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The Dynamics of Ethnopolitical Conflict Management by International and Regional Organizations in Europe

Pieter van Houten and Stefan Wolff

I. INTRODUCTION

Ethnic tensions and conflicts are prominent political phenomena. For example, several states in Central and Eastern Europe, the Balkans and the Caucasus have experienced such tensions and conflicts in recent years. The nature of these conflicts has ranged from violent wars in Croatia, Bosnia and Kosovo, to less intense but nevertheless violent conflicts in Moldova and Georgia, to largely non-violent tensions in Serbia, the Baltics and Ukraine. The management and prevention of such conflicts, which have also occurred in other parts of the world¹, have been among the main security challenges in the post-Cold War era. As a result, international organizations (IOs) such as the United Nations (UN) and the Organization for Security and Cooperation in Europe (OSCE) have paid considerable attention to such conflicts, and have—to varying degrees—been involved in conflict intervention and post-conflict settlement and reconstruction.

The ultimate objective of IO involvement and intervention in ethnic conflict is usually clear, namely: to stop the violence (if violence is already occurring) and to help manage and regulate ethnic relations such that serious tensions, possibly leading to violent conflicts, will be avoided in the future. Much less clear, however, is how to do this. In particular, the second task—the establishment or reinforcement of mechanisms to accommodate ethnic conflict and reduce conflict potential—is inherently complex and open to interpretation, as demonstrated by the plethora of suggested ‘solutions’ to ethnic conflict in the academic literature. So, which mechanisms have been advocated by IOs involved in the regulation and management of ethnic conflicts? Do these vary over time and between organizations? Are there differences between these professed principles and the actions of IOs in particular cases? What can explain differences between organizations and between ‘theory’ and ‘practice’ for particular organizations? Most importantly, what are the effects on the society and ethnic relations that these principles and mechanisms are intended to regulate and manage? In other words, which mechanisms have – or have not – been successful, and why? Given the simultaneous involvement of several IOs in many conflict situations, possible differences and coordination deficits

¹ T.R. Gurr, *People Versus States: Minorities at Risk in the New Century* (Washington DC: United States Institute of Peace, 2000).

between them can be important, and are yet to be explored systematically in the literature on ethnic conflicts.

This article makes a preliminary step in addressing these questions for organizations involved in the regulation of ethnic conflicts in Europe. It focuses on four organizations involved in conflict management and the (re)construction of governance arrangements in conflict-affected societies: the UN, the European Union (EU), the Council of Europe (CoE) and the OSCE. It summarizes the general agendas and advocated conflict management mechanisms of these organizations and then discusses their actions and strategies in specific cases. The focus is primarily on three cases: Bosnia and Herzegovina, Kosovo and Macedonia. These cases in the Western Balkans have seen extensive involvement of IOs, have been important ‘test cases’ for the agendas and principles of these IOs (and have, in turn, influenced these agendas) and provide considerable variation in proposed and implemented governance arrangements for ethnic minorities.

This analysis finds some significant differences in the agendas and case-specific recommendations of the different organizations, and considerable differences between the generally adopted principles for conflict settlement in an organization (if it has such general principles) and the proposed and endorsed mechanisms in the three cases. While some of these differences can be explained readily by the differences in the nature of the various IOs and straightforward state interests, some interesting questions on the sources and consequences of these differences remain. Answering these will require delving deeper into the organizational dynamics and relations with member states of these IOs.

The article is structured as follows. First, it gives a brief overview of the context of ethnic conflicts in the Western Balkans, followed by a classification of mechanisms used to settle ethnic conflicts. It then goes on to discuss the general approaches to conflict settlement adopted by UN, EU, CoE and OSCE, and their engagement with the conflicts in the Western Balkans. On this basis, it draws some preliminary conclusions about trends and patterns of IO involvement in conflict settlement in the Western Balkans.

II. ETHNIC CONFLICTS IN THE WESTERN BALKANS

Following the collapse of communism in Central and Eastern Europe in the late 1980s and early 1990s, what used to be called Yugoslavia gained notoriety as one of the most intensely violent

incidents of state disintegration in modern European history.² The wars of Yugoslav succession throughout the 1990s—from the brief skirmishes in Slovenia to the NATO air campaign against Serbia in the context of the Kosovo conflict—left tens of thousands dead and hundreds of thousands displaced. The legacy of communism, ethnonationalist mobilization and war left their unmistakable mark on the region, creating a complex situation in which multiple factors interacted with each other in shaping the environment in which international organizations attempted to manage crises and resolve their underlying conflicts. The key determinants against the background of which the IOs have been engaging with the region since the mid-1990s are listed below.

- Overlapping, multiple, unresolved ethnic conflicts in Bosnia and Herzegovina, Kosovo, Macedonia, and Serbia and Montenegro, increasing the requirements for managing the distinct yet inseparable conflicts and crises emerging from them.
- Economic and political instability in the region as a whole, resulting from, amongst other things:
 - The incomplete, or only partial implementation of, reforms of the economic system on the way to a market economy;
 - The incomplete process of democratization whose institutions function only to a limited degree;
 - The lack of sufficiently well-trained and motivated civil servants and other state employees caused by a skills and brain drain to the West and the private sector;
 - The high degree of (transnational) organized crime and corruption; and
 - An insufficiently developed and independent, cross-community civil society.
- The dependence upon actors in the international community and their own priorities, which are accepted, increasingly deliberately, thereby reducing local political capacity at all levels and across all sectors.
- The lack of flexibility of institutions established with international mediation/pressure whose democratic legitimacy and output efficiency is limited in the eyes of important local communities and parties.
- The fluidity and volatility of the situations in Macedonia, Kosovo and southern Serbia, the undetermined future constitutional status of Kosovo in relation to Serbia and Montenegro and

² The literature on these conflicts is vast. Examples of good accounts are J.B. Allcock, *Explaining Yugoslavia* (London: Hurst, 2000); F. Bieber and Z. Daskalovski (eds), *Understanding the War in Kosovo* (London: Frank Cass, 2003); S. Bose, *Bosnia after Dayton: Nationalist Partition and International Intervention* (London: Hurst, 2002); C. Carmichael, *Ethnic Cleansing in the Balkans: Nationalism and the Destruction of Tradition* (London: Routledge, 2002); D. Chandler, *Bosnia: Faking Democracy After Dayton* (London: Pluto, 1999); T. Judah, *Kosovo: War and Revenge*, 2nd ed (New Haven: Yale University Press, 2002); P.H. Liotta, *The Wreckage Reconsidered: Five Oxymorons from Balkan Deconstruction* (Lanham, MD: Lexington Books, 1999); *Id Dismembering the State: The Death of Yugoslavia and Why It Matters* (Lanham, MD: Lexington Books, 2001); M. Weller, *The Crisis in Kosovo 1989-1999: From the Dissolution of Yugoslavia to Rambouillet and the Outbreak of Hostilities* (Cambridge: Documents and Analysis, 1999); and S.L. Woodward, *Balkan Tragedy: Chaos and Dissolution After the Cold War* (Washington DC: Brookings Institute, 1995).

of Serbia and Montenegro itself, and the very slow process of institutional reform in Bosnia and Herzegovina.

- Unresolved issues related to the approximately 400,000 remaining refugees across the former Yugoslavia.

Given this explosive mix of factors which, under ‘normal’ circumstances, would in all likelihood facilitate widespread domestic and regional conflict, it is surprising that since the end of NATO’s air campaign against Serbia in 1999, violence has been either prevented or locally contained. Factors that may have influenced this include:

- A massive international presence in the form of peacekeeping troops, international governmental and non-governmental organizations and their financial, material and human investment in the region;
- The work of these international actors with local elites and non-governmental organizations, employing the principle of conditionality to development aid and the direct exercise of pressure;
- The fixation of elites in the region on membership in, or close association with, international organizations (such as EU, NATO, OSCE and Council of Europe) and thus their preparedness to accept conditions imposed upon them; and
- A certain degree of popular resignation *vis-à-vis* local and international politicians and political entrepreneurs, especially in the face of high levels of organized crime, corruption, desolate economic conditions and, in many places, deteriorating living standards.

