SERBIA AMIDST COMPETING SOVEREIGNTY CLAIMS

BALANCING THE WESTPHALIAN LEGACY WITH THE POLITICAL PRAGMATISM OF EUROPEAN INTEGRATION

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The 11th Kokkalis Graduate Student Workshop
John F. Kennedy School of Government
Harvard University

February 2009

Abstract

This paper analyzes the hypothesis that the recent challenges for Serbian statehood – which culminated in Kosovo's unilateral declaration of independence – prompted Serbia to redefine its relationship with the European Union and to accelerate the accession process, and thus to depart from Westphalian nation-state building by taking the path of neo-Westphalian member-state building. It goes on to argue that Serbia's statehood can best be preserved if it is embedded within the EU body politic, which would represent a move away from the deadlock of a history freighted with the Westphalian legacy. To this end, the paper discusses the implications of three competing claims for the concept of Serbia's statehood: the EU's, Kosovo's, and Serbia's own claims to sovereignty and pertinently the manner in which the Kosovo situation affected Serbia's EU integration policy, and to a lesser extent, the EU's policy towards Serbia.

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"It is up to us to safeguard [our] interests with the means and alliances that are at our disposal".
Boris Tadić (*Blic*, Belgrade, 31 December 2008)

"It is our interest to become a member of the EU and we cannot give it up at any price".
Boris Tadić (*Blic*, Belgrade, 03 January 2009)

1. INTRODUCTION

1.1. Topic
Throughout the history, the Western Balkans region has been scarred by the obstinacy of thinking in terms of Westphalian statehood. Riven by numerous conflicts, wars, sanctions and embargos, the region has repeatedly suffered from the lack of prescient leadership and has precipitated into isolation and flourishing public malfeasance in all its facets. The fall of communism, the struggle to supersede socialism,[1] the establishment of inchoate forms of capitalism and democracy, and the prospect of membership of the European Union ('EU') are among the factors that are changing the image of socio-economic, political and legal life of the region. In such a constellation, Serbia occupies a specific place. It carries a heavy burden of having been the central republic of the Socialist Federative Republic of Yugoslavia (1945-1992),[2] the larger federal unit within the Federal Republic of Yugoslavia (1992-2003), the larger member of the State Union of Serbia and Montenegro (2003-2006), and ultimately a state straddling the paths of EU integration and Kosovo retention (2006-today).

The last period has caused much turmoil and perplexity in the Serbian governing structures and has led it to one of the most important crossroads in its history. This paper focuses on this period and endeavors to test the hypothesis that the recent challenges for Serbian statehood – which culminated in Kosovo's unilateral declaration of independence – prompted Serbia to redefine its relationship with the European Union and to accelerate the accession process, and thus to depart from Westphalian nation-state building by taking the path of neo-Westphalian member-state building. It goes on to argue that Serbia's statehood can best be preserved if it is embedded within the EU body politic, which would represent a move away from the deadlock of a history freighted with the Westphalian legacy. To this end, the paper discusses the implications of three competing claims for the concept of Serbia's statehood: the EU's, Kosovo's, and Serbia's own claims to sovereignty and pertinently the manner in which the Kosovo situation affected Serbia's EU integration policy, and to a lesser extent , the EU's policy towards Serbia.

1.2. Method
Although the theoretical inspiration for this paper was found in Krasner's assessment of Westphalian sovereignty, a more practical incentive lay in four factors that currently underlie the transformation of the Serbian political, legal and social environment:

- the waning both of the 'politics of despair'[3] and of radical nationalism, as evidenced by the schism in the Serbian Radical Party and the Government's inherently pro-EU policies;

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[1] For an overview of institutional reforms see: Mendelski, Martin. *"Institutional reforms in South-Eastern Europe: a comparative analysis during different periods of transition"*, Paper presented at the Kokkalis Graduate Student Workshop on Southeastern and East-Central Europe, John F. Kennedy School of Government, Harvard University, 2008, pp. 7-10.

[2] This state was founded in October 1945 under the name *Democratic Federative Yugoslavia*, only to be renamed into *Federative People's Republic of Yugoslavia* the following month. The state changed its name into *Socialist Federative Republic of Yugoslavia* in 1963. Both adjectives "federal" and "federative" are used, the latter of which better corresponds to the Serbian-language versions of the respective constitutive acts. See more in: Ramet, Sabrina. *"The three Yugoslavias: state-building and legitimation, 1918-2005"*, Indiana University Press, 2006; Petranović, Branko and Štrbac, Čedomir. *"Istorija socijalističke Jugoslavije"*, Belgrade, 1977; Janković, Dragoslav and Mirković, Mirko. *"Državnopravna istorija Jugoslavije"*, Belgrade: Draganić, 1997, pp. 371-449.

[3] Cohen, Lenard J. *"The politics of despair: radical nationalism and regime crisis in Serbia"*, Working Paper No. 1, The Kokkalis Program on Southeastern and East-Central Europe, John F. Kennedy School of Government, Harvard University, 1999.

- Serbia's pursuit of a non-contentious advisory opinion by the ICJ, rather than a series of actions;
- the purportedly separate treatment of the processes of Serbia's EU accession, deployment of the EULEX Mission in Kosovo, and Kosovo's post-status state-building;
- Serbian public opinion polls that consistently indicate a positive attitude towards the EU.

These factors form the core of the argument that, as a corollary of incessant historical challenges for Serbia's statehood, we are witnessing a qualitative change in Serbia's approach towards the EU. Whilst taking into account the experiences of transferring sovereign powers described in the literature on eastern EU enlargement and on the former Yugoslavia, the focus of the analysis is placed on the empirical scrutiny of the following documents: a) the Serbian Government's strategies, programs and policies for EU accession and for Kosovo and Metohija; b) the Stabilization and Association Agreement and the Council's Decision on European Partnership with Serbia, as well as c) the European Commission's Enlargement Strategy and its Progress Reports.

1.3. Relevance
The theoretical relevance of the paper lies in the fact that a myriad of scholars have focused primarily on Kosovo's final status and the peculiarities of its state-building process.[4] This focus has produced such aberrant terms as 'fuzzy statehood',[5] 'supervised independence',[6] 'guided sovereignty',[7] or 'phased independence'.[8] Furthermore, much academic effort has been put into explaining the processes of legislative harmonization and preparation for EU membership.[9]

However, the dynamic that all these processes have been shaping have largely been left unattended. In other words, most of the literature to date has failed to juxtapose the historical vicissitudes of the Serbian state with the contemporary challenges presented by two interrelated processes: the EU integration and the retention of Kosovo. It has therefore fallen short of grasping the idiosyncrasies of Serbian statehood and remained fairly descriptive. Partly for this reason, the paper tries to determine Serbia's likely position in a plethora of divergent views on the Westphalian state.

Finally, the paper's policy relevance lies in its addressing one of the Serbia's core problems: consolidation and restructuring of its statehood in the dawn of the EU accession.

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[4] Some interdisciplinary examples are: Benedek, Wolfgang. *"Final status of Kosovo: the role of human rights and minority rights"*, Chicago-Kent Law Review, Vol. 80, 2005, pp. 215-233; Brown, Bartram S. *"Human rights, sovereignty and the final status of Kosovo"*, Chicago-Kent Law Review, Vol. 80, 2005, pp. 235-272; D'Aspremont, Jean. *"Regulating statehood: the Kosovo status settlement"*, Leiden Journal of International Law, Vol. 20, 2007, pp. 649-668; Dunay, Pal. *"Status and statehood in the Western Balkans"*, Stockholm International Peace Research Institute, 37th edition of the Yearbook, 2006, pp. 63-76; Monteux, Camille Andrée. *"The status of Kosovo under international law"*, Master thesis, School Of Oriental and African Studies, University of London, 1999-2000; Papadimitriou, Dimitris and Greiçevci, Labinot. *"To build a state: Europeanization, EU actorness and state-building in Kosovo"*, European Foreign Affairs Review, Vol. 12, 2007, pp. 219–238; Redman, Michael. *"Should Kosovo be entitled to statehood?"*, The Political Quarterly Publishing, Blackwell Publishers, 2002, pp. 338-343; Tesar, Filip. *"Evolution versus revolution. Kosovo's final status, public affairs and development policy"*, Slovak Foreign Policy Affairs, Policy Studies, Vol. II, 2005, pp. 30-42; Toschev, Adrian and Cheikhameguyaz, Gregory, *"The European Union and the final status Kosovo"*, Chicago-Kent Law Review, Vol. 80, 2005, pp. 273-304; Triantaphyllou, Dimitrios (ed). *"What status for Kosovo?"*, Chaillot Paper No. 50, Institute for Security Studies, Paris, October 2001; Williams Paul R. *"Earned sovereignty: the road to resolving the conflict over Kosovo's final status"*, Denver Journal of International Law and Policy, Vol. 31, 2002-2003, pp. 387-426.

