

## **Bachelor thesis**

# **The EU's Enlargement Strategy on the Western Balkan – the case of Kosovo**

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## Abstract

This case study of Kosovo tries to establish how conditionality as main tool of the enlargement strategy of the European Union is influencing Kosovo. The European Unions is trying to solve the conflicts in former Yugoslavia by offering these countries a membership perspective. This study tries to judge in how far this is working for Kosovo, one of the most difficult cases for the enlargement strategy. It tries to answer the question in how far Kosovo is complying with EU conditions. Kosovo is compared to Montenegro in this study to see in how far nation-building and the status issue influence the Europeanization of Kosovo. The study is based on an analysis of EU documents of the Enlargement process: mainly the European Partnership agreements and yearly progress reports by the European Commission.

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## Introduction

The question addressed in this research is: To what extent are Kosovo and Montenegro complying with EU conditions?

Is the EU, as investing a great deal of money and personnel in Kosovo, having big influence on Kosovo and can it secure reforms which open up a future for Kosovo in the European Union? Kosovo as newly created, contested state which is still in the making is a special case for EU foreign policy and its enlargement strategy on the Western Balkan. The paper aims to investigate in how far the enlargement strategy and conditionality as its main tool are working for this special case.

Kosovo is compared to Montenegro in this study another country that is part of the enlargement process on the Western Balkan. It seceded from Serbia as well but in a peaceful and regular manner. It is thus a good case to judge in how far the contested status and the fact that Kosovo is a young state under nation-building efforts influence the working of EU conditionality.

Conditionality has been described as the most successful tool of EU foreign policy by the European Commission. It has been used and developed mainly with the enlargement of central and eastern European countries in 2004. It was possible to reach profound transformations and reforms in these countries during the accession negotiations. The EU uses the prospect of its membership to pressure for reforms which countries have to fulfill in order to access to the European Union.

Yugoslavia became a problem of EU foreign policy after the dissolution of the country in the early 1990's and the wars following. The EU was initially unable to deal with the issue and US intervention was necessary to reach a peace agreement in Dayton in 1995. But some issues remained unresolved as for example the status of Kosovo and Montenegro. Both countries seceded from Serbia a few years later albeit under very different circumstances. While Montenegro seceded peacefully, Kosovo declared independence unilaterally after an armed conflict and NATO intervention (Craig Nation 2003).

The conflict in former Yugoslavia showed that the European Union was lacking the tools to deal with crises such as this and EU conditionality became the main tool of EU foreign policy in this region. The EU tries to overcome nationalistic conflicts and stabilize the region by offering EU membership. This happens through transfer of EU rules and norms to these countries.

Goals and steps have been agreed between the EU and these countries on their road towards EU membership. Visa-free travel and the beginning of accession negotiations are used as first incentives for countries to commit to reforms pushed for by the EU.

In Kosovo conditionality has been used by the European Union as well as the United Nations. Nation-building in Kosovo is carried out under a UN-resolution since the NATO intervention in 1999. The UN has led the nation-building efforts in cooperation with other organizations. Even though the UN resolution is still in place the EU has taken over most of the tasks from the United Nations. It tries to help the Kosovo authorities to build a functioning state (UNMIK 2008).

After the independence of Kosovo, conditionality becomes more important and one of the principle ways of the European Union to influence Kosovo and to push for reforms in Kosovo which wants to become a member of the European Union. Actions have been formulated in the "European Partnership for Kosovo" in 2004. Progress is monitored with the "Stabilization and Association process Tracking Mechanism". The commission issues annual reports on the progress in Kosovo.

For Montenegro conditionality has been applied first as a member of the Republic of Yugoslavia. After its independence the approach has been transferred to Montenegro as independent and sovereign state.

The paper wants to address the question how the conditions of the EU influence the nation and institution building in Kosovo. How much pressure is the EU asserting on Kosovo and in how far is Kosovo willing to follow the EU.

To answer the overall question "To what extent are the two countries complying with EU conditionality?" several sub-questions have to be posed. Montenegro serves as a comparative case as it seceded from Serbia as well but under different circumstances. It constitutes an accepted and functioning state for which the enlargement strategy is also applied.

The first and foremost question is what are the conditions set for these two countries? How has the EU developed conditionality as a tool of foreign policy and how is it applied? It builds the basis of the enlargement strategy to reach transformations in candidate countries.

The second question is how are conditions implemented in the two countries? What strategies are used to comply with EU conditionality?

The third sub-question is what are the differences between the two cases studied? Kosovo and Montenegro seceded under very different circumstances from Serbia and differ also in the fact that Montenegro is an established and accepted state. Therefore the EU strategy might also be different for the two countries as it is easier to open up a clear and credible membership perspective for Montenegro compared to Kosovo.

This leads to the fourth question which is: How can the differences be explained if there are any?

This question helps to explain the specialties of the Kosovo case compared to other "ordinary" cases of EU enlargement.

After having answered the question what the conditions actually are, how they are applied on the Balkans and in the special cases of Kosovo and Montenegro and after having established and explained the differences between the two cases we can actually judge the influence of EU conditionality and Europeanization on nation-building efforts in Kosovo in comparison to Montenegro. It is possible to explain the differences between the special case of Kosovo compared to other cases in the Balkans and thus answer the main question. We can give a clearer picture of the workings of conditionality in the Balkan region. Thus the question is a descriptive question and transfer of knowledge or inference from this case to others is not intended. The case study should rather help to describe and understand this special case. The situation in Kosovo differs from that of many other cases of enlargement as it is a newly created and contested state. This might have also implications for the enlargement strategy and the workings of conditionality. As the region differs significantly from previous experiences also the workings of the tools of EU enlargement might be different.

The research is based on the analysis of government documents. A program on its road towards Europe has been agreed for Kosovo in June 2004 in a European Partnership agreement with Serbia including Kosovo as defined in United Nations Security Council Resolution 1244. This agreement has been renewed twice and serves as the basis for EU conditionality. Progress is measured by annual commission reports. These documents build the cornerstone of the analysis. They are supplemented by reports of other governmental and non-governmental organizations. The theory is derived from the literature on EU enlargement and conditionality as its main tool. It relies mainly on a rational-choice theory for the explanation of the workings of conditionality. The study tests this framework and suggests some improvements for the case of

Kosovo. The situation in Kosovo differs from that of many other cases of enlargement. Institutional capacity and National identity are two factors which hinder progress in Kosovo and make compliance with EU conditions difficult. This has also implications for the enlargement strategy and the workings of conditionality.

## Theory

The theory part aims to give an overview of the existing literature on conditionality and the enlargement process. It describes the main theoretical models used and discusses their problems as well as their relevance for the study. It focuses on a rational-choice model as they offer the prime explanation of the workings of EU-conditionality.

The enlargement process is part of the external governance dimension of the European Union. External governance is usually based on the *Acquis Communautaire* and is concerned with the transfer of EU rules and values to other countries (Lavenex & Schimmelfennig 2009). External governance encompasses several different modes of EU governance differing for policy fields and regions. Examples are the European Neighborhood Policy, relations with the African, Caribbean and Pacific countries (ACP) or simply bilateral relations as with Switzerland.

The most important and the most successful mode of external governance is however the enlargement process. It has led to profound changes through rule transfer from the EU to candidate countries. Conditionality is the main tool of the enlargement policy.

The concept of conditionality can be subdivided into three different fields: Democratic conditionality, *acquis* conditionality and policy conditionality.

Schimmelfennig and Sedelmeier (2004) distinguish between two fields of conditionality in their study of EU enlargement in Central and Eastern Europe: Democratic conditionality and *acquis* conditionality.

Democratic conditionality is based on the Copenhagen Criteria and concerns issues like human rights, the rule of law and liberal democracy. It starts earlier than *acquis* conditionality and builds the basis for relationships between candidate countries and the EU.

*Acquis* conditionality is used for the adoption of the EU's rules and regulations by the candidate countries. These countries need to transpose all EU legislation into national legislation before EU membership. It concerns all fields the EU is occupied with. These two areas of conditionality were applied in the Eastern enlargement.

Policy conditionality has not been applied in the previous enlargement rounds but has been developed by the European Commission as special tool for the enlargement strategy on the Western Balkan. As the membership perspective is less credible for these countries the EU has started to offer intermediate rewards for the compliance with a certain set of conditions to offset the weak membership perspective. The best example of this is the visa policy in which the EU attaches conditions for visa-free travel to the EU. Trauner (2009) describes this type of conditionality and shows that it has been successfully used in the case of visa-liberalization with Macedonia.

Activity and compliance differ for the various fields of conditionality. Initially democratic conditionality is most important. The focus is put on the establishment of institutions in line with European standards. This happens from the very beginning of the relationship between the EU and the applicant state. Schimmelfennig and Sedelmeier (2004) found that success in this field depends a lot on domestic conditions. If they are favorable towards EU norms and values conditionality will be successful otherwise conditionality has little influence. This is due to the fact that conditions can be prohibitive in this field, i.e. lead to the loss of power for governments. *Acquis* conditionality starts later in the process and accelerates once membership negotiations have begun and a date for accession comes in sight. As conditions are usually not prohibitive conditionality is more successful if a credible membership perspective exists. Policy conditionality is a

new tool but seems to be very important on the Western Balkan to create tangible rewards. It has so far been used with success.

