THE EU'S POLICIES TOWARDS CONTESTED STATES

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Contested states are the product of partially successful strategies. National independence movements may prove capable of establishing effective control over a certain territory and its population, but a lack of full international recognition indicates that the counter-secession policies of the government confronted with the breakaway have likewise been successful to some extent. This results in a fragile equilibrium that the European Union's security policies need to address. In the case of Europe, there is no question of a military solution to any of these conflicts, but nor are negotiations making sufficient progress to end the stalemate. Among the various cases of unrecognised entities the EU is dealing with, one – Northern Cyprus – is located on EU territory. The EU is also mediating between a candidate country – Serbia – and a potential candidate country – Kosovo, whose statehood is contested, including by some EU member states. In addition, the EU has to develop a policy towards a number of disputes involving contested states in its eastern neighbourhood: these are the conflicts over the status of Transnistria in Moldova, South Ossetia and Abkhazia in Georgia, Nagorno-Karabakh in Azerbaijan, and Donbass and Lugansk in Ukraine. Russia is deeply involved in this last group through its support for these contested states. Moreover the EU also has to deal with entities that are located farther away, but that are nonetheless also crucial for its global security policies, such as Palestine and Taiwan. The following paper will describe some crucial characteristics of the EU's policies on conflicts involving contested states and will analyse some of the main problems it is grappling with.

The EU does not initiate policies to address secessionist or irredentist movements on the territory of its member states: it becomes active only when it can count on the support of the member states in facing such conflicts. Then the European Commission can, for instance, develop regional policies aimed at conflict transformation, with the goal of making the positions of the conflicting parties more compatible. In the long term this will allow for more cooperation between them, or even joint decision-making. The Commission implemented such a conflict transformation policy for Northern Ireland, with the full support of the British and Irish governments (Mabry et al., 2013).

The EU has, however, adopted a proactive policy in this regard where national minorities in candidate countries such as Macedonia and Turkey are concerned. And its initiatives are even more prominent in the case of contested states, whose formation entails a unilateral declaration of independence and generally results from the use of force. The outcome of conflicts involving contested states is ultimately decided at the international level. For these reasons, all conflicts involving contested states directly affect fundamental EU security interests.

One may wonder if it makes sense to compare the EU's policies towards the different conflicts involving contested states. The fact is, the EU has no overall strategy on contested states, merely a series of individual policies. States, or international organisations such as the EU, that are involved in attempts to solve conflicts on sovereignty do not want to present a particular approach or settlement as a general model for other cases: this would run counter to the need for flexibility that is required for successful mediation. In 2002, as High Representative of the European Union for Foreign Affairs and Security, Javier Solana played a leading role in brokering an agreement between Serbia and Montenegro which allowed for a referendum on independence for Montenegro. Such a referendum was held in 2006. Solana defended this clause in the agreement, and he also declared that it would not constitute a precedent for any other European countries. In his view, those who were comparing Montenegro with territorial disputes in Spain were suffering from *delirium tremens* (*El Mundo*, 2016). Two years later, in 2008, the EU member states who had recognised Kosovo likewise stressed that their decision did not constitute a precedent – that this was a *sui generis* case, which could not be compared to any other case. The conflicting parties have their own reasons to be fearful of comparisons: the risk is that the outcome of the dispute they are involved in would be made dependent on the outcome of the conflict it is compared with, in which case the comparison might work against them. For all these reasons, therefore, a systematic comparison between the various cases could be considered problematic from the perspective of a political practitioner. Scholars, on the other hand, have no reason to reject comparisons. That would be contrary to their trade. A comparison of the EU's policies towards contested states is particularly useful for showing common traits, despite the wide diversity of circumstances – and this allows for a better understanding of the EU's capacity to act in such difficult circumstances.

The EU does not have the power to recognise new states: that is the exclusive prerogative of its member states. And the member states' policies on recognition are not based on particular national doctrines. Recognition is a political act, which is to some degree guided by general principles and which also takes into account the interests of the recognising states, such as the need for a stable international order. In addition, recognition policies take into consideration the particular context in which a conflict on secession takes place. In order to preserve their diplomatic flexibility, individual EU member states do not formulate a clear doctrine on recognition policies, and this is *a fortiori* true for these states taken collectively.

The practice regarding recognition and non-recognition is thus very diverse, but there are still general observations to be made regarding

the EU experience. When confronted with the dissolution of the Yugoslav federation, the members of the European Communities (EC) were united in defending the position that, in principle, all Yugoslav republics (the entities with the highest formal status under the Yugoslav constitution) had a right to independence (Rich, 1993). This excluded a right to independence for provinces, such as Kosovo, that were formally subordinated to one of the republics. In the case of the Soviet Union, such a right to independence was reserved for Union republics – which were sovereign and, according to the constitution, had a right to secession. The members of the EC were in full agreement with each other when they denied the right to independent statehood to all other entities in the Soviet federal framework, such as Autonomous republics (Chechnya and Abkhazia) or Autonomous regions (South Ossetia and Nagorno-Karabakh). And EC members were likewise unanimous in their recognition of the mutually agreed dissolution of the Czechoslovak federation into its constituent parts. This means that the EC was able to reach full unanimity in the case of the dissolution of these three federations into newly independent states.

