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In the Bermuda Triangle? The European Union's Enlargement Policy, Common Foreign and Security Policy and Unfinished States in the Western Balkans

Abstract

Twenty years of the European Union's (EU) action as a strategic actor in the process of political and economic reforms of former communist countries has created enough experience based on which it is possible to thoroughly analyse the influence that the European integration has had on the success of transformation of these countries. In a self-imposing comparison, the process of European integration of Central and Eastern Europe (CEE) countries can be evaluated as much more successful than it is the case with the Western Balkan countries. Such course of events can only be explained by an overall consideration of all the factors having a decisive influence on the relationship between the EU and the Western Balkan countries. This paper implies that the concept of Europeanization based on the external incentive is not enough to explain such a course of the European integration process of the Western Balkan countries. Another important factor is the EU Common Foreign and Security Policy (CFSP) action that contributed not only to the spreading of phenomenon of unfinished countries in the Western Balkans but also to the decreased efficiency of the instruments of enlargement policy itself.

Key words: European Union, Western Balkans, enlargement, Common Foreign and Security Policy, unfinished states, normative power.

Introduction

It is often said that enlargement policy is the most successful foreign policy of the EU. (Schimmelfennig 2008: 918; Noutcheva 2008: 29; Vachudova 2006: 8). Unambiguous success of the EU's Enlargement policy and action in influencing transitions of Central and Eastern

Europe (CEE) countries has encouraged studies of the EU transformative power in relation to the candidate countries and its impact on their political and economic reforms during the accession process (Grabbe 2006) as well as mechanism of 'Europeanisation', or influence that the EU has on domestic structures of the candidate countries and their reasons for fulfilling the conditions set by the EU. (Schimmelfennig and Sedelmeier 2004: 661-679; Schimmelfennig 2005; Grabbe 2006; Vachudova 2006). The Stabilisation and Association Process, as a dominant EU political framework for the Western Balkan region, has fostered high expectations regarding changes that it will eventually lead to, and these high expectations partly come out of the previous success of the EU transformative power in the post-communist countries (Elbasani 2008). Why has the Stabilisation and Association Process not justified such high expectations? The main thesis of this paper explains that it was influenced by three factors: slower process of transformation of the Western Balkan countries themselves, complexity of the association process and contradictory action of the EU's CFSP in the Western Balkans. The influence of the third factor has been especially neglected during consideration of the Stabilisation and Association Process, therefore this paper aims to point out the aspects of the EU action in the Western Balkans needing to be further explored. The paper is divided into three sections. The first section is dedicated to the prevailing standpoints of what the reasons are for the slow association/accession of the Western Balkan countries to the EU, the second section implies the complex role that the EU's CFSP has in unfinished states of the Western Balkans, while the third section is dedicated to consideration of the EU action as a normative power in the Western Balkans.

The EU Enlargement Policy and the Western Balkans

What went wrong in the Western Balkans? Authors point to a number of factors that contributed to slower transformation and European integration of the Western Balkan countries. One group of factors is linked to the political and economical issues of the Western Balkan countries: communist legacy and the lack of breakup with the communist past, fragile institutions, especially weak judicial system and insufficiently strong fight against corruption and organized crime, issues of the post conflict societies, problems in cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague, the phenomenon of weak states (Petrovic 2009: 39-

58; Vachudova 2006; Mungiu-Pippidi et al. 2007). There is a spread phenomenon of partial reforms implementation in the Western Balkans, which creates conditions for one group of people to profit as a net-winner. In a situation like that, „instead of forming a constituency in support of advancing reforms, the short-term winners have often sought to stall the economy in a partial reform equilibrium that generates concentrated rents for themselves, while imposing high costs on the rest of society“ (Hellman 1998: 205). Also, the reforms in these countries are characterised by the fact that in them the EU is faced with „unwilling reformers and obstructed transitions“, pointed out are also structural socioeconomic obstacles, political-culture legacies, as well as lack of political will (Mungiu-Pippidi et al. 2007: 5, 13).