[5] Batt, Judy. *"'Fuzzy statehood' versus hard borders: the impact of EU enlargement on Romania and Yugoslavia"*, Working Paper 46/02, Centre for Russian and East European Studies University of Birmingham, 2002.

[6] As stemming from: United Nations Security Council. *"Letter of 26 march 2007 from the Secretary-General addressed to the President of the Security Council - Comprehensive Proposal for the Kosovo Status Settlement"*, 2007.

[7] International Commission on the Balkans. *"The Balkans in Europe's future"*, Centre for Liberal Strategies, Sofia, 2005, p. 19.

[8] Altmann, Franz-Lothar. *"Kosovo: phased independence?"*, Transition Studies Review, Vol. 13, No. 1, 2006, pp. 145-154.

[9] See essays in: Lopandić, Duško and Bajić, Vojislav (eds). *"Srbija i Crna Gora na putu ka Evropskoj Uniji"*, European Movement in Serbia, Belgrade, 2003.

2. THEORETICAL BACKGROUND

Analyzing the transformation of the concept of Westphalian sovereignty has long gained currency in many disciplines ranging from philosophy, political and legal theory to international relations, political science, and international and constitutional law. To provide a comprehensive overview of these developments would exceed both the scope and aim of this contribution; nevertheless, to be able to place Serbia in the burgeoning Westphalian spectrum, it is instrumental to adumbrate in a sweeping fashion the most influential approaches in the literature.

2.1. Sovereignty in philosophy, political and legal theory

As one of the quintessential problems, state sovereignty received its first systematic elaboration in the work of Jean Bodin in 1576.[10] The concept was further developed primarily through the idea of social contract by Thomas Hobbes.[11] The same idea assumed a fundamentally different explanation in Jean-Jacques Rousseau's *Du contrat social, ou Principes du droit politique*, who, unlike Bodin and Hobbes, attributed sovereignty to the people and not the state.[12]

The theory of sovereignty of the state as a separate legal *titulaire* was expounded by Georg Jellinek. Contrarily, Hans Kelsen's theory of legal positivism advocated the sovereignty of law. However, some of the first doubts about sovereignty arose in the first half of the 20th century. While Léon Duguit introduced the human side of sovereignty into the debate by emphasizing the role of public officials,[13] Harold Laski negated state sovereignty due to the limitations posed by various social organizations and communities.[14] In the period after the Second World War, sovereignty was fiercely criticized by Jacques Maritain, who urged that "political philosophy must get rid of the word, as well as the concept, of sovereignty" and that "this concept is intrinsically wrong and bound to mislead us if we keep on using it".[15] On the contrary, John Rawls' belief that "peoples (as organized by their governments) are free and independent, and their freedom and independence is to be respected by other peoples", and that "peoples are to observe a duty of nonintervention" is an epitome of Westphalian sovereignty.[16]

The above approaches permit to define sovereignty as supreme authority within the territory of a state. Sovereignty could effectively be captured by coupling its *elements* (supremacy, authority, and territoriality) with its most significant *characteristics* (sovereignty as internal/external, absolute/relative, and as the object of a diapason of its holders).[17]

2.2. Sovereignty in the Serbian legal and political thought

Most authors in Serbia adhere to the distinction between the notions of legal and political sovereignty, which itself is mainly colored with the internal/external variable. Along this line, *Politička enciklopedija* (Political Encyclopedia) contains the following two definitions:

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[10] Bodin, Jean. *"On sovereignty: four chapters from the Six Books of the Commonwealth"*, Cambridge University Press, 1992.

[11] Hobbes, Thomas. *"Leviathan"*, Penguin, Harmondsworth, 1968.

[12] Rousseau, Jean-Jacques. *"Du contrat social, ou Principes du droit politique"*, Garnier, Paris, 1963. The original was published in 1762.

[13] Duguit, Léon. *"Souveraineté et liberté"*, Paris, 1922.

[14] Laski, Harold J. *"The foundations of sovereignty and other essays"*, Harcourt Brace & Co, New York, 1921.

[15] Maritain, Jacques. *"Man and the state"*, University of Chicago Press, 1951, pp. 29-30; See more in: Maritain, Jacques. *"The Concept of Sovereignty"*, American Political Science Review, Vol. 44, No. 2, 1950, pp. 343-357.

[16] Rawls, John. *"The law of peoples"*, Critical Inquiry, Vol. 20, No. 1, 1993, p. 46; See his critique: Buchanan, Allen. *"Rawls's law of peoples: rules for a vanished Westphalian world"*, Ethics, Vol. 110, No. 4, July 2000, pp. 697-721.

[17] For an insightful analysis see how Bartelson "deconstructs" sovereignty in: Bartelson, Jens. *"A genealogy of sovereignty"*, Cambridge University Press, 1995, pp. 12-53.

"From a *legal* point of view, sovereignty is an attribute of state power, which consists in the independence of state power towards external factors (external sovereignty) and in its supremacy towards internal factors (internal sovereignty); or, put shortly, sovereignty is an attribute of state power manifested in its legal absoluteness. […] Studying sovereignty from a *political* point of view is more significant, because sovereignty is an essentially political notion. Sovereignty is the governing relationship between the political (i.e. actual) holder of power and the state power [itself]" [emphasis added, own translation].[18]

Similar approaches and definitions can be found in the works of Slobodan Jovanović,[19] Radomir Lukić,[20] and Svetislav Radovanović.[21]

As regards holders of sovereignty, the current Serbian Constitution of 2006 states that "sovereignty is vested in citizens who exercise it through referendums, people's initiative and freely elected representatives".[22] Whereas essentially the same provision appears in the Constitution of 1990,[23] the Yugoslav constitutions of 1963 (as amended in 1971) and of 1974 were imbued with socialist categories thus designating "working people" as holders of sovereignty.

3. WESTPHALIAN SOVEREIGNTY: THE RISE AND FALL OF A POSTULATE OF POST-MEDIEVAL INTERNATIONAL RELATIONS

The Peace of Westphalia of 1648, which ended the Thirty Years' War (1618-1648), is today widely acknowledged as the hallmark of international relations,[24] which facilitated the collapse of the feudal state and catalyzed the abatement of widespread religious conflicts in Europe. The two component international treaties – the one of Osnabrück and of Münster – established a *system of sovereign states* based on territoriality, sovereign equality, and non-intervention in internal affairs, or – as Krasner put it – "political organization based on the exclusion of external actors from authority structures within a given territory",[25] and – as Hinsley added – where "no final and absolute authority exists elsewhere".[26] Thus, the state became the single most important actor in the anarchic assemblage of interstate dealings. However, the eventuality of history's taking a different course has been advanced as an option by Spruyt[27] and Philpott.[28]

The ascendancy of Westphalia as the ultimate norm of state interplay was curtailed after the Second World War by a whole array of new developments including chiefly the establishment of the United Nations ('UN'), the Council of Europe, the General Agreement on Tariffs and Trade ('GATT'), the subsequent conclusion of a series of international treaties enshrining human rights and fundamental

