status problem. But neither is the United States. The international community will likely be glad to accept any outcome on which the Serb and Kosovar sides could agree. As it is far from clear, however, that such an agreement is possible, all participants will have their own perceptions of the future of Kosovo. For the named reasons, it is worthwhile to analyze the EU position on the final status of Kosovo.

## II. THE CURRENT EU POSITION REGARDING THE FINAL STATUS OF KOSOVO

### A. *The Current EU Involvement in Kosovo*

The current EU involvement in Kosovo is mostly economic. The EU leads Pillar IV of UNMIK, Reconstruction and Economic Development.<sup>14</sup> Within this framework, the EU has launched the Stabilization and Association Process, a roadmap to help the countries of the Western Balkans reach a European standard of economic infrastructures, which is a necessary step for accession to the EU.<sup>15</sup> Since the SAP is for nation-states only, the EU launched a special SAP Tracking Mechanism for Kosovo in 2003.<sup>16</sup> The limited role of the EU with respect to economic reconstruction can be explained as follows.

First, the more political Pillar III of UNMIK, Democratization and Institution Building, is led by the OSCE.<sup>17</sup> It seems that the EU does not have any direct involvement in the political reconstruction of Kosovo because most of its members are NATO allies that participated in the 1999 bombing of Yugoslavia. The more neutral OSCE, in contrast, is made up of fifty-five members, including Russia, the United States, and almost all the

14. UNMIK, *supra* note 9.

15. European Commission, *supra* note 6.

16. The SAP Tracking Mechanism (“STM”) for Kosovo, in the framework of the EU’s Stabilization and Association Process, is a technical working group and is co-chaired by UNMIK, the Provisional Institutions for Self-Government, and the European Commission. Its purpose is to support Kosovo, through policy advice and guidance, in its EU-compatible structural reforms. Press Release, European Union Pillar of UNMIK, Inaugural Meeting of the EU’s Kosovo SAP Tracking Mechanism (Mar. 12, 2003), available at <http://www.euinkosovo.org/press/2003/pr12032003.html>.

17. UNMIK, *supra* note 9.

European countries.<sup>18</sup> Second, any prospective EU membership requires economic improvement prior to a political integration.

Consequently, one might suppose that the limited role that the EU assumed over the last five years will lead to a limited political involvement in the future. However, the opposite is true. The limited role of the EU is likely to end. The main reasons cited for an increasing interest and role of the EU in Kosovo are (1) the EU is the closest geopolitical entity; (2) the EU has aspirations to become a global player; (3) the possibility of an EU membership for Kosovo; (4) the economic weight the EU exerts in the region; and (5) two EU member states are permanent Security Council members. In addition, UNMIK has been mandated to oversee Kosovo until the final status question has been solved. As soon as the final status question is on the agenda of the international community and serious determinations must be made, the EU and its member states are going to give up their political modesty. For the determination of the final status for Kosovo, the EU will be one of the main actors.

#### B. “Standards before Status”

The “Standards before Status” policy was proposed by the United Nations and has been traditionally backed by the United States.<sup>19</sup> The “Standards before Status” policy requires that Kosovo meet a certain level of political and economic standards before a decision regarding its final status can be made.<sup>20</sup>

UNMIK and the Kosovo Provisional Institutions of Self-Government (“PISG”) elaborated on the policy. On December 10, 2003, UNMIK presented the “Standards for Kosovo,” an extensive and detailed outline of the requirements that must be met before the question of Kosovo’s future status is addressed.<sup>21</sup> This document was complemented by the Standards Implementation Plan in March 2004, and an evaluation of progress is scheduled for mid-2005.<sup>22</sup> The Standards, according to UNMIK, are designed to ensure that all people in Kosovo, “regardless of ethnic background, race or

18. Organization for Security and Co-operation in Europe, *General Information*, at [http://www.osce.org/general/participating\\_states/](http://www.osce.org/general/participating_states/) (last visited Oct. 15, 2004).

19. U.S. Embassy, *U.S. Welcomes UNMIK’s “Standards for Kosovo”* (Dec. 11, 2003), at [http://www.usemb-assy.it/file2003\\_12/alia/a3121206.htm](http://www.usemb-assy.it/file2003_12/alia/a3121206.htm).

20. *Id.*

21. U.S. Embassy, *UNMIK Presents Standards for Kosovo* (Dec. 10, 2003), at [http://www.usemb-assy.it/file2003\\_12/alia/a3121209.htm](http://www.usemb-assy.it/file2003_12/alia/a3121209.htm).

22. U.S. Embassy, *supra* note 19.

religion—are free to live, work and travel without fear, hostility or danger and where there is tolerance, justice and peace for everyone.”<sup>23</sup>

The Standards cover eight broad categories of democratisation and “include requirements for functioning democratic institutions, rule of law, freedom of movement, sustainable returns and rights of communities, market economy, property rights, political dialogue, and development of a civilian Kosovo Protection Corps.”<sup>24</sup>

The U.N. Secretary-General’s Special Representative for Kosovo (“SGSR”), at the time Harri Holkeri (now Soren Jessen-Petersen), was responsible for transforming these eight categories—first set out in April 2002—into specific and measurable steps Kosovo must achieve.<sup>25</sup>

The eight categories are:

1. **Functioning Democratic Institutions.** This standard, among other things, requires that elections include internally-displaced persons and refugees, that the PISG act without discrimination, and that the media provide information for all communities in Kosovo.
2. **Rule of Law.** This standard provides that there should be equal access to justice and effective prosecution of ethnic crimes and economic crimes, such as money laundering.
3. **Freedom of Movement.** This standard requires, among other things, the free use of language.
4. **Sustainable Returns and the Rights of Communities and Their Members.** This standard requires the protection of minority rights in compliance with European standards.
5. **Market Economy.** This standard deals with privatization of socially owned enterprises and tax systems.
6. **Property Rights.** This standard requires adherence to the Housing and Property Directorate, and addresses issues in agricultural property and preservation of the cultural heritage.
7. **Political Dialogue.** This standard requires constructive and continuing dialogue between Pristina and Belgrade.
8. **Development of the Kosovo Protection Corps.** The Corps mandate is stated as “a civilian emergency organization, which carries out in Kosovo rapid disaster response tasks for

23. U.N. Interim Administration Mission in Kosovo, *Standards for Kosovo*, UNMIK/PR/1078 (Dec. 10, 2003), at <http://www.unmikonline.org/press/2003/pressr/pr1078.pdf>.

24. U.S. Embassy, *supra* note 19.

25. U.S. Embassy, *supra* note 21.

public safety in times of emergency and humanitarian assistance.”<sup>26</sup>

Unlike the United States, the position of the EU regarding the “Standards before Status” doctrine is not uniform. There seemed to be an early split between the European Parliament and the two other main institutions: the Commission and the Council.

Since 2002, Joost Lagendijk, a member of the European Parliament from the Netherlands, affiliated with the Greens, has been trying to get the issue of Kosovo’s final status on the agenda of the European Parliament.<sup>27</sup> He described “the need to gain an insight into what will be the future of Kosovo.”<sup>28</sup> He continued:

We cannot have the situation where Kosovo continues to exist whilst the Kosovans [sic] want something else, but we just hang onto the 1999 U.N. resolution. I do not have the solution, I do not know whether I am for independence or self-reliance, but I think that it is up to the European Union to start the discussion.<sup>29</sup>

On November 19, 2003, Lagendijk made a proposal in which he partly broke ranks with the traditionally EU-backed “Standards before Status” policy towards Kosovo by arguing that the status of the ex-Yugoslav province should be decided within two years.<sup>30</sup>

It is the EU’s responsibility to take the lead to ensure that within a period of—as far as I am concerned—two years, there is clarity with regard to Kosovo’s final status. It is quite clear to me that this will be a difficult choice. I also think that the European Union need not make that choice yet, but the Kosovars do need to know that a decision will be taken on their status in two years’ time. I therefore have a double message to give to the Kosovars: we are prepared to give you clarity about your final status in two years’ time, but you have to prove to us that you are able to manage your country in a proper manner, that is to say in a manner that embraces a decent minorities policy, including respect for the borders as they currently stand. If the Kosovars are able to do this, I think that we should say that in two years’ time, we are prepared to take a decision on their final status.<sup>31</sup>

26. For details about the eight Standards see UNMIK/PR/1078.

27. E-mail interview with Ute Seela, at the time of making the statement, Policy Advisor on Foreign Affairs and Enlargement for the Dutch Green Party (Apr. 28, 2004).

28. Remarks of Lagendijk (Nov. 6, 2002) (Debates of European Parliament), available at <http://www3.europarl.eu.int/omk/omnsapir.so/debatsL5?FILE=20021106EN&LANGUE=EN&LEVEL=DOC&NUMINT=3-174>.