There are, thus, good reasons to believe that IOs have played a role in containing conflicts in this region. While in the short term this is due in large part to military interventions and substantial amounts of provided aid, the long-term prospects for the region will depend significantly on the ethnic conflict regulation mechanisms that have been, or are being, put in place. Therefore, the question is: which mechanisms have been propagated and pursued by the IOs. Before addressing this, it is necessary first to indicate the universe of possible regulation mechanisms and the general conflict intervention and management agendas of the four IOs.

III. CLASSIFYING MECHANISMS FOR SETTLING ETHNIC CONFLICTS

In order to assess more systematically the work undertaken by IOs in the Western Balkan region, it is useful to have a classification of mechanisms for the settlement of ethnic conflicts. Ideally, such

mechanisms address successfully the underlying causes of such conflicts—that is, structural, political, social and economic, and cultural and perceptual factors that create conditions in which such ethnic conflicts are possible—and defuse the security dilemmas arising from them.³ In other words, conflict *settlement* aims at establishing an institutional framework in which the conflicting interests of different ethnic groups can be accommodated to such an extent that incentives for cooperation and the non-violent pursuit of conflicts of interest through compromise outweigh any benefits that might be expected from violent confrontation. Hence, conflict settlement implies negotiated, accepted and implemented institutional structures.⁴

McGarry and O’Leary suggest a very simple and useful distinction between methods that aim at eliminating differences between conflicting parties and methods that try to manage them.⁵ *Elimination* of differences can be achieved through genocide, ethnic cleansing, partition and/or secession, and integration and/or assimilation. Differences are *managed* through control regimes, third-party arbitration, federalism and other forms of territorial organization that accord parties greater autonomy over their own affairs, and through various forms of power-sharing. Schneckener presents a slightly more refined classification, distinguishing between methods of *elimination*, of *control* and of *recognition* (see Table 1).⁶ While using a similar set of methods, Schneckener’s approach is driven more clearly by normative judgments, that is, by a distinction between acceptable and unacceptable policies aimed at settling ethnic conflicts. Similar to McGarry and O’Leary, elimination strategies comprise genocide, ethnic cleansing and forced assimilation, while control regimes include coercive domination, co-opted rule and limited self-rule. In contrast to these two categories of unacceptable approaches to conflict settlement, Schneckener endorses so-called policies of recognition, such as minority rights, power-sharing, territorial solutions (which include federal and autonomy solutions) and bi- and multilateral regimes.⁷

1. Table 1: Mechanisms for the settlement of self-determination conflicts

³ On underlying causes of self-determination conflicts, see M.E. Brown, *The International Dimensions of Internal Conflict* (Cambridge, MA: MIT Press, 1996), Chapter 17.

⁴ This is in contrast to strategies that aim only to contain, limit, or direct the effects of an ongoing ethnic conflict on the wider society or region in which it takes place. C.f. S. Wolff, “Managing and Settling Ethnic Conflicts”, in: U. Schneckener and S. Wolff (eds), *Managing and Settling Ethnic Conflicts* (London: Hurst, 2004).

⁵ J. McGarry and B. O’Leary, “Introduction: The Macro-Political Regulation of Ethnic Conflict”, in: J. McGarry and B. O’Leary (eds), *The Politics of Ethnic Conflict Regulation* (London: Routledge, 1993), 4.

⁶ U. Schneckener, “Models of Ethnic Conflict Regulation: The Politics of Recognition”, in: Schneckener and Wolff, *Managing and Settling Ethnic Conflicts*, *supra* n. 4.

⁷ Other similar classifications can be found, for example, in D. Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1985). Chapters. 14-16; C.P. Scherrer, *The Structural Prevention of Ethnic Violence* (Basingstoke: Palgrave, 2003), Chapter 4; T.D. Sisk, *Power Sharing and International Mediation in Ethnic Conflicts* (Washington DC: United States Institute of Peace, 1996). Chapters 3-4); and S. Wolff and M. Weller, “Self-determination and Autonomy: A Conceptual Introduction”, in: M Weller and S. Wolff (eds.), *Autonomy and Self-Determination* (London: Routledge, 2005).

Elimination	Control	Recognition
<ul style="list-style-type: none"> • Genocide/ethnocide • Ethnic cleansing • Forced assimilation 	<ul style="list-style-type: none"> • Coercive domination • Co-opted rule • Limited self-rule 	<ul style="list-style-type: none"> • Domestic and international minority rights regimes (MRR) • Integrative/consociational power-sharing (PS) • Territorial solutions (TS) • Bi-/Multilateral regimes (BMR)⁸

Source: Adapted from Schneckener (2004)

IV. INTERNATIONAL ORGANIZATIONS AND ETHNIC CONFLICT SETTLEMENT

Concerns among IOs about ethnic conflicts and the situation of ethnic minorities are not new: such issues were important for the League of Nations, for example. However, the main surge in interest in and focus on these issues has occurred since the end of the Cold War when ethnic conflicts appeared to proliferate, many states started to democratize and international politics was no longer determined and stifled by confrontation between two ideological blocks. By and large, the general criteria and principles for ethnic conflict regulation adopted by the IOs under consideration here are variants of minority rights regimes (MRR). However, there are some recent developments and attempts to formulate territorial solution (TS) criteria as well. Power-sharing arrangements (PS) are rarely mentioned explicitly, but integrative approaches often appear to be assumed implicitly under advocated norms of democracy. The following brief discussions of the four organizations substantiates this.⁹

A. *United Nations*

The UN's approach to ethnic conflict is reflected, not only in its specific interventions in cases of conflict, but also more generally in its policies on minority rights and minority protection. While the League of Nations in the inter-war period had adopted (and failed in) an approach that emphasized group rights, the post-1945 UN focused on individual human rights and sought to prevent ethnic conflict, among other things, through the promotion of tolerance and non-discrimination. These

⁸ For example, bilateral treaties providing for recognition and protection of minorities, and regional approaches, such as the EU's Stability Pact for Southeastern Europe which promotes, among others, both minority rights/protection and reconciliation on a regional scale.

⁹ For a brief overview of the approaches of the various organizations towards ethnic minority issues, see P. Thornberry and M. Estébanez, *Minority Rights in Europe: A Review of the Work and Standards of the Council of Europe* (Strasbourg: Council of Europe Publishing, 2004): 10-28.

principles are enshrined in a range of UN documents, including the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social, and Cultural Rights; the International Covenant on Civil and Political Rights; the Optional Protocol to the International Covenant on Civil and Political Rights (which establishes a Human Rights Committee to which individuals can complain directly about violations of human rights); and the UNESCO Convention against Discrimination in Education.

Specifically concerned with minority rights and protection issues, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities was adopted by the General Assembly in 1992. The declaration includes an explicit list of rights to which members of minorities are entitled and requests states to take measures implementing those rights in a meaningful way. It makes specific reference to provisions contained in the UN Charter; the Universal Declaration of Human Rights; the Convention on the Prevention and Punishment of the Crime of Genocide; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights (especially Article 27); the International Covenant on Economic, Social and Cultural Rights; the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; and the Convention on the Rights of the Child. Amongst other things, the Declaration requests in Article 1 that:

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

It also contains a specific clause in Article 2-iii to the effect that “persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.” Further articles suggest more concrete state obligations in terms of minority rights policies in the areas of minority identity, language, education and economic participation.

The UN has created also a range of bodies charged with monitoring state compliance with international commitments relevant for the protection of minorities. These include the Commission on Human Rights; the Sub-Commission on the Prevention of Discrimination and Protection of Minorities¹⁰; the Committee on Economic, Social and Cultural Rights; and the Committee on the Elimination of Racial Discrimination. A Working Group on Minorities has held regular meetings since

¹⁰ Known as the Sub-Commission on the Promotion and Protection of Human Rights since 1999.

the mid-1990s exploring different ways in which the Declaration and its full implementation by member states can be promoted. In terms of relevant issues for this chapter, for example, at its eleventh session in 2005, the Working Group on Minorities discussed various thematic issues, including the relationship between minorities, self-determination and autonomy and the mainstreaming of minority rights in programmes and strategies to achieve the Millennium Development Goals.¹¹

The main thing to notice here is that these are all instances of *individual rights* conferred to members of ethnic minority groups (for instance, MRR mechanisms).¹² In other words, territorial solutions and power-sharing arrangements are not mentioned explicitly in these general policies and provisions.