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[18] Srdić, Milutin (ed). *"Politička enciklopedija"*, Savremena administracija, Belgrade, 1975, p. 1047.
[19] Jovanović, Slobodan. *"O državi"*, Belgrade, 1922.
[20] Lukić, Radomir. *"Teorija države i prava"*, Belgrade, 1974.
[21] Radovanović, Svetislav. *"O suverenitetu države u savremenim uslovima s posebnim osvrtom na SFRJ"*, Doctoral dissertation, Faculty of Law, University of Novi Sad, 1978.
[22] Article 2(1) Constitution of the Republic of Serbia of 2006.
[23] Article 2 Constitution of the Republic of Serbia of 1990.
[24] While Gross refers to it as "the first great European or world charter", Osiander calls for a reappraisal of the concept of Westphalian sovereignty. See more in: Gross, Leo. *"The Peace of Westphalia, 1648-1948"*, The American Journal of International Law, Vol. 42, No. 1, 1948, p. 20; Osiander, Andreas. *"Sovereignty, international relations, and the Westphalian myth"*, International Organization Vol. 55, No. 2, 2001, p. 281.
[25] Krasner, Stephen D. *"Sovereignty: organized hypocrisy"*, Princeton University Press, 1999, p. 4.
[26] Hinsley, Francis Harry. *"Sovereignty"*, Cambridge University Press, 1986, p. 26; See more in: Hinsley, Francis Harry. *"The Concept of Sovereignty and the Relations between States"*, Journal of International Affairs, Vol. 21, No. 2, 1967, pp. 242-252.
[27] Spruyt, Hendrik. *"The sovereign state and its competitors. An analysis of systems change"*, Princeton University Press, 1994.
[28] Philpott, Daniel. *"Revolutions in sovereignty: how ideas shaped modern international relations"*, Princeton University Press, 2001.

freedoms,[29] and – pertinently – the establishment of the European Coal and Steel Community in 1951. Another decisive impetus towards post-Westphalian reasoning was provided by ill-fated humanitarian interventions carried out without the consent of the targeted state, of which the 1999 NATO bombing of Serbia is a notable example. While all these processes represent collective *international* efforts to prevent any future outbreak of war and to assert personal rights of individuals, only the case of the EU represents an experiment in *supranational* integration.

The globalist forces mentioned above have led many international relations theorists to question the validity of the Westphalian system as a fundamental explanatory tool of international affairs. Quite illustrative of this pan-academic skepticism towards Westphalianism can be found in Fowler and Bunck's summary of depictions of sovereignty by various authors as "perforated, defiled, cornered, eroded, extinct, anachronistic, bothersome, even interrogated".[30] The guises of sovereignty presented by Simpson are equally telling of the trend.[31] Whereas some analysts seem to veer towards the post-Westphalian model,[32] others underscore the social dynamism of the Westphalian concept.[33]

Furthermore, whilst a number of scholars contend that Westphalian sovereignty continues to be the central paradigm of international relations,[34] Krasner offers a compelling and awakening assessment that sovereignty never actually was the absolute norm of international relations. In his *Compromising*

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[29] Such as the Universal Declaration of Human Rights and the Genocide Convention in 1948, then the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1950, as well as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 1966. See more in: Barkin, Samuel J. *"The evolution of the constitution of sovereignty and the emergence of human rights norms"*, Millennium, Vol. 27, No. 2, 1998, pp. 229-252.

[30] Fowler, Michael Ross and Bunck, Julie Marie. *"Law, power, and the sovereign state: the evolution and application of the concept of sovereignty"*, The Pennsylvania State University Press, 1995, p. 2.

[31] He uses the following epithets to explain various sovereignty's aspects: "degraded", "resurgent", "decomposing/recomposing", "metaphysical", "extraterritorial", "deffered" (here, he refers to the situation in Kosovo), "internationalized", "incipient", and "deterritorialised". See more in: Simpson, Gerry. *"The guises of sovereignty"* in: Jacobsen, Trudy; Sampford, Charles; and Thakur, Ramesh (eds). *"Re-envisioning sovereignty: the end of Westphalia"*, Ashgate Publishing, 2008, pp. 51-73.

[32] Some of the prominent works are as follows: Camilleri, Joseph A. and Falk, Jim. *"The end of sovereignty? The politics of a shrinking and fragmenting world"*, Edward Elgar, Aldershot, 1992; Harding, Christopher and Lim, Chin (eds). *"Renegotiating Westphalia"*, Kluwer Law International, The Hague, 1999; Hashmi, Sohail H. (ed). *"State sovereignty: change and persistence in international relations"*, Pennsylvania State University Press, 1997; Jacobsen, Trudy; Sampford, Charles; and Thakur, Ramesh (eds). *"Re-envisioning sovereignty: the end of Westphalia"*, Ashgate Publishing, 2008; Kegley, Charles W. and Raymond, Gregory, A. *"Exorcising the ghost of Westphalia: building world order in the new millennium"*, Prentice Hall, 2002; Lapidoth, Ruth. *"Sovereignty in Transition"*, Journal of International Affairs, Vol. 45, No. 2, 1992, pp. 326-346; Linklater, Andrew. *"Citizenship and sovereignty in the post-Westphalian state"*, European Journal of International Relations, Vol. 2, No. 1, 1996, pp. 77-103; Mark, Max. *"Beyond sovereignty"*, Public Affairs Press, Washington D.C., 1965; MacCormick, Neil. *"Beyond the sovereign state"*, The Modern Law Review, Vol. 56, 1993, pp. 1-18; Rosenau, James, N. *"Sovereignty in a turbulent world"* in: Lyons, Gene Martin and Mastanduno, Michael (eds). *"Beyond Westphalia?: state sovereignty and international intervention"*, Johns Hopkins University Press, 1995, pp. 191-228; Schrijver, Nico. *"The changing nature of state sovereignty"* in Crawford, James and Lowe, Vaughan (eds). "*The British Year Book of International Law 1999"*, Clarendon Press, Oxford, 2000, pp. 65-98; Soroos, Martin. "*Beyond Sovereignty"*, University of South Carolina Press, 1986; Vernon, Raymond. "Sovereignty at bay: the multinational spread of U.S. enterprises", Basic Books, New York, 1971; Vernon, Raymond. "Sovereignty at bay: ten years after", International Organization, Vol. 35, 1981, pp. 517-529; Wriston, Walter. "*The twilight of sovereignty"*, Scribners, New York, 1992; Zacher, Mark W. *"The decaying pillars of the Westphalian temple: implications for international order and governance"* in: Rosenau, James N. and Czempiel, Ernst-Otto (ed). "*Governance without government: order and change in world politics"*, Cambridge University Press, 1992, pp. 58—101.

[33] See for instance: Biersteker, Thomas J. and Cynthia Weber (eds). "*State sovereignty as social construct"*, Cambridge University Press, 1996. and Barkin, Samuel J. and Cronin, Bruce. "*The state and the nation: changing norms and the rules of sovereignty in international relations"*, International Organization, Vol. 48, No. 1, 1994, pp. 107-130.

[34] See for example: Esman, Milton J. *"State sovereignty: alive and well"* in: Montgomery, John Dickey and Glazer, Nathan (eds). *"Sovereignty under challenge: how governments respond"*, Transaction Publishers, 2002, pp. 375-391; Another astute reassertion of sovereignty can be found in: Fowler, Michael Ross and Bunck, Julie Marie. *"Law, power, and the sovereign state: the evolution and application of the concept of sovereignty"*, The Pennsylvania State University Press, 1995; also see some of the essays in: Stankiewicz, W.J. (ed) "*In defense of sovereignty"*, Oxford University Press, New York, 1969; McNeill, William H. *"Territorial states buried too soon"*, Mershon International Studies Review, Vol. 41, No. 2, 1997, pp. 269-274.

Westphalia,[35] he makes several assessments that are highly relevant for the proper understanding of the hypothesized shift in Serbia's foreign policy:

> "Breaches of the Westphalian model have been an enduring characteristic of the international environment because there is nothing to prevent them" (p. 115)…"Compromising the Westphalian model is always available as a policy option" (p. 117)…"In international politics, nothing is ever off the table" (p. 117)…"All states are not the same" (p. 117)…"In some areas of the world, notably central and eastern Europe, there have never been any smaller Westphalian states, that is, entities that enjoyed full autonomy" (p. 140)…"There is no structure of authority in the international system that can prevent stronger actors from engaging in imposition or coercion" (p. 147)…"In practice, the strong have been better able to maintain their territorial integrity and autonomy than the weak" (p. 147)…"Some states have the power to preserve their territory and autonomy; others do not." (p. 150-151)[36]

If coupled with Nye's jovial remark on the role of the UN quoted below, Krasner's observations illuminate the fact that the only viable and sustainable channel for the preservation of statehood for Serbia is integration into the EU.