29. *Id.*

30. Remarks of Lagendijk (Nov. 19, 2003) (Debates of European Parliament), available at <http://www3.europarl.eu.int/omk/omnsapir.so/debatsL5?FILE=20031119EN&LANGUE=EN&LEVEL=TOC1>.

31. *Id.*

This proposal has been supported by a majority of the European Parliament.

The European Council confirmed its support for the “Standards before Status” doctrine during the EU-Western Balkans summit in Thessaloniki, Greece, which was held June 19–21, 2003. This was the last official determination of the EU position. The summit revealed the willingness of both the EU and the countries of the Western Balkans to move toward European integration.

For that purpose, concrete measures have been articulated in *The Thessaloniki Agenda for the Western Balkans*.<sup>32</sup> The agenda confirmed the SAP as a means of consolidating peace and promoting stability and democratic development.<sup>33</sup> It endowed the SAP with new tools to further European integration.<sup>34</sup> Examples of those tools are Parliamentary Cooperation, European Partnerships, Opening of Community Programs, and Enhanced Community Financial Support.<sup>35</sup>

The promotion of economic development is still on the agenda because economic prosperity is essential for long-term stability in the region. The agenda supported the “Standards before Status” policy as a method for establishing the final status of Kosovo.<sup>36</sup>

### III. THE PROSPECTIVE EU POLICY FOR THE FINAL STATUS OF KOSOVO

#### A. *The March 2004 Unrests*

The March unrests in Kosovo widened the split that had been developing since 2002 among the EU institutions. The Commission’s position is represented by Chris Patten, the EU Commissioner for External Relations. In a speech before the European Parliament on March 30, 2004, Patten described his visit to Kosovo and called for an examination of the events.<sup>37</sup> He did not, however, indicate any change in the Commission’s position on the final status of Kosovo, but remained loyal to the “Standards before

32. European Commission, General Affairs & External Relations Council, *The Thessaloniki Agenda for the Western Balkans* (June 16, 2003), at [http://europa.eu.int/comm/external\\_relations/see/gacthess.htm](http://europa.eu.int/comm/external_relations/see/gacthess.htm).

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. European Commission, *Speech by the Rt. Hon. Chris Patten, CH before the Plenary European Parliament* (Mar. 30, 2004), at [http://europa.eu.int/comm/external\\_relations/news/pattern/sp04\\_166.htm](http://europa.eu.int/comm/external_relations/news/pattern/sp04_166.htm).

Status” policy.<sup>38</sup> He said that “[f]inal status discussions are for another day.”<sup>39</sup> Patten also stated, “[I do not] believe that we should abandon the idea of ‘Standards before Status.’ On the other hand, I don’t think that we should send a signal that final status discussion will be delayed indefinitely.”<sup>40</sup>

The positions of European Council members, as well as Javier Solana, the EU High Representative for the Common Foreign and Security Policy, have been similar.<sup>41</sup> There are no indications that any new approach will be followed or is seen as necessary. The “Standard before Status” policy remains the basic line:

[The] Council and European Commission have always expressed their support for the U.N.-line: Standards before Status. The riots in March have strengthened the will of both institutions not to let themselves be blackmailed into a shift of policy. There is no official policy change to be expected within the near future.<sup>42</sup>

In a recent debate in the European Parliament concerning the situation in Kosovo, Mr. Roche from the Council said, “I would like to underscore the strong support of the European Union for the United Nations policy of Standards before Status. This policy, together with Security Council Resolution 1244, remains the foundation of the international community’s commitment to Kosovo.”<sup>43</sup>

Again, the most outspoken institution regarding a change in the EU policy has been the European Parliament. In its session on March 30, 2004, Doris Pack, member of the European Parliament and head of the delegation for Southeast Europe of the European Parliament Foreign Affairs Committee, called for a change in the “Standards before Status” policy.<sup>44</sup> She said the current approach was not satisfactory and needed to be changed: “I do not believe that ‘Standards before Status’ is the only way; so far, it has led us astray. It should be ‘**Standards and Status**’. We must now set about solving the questions of status.”<sup>45</sup> She emphasized that without a clear per-

38. *Id.*

39. *Id.*

40. *Id.*

41. Irish Presidency 2004 of the European Union, *Statement by Minister of State Roche, on Behalf of the Council of Ministers, to the European Parliament on Kosovo* (Mar. 30, 2004), at [http://www.eu2004.ie/temp-lates/news.asp?sNavlocator=66&list\\_id=484](http://www.eu2004.ie/temp-lates/news.asp?sNavlocator=66&list_id=484).

42. E-mail interview with Ute Seela, *supra* note 27.

43. Remarks of Roche (Mar. 30, 2004) (Debates of European Parliament), available at <http://www3.europarl.eu.int/omk/omnsapir.so/cre?APP=CRE&PRG=CALEND&FILE=20040330r&LANGUE=EN&LEVEL=TOC1&CRENEW=04-03-30&LEG=L5>.

44. Remarks of Pack (Mar. 30, 2004) (Debates of European Parliament), available at <http://www3.europarl.eu.int/omk/omnsapir.so/cre?APP=CRE&PRG=CALEND&FILE=20040330r&LANGUE=EN&LEVEL=TOC1&CRENEW=04-03-30&LEG=L5>.

45. *Id.* (emphasis added).

ception as to where Kosovo is going, there will be ongoing unrest.<sup>46</sup> First, the U.N. must transfer more power to local Kosovar authorities, and Belgrade must be prevented from establishing parallel structures in Kosovo for the Serb minority.<sup>47</sup> Arguably, parallel governmental structures lead to the alienation and not integration of the Serb minority. Pack also said that the resistance of both sides, Serbs and Kosovo Albanians, to creating a multi-ethnic entity or state needs to face consequences set by the EU.<sup>48</sup> She urged the European Council to determine a new approach for the EU regarding Kosovo.<sup>49</sup> Finally, the European Parliament adopted a resolution on April 1, 2004, regarding the situation in Kosovo.<sup>50</sup> The resolution asks the European Council to begin a debate on the final status of Kosovo in a way that implies the determination of precise deadlines.<sup>51</sup>

Consequently, the split between the EU institutions that had started to occur in 2002 deepened with the March 2004 unrests. What that split means depends on the weight each institution carries. This is determined by the allocation of power among the different EU institutions regarding foreign policy.

#### B. *The Power Structure Within the EU Regarding Foreign Policy*

In order to determine whether and how the EU position on the final status will change, one must examine which institutions determine and carry out the EU's foreign policy. Understanding the respective roles of different institutions regarding the EU foreign policy helps determine which EU institution is the decisive one.

The EU's foreign policy is called the Common Foreign and Security Policy ("CFSP").<sup>52</sup> The CFSP comprises the so-called second Pillar of the EU.<sup>53</sup> It was established by the 1993 Maastricht Treaty on the EU and amended by the Amsterdam Treaty of 1999 and the Nice Treaty of 2001.<sup>54</sup> The principles and general guidelines for the CFSP are made by the Euro-

46. *Id.*

47. *Id.*

48. *See id.*

49. *See id.*

50. European Parliament, *European Parliament Resolution on the Situation in Kosovo* (Apr. 1, 2004), available at [http://www3.europarl.eu.int/omk/omnsapir.so/pv2?PRG=CALDOC&FILE=20040-401&LANGUE=EN&TPV=PROV&LASTCHAP=33&SDOCTA=25&TXTLST=1&Type\\_Doc=FIRST&POS=1](http://www3.europarl.eu.int/omk/omnsapir.so/pv2?PRG=CALDOC&FILE=20040-401&LANGUE=EN&TPV=PROV&LASTCHAP=33&SDOCTA=25&TXTLST=1&Type_Doc=FIRST&POS=1).

51. *Id.* ¶ 12.

52. European Commission, *Common Foreign and Security Policy*, available at [http://europa.eu.int/comm/external\\_relations/cfsp/intro/index.htm](http://europa.eu.int/comm/external_relations/cfsp/intro/index.htm) (last updated Feb. 2002).