More problematic, in terms of the unity of EU member states, was the application of the so-called "remedial position" on the right to secession (Buchanan, 2004). This position considers the redressing of historical injustices, such as liberation from oppression or occupation, as a legitimate basis for the right to independent statehood. According to this position, nations have such a right to independence if this is the only reasonable way to correct or prevent such injustices. The members of the European Community jointly defended this position in 1991 in relation to the restoration of the independence of the Baltic states, which had been occupied and annexed by the Soviet Union in 1940. When it came to recognising the statehood of Chechnya, Nagorno-Karabakh, Transnistria, Abkhazia and South Ossetia, however, they jointly refused to apply the same normative position. But the vast majority of them did recognise Kosovo in line with this remedial position – a decision that was then vehemently opposed by other member states, particularly Spain and Cyprus.

According to the "choice position" (Wellman, 2010), the population of any territory has a right to secede unilaterally if such a choice is based on the democratically expressed will of the majority and if it is likely to lead to the creation of a state that is based on the rule of law. This view of national self-determination finds support among political theorists, but far less among international lawyers. It may also count on some sympathy in the media and a part of European public opinion at large. But it is a position not shared by any EU member state, none of which identifies the principle of the self-determination of peoples with democratic freedom of choice. According to all EU members, the support of the majority of a people for independence is one of the necessary conditions for the recognition of a state, but this democratic will is far from being a sufficient condition for such recognition. They vehemently reject the view that the majority of a population of any given territory that is part of a recognised state may decide its future international status on its own. The EU therefore refused to recognise the legitimacy of a referendum on the independence of Transnistria in 2006, and it strongly opposes the holding of a referendum on the independence of the Republika Srpska in Bosnia and Herzegovina.

The division between EU member states regarding particular cases of recognition reflects the division in the international community as a whole. EC members were united on the issue of recognition in cases where the other members of the international community were also united, as they were in 1991 with the dissolution of the Soviet Union. At present, the EU member states are likewise divided when the other states in the international community are divided, as for instance on the recognition of Palestine or Kosovo. Such divisions lessen the efficiency of EU policies on conflicts involving contested states, but they do not make such policies impossible, as long as the EU is capable of overcoming the division between its members by developing a common policy of engagement without recognition. The EU is currently coordinating engagement policies towards Palestine and Kosovo, for example, and is thus able to act in line with its own interests in the disputes on the status of these entities.

And indeed the EU has a vital interest in being engaged in attempts at resolving conflicts involving contested states in Europe. It plays the leading role in mediating between Kosovo and Serbia. Together with the UN and the OSCE, it chairs the Geneva International Discussions regarding the conflicts in Georgia over South Ossetia and Abkhazia. It is likewise deeply involved in attempts at resolving the conflicts in Ukraine, in several ways. It has an observer role in the OSCE-led talks between Moldova and Transnistria, and a supportive role regarding both the UN-led negotiations on Cyprus and the negotiations on Nagorno-Karabakh, which are led by the Minsk Group of the OSCE (Russia, the US and France). The EU also has an interest in being present in breakaway territories with projects aiming at conflict transformation. This may be called a policy of "engagement without recognition" when the EU is divided on the question of recognition, and a policy of "engagement and non-recognition" when it is united in a refusal to recognise the statehood of the breakaway entities.

We have already mentioned the differences between practitioners and political scientists when it comes to comparing cases of secessionist conflicts in which the EU is involved. This is not the only distinction to be made between practical and theoretical perspectives on EU policies towards contested states. The term "contested state" itself is used in political science to describe the partial or total lack of international recognition of political entities in control of a particular territory and its population. It further raises the question of whether it is possible to consider these entities states on the basis of current definitions of statehood, regardless of the lack of recognition. This concept and the related political science concept of a "*de facto* state" are not used by the EU. Its diplomats avoid, whenever possible, the term "state" in cases where its member states are divided on the question of recognition. They also avoid it where they are unanimously in support of counter-secession policies aiming at the reintegration of these entities.

In some cases, EU member states and EU institutions will use terms from international law, such as "occupation", for instance. But, due to its legal implications, the use of such a term severely restricts the policy of engagement with unrecognised entities. In most cases the Commission and the Council (which are directly involved in the implementation of conflict transformation programmes in the breakaway territories)

will therefore hesitate to use the term – in contrast to the European Parliament, which is not confronted to the same extent with the problem of legal restrictions in the implementation of its policies. In the case of Abkhazia and South Ossetia, for instance, the term "occupied territories" is used by the European Parliament and some EU member states, such as Poland and Estonia, but not by the European Commission or the Council. Similarly, the European Parliament refers to the territories around Nagorno-Karabakh as being occupied, in line with several UN Security Council resolutions, but not Nagorno-Karabakh itself.