> "The UN is more an instrument of its member states than an independent actor in world politics. True, UN Secretary General Ban Ki Moon can make speeches, convene meetings, and propose actions, but his role is more secretary than general.[37]

Doubtlessly, the neo-Westphalian or even post-Westphalian contagion has found its most convincing embodiment and academic elucidation within the realm of the EU, where the 'pooling' of sovereignty[38] or its 'sharing'[39] have produced depictions of the EU as a post-modern entity,[40] or the one described as pluralist,[41] multilevel,[42] or composite.[43]

International lawyers, meanwhile, tend to couch their thoughts mainly in terms of the contrasting principles of self-determination and sovereignty.[44] These considerations, however, fall outside the ambit

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[35] Krasner, Stephen D. *"Compromising Westphalia"*, International Security, Vol. 20, No. 3, 1995/1996, pp. 115-151; See more on his understanding of Westphalian sovereignty in: Krasner, Stephen D. *"Sovereignty: organized hypocrisy"*, Princeton University Press, 1999; Krasner, Stephen D. *"Sovereignty: an institutional perspective"*, Comparative Political Studies, Vol. 21, No. 1, 1988, pp. 66-94; Krasner, Stephen D. *"Westphalia and all that"* in: Goldstein, Judith and Keohane, Robert (eds). "*Ideas and foreign policy"*, Cornell University Press, Ithaca, 1993, pp. 235-264; Krasner, Stephen D. *"The exhaustion of sovereignty: international shaping of domestic authority structures"*, Institut du développement durable et des relations internationales, Paris, March 2003; Krasner, Stephen D. *"Sovereignty"*, Foreign Policy, Vol. 122, January/February 2001, pp. 20-29; Krasner, Stephen D. *"Sovereignty and Governance"*, Paper presented at Legatum Institute Prosperity Symposium, Brocket Hall, 2008, pp. 1-24.
[36] For the criticism of his approach see: Philpott, Daniel. *"Usurping the sovereignty of sovereignty?"*, World Politics, Vol. 53, 2001, pp. 297–324; Lentner, Howard H. *"The concept of the state: a response to Stephen Krasner"*, Comparative Politics, Vol. 16, No. 3, 1984, pp. 367-377.
[37] Nye, Joseph S. *"Does the UN Still Matter?"*, The Financial Express (India), 13 July 2007.
[38] Keohane, Robert O. *"Ironies of sovereignty: the European Union and the United States"*, Journal of Common Market Studies, Vol. 40. No. 4, 2002, pp. 743–765.
[39] Wallace, William. *"The sharing of sovereignty: the European paradox"*, Political Studies Vol. 47, 1999, pp. 503-521.
[40] Caporaso, James A. *"The European Union and forms of state: Westphalian, regulatory or post-modern?"*, Journal of Common Market Studies, Vol. 34, Issue 1, 1996, pp. 29-52.
[41] Walker, Neil. *"The idea of constitutional pluralism"*, The Modern Law Review, Vol. 65, 2002, pp. 317-359.
[42] Pernice, Ingolf. *"Multilevel constitutionalism in the European Union"*, European Law Review, Vol. 27, pp. 511-529.
[43] Besselink, Leonard. *"A composite European constitution"*, Europa Law Publishing, Groningen, 2007.
[44] Cassese, Antonio. *"Self-determination of peoples, a legal reappraisal"*, Cambridge University Press, 1999; Crawford, James. *"The creation of states in international law"*, Cambridge University Press, Cambridge, 2006; Hannum, Hurst. *"Autonomy, sovereignty, and self-determination: the accommodation of conflicting rights"*, University of Pennsylvania Press, 1990; Pomerance, Michla. "Self-determination in law and practice, the new doctrine in the United Nations", Martinus Nijhoff

of this paper. Under the following headings, the Serbian foreign policy objectives are put in the perspective of EU integration.

4. THE EUROPEAN UNION AS A FACTOR OF SERBIA'S EMERGING NEO-WESTPHALIAN VISION

4.1. A glimpse at history: *per aspera…!*
To begin with, the history of Serbia is a perpetual alteration between peaceful and tumultuous times. After the Serbs settled in the region of the Balkans under the Unknown Archont, they founded the first state - Raška - in late 8th century. The medieval Serbian state under the Nemanjić dynasty is considered the Golden Age of Serbia (1166-1371).[45] The historic battle of Kosovo of 1389 and the defeat of Serbia marked the first great challenge to its statehood – the centuries-long rule of the Turks. As a consequence of two consolidated uprisings in 1804 and 1815, Serbia retrieved its sovereignty and passed the first modern-age constitution in 1835.[46] Its statehood was only formally recognized in the Treaty of Berlin in 1878, which Krasner cites as an example of disregard of the Westphalian model of sovereignty, due to a number of restrictive provisions that Serbia had to accept.[47]

Over the ensuing period, the Kingdom of Serbia was confronted with several wars (Serbo-Bulgarian War of 1885, First Balkan War of 1912-1913, Second Balkan War of 1913, First World War 1914-1918), which considerably hampered its medieval-like prosperity. The 'three Yugoslavias',[48] to borrow Ramet's shorthand, suffered Nazi mayhem during the Second World War and, roughly half a century later, engulfed in civil war. Driven by the Westphalian ideals, the region of Western Balkans became a global predicament. All the newly created states embraced the EU as the only route to peace, lasting stability, and sustainable development.

4.2. European Union as a catalyst of Serbia's rejuvenation: *…ad astra?*
As a follow-up to its refurbished regional approach, the EU proposed a Stabilization and Association Process ('SAP') for the countries of the Western Balkans in 1999. The conclusion of the Santa Maria da Feira European Council held in June 2000 brought an encouraging impetus: Serbia became a potential candidate for EU membership.[49] The Zagreb Summit held in November 2000 launched the SAP, confirmed Serbia's European perspective, and underlined the necessity of regional cooperation. The Thessaloniki EU-Western Balkans Summit held in June 2003 initiated a new phase in the relations between Serbia and the EU by the latter's offer of a European Partnership as a new instrument of pre-accession strategy.[50] European Partnerships are decisions adopted by the Council of the European Union, whereby short-term (1-2 years) and medium-term priorities (3-4 years) are laid down. Compliance therewith is monitored by the European Commission in its annual progress reports. Thus, there are two sets of conditions that Serbia must fulfill: a) the 1993 Copenhagen criteria for *accession* (political, economic, *acquis communautaire*), and b) European Partnership conditions in the *pre-accession* phase.

Publishers, 1982; see essays in: Tomuschat, Christian (ed). "Modern law of self-determination", Martinus Nijhoff Publishers, 1993; Raič, David. *"Statehood and the law of self-determination"*, Martinus Nijhoff Publishers, 2002.

[45] See a host of insightful historical sources in: Krkljuš, Ljubomirka and Šarkić, Srdjan. *"Odabrani izvori iz državnopravne istorije Jugoslavije"*, Naučna knjiga, Belgrade, 1982, pp. 20 and 41-42.

[46] The first set of codified legal rules that contained constitutional provisions was the so-called *Dušan's Code* adopted in 1349 (as amended in 1355).

[47] Krasner, Stephen D. *"Compromising Westphalia"*, International Security, Vol. 20, No. 3, 1995-1996, p. 138.

[48] Ramet, Sabrina. *"The three Yugoslavias: state-building and legitimation, 1918-2005"*, Indiana University Press, 2006.

[49] Chapter V, Heading D, point 67 of the Conclusions of the Presidency of the Santa Maria da Feira European Council, http://www.europarl.eu.int/summits/fei1_en.htm#, accessed on 02 January 2008.