Despite the slower transformation, authors suggest that „with only the partial exception of FYR Macedonia in regard to its political stability, all the countries in the region succeeded in significantly accelerating their post-communist political and economic transformation in a relatively short period of time, and „... intensification of the EU’s presence in the Western Balkans, most notably its conditioned technical and financial assistance for reforms, has produced strong and rapid effects as elsewhere in post-communist Eastern Europe“ (Petrovic 2009: 43, 44). In terms of economic and political reforms, the Western Balkan countries do not fall much behind Bulgaria or Romania which are the EU member states (Mungiu-Pippidi et al. 2007: 57). Milada Vachudova pointed out that the EU has, as ‘gravitational force’ significantly influenced strengthening the liberal forces in the post-communist countries in the Western Balkans by four mechanisms: creating the focal point for cooperation, providing incentives for adapting, using conditionality, and serving as a credible commitment for reform (Vachudova 2006).

The second group of factors that influenced slowing down the process of European integration of the Western Balkans results from changes in the very Enlargement policy of the EU: enlargement fatigue, and related to that the reactualized concept of absorption capacity, more rigid control of not only the adoption but also the application of the *acquis*, as well as the increased number of chapters during accession negotiations (Petrovic 2010). Even though there is no formal change of the very criteria, the lessons learnt led to the more strict interpretation of both the existing and the new instruments of implementation control, as for example the more strict control of fight against corruption after the membership admittance of Bulgaria and Romania. Although these elements to a certain extent make the process complex, and although the warnings such as „the EU has to be consistent, coherent and credible in the demands that it makes“ (Grabbe 2010) are justified, it

is undoubted that the EU implements a consistent approach when it comes to conditionality of the process of democratization and economic reforms in the candidate countries (Schimmelfennig 2008). In that respect, there is a normative consistency to conditionality as part of the EU's Enlargement policy. In accordance with the conditionality and Europeanization model based on the external incentives, „the success of political conditionality depends on (i) the conditional offer of EU membership to the target government; (ii) the normative consistency of the EU's enlargement decisions; and (iii) low political compliance costs of the target government“ (ibid: 921). Although conditionality represents an unequal relationship, and comprises also „imposition, pressure, control, and, partly, threats“ (Anastasakis 2008: 366), the policy of conditionality was successful in CEE countries as the EU consistently insisted on implementation of the same standards that are being fulfilled by the EU member states themselves (Lerch and Schweltnus 2006: 304-321).¹

However, progress in the process of political and economic transition is not enough for fulfillment of the EU conditions. Things are different when it comes to the issues of sovereignty and territorial integrity of the potential candidates. Frank Schimmelfennig believes that the main reasons for problems in the Enlargement policy in the Western Balkans are not changes of the Enlargement policy itself, but also the legacy of ethnic conflicts on the territory of former Yugoslavia and the associated factors such as the cooperation with the International Criminal Tribunal for the former Yugoslavia in The Hague, relations between ethnic groups in BiH and the status of Kosovo (Schimmelfennig 2008: 920). If we exclude the cooperation with the Tribunal in The Hague, which has been consistently implemented as the criteria of Enlargement policy in the Western Balkans from the beginning, the course of events in BiH and Kosovo is linked to the issues of sovereignty and constitutional structure, areas in which the conditionality and Europeanization model based on the external incentives is not sufficient. The issue of national identity could be added to this: „Explanations of non-compliance to political membership criteria focusing on political adaptation costs are short-sighted and need to be complemented by national identity as a prior causal factor“ (Freyburg and Richter 2010: 263-281), which the case of Macedonia and the twenty-year long dispute over its name confirms. On the other side, the examples of Montenegro and Kosovo show that the primary goal of the political leaders in the Western Balkans

1 There are different opinions regarding this issue. See, for example, conditionality of minority rights protection in CEE countries although the EU itself does not have a unique standard regarding this issue. However, this issue is an exception.

was not always the EU membership but gaining independence. At the same time, the Western Balkans, as a post-conflict and unstable region, is under the influence of the EU's CFSP. From a formal point of view, Enlargement policy, even though with more strict implementation instruments, has not changed, but what's different in the case of the Western Balkans compared to the CEE countries is a considerably higher influence of the CFSP on the course of events in the region and the direct influence it had on the Enlargement policy. In that respect, the Western Balkans is a unique example of the EU's action in its more recent history and cannot be compared to the previous stages of enlargement.