53. *Id.*

54. *Id.*

pean Council, which is composed of the heads of the member states and the President of the European Commission.<sup>55</sup> There are “common strategies” that set out the overall policy guidelines for activities by individual countries. So far there are “common strategies” on Russia, the Ukraine, the Mediterranean, and the Middle East Peace Process.<sup>56</sup> There are also “common positions,” which commit member states to adopting a certain position and a certain course of action, and which are decided by the General Affairs Council (composed of the foreign ministers of the member states and the Commission External Relations Commissioner).<sup>57</sup> Within the CFSP, special representatives for a certain region or country can be appointed who are accountable to the European Council.<sup>58</sup>

The CFSP has to be seen as part of the wider EU structure. The first Pillar concerns so-called “Community matters.”<sup>59</sup> The second Pillar consists of the CFSP, and the third Pillar consists of the Police and Justice Cooperation.<sup>60</sup> Within all these Pillars, the European institutions assume different powers depending on the sphere in which they are acting. The most integrated Pillar is the first Pillar.<sup>61</sup> The legal nature of the first Pillar is supranational, meaning that the European institutions above the national level can make binding and enforceable decisions.<sup>62</sup> Therefore the Commission, the Parliament, and the Council of Ministers enjoy the most power in the first Pillar because their powers are the broadest and most independent from the national level. The second and third Pillars are of intergovernmental nature, which means that decisions are made on the basis of cooperation among the member states.<sup>63</sup> Therefore, the legal instruments of the EU do not apply directly to the member states and cannot be reviewed

55. *Id.*

56. *Id.*

57. *Id.* The Council of the EU (Council of Ministers) is the main decision-making body of the EU. Meetings are held by the ministers of each member state (in contrast to the European Council which meets at the level of heads of state) depending on the specific issue. That means that depending on the agenda the council meets in different “configurations.” For foreign policy issues the council convenes as the General Affairs and External Relations Council (also called the General Affairs Council). Council of the European Union, *Council Configurations*, at [http://ue.eu.int/cms3\\_fo/showPage.asp?id=427&lang=en&mode=g](http://ue.eu.int/cms3_fo/showPage.asp?id=427&lang=en&mode=g) (last visited Oct. 15, 2004).

58. European Commission, *supra* note 52.

59. See BORCHARDT, *supra* note 12, at 18. The first Pillar is made up of the European Communities: the European Community, the European Coal and Steel Community, and Euratom. *Id.* At the heart of the Pillar is the Single Market with certain basic freedoms like the free movement of goods. *Id.* at 20.

60. *Id.* at 20–21.

61. *See id.*

62. *See id.* at 25. “The first Pillar embodies Community jurisdiction in its most highly developed form.” *Id.* at 20. Within the framework of the EC, the Community institutions may draw up legislation in their respective areas of responsibility which applies directly in the member states and may claim precedence over national law. *See id.* at 27–28.

63. *Id.* at 29.

by the European Court of Justice.<sup>64</sup> This is a crucial distinction, as it gives the second Pillar a more international character. The European Council and the General Affairs Council enjoy the most power. Agreements enjoy the status of international treaties or international executive agreements but do not supersede national law or policy.<sup>65</sup> The question of the final status of Kosovo clearly falls within the second Pillar, the CFSP.

The structure of the EU and the legal nature of its different Pillars are important in order to understand the decision-making process within the EU. The European Council and the General Affairs Council are the most powerful organs in the CFSP. “The Commission may, as any Member State, refer to the Council any question relating to CFSP and may submit proposals to the Council—although it does not have the sole right to do so as in Community matters.”<sup>66</sup> The Commission is solely responsible for many other external policies of the EU such as trade, humanitarian aid, development assistance, rehabilitation and reconstruction, and sanctions regulations.<sup>67</sup> In matters of foreign policy, however, the Commission only enjoys a minor role.

In the Community sphere, external representation is the function of Commission delegations.<sup>68</sup> In the CFSP sphere, the representation function is performed by the Presidency of the Council, operating through the local ambassador of the country holding the Presidency.<sup>69</sup> Usually a so-called Troika is formed, consisting of the representatives of the current presidency, the future presidency and the Commission.<sup>70</sup> The Troika represents the CFSP policy to third countries.<sup>71</sup> The decisions, however, are made by the European Council. They are carried out by the General Affairs Council. According to the European Commission,

The Presidency of the Council plays a vital part in the organisation of the work of the institution, notably as the driving force in the legislative and political decision-making process. It organizes and chairs all meetings and works out compromises capable of resolving difficulties. This is a key role in CFSP where decisions are taken by unanimity.<sup>72</sup>

64. *Id.* at 21.

65. *See id.* at 24.

66. European Commission, *supra* note 52.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

The Presidency is assisted by the Council Secretariat and, since the Treaty of Amsterdam, the Secretary-General/High Representative for the CFSP, currently Javier Solana. According to Article 26 of the EU treaty:

[The High Representative] shall assist the Council in matters coming within the scope of the CFSP, in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third countries.<sup>73</sup>

Thus, the High Representative has only an assisting role. Nor does the European Parliament have direct legal power in the CFSP.<sup>74</sup> It is merely kept regularly informed and consulted on the broad orientation and choices in this area.<sup>75</sup> The European Parliament, however, has budgetary authority and thereby attempts to implement its political agenda. The European Parliament can veto the budget, which includes the financial means of the EU for the Western Balkans.<sup>76</sup> The budget does not come into force until it has been signed by the President of Parliament.<sup>77</sup> Therefore, the European Commission, the European Parliament, and the High Representative only have assisting roles in EU foreign policymaking. The main bodies in charge are the European Council and the General Affairs Council, both representing the national governments. Consequently, the calls of the European Parliament for a change in the “Standards before Status” policy are nothing more than pleas to the European Council. The real power lies in the hands of the national governments represented in the Council. Therefore, decision making regarding the EU position on Kosovo will not take place among EU bureaucrats, but rather through the national executives. The heads of state and foreign ministers will be the driving force for the determination of the EU position on the final status. National interests and politics will play a role.

The question is then whether the national governments will be able to agree on a common position in the European Council. The example of the war in Iraq might not offer much hope for unanimous decisions on foreign policy matters.<sup>78</sup> Legally, the CFSP—through the treaty on the EU—obligates the member states to try to reach a common foreign policy.<sup>79</sup>

73. *Id.*

74. *Id.*

75. *Id.*

76. See European Parliament, *Powers of the European Parliament* (Apr. 30, 2004), available at [http://www.europarl.eu.int/presentation/default\\_en.htm#powers](http://www.europarl.eu.int/presentation/default_en.htm#powers).

77. *Id.*

78. See Barringer, *supra* note 13.

79. Article 11(2) of the Treaty on the EU states:

However, this obligation is not enforceable.<sup>80</sup> The enforcer of compliance is the Council, and thus the member states themselves.<sup>81</sup> It is, however, likely that there will be no split among the EU member states on the final status for Kosovo, but that a common position will be determined within the CFSP. The reasons are effectively the same for why the EU has an interest in the region and why it is important to analyze its position: the aspirations of the EU to be a global political and military player, the economic aid and development assistance it has provided to Kosovo, and the prospect of the accession of the Western Balkan countries to the EU in the future. It is a question of what weighs more—these reasons or national politics? In the case of the war in Iraq, national politics were more important than the unity of the EU in foreign policy matters. The case of Kosovo is different, though.

There are a number of reasons why there will be no split among EU member states on the issue of Kosovo. First, contrary to the war in Iraq, it is unlikely that a major split will emerge between the United States and some European countries. Both the United States and Europe carried out the military action through NATO in 1999. Both have worked together in Kosovo for about five years—politically, economically, and militarily. There might be different perceptions and visions about the future of Kosovo. They are, however, not too far apart. Most importantly, both the United States and Europe would rather put pressure on the Kosovar and the Serb side to come to an agreement than to create their own solution. It is therefore likely that the United States and Europe are going to work together. Thus, the United Kingdom as well as other European countries will not feel politically compelled to decide between the United States and fellow EU member states.

Second, military action in Kosovo already occurred in 1999. The split within the EU regarding the war in Iraq was based in part on the issue whether the use of force was permissible. That critical moment has already

The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations. The Council shall ensure that these principles are complied with.

CONSOLIDATED VERSIONS OF THE TREATY ON EUROPEAN UNION art. 11(2), available at [http://www.europa.eu.int/eur-lex/en/treaties/dat/C\\_2002325EN.000501.html#-anArt11](http://www.europa.eu.int/eur-lex/en/treaties/dat/C_2002325EN.000501.html#-anArt11) (last visited Oct. 15, 2004).

