

# **International Normative Commitments to Multi-Ethnicity: The Case of Kosovo, 1999–2012**

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## **Abstract**

Following the war in Kosovo in 1999, the international community embarked on the most extensive international peace- and state-building project to date. From the early UN administration of Kosovo until the end of ‘supervised independence’ in 2012, various international organisations played a critical role in shaping the post-war polity. Throughout this engagement, the international community was driven by normative commitments to multi-ethnicity. However, while international organisations were committed to making Kosovo ‘multi-ethnic’, lack of clarity prevailed about what this goal entailed, or why it was so important. The thesis seeks to answer two inter-related questions: what was meant by multi-ethnicity on the part of its proponents, and what explains the prominence of commitments to this idea. Taking the form of three sections, the thesis examines these commitments’ origins, manifestations, and explanations. International normative commitments to multi-ethnicity are found to originate in a shifting conception of the relationship between ethnic diversity and legitimate statehood during the twentieth century. Their manifestations in Kosovo are studied in three policy domains: the return of displaced persons, decentralisation of government to the local level, and minority rights. The thesis finds that international efforts in the pursuit of multi-ethnicity in Kosovo exhibited conflicting notions of multi-ethnicity, which shifted from integrationist ambitions to notions that reconciled the reality of segregation between ethnic groups on the ground through a ‘politics of recognition’. The goal of multi-ethnicity remained, but was transformed. Explanations for the commitments to multi-ethnicity are found in both normative and consequentialist considerations, by uncovering unspoken underlying assumptions, and in the identity and self-image concerns of international actors. These findings indicate the power of the normative environment in shaping the actions of international organisations and provide insights into the thus far under-theorised normative dimension of the international state-building project in Kosovo.



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## **List of Abbreviations**

BiH	Bosnia and Herzegovina
CCC	Consultative Council for Communities
CFPSG	Constitutional Framework for Provisional Self-Government in Kosovo
CoE	Council of Europe
CSCE	Conference on Security and Cooperation in Europe
EC	European Community
ECMI	European Centre for Minority Issues
ECRML	European Charter for Regional or Minority Languages
ECHR	European Convention on Human Rights
ESI	European Stability Initiative
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
FCNM	Framework Convention for the Protection of National Minorities
FRY	Federal Republic of Yugoslavia
HPD	Housing and Property Directorate
HPCC	Housing and Property Claims Commission
ICG	International Crisis Group
ICO	International Civilian Organisation
ICR	International Civilian Representative
IDP	Internally Displaced Person
KFOR	Kosovo Force
KLA	Kosovo Liberation Army
KPA	Kosovo Property Agency
KSIP	Kosovo Standards Implementation Plan
LoN	League of Nations
MCR	Ministry of Communities and Returns
MLGA	Ministry of Local Government Administration
NATO	North Atlantic Treaty Organisation
ORC	Office for Returns and Communities

OSCE	Organisation for Security and Cooperation in Europe
PISG	Provisional Institutions of Self-Government
PMU	Pilot Municipal Unit
RAE	Roma, Ashkali, and Egyptians
SFRY	Socialist Federal Republic of Yugoslavia
SMU	Sub-Municipal Unit
SRSG	Special Representative of the Secretary General
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNMIK	United Nations Interim Administration Mission in Kosovo
UNSC	United Nations Security Council

Note on place names

Place names are spelled in the terms most common or most convenient in English. Where this corresponds with either Albanian or Serbian spelling no political statement is intended.

## **Chronology of Key Events**

- 1989 Kosovo's autonomy is revoked and direct rule from Belgrade instated.
- 1991 Dissolution of Yugoslavia, wars erupt in Slovenia and Croatia.
- 1992 War erupts in Bosnia and Herzegovina.
- 1993 Copenhagen Criteria for EU membership established.
- 1995 Dayton Accord ends war in Bosnia and Herzegovina.
- 1998 KLA insurgency, Yugoslav forces intensify their response against civilian population in Kosovo.
- 1998 Christopher Hill conducts shuttle diplomacy between the parties, leads to Hill Proposal.
- 1999
- February* Conference held in Rambouillet.
- March–June* NATO intervention in Kosovo, air campaign against Serbia.
- June* UNSC Resolution 1244 establishes UNMIK.
- 2001 UNMIK passes Constitutional Framework for Provisional Self-Government in Kosovo.
- 2001 Ohrid Framework Agreement ends insurgency in neighbouring Macedonia.
- 2003 'Standards for Kosovo' unveiled.
- 2004 Large-scale riots targeting UN and minorities in Kosovo. In response, Kosovo-Serbs boycott elections.
- 2005 October, Eide Report is published, recommending the start of talks on Kosovo's future status.
- 2006 Vienna Negotiations (so-called status talks) begin under the mediation of Marti Ahtisaari.
- 2007 Comprehensive Proposal for the Kosovo Status Settlement (Ahtisaari Plan) recommends conditional, supervised independence for Kosovo.
- 2008 Kosovo unilaterally declares independence, adopts Constitution modelled after Ahtisaari Plan. ICO established to supervise Kosovo's independence.
- 2009 Five new Serb-majority municipalities established in ICO-led decentralisation process, local elections held with growing turn-out among Kosovo-Serbs.
- 2012 International supervision of Kosovo ends with the closing of ICO.



## **I. Introduction**

The 1999 intervention by the North Atlantic Treaty Organisation (NATO) in Kosovo led to a prolonged period of international engagement during which the United Nations (UN) and other international organisations oversaw the transformation of the province in an unprecedented project of internationally led post-conflict state-building. This period coincided with a significant shift in the inter-ethnic relations on the ground. After the oppression of Kosovo's Albanian population under President Slobodan Milošević, Serbia's rule over the province and its majority ethnic Albanian population came to an end. A large number of Kosovo-Serbs and members of other ethnic minorities remained in Kosovo as the UN took over administration of the province. After years of building local institutions and negotiating Kosovo's future status, the former province of Serbia declared itself independent in 2008. Since the end of the conflict in 1999, international organisations have been active in Kosovo, administering the territory, negotiating its future status, and finally supervising its independence until 2012.

Studying the period from 1999–2012 and the range of policies pursued, 'multi-ethnicity' emerges as a central goal of the international community for Kosovo. This concept runs like a red thread through varied policy areas that formed part of the international peacebuilding and state-building project in post-conflict Kosovo, which included the return of displaced persons, decentralisation of government, and minority rights. However, despite its prominence, multi-ethnicity is rarely elaborated further, and it therefore remains unclear what exactly international actors have in mind when they declare that Kosovo should be a

‘multi-ethnic’ state. Policies pursued in the name of multi-ethnicity are controversial as they are not without risk and can come at high cost.<sup>1</sup> Furthermore, it remains unclear why the international community was and continues to be so committed to this idea of a multi-ethnic state, giving it centre stage in its engagement with post-war Kosovo.

The international community invested considerable effort and resources in pursuit of multi-ethnicity in Kosovo throughout the post-war period, despite mixed results on the ground. It has been pointed out that in the policy sphere, it is ‘anathema to question the goal of re-establishing multi-ethnicity [in the post-conflict Yugoslav successor states], notwithstanding the elusiveness or even the dubious soundness of the goal in some cases.’<sup>2</sup> This thesis asks why this has been the case.

This question is worth asking because this heavy focus on multi-ethnicity was not the only choice available to the international community, nor was it an inevitable one.<sup>3</sup> Throughout history, widely different approaches have been taken to address the issue of diversity, particularly after war. The commitment to multi-ethnicity makes the international state-building project in Kosovo significantly more difficult. International actors risk their own credibility by committing

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<sup>1</sup> Will Kymlicka, *Multicultural Odysseys: Navigating the New International Politics of Diversity* (Oxford: Oxford University Press, 2007).

<sup>2</sup> Richard Caplan, ‘European Organizations and the Governance of Ethno-Cultural Diversity after the Cold War: The Yugoslav “Laboratory”’, *Nationalism and Ethnic Politics*, vol. 20, no. 3, 2014, p. 275.

<sup>3</sup> Many scholars continue to debate possible alternatives, and stress that these choices are not pre-determined, e.g. Lise Morjé Howard, ‘The Ethnocracy Trap’, *Journal of Democracy*, vol. 23, no. 4, 2012, pp. 155–69.

themselves to this goal, in which they invest reputational capital as well as significant resources. In this sense, the choice is puzzling.

While some of the previous approaches, such as forcible population exchanges, may have become unthinkable in the political and normative climate of the late twentieth and early twenty-first centuries, the question still remains as to why Kosovo witnessed this stress on multi-ethnicity, and why particular understandings of the term were prevalent. In order to engage with these questions, this study examines these commitments in more depth, proposing that such a study can tell us something about the normative dimensions of the international state-building project and about prevalent conceptions of legitimate political organisation and statehood in the twenty-first century.

In this introductory chapter, I outline the thesis' research question and methodology, including a discussion of case selection, scope, and data. Thereafter, the study's conceptual framework is introduced in the form of two logics of action that guide the examination in subsequent chapters. Finally, I offer a review of the literature pertinent to the research question, and end with an outline of the thesis.

While the implementation of various policies of 'multi-ethnicity promotion' on the ground have been studied and their merits debated, a critical, in-depth examination of the normative commitments to multi-ethnicity on the part of the international community, including their origins and manifestations, is missing. The aim of this study is to fill this gap and explain these international normative commitments to multi-ethnicity. In order to do so, the thesis examines how commitments to multi-ethnicity manifest themselves in international policymaking in Kosovo, and sheds light on the various notions of multi-ethnicity at play, and how these inform the policies in question. The picture that emerges is of a

complex policy endeavour, characterised by tensions and inconsistencies around the nature and extent of the commitment, as well as its interplay with political realities on the ground.

This thesis thus seeks to explain the normative commitments to multi-ethnicity by exploring how the international community in Kosovo negotiated the concept through policies over the period from 1999 to 2012. It is because the idea of multi-ethnicity is so pervasive in the international community's discourse around Kosovo, yet at the same time as a concept it remains contested and under-theorised, that this phenomenon deserves critical examination. An in-depth critical look at three policy areas, understood as manifestations of these commitments – minority returns, decentralisation and minority rights – helps explain these normative commitments. In other words, these policy areas are seen as illustrations of the thinking on multi-ethnicity among the international community. The thesis sheds light on the different, and at times competing, notions of multi-ethnicity that inform policy, as well as on various explanations for the international commitments to multi-ethnicity in the case of Kosovo. Explanations for these commitments can be found in the broader normative frameworks that constrain and shape international politics, as well as in international actors' self-image concerns and a range of assumptions that underlie the commitments to multi-ethnicity, which, however, are rarely made explicit.

### **1.1. International Normative Commitments to Multi-Ethnicity in Post-Conflict Kosovo**

Since the Yugoslav wars of the early 1990s, there has been considerable international involvement in the post-conflict political landscape of Yugoslavia's

successor states. Over the past two decades, this international undertaking has ranged from humanitarian aid to peacebuilding and state-building initiatives including substantial international funds flowing into the region and, in some cases, UN and European Union (EU) missions that enjoy executive powers. While the region is now stabilised and has been peaceful for over a decade, its political landscape continues to be significantly influenced by international actors. Since several conflicts in the region preceded the one in Kosovo in 1999, the international involvement in post-conflict Kosovo was both emblematic of a previous decade of peace- and state-building in the region and drew upon the specific experiences of international engagement for example in Bosnia and Herzegovina (BiH) and Croatia.

In Kosovo, the international community has maintained a significant presence since the conflict, playing an important role in maintaining peace, as well as shaping the nature of the post-conflict polity. This is evident in the UN's administration of the territory following the NATO intervention,<sup>4</sup> the international involvement in the ultimately unsuccessful status negotiations, and finally the endorsement by a significant number of the most powerful Western states of Kosovo's unilaterally-declared independence, as well as their continued presence in monitoring, oversight, and executive roles in Kosovo.

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<sup>4</sup> The United Nations Interim Administration Mission in Kosovo (UNMIK), established under UN Security Council Resolution 1244 in June 1999, took over all basic civil administrative functions after the conflict, as the resolution had 'effectively established Kosovo as a UN protectorate', see Richard Caplan, *International Governance of War-Torn Territories: Rule and Reconstruction* (Oxford: Oxford University Press, 2005), p. 19.

From the different forms that this involvement has taken, one can discern the commitments of international actors as well as their positions on the conflict, its resolution, and visions of the ideal post-conflict state. The policies pursued by external actors in the promotion of multi-ethnicity in Kosovo indicate not only what is conceived as necessary for peace and stability to be achieved, but also what is deemed desirable for them to be maintained. Recurring in the many manifestations of international involvement in post-conflict Kosovo are normative commitments to the idea of multi-ethnicity. The continued (or ‘restored’, as it is sometimes, arguably inappropriately, called) multi-ethnic character of Kosovo appears to be of major concern to international actors.

Both the scholarly literatures on post-conflict state-building and on diversity in democratic states (the ‘multiculturalism debate’) suggest that the concept of multi-ethnicity is not without its own tensions and complications, and as this study shows it is indeed a contested concept in the case of Kosovo. These tensions have been studied in theoretical and philosophical contexts. In addition, the outcomes of different policies pursued in the name of multi-ethnicity have been studied through empirical research and judged on how well they work. However, what is missing with regards to the involvement of the international community in the Western Balkans is an account of why the commitments to multi-ethnicity appeared as normative. This would include excavating the underlying assumptions in order to come to a clearer understanding of how multi-ethnicity was understood and employed on the part of its proponents. In other words, how those promoting multi-ethnicity in Kosovo themselves define success in this field, or how they frame and understand what it is they are pursuing has not yet been established. Despite the frequent mention of multi-ethnicity in the academic and policy

discourse around post-war Kosovo, it thus remains unclear what international policymakers had in mind when they referred to a situation of ‘multi-ethnicity’. Is it meant in a purely demographic sense, as defined by the presence of different ethnic groups in the territory, irrespective of their interrelationships? Or is it meant to include the element of inter-ethnic cooperation? If so, what level of cooperation would be necessary to constitute true multi-ethnicity? Is the ‘multi-ethnic character’ of a state to be found in the representation of all groups in official bodies or in multi-lingual documents? Does it entail a civic idea of citizenship or the constitutional recognition of all groups living in the state? How is this ‘ideal situation’, the multi-ethnic state, to be achieved? And, importantly, why is it considered to be an inherently good thing? Given that many of the policies that have been endorsed by the international community in the name of multi-ethnicity in the former Yugoslavia entail the real possibility of further entrenching ethnic divisions and re-igniting conflict, it has been argued that there are some serious internal contradictions at play.<sup>5</sup>

## **1.2. Explaining Normative Commitments: Two Logics of Action**

Constructivist scholars of international relations have studied how norms emerge, how they spread internationally, and the ways in which they shape international politics.<sup>6</sup> Over the past two decades, this body of scholarship has

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<sup>5</sup> Edward Newman, Ronald Paris & Oliver P. Richmond, eds., *New Perspectives on Liberal Peacebuilding* (New York: UN University Press, 2009); Camille A. Monteux, ‘Decentralisation: The New Delusion of Ethnic Conflict Regulation?’, *International Journal on Multicultural Societies (IJMS)*, vol. 8, no. 2, 2006, pp. 162–82.