The EU Common Foreign and Security Policy and Unfinished States in the Western Balkans

Being predominantly multiethnic states, most of the Western Balkan countries are faced with the relationship issues between their national communities, the issues that used to bring, or rather bring into question the constitutional structures of these countries. Unlike the previous enlargements (with an exemption of Cyprus to some extent, where the EU Enlargement policy has proven inefficient as a tool for solving the issues of sovereignty and territorial integrity of the candidate countries (Diez and Pace 2007: 10)²), at the very beginning of the Stabilization and Association Process the EU acted as a mediator, monitor and occasionally an arbiter in the process that changes the constitutional organization of the existing and leads to the creation of the new states. But it carried it out through its CFSP, often bringing the Enlargement policy into the second-grade position and presenting it with an already accomplished act. So the first country of the Western Balkans that signed the Stabilisation and Association Agreement (SAA) in 2001 was Macedonia, which nowhere near fulfilled the conditions for the signing of this agreement, but it was awarded for its agreement to international (and the EU) mediation in granting a wide territorial and functional autonomy as a response to the armed rebellion of the Albanian minority (Petrovic 2009). Paradoxically, the stopped civil war in Macedonia did not lead to full political stabilisation nor to the improvement of the democratisation process – unlike other Western Balkan countries, Macedonia marks stagnation

2 So Thomas Diez suggests that „... while there have been many changes in conflict behaviour, there has also not been a transformation to the extent that one could see EU engagement in present circumstances as successful.“

in terms of democratisation process in 1999-2008 period (Petrovic 2009: 49; Anastasakis 2008: 365-377; Bechev 2004). When Macedonia submitted candidacy for EU membership, in March 2004, it was the first time that the candidacy had been submitted by a country with the EU police mission (the Proxima mission which took over from Concordia) in its own territory (Bechev 2004). Macedonia experiences recurrent spates of violence, raising concerns among domestic and international commentators about the possibility of renewed fighting (Belloni 2009: 330), and ten years after the Ohrid Agreement, it is still seen as controversial by the Macedonian majority, and the political movements occasionally lead to the strengthening of revisionist stands towards the Agreement (Matovski 2008).

Temptations that the Western Balkans represents for the EU's CFSP last from the beginning of the 1990s, when numerous efforts made by the EU to prevent the wars in the former Yugoslavia were often ambivalent and confusing, and on many occasions led to complete turnaround in the politics of the EU itself (Petrovic 2009). In the case of the former Yugoslavia, the EU made a complete change within less than a year: from giving strong support to the Yugoslavian state at the beginning of 1991 to recognizing the independence of Slovenia and Croatia at the end of the same year. The complete turnaround was also made in the case of the Federal Republic of Yugoslavia: from the EU mediation in 2002 in defining the new constitutional structure of the two-membered federation of Serbia and Montenegro and giving warranties that this redefining would not slow down the country's progress in the process of European integration, to mediating the establishment of conditions and monitoring the process of secession of Montenegro four years later (Noutcheva 2007). In the case of Kosovo, opinions are different whether the EU has made the turnaround in its politics, or it accepted the independence of Kosovo from the beginning as an unavoidable solution (Ker-Lindsay 2009: 141-156; Sahin 2009: 235-255). All in all, after twenty years, the issues of creation of the new states in the Western Balkans have not been solved.