80. BORCHARDT, *supra* note 12, at 21.

81. CONSOLIDATED VERSIONS OF THE TREATY ON EUROPEAN UNION art. 11(2), available at [http://www.europa.eu.int/eur-lex/en/treaties/dat/C\\_2002325EN.000501.html#-anArt11](http://www.europa.eu.int/eur-lex/en/treaties/dat/C_2002325EN.000501.html#-anArt11) (last visited Oct. 15, 2004).

passed in Kosovo. There is a foreign military presence and no need to decide on military action. Therefore, the final status of Kosovo is not an issue controversial enough to lead to a split among the EU member states. The EU member states will overcome potential differences and reach a common position. The EU member states know that if they disagree amongst each other on the final status of Kosovo, they will have the same problem down the road when they have to agree whether to accept the region's countries into the EU. In addition, the EU generally tries to speak with one voice in the Western Balkans. The EU and not individual countries leads UNMIK Pillar IV.<sup>82</sup> The EU deployed its first military mission in Macedonia, which since then has been changed into an EU Police Mission.<sup>83</sup> The EU also has a Police Mission in Bosnia-Herzegovina.<sup>84</sup> Therefore, the EU will try to keep speaking with one voice in the region in order to not undermine its credibility as a united force. The example of an open political split regarding the war in Iraq was the exception rather than the rule in European foreign policy. Generally, the member states manage to overcome their differences and determine a common position.

### C. Possible Statuses for Kosovo

After having determined what EU institution within the EU structure will be decisive for the final status, the question remains: what status will the EU support? Due to the reiterated support for the "Standard before Status" policy by the European Council, there are, at this point, no indications about any preferences the EU might have. However, different options and their likelihood of being favored by the EU can be analyzed. In evaluating the likelihood of any EU position, the following factors should be taken into consideration.

First, the prevention of further disintegration of other countries in the region will be of high priority to the EU. The main issue is not whether the independence of Kosovo will really lead to more disintegration in Macedonia and Bosnia-Herzegovina, but rather that this fear exists among the EU member states. Therefore any final status solution will be evaluated in light of how much instability it may cause for Kosovo's neighbors.

82. UNMIK, *supra* note 9.

83. German Embassy in the United States, *EU Military Mission Helped Security in Macedonia* (Dec. 11, 2003), available at [http://www.germany-info.org/relaunch/politics/new/pol\\_eu\\_macedonia-2003.htm](http://www.germany-info.org/relaunch/politics/new/pol_eu_macedonia-2003.htm). In December 2003 the EU Police Mission "Proxima" replaced Operation "Concordia," which was the first EU military mission ever and went from March through December 2003. *Id.*

84. European Union Police Mission, *A Few of Many Events: Year 2003*, at <http://www.eupm.org/activities/seupmia.htm> (last visited Oct. 15, 2004). The EU Police Mission in Bosnia and Herzegovina started in January 2003. *Id.*

Second, the EU will not accept divisions along ethnic lines. In every statement of every institution regarding Kosovo, the need for a multiethnic Kosovo is emphasized. On the occasion of the recent unrest, the European Council again condemned the “ethnic violence” and called for the commitment of Kosovo’s Provisional Institutions of Self-Government to a multiethnic Kosovo.<sup>85</sup> Again, the questions of whether ethnic tensions or dissatisfaction with UNMIK caused the recent unrest and whether a multiethnic Kosovo is a realistic possibility is not the point; the point is that the EU will support the status that, in its eyes, fulfills this criterion. The rationale behind this factor is that the EU sees itself as a multicultural and multiethnic union, which is demonstrated by its slogan “United in Diversity.”<sup>86</sup>

Third, there are other political and economic considerations that will influence an EU position. Certainly, the EU will not allow the money it has spent in aid and reconstruction to be wasted on new military action, which could lead to an increased flow of refugees. The public opinion in many European countries is against further refugees from the Balkans. These factors need to be taken into account in examining the EU position on different statuses for Kosovo. They determine whether the EU is likely to favor a certain status. Given these factors, seven potential statuses for Kosovo from an EU perspective should be examined.

1. Complete Reintegration into the Union of Serbia & Montenegro

Although this status appears impossible due to the political situation, it should be noted here for purposes of completeness.

2. A Continuous Protectorate Under the United Nations

In this scenario, although the U.N. administration is interim by nature, the current protectorate would remain unchanged; no decision would be taken regarding a final status, and the United Nations would continue to oversee Kosovo while Kosovo’s autonomy increased.

85. Irish Presidency 2004 of the European Union, *supra* note 41.

86. European Commission, *EU Enlargement*, at [http://europa.eu.int/eday\\_en.htm](http://europa.eu.int/eday_en.htm) (last visited Oct. 15, 2004). The EU has a strong Human Rights and Democratization Policy that includes the protection of minorities. In the recent enlargement process, special attention was paid to minority rights. The Copenhagen Criteria, designed in 1993 for countries wishing to join the EU, specifically highlight the protection of minorities. The Stability Pact launched in Cologne on June 10, 1999, which aims to anchor peace and democracy in southeastern Europe, also pays a great deal of attention to the respect for minorities. See European Commission, *The EU’s Human Rights and Democratization Policy*, available at [http://www.europa.eu.int/comm/external\\_relations/human\\_rights/rm/index.htm](http://www.europa.eu.int/comm/external_relations/human_rights/rm/index.htm) (last visited Oct. 15, 2004). The slogan was primarily used in the recent enlargement round. See, e.g., European Commission, *EU Enlargement*, *supra*.

In terms of regional stability, this status seems questionable given the March unrest. It would require an increased vigilance by the Kosovo Force (“KFOR”) and an extension of the international military presence. The indefinite postponement of a final status decision might “corrupt” the progress already achieved if the international community is no longer perceived as a protector but as an occupying entity.<sup>87</sup>

On an economic level, the lack of decision regarding the final status would inhibit foreign investments and paralyze economic development.

However, as of today, without intending to blame one party more than the other, this status seems to provide a better protection of the Serb minority than the Kosovo government would.

### 3. Shift of the Protectorate to the EU

Another possibility is to replace the UNMIK as protectorate of Kosovo with an EU protectorate. That means that the EU would be in charge of all or most of the recent UNMIK Pillars. This solution might ease compliance with EU standards and contribute to a better development of Kosovo. It might advance the implementation of the SAP in Kosovo, contribute to more economic aid and development from European countries, enhance Kosovo’s integration into the pan-European infrastructure, and, in the long run, pave the way for Kosovo’s accession into the EU. The main idea behind EUMIK is that it allows both sides to save face.<sup>88</sup> It is based on the assumption that with all the countries of South Eastern Europe being in the EU one day, conflicts will ease. Although only nation-states are members of the EU, Kosovo might be able to join as a EU trusteeship territory and become independent over time.<sup>89</sup> Thus, political powers that are exercised by EUMIK will slowly be retransferred to the Kosovar authorities. In consequence, this proposal allows an independent Kosovo by way of EU accession, an “independence through the backdoor.”<sup>90</sup> In addition, the EU could prove its capacity as a political, economic, and military nation builder. This option has not been officially mentioned by the EU yet, but it has gained support on the national level. The German Liberal Party<sup>91</sup> introduced a resolution to the German parliament on March 31, 2004, asking the

87. U.S. INST. OF PEACE, *supra* note 1, at 1–2.

88. Interview with Brigita Jeronic, Assistant to Dr. Rainer Stinner, Member of the German Bundestag (Parliament) (Nov. 13, 2004) (explaining the EUMIK idea). Stinner introduced a resolution for EUMIK in the German Bundestag.

89. *Id.*

90. *Id.*

91. F.D.P., *Impressum* (Aug. 2, 2004), available at <http://www.liberale.de/portal/index.-phtml?impressum=1>.

parliament to vote in favor of an EU protectorate.<sup>92</sup> If adopted, the resolution would legally bind the German government to represent that position in the European Council.<sup>93</sup> According to the authors of the proposal, it has also gained support in Kosovo as a perspective of independence in the long term.<sup>94</sup>

A change in the form of protectorate does not, however, eliminate the dissatisfaction of the local population with the lack of self-governance. Frustration with UNMIK would transfer to EUMIK.<sup>95</sup> The EU will face the same problems and might not do a better job than UNMIK and the OSCE. It is not assured that the EU would be more successful than UNMIK. An EU protectorate would not solve any of the final status questions, but would only delay the problem. In the end, this might delay the effort of integrating Serbia and Kosovo into Europe. Only a realistic status solution with a concrete timetable offers true incentives for political and economic reforms. The Kosovo side might not be willing to wait any longer. In addition, the Serbian side might not accept such a change. Under the current UNMIK administration, any changes require the involvement of the U.N. Security Council, of which Russia is a permanent member whose vote is required. The guarantee of the traditionally friendly and supportive Russian vote would be lost for Serbia. As a result, the EU goals might be better served if the conflict is solved once and forever instead of installing a new interim administration.