<sup>6</sup> See e.g. Peter J. Katzenstein, ed., *The Culture of National Security* (New York: Columbia University Press, 1996); Martha Finnemore & Kathryn Sikkink, ‘International Norm Dynamics and

broken with the previously dominant focus on material capabilities of states, and with the assumption of state interests as given. Constructivists instead view states as social actors, and focus on identities, values, history, and norms. This school of thought considers the ways in which constructed, collective identities of political actors affect their policies, and studies the effects of these political identities on how actors define their interests in the first place. Norms can be regulatory or constitutive in nature – they can shape how actors behave or how they see and understand themselves.<sup>7</sup> Normative commitments to multi-ethnicity display elements of both. On the one hand, they drive policy, on the other, they feed into actors’ identities, e.g. in their self-understanding as European or ‘Western’ states, insofar as certain approaches to diversity have become part of what it might mean to be a European state. However, the relationship between the various elements is recursive and circular – norms affect interests, identities, and policies, but policies and identities also reproduce and reconstruct the interstate normative structures.<sup>8</sup>

According to James March and Johan Olsen, there are two different ‘logics of action’ by which political actors define goals and strategies.<sup>9</sup> The first, the ‘logic of consequences’, or ‘effectiveness’, suggests that political actors think in utility

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Political Change’, *International Organization*, vol. 52, no. 04, September 1998, pp. 887–917; Ian Hurd, ‘Constructivism’, in Christian Reus-Smit & Duncan Snidal, eds., *Oxford Handbook of International Relations* (vol. 5) (Oxford: Oxford University Press, 2008), pp. 298–317.

<sup>7</sup> Paul Kowert & Jeffrey Legro, ‘Norms, Identity, and their Limits: A Theoretical Reprise’, in Katzenstein, *Culture of National Security*, p. 452.

<sup>8</sup> Ronald L. Jepperson, Alexander Wendt, & Peter J. Katzenstein, ‘Norms, Identity, and Culture in National Security’, in Katzenstein, *Culture of National Security*, p.53.

<sup>9</sup> James G. March & Johan P. Olsen, ‘The Institutional Dynamics of International Political Orders’, *International Organization*, vol. 52, no. 4, October 1998, pp. 943–69. These two logics are used in this study similarly to the way they are employed by Roland Paris, ‘Peacekeeping and the Constraints of Global Culture’ *European Journal of International Relations*, vol. 9, no. 3, 2003, 441–73.

maximising terms, while second, the ‘logic of appropriateness’, sees political actors choosing strategies according to prevailing norms, or seeking to do what is believed to be ‘the right thing’. In the case of the international promotion of multi-ethnicity in post-conflict Kosovo, a logic of consequences or effectiveness could be used to evaluate multi-ethnicity with respect to its potential to contribute to peace and stability, the overall goals of international intervention and state-building in Kosovo. The established academic literature on the topic of maintaining peace in post-conflict divided societies discusses institutional approaches such as consociationalism, or rights-based approaches centred around group or individual rights. Employing the logic of effectiveness would then mean evaluating the promotion of multi-ethnicity in post-conflict settings solely based on its ability to achieve the goals of peace and stability with the highest chances of success, greatest gains and lowest risks and costs. According to this logic, it could be argued that the promotion of multi-ethnicity is both a highly costly and risky endeavour, and that the different policies it has led to in the Western Balkans are very much part of an on-going experiment, whose outcome remains unknown. The idea of separating ethnic groups—in the form of principled secessions, adjustment of borders, or transfer of populations—has been discussed to some extent in the academic literature on plural societies,<sup>10</sup> and in the policy debates on Kosovo where proposals for its partition have been raised.<sup>11</sup> However, the international

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<sup>10</sup> Chaim Kaufmann, ‘Possible and Impossible Solutions to Ethnic Civil Wars’, *International Security*, vol. 20, no. 1, Spring 1996, pp. 136–75; Chaim Kaufmann, ‘When All Else Fails: Ethnic Population Transfers and Partitions in the Twentieth Century’, *International Security*, vol. 23, no. 2, Fall 1998, pp. 120–56.

<sup>11</sup> John J. Mearsheimer & Stephen Van Evera, ‘Redraw the Map, Stop the Killing’, *New York Times*, April 1999; International Crisis Group (ICG), *Kosovo and Serbia after the ICJ Opinion*, August 2010.

community has for the most part rejected these proposals. It seems that there has been no pragmatic debate, at least no public debate, about the potential benefits of strategically rejecting the principle of multi-ethnicity, which indicates the strength of the above-mentioned commitments to it on the part of the international community.

The logic of appropriateness, on the other hand, presumes that political actors evaluate their strategies not merely based upon effectiveness, but also in light of perceptions of appropriateness. These perceptions are likely to be influenced by prevailing norms and values, ideological commitments, and actors' self-image and identity. The international engagement in Kosovo and in the wider Western Balkan region has been described as following a principled commitment to reject the drawing of borders along ethnic lines, and to foreclose any acceptance of the results of the 'ethnic cleansing' strategies that were witnessed during the wars that accompanied the dissolution of Yugoslavia. This commitment has been referred to as the 'anti-Lausanne consensus',<sup>12</sup> referring to the largest and most famous instance of an internationally sanctioned attempt at creating more homogeneous nation states. The Treaty of Lausanne of 1923 set the terms for the population transfers between Greece and Turkey of the respective 'minority' populations, leading to the displacement of 1.5 million people.<sup>13</sup>

This anti-Lausanne consensus, discussed in more detail in Chapter Two, espouses the value of diversity, and it is the product of a certain reading of

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<sup>12</sup> European Stability Initiative (ESI), *The Lausanne Principle: Multiethnicity, Territory and the Future of Kosovo's Serbs*, June 2004.

<sup>13</sup> Chapter Two discusses the Lausanne Treaty in more detail in light of the evolution of international thinking about diversity that preceded and followed it.

European history; a judgment of past approaches to multi-ethnicity. In this sense it can be argued that the international community's promotion of and strong commitment to multi-ethnicity can only be fully explained in light of how the international community perceives itself and its engagement in post-conflict situations. Since the benchmarks for 'successful' intervention and peacebuilding are set by the interveners and peace-builders themselves, the logic of appropriateness can assist in understanding these commitments. International actors attach importance to the ways their engagement in post-conflict settings will reflect upon them. Concerns about identity and self-image therefore play an important part in determining the commitment to a strategy. It is safe to assume, then, that given the important interventionist and mediating role played by the international community in ending the conflict in Kosovo, the reputations of these actors must be considered as linked to the perceived success of the peace- and state-building initiative. Given the anti-Lausanne consensus, it is understandable that external actors do not wish to be perceived as being complicit in creating mono-ethnic states that are based on violent separation of groups. Writing about the international community's policy on multi-ethnicity in post-war BiH, for example, Richard Caplan has argued that 'homogeneity would have been tantamount to an admission of failure'.<sup>14</sup>

In addition to concerns about condoning ethnic violence and accusations of potential complicity in partition, the international community is often uneasy about seemingly taking sides in conflicts through interventions and peacebuilding

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<sup>14</sup> Caplan, 'European Organizations', p. 275.

initiatives that are understood as favouring one group over another. The logic of appropriateness thus explains how the commitment to multi-ethnicity might be seen as a way of post-factum reconciling the fact that intervention led to new victims in a conflict, or bolster the attempts of the international community to portray itself as an impartial actor, responding to a crisis by pursuing policies that are in everyone's interest. Kosovo is a case in point. Here, intervention was explicitly justified in terms of the protection of Kosovo's Albanian population from the repression and violence perpetrated by Serbia's army and police forces under the leadership of Slobodan Milošević, then president of the Federal Republic of Yugoslavia (FRY). However, intervention changed the political reality into one of ethnic Albanian dominance in post-war Kosovo, leading to the local Serb population being the subject of most minority protection measures during the period of international administration and supervision.

Finally, using the lens of the logic of appropriateness, it is worth studying the apparent belief in diversity as an inherently positive value. This particular outlook is also linked to both perceptions about the region's supposedly harmonious multi-ethnic past and domestic experiences with pluralism in the countries that intervened and led the international efforts in Kosovo. Will Kymlicka, describing the global proliferation of the politics of recognition and multiculturalism, shows that this phenomenon is recent and has been applied in contradictory ways by international organisations and other actors including NGOs, academics and development agencies.<sup>15</sup> Employing both the logics of

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<sup>15</sup> Kymlicka, *Multicultural Odysseys*; See also Jane Boulden & Will Kymlicka, eds., *International Approaches to Governing Ethnic Diversity* (Oxford: Oxford University Press, 2015).

consequences and appropriateness, he identifies the roots of this normative commitment in developments taking place in the early 1990s, when optimism about ethnic politics in the West was coupled with pessimism about ethnic politics in the post-communist East. These circumstances, according to Kymlicka, led to a sense of urgency on the part of a number of international organisations and provided them with a moral direction; the faith in liberal multiculturalism and the drive to propagate it throughout the world. This enabled a strong commitment to policies explicitly recognising difference. The policy areas described in this study—minority returns, decentralisation, and minority rights—in which the international community promoted a certain understanding of multi-ethnicity in post-conflict Kosovo, are expressions of the developments Kymlicka describes.

It is worth noting that these two logics of action are not thought to be mutually exclusive and often may operate simultaneously and in a subtle relationship with one another.<sup>16</sup> Norms do not float in a material vacuum, nor do political actors fall neatly into a dichotomy of operating by one logic or the other. Therefore, both logics need to be taken into account when explaining any given phenomenon. For the purposes of this study, however, examining international state-building in Kosovo through the lens of a logic of appropriateness has proven fruitful insofar as it opens up space to think about explanations for the central role multi-ethnicity plays as a goal in international policymaking, whereas within the framework of a logic of effectiveness these choices would seem puzzling. Certainly some observers will see this latter logic at play and interpret the stress on multi-

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<sup>16</sup> March & Olsen, 'Institutional Dynamics of International Political Orders', p. 952. See also Kowert & Legro, 'Norms, Identity, and their Limits'.

ethnicity in the international community's approach as an outcome of a more pragmatic conflict resolution process—a mere compromise in negotiating between those involved in the conflict—rather than as a reflection of normative commitments to diversity or multi-ethnicity. Nevertheless, even within the constraints of conflict resolution with the goal of peace and stability, normative preferences certainly limit and inform the choices available to international actors, and may explain why they prioritise certain ideas and interpretations of multi-ethnicity over others. As such, keeping the logic of appropriateness in mind proves helpful in answering the main question of this thesis, i.e. why the choice is made to pursue multi-ethnicity, and, as part of this explanation, what is understood by multi-ethnicity on the part of its proponents, given that in practice this commitment remains largely unspecified. Rather than dichotomising the two logics, this study of international actors' commitments to multi-ethnicity in Kosovo suggests that the two logics do interact in complex ways, as will be traced in subsequent empirical chapters.

### **1.3. Methodological Concerns**

As a brief review of the literature demonstrates below, the notion of multi-ethnicity and related concepts of multiculturalism and pluralism have been studied from instrumental, normative and critical standpoints. However, what is lacking is a study of the complex ways in which commitments to multi-ethnicity are generated, understood, and negotiated in policymaking on the part of their international proponents. Kymlicka states that despite the trends of internationalising commitments to diversity, there has been surprisingly little scholarly work done on the 'international diffusion of multiculturalism and

minority rights’, and on how different international organisations perceive the ‘problem of ethnic diversity in different ways’.<sup>17</sup> No study has critically engaged with the normative commitments to multi-ethnicity on the part of the international community in post-conflict settings, and specifically with their different and conflicting manifestations, conceptualisations and explanations.

This thesis proposes to fill this gap by offering a critical examination of the international normative commitments to the concept of multi-ethnicity in post-conflict Kosovo. This study is both analytical and interpretive in nature.<sup>18</sup> The aim is to gain a thorough understanding of a concept that is omnipresent in the international community’s involvement in Kosovo, but that in its application often lacks specification, appears to be taken for granted by political actors involved, and remains under-theorised in the literature. It also aims to explain these rather surprising commitments, by examining what is meant by multi-ethnicity on the part of its international proponents, what the underlying assumptions and knowledge claims underpinning the commitments to it are, discern any related internal contradictions, and examine how these play out in practice.

Robert Cox distinguishes between critical and problem-solving approaches to social science.<sup>19</sup> According to this, critical approaches question prevailing discourses or ways of thinking and ‘do not accept existing policy parameters as a

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<sup>17</sup> Kymlicka, *Multicultural Odysseys*, p. 12.

<sup>18</sup> Yanow & Schwartz-Shea describe the interpretive approach as one that, rather than resting on positivist presuppositions, puts ‘human meaning making at the centre’, see Dvora Yanow & Peregrine Schwartz-Shea (eds.), *Interpretation and Method: Empirical Research Methods and the Interpretive Turn*, 2nd ed. (Armonk, N.Y.: M.E. Sharpe, Inc., 2014), p.xxi.

<sup>19</sup> Robert Cox, ‘Social Forces, States and World Orders: Beyond International Relations Theory’, *Millennium*, vol. 10, no. 2, 1981, pp. 126–55.

given or as necessarily legitimate'.<sup>20</sup> The critical approach, different from one that addresses the effectiveness of a strategy, raises questions about existing institutions, policy assumptions and the interests they serve, and in some cases challenges these assumptions.<sup>21</sup> Similarly, this study challenges the assumptions of multi-ethnicity promotion and points to some of the tensions inherent in international commitments to multi-ethnicity. It does not, however, primarily seek to evaluate how well the various multi-ethnicity policies 'work'. In addition to being fraught with problems of measurement and operationalisation of such concepts as 'inter-ethnic cooperation' or 'co-existence', the most important limitation of such an approach lies in the time factor. In Kosovo, the promotion of multi-ethnicity in the post-conflict environment has only been implemented for a relatively short period, i.e. over the last fifteen years. This would make it difficult to find meaningful empirical evidence for 'success' or 'failure' of multi-ethnicity promotion. Instead, this study seeks to examine how the various actors define 'success', how they believe multi-ethnicity should be achieved and what a state of multi-ethnicity would look like. In this sense, the years of international involvement in post-conflict Kosovo allow for ample study of the commitments in their various guises. It is hoped that this approach will contribute to an understanding of the under-theorised normative dimensions of the peace- and state-building project.

However, while the thesis' primary interest is not in how effective the policies are, it does not ignore the effects of the policies either. Naturally, the

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<sup>20</sup> Newman et al., *New Perspectives*, p. 38.

<sup>21</sup> *ibid.*, p. 23.

policies' effects contribute to explaining developments in the commitments to multi-ethnicity in Kosovo, as these experiences inform actors' commitments. In other words, while the primary interest is in the normative commitments that drive the policies related to multi-ethnicity, their outcomes and effects on the ground matter insofar as they influence the thinking about multi-ethnicity among actors. As such, the empirical dimension of how developments in Kosovo shaped the normative commitments in question does form part of this study, particularly in Chapters Four to Six.<sup>22</sup> However, the aim of this study is not to conduct an evaluation—by whatever standards—of the policies related to multi-ethnicity, but rather to explain the commitments to the concept that drive these policies. Why and how are international actors committed to the idea of a multi-ethnic state? How do they define it and translate it into practice? And how do the effects of policies pursued on the ground in turn alter these commitments? The effects are studied in the empirical section of the thesis in order to illuminate the ways in which understandings of multi-ethnicity and commitments to it are negotiated within and between international actors in post-war Kosovo.

The thesis focuses on what commitments to multi-ethnicity can teach us about the actors that hold these commitments, rather than on evaluating their outcomes against a given benchmark of 'success', in order to learn more about the actors themselves and particularly the normative environment in which they operate. How do they frame their promotion of multi-ethnicity? How do they assess what is and isn't working in the promotion of multi-ethnicity? Where do they see

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<sup>22</sup> Yanow & Schwartz-Shea describe this as 'empirical research analysed "interpretively"', Yanow & Schwartz-Shea, *Interpretation and Methods*, p. xxiii.

tensions and dilemmas? The critical and interpretive approach is employed because these questions are likely to generate insights about the normative dimension of international peace- and state-building, which this thesis seeks to illuminate. In contrast to much of the existing literature on post-conflict peace- and state-building, which has taken a rather technical approach, this approach promises to illuminate the complexity inherent in an endeavour like post-conflict state-building.<sup>23</sup>

The methodological approach taken for this research is qualitative and interpretive, making use of in-depth qualitative analysis of policy documents, secondary literature, and semi-structured and unstructured interviews. The aim is two-fold: to explain the normative commitments to multi-ethnicity (why the international community is so committed to the idea despite the difficulties and risks involved and in light of the alternatives) and to unpack various notions of multi-ethnicity to understand how international actors conceptualise multi-ethnicity differently. These two aims are connected and thus the research conducted mutually reinforces answering both questions by emphasising the ‘meanings—the beliefs and traditions—that are embedded in actions and practices’.<sup>24</sup>

This thesis does not propose to generate or test any hypothesis regarding commitments to multi-ethnicity, nor does it set out to build a causal model, in the strict sense. The phenomena and interplay of factors examined here can more aptly

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<sup>23</sup> For a critique of this technical approach, which he calls the ‘guide-book approach’, see Andreas Ernst, ‘Fuzzy Governance: State-Building in Kosovo Since 1999 as Interaction Between International and Local Actors’, *Democracy and Security*, vol. 7, no. 2, 2011, pp. 123–39.