This does not mean, however, that the UN never supports such mechanisms. Specific missions have demonstrated a wider array of UN-supported mechanisms for ethnic conflict settlement than suggested by the general policies. Apart from the missions in the Western Balkans, which are discussed in more detail below, the UN Plan for Cyprus, the involvement of the UN in the conflict settlement in Bougainville (Papua New Guinea), UN facilitation of Georgian-Abkhaz negotiations and elsewhere, underline the organization's practical commitment to achieve sustainable conflict settlements that respect human and minority rights, and include, where appropriate, provisions for power-sharing and territorial autonomy.

B. European Union

Despite its frequent rhetoric of democracy and minority protection, especially in the negotiations leading to the 2004 enlargement, the EU “has not developed a specific, legally-binding instrument on ‘minority rights’” and “a comprehensive minority policy has been lacking”.¹³ At most, it is possible to derive some provisions for these issues, and a general approach to ethnic conflict, from the EU treaties.

The key to this are some treaty references to the European Convention for Human Rights and Fundamental Freedoms (1950). Article 14 of this Convention (on the “Prohibition of Discrimination”) states that:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion,

¹¹ Report of the Working Group on Minorities on its eleventh session, Geneva: UN, 30 May to 3 June 2005 (E/CN.4/Sub.2/2005/27).

¹² Thornberry and Estébanez, *Minority Rights in Europe*, *supra* n. 9, 14-5.

¹³ Thornberry and Estébanez, *Minority Rights in Europe*, *supra* n. 9, 19.

political or other opinion, national or social origin, *association with a national minority*, property, birth or other status (authors' emphasis).

References to this Convention appear in the Treaty on the European Union (1992), Article 6, and the Treaty of Amsterdam (1997), Article 13. The latter states that:

Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council ... may take appropriate action to combat discrimination based on sex, racial or *ethnic origin*, religion or belief, disability, age or sexual orientation (authors' emphasis).

On the basis of this anti-discrimination Article, the Commission generated a Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Furthermore, in 2000, a Charter on Fundamental Rights of the European Union was agreed among the member states, which included a similar non-discrimination clause, and required that the "Union... respect cultural, religious and linguistic diversity."

Thus, the standard setting of the intergovernmental institutions of the European Union has been relatively limited. On the other hand, it appears that the European Parliament has been slightly more active in this area. So far, it has passed four resolutions concerned specifically with minority rights issues: Resolution on a Community Charter of Regional Languages and Cultures and on a Charter of Rights of Ethnic Minorities (1981), Resolution on Measures in Favour of Linguistic and Cultural Minorities (1983), Resolution on the Languages and Cultures of the Regional and Ethnic Minorities in the European Community (1987), and Resolution on Linguistic and Cultural Minorities in the European Community (1994). In addition, other resolutions of the Parliament in areas as diverse as human rights policy, cross-border cooperation, international development aid, and foreign and security policy make frequent references to the need for respect of human and minority rights.

However, this relatively weak legal basis for minority protection within the EU has not stopped the organization from taking a more proactive stance in its external policies. Following the collapse of communism in Central and Eastern Europe, minority protection was one of the criteria adopted for the recognition of new states. The Declaration on the Guidelines on Recognition of New States in Eastern Europe and the Soviet Union of December 1991 made it explicit that recognition of new states by the then European Community was dependent upon "guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the Conference on Security and Cooperation in Europe."

Another initiative followed with the Pact on Stability in Europe (1993-1995). Aimed at establishing a range of bilateral treaties and declarations providing for good-neighbourly relations between countries in Central and Eastern Europe, the resulting treaties included, where relevant, provisions for the protection of minorities, permissible levels of kin-state support and cross-border contacts between members of minorities and their ethnic kin abroad.¹⁴

Finally, minority rights and protection issues have played a prominent role in the EU enlargement process. The most important pronouncement of its conditionality policy in relation to minority rights and protection issues came in the form of the so-called Copenhagen Criteria (1993), which demanded that candidate countries, amongst other things, “be a stable democracy, respecting human rights, the rule of law and the *protection of minorities*”.¹⁵

While the wording of the EU’s external policies towards minority rights and protection issues is as vague as its internal provisions, there can be little doubt that externally the EU has promoted higher standards and endorsed policies that go well beyond what is legally required from its own member states.¹⁶ Moreover, the EU’s commitment to finding and encouraging such settlements can be seen to stretch beyond Europe. Most recently, the organization backed a successful mediation initiative by former Finnish President Martti Ahtisaari in Indonesia’s Aceh province and supported the North-South settlement in Sudan, both of which included elements of power-sharing and autonomy alongside more general minority rights provisions. Although ultimately not (yet) successful, the EU also endorsed the UN “Annan” plan for Cyprus providing for a bi-federal, reunited Cyprus in which Greek and Turkish Cypriots would have shared power in the centre.

C. Council of Europe

The Council of Europe was founded in 1949 as an organization for intergovernmental and parliamentary cooperation. Its basic aim has been the promotion of democracy and defence of human rights. It now has 46 member states and, since 1989, it has developed as, amongst other things, a human rights watchdog for post-communist states and a provider of assistance for legal and constitutional reforms (as a “guardian of democratic security”).¹⁷ The main CoE decision-making body

¹⁴ C.f. H.-J. Heintze, “Bilateral Agreements and Their Role in Settling Ethnic Conflicts”, in: Schneckener and Wolff, *Managing and Settling Ethnic Conflicts*, *supra* n. 7.

¹⁵ Emphasis added.

¹⁶ This, however, does not imply that conflict settlement mechanisms endorsed and promoted externally by the EU do not exist within the EU at all. On the contrary, the cases of Belgium, South Tyrol and Northern Ireland demonstrate that power-sharing and territorial solutions have been accepted by EU member states confronted with challenging examples of ethnic conflict.

¹⁷ For these and further basic facts, see the CoE website (www.coe.int).

is the Committee of Ministers (CoM), which consists of the Foreign Ministers of the member states. Other bodies are the Parliamentary Assembly, with representatives of member state parliament, and the Congress of Local and Regional Authorities (CLRA), which represents subnational authorities from the member states. A final relevant CoE component is the so-called Venice Commission, a committee of experts established in 1990, which provides advice and opinions on constitutional issues. This advice has been influential in certain cases, and the Commission has paid particular attention to countries suffering or emerging from ethnic conflicts.

As a body focused on defending human rights, it is probably not surprising that CoE has focused some attention on minority rights and interethnic relations. However, the intergovernmental (CoM) level started addressing these issues relatively late, lagging behind other organizations such as OSCE. The Parliamentary Assembly and CLRA, on the other hand, have been promoting these issues for a long time.¹⁸

The central aspect of CoE's focus on ethnic minority issues is the Framework Convention for the Protection of National Minorities (FCNM). The decision to develop this Convention was made in 1993, and it entered into force in 1998. It has now been ratified by 37 member states, and has significance beyond the CoE.¹⁹ As Phillips summarizes:

The Framework Convention for the Protection of National Minorities ... is the first ever legally binding multilateral instrument devoted to the protection of national minorities. It is one of the most comprehensive treaties designed to protect the rights of persons belonging to national minorities. Parties to this convention undertake to promote the full and effective equality of persons belonging to minorities in all areas of economic, social, political and cultural life together with the conditions that will allow them to express, preserve and develop their culture and identity.²⁰

Although its implementation and monitoring relies considerably on state governments themselves, FCNM is judged to have been reasonably successful so far.²¹

¹⁸ For an extensive overview of all facets CoE's focus on ethnic minority issues, see Thornberry and Estébanez, *Minority Rights in Europe*, *supra* n. 9.

¹⁹ For example, the EU has sometimes indicated to applicant states that ratification of FCNM is a condition to meet the Copenhagen criteria for EU membership.

²⁰ A. Phillips, "The Framework Convention for the Protection of National Minorities (FCNM)", Council of Europe (ed), *Mechanisms for the Implementation of Minority Rights: Minority Issues Handbook 2*, Strasbourg: Council of Europe Publishing, 2004, 109.

²¹ Phillips, "The Framework Convention", *supra* n. 20; M. Weller, "Enforced Autonomy and Self-governance: The Post-Yugoslav Experience", in: Weller and Wolff (eds), *Autonomy and Self-determinations*, *supra* n. 7.