[50] See more in: Government of the Republic of Serbia. *"Proces stabilizacije i pridruživanja"*, 2006; Jančić, Davor. *"Serbia in the European Union - status of Kosovo",* Legal Life - Journal of Legal Theory and Practice, Special Issue "Law and Humane Future", Vol. 4, No. 12, 2006, pp. 719-730.

Again, these could be assessed as jeopardizing Serbia's sovereignty in Krasner's terms. Yet, it would be much more plausible to envision EU's allure as Serbia's opportunity to devise a neo-Westphalian agenda.

In the same period, Serbia endured 78 days of bombing by NATO, as a result of decade-long political and diplomatic blunders of then President of FR Yugoslavia Milošević. Since it had failed to receive endorsement by the UN Security Council, this tragic event not only fortified the already present perceptions of change in the norms of international intervention,[51] but also sparked vivid discussions on its shaping of post-Cold War international relations.[52] In Serbia, NATO bombing has been widely viewed as illegal and has played a central role in the subsequent massive public outcry and the resulting ouster of Slobodan Milošević. The famous 2000 *October revolution* and the installment of Prime Minister Djindjić's Government triggered democratic reforms and introduced the vision of divorce from Westphalian politics.

Taken together, the prospect of European integration and the failure to win support of the international community in defending principal state interests meant that Serbia's future political path was essentially broken into two tracks: the one of Westphalian rejection of alternative mechanisms of protection of sovereignty and the other of neo-Westphalian incorporation of sovereignty into the EU's dispersed system of statehood. The key questions for Serbia are whether these two paths are mutually exclusive and how the Government's foreign policy should be assessed.

5. EU INTEGRATION V. KOSOVO RETENTION: DIPLOMACY AT CROSSROADS

5.1. The Serbian Government's EU policy
The current Government of the Republic of Serbia was appointed by the National Assembly on 7 July 2008. In his keynote address to the Assembly, Prime Minister Cvetković designated EU integration as Serbia's paramount priority and deepest interest.[53] This was further corroborated by President Tadić,who urged that "Serbia is a democratic country devoted to accelerated integration into the European Union, a country that can become a guarantor of good neighborly relations, security and prosperity in the region" [own translation].[54] The National Assembly itself has also given strong confirmation that "an expedited accession of the Republic of Serbia […] to the EU and to the Partnership for Peace are strategic national goals, which will be fully and constantly supported" and has declared that it is "fully prepared to fulfill all preconditions necessary to speed up the integration into the European Union" [own translation].[55]

In order to provide strategic guidance, already in 2005, the Government adopted the National Strategy for integration into the EU, which foresees the following foreign policy goals: "normalization of relations with international institutions and influential countries […], orientation towards Euro-Atlantic integrations, […] inclination towards peaceful dispute settlement relying on diplomatic and political measures, which was rewarded internationally." It further stresses that "special prudence and expediency as well as inclination towards peaceful dispute settlement were demonstrated during the ethnic violence over non-Albanian population in Kosovo and Metohija in March 2004" and that "beside the

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[51] See essays in: Lyons, Gene Martin and Mastanduno, Michael (eds). *"Beyond Westphalia?: state sovereignty and international intervention"*, Johns Hopkins University Press, 1995; See also: Chopra, Jarat and Weiss, Thomas G. *"Sovereignty is no longer sacrosanct: codifying humanitarian intervention"*, Ethics and International Affairs, Vol. 6, Issue 1, 1992, pp. 95-117; Zacklin, Ralph. *"Beyond Kosovo: the United Nations and humanitarian Intervention"*, Virginia Journal of International Law, Vol. 41, 2000-2001, pp. 923-940.
[52] Buckley, Mary and Cummings, Sally (eds). *"Kosovo: perceptions of war and its aftermath"*, Continuum International Publishing Group, 2001.
[53] Government of the Republic of Serbia. *"Keynote address of Prime Minister Nominee Mirko Cvetković"*, http://www.srbija.gov.rs/pages/article.php?id=46940, 7 July 2008, accessed on 20 November 2008.
[54] Tadić, Boris. *Speech at the Conference on World Politics*, Evian, France, 8 October 2008.
[55] National Assembly of the Republic of Serbia. *"Rezolucija o pridruživanju Evropskoj Uniji"*, 2004.

intensification of international cooperation with the EU and its Member States, Serbia has to ensure stable relations with other international actors. This implies the promotion of relations with the United States and further development of bilateral cooperation with Russia and China."[56]

The event of prime importance for Serbia's ties with the EU was the conclusion of the *Stabilization and Association Agreement* ('SAA') and the *Interim Agreement on Trade and Trade-related issues* ('Interim Agreement') in April 2008, which the Serbian National Assembly duly ratified. This is the first international agreement to regulate the relations between Serbia and the EU. It envisages Serbia's full association over a transitional period of a maximum of six years. To this end, the mechanism for political dialogue is to be set up, which entails the establishment of the following bodies:[57]

a) *Stabilization and Association Council* ('SAC'). Its competence is to perform annual reviews of the application and implementation of the SAA and of the adoption by Serbia of legal, administrative, institutional, and economic reforms, taking into account the European Partnership. This body consists of the members of the Council and the Commission, on the one hand, and of the members of the Serbian Government on the other. The SAA empowers this body to take binding decisions and issue recommendations.
b) *Stabilization and Association Committee.* It assists the SAC in the performance of the latter's duties and its composition resembles that of the SAC. It may create subcommittees or special bodies.
c) *Stabilization and Association Parliamentary Committee.* It is a joint forum for meetings and the exchange of views of Members of the Serbian National Assembly and of the European Parliament.

As regards sectoral policies, the SAA is predominantly a trade agreement, which mandates the establishment of a bilateral free trade area within six years in conformity with the provisions of GATT 1994 and WTO.[58] However, it is important to note that the SAA includes, as an essential element, the cooperation in countering the proliferation of weapons of mass destruction,[59] but also in combating terrorism, money laundering, illicit drug trafficking, and organized crime.[60]

Moreover, whereas the application of the SAA is submitted to ratification in the EU Member States, the Interim Agreement is dependent on the Council's assessment of Serbia's cooperation with the International Criminal Tribunal for the former Yugoslavia ('ICTY'), which itself is one of the general principles of the SAA.[61] Although not obliged to, Serbia decided to unilaterally implement the Interim Agreement, as a sign of good will and commitment to its European aspiration.

Finally, in accordance with the requirements laid down in the European Partnership Decision of 2008,[62] the Government adopted a new National Program for integration into the European Union in October 2008. This is the most comprehensive plan adopted so far and is aimed at the development of policy objectives and administrative capacities to meet the EU's conditions. To do so, the National Program expounds the aims and means to achieve EU standards in the areas encompassing democracy and the rule

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[56] Government of the Republic of Serbia. *"National Strategy of Serbia for the Serbia and Montenegro's accession to the European Union"*, June 2005, pp. 44-46.
[57] Article 8 in conjunction with Articles 11-12 and 119-125 SAA
[58] Article 18(1) SAA
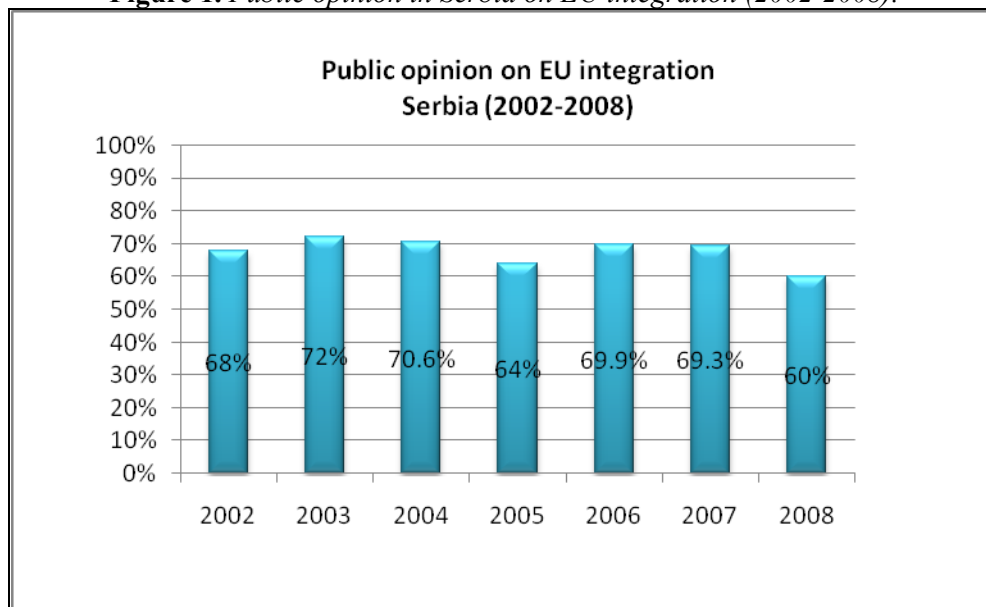[59] Article 3 SAA
[60] Articles 7 and 84-87 SAA
[61] Articles 2 and 4 SAA
[62] Council Decision (2008/213/EC) of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Serbia including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2006/56/EC.