The prime model for the explanation of the adoption of EU rules is a rational-choice model. Kelley (2004) describes membership conditionality as the most relevant of the rational choice methods which is characterized by the fact that international organizations tie membership to a certain set of conditions that have to be fulfilled. It corresponds to conventional conditionality model in which states respond to rewards and sanctions imposed on them. In this model states are seen as rational actors who try to maximize their utility. Responses to conditions depend on cost-benefit calculations.

Schimmelfennig and Sedelmeier (2004) describe an “external-incentives model” as rational bargaining model similar to that of Kelley with outcomes depending on bargaining power in a bargaining process between the EU and applicant states. The bargaining process starts with a status quo that is different from an EU rule. Conditionality offers incentives to change the status quo. Conditionality can have a direct effect on a government or work indirectly by activating other domestic actors to pressure decision-makers. But the final decision is always taken by governments who balance their interests to maximize their power. The general hypothesis of this model is: “*a state adopts EU rules if the benefits of EU rewards exceed the domestic adoption costs*” (Schimmelfennig & Sedelmeier 2004, p. 664). Several further factors influence the workings of conditionality. These are the determinacy of the conditions meaning the clarity and formality of the rule, the credibility of conditionality meaning that the reward is really not given by non-compliance and that the reward is given by compliance, and adoption costs and the number of veto players at national level that have to bear costs of rule adoption.

Moravcsik and Vachudova (2003) focus on the bargaining process between the EU and candidate countries. They describe the enlargement with bargaining theory in line with the liberal intergovernmentalist theory of European integration. They rely on the pattern of “asymmetrical interdependence” as described by Keohane and Nye. Those players in a bargaining round that gain the most are willing to compromise the most in order to reach an agreement. In the case of membership negotiations applicant states gain a lot while the accession of individual states only leads to a smaller benefit for the EU. Thus applicant states are in a weak bargaining position vis-à-vis the European Union. This effect is especially high for “interdependent” countries that benefit a lot from liberalization and open markets. These are often countries with a small GDP who benefit a lot from joining the European market. The great difference in bargaining power can be seen by the fact that the EU is able to impose conditions in fields in which the EU has no internal competences and that are not applied for states that are already an EU member.

Steunenberg and Dimitrova (2007) use a bargaining model to assess the effectiveness of conditionality in EU enlargement. They try to answer the research question “when is conditionality effective”. The enlargement game is depicted as a two-player game between the EU and the applicant country. Both players have the option of continuing cooperation or giving up the enlargement negotiations. The EU is willing to accept a new member state and chooses depending on the efforts made by the applicant country to support or oppose membership. The applicant country can either pursue membership and comply with EU conditionality or retreat from EU membership. This leads to four possible outcomes of the bargaining game. If both players comply it leads to “reformed membership” of the country. If both players do not comply it leads to no membership and no reforms. If the applicant country does not comply but the EU does still support membership it leads to “unreformed membership” and if the country does comply but the EU nevertheless opposes membership the applicant country becomes a “reformed satellite”.

Both players in this game face losses and gains from membership of the applicant. The payoff structure differs however. For the EU the most beneficial outcome is a reformed satellite, followed by reformed membership, no membership and unreformed membership. For the applicant state its unreformed membership, reformed membership, no membership and reformed satellite. The game constitutes a prisoner's dilemma with both players having the dominant strategy to defect in a onetime negotiation. This would lead however to a situation with both being worse off in a no membership situation. The overall optimal outcome would be reformed membership. The enlargement process consists however of numerous negotiations. Therefore a cooperation strategy is possible as retaliation can occur in the next round if one player does not comply with the agreement. For the process of enlargement this means that both the EU and applicant states have an incentive to cheat, the applicant country by complying only superficially or not at all and the EU by pushing for reform and in the end not granting membership.

Alternative models for the explanation of the working of EU conditionality are socialization based methods. These methods are only based on norms. Methods used for policy transfer are persuasion, shame and praise. Policy change results either from the change in the actor's beliefs or through concerns over one's own reputation. It is important to note that rational-choice and socialization based models are not mutually exclusive but can coexist next to each other.

Schimmelfennig and Sedelmeier (2004) test two other models in their study. According to the social learning model actors are motivated by identities, norms and values and adopt rules if they are convinced of the appropriateness and legitimacy of EU rules. Thus persuasion and social learning are most important for the process of rule-adoption. In this model the EU constitutes a community with a certain set of norms and values and applicant states adopt rules if they are convinced of the appropriateness of the norms and values. The lessons-drawing model postulates the EU rules can also be adopted without EU action if governments are convinced that the EU rule is an improvement of the status quo. Governments assess the effectiveness of rules in other countries and might choose to adopt those rules if they believe them to be effective in the national context. Both models are only of limited importance and my study will focus on the rational-choice model as prime explanation.

Another important concept that influences the working of conditionality is national identity.

Freyburg and Richter (2010) argue that the rational-choice framework of cost-benefit calculations described above is only valid if the conditions do not conflict with the national identity of the country. If a condition set by the EU is in line with national identity it will depend on a cost-benefit calculation of the country if it complies or not. If the condition runs counter to the national identity the country will always not comply regardless of benefits offered.

The authors test their claim with a case study of Croatia and the cooperation with the International Criminal Tribunal for the Former Yugoslavia. In this case Croatia complied only partly with conditionality and the authors state that this can be traced back to the fact that some issues conflicted with national identity. There are two ways the national identity is viewed in Croatia. On the one hand the country perceives itself as a guardian of national sovereignty after the "heroic" victory against Serbian suppression. On the other hand the country views itself as part of the Christian European culture. The article argues that identity conflict in the Croatian society and government led to a change in politics concerning war criminals. But nevertheless compliance remained ambiguous. The generalizability of the study is low as it concerns only one case in one country. But nevertheless it shows an important point, namely that national identity can negatively influence the working of EU conditionality. One should be aware that the positive results

of conditionality in the Eastern Enlargement might not be transferable to former Yugoslavia where national identity is a crucial factor leading to a lot of conflict. This is an important point to pay attention to in the research.

We can draw several conclusions from the theoretical literature described above:

First of all conditionality can be subdivided into three different fields: democratic conditionality, acquis conditionality and policy conditionality. Compliance should differ in the three fields depending on domestic conditions and adoption costs.

The main explanation for differences in compliance should be adoption costs, the credibility and size of rewards and maybe national identity as special issue on the Balkans.

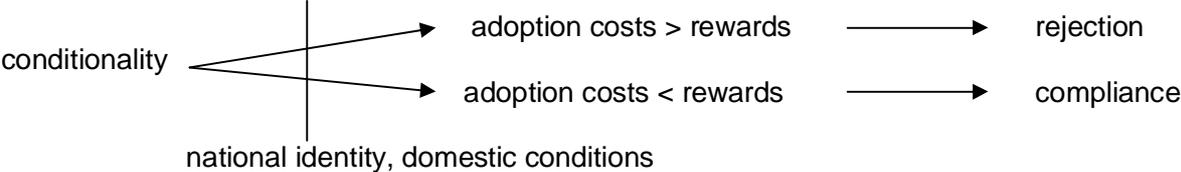
According to the literature the EU's influence is the smallest in the field of democratic conditionality. The success mainly depends on domestic conditions. But as domestic conditions in Kosovo were shaped by the international community after the military intervention they should be favorable towards EU conditionality. Additionally UN-conditionality was applied as well in this field which might have made it more effective. Thus we can state the following hypothesis: *“Compliance should be high in the field of democratic conditionality due to conditions shaped by the international community”.*

For acquis conditionality the EU's influence should be larger. But as Kosovo is far away from membership it might be that implementation is lacking at the moment. It should speed up once a credible membership perspective becomes visible which will probably still take years. But as membership is crucial for the Western Balkan countries they do not really have an alternative to compliance with EU conditions. But overall we can state the hypothesis: *“Acquis conditionality should be less important than democratic conditionality but compliance should increase in the future.”*

Therefore policy conditionality should be most important at the moment. Intermediate rewards are tangible and thus reforms are more likely in these areas. It depends on which issues the EU puts its salience. *“Compliance should be high in the field of policy conditionality.”*

National identity is an important factor in the region and might offer a possible explanation for non-compliance with EU conditions.

Graphically the situation can be depicted as follows:



In general success of EU conditionality depends on the relationship between the size of costs and rewards. This relation can however be negatively influenced by domestic conditions and national identity.

This chapter has delivered the theoretical framework for the analysis which has to focus on adoption costs and the size and credibility of rewards to assess the effectiveness of EU conditionality. Furthermore the main question to what extent Kosovo is complying with EU conditionality needs to be answered for the three different sub-fields of conditions as compliance is most likely different in them. National identity and domestic conditions as most important impeding factors need to be taken into account.

## Methodology

This chapter describes the material used in the analysis and will discuss how the research is going to proceed. It will be discussed which documents are used and how they are analyzed. The chapter should help to clarify how the research questions will be answered.