<sup>24</sup> Mark Bevir, ‘How Narratives Explain’, in Yanow & Schwartz-Shea, *Interpretation and Methods*, p. 283.

be considered to ‘account’ for an observed outcome, rather than conclusively explain or even predict such an outcome.<sup>25</sup> Rather, using interpretive and qualitative methods, the thesis seeks to enhance our understanding of the normative structures that constitute, constrain, and thereby account for international policy in the post-conflict setting. This approach can be considered an exercise in constitutive theorising.<sup>26</sup> Constitutive theory objects to the exclusive focus on causal mechanisms and instead holds that rules and self-understandings play both constitutive and causal roles in social life. This does not imply that there are no causal mechanisms at play in the interpretive study of norms, since as Wendt also concedes, ‘norms are causal insofar as they regulate behaviour’.<sup>27</sup> However, while much positivist social science focuses on causal mechanisms in the narrow sense, whereby X is shown to produce Y, with the two variables considered mutually independent and temporally sequenced, constitutive theorising focuses on ‘the structures that constitute X and Y in the first place’.<sup>28</sup> In this context it appears particularly unsuitable to think in the categories of dependent and independent variables, when these are often mutually constitutive in the social world. Answering these kinds of questions thus calls for the use of interpretive methods, which necessarily includes a large degree of description and conceptual analysis.<sup>29</sup>

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<sup>25</sup> Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999), p. 88.

<sup>26</sup> *ibid.*, p. 83.

<sup>27</sup> *ibid.*, p. 82.

<sup>28</sup> *ibid.*, p. 83.

<sup>29</sup> *ibid.*, p. 87.

The lack of a clear definition of multi-ethnicity and the fact that this thesis does not offer a framework for measuring it should not be considered a weakness of the research design. On the contrary, looking at the way the concept is negotiated and understood differently by actors enhances our understanding of this under-studied commitment, whose complex and contested nature is exactly the focus of the study. The interpretive approach taken promises to shed light on how the commitment to this idea is situated within and around international actors' broader normative frameworks, what it allows them to do, and what they expect and hope it can achieve. Antje Wiener finds an inverse relationship between the levels of contestation around a norm and its level of specification.<sup>30</sup> In other words, the most contested norms, or what she calls 'fundamental norms', are also the least specified, whereas the most specified, or what she calls 'standardised procedures' are the least contested.<sup>31</sup> Multi-ethnicity in post-conflict Kosovo can be understood as such a fundamental, yet contested norm.<sup>32</sup>

A qualitative, interpretive approach and the use of an in-depth case study is most suitable to interrogate such a complex commitment and to situate it within the context of the actors' normative frameworks, beliefs, history, and self-understanding. The interpretive approach links beliefs, intentions, and actions in an understanding that these are constitutive of the commitments to and understandings

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<sup>30</sup> Antje Wiener, 'Enacting Meaning-in-Use: Qualitative Research on Norms and International Relations', *Review of International Studies*, vol. 35, no. 1, 2009, p. 185.

<sup>31</sup> In the middle she finds 'organising principles' (*ibid.*, p. 185).

<sup>32</sup> Lisa Gross, 'The Journey from Global to Local: Norm Promotion, Contestation and Localisation in Post-War Kosovo', *Journal of International Relations and Development*, vol. 18, no. 3, 2015, pp. 311–36. Gross applies Wiener's framework to post-conflict Kosovo and classifies multi-ethnicity as a 'fundamental norm'.

of multi-ethnicity. As Gerring notes, case study research has the virtue of enabling such depth of analysis, as it offers ‘insight into the intentions, the reasoning capabilities and the information-processing procedures of the actors’.<sup>33</sup>

### **Case Selection**

This study uses the international commitments to a multi-ethnic Kosovo to explore larger issues pertaining to post-conflict peace- and state-building and the trend towards multi-ethnicity and diversity becoming more prominent commitments in international relations in the late 1990s and early 2000s. As described above, this is to some extent unexpected in light of European history, and given the difficulties it adds to the already complex task of peace- and state-building in situations following ethnic conflict.

The case of Kosovo is used here in an inductive way, and not to test a theory or hypothesis about multi-ethnicity or its promotion by the international community.<sup>34</sup> It is a starting point for constitutive theorising about commitments to multi-ethnicity and how they play out in post-conflict peace- and state-building. The case study approach is appropriate because it allows for in-depth study of conceptually complex subjects like this one. For this exercise, an ‘information-oriented’, rather than a random selection of a case is suitable,<sup>35</sup> as it allows one to

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<sup>33</sup> John Gerring, *Case Study Research: Principles and Practices* (Cambridge: Cambridge University Press, 2007), p. 45.

<sup>34</sup> *ibid.*, p. 39.

<sup>35</sup> Bent Flyvbjerg, ‘Five Misunderstandings About Case-Study Research’, in Paul Atkinson & Sara Delamont, eds., *SAGE Qualitative Research Methods*, (Thousand Oaks: SAGE Publications, 2006), p. 230. Random sampling would be more important if the aim was to generalise to a large population of cases.

study ‘information-rich cases in depth and detail’.<sup>36</sup> This is because it is not always a case’s representativeness that allows one to reveal the most information about a given phenomenon.<sup>37</sup>

The two relevant criteria in case selection with the aim of studying these international normative commitments to multi-ethnicity are:

(1) the nature and extent of the international community’s role and involvement in a case; and

(2) that the international efforts in pursuing peace- and state-building followed a (perceived) ethnic conflict.

The first criterion relates to the empirical study of the nature of these international normative commitments. Since the focus is on the international dimension, with the aim of understanding the shift towards an ‘internationalisation of liberal multiculturalism’,<sup>38</sup> situations where the international actors had a chance to put this commitment into practice are of particular interest.

The second criterion presumes that it is unlikely that one would find particularly strong commitments to diversity or multi-ethnicity in international responses to conflicts that were not perceived to have an ethnic dimension. As such, many cases of peace- and state-building, broadly construed, do not lend themselves well as cases for this study. For example, the types of cases that fall outside the scope of this project include instances of UN peacekeeping operations

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<sup>36</sup> Michael Quinn Patton, ‘Enhancing the Quality and Credibility of Qualitative Analysis’, *Health Services Research*, vol. 34, no. 5, 1999, p. 1197.

<sup>37</sup> Flyberg, ‘Five Misunderstandings About Case-Study Research’, p. 229.

<sup>38</sup> Kymlicka, *Multicultural Odysseys*.

that were undertaken following wars of independence in the decolonisation period or civil wars in Central America, which were understood as ideological rather than ethnic conflicts.<sup>39</sup> It therefore makes sense to restrict the scope to how commitments to multi-ethnicity, or ideas about diversity, play out around situations of (perceived) ethnic conflict.

The ‘universe of cases’, or scope, is thus relatively small.<sup>40</sup> From a historical standpoint, as mentioned above, this commitment is surprising insofar as previous periods saw approaches that did not focus on multi-ethnicity. This broader trend towards commitments to multi-ethnicity should not be understood as a direct trajectory, but rather a constant negotiation, which is discussed in depth in Chapters Two and Three. Suffice it to say here that the case of Kosovo, while unusual in the broader historical perspective, is characteristic of a moment in the late 1990s and early 2000s. It is thus a good case as it is exemplary of a trend that took place in the post-Cold War period.

Beyond the historical dimension, there is also a regional one. This particular normative trend did not only lead to this ‘moment’ in the late 1990s, but was also more pronounced geographically in Europe. In other post-conflict cases where the international community was involved in peace- and state-building efforts, most notably in various African conflicts in the 1990s and 2000s, the stress on multi-ethnicity, minority rights, and various tools to manage diversity was less pronounced. Similarly, it is in the European legal framework specifically that legal

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<sup>39</sup> This is based on Sarah von Billerbeck’s list of multidimensional or complex UN Peacekeeping Operations. See Sarah von Billerbeck, *Whose Peace? Local Ownership and UN Peacebuilding*, DPhil Thesis, University of Oxford 2012, Annex II, pp. 312–18.

<sup>40</sup> Gerring, *Case Study Research*, p. 80.

norms of minority rights were most strongly enshrined in this period, and European organisations such as the Organisation for Security and Cooperation in Europe (OSCE), the European Union (EU), and the Council of Europe (CoE) have been particularly active in this regard throughout the continent, as discussed further in Chapter Three.<sup>41</sup>

Kosovo represents a good case to study international normative commitments to multi-ethnicity since it fulfils the above criteria:

(1) The international community's role in Kosovo was particularly extensive and influential, with Kosovo in the post-war period constituting a de facto international protectorate, making it an especially rich case to study manifestations of normative commitments. Kosovo's post-war reality was such that international actors had a chance to shape the post-conflict polity to an almost unprecedented extent, which offers a large array of 'observations' of multi-ethnicity promotion in practice.

(2) The conflict in Kosovo was generally understood as an ethnic one, thus making it a suitable case for studying how international actors think of multi-ethnicity in a post-conflict context.

As mentioned above, international actors also significantly influenced diversity policies in other post-Yugoslav successor states, as well as in East and Central Europe as part of the process of EU enlargement, and beyond. This influence took many forms, from membership conditionality, aid policies, mediation in conflicts including significantly shaping peace agreements, to

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<sup>41</sup> Caplan, 'European Organizations'.

intervention and international administration. International actors played decisive roles in drafting and negotiating key documents such as constitutions, laws, and peace agreements in a number of post-Yugoslav states, including BiH, Kosovo and Macedonia.<sup>42</sup> Kosovo is therefore only one case study out of several possible choices that allow for a study of international normative commitments in the post-conflict setting. However, Kosovo experienced what is arguably the highest degree of international involvement, with its constitution, laws and day-to-day policy decisions extensively shaped by international actors and with various international organisations holding executive powers over the period.<sup>43</sup> Additionally, external actors continue to influence and sometimes dominate state institutions in their role as advisors and donors. This role of the international community plays against the backdrop of the prospect of European and transatlantic integration, a goal to which Kosovo and the wider region aspire, and one that adds additional leverage to the international presence. In addition to the extent of the international influence in Kosovo, the number of different international organisations that played an active role in promoting multi-ethnicity adds to making this a very rich case for study.

The Kosovo case is influenced by previous experiences of international peace- and state-building in the region. Most notable here is the international involvement in post-conflict BiH. Both in the secondary literature surveyed, as well as in interviews conducted with policymakers, the connections between BiH and

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<sup>42</sup> In this work, the terms ‘Macedonia’ and ‘Republic of Macedonia’ will be used to refer to the Yugoslav successor state recognised by the United Nations as the Former Yugoslav Republic of Macedonia (FYROM).

<sup>43</sup> These include most importantly in the UNMIK-era the Special Representative of the Secretary General (SRSG) and, after the declaration of independence, the International Civilian Representative (ICR).

Kosovo are a recurring theme. The two cases share certain similarities, such as the fact that many of the same organisations were active, many of the staff held positions in Kosovo after having served in BiH, and they share a joint history as part of the former Yugoslavia. Nevertheless, there are also important differences pertaining to various key elements such as the demographic make-up of the state and the nature of the conflict. It is for this reason that the two cases do not, in the end, lend themselves to being studied through a comparative lens. Nevertheless, the experience of BiH features in the study of commitments to multi-ethnicity in Kosovo, and is therefore discussed throughout the thesis.

To summarise, Kosovo functions as an excellent example and worthy subject matter for this study, because, in addition to fulfilling the basic criteria, it is also an analytically rich and data-rich case.<sup>44</sup> The number of international actors and the extent of their involvement in post-conflict Kosovo offer a wealth of material with which to study the international normative commitments to multi-ethnicity. The case of Kosovo is also representative of the normative trend, most pronounced in Europe, of valuing diversity and attempts to preserve or restore multi-ethnicity following conflict.

The limitation of these methodological choices is that one cannot claim broad generalizability of the findings. However, since the concept of multi-ethnicity in this context is under-theorised, this is an appropriate approach to take at this stage. As is often the case in an in-depth case study, the fact that the results do not fit into ‘neat scientific formulae, general propositions, and theories [can be

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<sup>44</sup> Gerring, *Case Study Research*, p. 57.

a] sign that the study has uncovered a particularly rich problematic'.<sup>45</sup> This analysis of a single case, which in itself contains dozens of observations, can thus contribute to generating future questions and theories.<sup>46</sup>

Finally, this case allows for the study not only of multi-ethnicity specifically, but more broadly of the way international organisations come to a commitment and how such a commitment is then negotiated in practice. In this sense the project also speaks to debates in the literature on international organisations and international norm diffusion, as well as the literature on post-conflict peace- and state-building specifically.

### **Policies as Manifestations of Commitments**

Three policy areas are identified as manifestations of the commitments to multi-ethnicity and are studied in depth in Section Two of the thesis: the return of displaced persons following the conflict, the debate on territorial divisions and decentralisation, and finally special cultural and representation rights for minorities. These three policy areas are conceptualised as manifestations of the international normative commitments to multi-ethnicity because the international actors themselves see them in this way.<sup>47</sup>

My empirical research shows that these three policy areas are perceived by international actors as key to achieving the overall goal of a multi-ethnic Kosovo. I

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<sup>45</sup> Flyberg, 'Five Misunderstandings About Case-Study Research', p. 237.

<sup>46</sup> Flyberg further points out that 'formal generalisation is overvalued as a source of scientific development, whereas "the force of example" is underestimated', *ibid.*, p. 228.

<sup>47</sup> Caplan also describes policies as 'initiatives that offer a window on the thinking within European organisations about these questions' (Caplan, 'European Organizations', p. 275).

thus argue that international normative commitments to multi-ethnicity are manifested during the period between 1999 and 2012 in the policies on minority returns, decentralisation and special minority rights. Various notions of multi-ethnicity are negotiated by international actors in these policy fields, as the discussion in subsequent chapters demonstrates.

There are several factors that make these particular policy areas suitable as sub-cases to study the commitments to multi-ethnicity. Firstly, they are fields in which the international community was very active and into which it invested significant effort and resources over the entire post-conflict period. Therefore, commitments to multi-ethnicity are likely to be translated into practice in these fields. Secondly, these areas touch on both immediate post-conflict needs and longer-term goals of the international community, thus encapsulating some of the tensions and constraints inherent in post-conflict state-building endeavours. Thirdly, these policy areas tackle some of the core issues in state-building, as they relate to key features of the post-conflict state's nature. These are the state's demographic make-up, its internal territorial arrangement, and the constitutional provisions governing relations between individuals, groups, and the state.<sup>48</sup>

However, the final and most important reason for choosing these three areas lies in the fact that these were the three areas that international actors themselves prioritised in their promotion of multi-ethnicity in Kosovo. It is in these areas that the actors themselves perceive the work of multi-ethnicity promotion to be situated. In the international discourse these policies are consistently linked to Kosovo's

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<sup>48</sup> Alternatives policy areas could have included security sector reform, or internationally led economic development programmes.

multi-ethnic character. Since it is the actors' own understandings of the concept that are of interest here, it makes sense to use their classification of relevant policy areas as a criterion for selecting these sub-cases for empirical study. As such, the areas of returns, decentralisation, and minority rights are chosen because they are the most significant policy areas for multi-ethnicity promotion from the point of view of the actors in question, as well as being representative of the key features of policymaking in post-conflict state-building generally. They also constitute rich sub-cases because of the large number of actors involved, thus allowing the examination to illuminate the complexity of the international community's presence in post-conflict Kosovo, including differences in approaches to multi-ethnicity between various organisations. There is some variation between the three fields with regard to which actors took leading roles, although all of the international presence in Kosovo was involved in varying degrees in each of them. It is also worth noting that the three policy areas were inter-related in practice, as well as in the minds of policymakers, as discussed in Section Two below.