of law, human and minority rights, regional cooperation, market economy and competition, together with all its ramifications. Furthermore, taking France and Slovenia as examples of best practice, it establishes a new coordination mechanism for European integration aimed at efficient decision making and implementation of reforms. This mechanism comprises a Coordination body for EU accession process, an Expert group of the Coordination body, 35 Expert subgroups, and 7 Units for European integration, all of which are led by the European Integration Office of the Serbian Government.[63]

Perhaps the most momentous indicator of Serbia's turn towards neo-Westphalian member-state building is the nation-wide consensus on EU integration. As the public opinion polls carried out in the period 2002-2008 demonstrate, there has been consistent support for EU membership, which never fell below 60%.

Figure 1. *Public opinion in Serbia on EU integration (2002-2008).*

Source: Strategic Marketing and CeSID.[64]

5.2 The Serbian Government's Kosovo policy
First and foremost, the greatest challenge for Serbia has been to reconcile its EU perspective with the Kosovo situation. That Kosovo is part of Serbia is a historical fact,[65] a mandate of international law, a constitutional duty, and the source of legitimacy of any Serbian government. The first competence of the Republic of Serbia, according to the Constitution of 2006, is to "organize and provide for sovereignty, independence, territorial integrity and security of the Republic of Serbia, its international status and relations with other countries and international organizations."[66] For these and many other reasons, all Serbian governments have endeavored to safeguard these values and this is in no way novel. However, the manner in which this can and must be performed is precisely the measure of differentiation between successive government coalitions.

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[63] Government of the Republic of Serbia. *"Nacionalni program za integraciju u Evropsku Uniju",* October 2008, p. 31-32.
[64] CeSID. *"Istraživanje javnog mnjenja, jesen 2008",* 2008, p. 12. and Government of the Republic of Serbia. *"Stavovi gradjana o procesu evropske integracije Republike Srbije"* (public opinion poll done by Strategic Marketing Belgrade), 2007, p. 2.
[65] Bearing in mind the ongoing conflict in the Gaza strip between Hamas and the Israeli army (started on 27 December 2008), Batt's justified description of Kosovo as Serbian Jerusalem brings at least a shiver. See more in: Batt, Judy. *"Kosovo and the question of Serbian statehood*", Chaillot Paper No. 81, Institute for Security Studies, Paris, August 2005, p. 33.
[66] Article 97, point 1 of the Constitution of Serbia of 2006.

On 17 February 2008, the Kosovo Assembly declared independence and thereby claimed sovereign statehood.[67] This was supplemented by the adoption of the Constitution of the Republic of Kosovo in April 2008, whose notable feature is the immediate limitation of sovereignty in favor of the International Civilian Representative:

> "Notwithstanding any provision of this Constitution, the International Civilian Representative shall, in accordance with the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007, be the final authority in Kosovo regarding interpretation of the civilian aspects of the said Comprehensive Proposal. No Republic of Kosovo authority shall have jurisdiction to review, diminish or otherwise restrict the mandate, powers and obligations referred to in Article 146 and this Article". [68]

Serbia's reaction involved the immediate annulment of these two documents.[69] As mentioned earlier, the conflicting Serbia's and Kosovo's claims to statehood have attracted much scholarly attention. Still, it is necessary to grasp three crucial dimensions that are undelying the transformation of Serbia's Kosovo policy.

5.2.1. Political dimension
After the insurmountable impasse in the Koštunica Government, the ensuing parliamentary elections were dubbed 'The Referendum on the EU'. Three main political options were offered to the electorate along the following spectrum:

- Kosovo retention at any price – promoted by Šešelj's Radical Party and Koštunica's Democratic Party of Serbia (nationalist option)
- Kosovo retention and European integration – promoted by Tadić's Democratic Party and Dinkić's G17+ (moderate option)
- Kosovo's independence acknowledged – promoted by Jovanović's Liberal Demoratic Party (liberal option)

The resounding electoral victory of the moderates and the defeat of the nationalists have inspired a new political climate.[70] Roiled by internal disputes, the Radical Party finally split. The schism was caused by its former prominent member – Tomislav Nikolić – when he left the party and founded the Serbian Progressive Party, whose political program is considerably toned down in favor of EU integration. On the one hand, this testifies to the fact that Milošević-type hardcore nationalism is at least in decline, if not dwindling.[71] On the other hand, the Socialist Party is one of the coalition parties in the Government. Nevertheless, this should not be overstated, since their resurrection is more a matter of fortunate electoral calculus than of genuine support by the Serbian citizenry. In their analysis of the central and eastern EU

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[67] Kosovo Assembly. *"Kosovo Declaration of Independence"*, http://www.assembly-kosova.org/?krye=news&newsid=1635&lang=en, February 2008.
[68] Article 147 of the Constitution of the Republic of Kosovo.
[69] National Assembly of the Republic of Serbia. *"Odluka Narodne Skupštine Republike Srbije o potvrđivanju Odluke Vlade Republike Srbije o poništavanju protivpravnih akata privremenih organa samouprave na Kosovu i Metohiji o proglašenju jednostrane nezavisnosti"*, February 2008.
[70] According to the official results of the elections, the Coalition for European Serbia led by the Democratic Party won 102 seats, the Radical Party 78, the Coalition Democratic Party of Serbia-New Serbia 30, and the Coalition Socialist Party-The Part of United Pensioners of Serbia-United Serbia 20. See more in: Electoral Commission of the Republic of Serbia. *"Izveštaj o ukupnim rezultatima izbora za narodne poslanike Narodne Skupštine Republike Srbije"*, http://www.rik.parlament.sr.gov.yu/cirilica/propisi_frames.htm, accessed on 10 January 2008.
[71] See more on the Milošević era: Thomas, Robert. *"Serbia under Milosevic. Politics in the 1990s"*, London: Hurst & Company, 1999; Ramet, Sabrina P. and Pavlakovic, Vjeran *"Serbia since 1989: politics and society under Milosevic and after"*, University of Washington Press, 2005; Gordy, Eric. *"The culture of power in Serbia: nationalism and the destruction of alternatives"*, Pennsylvania State University Press, 1999, pp. 21-61.

enlargement, Nello and Smith rightly point out that it is conceivable that the nationalist forces in the excluded applicant states become more popular, with negative implications for political stability; and observe that the loss of EU influence over the disappointed applicant states is a potential side-effect of enlargement in stages.[72] While initially true, such a trend seems to be losing ground in the case of Serbia.

Another powerful statement of Serbia's Kosovo policy comes from President Tadić. After asserting that "the priorities of Serbian diplomacy in the following period will be the protection of state sovereignty and territorial integrity in Kosovo and Metohija, the strengthening of regional influence and EU integration", he added that: "There are three pillars of Serbian foreign policy: the European Union, Russia, and the United States, and, short of deepening of these relations, we cannot realize our vital national interests" [own translation].[73]

Moreover, it is essential to note that this approach has been accompanied with the rejection of use of force. Having in mind the unfortunate heritage of the past, such a standpoint of the Serbian government is a remarkable attempt at improving Serbia's international image as a belligerent state. Serbian Defense Minister Šutanovac has explained it in the following terms: "Among all scenarios, the only one that is not logical and applicable is the entry of the army into Kosovo and conflict with KFOR. The conflict with KFOR would again be a conflict with the international community" [own translation].[74] Instead, Serbia has resorted to measures of socio-economic and legal nature, which will be outlined below.