If we define a finished state as the one that has been internationally recognized, functional and territorially undisputed by other states, there are at least three disputed cases in the Western Balkans according to such criteria: BiH (internationally recognized, territorially undisputed, nonfunctional), Serbia, which has been brought in the position of the unfinished state by those EU member countries which recognized Kosovo (internationally recognized, functional, territorially disputed) and Kosovo (partly internationally recognized, nonfunctional, territorially disputed). On the other side, „Brussels asserts that it

is only possible for the EU to enter contractual relationships with sovereign states that can present themselves as clearly defined negotiating partners, with a single voice“ (Massari 2005: 261). Exactly by its nonfunctionality did the constitutional blockade of the Federal Republic of Yugoslavia become a subject of the EU’s security interest, but despite EU mediation in defining the new constitutional structure, EU association policy conditioned SAA negotiations by internal harmonisation that would never be successful. Then the EU intensively worked on setting up standards for holding a referendum the results of which would be acceptable by the political parties in Montenegro and the international community as well, and immediately after the referendum it invited its member states to recognize this country. Contradiction between the security policy of the EU (which in 2002 estimated that the independence of Montenegro would be too early, taking into consideration its internal instability and the possible effect on Kosovo, which only led to the preparation of the right moment) and the association/Enlargement policy which requested functionality, brought to a four-year long sabotaging of redefining the constitutional system of the State Union of Serbia and Montenegro. The association/Enlargement policy conditions were not effective as it was obvious that the EU’s strategic action was motivated by its own estimations of security considerations, and Montenegro knew they were only postponing its independence (Massari 2005; Noutcheva 2007). On the contrary to this case, in BiH the policy of strengthening central institutions was implemented as a necessary precondition for this country’s accession to the EU. Functionality of one country is certainly a normative condition for the EU association/accession, however imposition of certain institutional (even less constitutional) solutions in BiH does not have normative justification considering that the EU itself is a set of various national structures, from centralised, like the French, to the extremely decentralised, like the Belgium structure (Anastasakis 2008: 366-368; Noutcheva 2007; Bieber 2010). In that context, „EU’s unclear and wavering strategy towards“ BiH can be noted (Bieber 2010: 1). The EU poses itself ambivalently towards constitutional reforms, „supporting (although not whole-heartedly) the first US-led efforts that failed in April 2006 and then subsequently stating that constitutional changes are not a requirement, but are necessary“ (Bieber 2010: 2). Despite the European Commission’s position that it „will not negotiate an SAA with Lord Paddy Ashdown“ (Vachudova 2006: 27), the EU signed the SAA with BiH in June 2008.

How does the Enlargement policy function in such circumstances? The EU policy towards the Western Balkan countries is based on the

same (the right one?) main presumption that was prevalent in the case of the CEE countries - namely, that the perspective of the EU membership is the most important incentive for political and economic changes. „By the late 1990s, however, enlargement and foreign policy had become closely intertwined as it became clear that EU's leverage on aspiring members was the most powerful and successful aspect of EU's emerging foreign policy. Recognizing this, EU leaders made the prospect of EU membership the cornerstone of EU's foreign policy toward the Western Balkans“ (Vachudova 2006: 8). The EU strategy was based, in addition to the political conditions concerning functionality of the Western Balkan countries, the cooperation with the ICTY and the regional cooperation, on the application of the EU transformative action or Europeanization model, the centre of which is the perspective of membership, the same model that was applied in the CEE countries.

However, it turned out that this powerful incentive was not sufficient to prevent the creation of new countries in the Western Balkans. The main presumption of the EU's Enlargement policy proved to be unjustified in collision with aspirations for creation of new countries. In all the processes in the Western Balkans, the CFSP has played an important, although not a decisive role. It is exactly for the important role the EU had that the process of association/accession of these countries cannot be analysed without taking into consideration the EU action through both its policies. The EU action in the Western Balkans is also characterised by the fact that it „forces the implementation of a particular statehood solution by the use of its conditionality criteria for association and accession“ (Petrovic 2009: 40). Thus the complex influence of the EU led to the gradual changes in the nature of conditionality, changes with both contradictions and risks in them. Othon Anastasakis implies that the EU a) is adding new political conditions and criteria (by strengthening conditionality for every step in the early stages of the association process – such as feasibility study, the start of negotiating the SAA, the initialling of the SAA, the signing of the SAA, etc.), giving more attention to 'the journey' than the accession as the goal, affecting the credibility of the strategy; b) through its conditions the EU blends together normative, functional and real political demands, which makes its intentions less clear; c) in some cases it carried out strict assessment of fulfillment of the standards, while in other cases it relaxes the criteria to avoid security risks, thus having an influence on the consistency of the process (Anastasakis 2008: 366-368).