FCNM covers a wide range of issues, such as non-discrimination; the promotion of conditions favouring the preservation and development of culture, religion and language; access to and use of media; use of the minority language in private and in public; topographical names in the minority language; the learning of, and instruction in, the minority language; freedom to set up educational institutions; participation in public life; and the prohibition of forced assimilation. Many of these issues can be seen as basic human rights, and FCNM naturally is consistent with CoE's much older European Convention on Human Rights (1950). CoE has also adopted a Languages Charter, which sets out criteria for language provisions.

The main thing to notice about these provisions is that they are all based on an *individual rights* approach (that is, these are all instances of the MRR mechanism). Indeed, any mention of 'autonomy' or territorial solutions is avoided.²² Thus, such solutions are not part of the official CoE 'agenda' on the management and regulation of ethnic relations. This does not mean, however, that such solutions have not been discussed in CoE. In fact, the Parliamentary Assembly and especially CLRA have regularly endorsed and promoted federalism, territorial autonomy and decentralization as promising mechanisms for protecting the interests of ethnic minorities.²³ This has been important in raising awareness of such possible solutions, but the Committee of Ministers has not yet endorsed these resolutions and recommendations.

CoE's mechanisms for enforcing these principles are limited. It relies mostly on monitoring, reporting and dialogue with the member states. However, this is not to say that its normative role (in setting the agenda, providing advice, and so on) can be neglected. And if its criteria and principles are endorsed by other organizations such as the EU, it increases the likelihood that it will have influence. One sanction that CoE does possess is the withholding of membership from applicant states. Although it has used this mechanism on occasion, minority issues have not played a very large role in the process and even the Parliamentary Assembly has not pushed very hard for their inclusion.²⁴

D. OSCE

The Organization for Security and Cooperation in Europe was established (as the Conference on Security and Cooperation in Europe) in the early 1970s as part of the so-called 'Helsinki process'. Its main aim at that time was to facilitate communication and cooperation between the two Cold War

²² Thornberry and Estébanez, *Minority Rights in Europe*, *supra* n. 9: 651-652

²³ Examples are CLRA Resolution 52 (1997) and Recommendations 43 (1998) and 70 (1999); and Parliamentary Assembly Recommendation 1201 (1993), and most recently Resolution 1334 (2003), titled 'Positive experiences of autonomous regions as a source of inspiration of conflict resolution in Europe'.

²⁴ Thornberry and Estébanez, *Minority Rights in Europe*, *supra* n. 9, 633.

blocs. The CSCE/OSCE is a political, purely intergovernmental organization focused on security issues, but based on a notion of ‘security’ which has broadened considerably over time. Its agreements and documents are based on political consensus and, as such, are not legally binding. The main OSCE decision-making body is the Permanent Council, which consists of representatives of the member state governments.

Although there was a statement on minority rights in the 1975 Helsinki Accords, this was not a significant issue at the time, and was clearly subordinated to ‘hard’ security issues such as arms control.²⁵ Only in the late 1980s, near the end of the Cold War, would ethnic minority issues gain some prominence. The Copenhagen Document of 1990, which was the conclusion of a high-level CSCE conference on the ‘human dimension’ of its work, increased the salience of minority issues considerably, and served as inspiration for the work of other organizations (such as CoE’s FCNM). This document dedicates a whole chapter to minority issues, and contains provisions regarding the promotion of the identity of minorities; language rights of minorities; the right of cross-border contacts; the right to participate effectively in public life; and the right to maintain one’s own educational, cultural and religious institutions. For the most part, subsequent declarations and documents reaffirmed these minority standards.

As was the case for the other IOs surveyed above, virtually all these guidelines and standards are *individual rights* (MRR mechanisms). While these mechanisms clearly dominate the official OSCE policy, there are more references and discussions of territorial solutions (TS mechanisms) in their documents than in those of other IOs. For example, the Copenhagen Document includes (in Art. 35) the carefully worded statement that:

“[P]articipating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.”

Similarly, the 1991 Geneva report, the result of a meeting of experts on national minorities, includes (in Section IV) as one of the many suggested approaches to accommodating minority interests: “local

²⁵ For an overview of the development of minority rights and ethnic conflict management in the OSCE, see C. Neukirch, K. Simhandl and W. Zellner, “Implementing Minority Rights in the Framework of the CSCE/OSCE”, in: Council of Europe (ed), *Mechanisms for the Implementation of Minority Rights: Minority Issues Handbook 2* (Strasbourg: Council of Europe Publishing, 2004).

and autonomous administration, as well as autonomy on a territorial basis, including the existence of consultative, legislative and executive bodies chosen through free and periodic elections.”

Overall, it should be noted that OSCE has, since the early 1990s, focused primarily on supporting democratization process, institution building and the strengthening of the rule of law in former communist states. Clearly, concerns over minority rights and ethnic relations can be defined as falling within this mandate, should the organization so choose. OSCE has various implementation instruments at its disposal. The first, and least consequential, is a process by which member states can ask the organization to report on or discuss the political situation in another state. Second, OSCE has established field missions in many states. These missions tend to have some significant autonomy to define their focus.²⁶ Through its field activities, OSCE can play a relevant role in conflict settlement processes. Third, the most interesting and innovative mechanism has been the establishment (in 1992) of the Office of the High Commissioner on National Minorities.²⁷ The mandate of the Office of the HCNM essentially is to prevent ethnic conflicts by providing early warnings and trying to mediate if ethnic tensions are growing. It tries to do this by visiting countries, by providing specific recommendations to governments (usually privately), by issuing general (public) recommendations or by engaging in specific projects that might reduce ethnic tensions. Whilst it does not have the power of direct sanction, the HCNM appears to have had a considerable impact in cases such as the Baltics and Ukraine.²⁸

During the course of its work, the Office of the HCNM inevitably has needed to address the appropriateness of particular conflict settlement mechanisms. From the perspective of this chapter, the most noteworthy fact is that, although there are occasional cases in which the Office of the HCNM promoted territorial solutions, these are the exception rather than the rule in its practical work.²⁹ On the other hand, it did endorse the so-called Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999), developed by a NGO in its employment (but not endorsed by the main OSCE decision-making body). These recommendations contain clear statements in favour of the use of territorial solutions (TS mechanisms) (Sections 14, 19-21). To give one example, Section 19 states that:

“States should favourably consider ... territorial devolution of powers, including specific functions of self-government, particularly where it would improve the opportunities of minorities to exercise authority over matters affecting them.”

²⁶ Neukirch *et al*, *Implementing Minority Rights*, *supra* n. 25, 166.

²⁷ The post of High Commissioner for National Minorities has been occupied in recent years by: Max van der Stoel, from 1993 until 2001; Rolf Ekéus, from 2001 until 2007; and Knut Vollebaek from 2007.

²⁸ One way the HCNM has managed to have influence has been by getting the European Commission to condition their relations with (applicant) states on his reports.

²⁹ W. Kemp (ed), *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities*. The Hague: Kluwer, 2001: at 109-111; Neukirch *et al*, *Implementing Minority Rights*, *supra* n. 25, 171.

Thus, OSCE appears to have paid slightly more attention in its general policies to the use of territorial criteria than other IOs have, but this has remained nevertheless on the ‘fringes’ of these policies. On the whole, it conforms to the general pattern that official IO approaches focus almost exclusively on individual rights for members of ethnic minorities.

V. INTERNATIONAL ORGANIZATIONS AND ETHNIC CONFLICT SETTLEMENT IN THE WESTERN BALKANS

Have the strategies of the international organizations in specific cases of ethnic conflict settlement been informed primarily by the general policies and guidelines discussed in the previous section or are other, more *ad hoc*, options pursued as well? And are there differences between the IOs in this? This section explores these questions in relation to cases in the Western Balkans, in particular, Bosnia and Herzegovina, Kosovo and Macedonia. All three now are governed for the most part on the basis of peace settlements, in the establishment of which the IOs under consideration played an important role. So, this section discusses first the nature of these peace settlements and the settlement mechanisms embedded in them. However, interesting questions remain as to their emphases and strategies in these cases before, and on issues not directly covered in, the settlement. These are discussed in the remainder of this section.