5.2.2. Economic dimension
In line with the peaceful stance on defending Kosovo, the Government elaborated the Strategy of long-term economic development of the Serbian community in Kosovo and Metohija, whose main goals are:

- economic integration of the Serbian community into the economic flows of the Republic of Serbia;
- enhancement of the quality of life i.e. the reduction of poverty of the Serbian community;
- stopping the emigration from Kosovo and Metohija of the members of the Serbian community.[75]

The incentive lay chiefly in the sharp decline in the Serb population in Kosovo and in the stark contrast between the levels of foreign direct investment in Serbia and the aggregate of foreign assistance in Kosovo, as presented below.
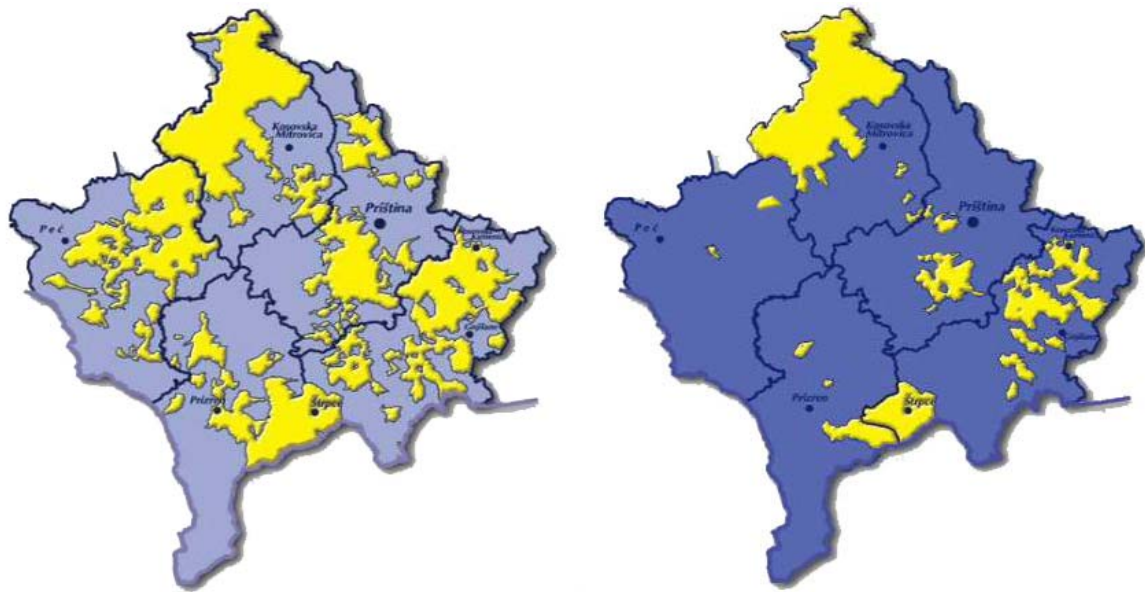
Figure 2: *Serbian population, Kosovo and Metohija in 1999 and 2005.*

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[72] Nello, Susan Senior and Smith, Karen E. *"The European Union and Central and Eastern Europe"*, Ashgate Publishing, 1998, p. 57. They invoke the example of Slovakia's approximation of economic relations with Russia. The ongoing negotiations between Serbia and Russia on the sale of 51% of shares in the Serbian state-owned energy company *NIS* is comparable but should not be understood as a step dissonant with European integration.

[73] Tadić, Boris. *"Tadić: three priorities of the foreign policy of Serbia"*, http://www.ds.org.yu/sr/index.php?option=com_content&task=view&id=6818&Itemid=1, accessed on 12 January 2008. See also the heated debate on Serbia's Kosovo policy between Serbian Foreign Minister Jeremić and Stephen Sackur at: HARDTalk. *"Vuk Jeremić"*, http://news.bbc.co.uk/2/hi/programmes/hardtalk/7131287.stm, 7 December 2007, accessed on 25 November 2008. The former intimated his view on the European dimension of the Kosovo situation in the following terms: "I think that if we are going to continue advancing the cause of European integration in the Balkans, and I think that that has got to be our foremost priority, the way we solve Kosovo future status has got to be in the function of the European integration of the Balkans."
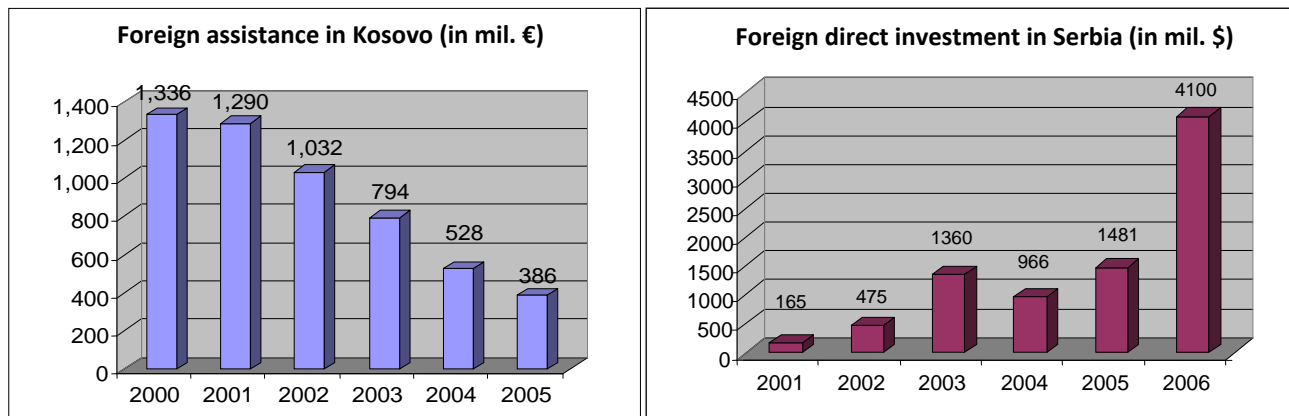
[74] Tanjug-Srna. *"Šutanovac: Vojska Srbije neće ući na Kosovo"*, reported by *Blic* (Belgrade), 11 December 2007.

[75] Government of the Republic of Serbia. *"Strategija dugoročnog ekonomskog razvoja srpske zajednice na Kosovu i Metohiji"*, 2006, p. 4.

Source: Government of the Republic of Serbia, 2006.[76]

Figure 3. *Foreign assistance in Kosovo (2000-2005) and foreign direct investment in Serbia (2001-2006)*

*Source***:** Government of the Republic of Serbia, 2006.[77]

5.2.3. Legal dimension

An important aspect of Serbia's Kosovo policy is its orientation towards diplomatic and legal rather than military and the instruments of direct confrontation. The embodiment of such an approach lies in the Government's successful initiative within the UN's General Assembly, which resulted in the adoption of a resolution requesting an advisory opinion from the International Court of Justice on the legality of Kosovo's secession. Therefore, the option of initiating a series of actions against the states that have

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[76] Ibid, p. 13.
[77] Ibid, p. 59.

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recognized Kosovo as independent has been rejected. This might be seen as one of the lessons learned after the failure of proceedings instituted against ten NATO Members during the bombing in 1999.[78]

In addition, the SAA explicitly confirms that it "shall not apply in Kosovo which is at present under international administration pursuant to United Nations Security Council Resolution 1244 of 10 June 1999. This is without prejudice to the current status of Kosovo or the determination of its final status under the same Resolution".[79] The obvious separate treatment of Kosovo's final status and Serbia's EU integration should be observed from the perspective of mutual concessions, which form the core of the EU's soft power analyzed below.