The international community was consistently pursuing the goal of multi-ethnicity and granting it centre-stage in the international engagement from 1999 to 2012. However, while commitments to multi-ethnicity were always evident, they also lacked specification and shifted in light of various other concerns and developments on the ground, providing a rich basis for their critical examination.

### **Scope and Data**

The time scope of this study extends from 1999, when the international administration of Kosovo began, to 2012, when international supervision formally came to an end. The changes in the status of the territory and the international

involvement over the period in question, most notably following Kosovo's unilateral declaration of independence in 2008, do not significantly affect the subject matter of this study. The commitments to multi-ethnicity remained prominent throughout. Where appropriate, shifts resulting from developments on the ground during the period are highlighted in subsequent chapters.

The international actors in question represent the array of organisations that operated in Kosovo during this period. Most notably, the UN Interim Administration Mission in Kosovo (UNMIK) and several UN agencies such as its High Commissioner for Refugees (UNHCR) and Development Programme (UNDP), the Organisation for Security and Cooperation in Europe (OSCE), the Council of Europe (CoE), the European Union (EU), and the International Civilian Office (ICO),<sup>49</sup> as well as the 'donor community' consisting of countries supporting Kosovo through bilateral development aid. All these actors promoted multi-ethnicity through their work in Kosovo in various ways. The use of the term 'international community' does not imply that these diverse actors constitute a uniform block, as evidenced by the yet disputed nature of Kosovo's statehood.<sup>50</sup> However, they all displayed strong normative commitments to the concept of multi-ethnicity, and are therefore studied jointly under the umbrella of 'international normative commitments to multi-ethnicity'. While the differences

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<sup>49</sup> The International Civilian Office, led by the International Civilian Representative for Kosovo (ICR), was established by the International Steering Group for Kosovo (ISG), consisting mostly of EU members and the USA. The ICO was mandated by the Comprehensive Proposal for the Kosovo Status Settlement, generally known as the Ahtisaari Plan, to supervise the implementation of the plan, and its mandate was terminated by the ISG in September 2012. See Comprehensive Proposal for the Kosovo Status Settlement, 2007 (Ahtisaari Plan), Annex IX, Article 5.1.

<sup>50</sup> To date, 112 out of 193 UN member states have recognised Kosovo as an independent state. Even the EU remains internally divided over the issue, with five member states withholding recognition. See <http://www.kosovothankyou.com/>, accessed 5 August 2016.

and disagreements among the various organisations are traced in subsequent chapters, the terms ‘international actors’ or ‘the international community in Kosovo’ are used when highlighting the overall insights gained from studying these various organisations’ policies and approaches. There are important differences between the organisations’ mandates and roles in post-conflict Kosovo, including constraints resulting from varying membership composition, status-neutrality in the case of the UN and others, as well as differing level of expertise in certain areas. Their level of activity also varied by policy area. For example, UNMIK and UNHCR took a leading role in the field of minority returns, whereas from 2008 onwards the ICO was the major actor in the decentralisation process, and the OSCE had a prominent role in the field of minority rights. However, it has also been noted that despite all of their differences, ‘common goals and strategies informed by a shared set of concerns’ did drive a range of different organisations in this and other cases of post-conflict peacebuilding.<sup>51</sup>

While local perspectives on multi-ethnicity will also be discussed, particularly with regard to their interplay with international approaches, the study’s focus on international actors stems from the project’s broader interest in the normative dimensions of the international peace- and state-building enterprise. Additionally, it must be noted that the policies and laws that touch on the management of Kosovo’s multi-ethnicity were almost entirely foreign-imposed or the outcome of skewed power relationships between international and Kosovar actors. Essential documents, such as the Constitutional Framework for Provisional

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<sup>51</sup> Caplan, ‘European Organizations’, p. 271.

Self-Government (CFPSG) of 2001 were thus ‘neither a reflection of political consensus within Kosovo between the different national communities, nor even within either the Albanian or Serb community’.<sup>52</sup> This has been described as a refusal on the part of international actors in Kosovo ‘to engage with local self-understanding of nationhood, [which] reinforces the gap between two societies and two realities – the international and the local’.<sup>53</sup>

Data for this study was gathered and generated by consulting a range of documents and through interviews with policymakers from different international organisations that were active in these policy areas in Kosovo between 1999 and 2012. These were complemented by interviews with members of Kosovo’s state institutions and civil society organisations. For the purposes of answering the research question, this material does not lend itself to the use of word-frequency counts or other forms of quantitative textual analysis, since it concerns the meanings attributed to the concept and the framework within which these meanings are produced.

The textual analysis of international discourse around multi-ethnicity is based on a range of documents, including reports of international organisations, which present the commitments to multi-ethnicity in the actors’ own words, as well as proposals for negotiated solutions to the Kosovo conflict, relevant laws,

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<sup>52</sup> Florian Bieber, ‘The Legal Framework for Post-War Kosovo and the Myth of Multiethnicity’, in Nenad Dimitrijević & Petra Kovacs, eds., *Managing Hatred and Distrust: The Prognosis for Post-Conflict Settlement in Multiethnic Communities in the Former Yugoslavia* (Budapest: Open Society Institute, 2004), p. 122.

<sup>53</sup> Anna Di Lellio & Stephanie Schwandner-Sievers, ‘The Legendary Commander: The Construction of an Albanian Master Narrative in Post-War Kosovo’, *Nations and Nationalism*, vol. 12, no. 3, 2006, p. 525.

speeches and media reports.<sup>54</sup> The existing secondary literature on the period is also used extensively.

In addition to studying how commitments to multi-ethnicity have been expressed in documents, I conducted and analysed forty semi-structured, open-ended interviews with current and former staff of various international organisations, as well as Kosovar policymakers and civil society activists.<sup>55</sup> These interviews represent the thesis's originally generated data. The purpose of these interviews is to deeply examine a concept that is rarely questioned among international officials in Kosovo: multi-ethnicity. Interviews with policymakers inevitably raise the problem of differentiating between justifications and motivations. Even if as an interviewer it is impossible to conclusively uncover the motivations behind policy choices, it is worth noting that stated justifications are also an indication of standards of appropriateness, since 'justification speaks directly to normative context'.<sup>56</sup> Semi-structured, open-ended interviews are therefore the most effective method for enabling such an investigation, which cannot be done in the form of questionnaires, surveys, or structured interviews that

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<sup>54</sup> According to the interpretive research method, policy documents can be understood as 'repositories of interpretations made by others', Cecilia Lynch, 'Critical Interpretation and Interwar Peace Movements: Challenging Dominant Narratives' in Yanow & Schwartz-Shea, *Interpretation and Method*, p. 304.

<sup>55</sup> Annex 1 contains a full list of interviews conducted. Due to the political sensitivity of these interviews, and in order to enable frank conversations, interviewees were guaranteed anonymity where they so wished. Transcripts of the interviews are available upon request. Interviews were conducted in English, German, and Albanian and translated by the author. Some of the interviews were conducted during a previous phase of this project as an MPhil Thesis in Politics (European Politics & Society), submitted to the University of Oxford in May 2011.

<sup>56</sup> Martha Finnemore, 'Constructing Norms of Humanitarian Intervention', in Katzenstein, *Culture of National Security*, p. 157.

allow for easy coding, since ‘unstructured interviews are best used as a source of insight, not for hypothesis testing.’<sup>57</sup>

Most of these interviews can be qualified as elite interviews, insofar as they were conducted with individuals at the heart of the policymaking and implementation processes, or intimately aware of these due to their positions within international or local organisations in Kosovo. While efforts were made to speak to a broad spectrum of people who qualify as ‘elite’ in this sense, i.e. covering all three policy areas and including all of the key international organisations and different time periods, this was consciously not a random sampling method.<sup>58</sup> Rather, it consisted of a combination of purposive, snowball, and opportunistic sampling strategies.

The views of Kosovars, as opposed to members of the international community in Kosovo with regard to multi-ethnicity promotion is not the primary focus of this study. However, the interaction between the two perspectives shapes and influences international commitments to multi-ethnicity, and is therefore not disregarded. Where available, existing data on Kosovar public opinion was used, and interviews were also conducted with representatives of Kosovar civil society and government. The combination of interviews with the policy analysis based on original policy documents and secondary sources allows for a differentiated view on international normative commitments to multi-ethnicity.

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<sup>57</sup> Beth L. Leech, ‘Asking Questions: Techniques for Semistructured Interviews’, *PS: Political Science and Politics*, vol. 35, no. 4, December 2002, p. 665.

<sup>58</sup> Oisín Tansey, ‘Process Tracing and Elite Interviewing,’ *PS: Political Science and Politics*, vol. 40, no. 4, October 2007, pp. 765–72.

#### **1.4. Literature: Debates on Diversity and Ethnic Conflict**

This segment offers a review of some of the relevant literature upon which the analysis in subsequent chapters relies. The study of international normative commitments to multi-ethnicity, and their manifestations in practice in the post-conflict setting, relate to four broad areas of existing research. Firstly, there is a developed literature that examines possible tools of ethnic conflict regulation and resolution from the pragmatic point of view of what works best. Secondly, multi-ethnicity and its merits and desirability have been studied from various normative standpoints by political philosophers. Both of these bodies of literature are discussed in more detail below, helping to situate notions of multi-ethnicity promoted in post-conflict Kosovo throughout the thesis.

Thirdly, several writers have studied the mechanisms, such as membership conditionality, through which international organisations influence diversity policies in domestic settings.<sup>59</sup> They show how a range of policies are advanced or imposed in the pursuit of multi-ethnicity through norm-promotion and conditionality.<sup>60</sup> This literature focuses on the mechanisms of influence and the various conditions, at the level of domestic politics and international organisations, which enable policies to be spread internationally. In contrast to the focus on mechanisms, this thesis seeks to explain the nature and origins of these

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<sup>59</sup> Judith G. Kelley, *Ethnic Politics in Europe: the Power of Norms and Incentives*, (Princeton: Princeton University Press, 2004); Gwendolyn Sasse, 'The Politics of EU Conditionality: the Norm of Minority Protection During and Beyond EU Accession', *Journal of European Public Policy*, vol. 15, no. 6, September 2008, pp. 842–60; Kymlicka, *Multicultural Odysseys*.

<sup>60</sup> Richard Caplan, *Europe and the Recognition of New States in Yugoslavia* (Cambridge: Cambridge University Press, 2005); Claire Gordon, Gwendolyn Sasse & Sofia Sebastian, *EU Policies in the Stabilisation and Association Process* (EURAC, 2008); Kelley, *Ethnic Politics in Europe*.

commitments and norms. However, this body of literature is discussed in the context of Europe's minority rights regime in Chapter Three, in order to situate commitments to multi-ethnicity in Kosovo in their regional context.

Finally, the literature on peacebuilding has seen recent developments towards critiques of liberal peacebuilding on normative grounds.<sup>61</sup> These scholars recognise that peacebuilding activities are not neutral in their normative orientation and impact and argue that 'there are deep and unresolved internal contradictions in the peacebuilding project'.<sup>62</sup> There is a growing literature that critically examines and questions the underlying assumptions and value-judgments upon which peacebuilding activities are based, which has led to new debates about the relationship between international and local actors in this field, constituting a 'local turn' in the study of post-conflict peace- and state-building.<sup>63</sup> These authors study how attempts have been made to instil certain values, such as pluralism, in host societies, and how in these instances, there seems to be a consensus amongst the peace-builders, which local actors often only nominally join. While concepts such as democratisation and liberal marketisation have been studied in this approach, a critical examination of the international promotion of multi-ethnicity in post-conflict settings, as evidence of underlying values about diversity after conflict, can build on and contribute to this field.

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<sup>61</sup> Newman et al., *New Perspectives*.

<sup>62</sup> *ibid.*, p. 4.

<sup>63</sup> Roger Mac Ginty, *Peacebuilding and Local Resistance: Hybrid Forms of Peace* (New York: Palgrave Macmillan, 2011); Roger Mac Ginty, & Oliver Richmond, 'The Local Turn in Peace Building: A Critical Agenda for Peace', *Third World Quarterly*, vol. 34, no. 5, 2013, pp. 763–83.

What follows is an overview of the debates on diversity within states generally, and in post-conflict settings in particular. These form the basis for a critical discussion of manifestations, conceptualisations and explanations of international normative commitments to multi-ethnicity in Kosovo in subsequent chapters of this study. The theoretical literature outlined here will be revisited to situate the empirical findings on policies in the field of multi-ethnicity promotion in Section Two of the thesis. The literature here reviewed is thus used to highlight the tensions and negotiations found empirically in approaches to multi-ethnicity in the field.

Political theorists have advocated a range of approaches to diversity in liberal democratic contexts. As will be discussed in subsequent chapters, the policies pursued by the international community in Kosovo negotiate the concept of multi-ethnicity in various ways, drawing on both liberal-individualist and communitarian-collectivist approaches to it. The term multi-ethnicity is used in this work due to its prominence in the policy debates on Kosovo. However, much of the relevant scholarly literature speaks of ‘multiculturalism’ or more broadly of diversity, or plural states. ‘Ethnicity’ remains a highly elastic concept, the only general working definition of which is that it involves the common consciousness of shared origins and traditions, based on linguistic, cultural, religious, behavioural, or biological traits. It is therefore a term that does not require a rigid definition based on verifiable facts, and in the debate on multiculturalism and multi-ethnicity, it does not matter, ultimately, whether shared origins and traditions can be said to exist as a matter of objective fact or whether they are invented, constructed, or

selected.<sup>64</sup> For the purposes of this study, the subtle differences between ‘culture’ and ‘ethnicity’—and by extension between ‘multiculturalism’ and ‘multi-ethnicity’—are irrelevant, since in the present context they both refer to features constructing individuals’ identities that are held in concert with others, and may engender political claims or otherwise inform one’s relationship to the state. This debate thus raises questions about relationships between various groups, most importantly between majority and minority groups, between the state and these groups, as well as between the group and the individual.

Kymlicka describes the proliferation of ‘liberal multiculturalism’ by the international community as a normative commitment to the value of diversity and to the accommodation and recognition of different groups.<sup>65</sup> As he acknowledges, the policies of recognition and accommodation of minority groups that accompany the above-mentioned global proliferation of liberal multiculturalism do not go unquestioned and are in fact fiercely debated, particularly as they are considered potentially in conflict with other liberal values such as equality and justice.<sup>66</sup> The scholarly debate is commonly framed as one between liberalism and communitarianism. From the literature arise different stances a state can take in relation to ethnic groups, which include, amongst others, indifference or recognition.

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<sup>64</sup> *The Concise Oxford Dictionary of Politics* (Oxford: Oxford University Press, 2009). For a critical view on ‘ethnic groups’, see Rogers Brubaker, *Ethnicity Without Groups* (Cambridge: Harvard University Press, 2004).

<sup>65</sup> Kymlicka, *Multicultural Odysseys*.

<sup>66</sup> *ibid.*, p.16.