A. Settlements Currently in Place in Bosnia and Herzegovina, Kosovo and Macedonia

The four international organizations considered above have made possible, directly supported and continuously endorsed the settlements achieved in Bosnia and Herzegovina in 1995, in Kosovo in 1999 and in Macedonia in 2001. This dimension of their practical approach to ethnic conflict settlement can be appreciated better once the nature of these settlements is understood in greater detail. As Table 2 illustrates, all three settlements combine different mechanisms, to varying degrees.

Table 2: Conflict Settlement Mechanisms Adopted in Bosnia and Herzegovina, Kosovo and Macedonia

	MRR	PS	TS	BMR
Dayton Peace Accords	X	X	X	X
Constitutional Framework for Provisional Self-government for Kosovo UNSCR 1244	X X ³⁰	X X ³¹		X
Ohrid Agreement	X	X		

1) The Dayton Peace Accords

The Dayton Peace Agreement of 1995 provides the legal foundation upon which the post-war Bosnian state has been constructed. It establishes several layers of authority: principally, the state level, the entity level and the local level. Within the Bosnian-Croat Federation, cantons provide a further layer of authority. All four layers have their competences clearly laid out in the Dayton Peace Agreement, its various annexes and follow-on documents, as well as various subsequent amendments. A significant change to this structure was made in 1997 when the so-called Peace Implementation Council, uniting almost sixty states and governmental and non-governmental organizations involved in the implementation of the Dayton Peace Agreement, decided to endow the Office of the High Representative with the authority to dismiss elected and unelected officials in Bosnia and Herzegovina if they were deemed to obstruct the implementation of the Dayton Peace Agreement and to make legally binding decisions (that is, to pass laws) in any area in which the state or entity parliaments were unable or unwilling to legislate. This established the High Representative, not only as the ultimate arbiter in any cases of difficulties in implementing the Dayton Peace Agreement and in coordinating policy between the institutions it established, but endowed the office with significant legislative and executive powers.

What is striking about the construction of the Bosnian state is the almost excessive degree of decentralization. Powers are very minimal at the level of state institutions. They include foreign

³⁰ Through reference to the Rambouillet Accords.

³¹ Through reference to the Rambouillet Accords.

relations, foreign trade, customs, monetary policy, immigration, international and inter-entity criminal law enforcement, communications infrastructure, inter-entity transportation, air traffic control and inter-entity coordination. Any other power or part thereof, not mentioned explicitly, is allocated by default to the entities which become thereby the sources of original authority. Whereas there is further devolution to cantons and eventually to municipal authorities in the Bosnian-Croat Federation, the Republika Srpska is an almost oddly centralized entity in the context of Bosnia, retaining most powers at the level of the entity government and endowing municipalities primarily with administrative functions in the areas of development, urban planning, budget, local infrastructure and specific local needs of citizens in the areas of culture, education, health and social welfare, and so on.

This particular layering of authority reflects the balance of power within Bosnia and Herzegovina as a whole and within the two entities. The entities gained wide-ranging autonomy in almost all functions of government, including defence (although this is no longer the case) and a significant part of foreign policy and thus were able to assert their independence from a weak central government at the state level. This distribution of power at the state-entity nexus is mirrored within the Bosnian-Croat Federation: cantonal and municipal authorities are strengthened at the expense of the Federation government. Bosnia and Herzegovina can be characterized therefore as an asymmetric federation in the sense that there are significant differences in how authority is layered within each entity.

In the context of the ethnic demography of Bosnia and Herzegovina, this layering of public authority has several implications. Firstly, most powers are located at the interethnically least contentious level—the entity in the case of Republika Srpska, the cantons in the case of the Federation. This institutional design absolves elites from substantive cooperation as significant powers lie primarily at levels where there is significant ethnic homogeneity. Secondly, for this very reason, there is little or no need for segmental autonomy: virtually monoethnic levels of government have authority over (usually segmented) policy areas such as culture and education. Thirdly, because of the degree to which power has been retained at the entity level, especially in the federation, and because of the fact that there remain certain powers in the competence of the state-level institutions, there is a greater need for mandatory horizontal elements of power-sharing (proportionality, qualified majority voting procedures in legislative assemblies, and so on), which are provided for in great detail in the Dayton Peace Agreement and other relevant constitutional documents and their subsequent amendments.

Apart from these provisions for territorial and power-sharing mechanisms, the Dayton Peace Accords also include, in Annex 6, a specific Agreement on Human Rights, which states in its Article 1:

(14) The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in the Annex to this Constitution secured without

discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, *association with a national minority*, property, birth or other status (authors' emphasis).

The international agreements referred to include, among others, the European Charter for Regional or Minority Languages and Framework Convention for the Protection of National Minorities; the International Convention on the Elimination of All Forms of Racial Discrimination; and the International Covenant on Civil and Political Rights; and the Covenant on Economic, Social and Cultural Rights.

Article 2 of the Dayton Constitution for Bosnia and Herzegovina makes specific reference to this Annex:

1. Human Rights. Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. To that end, there shall be a Human Rights Commission for Bosnia and Herzegovina as provided for in Annex 6 to the General Framework Agreement.

It states further that “[t]he rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina” and that “[t]hese shall have priority over all other law” (Article 2-ii). In addition, Article 2 also reiterates verbatim the non-discrimination provision of Annex 6 cited above.

The Republic of Bosnia and Herzegovina, the Republic of Croatia, the Federal Republic of Yugoslavia, the Federation of Bosnia and Herzegovina and the Republika Srpska also agreed on a range of regional confidence-building and stabilization measures, detailed in Annex 1B to the General Framework for Peace. These focus in particular on arms control issues.

In conclusion, then, the Dayton Peace Accords compromise a range of different conflict settlement mechanisms: power-sharing, territorial solutions, minority rights and multi-lateral regimes.

2) The Constitutional Framework for Provisional Self-government for Kosovo

Within the institutional structure that has emerged in Kosovo since 1999, the Special Representative of the Secretary-General of the United Nations (SRSG) retains the full authority given by UN Security Council Resolution 1244. On this basis, the SRSG also retains full decision-making authority regarding any aspect of provisional self-government in Kosovo and can effect unilaterally any change

to the existing Constitutional Framework. Thus, while the powers of the international community in Kosovo are broadly similar to, albeit somewhat more extensive than, those in Bosnia and Herzegovina, the design of Kosovo's self-government institutions is less complex. Apart from the SRSG, a two-layered system provides the backbone for the exercise of public authority in Kosovo: the Kosovo central authority, which has a wide range of competences in almost all sectors of public policy; and the municipalities, which have powers in all areas of *local* administration that are not expressly reserved for the Kosovo Central Authority. This means that there are no explicit territorial mechanisms of conflict settlement foreseen in the provisional constitutional framework. The concentration of Serbs in particular areas of Kosovo in combination with municipal powers, however, does create *de facto* enclaves in which Serbs exercise a reasonable level of autonomy.

Human rights in the constitutional framework are fairly similar to those found in the Dayton Peace Accords. Article 3-i states that “[a]ll persons in Kosovo shall enjoy, without discrimination on any ground and in full equality, human rights and fundamental freedoms” and Article 3-ii places the practice of human rights in Kosovo in the context of:

internationally recognized human rights and fundamental freedoms, including those rights and freedoms set forth in:

- a. The Universal Declaration on Human Rights;
- b. The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
- c. The International Covenant on Civil and Political Rights and the Protocols thereto;
- d. The Convention on the Elimination of All Forms of Racial Discrimination;
- e. The Convention on the Elimination of All Forms of Discrimination Against Women;
- f. The Convention on the Rights of the Child;
- g. The European Charter for Regional or Minority Languages; and
- h. The Council of Europe's Framework Convention for the Protection of National Minorities.

These international instruments are directly applicable in Kosovo (Article 3-iii).

In addition to these more general human rights provisions, Article 4 details the specific right of communities and their members, that is, it provides a clear minority rights regime, listing in Article 4-iv a set of rights and entitlements, including in the areas of language, cross-border contacts, social, economic and political participation, education, religion and media, and the receipt of financial support

for relevant activities. Chapter 9 on the ‘Provisional Institutions of Self-Government’ makes extensive allowances for the use of languages other than Albanian.