#### 4. Cantonization/Decentralization

Under this hypothesis, “Serb enclaves govern themselves under de facto (not necessarily de jure) Yugoslav sovereignty, regardless of Kosovo’s status; this is a ‘soft’ partition scenario.”<sup>96</sup>

92. Antrag 15/2860 was introduced on March 31, 2004. There has been no vote on the request yet. Deutscher Bundestag, *hib-heute im Bundestag*, 094/2004 (Apr. 6, 2004), available at [http://www.bundestag.de/bic/hib/2004/2004\\_094/02.html](http://www.bundestag.de/bic/hib/2004/2004_094/02.html). The actual request can be found in German at <http://dip.bundestag.de/btd/15/028/1502860.pdf> (Mar. 31, 2004).

93. E-mail interview with Brigita Jeroncic, Assistant to Dr. Rainer Stinner, Member of the German Bundestag (Parliament) (Apr. 13, 2004). Stinner was in charge of introducing the EUMIK resolution.

94. Interview with Jeroncic, *supra* note 88.

95. The name “EUMIK” (EU Mission in Kosovo) has been introduced by the authors due to a lack of official denomination for such a protectorate at this point.

96. U.S. INST. OF PEACE, *supra* note 1, at 7. An Institute task force examined options for Kosovo’s final status. Participants in the Task Force included: Kurt Bassuener, Co-Director, Democratization Policy Institute; Michael Dzeidzic, Program Officer, Balkans Initiative, U.S. Institute of Peace; Jusuf Fuduli, Research Assistant, Balkans Initiative, U.S. Institute of Peace; Heather Hurlburt, Deputy Director, International Crisis Group, Washington Office; James Hooper, Public International Law and Policy Group; Julie Mertus, American University; Brenda Pearson, Senior Fellow, U.S. Institute of Peace; Robert Perito, Senior Fellow, U.S. Institute of Peace; Colette Rausch, Program Officer, Rule of Law

In terms of regional stability, this status might lead to negative consequences in Macedonia and southern Serbia, where Albanians could ask for a similar kind of autonomy. Moreover, it would require military presence for an indefinite amount of time to protect the enclaves, does not lead to a multiethnic administration of Kosovo, but to a disguised ethnic separation, and would be very complex to administer.

The positive aspects of this status are its legitimacy (it has the favor of the Serbs—in Kosovo and in Belgrade as well)<sup>97</sup> and the fact that the regional borders would stay intact, with no further disintegration of the Balkans.

### 5. A Loose Federation

Kosovo could be integrated into the Union of Serbia and Montenegro as an equal third state. This option would offer a middle ground between the more radical solutions of full independence or reintegration into Serbia. Kosovo would have a higher degree of self-governance than an autonomous province. Also, this solution would avoid any change of borders in the region.

However, there is one main objection. It is unclear whether the union between Serbia and Montenegro will last. It was established through the Constitutional Charter of Serbia and Montenegro on February 4, 2003.<sup>98</sup> The creation of Serbia and Montenegro formally terminated the state of Yugoslavia.<sup>99</sup> Its long-term existence must be questioned. First, the Constitutional Charter was drafted so as “to placate Montenegro’s restive stirrings for independence and will allow Montenegro to hold a referendum on independence in three years’ time.”<sup>100</sup> In addition, in May 2003, “Filip Vujanovic, a strong advocate of Montenegrin independence, was elected Montenegro’s president.”<sup>101</sup> On April 4, 2004, he reiterated that Montenegro does not benefit from the State Union and called for consideration of

Program, U.S. Institute of Peace; Louis Sell, University of Maine; Gen. John O.B. Sewall (retired); Daniel Serwer, Director, Balkans Initiative, U.S. Institute of Peace; Paul Szasz, New York University (participated in task force meetings but died before final report was prepared); Eric Witte, Coalition for International Justice. *Id.* at 19.

97. Serbian Unity Congress, *Premier Kostunica: For Serbia “Status of Kosovo” Means Many Things but Under No Circumstances Can it Mean Independence* (Mar. 3, 2004), at [http://news.serbian-unity.net/bydate/2004/March\\_03/20.html](http://news.serbian-unity.net/bydate/2004/March_03/20.html).

98. Serbia and Montenegro, *Political System*, available at <http://www.gov.yu/start.php?je=e&id=6> (last visited Oct. 15, 2004).

99. Serbia and Montenegro, *History from 1918 to 2003*, available at <http://www.gov.yu/start.php?je=e&id=38> (last visited Oct. 15, 2004).

100. Infoplease.com Online Encyclopedia, *Serbia and Montenegro*, at <http://www.infoplease.com/ipa/A0108157.html> (last visited Oct. 15, 2004).

101. *Id.*

independence for Montenegro.<sup>102</sup> Therefore, the option of a loose federation does not seem very viable.

#### 6. Unconditional Independence Within Existing Borders

This option is defined as follows in a report of the United States Institute of Peace:

After an agreed period (perhaps three years) of increasing self-rule under international supervision, Kosovo would become an independent state within its current borders. Kosovo Serbs would get internationally guaranteed rights and broad local autonomy. Before independence, Kosovo would establish cooperative trans-border political, economic, and security relationships with neighboring states. International monitoring would continue for a limited period after independence.<sup>103</sup>

Unlike conditional independence, this status likely will not be perceived as legitimate by the international community because it will be considered an “unearned” independence. Moreover, to be acceptable, this solution would likely require an effective minority protection, but the March unrests demonstrate the vulnerability of minorities. It seems that this status would increase the push for partition.

An independent Kosovo would certainly relieve Serbia from a burdensome obstacle to obtaining EU membership, but it also raises, in Europe, the ministates issue. Will the EU be reluctant to accept the creation of many ministates in Europe, increasing the number of its potential members? On one hand, this solution might complicate the political process with respect to structuring European institutions (for example, voting rights and the number of commissioners). On the other hand, there is no valid argument against admitting ministates, considering the admission of Malta and Cyprus and the membership of Luxemburg.

Considering these observations, one might think that it is preferable to have democratic ministates than ongoing conflicts. Already, with the May 2004 enlargement of the EU, there seems to exist a trend for the admission of a larger number of smaller countries. The EU members can be classified as follows:

- four big countries (Germany, United Kingdom, France, Italy);
- two medium/big countries (Spain, Poland);

102. President of the Republic of Montenegro, *Statement of April 4, 2004*, available at <http://www.pred-sjednik.cg.yu/eng/index.phtml?akcija=vijest&id=311>. “If Serbia and Montenegro do not benefit from the State Union, then it should no longer exist.” *Id.*

103. U.S. INST. OF PEACE, *supra* note 1, at 11.

- ten medium/small countries (Romania, Netherlands, Greece, Czech Republic, Belgium, Hungary, Portugal, Sweden, Bulgaria, Austria);
- five small countries (Slovakia, Denmark, Finland, Ireland, Lithuania);
- six ministates (Latvia, Slovenia, Estonia, Cyprus, Luxembourg, Malta).

There clearly is a trend within the EU to accept more ministates. Instead of trying to avoid the creation of ministates, the EU might have to adapt its institutions.

#### 7. Independence After the Rearrangement of Borders

Under this system, the borders between Serbia and Kosovo would be rearranged according to ethnic composition. Mainly the three northern municipalities—Zvečan, Zubin Potok, and Leposavic—as well as Mitrovica north of the Ibar River, would go to Serbia.<sup>104</sup> The remaining 26.5 municipalities would become an independent Kosovo.<sup>105</sup> Albanian-dominated areas in southern Serbia would become part of an independent Kosovo.

It is arguable whether this option might set a destabilizing precedent for Macedonia and Bosnia-Herzegovina. What is important is that in the eyes of the EU it will have that effect. The EU already worries about destabilization in the region. During the violence in Macedonia in 2001, the EU perceived the possibility of a military conflict between the Albanian minority and the Slavic majority in Macedonia. The EU knows that that violence was only prevented by quick and decisive action. Additionally, the perception of the Balkans in general is that territorial conflicts, especially moves for independence, inevitably lead to military conflicts. The EU certainly is not willing to take that risk and open Pandora's Box. Finally, changing borders along ethnic lines will not lead to effective protection of minorities. There will never be ethnically "clean" areas and therefore no end to the necessity of minority protection. A monoethnic policy is completely contrary to EU policy. Surely any EU support for this option can be ruled out.

#### IV. NATIONAL POSITIONS ON THE FINAL STATUS OF KOSOVO

It has been determined that the European Council and the General Affairs Council will be the EU institutions that play the major role in the EU's position on the final status for Kosovo. In the European Council and the

104. *Id.* at 12.

105. *Id.*

General Affairs Council, the national governments are represented. Therefore, the positions of the national governments need to be determined.

This analysis will include the positions of Germany, France, the United Kingdom, and Greece. The first three are the biggest and politically and economically most important countries in the EU. In addition, France and the United Kingdom have veto power in the U.N. Security Council. Therefore their agreement to any change of Resolution 1244 will be required. Greece has been included in the analysis as it is the closest traditional ally of Serbia in the EU. Analyzing national positions towards the final status of Kosovo requires taking intranational politics into account. Intranational political analysis also allows for the formulation of strategies for influencing an EU position before it has been determined on the European level.