As noted in the introduction the case study of Kosovo should help to further the understanding of the working of EU conditionality by studying the unusual case of Kosovo in detail. Montenegro should help to analyze Kosovo as a comparative case. It has been selected for various reasons. On the one hand it has some very important similarities with Kosovo. It was for a long time part of the republic of Yugoslavia as was Kosovo. Also after the Balkan wars it remained in a Union with Serbia and seceded only recently. On the other hand there are also important differences between the two. Montenegro seceded peacefully after a referendum on independence and it is recognized by the European Union and all its member states. This is the biggest difference to Kosovo which seceded after war and NATO intervention and which declared independence unilaterally with the backing of most but not all EU member states. Montenegro constitutes furthermore an established state with established and more or less functioning institutions. Kosovo is contrary subject to nation-building efforts in which state institutions have to be established. A comparison between the two should help to explain in how far these important differences impact on EU conditionality.

The following documents will be used to answer the research question. A program on its road towards Europe has been agreed for Kosovo in June 2004 in a European Partnership agreement with Serbia including Kosovo as defined in United Nations Security Council Resolution 1244 (Council decision 2004/520/EC). This agreement has been renewed twice and serves as the basis for EU conditions which are set out in it (Council decision 2006/56/EC and Council decision 2008/213/EC). The EU decisions build the foundation of conditionality. They show the development of the conditions set for the two countries.

Progress is measured by annual commission reports which are available from 2005 to 2009. They give a measure to what extent the countries are complying with conditionality in the different fields. The European Commission discusses the enlargement policy in several documents. It publishes a yearly enlargement strategy in which it discusses general implications of the policy. The Commission has furthermore published two special documents on Kosovo: The communication "A European Future for Kosovo" in 2005 and the communication "Kosovo – fulfilling its European Perspective" in 2009. These documents of the EU build the cornerstone of the analysis. They are supplemented by reports of other governmental and non-governmental organizations.

Important UN-documents are the "Standards for Kosovo" agreed in 2003 which sets out conditions for Kosovo before being able to gain independence and the "Eide-report" of 2005 which reviews the progress on these standards. They serve as another control for EU conditions mainly in the field of democratic conditionality. The "Ahtisaari-plan" on the status settlement of Kosovo is an important foundation for Kosovo's constitution.

The "International Crisis Group" is a non-governmental organization "committed to preventing and resolving deadly conflict". It issued reports on the development of Kosovo. They can be used to analyze certain special issues like nation-building or minority rights in Kosovo. They can give a potential explanation why compliance in some areas is lacking or which problems Kosovo faces with the implementation of EU standards. The situation of minorities is the main issue that will be discussed with these reports.

In the European partnership agreement of 2004 conditions were also set out for Montenegro which was then still part of the republic of Yugoslavia. This is also true for the 2006 council decision. In 2007 a new partnership agreement was concluded with Montenegro (Council decision 2007/49/EC). Progress reports for Montenegro are available from 2005-2009. A visa roadmap for Montenegro from the European Commission is used to assess conditionality for visa-free travel. Montenegro has also already concluded a Stabilization and Association Agreement. Furthermore homepages of the relevant national authorities will be used which contain further reports and working programs. In Kosovo the “Agency for European Integration” has recently been transformed into the ministry of European integration and is responsible for European integration in the executive. It provides several important reports on how European standards are implemented. The situation is similar for Montenegro where comparable institutions exist. The strategies for the implementation of EU conditions are used in this paper.

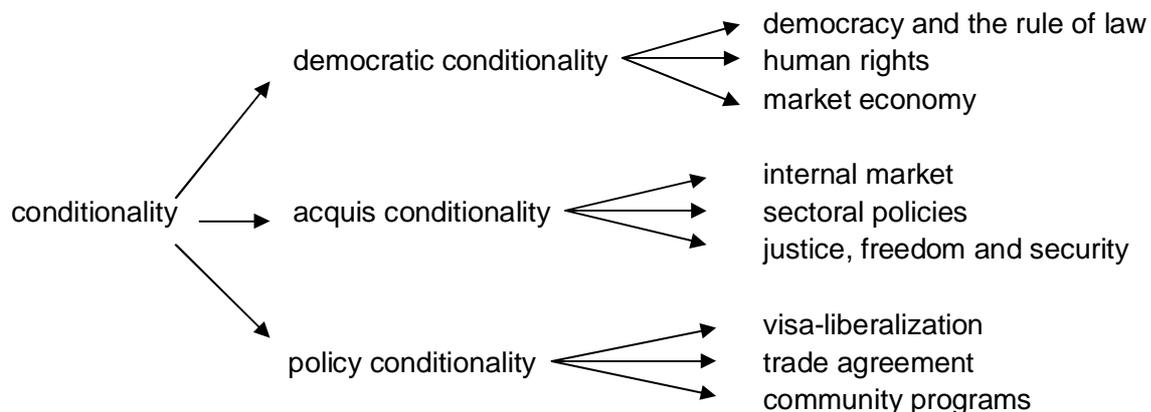
To answer the first sub-question “what are the conditions?” the council decisions will be analyzed using the differentiation of fields of conditionality described in the theory section. These were: democratic conditionality, acquis conditionality and policy conditionality.

Democratic conditionality is based on the Copenhagen criteria. On the one hand they contain political criteria like democracy and human rights and on the other hand also economic criteria. We can use three different categories for Democratic conditionality: democracy and the rule of law, human rights and the protection of minorities and free market economy.

Acquis conditionality is concerned with the adoption of the *acquis communautaire* by candidate countries. The categories used for this type of conditionality are directly derived from the progress reports which make three subcategories for this field: the internal market, sectoral policies and Justice, Freedom and Security.

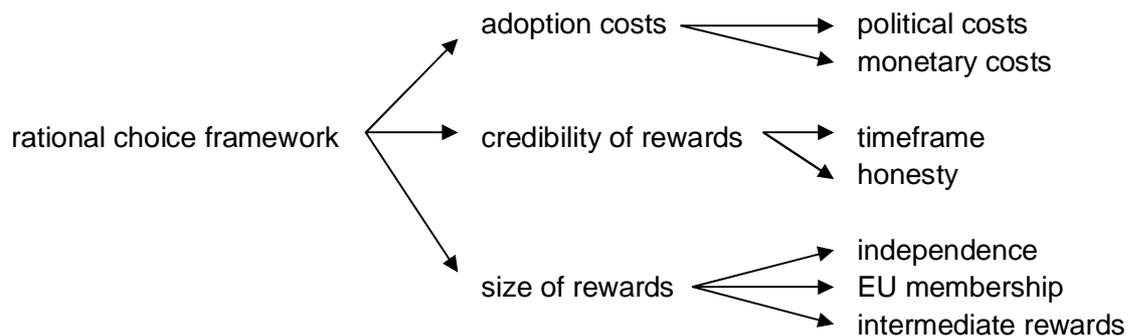
Policy conditionality is characterized by intermediate rewards which countries can achieve on their way towards membership. For Kosovo the Commission mentions several possibilities which can be used as categories for policy conditionality (see European Commission 2009a): Visa liberalization, a trade agreement and the participation in community programs.

A special focus will put on the key-priorities which have been adopted as they show on which issue areas the European Union puts its focus which are probably also the areas in which the biggest problems exist.



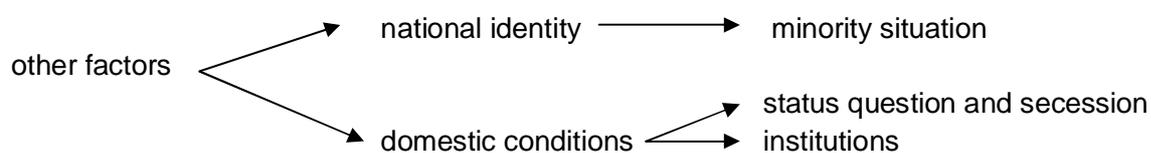
The second sub-question “how are conditions implemented?” will be discussed with the strategies of Kosovo for the implementation of the Partnership agreement. This question is linked to the question how countries determine which conditions are implemented. This is mainly based

as described in the theory part on a cost-benefit calculation. The most important items in this rational choice framework are adoption costs, the credibility of rewards and the size of rewards. Adoption costs have two categories which are on the one hand political costs and on the other hand the monetary costs of implementation. The credibility of rewards is dependent on the time-frame within which the rewards are offered but also the honesty meaning that rewards will really be given. In the case of Kosovo there were three different kinds of rewards which differ in size considerably: Independence offered by the United Nations in the Standards process was most important, EU membership offered by the EU in the enlargement process is the most important long-term goal of Kosovo and intermediate rewards offered through policy conditionality.



The third sub-question “What are the differences between the two cases?” will be established with the two schemes used above. Differences will have to be described in the three different fields of conditionality and how each country is complying.

The third sub-question “How can the differences be explained?” will depend as described above on the rational choice framework, thus we can use the scheme described for sub-question two, and one for the special issue of national identity and differing domestic conditions. In the case of Kosovo the most problematic aspect of national identity is that of the different ethnicities that do not share a common national identity. Thus the problem of national identity is closely connected to minority rights and discrimination against minorities. The differing domestic conditions between the two countries are: The international status and the differences in the secession process from Serbia and related to that differences in institutions which were at least partly already existent in Montenegro and had to be built completely new in Kosovo.