The EU policy of engagement without recognition, as adopted towards Kosovo, is designed in such a way that it should not have any consequences for the recognition of statehood. But those EU member states who refuse to recognise the statehood of Kosovo still accept the idea that that entity's political structures should be built up in line with democratic standards, with a view to a final settlement in the future. In such a case, the EU may thus support a process of state- and nation-building, as long as this kind of engagement is status-neutral. By contrast, a policy of engagement and non-recognition opposes all forms of direct support for state- and nation-building, and promoting democracy is then restricted to giving assistance to certain programmes run by civil society organisations. In these cases the EU adheres to the principle of territorial integrity, and in principle backs the counter-secession policy of governments confronting a breakaway. This is its approach to all the contested states on the territory of the former Soviet Union, and also to Cyprus. In the case of Nagorno-Karabakh it adopts, formally, a more balanced position – taking into account its diplomatic relations with Armenia – by referring to the principle of national self-determination of peoples as well as to the principle of territorial integrity, but in its practical policy here it does not cross the red lines set by Azerbaijan by venturing into an active form of engagement.

When it comes to contested states, the EU policies of engagement and non-recognition or engagement without recognition are never identical to the policies of a central government confronting a breakaway. Its non-recognition policy towards Taiwan is based on the One China principle, but it does not share Beijing's view on future reunification or its cross-Strait policies. In the case of Kosovo, the EU has developed its own rules for its policy of engagement without recognition, which differ both from the practice of EU member states who recognise Kosovo and from the practice of member states who oppose such recognition. Similarly, in the case of Cyprus, the non-recognition policy of the EU institutions is not fully in line with the policy of the Cypriot government. The institutions will generally respect the government's policy, but will also take their own initiatives on conflict transformation and may even, in exceptional cases, cross the red lines set by Cyprus.

This thesis can be illustrated by an example. After the failure of the UN's so-called "Annan plan" for the reunification of Cyprus in 2004, the EU wanted to facilitate future negotiations by ending the isolation of Northern Cyprus. On 29 April 2004, the Council of the European Union approved the so-called Green Line Regulation on the movement of persons and goods between northern and southern Cyprus. The Turkish Cypriot Chamber of Commerce – an institution that had already

existed before the division of the island – received authorisation to issue the accompanying documents necessary for intra-island trade. This happened in agreement with the Greek Cypriot government. But the value of this trade remained extremely limited over the ensuing years: in 2016 it amounted to around €1–5 million, which is far below the minimum it would need in order to have a significant impact on conflict transformation. The low level of trade from south to north is largely a consequence of the status question: customs duties have to be paid on goods that are exported to the north (because the Turkish Cypriots regard the border as an international one), and moreover, unlike goods exported outside the EU, they are not exempt from VAT (because the Greek Cypriots and the EU regard the north as part of EU territory) (Mirimanova, 2015). In 2004 there was widespread support within the European Union for a trade regulation that would allow goods to be exported directly from Northern Cyprus to the EU, but it was vetoed by the Greek Cypriot government. The question of direct trade with Northern Cyprus returned to the agenda when the Lisbon Treaty entered into force in December 2009, as this brought the European Parliament into a co-decision procedure in such matters. But the Commission's proposal to allow direct trade failed to receive majority support within the European Parliament, as it was felt that such trade liberalisation would imply that Northern Cyprus could be considered a separate legal entity (Vogel, 2010; *Cyprus Mail*, 2010).

This example illustrates the formal and institutional complexities of an EU policy of engagement and non-recognition and, furthermore, the divisive effects such a policy may have among EU institutions, as here between the Commission and the Parliament. Here, the Cypriot government managed to mobilise majority support in the European Parliament against a direct trade agreement between the EU and Northern Cyprus, but the dispute shows that in principle it is very possible for a member state to be overruled on matters regarding its counter-secession policy.

At the beginning of this article, the conflicts between contested states and the states they have broken away from were described in terms of partial success: the contested states managed to establish effective power, and the central states to prevent their full or even partial recognition. These achievements can also be described in terms of partial failure: on the one hand, the failure to achieve full recognition, and on the other, the failure to recover control over the lost territory. The EU's policy of engagement with contested states can likewise be described in terms of both failure and success. The EU member states are divided on the issue of recognition and the EU institutions on the best kind of engagement with contested states. This means that their policies in this regard are less efficient than they could be. Nevertheless, the EU and its member states have succeeded in overcoming major divisions in even the most difficult cases.

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