‘Indifference’, in the context of this study, indicates that a state takes no position on its citizens’ group belonging. Equal civil and political rights and guarantees against discrimination are believed sufficient to protect individuals from any harm arising from their group affiliation. Proponents of this model argue that what liberalism should offer in a multicultural society is the opportunity for different groups to live together in a state that is indifferent to their different ways and goals, and that therefore, ‘liberalism might well be described as the politics of indifference’.<sup>67</sup> US liberal scholars such as John Rawls and Ronald Dworkin have shaped this perspective, arguing for the superiority of the equal application of individual rights over any group-differentiation and recognition. The ideal envisaged by this strand of liberal thinking is a ‘colour-blind’ state, which treats all its citizens as equals and takes no stance on issues of culture, religion, ethnicity or race. This kind of state has also been described by Nathan Glazer as acting with ‘benign neglect’ towards minority groups.<sup>68</sup> Some liberal thinkers allow for exceptions in the form of affirmative action, since they acknowledge that the colour-blind approach, while de jure providing equality, has in practice left certain groups marginalised, underrepresented, and at a structural disadvantage. However, Kymlicka points out that affirmative action is simply an exception that confirms the rule; it is meant to help overcome past injustice with the final aim of a colour-blind and neutral society. Most liberal thinkers reject the idea of permanent differentiation of minority groups in their rights and status. In a multi-ethnic post-

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<sup>67</sup> Chandran Kukathas, ‘Liberalism and Multiculturalism: The Politics of Indifference’, *Political Theory*, vol. 26, no. 5, October 1998, p. 691.

<sup>68</sup> Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995), p. 3.

conflict setting, 'indifference' constitutes a minimalist notion of multi-ethnicity; the existence of different groups in a state, without any particular institutional mechanisms for managing this multi-ethnicity.

Contrary to this, proponents of a 'politics of recognition', often called communitarians, argue for state recognition of cultural identities by granting special, group-differentiated rights to minorities.<sup>69</sup> At the heart of this argument is the notion of identity as closely linked to recognition, due to a basic feature of the human condition, i.e. its fundamentally dialogical character. It is only through interaction with others that we acquire the 'languages needed for self-definition'.<sup>70</sup> Therefore, recognition by the state plays an important role in forging identity; and relating to feminism, race relations and multiculturalism, it has been argued that withholding recognition, or mis-recognition and misrepresentation, can be forms of oppression.<sup>71</sup> Many scholars consider public recognition to be in tension with the liberal democratic tradition of equal treatment of all citizens and non-discrimination. Proponents of recognition, on the other hand, redefine non-discrimination as requiring that differences become the basis of differential treatment as a tool to achieve equality, rather than ensuring non-discrimination by remaining blind to the ways in which people differ.

Communitarians offer two criticisms of the politics of universalism and its implied indifference towards diversity. The first is that by withholding recognition

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<sup>69</sup> Charles Taylor, et al., *Multiculturalism: Examining the Politics of Recognition* (Princeton: Princeton University Press, 1994), edited and introduced by Amy Gutman.

<sup>70</sup> *ibid.*, p. 32.

<sup>71</sup> *ibid.*, p. 36.

individuals are suppressed and forced into a mould that is not true to them. The second is that this mould, contrary to what proponents of the politics of universalism claim, is not itself neutral. In fact, it is a reflection of the dominant culture. Thus, the nominally fair, difference-blind society as portrayed in this reading turns out to be both inhumane as it suppresses identities and in so doing becomes itself discriminatory by imposing the majority culture on all.<sup>72</sup> It is argued that no state policy can ever be ‘neutral’, and the application of equal rights and non-discrimination within a system that has an inherent bias towards the majority group is not sufficient to ensure full equality of all citizens.

Kymlicka rejects the dichotomy between liberalism and communitarianism and proposes a liberal theory of minority rights that seeks to reconcile the idea that justice between groups requires that members of different groups be accorded different rights with the principles of equality and individual freedom.<sup>73</sup> He argues that the importance of differing social practices and cultural meanings has been largely ignored by liberal thinkers, who have often implicitly assumed a culturally and ethnically homogeneous state.<sup>74</sup> Failing to recognise the identity of citizens in the state can also be detrimental to them because it is often tied to historical injustices. Recognition can therefore also make a positive contribution to the politics of reconciliation in divided states.<sup>75</sup> As an example of the role recognition can play in a conflict or post-conflict setting, in 1991, the Arbitration Commission

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<sup>72</sup> *ibid.*, p. 43.

<sup>73</sup> Kymlicka, *Multicultural Citizenship*, p. 45.

<sup>74</sup> *ibid.*, p.126. Chapter Two discusses this with reference to John Stuart Mill and other thinkers.

<sup>75</sup> Will Kymlicka & Bashir Bashir, eds., *The Politics of Reconciliation in Multicultural Societies* (Oxford: Oxford University Press, 2008).

of the Peace Conference on the Former Yugoslavia notably ruled that ‘where there are one or more groups within a state constituting one or more ethnic, religious or language communities, they have the right to recognition of their identity under international law’.<sup>76</sup>

The politics of recognition raises also a number of problems. Its critics argue that groups are mutable social formations, and recognising them may be a factor in their perceived existence or contribute to individuals identifying with them.<sup>77</sup> This might also lead to a proliferation in ethnic group identification to ever-new groups, and to resentment among the majority population, with potentially grave political consequences. Other sceptics insist that to the democratic state, citizens’ ethnic identities have to be secondary, since elevating ethnic over universal identities can only lead to intolerance.<sup>78</sup> Yet others point to the negative effects that public recognition of groups may have on the individual. Countering the justification that considers recognition as linked to identity to the benefit of individuals, K. Anthony Appiah asks why, if our concern lies at the level of the individual, the discourse on public recognition is using such large categories as race, ethnicity or sex, which are far removed from individuals.<sup>79</sup> In this view, recognising collective identities cannot be ideal, since political recognition will be tied to certain life-scripts. These tightly scripted identities, such as race or ethnic

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<sup>76</sup> Arbitration Commission of the Peace Conference on the Former Yugoslavia, *Opinion No. 2*, 11 January 1992, reprinted in Marc Weller, *The Crisis in Kosovo 1989–1999: From the Dissolution of Yugoslavia to Rambouillet and the Outbreak of Hostilities* (Cambridge: Documents & Analysis Publishing, 1999).

<sup>77</sup> Kukathas, ‘Liberalism and Multiculturalism’, p. 693.

<sup>78</sup> Steven C Rockefeller, in Taylor, *Multiculturalism*, p. 88.

<sup>79</sup> K. Anthony Appiah, in Taylor, *Multiculturalism*, p. 150.

group belonging, depend on properties that are, or are at least perceived as, not optional. Appiah argues that if we take autonomy seriously we also have to consider the identities constructed in the politics of recognition, since recognising, respecting, and treating people as members of a specific group also implies certain expectations about what it means to be a member of that group. It can also imply an assumption that citizens should make group membership the defining feature of their identity.

A more cautious view on multicultural policies is also offered by David Miller, who finds it difficult to reconcile special rights for groups with the principle of nationality. In this reading, special rights for minority groups based on arguments of identity politics ignore the benefits that these groups derive from participating in a shared national identity and overlook their need and desire to belong as full members to the national community.<sup>80</sup> Miller argues that democratic politics requires such a national identity as a basis for trust, solidarity and territorial stability.<sup>81</sup> This debate is often held in light of stability and security concerns, where it is argued that group-differentiated rights to self-government constitute a serious threat to a state's integrity. In light of these concerns, Kymlicka argues for these rights as a tool for achieving functioning multi-ethnic states, since groups that have a separate sense of ethnic identity can still display a common loyalty and sense of allegiance to the state. In fact, Kymlicka argues that national, ethnic or

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<sup>80</sup> David Miller, *On Nationality* (Oxford: Clarendon Press, 1995), p. 138.

<sup>81</sup> David Miller, 'Immigrants, Nations, and Citizenship', *Journal of Political Philosophy*, vol. 16, no. 4, December 2008, p. 378.

cultural groups in diverse states may feel allegiance to the state precisely because it recognises and respects their distinct group existence.<sup>82</sup>

Finally, the case of diversity in post-conflict contexts has been the subject of extensive literature on specific tools of ethnic conflict regulation and resolution, covering territorial and institutional approaches. This literature uses various approaches to diversity to categorise different conflict regulation tools. The policy areas examined in this thesis, particularly decentralisation and minority rights, can be understood as such tools of ethnic conflict regulation.

The scholarly debate on ethnic conflict regulation is relatively young, having developed over the past twenty-five years as a result of the preponderance of intra-state wars in relation to inter-state wars. John McGarry and Brendan O’Leary offer a typology of methods for the regulation of ethnic conflict, with two main categories of methods based on the elimination or management of difference.<sup>83</sup> Ulrich Schneckener and Stefan Wolff describe this distinction by differentiating between the politics of elimination, control and recognition of differences.<sup>84</sup> Control and recognition can thus be seen as contrasting forms that the management of difference may take. Of these, the politics of recognition is considered the most compatible with principles of democracy and human rights, because it is the only non-unilateral one. It may entail the management of difference through such devices as federalism, autonomy, decentralisation, power-

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<sup>82</sup> Kymlicka, *Multicultural Citizenship*, p. 13, p. 189.

<sup>83</sup> John McGarry & Brendan O’Leary, eds., *The Politics of Ethnic Conflict Regulation: Case Studies of Protracted Ethnic Conflicts* (New York: Routledge, 1993).

<sup>84</sup> Ulrich Schneckener & Stefan Wolff, eds., *Managing and Settling Ethnic Conflicts: Perspectives on Successes and Failures in Europe, Africa and Asia* (London: Hurst & Co., 2004).

sharing, consociationalism, affirmative action, legislative quotas and the like, and belongs in the ‘management of difference’ camp. Its counterpart in the ‘elimination of difference’ camp would be assimilation, or, to use a term with more positive connotations, integration. This is proposed by scholars who argue that measures of recognition entrench and exacerbate division, rather than manage it, and they alternatively propose more ‘integrative’ or assimilationist approaches aimed at blurring or transcending differences. In this view, the problem with the politics of recognition is that it carries the risk of ‘recognis[ing] some collective identities to the exclusion of others, and institutionally entrench[ing] those cleavages, [thus] fragment[ing] social and political life into enclaves’.<sup>85</sup>

Donald Horowitz is one of the main proponents of the ‘integrative’ approach,<sup>86</sup> whereas Arend Lijphart is seen as the father of consociationalism.<sup>87</sup> Consociationalism suggests power-sharing through representation of all groups, grand coalitions and veto powers for minorities, as such incorporating existing divisions into the political system in order to accommodate them.<sup>88</sup> Horowitz’s more integrative approach advocates centripetalism, which focuses on incentivising moderation through preferential voting by making political actors dependent on votes from members of ethnic groups other than their own, which could also lead to

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<sup>85</sup> Sumantra Bose, *Bosnia After Dayton: Nationalist Partition and International Intervention* (London: Hurst & Co, 2002), p. 247.

<sup>86</sup> Donald L. Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1985); Donald L. Horowitz, ‘Making Moderation Pay: the Comparative Politics of Ethnic Conflict Management’, in Joseph V. Montville (ed.), *Conflict and Peacekeeping in Multiethnic Societies* (New York: Lexington Books, 1991).

<sup>87</sup> Arend Lijphart, *Democracy in Plural Societies* (New Haven: Yale University Press, 1977).

<sup>88</sup> Lijphart, *Democracy in Plural Societies*.

a form of power-sharing through pact making or vote pooling.<sup>89</sup> These two models can be seen as poles between which individual institutional cases may be situated. They reflect the main division central to arrangements in post-conflict multi-ethnic societies, and the dichotomy central to the scholarly debate on post-conflict peacebuilding.

Approaches to its regulation indicate certain assumptions made about the nature of ethnic conflict. Causing much controversy in the field,<sup>90</sup> Chaim Kaufmann in the mid-1990s argued against promoting multi-ethnicity after ethnic conflict, contending that after the violence, ethnic identities will inevitably be hardened, and intermingled populations will create security dilemmas that should be avoided.<sup>91</sup> The notion of the ‘ethnic security dilemma’ is based on the view that actors prioritise their own security and survival above all other concerns.<sup>92</sup> The dilemma lies in the fact that ‘what one does to enhance one's own security causes reactions that, in the end, can make one less secure. Cooperation ... to mute these competitions can be difficult because someone else's “cheating” may leave one in a militarily weakened position. All fear betrayal’.<sup>93</sup>

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<sup>89</sup> Horowitz, ‘Making Moderation Pay’.

<sup>90</sup> Roy Licklider & Mia Bloom, *Living Together After Ethnic Killing: Exploring the Chaim Kaufmann Argument* (London: Routledge, 2007).

<sup>91</sup> Kaufmann, ‘Possible and Impossible Solutions’; Kaufmann, ‘When All Else Fails’.

<sup>92</sup> Barry R. Posen, ‘The Security Dilemma and Ethnic Conflict’, *Survival*, vol. 35, no. 1, 1993, pp. 27–47.

<sup>93</sup> *ibid.*, p. 28.

Realist thinkers such as Barry Posen additionally argue that this dynamic ‘is intensified when the opponents belong to different ethnic groups’.<sup>94</sup> Kaufmann therefore argues that ‘solutions that aim at restoring multi-ethnic civil politics and at avoiding population transfers—such as power-sharing ...—cannot work because they do nothing to dampen the security dilemma’.<sup>95</sup> In this view, separation of the different groups is considered the only way to ensure peace. Kaufmann thus spells out what by the 1990s had become generally considered an unacceptable policy suggestion; that the international community should not only condone the emergence of ethnically homogeneous territories resulting from practices of ethnic cleansing, but in some cases actively assist in facilitating population transfers for the purpose of ensuring peace and stability through separation. This view remains highly controversial, as described in more detail in Chapter Two, but it is relevant in the discussion of minority returns policies in Kosovo. Since the Kaufmann argument sporadically resurfaces in policy debates on cases of ethnic conflict such as Kosovo, it is most notably the general consensus of its principled rejection that explains much of the returns policy discussed in Chapter Four.

As mentioned above, this review of the debates on diversity in the political theory literature, the so-called ‘multiculturalism’ debate, and the literature on post-conflict arrangements in diverse states serves to situate the subsequent empirical findings from the Kosovo case. Specifically, the various notions of multi-ethnicity and tensions around the concept can thus be analysed and classified along the

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<sup>94</sup> Nicholas Sambanis, ‘Partition as a Solution to Ethnic War: An Empirical Critique of the Theoretical Literature’, *World Politics*, vol. 52, no. 4, July 2000, p. 438.

<sup>95</sup> Kaufmann, ‘Possible and Impossible Solutions’, p. 139.

spectrums between liberal-individualist and communitarian-collectivist approaches, and between the elimination and the management—e.g. through recognition—of difference.

### **1.5. Outline of Thesis Chapters**

In this introduction, I have outlined the research question and methodology, as well as the conceptual framework for this study and have reviewed some of the relevant literature. The remainder of the thesis is divided into three sections, covering origins, manifestations, and explanations of international normative commitments to multi-ethnicity in post-conflict Kosovo.

Section One contextualises the commitments to multi-ethnicity studied in this thesis by discussing their origins. It comprises Chapters Two and Three, which provide historical and regional background to these commitments. Chapter Two reviews the normative developments that led to minority-majority relations becoming a topic of international concern and the different ways in which diversity was perceived and managed during the nineteenth and twentieth centuries. Chapter Three offers the immediate backdrop to the Kosovo case by discussing preceding events in the Balkans, including approaches to multi-ethnicity during and after the dissolution of Yugoslavia, as well as the spread of a minority rights regime in Europe during the 1990s. The purpose of these chapters is to situate the international commitments to multi-ethnicity in Kosovo within their historical and regional context, in order to better examine and explain them.