This analytical scheme is not intended to be a strict coding scheme that would allow for the quantitative analysis of qualitative data. The categories are furthermore not thought to be exhaustive meaning issues can also fall outside one of the categories. The scheme is rather thought to guide the analysis and show in how far the theory is connected with it. It shows which issues the analysis will focus on in order to assess the theoretical literature and finally answer the research question. The documents will be read with a focus on these issues connecting the data with the categories. This should help to judge the quality of the theoretical framework for the Kosovo and finally establish to what extent Kosovo is complying with EU conditions.

This chapter has shown how the analysis will go about. It should help to give a clear focus on what will be done in the following chapters and how the research question will finally be answered. It was described which EU decisions and reports are used and how they will be analyzed in the study. This should help to judge the quality of the study.

## Analysis

This chapter tries to give an analysis of the progress of Kosovo which should then help to answer the main research question. It relies on the theoretical framework mentioned in the theory chapter. It will follow the structure of the analytical scheme described in the previous chapter. Thus adoption costs, the size of rewards and the credibility of rewards will be discussed in the first paragraph. These are the most important features of the rational-choice framework. A short conclusion on the explanations of the rational-choice framework follows at the end of this paragraph. The second paragraph will deal with the institutional capacity which is part of the special domestic conditions in Kosovo and might negatively impact on EU conditionality. National identity will be the issue of the third section and the comparison between Kosovo and Montenegro will constitute a fourth part. These three paragraphs discuss deviations of the typical rational choice framework in the case of Kosovo. In the conclusion of this chapter the sub-questions will be answered.

As suspected, compliance is different in the various fields for Kosovo. More activity and better compliance can be seen in the field of democratic conditionality. The main focus of conditionality was directed at establishing a functioning state in line with European standards. Acquis conditionality and the transposing of EU legislation were so far of minor importance. The theory suggests that adoption costs, the size and the credibility of rewards are the most important reasons explaining compliance.

As stated in the methodology part, there are three different types of rewards which will be discussed in the following. The size of rewards of EU conditionality has not always been the same but has developed over the years. When conditionality initially started for the Western Balkan countries in 1997 the EU was not yet offering full membership. Instead the EU offered bilateral relations and financial assistance for the fulfillment of a list of general conditions. The issues covered were democracy and human rights and political conditions relating to the Yugoslavia wars. In 1999 the size of rewards increased slightly when the EU was ready to offer Stabilization and Association Agreements as reward for the fulfillment of the same conditions. The possibility of EU membership, and thus a real increase in the size of the reward, was for the first time stated in 2000 with accession being conditional on the fulfillment of the Copenhagen criteria. In 2003 EU leaders decided at their "Thessaloniki summit" to offer the adoption of European Partnership Agreements which should guide countries on their way towards accession to the European Union (European Commission 2010). EU membership is working as reward in the field of democratic conditionality and in the field of acquis conditionality.

Conditionality was applied also by the United Nations which took over the administration of Kosovo after the NATO intervention and the retreat of Serb forces in 1999. They offered independence to the people of Kosovo in return for the fulfillment of the so called "Standards for Kosovo". The size of rewards is higher for Kosovo in this field as independence was most important and built the foundation for everything else. The standards contained issues like functioning democratic institutions, the rule of law, freedom of movement and minority issues. They thus covered only the area of democratic conditionality. Therefore the reward of independence was only important for the field of democratic conditionality. UN conditionality was however linked to EU conditionality which focused more on the long run. This is also clearly stated in the United Nations Standard document which states: *"These standards reinforce Kosovo's parallel progress towards European standards in the framework of the EU's Stabilization and Associa-*

*tion Process, based inter alia on the Copenhagen criteria*" (United Nations Standards for Kosovo 2003, p. 3).

Other possible types of rewards are intermediate rewards which are smaller in size than independence or EU membership but they may nevertheless play an important role. For Kosovo the European Commission is proposing to offer visa-free travel, trade agreements, participation in community programs and financial assistance. This is dependent on the progress of Kosovo and so far a visa-liberalization dialogue has not yet started and also the conditions to conclude a trade agreement have not yet been reached (European Commission 2009a). Most likely this will however be important in the future. These rewards are dependent on progress and the fulfillment of conditions in certain policy fields and relate thus to the field of policy conditionality.

For adoption costs a distinction was made between political costs and monetary costs in the analytical scheme. Political adoption costs were high for Kosovo as it had to accept not only the fulfillment of the standards for Kosovo and the political conditions but also the whole constitutional set up for their country through the Ahtisaari Proposal (Security Council 2007). This was the plan for Kosovo's independence and built the basis of its constitution. The constitution was seen as *"too modern and indulgent of multi-ethnicity"* by many Kosovo Albanians (International Crisis Group 2008, p. 18).

The issue of multi-ethnicity and minority rights is seen very critical by many people from the Albanian majority in Kosovo. Provisions for the Serb minority include new and expanded Serb-majority municipalities and through decentralization extended competences and the possibility to link with one another and form special relations with the Serbian government in Belgrade from which they can receive technical assistance. Furthermore a mechanism was created in the Kosovo assembly to prevent the Serb minority from being outvoted on certain issues. Special protection zones and provisions were also adopted for the Serbian Orthodox Church (International Crisis Group 2007). These provisions on minority rights go beyond European Standards and were seen by Albanians as giving the Serb minority far more rights than themselves. Another issue was the cooperation with the International criminal court for the former Yugoslavia that was part of conditionality. Important politicians have been indicted before the court. The most important case was that of Prime Minister Ramush Haradinaj who had to resign from his post and went before the court voluntarily (European Commission 2007). All of this shows that adoption costs were very high for Kosovo in the field of democratic conditionality.

The adoption costs for *acquis* conditionality are in general lower than for political conditionality as they are in most cases of a more technical nature. Bringing its legislation in line with the *acquis communautaire* is in most cases not as problematic as fulfilling the conditions of democratic conditionality. The fields covered by *acquis* conditionality are the internal market (the four freedoms), sectoral policies (e.g. environment or transport) and Freedom, Security and Justice.

Monetary adoption costs are of minor importance for Kosovo compared to this as they were mainly borne by external donors.

The credibility of rewards has been higher for Kosovo in the field of democratic conditionality than in the field of *acquis* conditionality as the United Nations applied conditionality as well. Conditionality by both organizations reinforced itself. As the United Nations offered the settlement of the status question in a reasonable period of time the reward was bigger and more credible than an eventual membership in the European Union in the long future. Most activities focused on the implementation of the Standards as they also received most attention by the international organizations. It was more important than transposing European legislation at that time. EU membership is contrary a reward that is in the very distant future and not yet tangible for Kosovo.

The EU tries to offset this by offering intermediate rewards like visa-free travel, trade agreements, participation in community programs and financial assistance. Such rewards are more tangible for Kosovo and might play an important role in the future. This could however only happen after independence and a state of Kosovo has been established. Policy conditionality should give good results as it is a tangible goal. It offers a credible reward which is for example visa-free travel to the European Union. It is an important step which has worked well for other countries. Compliance should be highest in this field.

But as the visa liberalization dialogue has not yet started for Kosovo we cannot discuss the issue yet. As it is to become a topic for Kosovo soon its result will be visible in a few years. The dialogue will only begin if a readmission agreement has been adopted by Kosovo. Also security of documents, border and migration management, protection of personal data and results in the fight against organized crime and corruption are important points that need to be addressed before visa liberalization can be discussed. Once these issues have been addressed the Commission will draw up a strategy which specifies conditions after whose fulfillment visa-free travel will be granted (European Commission 2009a). Also the possibility of a trade agreement has been stated by the Commission as possibility once Kosovo has made further progress on the relevant economic conditions (European Commission 2009a). Policy conditionality will be the main tool to rely on in the near future as the status question has been settled and UN conditionality cannot be applied any further. EU membership is not yet the credible reward to replace it in the short-run. For that reason these intermediate rewards will most likely be of great importance.

Overall we can conclude that credibility and size of rewards were bigger for Kosovo in the field of democratic conditionality. This explains the fact that it received the main attention so far by Kosovo's institutions even though the adoption costs were also higher than in the field of acquis conditionality. Sovereignty was so important and was to be achieved realistically only through cooperation with the International Community that Kosovo's leaders were therefore willing to accept all the conditions set by the International Organizations.

The low compliance in the area of acquis conditionality cannot be explained through high adoption costs but rather through a low size and credibility in rewards at least in the short run. Compliance problems existed also in the field of democratic conditionality albeit the fact that rewards were higher and compliance was somewhat better than in the other field. In his assessment of Kosovo's progress on the standards the UN special envoy Kai Eide concluded that progress by Kosovo was uneven (Security Council 2005). This was also confirmed by the European Commission in the 2005 progress report where it stated that: *"The European Partnership cited the implementation of the eight Standards for Kosovo as the overarching short-term priority. While some progress could be witnessed, none of the standards have been fully met and serious concerns remain, in particular regarding the rule of law (standard II), freedom of movement (standard III), sustainable returns and rights of communities and their members (standard IV) and property rights (standard VI)."* (European Commission 2005, p. 57) Nevertheless it was seen by the International Community that a new dynamic had been created and that postponing the status question would not lead to better results and so a process for the resolution of the status question was started.