Very often security reasons that have an influence on the selection of criteria and the course of conditionality dominate. The influence of security interests on the Enlargement policy is no new – let's give

only a few examples: interests of geopolitical stabilisation of the region (but also keeping the balance of powers within the EU itself after the reunification of Germany) had an influence on forming the policy towards the CEE countries after the fall of the Berlin wall, and the decision to start accession negotiation with Bulgaria and Romania was a reward for their support to the NATO intervention in Kosovo (Sedelmeier 2005). One of the reasons for the lower success of the Stabilisation and Association Process in the Western Balkans region lies in the „EU’s dual objectives in the region - first stability and then integration“ (Elbasani 2008: 299). It is undoubted that the European integration of the Western Balkans can significantly contribute to the stabilisation of the region. However, there is a problem here – what does the term stability mean to whom, which leads not only to different, but also to directly opposite goals. For the EU, stability could mean everything that prevents influx of refugees or increased illegal trade at its borders (ibid: 301), while for the Western Balkan countries it may bring into question their territorial integrity, such as it is the case of Kosovo for Serbia, for example. The EU’s striving to accomplish security goals in the region, by achieving stability beyond anything else, had an impact on creation of two new countries (Montenegro and Kosovo). The EU’s role in the making of new countries produces the new conditions for the region - so in the case of Serbia there is already de facto (although the EU institutions do not formally say it) the additional condition that it should „normalise“ relations with Kosovo before the accession to the EU, through gradual silent recognition, until the most likely demand that a legal framework for the solution of this problem is found in the final stage of the accession negotiations. This condition will become more evident now that Serbia has fulfilled the condition of full cooperation with the ICTY (the two last indictees Ratko Mladic and Goran Hadzic were arrested in May and July 2011).

Although the importance of the EU’s security interests for the Enlargement policy is not new, what is different in the case of the Western Balkans is the fact that the EU has been involved, much more than in the previous enlargements, in the internal political process of the potential candidate countries (the declaration of Kosovo independence, internal reconciliation and institutional reorganization in BiH, political cooperation of the national communities in Macedonia), and very often EU itself is responsible to ensure security and the rule of law in these territories (Macedonia, Kosovo, BiH). In such circumstances, one of the limitations of the EU’s integration strategy is even more expressed, resulting from its internal divisions, both between the member states and between the EU institutions (Belloni 2009; Rupnik 2009), or „the

parallel existence of supranational external relations, intergovernmental Common Foreign and Security Policy, and independent national foreign policies of member states“ (Lerch and Schweltnus 2006: 305). However, one of the key lever of consistency of the EU’s Enlargement policy and transformative capacity „lies in its potential for minimising differences likely to be exploited by local players in the region“ (Belloni 2009: 325). Exactly the opposite has proven to be the case in the EU member countries action regarding Kosovo.

The EU uses conditionality policy also to influence the election results, as the example of the last elections in Serbia shows, when the decision to initialise visa liberalization negotiations was made three days before the presidential elections at the beginning of 2008, which helped the pro-European candidate Boris Tadic to win the elections. Then, in April of the same year, in order to influence the results of the parliamentary elections after the declaration of independence of Kosovo and its fast recognition by some member states, the EU agreed to sign the SAA with Serbia, even though Serbia had not fulfilled the condition of the full cooperation with the ICTY (Anastasakis 2008: 374). Surely, in the EU itself, providing mutual political support between the member states governments is not rare (Wallace 2002: 325-344), but in the Western Balkans we are witnessing an overall influence: from influencing the results of electoral process, political and economical reforms, to the issues of statehood, sovereignty and territorial integrity. Dimitar Bechev describes this complex role of the EU in the Western Balkans in the following manner: „On one hand, the EU’s in charge of preventing conflict and stabilising, if not building up from scratch, the ethnically divided and politically volatile states and territories in the region. It facilitates peace agreements and imposes constitutional charters, run cities, directly administers economies, dispatches peacekeepers and police officers. On the other, the Union drives forward its pre-accession agenda centered on wholesale implementation of legal and regulatory framework in functional areas such as trade, fiscal governance, consumer protection, competition, and the like“ (Bechev 2004: 2). Let’s also add the EU’s role as a mediator and facilitator in the making of electoral alliances, such as, in addition to the already mentioned case of Serbia, the case of the Office of the High Representative action in creation of The Alliance for change in BiH (Vachudova 2006: 27).