Section Two of the thesis offers an analysis of the empirical material, examining international normative commitments in action. Three chapters discuss

international policymaking on returns, decentralisation, and minority rights in Kosovo respectively. This section draws on documents and interviews covering the period from 1999 to 2012 and examines how the commitments to multi-ethnicity played out in practice in these fields. A number of notions of multi-ethnicity, ranging from the more minimalist understanding of different ethnic groups simply living in the same territory, to more elaborate conceptualisations to do with notions of recognition and integration emerge. Different goals and competing notions of multi-ethnicity form a complex interplay, resulting in the policies discussed in Chapters Four to Six. These chapters also cover the ways in which the commitments were transformed by developments on the ground during the period in question. Overall, the international involvement in Kosovo exhibits notions of multi-ethnicity that allow for policies of recognition and, to some extent, separation, while also implying a desire for integration and a blurring of divisions between groups. All of this is set against the backdrop of historic developments in normative approaches to diversity, and based upon previous experiences of diversity management in the region.

Building on the empirical part, Section Three concludes the critical examination by offering explanations of the international normative commitments to multi-ethnicity in Kosovo. Chapter Seven, employing the conceptual framework discussed above, traces both the logic of appropriateness and the logic of consequences to explain the commitments to multi-ethnicity. Finally, Chapter Eight concludes the thesis by summarising its findings and drawing from them implications for the theory and practice of international state-building.



## **Section One: Origins of International Normative Commitments to Multi-Ethnicity**

Following the introductory chapter, which presented the research question, analytical framework, and literature on diversity and ethnic conflict, this first section of the thesis addresses the historical and regional background of international normative commitments to multi-ethnicity in the Kosovo case. The section consists of two chapters that discuss the normative developments leading up to the case examined in depth in the rest of the thesis: the international normative commitments to multi-ethnicity in post-conflict Kosovo from 1999 to 2012.

The first chapter in this section offers a historical perspective on the development of approaches to diversity and multi-ethnicity with a focus on the nineteenth and twentieth centuries. Specifically, the chapter traces how international thinking and practice in relation to national self-determination and human rights influenced shifts in approaches to diversity, as evidenced in policies related to state recognition and legitimacy, ethnic displacement, and minority rights.

The subsequent chapter takes a closer look at the regional context of international commitments to multi-ethnicity in Kosovo. In particular, it examines the approaches to multi-ethnicity taken in other post-conflict states in the former Yugoslavia and places these in the context of Europe's post-Cold war minority rights regime.



## **II. Approaches to Multi-Ethnicity in Historical Perspective**

The term ‘multi-ethnicity’, employed in this thesis due to its prominence in international policymaking in post-conflict Kosovo, may in other contexts have been referred to as multiculturalism, a multi-national state, or a diverse or plural society. Despite the changing terminology over time, all these concepts are connected by a historical background of evolving ideas about diversity and its place in politics and state-building. This chapter discusses the historical trajectory of concepts and practices surrounding diversity, and suggests that policymaking regarding multi-ethnicity in post-conflict Kosovo should be thought of against this historical background. It shows that, not unlike in the case of Kosovo, diversity within states was always subject to contention. Throughout the periods reviewed in this chapter political actors had to negotiate their approaches to diversity with other commitments to ideas about the nation-state, self-determination, and human rights, driven both by a logic of appropriateness and a logic of consequences.

Commitments to multi-ethnicity cannot be described as a straightforward norm, the evolution of which may be traced over time. It would be anachronistic to speak of a continuous *history* of a normative commitment to multi-ethnicity as such. However, contemporary normative commitments do emerge from predecessor experiences and practices – they do not come from nowhere.

In line with the constructivist literature outlined in the Introduction, what might today be termed a strong normative commitment to multi-ethnicity developed in parallel and in a reinforcing manner with other norms, in what Martha

Finnemore calls norm-bundles.<sup>1</sup> As this chapter demonstrates, the key concepts that influenced the trajectory of international thinking about diversity were, initially, national self-determination and, later, individual human rights. These interplayed with the thinking about diversity, as discussed below, in complex ways.

As mentioned above, the terminology used to describe the subject of this chapter changed over time, depending on which identifying category of difference between groups was considered salient (*multi-religious* in the imperial period, *multi-national* once the concept of the nation started to dominate political thinking, to *multicultural*, *multi-racial* or *multi-ethnic* in various contexts today). I therefore proceed in this chapter by examining approaches to diversity broadly, covering all forms of plural societies that were subject to political thinking.

Firstly, and perhaps obviously, diversity as an empirical fact is almost ubiquitous throughout political time and space. It is unlikely that any political unit of organisation, contemporary or historical, can adequately be described as entirely homogenous, although, as will be seen, there have been attempts to engineer such homogeneity in actuality, by removing people or even killing them, or symbolically, by ignoring and negating the existence of minority populations and writing histories to that effect.

Given the ubiquity of diversity as an element of political life throughout history, the question of a starting point for examination of discourse and practices

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<sup>1</sup> Finnemore, 'Constructing Norms of Humanitarian Intervention'. Finnemore describes the evolution of a norm in reference to 'norm-bundles' that reinforce each other – e.g. in the way the success of one norm, e.g. decolonisation, reinforces another norm, e.g. humanitarian intervention.

about diversity arises. At which point in time did diversity become politically salient?

Basic ideas about liberal democracy are closely linked to problematising diversity. John Stuart Mill argued that homogeneity of a political community, particularly a common language and shared culture, was a prerequisite for representative government: 'Free institutions are next to impossible in a country made up of different nationalities'.<sup>2</sup>

Furthermore, it was with the advent of nationalism, which views the state as the expression of a nation's right to self-determination, that diversity became increasingly politically salient. This is because the fact of diversity (or multi-ethnicity) poses a serious challenge to this idealised vision of the legitimate state – the nation-state representing a national group's affirmation of its nationhood and right to self-determination. Specifically, this ideological development led to diversity being problematised in instances where political space shrunk due to changes in political boundaries, such as at the end of empire, as well as during and after wars.<sup>3</sup> It was in these moments that minorities traditionally became the focus of attention in international relations. As such, thinking about diversity and, in particular, conceptualising majority-minority relations as pressing, potentially destabilising, and disruptive political issues, is historically and conceptually tied up with the emergence and eventual dominance of the idea of nation-states as the ideal

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<sup>2</sup> John Stuart Mill, 'Considerations on Representative Government', in *On Liberty and Other Essays*, edited and introduced by John Gray (Oxford: Oxford University Press, 1991), p. 428.

<sup>3</sup> Jennifer Jackson Preece, 'Minority Rights in Europe: from Westphalia to Helsinki', *Review of International Studies*, vol. 23, no. 01, January 1997, p.77; Rogers Brubaker *Nationalism Reframed: Nationhood and the National Question in the New Europe* (Cambridge: Cambridge University Press, 1996), p. 152.

form of political organisation. While the rise of the concept of national self-determination was key in the evolution of thinking on diversity, it has also been argued that the source of the problem of diversity already lies within the liberal democratic model, as evidenced by the Millian ideal of homogeneity in the political community.<sup>4</sup>

In the following, the focus is on two critical factors in this historical trajectory, one ideological and one empirical. Firstly, the rise of nationalism and the principle of national self-determination, and secondly, the twentieth century's twin responses to diversity: population exchanges on the one hand, and minority and human rights protection mechanisms on the other.

## **2.1 Pre-Nineteenth Century Approaches to Diversity**

It can be argued that until the nineteenth century diversity was not understood as a political problem the way it is today. Diversity was generally 'an accepted fact of life' in that period.<sup>5</sup> One prominent exception was the expulsion of Jews and Muslims from Spain during the Spanish Inquisition. While expulsion was an exceptional measure, it must be noted that throughout Europe, Jews were forced to live in ghettos for most of the Middle Ages, and experienced waves of persecution and toleration over this period. With the Emancipation of the Jews ghettos were abolished.

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<sup>4</sup> Allen Lynch, 'Woodrow Wilson and the Principle of "National Self-Determination": A Reconsideration', *Review of International Studies*, vol. 28, no. 2, April 2002, pp. 419–36.

<sup>5</sup> Eric D. Weitz, 'From the Vienna to the Paris System: International Politics and the Entangled Histories of Human Rights, Forced Deportations, and Civilizing Missions', *American Historical Review*, vol. 113, no. 5, December 2008, p. 1317.

The Westphalian system is generally considered the beginning of the ‘modern period’ in international affairs, as it replaced the feudal society of the Middle Ages with sovereign, territorial states. The modern period was characterised by the principle of *cuius regio eius religio*, meaning that every principality or state had its official religion to which the population was expected to adhere. Nevertheless, there were instances, typically following war and conquest, when the existence of religious minorities who did not share the denomination of their sovereign violated this principle. Indeed, there were cases in which certain Christian communities were granted religious freedoms by their sovereign after border changes had taken place as a result of war.<sup>6</sup> However, such guarantees were understood as special concessions by a sovereign to his new minority subjects in order to keep the peace, and they remained at his discretion. These should therefore not be understood as in any sense reflecting the contemporary idea of a *right* to religious freedom or of minority rights pertaining to groups or individuals.<sup>7</sup> Importantly, while there were treaties that provided for the protection of religious minorities prior to the nineteenth century, a key difference to later developments lies in the fact that it was still unthinkable that a religious minority group could constitute a source of sovereignty.<sup>8</sup>

In contrast to the principle of *cuius regio eius religio* that prevailed in much of Europe, the Ottoman Empire devised the so-called millet system, which offered religious communities substantial autonomy in areas such as education, family law,

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<sup>6</sup> Jackson Preece, ‘Minority Rights in Europe’, p. 75–7.

<sup>7</sup> *ibid.*, p. 78.

<sup>8</sup> Weitz, ‘From the Vienna to the Paris System’, p. 1317.

religious affairs, and even taxation.<sup>9</sup> Under the millet arrangement, Christian and Jewish leaders could exert considerable control over their communities, applying their own systems of custom and law. The sultans devised the millet system because non-Muslims could not be ruled under Islamic law, and as a way to ensure the accountability of leaders of autonomous minority communities to the sultan. It is worth noting that the millet system granted this autonomy to persons on the grounds of belonging to specific religious communities, irrespective of their place of residence, and therefore did not constitute territorial autonomy. These considerable levels of autonomy in social, civil, and religious affairs contrasted starkly with practice elsewhere in the world at the time. Nevertheless, in the Ottoman Empire religious minorities were still disadvantaged compared to the majority Muslim population.<sup>10</sup>

## **2.2. Nationalism and Population Politics: The Nineteenth Century**

It was at the Congress of Vienna in 1815 that nationalism and the nation-state first started to appear as new legitimising principles in international relations, although they only became dominant in a gradual process throughout the nineteenth century. Eric Weitz has argued that an important shift in thinking about

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<sup>9</sup> Karen Barkey & George Gavrilis, 'The Ottoman Millet System: Non-Territorial Autonomy and its Contemporary Legacy', *Ethnopolitics*, vol. 15, no. 1, 2016, pp. 24–42; Jan Erk, 'Non-Territorial Millets in Ottoman History', in Tove H. Malloy & Francesco Palermo, eds., *Minority Accommodation through Territorial and Non-Territorial Autonomy* (Oxford: Oxford University Press, 2015).

<sup>10</sup> E.g. with regard to taxation, military service, and legal cases between Muslims and non-Muslims, see also Mark Mazower, *Salonica, City of Ghosts: Muslims, Christians, and Jews 1430-1950* (London: Harper Perennial, 2005).

diversity occurred between what can be called the Vienna and the Paris systems, referring to the Congress of Vienna of 1815 and the Paris Peace of 1919.<sup>11</sup>

The treaties signed at Vienna in 1815 were the first time that ‘minorities were defined as national groups rather than religious communities’,<sup>12</sup> in what can anachronistically be called an early formulation of *national* minority rights.<sup>13</sup> This tendency increased during the course of the nineteenth century. Eventually what Weitz calls ‘population politics’ came to dominate, characterised by the ‘connection drawn between populations conceived in national and racial terms and sovereignty’.<sup>14</sup> While the Vienna Treaty still largely focused on rulers, states, and territorial borders, towards the end of the same century a shifting focus on populations can be discerned, with treaties addressing the rights of minorities and speaking of them in national terms, rather than merely as religious groups. At the same time, from the perspective of the Great Powers, the populations of Eastern Europe were increasingly described as potentially admissible to the community of civilised nations on the condition that they would adopt the prevailing liberal principles of the time. Interestingly, the period considered crucial in leading to this new population politics of the Paris system, that is the years 1860–85, coincides with the intensifying practice of forced deportations in Europe.<sup>15</sup> In this period, migration took place on an unprecedented scale and with mostly ethnically

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<sup>11</sup> Weitz, ‘From the Vienna to the Paris System’.

<sup>12</sup> Jackson Preece, ‘Minority Rights in Europe’, p. 78.

<sup>13</sup> Andre Liebich, ‘Minority as Inferiority: Minority Rights in Historical Perspective’, *Review of International Studies*, vol. 34, no. 2, 2008, p. 253.

<sup>14</sup> Weitz, ‘From the Vienna to the Paris System’, p. 1315.

<sup>15</sup> *ibid.*, p.1320–2.

homogenising effects. Most notably, Muslims started leaving former Ottoman lands in Europe and flooded into the heart of the Ottoman Empire. In 1862-3, the first bilaterally agreed exchanges of Christian and Muslim populations took place in the Caucasus between the Russian and Ottoman Empires, though these were not totalising like the ones that were to follow in the twentieth century. The practice was emulated in other agreements on population transfers following the Balkan Wars, between Greece, Bulgaria, and the Ottoman Empire. Homogenising displacements continued during World War One and thereafter.

This period also includes early examples of granting of civil and political rights to minorities of Balkan states and the Ottoman Empire, which can also be understood as a form of population politics featuring in international treaties. For example, the Berlin Treaty of 1878 obliged Romania to grant religious freedom to its minorities and enshrined non-discrimination. By addressing populations rather than sovereign rulers and their territories, this Treaty recognised East Europeans as nations defined in ethnic and racial terms, and required them to adhere to a civilisational standard defined by the Great Powers. These were not imposed on other states as ‘minority safeguards were deemed unnecessary for politically mature Western European states who could be relied upon to fulfil the “standard of civilization”’.<sup>16</sup>

Through the 1878 Berlin Treaty the Great Powers imposed minority protection on new states, which resented this as meddling in their internal affairs, and pointed to a lack of universality, with only the new states of Eastern Europe

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<sup>16</sup> Jackson Preece, ‘Minority Rights in Europe’, p. 82.

obliged to adhere to these standards.<sup>17</sup> The Congress of Berlin in 1878 marked the first time that minority rights became a condition for new states to gain recognition from the Great Powers, thus representing an element of unequal sovereignty.<sup>18</sup> The Great Powers imposed conditions regarding religious freedom and civic rights on all the new states, that is, Serbia, Montenegro, Romania, and Bulgaria. This was likely motivated by several factors. These include stability concerns, whereby minority rights provisions were believed to limit the destabilising potential of minority demands for greater autonomy, genuine humanitarian concerns for some of the minorities in question, as well as the civilisational aspect mentioned above, driven by a Western prejudice against the ‘inferior’ regimes in East-Central Europe. Among the new states subject to this development, Romania was of principal concern to the Great Powers because of its recent past of systematic exclusion and discrimination of Jews.<sup>19</sup> In this and in later treaties that imposed minority rights mechanisms on states in Eastern Europe, the states grudgingly accepted outside control and interference in return for recognition.<sup>20</sup>

While provisions on religious freedom and guarantees of non-discrimination for minorities can be found in these texts, no enforcement mechanisms were created, as in many future cases.<sup>21</sup> Furthermore, despite the mechanisms of conditionality for recognition by the Great Powers—operating in a

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<sup>17</sup> The same dynamic was repeated decades later in the case of the League of Nations Minority Rights Regime, see Carole Fink, ‘Minority Rights as an International Question’, *Contemporary European History*, vol. 9, no. 3, November 2000, p. 390.