5.3. The EU's policy towards Serbia

5.3.1. Traditional conditionality

The EU's well-known Copenhagen conditions for accession and those arising from the European Partnership and the SAA can be best appraised through the lens of the Commission's European Enlargement Strategy 2008-2009 and its Progress Reports, which both share the same findings. The Commission ascertains Serbia's good overall capacity in the area of public administration and significant progress in cooperation with the ICTY due to the extradition of Radovan Karadžić.[80] It also emphasized that Serbia actively participated in regional initiatives, including the newly established Regional Cooperation Council[81] and cooperated constructively in ensuring the implementation of the Central European Free Trade Agreement. The main challenges remain the fight against corruption and organized crime.

With regard to Kosovo, the Commission acknowledges the "new reality", treats it as "sui generis",[82] and "expects Serbia to take a constructive line on EULEX deployment and encourages Kosovo Serbs to participate in Kosovo's development".[83]

5.3.2. Modern conditionality

The revival of the EU's Security and Defense Policy has assumed a qualitatively new dynamic with the deployment on 9 December 2008 of the EULEX Mission in Kosovo, the EU's largest ever civilian mission. Its mandate is to "assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognized standards and European best practices."[84]

Besides the Head of Mission and the Civilian Operation Commander, the structure of EULEX comprises three components:

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[78] See more in: Gray, Christine. *"Recent cases: legality of use of force (Yugoslavia v. Belgium) (Yugoslavia v. Canada) (Yugoslavia v. France) (Yugoslavia v. Germany) (Yugoslavia v. Italy) (Yugoslavia v. Netherlands) (Yugoslavia v. Portugal) (Yugoslavia v. Spain) (Yugoslavia v. United Kingdom) (Yugoslavia v. United States of America): provisional measures"*, International & Comparative Law Quarterly, Vol. 49, Issue 3, 2000, pp 730-736, and her article in the same issue of the journal on preliminary objections.

[79] Article 135 SAA

[80] European Commission. *"Enlargement Strategy and main challenges 2008-2009"*, Communication from the Commission to the Council and the European Parliament, COM(2008)674, 2008, p. 4.

[81] It succeeded the Stability Pact for South Eastern Europe on 27 February 2008.
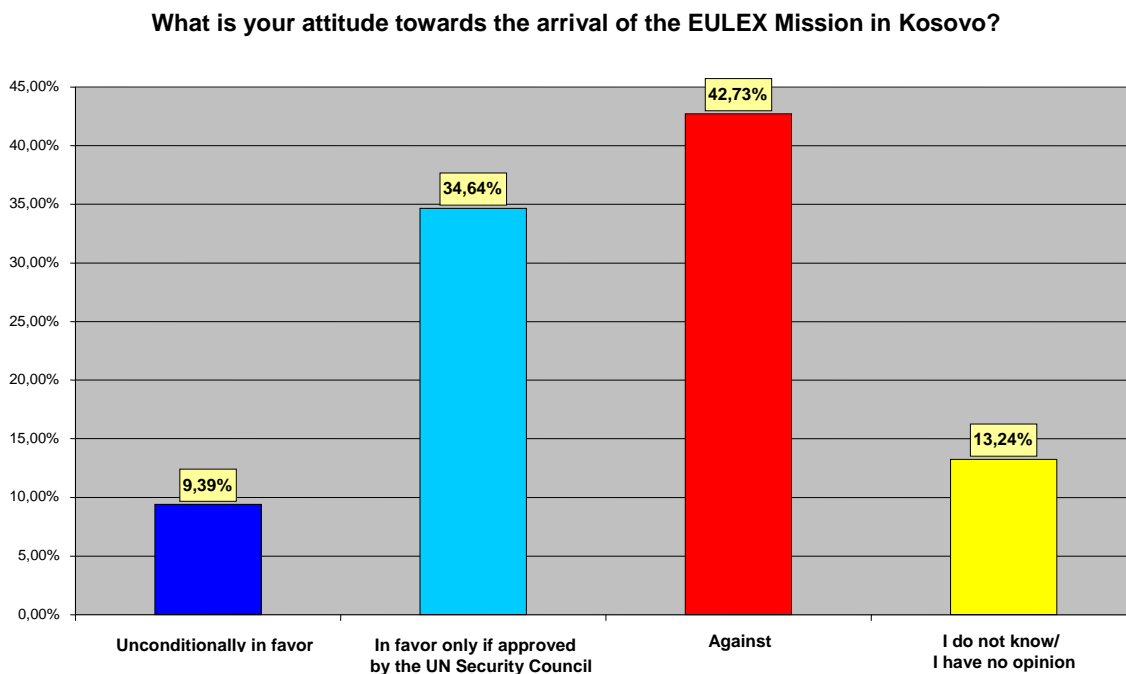
[82] Ibid, p. 5.

[83] Ibid, p. 10.

[84] Article 2 Council Joint Action (2008/124/CFSP) of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO.

- a *police* component, co-located where appropriate with the Kosovo Police Service, including at the border crossing points;
- a *justice* component, co-located where appropriate with the relevant Ministries, the Kosovo judiciary, the Kosovo Property Agency, the Kosovo Correctional Service;
- a *customs* component, co-located where appropriate with the Kosovo Customs Service.[85]

In a move to take over part of the duties of UNMIK, the EULEX Mission is a compromise between the West and the East, between the UN and the EU, as well as between Serbia and Kosovo. In her account on EULEX, Pond poses the question whether the EU can avoid being perceived as a quasi-colonial occupier and warns about severe obstacles that EULEX will encounter by pointing at Kosovo's soaring levels of organized crime and corruption.[86] The Serbian government has shown a pragmatic face and embraced cooperation with EULEX, which can be interpreted as another neo-Westphalian approach to a Westphalian problem.

However, while the support for EU integration alone enjoys solid and steady popular support, the Serbian citizens demonstrate caution towards EULEX. What is more, when asked whether they would support EU integration if it were conditional on Serbia's recognition of independent Kosovo, 71.3% of the interviewees answered in the negative.

Figure 4. *Public opinion on the EULEX Mission in Kosovo (March-April 2008).*

What is your attitude towards the arrival of the EULEX Mission in Kosovo?

Source: Government of the Republic of Serbia, 2008.[87]

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[85] Article 6(3), ibid.

[86] Pond, Elizabeth. *"The EU's test in Kosovo"*, The Washington Quarterly, Vol. 31, Issue 4, 2008, pp. 104 and 107-108.

[87] Government of the Republic of Serbia. *"Istraživanje: Kosovo i strateške spoljnopolitičke integracije"* (presentation for the media), April 2008, p. 6.

6. CONCLUSION

This paper represents a multidisciplinary sketch of the elements that constitute an evolving neo-Westphalian attitude of the Serbian governing and societal forces towards the EU and the world's powerhouses. The contours of the new approach to internationalization and Europeanization of Serbian politics are a consequence of the events that have been unfolding in Kosovo since the early 1980s, which reinforced Serbia's determination to fulfill the EU's accession and association conditions.

Concurrently, the political, economic and legal dimensions of Serbia's Kosovo policy are equally indicative of its incipient neo-Westphalian attitude to international relations. The waning of extreme nationalism, the resolute rejection of the use of military capabilities to protect its sovereignty in Kosovo, the turning to peaceful and diplomatic means, as well as the acceptance of and cooperation with the EULEX Mission reveal Serbia's new political face. Principally, these could be interpreted as a decisive move in Serbian intellectual and political milieus towards neo-Westphalian thinking. That notwithstanding, an entirely post-Westphalian perspective is still somewhat distant and will require garnering further legitimacy for the European cause.

To conclude, the defining trait of the relations between the EU and Serbia has been the exchange of concessions rather than the hitherto exchange of mutual misunderstandings, and such an approach has proven to be the best way forward in rectifying numerous strategic errors of failed politics of the past. This is a platform on which Serbia has the chance to restore its tarnished image and buttress its statehood with European values. To do so, Serbia must necessarily promote the development of strategic alliances with the United States and the EU. At last, that sufficient momentum has been generated to fully reap the benefits of the neo-Westphalian understanding of sovereignty goes beyond mere conjecture – yet, whether the hope for a change towards post-Westphalia is audacious remains to be seen.

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