Power-sharing mechanisms are also part of the constitutional framework, but in a less specific way than in the Dayton Peace Accords. Following on from the pronouncement in Article 4-v that “Provisional Institutions also shall ensure fair representation of Communities in employment in public bodies at all levels,” there are a range of provisions to ensure adequate participation and representation of members of all communities in the political process. These include the reservation of 20 of the 120 seats in the Assembly for the representation of non-Albanian communities (10 for Serbs, 10 for others); one Serb and one other non-Albanian assembly member are to be members of the presidency of the assembly; seats on the assembly’s budget committee are allocated proportionally, while the Committee on Rights and Interests of Communities is composed of two members from each of the communities represented in the assembly; chairmanships and vice-chairmanships of these and other committees also have to take account of community representation. In addition, and similar to Belgian ‘alarm-bell procedure’, the president of the assembly is required to take seriously objections to bills raised by members of the assembly on the basis of alleged human or community rights violations and facilitate negotiations to achieve an acceptable compromise.

The most explicit requirement for power-sharing is contained in Article 9-iii-6:

At all times, at least two Ministers shall be from Communities other than the Community having a majority representation in the Assembly.

- a) At least one of these Ministers shall be from the Kosovo Serb Community and one from another Community.
- b) In the event that there are more than twelve Ministers, a third Minister shall be from a non-majority Community.

Thus, the Constitutional Framework for Provisional Self-government for Kosovo combines two different conflict settlement mechanisms: human and minority rights regimes and power-sharing.

Other relevant documents also emphasize the regional dimension of the settlement achieved in Kosovo. Thus, for example, UNSCR 1244

[w]elcomes the work in hand in the European Union and other international organizations to develop a comprehensive approach to the economic development and stabilization of the region affected by the Kosovo crisis, including the implementation of a Stability Pact for South Eastern Europe with broad

international participation in order to further the promotion of democracy, economic prosperity, stability and regional cooperation.

c) The Ohrid Agreement

According to the Ohrid Agreement, Macedonia retains its two-layered system of authority. The powers between the two levels—the national government and the municipalities—are divided clearly and municipalities enjoy a substantive degree of autonomy within the system. The national government is the residual source of all public authority in the country. At the local level, 124 municipalities and the capital city of Skopje have enhanced local self-administration powers in a broad range of policy areas. Municipal institutions have competences which include the budget and other financial matters, the establishment and control of public services, institutions and enterprises, and the establishment and supervision of governing and administrative organs at the municipal level. In addition to these two layers of public authority that exist throughout Macedonia, citizens have the opportunity to establish so-called ‘neighbourhood’ self-governments within the municipalities in which they live. Thus, while there is no explicit territorial dimension to the settlement achieved in Ohrid, Macedonia’s ethnic demography with high concentrations of ethnic Albanians in the west of the country and a reform of local authority boundaries, which was part of the Ohrid Agreement, provide for *de facto* autonomy of ethnic Albanians at the local level.

Human and minority rights provisions are enshrined in the Ohrid Agreement in several ways. Article 4 on ‘Non-Discrimination and Equitable Representation’ states that “[t]he principle of non-discrimination and equal treatment of all under the law will be respected completely” and “applied in particular with respect to employment in public administration and public enterprises, and access to public financing for business development.” Equitable representation is envisaged for “all central and local public bodies and at all levels of employment within such bodies” (Article 4-ii), while one-third of the judges of the constitutional court “will be chosen by the Assembly by a majority of the total number of Representatives that includes a majority of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia” (Article 4-iii). This procedure, which is also applied to the election of the public attorney (ombudsman) and of three of the members of the Judicial Council, is one feature of power-sharing provisions in the Ohrid Agreement. The others are so-called special parliamentary procedures. According to Article 5-i, “certain constitutional amendments in accordance with Annex A and the Law on Local Self-government cannot be approved without a qualified majority of two-thirds of the vote, within which there must be a majority of the votes of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.” The same is applied to “[l]aws that directly affect culture, use of language, education, personal documentation, and use of symbols, as well as laws on local finances,

local elections, the city of Skopje, and boundaries of municipalities” (Article 5-iii).

Further minority rights provisions are contained in Article 6 and relate to education and the use of languages, and in Article 7 on ‘Expression of Identity’ which states:

With respect to emblems, next to the emblem of the Republic of Macedonia, local authorities will be free to place on front of local public buildings emblems marking the identity of the community in the majority in the municipality, respecting international rules and usages.

Thus, the Ohrid Agreement is another example of a settlement combining different types of conflict settlement mechanisms: a human and minority rights regime, and provisions on power-sharing.

B. United Nations

The UN provided the framework of most conflict settlement attempts in the Western Balkans throughout the 1990s. Following the failure of regional organizations to prevent and/or stop the violent escalation of conflicts in Croatia, Bosnia and Herzegovina, and Kosovo, it was left to the UN to pick up the pieces afterwards. Throughout this period, the UN’s conflict *management* policies comprised diplomatic initiatives (or support thereof), imposition of sanctions, the use of force and the creation and operation of the ICTY.

Of particular interest from the perspective of the chapter is the UN’s endorsement of various peace initiatives for Bosnia and Herzegovina, including the Vance-Owen Plan of 1993 and the Dayton Accords of 1995, both of which integrated a range of provisions classifiable as minority rights regimes, power-sharing and territorial solutions.³²

A similar pattern of UN activity was visible in Kosovo. The UN supported the Rambouillet process and draft agreement, and provided subsequently, through its own Resolution 1244, the framework for the interim administration of Kosovo, which—as we have seen—while leaving power ultimately in the hands of the UN SRSG, also provides for a mixture of minority rights regimes, power-sharing and

³² For details of the Vance-Owen Plan, see Report of the Secretary-General on the activities of the International Conference on the Former Yugoslavia New York: UN, 26 March 1993 (S/25479); for the Dayton Accords, see Letter dated 95/11/29 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General. New York: UN, 30 November 1995 (S/1995/999).

territorial solutions.³³

In Macedonia, the UN sponsored a military observer mission charged with preventing the spill-over of violence from other conflicts in the region,³⁴ but generally took more of a backseat to the involvement of the EU and NATO, especially during the crisis in 2000/2001, by which time the EU (initially supported by NATO) was finally in a position to take a lead role in conflict resolution itself. Nevertheless, the UN endorsed the EU/NATO-brokered Ohrid Agreement, which presented a framework for resolving the self-determination conflict in Macedonia by providing for subsequent reforms in the country, including devolution of competences to local authorities.³⁵

The case of Croatia, although not central to this argument, presents a somewhat different case for the role played by the UN in conflict settlement attempts in the region. While minority rights regimes were and remained central to the UN's efforts, here, by contrast to the situation in Bosnia and Herzegovina and Kosovo, power-sharing and territorial solutions were less prominent. In fact, the UN supported the establishment of a unitary Croatian state, even though it did so in the case of Eastern Slavonia by means of an agreed and cautious process of the transfer of authority back to Croatia through temporal, internationalized autonomy.³⁶

Thus, the UN has promoted through its policy on the ground, especially through its active involvement in and support of the settlements in Bosnia and Herzegovina, Kosovo and Macedonia, a range of different conflict settlement mechanisms, principally human and minority rights regimes and forms of power-sharing. It has also endorsed a regional approach to the situation in the Western Balkans. Only in Bosnia and Herzegovina, and temporarily in Croatia, has it actively endorsed territorial mechanisms.³⁷

³³ For details of Security Council Resolution 1244, see Security Council Resolution 1244 (1999) on the deployment of international civil and security presences in Kosovo, New York: UN, 10 June 1999 (S/RES/1244[1999]). Also see UNMIK Regulation UNMIK/REG/2001/9. Prishtina: United Nations Interim Administration Mission in Kosovo, 15 May 2001 (Constitutional Framework for Provisional Self-Government).

³⁴ Initially established as UN Protection Force (UNPROFOR) in 1992, the Security Council decided in 1995 to rename the mission United Nations Preventive Deployment Force (UNPREDEP). Subsequently NATO established a mission with a similar mandate.

³⁵ See Security Council Resolution 1371 (2001) on implementation of the Framework Agreement in the former Yugoslav Republic of Macedonia. New York, UN, 26 September 2001.

³⁶ C.f. Weller, "Enforced Autonomy and Self-governance, *supra* n. 21: 58f.

For details of the "Basic agreement on the region of Eastern Slavonia, Baranja and Western Sirmium," see Letter dated 95/11/15 from the Permanent Representative of Croatia to the United Nations addressed to the Secretary-General, New York: UN, 15 November 1995, Annex (S/1995/951).