#### A. Germany

Intra-German politics have already been partly demonstrated by the resolution of the Liberal Party that was introduced into the German Parliament on March 31, 2004, asking the Parliament to vote for an EU protectorate in Kosovo.<sup>106</sup> There has been no vote on the resolution yet, nor any scheduled date at this point. The Liberal Party has been an opposition party since 1998. However, from 1969 to 1998, it was in charge of the Foreign Ministry, dominating German foreign politics for about twenty years.<sup>107</sup> Thus, the resolution carries some political weight. It is far from clear, though, that it will be adopted. The member of Parliament who was in charge of drafting the resolution is skeptical about the chances for its adoption.<sup>108</sup> The simple reason is that the governing parties enjoy the majority in Parliament.<sup>109</sup>

The majority parties—the Social Democratic Party and the Green Party—remain vague about their opinions on the future of Kosovo. There is no clearly defined policy. The government sticks with the “Standards be-

106. Deutscher Bundestag, *supra* note 92.

107. FDP Bundestagsfraktion [Website of the Parliamentary Group of the Liberal Party], *Geschichte der Fraktion [History of the Parliamentary Group], Details der einzelnen Wahlperioden [Details of the Individual Legislative Periods]*, available at <http://www.fdp-fraktion.de/> (last visited Oct. 15, 2004).

108. E-mail Interview with Jeronicic, *supra* note 93.

109. In 1998, the Socialdemocratic and the Green Party formed a coalition on the federal level; they have the majority in Parliament. Der Bundeswahlleiter [Website of the German Electoral Commissioner], *Bundestagswahlen [Federal Parliamentary Elections]* (Oct. 30, 2002), at <http://www.bundeswahlleiter.de/wahlen/btwahl.htm>.

fore Status” policy.<sup>110</sup> Given the recent unrest in Kosovo, the U.N. Security Council in a session on March 18, 2004, discussed the situation in Kosovo.<sup>111</sup> The Security Council adopted a declaration condemning the violence and calling for an investigation of the events.<sup>112</sup> The declaration does not have the legal status of an international resolution.<sup>113</sup> The German foreign minister, Joschka Fischer (Green Party), who was present at the U.N. meeting, allegedly acknowledged in private that independence is no option at this point.<sup>114</sup> This position reflects intra-German politics to the extent that the foreign minister represents the government and—due to the parliamentary system in Germany—the majority in Parliament. The statement, however, is only reported to have been made and was neither made in public nor officially affirmed. It therefore is not based on an official determination of the German position, which remains the “Standards before Status” approach. The Security Council declaration also does not reflect an official German position because it condemned the March 2004 unrest but did not deal with the status of Kosovo.

Both perspectives make clear that short-term independence of Kosovo is not a valid option according to Germany. While one of the opposition parties favors an EU protectorate, the government does not seem to have a clear perception of Kosovo’s future status at all. Both, however, imply that independence is not favored at this point. Therefore, Germany most likely will not support immediate independence for Kosovo.

### B. France

France, since its alliance with Serbia during World War I, traditionally maintains closer relations with Serbia than with Albania. On November 5, 1998, “[a] French army officer [was suspected] of passing NATO secrets to Belgrade.”<sup>115</sup> The U.S. military also suspected France of pro-Serbian sympathies in the Balkan conflict. In response to these allegations, the former

110. Permanent Mission of Germany to the United Nations, *Statement by Mr. Joschka Fischer Federal Minister for Foreign Affairs, at the United Nations Security Council Meeting in New York on March 18, 2004, on the Situation in Kosovo* (Mar. 18, 2004), available at [http://www.germany-info.org/UN/archive/speeches/2004/sp\\_03\\_18\\_04.html](http://www.germany-info.org/UN/archive/speeches/2004/sp_03_18_04.html).

111. Phoenix Online, *UNO Fordert Ende der Gewalt im Kosovo [U.N. Demands End of Violence in Kosovo]* (Mar. 19, 2004), at <http://www.phoenix.de/ereig/exp/19360/>.

112. Deutsche Welle, *NATO Peacekeepers in Action in Kosovo* (Mar. 20, 2004), available at [http://www.dw-world.de/english/0,3367,1433\\_A\\_1147147\\_1\\_A,00.html](http://www.dw-world.de/english/0,3367,1433_A_1147147_1_A,00.html); Phoenix Online, *supra* note 111.

113. Phoenix Online, *supra* note 111.

114. Der Standard, *Svilanovic: Deutschland “blockiert” Kosovo-Resolution [Germany Blocks a Kosovo Resolution]* (Mar. 26, 2004), available at <http://derstandard.at/?id=1612302>.

115. Reuters, *Media: Alleged Spy Reveals Damaging Information to Serbia* (Nov. 5, 1998), available at <http://www.xs4all.nl/~pressnow/media/kosovo/981105.html>.

French Prime Minister Lionel Jospin denied a biased French policy: “French policy in Yugoslavia is perfectly clear . . . It is not decided by feelings for this or against that.”<sup>116</sup>

During the earliest stages of the Kosovo conflict, France encouraged political settlement of the issue through the establishment of a status of substantial autonomy inside the Federal Republic of Yugoslavia.<sup>117</sup> President Chirac formally opened the Rambouillet meeting.<sup>118</sup> The conference was held under Franco-British co-chairmanship. They recorded the parties’ agreement in principle on the political framework for the substantial autonomy of Kosovo and decided to convene a meeting to finalize the agreement, including its implementation chapter. The Rambouillet Accords were actually signed by the Kosovar delegation alone. Nowadays, France, still governed by the Chirac administration, seems to pursue a similar and consistent policy. Bernard Kouchner’s appointment as the U.N. Secretary-General’s special representative ensured that France would play a key role in the administration and reconstruction of Kosovo.<sup>119</sup>

The current official position of the French Republic is manifested by ongoing support for the “Standards before Status” doctrine. Although there was no apparent shift in the French policy after the March 2004 unrests, one must still be aware that two different inclinations can be found among French politicians. Daniel Cohn-Bendit, at the time a French member of the European Parliament,<sup>120</sup> affiliated with the Greens, opposes the partition of Kosovo and appears to be pro-Albanian.<sup>121</sup> On the other hand, Bruno Gollnisch, French member of the European Parliament, nonaffiliated, Front

116. *Id.*

117. JoMarie Fecci, *French Policy in Kosovo*, PARIS TEMPO, available at [www.paris-tempo.com/kosovo3.html](http://www.paris-tempo.com/kosovo3.html) (last visited Oct. 15, 2004).

118. See Richard Becker, *The Rambouillet Accord: A Declaration of War Disguised as a Peace Agreement*, available at <http://www.iacenter.org/warcrime/rbecker.htm> (last visited Oct. 15, 2004).

The accord provided for a very broad form of autonomy for Kosovo. A province of Serbia, one of two republics (along with Montenegro) which make up present-day Yugoslavia, Kosovo would have its own parliament, president, prime minister, supreme court and security forces under Rambouillet. The new Kosovo government would be able to negate laws of the federal republic’s legislature (unlike U.S. states) and conduct its own foreign policy.

*Id.*

119. Fecci, *supra* note 117.

120. As of the last European Parliament elections on June 13, 2004, Mr. Cohn-Bendit has since become a German Member of the European Parliament. European Green Party, *Green Group in the European Parliament*, available at <http://www.europeangreens.org/peopleandparties/members/germany.html> (last visited Dec. 1, 2004).

121. *l’Humanité*, *Kosovo: Les Verts Admettent Leurs Nuances* (Apr. 13, 1999), available at <http://www.humanite.presse.fr/journal/1999-04-13/1999-04-13-287588>.

National, emphasizes victimization of the Serbs in Kosovo and asks for their protection.<sup>122</sup>

### C. *United Kingdom*

The United Kingdom is receptive to the U.S. pro-independence policy. However, Lord Lea of Crondall, addressing the House of Lords, mentioned after the March unrest:

[Although] we have heard criticisms in the press that a contributory factor in last week's events was that no progress was being made on the final status of Kosovo, . . . our experience in Northern Ireland should be enough to show that we must be careful to avoid a premature attempt to define final constitutional status. The key priority must surely be to keep all the states in the region, including Serbia Montenegro, Albania, Macedonia, Bosnia-Herzegovina and Croatia, in dialogue about the economic and wider future of the west Balkans. All have an aspiration to join the European Union.<sup>123</sup>

The United Kingdom plays an important role in the fight against crime in the Western Balkans and “presses for full compliance with the International Criminal Tribunal for the former Yugoslavia (ICTY) to ensure that all indicted war criminals are detained and transferred to the Hague to receive a full hearing and the region confronts its recent past.”<sup>124</sup>

### D. *Greece*

The official position of the government of Greece is to pursue the “Standards before Status” approach based on U.N. Resolution 1244 (1999).<sup>125</sup> Greece, however, is the best example of how traditional affiliations among European nations can influence national and European politics. European politics are often tradition based. Not to acknowledge traditional affiliations and their impact can lead to wrong predictions of future politics. In the case of Greece it can be assumed that Greece will not favor the independence of Kosovo, neither in the short nor in the long term.