<sup>18</sup> Jackson Preece, ‘Minority Rights in Europe’, p. 80.

<sup>19</sup> *ibid.*

<sup>20</sup> This dynamic was partly echoed during the European Union’s eastward enlargement in the early 2000s.

<sup>21</sup> Fink, ‘Minority Rights as an International Question’, p. 386.

similar way to contemporary EU membership conditionality—subsequent failure to implement and fulfil these requirements did not lead to withdrawal of recognition. While the Great Powers may have implied that they had a right to intervene in cases of breach, no such interventions took place.<sup>22</sup>

From the Berlin Congress until World War One this nascent minority protection system was primarily about protecting the Jews in the new Balkan states, while its successors in 1919 included more elaborate guarantees for other minorities as well, including Germans, Ukrainians, Hungarians, Bulgarians, and Albanians.<sup>23</sup> Another noticeable innovation came with the creation of the League of Nations, which took over the enforcement duty previously only hesitantly practiced by the Great Powers.

Underscoring the above-mentioned shift towards increased focus on populations rather than sovereign rulers, at the time of the Paris Peace conference the ‘legions of experts arrived with volumes of maps and statistics concerning the ethnic and national composition of various regions’.<sup>24</sup> This indicates how important populations and their ethnic character had become in relation to political boundaries. It was this expansion of the definition of state interests into the realm of population politics that paved the way for more proactive state and international policies on diversity, which were to include both an expansion of minority rights and increased population displacement and deportations.

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<sup>22</sup> Jackson Preece, ‘Minority Rights in Europe’, p. 81.

<sup>23</sup> Carole Fink, *Defending the Rights of Others: The Great Powers, the Jews, and International Minority Protection* (Cambridge: Cambridge University Press, 2004).

<sup>24</sup> Weitz, ‘From the Vienna to the Paris System’, p.1327 and 1331.

As will be described below, legal minority protections and ethnically targeted displacements often went hand in hand, both in practice and principle. They were both based on the idea of sovereignty as rooted in the (ethnically defined) nation, and were in fact propagated by the very same statesmen and documents during the twentieth century.

### **2.3. Population Transfers and Minority Rights: Diversity in the Early Twentieth Century**

Population politics was enshrined in the Treaties concluded at both Paris and Lausanne, the latter marking the end of the Ottoman Empire and the imperial age in Europe.<sup>25</sup> The population politics that had emerged in the late nineteenth century was reinforced by World War One, with progressively maximalist war aims of all belligerents, and, both in Europe and in the colonies, increasingly brutal subjugation of peoples including instances of genocide. Weitz argues that this development, coupled with the Wilsonian notion of the self-determination of (civilised) peoples as a key to lasting peace, which was coming to Europe from across the Atlantic, culminated in the Lausanne Treaty's population exchange.<sup>26</sup>

Woodrow Wilson has been criticised for awakening the hopes of national groups in Eastern Europe with the 'dangerously vague'<sup>27</sup> principle of national self-determination contained in his Fourteen Points statement. However, Wilson likely

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<sup>25</sup> *ibid.*, p. 1326.

<sup>26</sup> *ibid.*, p. 1323–6.

<sup>27</sup> Mark Mazower, 'Minorities and the League of Nations in Interwar Europe', *Deadalus*, vol. 126, no. 2, Spring 1997, p. 49.

had a civic-liberal concept in mind when he referred to self-determination, one that was chiefly concerned with self-government. In this understanding, national self-determination was at the heart of the democratic ideal.<sup>28</sup> Wilson was also simply unaware of the extent to which ethnic and state borders did not overlap in Eastern Europe. He admitted to the difficulty arising from the conceptual ambiguity himself:

When I gave utterance to those words [that all nations had a right to self-determination], I said them without a knowledge that nationalities existed, which are coming to us day after day.... You do not know and cannot appreciate the anxieties that I have experienced as the result of many millions of people having their hopes raised by what I have said.<sup>29</sup>

The fact that the Paris Peace Conference took up the language of nations, minorities, and self-determination, and enshrined it internationally had a

... profound policy implication, because it presumed the domination of one population in the state ... [and] enshrined the concept of rights as inhering in groups, which existed uneasily with all the democratic provisions for individual rights that the new states established at Paris were mandated to introduce.<sup>30</sup>

These tensions, finally, meant that when a minority was too large or too problematic it was thought by many that it might simply have to be removed. The Lausanne Treaty, as an extreme example of population politics, can thus be understood as the outcome of a shift in thinking that took place during the nineteenth century regarding the connection drawn between sovereignty and nationally, ethnically, or racially defined peoples.

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<sup>28</sup> Lynch, 'Woodrow Wilson and the Principle...'

<sup>29</sup> Quoted in *ibid.*, p. 426.

<sup>30</sup> Weitz, 'From the Vienna to the Paris System', p. 1330.

## **Population Transfer**

Forced displacement had already seriously altered the demographics of the Balkans and the Ottoman Empire in the decade before the infamous Lausanne Treaty formalised the population transfer of 1.5 million people between Greece and Turkey. The Balkan Wars of 1912 and 1913, followed by World War One and finally the Greek-Turkish war, had displaced millions of Muslims and Christians. In the last decades of the nineteenth century and the first decades of the twentieth, the migratory tendency in the Ottoman Empire and South East Europe was clear: Muslims migrated south and east, and Christians north and west. War was a central driver of this (often forced) migration. However, it was not war as such, but rather war ‘at the high noon of mass ethnic nationalism’,<sup>31</sup> in conjunction with the formation of new nation-states and ethnic ‘nationalisation’ of existing states in a region characterised by heterogeneous populations that explain the massive population displacements of the period. The homogenising effect of the Lausanne Treaty was in many ways already a reality on the ground when the treaty was signed.<sup>32</sup>

Prior to the Greco-Turkish population exchange, the idea of transferring minority populations had already been formulated in the Turko-Bulgarian Convention of 1913. It set the new frontier and provided for a reciprocal population exchange within a 15 km stretch of the entire common border, facilitated by the

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<sup>31</sup> Brubaker, *Nationalism Reframed*, p. 154.

<sup>32</sup> Renee Hirschon, ed., *Crossing the Aegean: An Appraisal of the 1923 Compulsory Population Exchange Between Greece and Turkey* (New York, Oxford: Berghahn, 2003), p. 4.

two governments.<sup>33</sup> Most of this population movement had already taken place when the convention was agreed. The purpose of the document was to make these movements permanent and to convince individuals who remained on the ‘wrong’ side to move to their supposed kin-state. In this case, the decision was to be implemented by a Mixed Commission that would also appraise the properties of the exchanged populations. However, due to the outbreak of World War One, liquidation and appraisal of properties of nearly 50,000 persons from each side was never carried out.<sup>34</sup> As was later the case in the Greco-Turkish population exchange, populations were literally interchanged, that is, moved to the villages and houses of their departing counterparts across the border.<sup>35</sup>

In 1914 a similar Greco-Turkish agreement was signed to regulate a voluntary population exchange. However, this agreement was stillborn because Turkey entered the war on the side of the Central Powers.<sup>36</sup> Following World War One the same principle of exchange of minority populations was enshrined into the post-war order through various peace treaties, as it was seen by many as an attractively simple and effective tool to help match populations to the boundaries of new nation-states. The above-mentioned Turko-Bulgarian Convention of 1913 and the stillborn Greco-Turkish Agreement of 1914 can thus be understood as the

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<sup>33</sup> Stephen P. Ladas, *The Exchange of Minorities: Bulgaria, Greece and Turkey* (New York: Macmillan, 1932), p. 18–19.

<sup>34</sup> *ibid.*, p. 20.

<sup>35</sup> Interestingly, in what Brubaker calls a case of ‘post-imperial ethnic unmixing’, a protracted outmigration of Muslim Turks from the Balkan successor states took place throughout the twentieth century, particularly from Bulgaria, which at times exerted pressures on the Turkish minority to leave, and instituted harsh assimilation campaigns up until the mid-1980s. See Brubaker, *Nationalism Reframed*, p. 155.

<sup>36</sup> Bruce Clark, *Twice a Stranger: How Mass Expulsion Forged Modern Greece and Turkey* (London: Granta Books, 2006), p. 53.

forerunners of the Convention of Neuilly of 1919 and the Treaty of Lausanne 1923, respectively.<sup>37</sup>

### **The Lausanne Treaty's Long Shadow**

The Lausanne Treaty is invoked to this day, including with respect to post-conflict Kosovo.<sup>38</sup> It has been argued that 'we are still haunted, at the start of the twenty-first century, by the legacy of a treaty that was concluded early in the twentieth.'<sup>39</sup>

The Convention Concerning the Exchange of Greek and Turkish Populations was signed in Lausanne, Switzerland on 20 January 1923, and provided for an internationally sanctioned forced exchange of the Muslim and Christian populations of Greece and Turkey, respectively.<sup>40</sup> In July of the same year it was followed by the Treaty of Peace that redrew the boundaries of new states and formalised the end of the Ottoman Empire.<sup>41</sup> In total, approximately 1.5 million people were affected by the exchange, 1.2 million Christians entered

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<sup>37</sup> Ladas, *Exchange of Minorities*, p. 23. A separate agreement was also signed between Bulgaria and Greece in November 1919 providing for the voluntary exchange of population, which involved 200,000 Slavs in northern Greece and 170,000 Greeks in Bulgaria (Weitz, 'From the Vienna to the Paris System', p. 1335).

<sup>38</sup> See e.g. ESI, *Lausanne Principle*.

<sup>39</sup> Clark, *Twice a Stranger*, p. xiii.

<sup>40</sup> Article One of the Lausanne Treaty reads: 'There shall take place a compulsory exchange of Turkish nationals of the Greek Orthodox religion established in Turkish territory, and of Greek nationals of the Muslim religion established in Greek territory. These persons shall not return to live in Turkey or Greece without the authorisation of the Turkish government or of the Greek government respectively'. Lausanne Peace Treaty VI. Convention Concerning the Exchange of Greek and Turkish Populations Signed at Lausanne, January 30, 1923. [http://www.mfa.gov.tr/lausanne-peace-treaty-vi\\_-convention-concerning-the-exchange-of-greek-and-turkish-populations-signed-at-lausanne\\_.en.mfa](http://www.mfa.gov.tr/lausanne-peace-treaty-vi_-convention-concerning-the-exchange-of-greek-and-turkish-populations-signed-at-lausanne_.en.mfa), accessed 27 January 2014.

<sup>41</sup> Hirschon, *Crossing the Aegean*, p. 6.

Greece, a large portion of whom had already fled during the fighting in 1922, and approximately 350,000 Muslims were expelled from Greece under the agreement.<sup>42</sup>

This displacement was seen as an instrument of nation-state creation. Contemporary authors have labelled these historic events ‘ethnic cleansing’, a term that only came into use during the Yugoslav wars of the 1990s, and have associated them with the inherent dilemma of an ethno-national understanding of the Wilsonian principle of self-determination.<sup>43</sup> The dilemma lies in the need for uniformity in order to view the state as the expression of a group’s right to self-determination, while diversity is often a fact in reality. In this way, diversity becomes an obstacle to the fulfilment of national self-determination.

In the normative framework that emerged following World War One, national self-determination was indeed understood as based on ethno-cultural grounds in Europe, and linguistic and cultural characteristics were considered proof of nationhood.<sup>44</sup> It has been argued that two pitfalls were inherent in this: firstly, the indeterminate meaning of ethnic nationhood, and secondly, the demographic reality, namely the fact that groups were geographically intermixed in the territories of formerly multi-ethnic empires. In these situations, prevalent in much of the post-imperial world, either borders had to be adjusted or people had to be moved. Population transfers came to be seen as legitimate tools of ‘improving the fit between national boundaries and the ethnic composition of the population within

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<sup>42</sup> *ibid.*, p. 14.

<sup>43</sup> Jennifer Jackson Preece, ‘Ethnic Cleansing as an Instrument of Nation-State Creation: Changing State Practices and Evolving Legal Norms’, *Human Rights Quarterly*, vol. 20, no. 4, 1998, pp. 817–42.

<sup>44</sup> *ibid.*, p. 823.

them'.<sup>45</sup> In fact, while there were statesmen and commentators who had moral qualms about this approach, many others admired its simplicity and viewed particularly the agreement on the Greco-Turkish population exchange as a commendable success.

The Lausanne Treaty can be thus be understood as the logical conclusion of the principle of self-determination of peoples in ideally ethnically homogenous states, rather than as an aberration from emerging liberal and democratic norms enshrined internationally at the Paris Peace Conference.

The Lausanne Treaty represents the most prominent example of an international *rejection* of diversity.<sup>46</sup> Reactions to the Lausanne Treaty also offer a view into the thinking about diversity and the possibility of a multi-ethnic state. The population exchange and how it is to be interpreted in hindsight remain controversial issues to this day, illustrating the continued salience of debates about diversity.

While the conflict parties and international mediators favoured the exchange, or at least did not oppose it when negotiating the Lausanne Treaty, it is noteworthy that they were all concerned to ensure they would not be associated

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<sup>45</sup> *ibid.*, p. 823.

<sup>46</sup> As illustrated below, this particular instance has been understood varyingly as either a principled rejection of diversity or a pragmatic choice in a specific and difficult situation. The Commission itself called particularly the obligatory principle that the final Treaty contained 'a great but inevitable misfortune', quoted on p.342 of Christa Meindersma, 'Population Exchanges: International Law and State Practice – Part 1', *International Journal of Refugee Law*, vol. 9, no. 3, 1997, pp. 335–64.

with initiating or advocating the policy.<sup>47</sup> This indicates that there was an expectation among them that the exchange would be considered inappropriate, as ‘world opinion was firmly against the idea of a compulsory exchange’.<sup>48</sup> It was particularly the compulsory nature of the exchange that protagonists wished to distance themselves from.<sup>49</sup> Even prior to the codification of human rights, the problematic aspects of this policy were clear to those who nonetheless favoured them.

This population exchange remains a controversial and divisive issue. Many commentators have hailed it as a success story that enabled a century of peace between Greece and Turkey, while others have decried it as a dangerous precedent of nation-state homogenising at the expense of the human rights of 1.5 million people.<sup>50</sup> Much of the political science literature has ignored the human consequences of uprooting individuals that the Treaty sanctioned, and has instead focused on its effects on international peace, as well as on state-building in Greece and Turkey. The latter are often interpreted as positive. However, anthropologists and sociologists have also pointed to the potentially adverse long-term consequences of separation, whereby growing ignorance of the other and

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<sup>47</sup> Clark, *Twice a Stranger*, p.44; Meindersma, ‘Population Exchanges’, p. 341 and p.350. Meindersma also points out that at no point did the delegations attempt to justify the measure on legal grounds, ‘but rather sought to deny responsibility for it’.

<sup>48</sup> Meindersma, ‘Population Exchanges’, p. 341.

<sup>49</sup> Michael Barutciski, ‘Lausanne Revisited: Population Exchanges in International Law and Policy’, in Hirschon, *Crossing the Aegean*, p. 28. Barutciski also points out that in historical comparative perspective, as well as in the specific case of the Greco-Turkish population exchange, the fact that such agreements are normally signed after significant ethnically targeted displacement has already taken place means that the only real implication of the voluntary or compulsory nature of agreements like the Lausanne Treaty lies in the options of return for those expelled.

<sup>50</sup> Barutciski, ‘Lausanne Revisited’, p. 25; Hirschon, *Crossing the Aegean*, p. 9; Jackson Preece, ‘Ethnic Cleansing’, p. 824; Weitz, ‘From the Vienna to the Paris System’, p. 1338.

diminished contact can also raise the level of conflict.<sup>51</sup> Time will tell whether this might apply to those parts of the former Yugoslavia that saw major ethnically homogenising displacement in the last two decades.