³⁷ Note that Resolution UNSCR on Kosovo 1244 emphasises the territorial integrity of Serbia and Montenegro and reaffirms "the call in previous resolutions for substantial autonomy and meaningful self-administration for Kosovo."

C. European Union

Throughout most of the 1990s, the EU was almost entirely unsuccessful in preventing or settling any of the ethnic conflicts in the Western Balkans. This does not mean that all blame for this failure can be said to fall squarely at the feet of the EU itself—while it lacked, during the 1990s, the institutions and policy mechanisms that have enabled it to become a more credible and assertive international actor in the 21st century, ultimately it was decisions by local political leaders and their followers in the Balkans that led to the escalation of violence there.

As none of the EC-sponsored or supported initiatives in the early 1990s managed to prevent the massive bloodletting, especially in Bosnia and Herzegovina, it was only after a decisive, UN-mandated NATO operation that the Dayton Peace Agreement ended the war in 1995. Establishing a complicated asymmetrical federation, all three main communities in Bosnia and Herzegovina have since enjoyed substantial territorial and political autonomy, constrained only by the extensive powers accorded to the High Representative for Bosnia and Herzegovina. The EU has supported principally the full implementation, as well as gradual reform of the Dayton Accords, not least through significant financial aid (of €2.5 billion between 1991 and 2004) and by appointing its own Special Representative for the country, who is now at the same time also the High Representative.

At the same time, the EU adopted a broader regional approach as early as 1997. As part of this process, political and economic conditionality was established for the development of bilateral relations, including progress on the development of the Dayton Accords. This was followed in 1999 by the launching of the Stabilization and Association Process which offered a clearer prospect of integration into EU structures for all countries of the region, again dependent upon them meeting a range of conditions. These were spelled out in detail in 2000 in the publication of the so-called EU Road Map. Before the EU would even commission a feasibility study for the opening of negotiations on a Stabilization and Association Agreement, Bosnia and Herzegovina had to undertake the 18 “essential steps”, which included demands for stronger engagement at all levels to create conditions for sustainable returns (of minorities) and demands for the implementation of decisions of the human rights institutions. By 2003, Bosnia and Herzegovina was deemed to have fulfilled the conditions of the Road Map, and the European Commission conducted a feasibility study. This identified 16 priority reforms, including a demand that outstanding legislation supporting refugee returns be adopted and brought into force.

Apart from measures aimed directly at the accession of Bosnia and Herzegovina, the EU has also taken on an increasingly active role on the ground – establishing an EU police mission (following on

from a UN-led one) and conducting Operation Althea (taking over from SFOR) to provide the security component of international assistance according to the Dayton Accords. Through the European Initiative for Democracy and Human Rights, the EU has also continued to play a significant role in supporting projects that promote the rule of law, respect for human rights, protection of minorities and political pluralism.

As far as Macedonia is concerned, violent conflict was avoided throughout the 1990s and the country was the first among the Yugoslav successor states to conclude a Stabilization and Association Agreement with the EU in 2001. The EU, together with NATO, also took a lead role in securing the Ohrid Agreement of August 2000, which ended the violent confrontation between ethnic Albanians and Macedonian security forces and provided for substantive reforms and improvements in the situation of the Albanian minority in the country. The EU has supported the implementation of this agreement politically and financially (the latter as part of its total commitment of over €600 million to the country since 1992). Similar to Bosnia and Herzegovina, the EU conducted a military security operation between March and December 2003 (following on from a NATO-led operation in accordance with the Ohrid Agreement). Subsequently, the EU has established a police mission in the country (Operation Proxima), also in line with provisions made in the Ohrid Agreement.

Along with all countries of the Western Balkans, Kosovo was offered a European perspective by the EU Council at Thessaloniki in 2003, in other words, closer association with, and eventual membership in the EU became real possibilities. In the current process of reviewing governance standards in Kosovo and the likely subsequent final status negotiations the EU has emphasized that “Kosovo’s Status must be based on multi-ethnicity; the protection of minorities; [and] the protection of cultural and religious heritage,” that “the solution of Kosovo's Status must strengthen regional security and stability” which means that “there must be no change in the current territory of Kosovo (i.e. no partition of Kosovo and no union of Kosovo with any country or part of any country after the resolution of Kosovo's status).” Clearly, this does not exclude an independent Kosovo, even though the EU is still formally committed to UNSCR 1244 which reaffirms substantial autonomy and meaningful self-administration for Kosovo as a desirable settlement of the conflict.

Similarly to the UN, the EU has promoted through its policy statements, and more so through its political practice on the ground, its active involvement in and support of the settlements in Bosnia and Herzegovina, Kosovo and Macedonia, a range of different conflict settlement mechanisms. Again, these were limited principally to human and minority rights regimes and forms of power-sharing. The EU has championed a regional approach to the situation in the Western Balkans through the Stability Pact for Southeastern Europe and the Stabilization and Association Process. Only in Bosnia and

Herzegovina, through its support for the Dayton Peace Accords, has it endorsed explicitly territorial mechanisms.

D. Council of Europe

The Council of Europe has not been involved as directly or as heavily in the conflicts in the Western Balkans as the other IOs under consideration here. In terms of direct presence on the ground, it has a few offices and has been engaged in legal training activities and the establishment of the Human Rights chamber in Bosnia and Herzegovina. On the whole, its involvement consists mostly of recommendations, advice, and some diplomatic pressure, and is focused almost entirely on human rights and minority rights issues (MRR mechanisms). For example, a 1992 Committee of Ministers Resolution urges Yugoslavia to respect the rights of its minorities and in 1998, CoM refused to discuss possible CoE membership of Yugoslavia because of the Kosovo issue. Similarly, the Parliamentary Assembly adopted several Recommendations on the Kosovo issue (from 1998 to 2002) along these lines.³⁸ CoE also supports the Dayton Accords (and was involved in its human rights area), Stability Pact and its emphasis on regional protection of minority rights, and UNSC Resolution 1244 on Kosovo.

Possibly more interesting are the activities of the Venice Commission, which receive considerable attention from other actors involved in the Western Balkans cases. Several of its opinions touch, directly or indirectly, on existing conflict settlement mechanisms. For example, in a recent opinion on the constitutional situation in Bosnia, the Commission suggests undermining some of the existing power-sharing and territorial arrangements in order to make the Bosnian state more efficient, by strengthening the central state and keeping the Entities but with somewhat reduced powers.³⁹ In other opinions, it recommends more centralization in the Bosnian educational system as well.⁴⁰ In various opinions (for example, in commentaries on constitutional drafts and language laws), the Commission has stressed the importance of minority rights in Bosnia. Besides this emphasis on minority rights, it is hard to detect (without fully analysing many of its opinions and comments in detail) a consistent approach to other conflict settlement mechanisms in the Commission's work.

It is clear that the Council of Europe focuses primarily on minority rights mechanisms (MRR) in its approach to ethnic conflicts. However, it should not be forgotten that it has supported—and is

³⁸ For further details, see Thornberry and Estébanez, *Minority Rights in Europe*, *supra* n. 9, 197, 234, 422-42.

³⁹ Venice Commission, Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative, CDL-AD(2005)004, 11 March 2005.

⁴⁰ For example, Venice Commission, Opinion on the Draft Framework Law on Higher Education in Bosnia and Herzegovina, CDL(2003)168, 10 October 2003.

involved in various ways with—the Dayton Accords, the Stability Pact and UNSCR 1244, and, thus, engages indirectly with the other three types of settlement mechanisms too.

E. OSCE

As indicated in the previous section, two elements of OSCE operations in ethnic conflict management and settlement should be considered: the OSCE field offices (their mandates and activities) and the HCNM.

The mandate of the OSCE mission in Bosnia and Herzegovina was established in the Dayton Accords, and focused on the rebuilding of a democratic society. As a result, the OSCE has been involved in election monitoring (until 2000), public administration reform, education reforms and security cooperation. Although it is forced to work within the territorial structure established in the Dayton agreements, in terms of conflict settlement mechanisms it appears to be focused mainly on increasing the amount of power-sharing and integration in Bosnia (in other words, on building up the state level), which follows the general objectives and directions of the High Representative and most of the international community. For example, it has overseen the integration of the two entity armies into a state army, and has been trying to establish a more integrated educational system.