Thus the cost-benefit calculation suggested by the rational-choice framework offers some insights, like the focus on certain problems. It can however not explain the low overall compliance of Kosovo. Other factors that might also explain the low compliance, overall and in the field of acquis conditionality, will be discussed below.

One of these factors is the weak institutional capacity of Kosovo. Kosovo possesses only weak institutions especially the Public Administration and in the justice system. Furthermore corruption and a small budget are big problems which make genuine compliance with EU conditions sometimes very difficult. Legislation is in many cases adopted and so some progress on EU conditions is made but the necessary institutional capacity to implement this legislation is often lacking. This has also been recognized by the European Commission which writes in its Communication on Kosovo: *“However, in its approximation process to the EU, Kosovo needs to match the adoption of legislation with adequate implementation and enforcement.”* (European Commission 2009a, p. 3)

Kosovo has not yet managed to establish an independent and effective Public Administration. A weak Public Administration has been cited by the European Commission as problem in all progress reports. It is overstaffed and the distribution of tasks is often unclear and overlapping. Kosovo has taken steps to address this issue but has yet failed to really solve the problem. In 2009 the Commission stated that Capacity and effectiveness of the administration are low, key legislation relating to the Public Administration has not yet been adopted and transparent appointments and independence from political influence are still missing (European Commission 2009b). This lack of transparency and political independence was also found by Kai Eide who wrote in his report that appointments are frequently made based on political consideration or clan affiliation and not based on competence. The lacking distinction between political authority and Public Administration is seen as concern by many civil servants for the further development of the Public Administration of Kosovo (Security Council 2005).

Another big issue that weakens the working of Kosovo’s institutions is corruption. It is one of the biggest problems and occurs frequently at all institutional levels. It has been named a “serious concern” by the European Commission and the fight against corruption is a key-European Partnership priority (European Commission 2009b). So far progress on this point has been limited by Kosovo. An anti-corruption agency has been established and a legal framework is in place. It is however not strong enough to show real improvements in the fight against corruption.

The weak judicial system is one of the reasons why many laws cannot be genuinely enforced. There are various reasons for the weak justice system. For a long time there was legal uncertainty because three different kinds of laws were applicable in Kosovo: Old Yugoslavian laws, UNMIK regulations and laws by the new institutions of Kosovo. This created legal uncertainty as it was not always clear which law to apply. This situation should improve now after independence. Apart from that the justice system faces also serious capacity problems. It has been called the weakest of Kosovo’s institutions by Kai Eide in his report (Security Council 2005). The backlog of cases amounts to thousands despite International assistance. International prosecutors and judges deal with serious crimes but have not managed to solve the overall effectiveness problem. The EULEX mission of the European Union tries to improve capacities as well.

Kosovo has only a small budget that is mainly fed through customs revenues which makes it difficult to strengthen the institutions. Tax collection is still at a low level and needs to improve significantly. Furthermore budgetary planning has been weak which leads to strong consolidation in some years and expansionary budgets in others (European Commission 2009b). Kosovo is still mainly dependent on international donors.

All of the issues mentioned above contribute to the fact that legislation is often not implemented and enforced. This makes compliance with EU conditionality impossible and is one of the most important reasons why Kosovo is only complying to a limited extent with EU conditionality. It creates big problems and hinders progress on many political and economic problems. In the political field the weakness of Kosovo’s institutions contributes to the fact that the rule of law is

not respected in all cases and that it cannot yet be enforced. This has led to a climate of impunity in Kosovo. Many of the cases not resolved are property claims by minorities which has led to the illegal occupation of property on a large scale. The sense of impunity has also led to discrimination and low-level crimes against minorities (Security Council 2005). This hinders reconciliation of ethnicities in Kosovo and makes progress towards a stable Kosovo difficult. The uncertain legal framework and the climate of impunity impact also negatively on the economy. It creates an unsecure business environment in which investment and economic development are very complicated. The political and economic problems related to the problem of weak institutions make the overall progress of Kosovo very difficult. This hinders also the progress on EU conditionality. Thus there is not only a direct link between weak institutions and the implementation of EU standards but also an indirect link as weak institutions lead to little economic and political development and this leads to low genuine compliance with EU conditionality.

The factor of low institutional capacities is a deviation from the rational-choice cost-benefit framework as also the capabilities are important in the case of Kosovo. In some cases Kosovo simply lacks the capabilities to implement European standards. This does however not mean that lacking implementation and enforcement can always be explained with the low institutional capacities. Sometimes there might also be a lack of willingness to enforce laws. This relates to the fact that as conditions are imposed on Kosovo externally its leaders might not always be convinced of the appropriateness of the measures imposed on them. Thus they might be reluctant to enforce them. Genuine compliance is lower in the rational-choice framework compared to socialization based measures because governments are not always convinced of the rules they have to adopt. It was stated in the theory part that countries have an incentive to cheat during the enlargement process. That such a problem can exist in Kosovo can be seen in the Eide report. On standard implementation he writes that: *“However, among Kosovo Albanians there is also a tendency to see standards implementation as an exercise imposed from outside and one that they have to go through in order to reach the status process. Genuine support for its underlying principles and objectives is often lacking. The strong verbal support for the standards process has therefore not been adequately translated into a profound commitment to concrete results.”* (Security Council 2005, p. 8)

Nevertheless weak institutional capacity is a big problem for Kosovo which might have led to low compliance with EU conditions. Its relationship to the theoretical framework cannot be judged finally. Problems of implementation and enforcement are one reason why Kosovo is complying only to a limited extent with EU conditionality. Whether this is due to weak institutional capacity or whether it is due to a lack of willingness cannot always be said. If the former is the case it is a deviation from the rational-choice framework and if the latter is the case it falls within the rational-choice framework. It is however likely that institutional capacity is a factor for non-compliance as overall a willingness to follow EU and UN conditions and establish a European-type nation state has been attested to Kosovo by the UN (Security Council 2005) as well as the EU (European Commission 2009a). It can thus be seen as extension of the rational-choice framework which implies that countries do always have the capabilities to transpose EU legislation.

Another issue that makes compliance difficult for Kosovo is national identity. The article by Freyburg and Richter (2010) discussed in the Theory section proposes a refinement of the rational-choice framework for the Balkan countries in so far that it only applies if conditions are in line with the national identity of that country. If conditions are contrary to the national identity they will not be adopted regardless of cost-benefit calculations. National identity is a very impor-

tant factor in Kosovo. This has been described by Kai Eide in his report for the United Nations. He writes over the Kosovo Albanian national identity: *“Today, the Kosovo Albanians demonstrate stronger self-confidence and assertiveness. They are — understandably — shaping their identity as a ruling majority population. This identity is — to a large extent — built on controversial events, personalities and symbols, often in opposition to the identities of Kosovo Serbs and other communities.”* (Security Council 2005, p. 7)

This national identity is thus conflicting with that of minorities living in Kosovo especially the Serbian minority. Their situation is described as follows: *“In contrast, the Kosovo Serbs are struggling to preserve their identity. They are experiencing pressure against important elements of this identity, such as their language, culture and religious heritage, as well as their economic survival. Other smaller communities are being further marginalized — politically, economically and culturally. In some cases, they are being assimilated”* (Security Council 2005, p. 7).

The Albanian majority on the one hand is thus willing to follow EU conditionality in most instances as they regard the state as part of their national identity. To get it they are even willing to make big concessions regarding multi-ethnicity and minority rights. These issues have been discussed above. The Serb minority on the other hand sees its national identity threatened by that state and refuses participation. This manifests itself in parallel institutional structures being run in the areas of the Serbian minority. This weakens the state of Kosovo and makes compliance more difficult. It is not able to apply and enforce laws at its entire territory. Kosovo Serbs run also parallel structures in the field of education and health care and abstain from the Kosovo Assembly. They fear that they will only legitimize a body that is under full control of the Albanian majority and will not respect their interests (International Crisis Group 2007).

Apart from the parallel structures there is deep mistrust between the different ethnicities. This manifests itself in discrimination and a great amount of low-level inter-ethnic crimes. Property claims by minorities have not yet been resolved. The strong tensions between the ethnicities can also be seen by the fact that many refugees refuse so far to return to their homes. This is due to perceived or real security threats. Also discrimination and the unresolved property issues are reasons for the refusal to return (European Commission 2009b). In how far these minorities can be integrated and a common national identity for the state of Kosovo can be found remains to be seen. Thus far little progress has been made on this issue. This creates an unstable political environment in which the factor of the weak institutional framework discussed above impacts even heavier. There is a strong link between the low efficacy of the institutions and the lacking participation of minorities in them. The problem with the national identity impacts therefore mainly on the low capacities of Kosovo to implement and enforce legislation and so to comply with EU conditionality. Reconciliation will be an important task for the future of Kosovo. The Albanian majority would have to accept that Kosovo is a multi-ethnic state and not only one of the Albanian majority. Serbs would most likely have to accept the independence of Kosovo and start participating in this newly created state.