122. Website of Bruno Gollnisch, available at <http://www.gollnisch.com/> (Mar. 30, 2004); Remarks of Gollnisch (Nov. 30, 2004) (Debates of European Parliament), available at <http://www3.europarl.eu.int/omk/omnsapir.so/cre?FILE=20040330r&LANGUE=FR&LEVEL=DOC&NUMINT=2-214&LEG=L5>.

123. 659 PARL. DEB., H.L. (5th ser.) (2004) 489, available at [http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds04/text/40322-09.htm#40322-09\\_spnew1](http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds04/text/40322-09.htm#40322-09_spnew1).

124. Foreign & Commonwealth Office, *Countries and Regions: Western Balkans*, available at <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394725> (last visited Oct. 15, 2004).

125. Hellenic Republic Ministry of Foreign Affairs, *Serbia & Montenegro*, available at [http://www.mfa.gr/english/foreign\\_policy/europe\\_southeastern/balkans/Yugo.html](http://www.mfa.gr/english/foreign_policy/europe_southeastern/balkans/Yugo.html) (last visited Oct. 15, 2004).

The main reason is that Greece traditionally has been a close ally of Serbia. There are a number of reasons for that close relationship. One is the so-called Macedonian question. Throughout the twentieth-century, there have been several alliances in order to obtain the territory that is currently called Macedonia.<sup>126</sup> To Greece, Macedonia is still a very controversial issue, as demonstrated by the controversy over Macedonia's official name.<sup>127</sup>

Even in the ethnic conflicts of the 1990s, Greece was perceived as biased in favor of Serbia. Greece was accused of siding with Milosevic's Serbia during the Bosnia and Kosovo wars<sup>128</sup> and to have scorned the Serbian opposition even until 2000.<sup>129</sup> Greece was even accused of siding with Serbia's darkest sides.<sup>130</sup> During the Kosovo bombings, a near unanimity of Greeks opposed them.<sup>131</sup> On the other hand, Greece voted for the military action against Yugoslavia. As military action by NATO must be taken unanimously Greece could have vetoed the campaign but refrained from doing so. At the time of the bombing, however, the Greek government was the first to call for the suspension of military action and to return to negotiations.<sup>132</sup>

126. In 1912, Bulgaria and Serbia signed a treaty dividing Macedonia, which was under Ottoman rule. Northern Macedonia was supposed to become Serb, and southern Macedonia Bulgarian. Then Bulgaria, Serbia, and Greece formed an alliance in order to liberate Macedonia from the Ottoman Empire (the First Balkan War). The Bulgarian army defeated Turkish troops close to Constantinople. The Greek and Serbian armies occupied Macedonia and divided it among themselves. It is disputed whether Serbia and Greece managed to keep the land under their control, leaving Bulgaria outside, or if Bulgaria was dissatisfied with its share and started the Second Balkan war against Serbia. Macedonian Scientific Institute, *Macedonian Question*, at [http://www.macedoniainfo.com/macedonia/Macedonian\\_Question.htm](http://www.macedoniainfo.com/macedonia/Macedonian_Question.htm) (last updated Aug. 11, 2004).

127. Macedonia's official title is "Former Yugoslav Republic of Macedonia." In the first Balkan war, Greece gained the territory around the city of Saloniki (Thessaloniki). This northern province is named Makedonia, which led Greece to oppose the new Macedonian state's bearing of that same name. INT'L CRISIS GROUP, BALKANS REP. NO. 122, MACEDONIA'S NAME: WHY THE DISPUTE MATTERS AND HOW TO RESOLVE IT 11-14 (Dec. 10, 2001), available at [http://www.icg.org/library/documents/report\\_archive/A400507\\_10122001.pdf](http://www.icg.org/library/documents/report_archive/A400507_10122001.pdf).

128. In a report by a Dutch commission investigating the 1995 Srebrenica massacre, Greece was revealed to have sent shipments of light arms and ammunition to the Bosnian Serb army between 1994 and 1995. Helena Smith, The Observer, *Greece Faces Shame of Role in Serb Massacre* (Jan. 5, 2003), available at <http://observer.guardian.co.uk/milosevic/story/0,10639,868869,00.html>.

129. Panayote Dimitras, Advocates for Kosova Independence, *Book Review: Takis Michas, Unholy Alliance: Greece and Milosevic's Serbia in the Nineties*, available at <http://www.albnet.com/aki/bookreview/br02.htm> (last visited Oct. 15, 2004).

130. Many Greek intellectuals, politicians, journalists, and academics allegedly expressed their admiration for Karadzic. According to some historians, the media and politicians simply gave in to this overpowering popular demand. Greek paramilitary fighters had joined Serbian forces in Srebrenica and even hissed the Greek flag after the capture of the city. After the war, when the Hague tribunal indicted Karadzic and Mladic, two million signatures were reportedly collected by the Greek-Serbian friendship association to oppose their prosecution. *Id.*

131. *Id.*

132. Joseph Fitchett, *NATO Shoots Down 2 Serb MiG-29s over Bosnia*, INT'L HERALD TRIB., Mar. 27, 1999, available at <http://www.iht.com/IHT/DIPLO/99/jf032799.html>.

This alliance between Greece and Serbia is partly attributable to the Orthodox Church as a nationalist influence common to Greece and Serbia, one that emphasizes a common ethnicity and anti-Western sentiment. Thus, in the light of this history, it is most realistic to expect that Greece will not support the Kosovar claim for independence on its own. Greece will, however, not prevent a common European position either. The reasons why a common position in the CFSP is likely to emerge were explained above. Traditional affiliations will influence a national position for Greece, but they will probably not present an obstacle for the EU to act. There certainly may be exceptions, but generally European identity and loyalty towards the other EU member states drive Greek policy. The vote of Greece for the bombing of Yugoslavia in 1999 supports that claim.

#### V. METHODS FOR THE EU TO INFLUENCE THE FINAL STATUS DETERMINATION

What weight does the EU carry to force Serbia and the Kosovar Albanians to come to an agreement? What incentives can it offer and what threats can it make? How will the EU—independently of what solution it favors—try to implement its position? There are two main mechanisms the EU will be able to use. Both are mainly of an economic nature—the economic aid the EU provides and the possibility of future accession of the region into the EU.

First, the EU has the biggest economic share in Kosovo's reconstruction and future economic development. Whatever political status and form of government Kosovo will have will depend on economic aid and trade in order to be a viable polity. Regional economic cooperation will be necessary. Any political solution will not be long-lasting if issues such as economic development, unemployment, and reconstruction are not adequately addressed and solved. This is where the EU can exercise its influence. The EU is the biggest financial donor for Kosovo. In addition, it is the biggest trading partner of the province.

The second incentive the EU controls—both positive (a “carrot”) and negative (a “stick”)—is the prospect of EU membership for both Serbia and Kosovo. The EU might try to convince Serbia that an EU membership can be reached more easily and more quickly if Serbia gets rid of its Kosovo burden. On the other hand, the EU might or might not offer prospective membership to Kosovo as an independent state. One might think that in the long term there will be no difference because both Serbia and Kosovo will eventually join the EU, either together or as independent states. However, the current status of Kosovo prevents an EU membership because only

independent states can join the union. That means that the question of Kosovo has to be solved in order to enable both Serbia and Kosovo to join the Union. The EU can offer a membership under certain conditions, privileges, and timetables, or it can refrain from doing so. For example, Serbia's and Kosovo's EU memberships might be combined and tied to each other in order to force them to cooperate on certain issues.

One might think that an EU membership is not a useful "carrot" for changing international politics. The example of Cyprus could be cited to support this claim. The case of Cyprus, however, proves that EU memberships work as incentives. The reason why only some regions of Cyprus joined the EU on May 1, 2004, is not because the "carrot" did not work, but because it was already given away. In the case of Cyprus, the EU made the mistake of letting the southern part of the island join regardless of the outcome of negotiations. That gave the southern part a guaranteed membership even if it rejected the reunification, which it finally did. That mistake should not be repeated. The Cyprus example shows, however, that an EU membership is a huge "carrot" for all participants. The possibility of EU membership, for the first time, encouraged the northern part of the island, as well as Turkey, to engage in serious negotiations and even led to the approval of a referendum. The problem was that the Union had given away its "carrot" for the South.