In Kosovo, the OSCE mission is one of the pillars of UNMIK, and has been the lead agency for institution building in the territory (initially, it was thought that it might be the overall lead agency but the UN took this responsibility in the end). In practice, this has meant that it is involved in supporting NGOs and political parties, media issues, judicial reform and the establishment of the rule of law, and the development and training of local police forces. It has also been involved in the establishment and improvement of local self-government. Although this has possible implications for minorities, these reforms do not appear to be conducted with territorial conflict settlement criteria in mind.

The OSCE Mission in Macedonia was just a ‘spillover monitoring mission’ from 1992 until 2001, tracking the possibility that conflicts in Bosnia and then Kosovo might destabilize the country. As such, it was not involved actively in conflict settlement activities, although it supported the HCNM’s activities (see below). Since the Ohrid agreement, the mission has been involved in the promotion of minority integration into the police and public administration, and the building of institutional capacity in the public sector.

Although the Office of the HCNM was created partly with the situation in the Balkans in mind, in the

1990s the High Commissioner was only selectively involved in the cases there.⁴¹ For example, he was not involved in Bosnia, as there was, at first, already a conflict going on (while the HCNM is related primarily to conflict *prevention*), and then an abundance of IOs involved. On the other hand, the High Commissioner spent a considerable amount of effort and time on Macedonia, a relatively neglected case early on and one where tensions could lead to conflict. The focus here was on promoting the rights of the Albanian minority primarily (especially on the use of language and educational issues), and attempts to integrate them into society. Thus, this was a combination of MRR and PS mechanisms. There was some emphasis on local self-government, but territorial solutions were downplayed for the most part, although the HCNM monitored the decentralization process after the Ohrid agreement.⁴²

In Kosovo, the High Commissioner became somewhat involved, although neither the Serbs nor the Kosovars were particularly keen on this (in fact, he was formally involved in a capacity other than that of HCNM). Here, emphasis was on a territorial issue, namely, the restoration of Kosovo's autonomy within the Federal Republic of Yugoslavia.⁴³ In addition, he focused on the rights of the Albanians and issued numerous warnings that conflict was about to break out.⁴⁴

The OSCE has been one of the IO pillars of the Stability Pact (1999), and adheres to the conflict settlement principles – which focus mostly on minority rights – incorporated within them. Thus, overall, the emphasis of the various OSCE actors in these cases is centred primarily on power-sharing and minority rights issues, but—through its involvement in broader initiatives—in the other areas as well.

VI. CONCLUSIONS

This article has discussed the approaches and agenda of international organizations involved in the settlement of ethnic conflict, with a focus on the Western Balkans. Being mostly descriptive, it has raised at least as many questions as it has answered and more definitive conclusions will have to await

⁴¹ J. Packer, "The Role of the OSCE High Commissioner on National Minorities in the Former Yugoslavia", *Cambridge Review of International Affairs* 12(2), 1999: 169-184; Kemp, *Quiet Diplomacy*, *supra* n. 29.

⁴² S. Holt, "The Activities of the OSCE High Commissioner on National Minorities January 2001 – May 2002", M. Weller *et al* (eds), *European Yearbook of Minority Issues Vol. 1, 2001/2* (The Hague: Kluwer, 2001/2).

⁴³ Kemp, *Quiet Diplomacy*, *supra* n. 29.

⁴⁴ The HCNM was also actively involved in Croatia after the Dayton Accords in 1995, where he focused mostly on the situation of refugees and displaced persons (MRR issues). In recent years, he has also been involved in the debates about the future of Serbia & Montenegro, again focusing mostly on minority rights issues.

more detailed empirical research. It is possible, however, to draw some tentative conclusions from the above.

First, although the involvement of all the organizations discussed in the larger settlements in the countries studied here (Dayton, UNSCR 1244, Ohrid) means effectively that there is a strong convergence in conflict settlement approaches among these IOs, it is possible nevertheless to detect some interesting differences underlying this convergence. The Council of Europe and OSCE focus primarily on human and minority rights, although the latter also advocates occasionally various power-sharing mechanisms. The UN has a general focus on minority rights but usually gets involved only when the situation has deteriorated, and then appears to be willing to apply a variety of mechanisms. The EU is also willing to use different mechanisms, although it appears to try to avoid territorial mechanisms. Why these differences? The nature and capabilities of each organization are surely part of the answer but there are deeper questions also. Do these differences reflect an intended 'division of labour' between the organizations—as one would expect perhaps given their largely overlapping memberships—or do they reflect institutional autonomy and a lack of coordination?

Second, it is clear that only the protection of minority rights is widely acceptable as a conflict settlement mechanism. Other mechanisms are used in certain situations but are not included in the general policies and agendas of the IOs. One reason for this is probably the politically sensitive nature of mechanisms such as power-sharing and territorial arrangements. These mechanisms infringe considerably on a state's sovereignty, and might 'come back to haunt' any state that agrees to them but itself has ethnic minorities. In this context, it is probably no coincidence that the parliamentary bodies in the EU and CoE are more willing to endorse these mechanisms than the intergovernmental bodies. In specific situations (as opposed to agreeing to general principles), states are sometimes willing to implement these mechanisms.

Moreover, although there seems to be a prevailing trend to endorse human and minority rights regimes above all else, usually in combination with some sort of power-sharing mechanisms, the fact that only Bosnia and Herzegovina presents a formally institutionalized territorial solution (alongside a human and minority rights regime and power-sharing mechanisms) does not automatically mean that IOs (and their member states) now reject categorically territorial solutions. Critics of federal and consociational conflict settlement mechanisms usually point to the difficulties experienced in Bosnia and Herzegovina and to the absence of such mechanisms in Kosovo and Macedonia to deduce a trend towards majoritarian democracy with safeguards for minorities. Yet, we would contend that this is not the only conclusion that can be drawn. Should the final status of Kosovo be anything but independence, it is inconceivable that Kosovo would not enjoy far-reaching, substantive and

meaningful autonomy within a reconstituted post-Yugoslav federation. The fact that formal territorial arrangements are absent in Kosovo and Macedonia matters less in practice than on paper: the respective significant minority communities (ethnic Albanians in Macedonia and ethnic Serbs in Kosovo) are concentrated territorially and thus benefit, by default, from the substantial devolution of power from the centre to the local government level.

Third, another conclusion that can be drawn is that the Western Balkans is an example of the increasing 'regionalization' of conflict resolution. In Bosnia and Herzegovina, Kosovo and Macedonia, European organizations have played a crucial role in bringing about conflict settlements and increasingly have taken a lead role in their implementation and operation. Especially the EU, once it developed appropriate capabilities by the early 2000s, took over a lot of the areas covered previously by other IOs (for example, security responsibilities from NATO in Bosnia and Herzegovina and Macedonia). Kosovo stands out in this trend but it is contended that a case can also be made here that underlines the general trend mentioned above: the Kosovo crisis began before the EU was fully ready, so the current structures are in a sense left-overs from an era in which the EU was unable to take on major commitments. In addition, and in contrast to the other cases, the outcome of final status negotiations in Kosovo is still more uncertain (at least in terms of its timeline) and hence there is more at stake which brings a whole host of other actors into the game, thus making the UN a more important player. There is, of course, also the issue of UNSCR 1244 which makes Kosovo a *de jure* UN case, but as with Bosnia and Herzegovina it is argued that the EU is going to play a more significant role in Kosovo in the future (if one examines the lead personnel of UN, OSCE, NATO and troop-contributing nations, it can be seen to be doing this indirectly already). The involvement of OSCE and NATO in Kosovo also underlines the regionalization trend, bearing in mind in particular that the OSCE was meant to be the lead IO in Kosovo until the very last minute.

A final point that emerges from the discussion of the precise nature of the settlements currently in place in the three cases discussed is that they are examples of complex power-sharing in action, in that they combine MRR, TS, PS and BMR, albeit to differing degrees. One question that can not yet be answered is whether this is by design or by accident, and future research will have to focus, amongst other things, on determining the extent to which a certain *ad hoc*-ism (or case-by-case approach) still prevails among policy makers in IOs in their dealings with specific conflict situations or whether there is an emerging pattern of complex power-sharing arrangements applied to ethnic conflicts more generally, albeit with minor context-dependent differences.