So far the policy of the International Community is decentralization as proposed in the Ahtissari plan (Security Council 2007). New and bigger Serb-majority municipalities should be created in which Serbs would be able to regulate their day-to-day affairs. Also health care and education would be competences of these municipalities. Through this approach the International Community tries to offer the Serb minority a possibility to participate in the new state. But as they refuse to acknowledge independence and the Ahtissari plan they thus far also refuse to participate in the decentralization. This situation might change however especially in Serb enclaves in the South of Kosovo where parallel structures do not deliver adequate services (International Crisis Group 2009). The situation in the north of Kosovo where the areas of the Serb minority

are directly connected with Serbia is more difficult. To get these areas to cooperate will be very difficult. It is however the only chance to offer the Serbian minority the possibility to stick to their national identity and at the same time create a new state for the Albanian majority in line with their national identity. The issue of multi-ethnicity and conflicting national identities is and will however remain a big problem for Kosovo that makes compliance with EU conditionality very difficult at the moment. It weakens Kosovo's institutions considerably.

For the theoretical framework we can conclude that national identity is an important factor that influences the rational-choice framework which is not always applicable in cases of identity conflict. Kosovo Serbs have so far abstained from Kosovo's new institutions even if cooperation with those institutions would in some cases provide great benefits. Therefore it seems that the argument of Freyburg and Richter (2010) that national identity modifies the rational-choice framework seems to have some truth. Kosovo Albanians see the building of a European-like state with an Albanian majority as part of their national identity and are thus willing to largely accept EU conditionality while the Serb minority refuses to accept independence and thus conditionality which aims at building this state they do not accept. This makes the application and implementation of EU conditionality very difficult. The biggest impact of national identity and its related conflicts is however that it weakens the state of Kosovo considerably. Overall we can conclude that national identity is an important factor that is only partly in line with the rational-choice framework of EU conditionality.

A comparison between Kosovo and Montenegro should help to establish in how far Kosovo is a typical case of EU enlargement in the Western Balkan or whether the problem of the disputed secession makes Kosovo a special case.

Montenegro declared its independence from the State Union with Serbia in June 2006. This has happened after a referendum which terms have been agreed with the European Union. 55.53% of the voters voted for independence which is only very narrowly over the required threshold of 55% of the votes (European Stability Initiative 2007). This shows that independence was not an uncontested decision. Montenegro was in a State Union with Serbia since 2003 which replaced the federal structure of the republic of Yugoslavia. Neither of the two countries was satisfied with the Union. While Serbia wanted more centralization Montenegro worked towards independence and participated only unsatisfactorily in the common institutions. A functioning state Union was thus never created. This happened despite the fact that the EU worked for the State Union and initially opposed independence. It feared that the independence of Montenegro would have a negative impact on the status of Kosovo. Montenegro feared however of being set back on its way towards the European Union by the reluctance of Serbia and was thus eager to push for independence. It was always of the opinion to be more cooperative towards the EU. The strained relations between Serbia and its neighbors and the lacking cooperation with International Criminal Tribunal for the former Yugoslavia (ICTY) were seen as obstacle on the way towards Europe. The fact that the EU decided to suspend the talks over the Stabilization and Association Agreement in 2006 helped the independence campaign considerably as this was seen as a fault of Serbia. Once the decision for independence had been taken it was supported internationally. The process of independence proceeded smoothly. Montenegro and the EU built relationships quickly afterwards and Montenegro progressed on its way towards accession.

This is in sharp contrast to Kosovo which declared independence unilaterally in 2008. The state of Kosovo has so far not been recognized by all EU member states. Secession happened under protest of Serbia and as a consequence of the NATO military intervention in 1999. The start for the new state of Kosovo has thus been far more difficult than for Montenegro.

In general Montenegro is further ahead regarding compliance with EU conditionality than Kosovo. A Stabilisation and Association Agreement (SAA) has been adopted for Montenegro in 2007 and entered into force in 2010. Montenegro has applied for EU membership in 2008 but a decision by the commission and the council is still pending. The commission is evaluating a questionnaire sent to accession countries to assess progress. Once this has happened it will issue a recommendation to the council which will finally decide on the membership application. According to the rapporteur for Montenegro of the European Parliament the recommendation by the Commission will be made at the end of 2010. He stated it would most likely be positive and accession negotiations could then start in 2011 (EurActiv 2010). A visa liberalization dialogue has been started in 2008 as well and has been successfully completed in December 2009.

For Kosovo a Stabilization and Association Agreement has not yet been adopted and a time-frame is not yet visible. As this is an important step before membership an application by Kosovo and eventual membership are still very far away. Also a visa-liberalization dialogue has not yet been started. This shows that the overall situation is much better for Montenegro as it has progressed much quicker than Kosovo.

One of the most important reasons for that is probably that institutions have already been in place in Montenegro and did not have to be built entirely new as in Kosovo. The smooth proceeding of independence has helped Montenegro to maintain and build on that existing capacity. In Kosovo however nation-building efforts were needed and all institutions had to be created from zero. This is one important difference between the two cases.

Montenegro is however also subject to EU conditionality and encounters problems common to most Western Balkan countries. The issues are in many cases similar to those of Kosovo. In its enlargement strategy 2008-2009 the Commission attests Montenegro that it has made important progress on EU conditions (European Commission 2008). Nevertheless certain problems remain. It needs to strengthen implementation of reforms, complete judicial reform and enhance administrative capacity. Also corruption and organized crime are still major problems for Montenegro. Judicial reform is a key-priority for Montenegro and in 2009 the Commission noted that Montenegro had moderately advanced in this area but that further efforts were needed to ensure independence, accountability, integrity and efficiency of the system (European Commission 2009c). Also Public Administration reform is a key-priority for Montenegro. Despite some progress significant efforts are needed to establish an independent and effective administration. Upgrading of capacity is also needed to fully implement the SAA. In the field of anti-corruption policy which is also a key-priority there has been good progress by Montenegro concerning the legal and administrative framework. Nevertheless corruption remains prevalent and a big problem for the country. Overall it can be said that Montenegro is facing some similar problems as Kosovo which are in general issues in all countries in the Western Balkan region.

Even though Montenegro faces some problems with minorities as well these problems are on a far smaller scale than those of Kosovo. This might also be due to smooth proceeding towards independence. Montenegro still hosts some refugees from Kosovo whose legal status is unclear and whose living conditions raise some concern. Furthermore there are still problems with Roma, Ashkali and Egyptian minorities (European Commission 2009c). But these are minor problems in comparison to Kosovo and the functioning of the institutions is not hindered by these issues. This can also be seen by the fact that minority rights and multi-ethnicity are a key priority for Kosovo but not for Montenegro.

All in all it can be said that while Kosovo and Montenegro face some similar problems there are also important differences between the two countries which account for differences in the compliance with EU conditionality. The similarities are weak institution, corruption and organized

crime. It seems that Montenegro has shown some more progress in tackling these issues but has not reached a sufficient status yet. For Kosovo, on the contrary, these issues are still very big and hinder an effective functioning of the state. They are a significant source of instability.

The most important difference between the two is the situation of minorities. While there are still some problems in Montenegro they are minor compared to Kosovo where the minority situation poses big problems for the functioning of the state. This is one of the big issues Kosovo has to solve. The difference in this question can be related to the two different ways to independence between the two countries. The problems of Kosovo with its Serb minority are to a large extent related to the unilateral declaration of independence that is not universally recognized. In Montenegro the situation is totally different. Despite the fact that a big group of people was in favor of remaining in the Union with Serbia there were no problems once independence was declared. The only minority problems that exist relate to refugees and other smaller minorities. This is one essential difference that can be attributed to the different ways in which independence was reached.

The comparison between Montenegro thus suggests that while Kosovo faces some problems which seem to be typical for the Western Balkan there are also some issues that can be related to its difficult status. Countries that have a clear status and as Montenegro seceded in an orderly manner seem to possess a better institutional capacity and are better capable of complying with EU conditions. Their EU accession is thus more likely in the near or medium future.

After having discussed the points mentioned in the analytical scheme one by one we can now draw several conclusions for the sub-question posed in the introduction. The first question was: What are the conditions for Kosovo? As stated in the analytical scheme the conditions can be put into three different categories: democratic conditions, acquis conditions and policy conditions. Only the first two have so far been applied for Kosovo. Most important for Kosovo at the moment is Democratic conditionality. It is based on the Copenhagen criteria and works towards building a functioning and effective state in line with European standards. The Copenhagen Criteria have been agreed by EU member states in 1993 and are the basic conditions for EU membership. They contain three important elements which have been already stated in the analytical scheme. In detail they read as follows: *“Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union”* (Copenhagen European Council 1993, p. 1).

For Kosovo this has expressed itself in the Standards for Kosovo adopted by the United Nations which were for a long time the prime conditions. These standards include functioning democratic institutions, the rule of law and return of refugees and rights for minority communities. The standards should lead Kosovo to independence and are thus not used as a formal tool anymore since it has been reached. The key-priorities of the European Partnership agreement are however similar and include the same issues. They state some tasks more explicitly like the fight against corruption or multi-ethnic tolerance (Official Journal of the European Union 2008).

Acquis conditionality is also applied but is of minor importance so far. The number of conditions in this field has however increased significantly in the last years. It is in general about bringing legislation in line with EU-rules. It covers all fields of the *acquis communautaire*. The conditions can be grouped into three categories as described in the analytical scheme. These were: Internal market, sectoral policies and justice, freedom and security.