The "carrot" of EU membership faces a number of problems, though. The first one is whether national politicians really want that accession. In the elections in Serbia on December 28, 2003, pro-Western parties were defeated, and nationalistic parties prevailed.<sup>133</sup> The new Serbian government might simply not desire that Serbia become an EU member. Similarly, Kosovars might not be willing to give up sovereignty after a short period of independence after decision making was dominated by internationals for many years. However, national politics will face the dynamic of a region that is heading towards European integration. Slovenia joined the Union on May 1, 2004.<sup>134</sup> Romania, Bulgaria, and Croatia are to follow in the years to come.<sup>135</sup> Macedonia has applied for EU membership.<sup>136</sup>

133. Ian Traynor, *Serbian Election Victory for War Crimes Suspect's Party* (Dec. 29, 2003), available at <http://www.iht.com/IHT/DIPLO/99/jf032799.html>. The main winner of the elections was the Serbian Radical Party. *Id.* The Serbian Radical Party is led by Vojislav Seselj, who is awaiting trial at the war crimes tribunal in The Hague. *Id.*

134. European Commission, *supra* note 2.

135. See European Commission, *Enlargement*, at [http://www.europa.eu.int/abc/index\\_en.htm#](http://www.europa.eu.int/abc/index_en.htm#) (last visited Oct. 15, 2004).

136. Croatia applied for EU membership on February 21, 2003. European Commission, *The EU's Relations with Croatia*, at [http://europa.eu.int/comm/external\\_relations/see/croatia/index.htm](http://europa.eu.int/comm/external_relations/see/croatia/index.htm) (last updated June 2003). Macedonia applied for EU membership on March 22, 2004. Irish Presidency 2004

A second problem that the EU membership “carrot” faces is that institutional reform of the Union needs to progress. In that regard, the EU constitution plays a decisive role.<sup>137</sup> Currently, the Treaty of Nice governs the Union of twenty-five member states; it came into force on February 1, 2003.<sup>138</sup> In December 2003, the European Council wanted to adopt a new treaty: the European Constitution.<sup>139</sup> The adoption failed, however, because Poland and Spain did not agree with the newly weighted voting rights that would reduce their influence in the Council of Ministers, as compared to the voting rights that they enjoyed under the Treaty of Nice.<sup>140</sup> Since then, the Polish and Spanish governments have changed their positions, but new uncertainties have arisen from decisions to submit the EU constitution to referenda in some member states.<sup>141</sup> Superficially, the consequences for Kosovo do not seem imminent, as Kosovo neither enjoys statehood nor fulfills the political and economic conditions for membership. However, a

of the European Union, *President of the European Council Formally Accepts Macedonian Application for Membership in the EU* (Mar. 22, 2004), at [http://www.eu2004.ie/templates/news.asp?sNavigator=66&list\\_id=443](http://www.eu2004.ie/templates/news.asp?sNavigator=66&list_id=443).

137. The entity of the EU is a treaty-based organization. Its fundament, the Treaty of Rome of 1958, established two of the three European communities: the European Economic Community (EEC, later called the EC) and the European Atomic Energy Community (Euratom). The European Coal and Steel Community (ECSC) had already been established in 1951. The original treaties have been altered over time through the Treaties of Maastricht, Amsterdam, and Nice. The treaties establish the European institutions, the rights of European citizens, the mechanisms for cooperation among the European member states, and more. European Commission, *supra* note 2.

138. *Id.*

139. In December 2001, the European Council, during its summit in Laeken, Belgium, mandated a European Convention to elaborate a draft treaty establishing a constitution for the EU. The draft treaty was presented in July 2003 and included the following main features: (1) reorganization of the existing treaties and changes to the overall structure of the EU; (2) increased role of the European Parliament; (3) incorporation of the Charter of Fundamental Rights; (4) changes in the institutions of the EU, especially the creation of a permanent President of the EU, the creation of a Foreign Minister of the EU, and a reduced number of commissioners; and (5) changes in the voting rights in the Council of Ministers (as compared to the voting rights in the Treaty of Nice). European Convention, *Report from the Presidency of the Convention to the President of the European Council* 3–5 (July 18, 2003), available at <http://european-convention.eu.int/docs/Treaty/cv00851.en03.pdf>.

140. Under the Treaty of Nice, both Poland and Spain have twenty-seven votes each, only two less than much more populous nations like France and Germany. Deutsche Welle, *EU Constitution Summit Fails* (Dec. 13, 2003), at [http://www.dw-world.de/english/0,3367,1433\\_A\\_1059815\\_1\\_A,00.html](http://www.dw-world.de/english/0,3367,1433_A_1059815_1_A,00.html).

141. After the election of a new Spanish government on March 14, 2004, Spain changed its position on the EU constitution. In addition, a new proposal for another form of double majority in the voting mechanism makes the adoption of the constitution more likely. The new provision would provide that instead of half (13/25) of the member states representing 60% of the population, 55% (14/25) of the states would represent 65% of the population. Christian Wernicke, *Süddeutsche Zeitung, Irland will die EU-Verfassung Retten [Ireland Wants to Save the EU Constitution]*, available at <http://www.sueddeutsche.de/aus-land/artikel/968/30938/> (Apr. 28, 2004). On April 21, 2004, the Prime Minister of Great Britain, Tony Blair, declared that he was submitting the EU Constitution to a referendum in the United Kingdom, making the chances for its realization unclear again. Christoph Schwennicke & Alexander Hagelüken, *Süddeutsche Zeitung, Tony Blair Setzt die EU-Verfassung aufs Spiel [Tony Blair Jeopardizes the EU Constitution]* (Apr. 19, 2004), available at <http://www.sueddeutsche.de/ausland/artikel/419/30389/>.

failed EU constitution can have a substantial impact on Kosovo's future. The impact can occur in two forms: (1) on Kosovo's ability to become an EU member, whether as an independent entity or as part of Serbia and Montenegro; and (2) on Kosovo's final status.

The first possibility is that the EU would not be able to accept new members for a long time. The EU constitution was supposed to prepare the EU for twenty-five and more members. The current Treaty of Nice has a voting mechanism that includes Bulgaria and Romania.<sup>142</sup> Any further enlargement will require a change in the voting mechanism, as it will have to be determined how many votes each new member state will have. Thus, Kosovo's prospective EU membership, whether as an independent country or as part of Serbia and Montenegro, is subject to the EU's ability to make further reforms. Any new enlargement will raise the question of how voting rights should be weighted. Without an agreement on the EU constitution, any other agreement on enlargement seems impossible.

The uncertainty of the EU's own status affects its ability to influence the final status of Kosovo. If the EU cannot successfully reorganize itself to allow for the acceptance of new members, it cannot offer membership to Serbia as an incentive for Serbia's acceptance of the independence of Kosovo. Likely, there will simply be too little for Serbia to gain in letting Kosovo go. The inability of the EU to structure further enlargement will diminish its influence on Kosovo's final status determination.

#### CONCLUSION

Although the March 2004 unrests put Kosovo back on the top of the EU's agenda, they certainly did not enhance the prospects of Kosovo's independence. The EU, in determining its policy toward Kosovo, should evaluate whether the cause of the March 2004 unrests was recurrent ethnic tensions or dissatisfaction with UNMIK.

Ultimately, EU member states will not be split on the issue of the final status for Kosovo. In the short term, because the EU does not want to reward the violence, it will not favor independence for Kosovo. In the long term, the EU likely will prefer conditional independence. The EU will value minority protection as the key indicator of democratization. It is clear that without efficient protection of the Serb minority in Kosovo, independence will not be granted.

142. European Commission, *Treaty of Nice: A Comprehensive Guide, Institutional Questions*, available at [http://www.europa.eu.int/scadplus/nice\\_treaty/council\\_en.htm#VOTES](http://www.europa.eu.int/scadplus/nice_treaty/council_en.htm#VOTES) (last visited Oct. 15, 2004).

Which status it is going to be is very difficult to predict. The Serbian idea to split Kosovo will probably receive least support. The idea of conditional independence, which the Independent Commission on Kosovo has launched some time ago, looks the most feasible. Independence would then be made dependent upon the protection of minorities, abandoning any Greater Albanian projects, condemnation of any violence, and regional cooperation. Because of the past and realities on the ground (also created by UNMIK), integration of Kosovo back into Serbia doesn't seem an option.<sup>143</sup>

143. E-mail interview with Ute Seela, *supra* note 27.