However, the foundation of the EU’s transformative influence on the candidate countries is the fact that the EU requests the implementation of same principles and norms that it applies itself. The question in the case of the unfinished Western Balkans states is whether the EU’s action is driven by spreading of its norms and universal values, or by accomplishing its own security interests in the region.

EU – a Normative Power in the Western Balkans?

Such complex action of the EU's CFSP in the Western Balkans refers to the importance of the question of what the nature of its action is in the international relations, the question that has been actual from the very formation of this policy. In the recent years, the EU has been increasingly described not only as a civil and soft power, but the normative power as well (Manners 2002: 235-258; Manners 2006: 182-199; Sjursen 2006: 169-181), as a foreign policy actor which – whether for beliefs or because it has no power to act differently – aims to shape, embed and spread the rules and values in the international relations without using tools of force, most frequently through contractual relationships that it makes with third parties. The EU, as „a post-national normative power for the twenty- first century“ (Manners 2006: 182), unlike the states, represents its foreign policy not as a policy that is based on the balance of powers and the logic of the 'zero sum' game, but the one that acts believing that the cooperation and the strengthening of the third countries are the best ways to accomplish the interests of the EU itself (Tocci 2008a).

This concept has been criticised as an expression of a liberal-idealistic view of the EU as the new and uniquely benign actor in international relations. Thomas Diez suggests that it represents „a discursive construction rather than an objective fact, and that the 'power of normative power Europe' rests in the identity it provides for the EU and the changes it imposes on others, partly through its hegemonic status“ (Diez and Pace 2007). Adrian Hyde-Price believes that the EU does not act as a normative power, but that it „serves as an instrument of collective hegemony, shaping its external milieu through using power in a variety of forms: political partnership or ostracism; economic carrots and sticks; the promise of membership or the threat of exclusion“, and that it acts as a 'civilisational power' only in the sense that its most powerful member countries use it in order to impose their common values and norms on the post-communist East (Hyde-Price 2006: 217-234).

Despite criticisms, the EU sees itself as the normative power. „The constitution of the EU as a political entity has largely occurred as an elite-driven, treaty based, legal order. For this reason its constitutional norms represent crucial constitutive factors determining its international identity“ (Manners 2002: 241). Wide normative basis of the EU for the past 50 years has been developed through many declarations, agreements, policies, criteria and conditions (ibid: 242). The Lisbon Treaty determines also that „the Union's action on the international scene shall be guided by the principles which have inspired its own

creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law³. As highlighted by Ian Manners, who developed the concept of the EU as a normative power, confirmation and development of its own norms is what empowers the European Union to represent and legitimize itself as something more than just a sum of its constitutional parts, and the concept of normative power suggests not only that the EU was built on the normative foundation, but also that it predisposes itself to act in a normative manner in the world politics (ibid: 244, 252).