For Montenegro the situation is somewhat different. As it has advanced further than Kosovo all three types of conditionality have been applied. It has completed successfully the visa-liberalization dialogue and fulfilled all the conditions related to it. In the field of democratic conditionality it faces some conditions similar to those of Kosovo like Public Administration reform, reform of the justice system, fight against corruption and organized crime or cooperation with the ICTY. Acquis conditionality is more important for Montenegro as it has submitted its membership application already. Should membership negotiations begin in the near future, transposing EU legislation will become the main task for Montenegro.

The second sub-question was: How are the conditions implemented? Conditions are implemented in a similar manner in both countries. Both countries also face the problem of institutional capacity to implement the conditions although this problem is more pronounced in Kosovo than in Montenegro. Kosovo has established an agency for coordination and development and European integration. It is responsible for coordinating the implementation of the conditions laid down in the European Partnership agreement. Yearly European Partnership Action Plans are the main tool for implementation. They determine which ministry is responsible for implementation, which deadlines it faces and which budget is allocated for the task. The agency for European integration monitors the actual implementation by the various ministries. The assembly is only informed about the action plans as they are no formal legislation but only government programs. Thus decisions are always taken by the executive which is the one to decide on the basis of a cost-benefit calculation on these issues. It takes the decisions based on the adoption costs in comparison to the size and credibility of rewards. These items have already been discussed above (Agency for Coordination of Development and European Integration 2008).

The European Commission uses the Stabilization and Association Process Tracking Mechanism as main tool to monitor compliance by Kosovo. Continuous meetings are held between the Commission and members of the Kosovo government to discuss progress by Kosovo and problems it needs to address. Additionally to these general meetings sectoral meetings take place discussing specific policy fields (European Commission 2009b). The Commission publishes its assessment in yearly progress reports.

The third sub-question was: What are the differences between Kosovo and Montenegro?

The comparison between Montenegro and Kosovo has despite a lot of similarities also shown some important differences. As stated above, Montenegro has made more overall progress fulfilling EU conditions. If we take the analytical scheme as measure we can conclude that all three types of conditionality are applied in Montenegro but only two in Kosovo where policy conditionality is still lacking. Another difference is that while for Kosovo democratic conditionality is still most important Montenegro is already one step ahead and focus on acquis conditionality. It has already signed an SAA which entered into force in 2010. This is one step further towards EU membership than the Partnership agreement as it explicitly mentions the adoption of the acquis communautaire as task. This can be seen in article 72 of the SAA: "*Montenegro shall endeavour to ensure that its existing laws and future legislation will be gradually made compatible with the Community acquis. Montenegro shall ensure that existing and future legislation will be properly implemented and enforced*"... "Approximation will, at an early stage, focus on fundamental elements of the Internal Market acquis, including financial sector legislation, Justice, Freedom and Security as well as on trade-related areas. At a further stage, Montenegro shall focus of the remaining parts of the acquis" (Council of the European Union 2007, p. 69).

Kosovo in comparison is still mainly occupied with institution-building and a SAA is not yet foreseeable. This seems to point to the fact that the institutional capacity to align its legislation with the acquis is significantly higher in Montenegro. The institutions seem to be better developed

despite the fact that they also need some strengthening to fully implement the SAA. Better progress in the field of democratic conditionality is, as stated in the theory part, partly dependent on domestic conditions. This situation is more favorable in Montenegro which offsets the differences in rewards which were higher for Kosovo through the UN standards process.

Another important difference is the situation with minorities in the two countries. While Kosovo faces, as described above, big problems with minorities and their participation in the new institutions the situation in Montenegro is completely different. The press release of the first Stabilization and Association Council reads as follows:

*"The SA Council welcomes the good inter-ethnic climate in Montenegro which is creating conditions for further progress in this area"* (Council of the European Union 2010, p. 3).

This shows that despite the fact that Montenegro faces some problems in this field these are minor compared to Kosovo.

The two major differences are thus that Montenegro has made overall significantly more progress than Kosovo and seems to be much closer to an EU accession and that minority issues are a major problem for Kosovo while it is not of big importance in Montenegro. Apart from that the two countries face many similar problems and the main difference is that Montenegro seems in many respects to have made better progress on them.

The situation above can be demonstrated by comparing key-priorities of the European Partnership agreements. Kosovo (Official Journal of the European Union 2008) faces several key-priorities relating to the minority problem. These are the advancement of the decentralization process, to create a climate for reconciliation and inter-ethnic tolerance, respect of religious freedom and create a society free of discrimination. These are 4 of 10 key-priorities. Montenegro (Official Journal of the European Union 2007) in comparison has none of the above key-priorities and none related to minority rights or discrimination. Minority rights are only mentioned as one sub-point in the condition of adopting a new constitution in line with European Standards. Both countries face the condition of Cooperation with the ICTY which is typical for the Western Balkan countries. Moreover both countries face conditions relating to the fight against corruption and organized crime. Also the strengthening and reform of the Public Administration is a key-priority for both countries. The conditions differ however in wording as they are more specific for Montenegro which might be related to the fact that it has shown some more progress in tackling the issues. For Kosovo the conditions are kept very general. This is similar for reforms in the field of justice system which is a condition for Montenegro describing measures to be taken quite detailed while Kosovo only face the establishment of the rule of law and a legal framework and the accessibility of courts to create a business friendly environment. Other key-priorities differ due to the respective political situation in the country.

Overall we can see, as stated above that the progress on EU conditions and the minority situation are the biggest difference between the two countries. Similar issues are strengthening of institutions and the Public Administration, reform of the judicial system and the fight against corruption and organized crime.

The last sub-question was how the differences mentioned above can be explained. Are they related to the fact that both countries seceded under different circumstances from Serbia? The differences in progress fulfilling EU conditionality are most likely related to differences in the institutional capacities. While all institutions needed to be built from zero in Kosovo and there was virtually no fulfillment of EU conditionality, Montenegro had already started to fulfill EU conditions as part of the State Union with Serbia. It had also already begun to negotiate a SAA which is a state Kosovo has not yet reached. After independence Montenegro could build on these developments and was quick to conclude the SAA. Also institutions were already in place.

Thus a lot of the differences can be traced back to different historical developments. Because of that it was easier for Montenegro to fulfill EU conditions in the visa-liberalization dialogue and obtain visa-free travel and also to conclude the SAA. It has also better capacities to align its legislation with the *acquis*.

The differences in the field of minority rights are also related to historical developments but can to a great extent also be related to the differences in the secession process from Serbia. The violent conflict in Kosovo between the Albanian and Serbian parts of the population has led to a climate in which the establishment of a common state is very difficult. The declaration of independence by the institutions dominated by the Albanian majority was thus never recognized by the Serbian minority which refuses participation. This conflict has led to the difficult situation of Kosovo described above. Such a conflict has been absent for Montenegro which faces only minor problems with smaller minorities like Roma, Ashkali and Egyptians mainly refugees from Kosovo. The absence of conflict could also be witnessed during secession which happened through a recognized referendum. Independence was generally accepted by the International Community. Therefore Montenegro is in a different situation than Kosovo which makes compliance with EU conditionality less difficult.

All in all we have seen in this chapter that Kosovo has made only limited progress fulfilling EU conditions. It faces several problems which cannot be explained fully with the rational-choice framework that is usually applied to explain EU conditionality. The weak institutional capacity is one of the factors that make compliance difficult for Kosovo. The other one is the difference in the national identity between the different ethnicities in Kosovo. That national identity is an important factor deviating from the rational-choice framework has already been stated in the theory chapter. The analysis suggests that there is some truth to that. Thus we can conclude that a part of the problem of Kosovo can be explained by the rational-choice framework and differences in the rewards and adoption costs. Nevertheless questions to this rational-choice framework have to be posed regarding institutional capacity and the ability to adopt EU conditions and regarding national identity.

## Conclusion

As an answer to the overall research question it can be concluded that Kosovo is only complying to a limited extent with EU conditions. Efforts have been undertaken since the first European Partnership agreement in 2004 and some progress has been made. But institutional capacities are limited and full genuine compliance with EU conditions is mainly lacking. This study relied on the analysis of the documents by the European Commission on the European Partnership agreement between Kosovo and the European Union. The analysis of these documents has shown in how far Kosovo progressed on EU conditions since the conclusion of the agreement in 2004. Distinctions between different fields of EU conditionality have been made based on previous research.

Most progress could be witnessed in the field of democratic conditionality. This is also the area in which the main focus is put at the moment. The building of functioning democratic institutions has begun but is not yet fully completed. Big problems still exist and make an effective working of Kosovo's institutions difficult. These problems are low institutional capacity and a weak Public Administration. Additionally Kosovo possesses only a small budget that is mainly fed through customs revenues. The amount of tax revenues remains limited. The institutions are furthermore weakened through corruption at all levels. Parallel structures in the area of Serb minorities also weaken the impact of Kosovo's institutions. This makes implementation and enforcement of policies very difficult. This is especially true for the justice system which is still not working well. The rule of law cannot yet be sufficiently secured in Kosovo. Property rights are one of the big problems which need to be resolved as they impact negatively on many other aspects as the working of the economy. Many political problems cannot be resolved without functioning institutions and the rule of law. Nevertheless Kosovo has tried to address many of these issues and has acted on advice from the European Union. Even so progress remains uneven.

In the field of *acquis* conditionality the situation looks worse. This is however to be expected. The political problems of Kosovo make a real alignment with standards of the *acquis communautaire* very difficult. Progress in this area is only likely to happen after the institutional capacities have been built to really transpose EU legislation into national law. It has also been suggested in the theory part that progress in this area is likely to be limited. The success of conditionality depends on the credibility of the membership perspective. As Kosovo is still far away from membership and membership negotiations will not begin any time soon progress cannot be expected.

Policy conditionality which is partly used as a substitution for the lacking membership perspective has not yet started for Kosovo. It has brought good results for other countries in the western Balkan region. Visa-liberalization has been a good incentive to push for reform in the area of freedom, security and justice. But as this process has not yet begun for Kosovo no results can be reported. This is also mainly due to the fact that basic legislation and capacities do not exist to commence a visa liberalization dialogue. This process might be started soon and could achieve good results and lead in the end to visa-free travel for Kosovo's citizens. This is already enjoyed by other countries in the region and is an important step ahead for Kosovo.

Overall we can thus conclude limited progress on the conditions. This can also be seen by the fact that the key priorities to be fulfilled by Kosovo have basically remained the same over the reporting period. Stronger institutional capacities are needed to really achieve results.

In the theory part it was explained that a rational-choice framework is most important for explaining compliance with EU conditionality. Countries weigh the costs of reform against the benefits of EU rewards and make their decision on that basis.

Several hypotheses were stated according to this framework. The first hypothesis that compliance should be high in the field of democratic conditionality could only be confirmed partly. There was a strong focus on that issue and compliance is highest in that field due to the large reward of independence and the domestic conditions shaped by the United Nations. But nevertheless problems remain and the overall compliance of Kosovo is low. The second hypothesis that *acquis* conditionality is less important than democratic conditionality at the moment could be confirmed. As the reward of EU membership is still very distant and unsure there is little focus on *acquis* conditionality thus far which will become more important once Kosovo has made more progress in the field of democratic conditionality. The third hypothesis that compliance should be highest in the field of policy conditionality could not be confirmed. The conditionality process in this field has not yet really started. Therefore nothing can be said at this time. It is however likely that it will become an important topic in the following years.

Thus we can conclude that the rational-choice framework has some use as it can explain why Kosovo focused on the fulfillment of the UN standards in the short-run. The rewards were higher than membership in the European Union in the long future which is the main reward in the field of *acquis* conditionality. This will become more important once Kosovo has made more progress in building an effective and functioning state. Then the membership perspective is more credible. This can be seen in the comparison with Montenegro which, after the SAA entered into force and it submitted its membership application, will focus on transposing the *acquis communautaire*. This is possible as it has made overall more progress than Kosovo. For Kosovo the most important tool will be policy conditionality which the Commission is starting to use. A visa-liberalization dialogue might start soon once a readmission agreement has been signed between Kosovo and the EU. Also other intermediate rewards like a trade agreement might be offered in the future. According to the theory these rewards are very important as they give Kosovo tangible short-term rewards as an incentive for further reform.

The analysis has however also shown some weaknesses in the theoretical framework in relation to Kosovo. The overall low compliance by Kosovo cannot be explained by adoption costs or rewards offered to Kosovo. In many cases Kosovo simply lacks the institutional capacity to implement reforms needed to fulfill EU conditions. The weakness of its newly created institutions is the biggest problem for Kosovo that has yet to be solved. The comparison with Montenegro has shown that this is to a certain extent also a problem suffered by other countries. Also Montenegro needs to strengthen its institutions to fully comply with EU condition and align its legislation with EU rules. Another problem of the rational-choice framework is the problem that it does not take into consideration national identity as a factor. This is problematic for Kosovo as the national identity is so far dominated by the Albanian majority and makes reconciliation very difficult. It creates conflicts with the Serb minority which is refusing to participate in the new state of Kosovo. This makes the functioning of the state of Kosovo over its whole territory impossible and weakens Kosovo's institutions. This makes compliance with EU conditionality difficult. Especially as the creation of a multi-ethnic society free of discrimination is one of the key-priorities. Thus far there are few signs that this might happen in a visible period of time. But this issue might question the whole future of Kosovo. It is a very important factor for Kosovo that cannot be included in the rational-choice framework.

Thus there are certain issues in which the theoretical framework could be enhanced according to the analysis of the situation in Kosovo. It needs to include the problem of institutional capaci-

ties and national identity at least in the case of Kosovo. These two factors have led to low compliance of Kosovo. They cannot be included into the features of the rational-choice framework which were adoption costs and the credibility and size of rewards.

It can be concluded that conditionality as a tool of EU foreign policy is only partly helpful and successful for reforming Kosovo. On the one hand Kosovo is taking reforms and seems to be willing to follow EU conditionality but on the other hand real success can only be obtained if the institutions are strong enough to implement reforms. Therefore the working of EU conditionality might improve in the future once Kosovo is able to really implement reforms. The willingness of Kosovo to commit to reform can only then be fully judged.

Recommendations for the EU's enlargement policy in Kosovo concern two issues. One is institution and capacity building which remains an important task that can only partly be fulfilled through conditionality. Efforts are undertaken in this field by various international organizations. The European Union has deployed the EULEX mission to tackle one of the biggest problems of Kosovo, the weaknesses of the justice system and the rule of law.

My first recommendation would be to step up the efforts of capacity building. The various programs are already in place but could be strengthened. So far the EU offers money from various funds the most important being the Instrument for Pre-Accession Assistance (IPA). Kosovo has so far obtained almost 500 million € from IPA. The Commission has furthermore organized a donor's conference for Kosovo in 2008 which pledged more than 1 billion € for Kosovo (European Commission 2009a). These are important revenues for Kosovo to strengthen its institutions and develop its state.

The EU offers also technical assistance to Kosovo with reforms to be undertaken. It is crucial that institution-building takes place. Strategies to build administrative capacity are for example the "twinning" program in which civil servants of EU member states are deployed to accession candidates to help them work on special projects. Short-term assistance through seminars, peer review and technical advice is offered through the TAIEX program. Another joint program with the OECD is Sigma which is intended to help specifically with certain governance issues (Public administrative reform, public procurement, public sector ethics and anti-corruption initiatives, external and internal financial control).<sup>1</sup> Thus a lot of important strategies are already in place. To increase the scope of these programs would be one possibility to speed up institution-building in Kosovo. Conditionality is a good additional tool to these efforts and might help to ensure long term success in keeping Kosovo's institutions on track. For Kosovo there are no real alternatives to EU membership and thus compliance with EU conditionality in the long run. Therefore conditionality should be judged as a tool for longer time periods.

My second recommendation concerns Education in Kosovo which is an issue that needs to be addressed. So far progress in this area has been limited. Education is however a key to the future development of Kosovo. Well educated and trained people are needed to resolve the capacity problems in all areas of Kosovo's institutions. The EU could step up its offer of scholarships for universities in the EU for young people especially those attempting to work in Kosovo's civil service. Furthermore the education in universities in Kosovo and the training opportunities for civil servants could be improved. Also in this field steps have been taken by the EU like the establishment of the Regional School for Public Administration which is intended for the whole Balkan region. Thus we can conclude that overall a lot of efforts are made to boost capacities in

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<sup>1</sup> For more information on these programs see [http://ec.europa.eu/enlargement/how-does-it-work/technical-assistance/index\\_en.htm](http://ec.europa.eu/enlargement/how-does-it-work/technical-assistance/index_en.htm)

accession countries and a lot of strategies are in place already. It might take some time till results will show effect in Kosovo.

Another issue that needs to be solved in order to make progress is the minority question. The European Union and the International Community rely on decentralization as main strategy to get the Serb minority to participate in the state of Kosovo. They have however refused participation as they still do not recognize the independence of Kosovo. Time might be a factor that is helping to get at least some participation as the parallel structures in the Serb territories do not always provide sufficient services. This situation has been aggravated through the financial crisis which made support from Serbia to these structures more difficult. The International Crisis Group for example concludes that the policy of Serbia to isolate Serbs from Kosovo's institutions is failing (International Crisis Group 2009).

My first recommendation to solve this problem is that the European Union has to ensure that the Albanian majority is serious about the integration of minorities in the new structure and might to this end need to enforce conditionality stronger. There needs to be a strong pressure on the Albanian majority to create a multi-ethnic society. The EU could threaten to withhold financial assistance in the case of non-compliance.

My second recommendation is to solve the status question of Kosovo. All EU member states should, now after the ruling of the International Court of Justice that Kosovo's independence was legal, accept the state of Kosovo. Furthermore the pressure on Serbia needs to be increased to accept the state of Kosovo. The EU can make clear that Serbia can only become a member of the European Union if it accepts Kosovo's independence. Furthermore Serbia needs to be pushed to cooperate in this matter and convince the Serb minority in Kosovo to participate in the new state. This is however very unlikely at the moment as Serbia does everything to work against the independence of Kosovo. If this problem can be resolved participation by the Serb minority might be possible one day. The EU needs thus to put pressure on both sides to accept the decentralization at least in the short-run and strategies for reconciliation could be put in place for long-term stability. This could in the end lead to a stable and functioning state of Kosovo that could in the long future become a member of the European Union.

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