In her analyses of the EU action as a normative actor, Nathalie Tocci suggests that, although the term normative can be a matter of subjective interpretation in which every stronger actor would influence determination and formation of 'the norm' in international relations, it can be avoided by being subjected to a set of standards that is generally acceptable and legitimate to the largest possible extent. She qualifies them as normative goals, normative means and normative result/impact. Different combinations of the first two mentioned variables (beside all the complexity of their determination in each particular case) lead to different types of foreign policy: normative, *realpolitik*, imperial and the status quo type. Normative type of foreign policy is characteristic by its normative goals and normative means. This type justifies its action in the foreign policy by the goals directed towards strengthening international law and institutions and it promotes the rights and obligations determined by the international law. The opposite type is the *realpolitik* (non-normative goals, non-normative means) with the aim to possess (territories, decisive influence, or anything else it values and competes with others in possessing/sharing that value), and it fulfills this goal using all available means (including the means of coercion), regardless of the internal or international legal obligations. The imperial type of foreign policy claims that it follows normative goals, but in the way that does not engage itself (normative goals, non-normative means). Instead of obeying the international law and multilateral legal frameworks, this type uses whatever means are available to impose its norms, even if it means breaking the international law. Such foreign policy is breaking the existing rules, it prevents adoption of new or imposes making of those rules that would best serve its interests. And, finally, it is possible to profile the status quo type of

3 Treaty of Lisbon, Title V, Article 21.

policy. In this case goals are non-normative in as much that the actor does not strive to improve the international law and institutions, but it respects the existing, therefore using the normative means. As far as the results are concerned, they can be expected or unexpected. The expected result is the one reflecting the goal, regardless of whether the goal was normative or not, while in the case of the unexpected, an international actor could pursue normative goals through normatively deployed means, yet it may fail to achieve a normative impact (Tocci 2008a).

Implementation of this criteria in practice has shown that EU foreign policy, despite normative self-determination, in different parts of the world and in different periods of time had „dramatically different forms“ (Tocci 2008b: 25). The analysis carried out by Gergana Noutcheva shows that the Enlargement policy in 1989-2007 period was normative in all its elements (Noutcheva 2008a). The basis of the Enlargement policy in that period was made of the normative goals of democratisation and economic modernisation through anchoring post-communist countries of the Central and Eastern Europe into the Western model of political pluralism and economic liberalism, successfully accomplishing normative results. In the Western Balkans region the situation is different, which in the analysis according to the same model shows the example of Kosovo (Noutcheva 2008b). Complex EU involvement in the case of Kosovo aimed to peacefully determine its final status through reaching the permanent solution. Despite declarative normative goals, the international action, part of which the EU was, in the case of Kosovo deviated from the international legal norms and multilateral frameworks. Many EU member states had already supported or even participated in the NATO bombing of the Federal Republic of Yugoslavia in 1999, without the United Nation Security Council's approval. The EU silently participated in a gradual process of legitimisation of independence as the process results (ibid: 49), and it was preparing the launch of operation in Kosovo within the EU CFSP, without the explicit UN authorisation, broadly interpreting the UN Resolution 1244. Finally, many EU member states recognised Kosovo, although the EU has formally declared its position as status neutral. The fact that not even the advisory opinion of the International Tribunal in The Hague regarding the declaration of Kosovo independence cannot give internationally legal legitimacy to this process, is shown by the EU, but also the USA and other countries that recognized Kosovo, insisting on Kosovo as *sui generis* case which cannot be applied as a rule. Declaring the alleged uniqueness of the Kosovo case, the EU demonstrate selective application of the new „rules“. The EU in the case of Kosovo used the means that were not

in accordance with its proclaimed normative goals of support to the international legal system. In this context, the impact of its foreign policy is imperial or hegemonist. Imperial actor may fail to achieve normative impact given that, while having the capability and resolve to pursue normative goals, its breaking of the law sets a strong model and precedent for other international players, which impedes the achievement of an overall normative impact (Tocci 2008a). Despite the fact that „it was in this region that the EU’s credibility as a foreign policy actor was most clearly at stake“ (Vachudova 2006: 8), the EU continues to make mistakes. The mistake with the role that the EU accepted to play in the case of Kosovo is bigger by the fact that, as a community that is based on the rule of law, it erodes the legal norm in the territory of the potential membership candidate, and at the same time, through the process of enlargement, it requires from the candidate to fulfill the legal norms set by the EU. Such action of the EU is just the continuation of the inconsistent foreign policy to which the Western Balkans has been a great temptation for two decades.

Conclusion

If we take that „political accession conditionality is based on a credible and normatively consistent commitment to rewarding the democratic consolidation of European countries with EU membership“ (Schimmelfennig 2008: 932) as a criteria, the EU Enlargement policy has not changed. This policy in the Western Balkans nowadays has, however, been burdened with factors that are direct consequence of EU’s CFSP action. This „loaded agenda of both stabilization and association coupled with a weaker promise of membership can arguably erode the power of enlargement conditionality in the region (Elbasani 2008: 294). From the beginning of implementation of the Stabilisation and Association Policy, the two new states have been created in the Western Balkans, new borders, even a new language (the case of Montenegro), while at the same time the centralisation in BiH was insisted on. The paradox of the EU action in the Western Balkans is that it had the role in creation of the new states (at least the role of setting up standards for gaining independence and monitoring the process) although one of the key advantages of the European integration supposedly is that „the answer to the problem of borders is not to redraw them, but to make them increasingly irrelevant by recognizing allegiances to overlapping polities and thus de-politicizing the significance of (hard) borders“ (Belloni 2009: 324). Just the opposite is happening in the Western

Balkans, in the Enlargement process. For the first time in its history the EU directly participates in formation of its, as it says, potential member country, in the territory of the potential member country. All of this has led to general confusion: who is recognizing whom and within what borders in the Western Balkans? Following more than ten years of action of both the accession/Enlargement policy and the CFSP in the Western Balkans, problems have not been solved at all, the number of unfinished states in this region has been increased, and the number of protectorates has not been decreased.

The EU action in the Western Balkans is lacking a strong normative justification, which certainly impacts the lower level of accepting the conditionality. To a great extent, conditionality in the Western Balkans has been accepted as a consequence of the EU's strategic influence more than as accepting a legitimate norm in the process of accession/association, therefore this acceptance is more prone to change. The conditionality policy implemented by the EU in the cases of the State Union of Serbia and Montenegro, BiH and Kosovo, was based on its strategic interests, first of all security interests, and not on the normative principles or moral reasons (Noutcheva 2007). Such an approach compromised the legitimacy of the EU requirements relative to the actors in the Western Balkans. The same actor in the same region cannot implement double policy without consequences. Under such conditions, the political conditions (which are formally derived from the enlargement policy) are sometimes, due to the inconsistency of the EU, seen as illegitimate for a reason. The conditions will be more effective if seen as legitimate, and in order to be seen like that they need to be based on clearly defined rules that apply to all the member states.

Instead of the normative Enlargement policy, the EU implements the policy of precedents though the influence of its CFSP (signing the SAA with Macedonia, inconsistent application of the agreement on the State Union of Serbia and Montenegro, the case of Kosovo). While in the enlargement to the CEEC the EU consistently insisted on standards which it applies itself, in the Western Balkans, in the case of Kosovo, for instance, the EU participates in making the precedent that the member countries would never implement in their own territories. In addition to that, in the process of accession/association the EU implements not the institution building, but the member state and nation building, which brings to the confusion of its roles: from the actor that influences the process of economic and political reforms by conditionality, the EU becomes the protector that has to evaluate its own success in the making of functional states. When all of this is accompanied by the problems of the EU such as absorption capacity, enlargement fatigue, impact of

the world economic crisis and its devastating consequences for some of the EU member countries and stability of the euro-zone, the case of Turkey and exit option contained in the EU's Negotiating Framework for accession negotiations⁴ which represents a certain formalization of the candidacy and negotiation game without realistic membership perspective, the European future of the Western Balkan countries (with the exception of Croatia) does not look bright.

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4 „While having full regard to all Copenhagen criteria, including the absorption capacity of the Union, if Turkey is not in a position to assume in full all the obligations of membership it must be ensured that Turkey is fully anchored in the European structures through the strongest possible bond.“ Article 2 of Negotiating Framework, available at: http://ec.europa.eu/enlargement/pdf/st20002_05_tr_framedoc_en.pdf

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