The divisive nature of the Lausanne-sanctioned population exchange is also evident in a number of contradictory quotes attributed to Lord Curzon, the British Foreign Minister who presided over the Military and Territorial Commission at the Lausanne Conference, and who coined the often-quoted expression about the ‘unmixing of peoples’. While on the one hand Lord Curzon stated that the compulsory nature of the exchange represented a ‘thoroughly bad and vicious solution for which the world will pay a heavy penalty for a hundred years to come’,<sup>52</sup> he is also quoted as commenting on the resulting suffering of individuals that ‘these hardships, great though they may be, will be less than the hardships which will result for these same populations if nothing is done’.<sup>53</sup> While the first displays scepticism about the policy and its potential to become a precedent for the future, the second statement takes a pragmatic standpoint about minimising harm. Harm-minimisation, and a particularly humanitarian interpretation of internationally sanctioned forced population transfers, has been a noticeable feature in the reasoning of many policymakers in this and other cases of conflict. Both the Lausanne Treaty and, following World War Two, the Potsdam Agreement intended to ensure that transfers of persons would take place in an ‘orderly and humane’

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<sup>51</sup> Hirschon, *Crossing the Aegean*, p. 10–11.

<sup>52</sup> Quoted in Barutciski, ‘Lausanne Revisited’, p. 25; Weitz, ‘From the Vienna to the Paris System’, p. 1336; Jackson Preece, ‘Ethnic Cleansing’, p. 817.

<sup>53</sup> Quoted in Barutciski, ‘Lausanne Revisited’, p. 26.

fashion, for example, in the former case, through supervision by the League of Nations. Despite this provision, this standard was far from realised in practice.

Similar views continued to influence the thinking on diversity and its merits or otherwise long after 1923, particularly during and after World War Two. They were also evoked in policy debates during the dissolution of Yugoslavia and its aftermath. Connections were drawn between the Lausanne Treaty and the Potsdam Agreement authorising the expulsion of millions of ethnic Germans from various states in Eastern Europe, as well as the Dayton Accords that ended the war in Bosnia and Herzegovina (BiH) in 1995.<sup>54</sup>

Regarding the compulsory and near-total nature of the exchange, which ensured that refugees could not return to their former homelands, Lord Curzon remarked that ‘the suffering entailed, great as it must be, would be repaid by the advantages which would ultimately accrue to both countries from a *greater homogeneity* of population and from the *removal of old and deep rooted causes of quarrel*’.<sup>55</sup>

In contrast to the conclusions reached at the Lausanne Conference, a few years previously the King-Crane Commission, mandated to make recommendations for the Paris Peace Conference, had favoured a diverse Turkish mandate.<sup>56</sup> This

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<sup>54</sup> Norman M. Naimark, *Fires of Hatred: Ethnic Cleansing in Twentieth Century Europe* (Cambridge: Harvard University Press, 2001), quoted in Weitz, ‘From the Vienna to the Paris System’, p. 1343. Weitz states that Roosevelt, Churchill, and Franjo Tudjman all specifically referred to the ‘success’ of the Lausanne Treaty.

<sup>55</sup> Quoted in Meindersma, ‘Population Exchanges’, p. 346, emphasis added.

<sup>56</sup> During the summer of 1919, President Woodrow Wilson mandated the ‘American Section of the Inter-Allied Commission on Mandates in Turkey’, which came to be known as the King-Crane Commission, to conduct a fact-finding mission before the Paris Peace Conference. The mission

commission opposed the separation of peoples while advocating a cosmopolitan future Turkish state that would ‘sacredly guard the rights of all minorities’,<sup>57</sup> including equal rights and representation. Regarding the ‘problem of the Greeks’ in the future Turkish state, the Commission recommended that ‘in the long run the better good both of the Greeks and of the Turks is to be found in their union in one cosmopolitan state.’<sup>58</sup>

Lord Curzon’s statement above, contrasted with the King-Crane Commission’s recommendations, illustrates the starkly diverging impressions and interpretations of outsiders regarding either the inevitability of conflict between ‘less civilised’ nations on Europe’s periphery, or the—possibly idealised—vision of their harmonious coexistence. Notably, these are both recurring tendencies, as they appeared again in international discourse about the wars that accompanied the dissolution of Yugoslavia 70 years later.

### **The League of Nations Minority Rights Regime**

The period of population transfers described above was also characterised by an emerging minority rights regime being established by the very same actors. For example, the Lausanne Treaty also included minority rights provisions for the remaining non-Muslim population in Turkey.

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travelled to areas of the former Ottoman territories in order to determine the wishes of the people of the region.

<sup>57</sup> Report of the King-Crane Commission, King-Crane Commission Digital Collection, <http://dcollections.oberlin.edu/cdm/compoundobject/collection/kingcrane/id/1239/rec/11> accessed 13 December 2013.

<sup>58</sup> *ibid.*

However, being a minority protected under the new regime was still considered inferior to being part of a dominant ethnic majority in any of the nationalising states.<sup>59</sup> In fact, the idea of population transfers, whether forced or not, was often also expressed as a service to those who would have to move to improve the fit between borders and populations. The transfer of these individuals was considered ‘the fulfilment of that minority’s right to national self-determination – once moved, they would become a part of that body politic that reflected their ethnocultural distinctiveness’.<sup>60</sup>

In terms of the thinking behind the minority rights regime that emerged at this time, both of the logics described above seemed to be operating. Once again, normative trends can be discerned, which however interplay with consequentialist ones. The minority regime is often wrongly associated with liberal idealism only – in fact, for many decision makers at the time it also had the strategic aim of stabilising diverse states by ensuring that minorities’ claims for national self-determination in the form of separatism or calls for more substantive autonomy would be deterred. The charge of Wilson’s and the entire League of Nation system’s idealism thus fails to do justice to the evidence that suggests that a large part of the motivation was geopolitical; minorities were seen as a potential source of instability.<sup>61</sup> The Great Powers saw the minority rights guarantees to which they

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<sup>59</sup> Liebich, ‘Minority as Inferiority’.

<sup>60</sup> Jackson Preece, ‘Ethnic Cleansing’, p. 823.

<sup>61</sup> Liliana Riga & James Kennedy, ‘Tolerant Majorities, Loyal Minorities and “Ethnic reversals”’: Constructing Minority Rights at Versailles 1919’, *Nations and Nationalism*, vol. 15, no. 3, 2009, p. 472.

held new states emerging from multi-ethnic empires as a tool to keep this instability in check.

Views on diversity during this period varied, illustrating the continual negotiation and contention that the question of diversity raises. For example, at the end of the First World War in Britain there were both outspoken supporters of the smaller nationalities in Eastern Europe who advocated for their right to national self-determination in new states and liberals who already feared the potential Pandora's box such an approach entailed. Lord Acton had already warned in the nineteenth century that 'by making the State and the nation commensurate with each other in theory, [nationality] reduces practically to a subject condition all other nationalities that may be within the boundary'.<sup>62</sup> Representatives of the British Foreign Office in the period leading up to the Paris Peace voiced similar doubts about the principle of nationality as the sole basis of organisation for the European peace.

The interwar international minority rights regime was mostly drafted by the 'Committee on New States', which was set up in Paris to draw up the separate minority treaties. Minority rights standards were enshrined in the five minority treaties, in chapters on the rights of minorities included in peace treaties and declarations on the protection of minorities made by certain states. They were not included in the League Covenant and therefore were not universal.<sup>63</sup> The Polish Treaty was the first one to be drafted, representing the first example of a new,

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<sup>62</sup> Quoted in Mazower, 'Minorities and the League of Nations', p. 49.

<sup>63</sup> Meindersma, 'Population Exchanges', p. 347.

ambitious, international policy on minority protection. The Polish Treaty served as a model for all the other Treaties and included a combination of equality guarantees for minorities and provisions for ‘certain forms of collective organisation in the educational and cultural spheres’.<sup>64</sup>

The discussions surrounding these treaties took place among a very small circle of elites of the country in question together with a group of Western officials. What is known about the thinking behind these developments is that Polish Jewry was the minority that drafters of the Polish Minority Treaty had in mind and British and American Jewry heavily influenced the negotiations of the Treaty.<sup>65</sup> However, the Jews were actually not a good example to use as a template for the other minorities in East and Central European states, many of whom had experienced what has been described as ‘ethnic reversals’ – previously privileged or dominant groups that suddenly turned into minorities in the national projects of those formerly subjugated under the imperial order. The Anglo-American elites who framed these treaties saw a *liberal* minority rights regime as the solution, expecting that it would create ‘tolerant majorities’ and ‘loyal minorities’. Particularly the faith in cultural and identity-based protections may have been misplaced in contexts where there was no liberal tradition. Socio-economic issues regarding privilege and access were more pressing to Europe’s minorities than identity-based protections. This was evident in the types of appeals that were brought to the

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<sup>64</sup> Mazower, ‘Minorities and the League of Nations’, p. 50.

<sup>65</sup> Riga & Kennedy, ‘Tolerant Majorities’.

attention of the League during the interwar years, which were more often economic than cultural in nature.<sup>66</sup>

The system that emerged focused on the protection of individual liberties and non-discrimination, likely modelled after the US Constitution, and coupled this with group-differentiated rights, such as minority language provisions in schools. The focus was thus on empowering minorities through cultural rights, with the aim of creating shared political allegiance. Because Polish Jewry became the paradigmatic minority, the entire minority rights regime in Eastern and Central Europe was characterised by non-territorial, non-political, cultural rights.

This approach was based on progressive American voices who ‘theorised their own experiences about how assimilation worked in a diverse liberal democracy’.<sup>67</sup> It included a preference for unitary states and for a universalist approach to equality, concerned about too much differentiation in rights, due to a fear of creating states within states. This was based on the Millian idea that a certain degree of homogeneity is needed for liberal democracy to function. In addition there was a belief in the ‘distinctly American Progressivist idea that cultural differences were amenable to substantial reform given the right politics’.<sup>68</sup> Thus the aim was to create some level of value homogeneity or a shared political culture, in order to attain political loyalty from minorities.

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<sup>66</sup> *ibid.*, p. 478. Similar arguments can be made about approaches to minority issues in post-conflict Kosovo, including parallels to the analysis of ‘ethnic reversals’ and class inversions that characterised the post-imperial period. See Section Two below.

<sup>67</sup> *ibid.*, p. 476.

<sup>68</sup> *ibid.*, p. 473.

At the end of the First World War, while many peoples had newly secured their self-determination, this achievement also ‘created a subordinate level of citizenship for the rest of their population’.<sup>69</sup> The mechanism for minority protection that the League of Nations created, the Minorities Committee, was to investigate petitions and issue reports on the situation of minorities in the newly independent Eastern European states. However, the system had only minimum enforcement mechanisms and fully depended on the co-operation of states whose governments it wished not to alienate.<sup>70</sup> It was thus only able to offer recommendations, in what was designed as a consensual conflict resolution formula but broke down due to a lack of international goodwill.<sup>71</sup> The League Council often ignored complaints from minorities, for example about assimilationist policies of states, and the Great Powers were very reluctant to back the cause of a minority wherever their national interests were not touched. This opened up the possibility of politicisation of minority rights by states on behalf of their ethnic kin minorities abroad.<sup>72</sup> Kin-states with large minorities outside their borders and at times irredentist leanings, most notably Germany, became the biggest advocates for minority rights within the League system.

Finally, the non-universal nature of the regime, whereby only new states in Eastern Europe were bound by its provisions, created resentment and a lack of

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<sup>69</sup> Fink, ‘Minority Rights’, p. 388. Fink refers to examples from these new states’ constitutions, such as: ‘We, the Polish nation, thanking Providence for having restored liberty after a century and a half of servitude’, and ‘We, the Czecho-Slovak nation, wishing to consolidate the complete unity of the nation...’.

<sup>70</sup> *ibid.*

<sup>71</sup> Jackson Preece, ‘Minority Rights in Europe’, p. 83.

<sup>72</sup> *ibid.*, p. 83.

legitimacy: ‘the new international minorities system of 1919 was born under the cloud of dictated arrangements imposed on unwilling governments on behalf of highly diverse, unnamed and largely unconsulted minorities’.<sup>73</sup>

However, the minority rights regime, while criticised in retrospect by many, can also be understood as an ambitious attempt compared to what came both before and after it. The international community of the interwar decades is sometimes lauded for having in most cases resisted a repetition of the logic underpinning the Lausanne Treaty, and opted rather for an approach based on minority rights protection by law.<sup>74</sup> The principle of population transfer to eliminate diversity was only emulated again by Hitler with his policy of ‘repatriating’ ethnic Germans to Germany from South Tyrol, the Baltics, and Bessarabia, and later through forced transfer and killing of ‘undesirable’ populations. While the League minority rights regime did not live up to expectations and saw many commitments made but not implemented, it also saw a few successes of conflict mitigation and resolution. These included the resolution of the Aaland islands dispute between Sweden and Finland in 1921, providing the islanders with substantial autonomy while retaining Finnish sovereignty over the islands,<sup>75</sup> as well as Estonia’s granting of cultural autonomy to its national minorities.<sup>76</sup>

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<sup>73</sup> Fink, ‘Minority Rights’, p. 390.

<sup>74</sup> Mazower, ‘Minorities and the League of Nations’.

<sup>75</sup> Jackson Preece, ‘Minority Rights in Europe’, p. 83.

<sup>76</sup> Mazower, ‘Minorities and the League of Nations’, p. 54.

#### **2.4. Diversity, World War Two, and its Aftermath**

The interwar period's minority rights regime did not survive the upheaval of World War Two, during which the practice of ethnic displacements once again dominated Europe. Approaches to diversity took a turn that was partly premised on previous thinking and practices, however. Germany in particular had been very active in Geneva within the League of Nations framework, advocating on behalf of ethnic German minorities throughout Europe, and particularly in Poland.<sup>77</sup> Later on, 'Nazi thinking pushed the collectivism inherent in the very idea of minority rights to a new extreme'.<sup>78</sup> Sceptical of an undercurrent in the League of Nations minority rights regime whereby assimilation was regarded as ultimately a positive development, Nazi ideology considered it a moral duty to preserve the nation as an organic whole, taking precedence over the concerns or rights of individuals. Population transfer also became a cornerstone of Nazi policy. This included the forced moving and killing of unwanted populations, as well as the *Umsiedlung* of Germans into the Reich and its Incorporated Territories. Population transfers thus became a central feature of the Second World War, including when the Allies agreed on the transfers that a post-war settlement would entail.<sup>79</sup>

The Governments-in-Exile of Czechoslovakia and Poland in particular made it clear that their German minority had acted as a fifth column, and insisted that it would be impossible to include them in a future state, certainly not with the extensive minority rights provisions of the interwar period. Both Roosevelt and

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<sup>77</sup> *ibid.*, p.52. Germany itself had not been subject to any minority treaty following World War One.

<sup>78</sup> Mark Mazower, 'The Strange Triumph of Human Rights, 1933–1950', *The Historical Journal*, vol. 47, no. 2, June 2004, p. 384.

<sup>79</sup> Jackson Preece, 'Ethnic Cleansing', p. 823.

Churchill stated their preference for a population transfer, which, like at Lausanne, was to be implemented in an orderly and humane fashion. Roosevelt commented that ‘while this is a harsh procedure, it is the only way to maintain peace...’.<sup>80</sup>

Churchill similarly proclaimed that

expulsion is the method which, so far as we have been able to see, will be the most satisfactory and lasting. There will be no mixture of populations to cause endless trouble.... A clean sweep will be made. I am not alarmed by these large transferences, which are more possible in modern conditions than they ever were before.<sup>81</sup>

Edvard Beneš, then President of the Czechoslovak Government-in-Exile, already wrote in 1942 that ‘It will be necessary after this war to carry out a transfer of populations on a very much larger scale than after the last war. This must be done in as humane a manner as possible, internationally organized and internationally financed’.<sup>82</sup>

The forcible transfer of the German minority from Czechoslovakia, Poland, and Hungary was authorised by the Allies in the Potsdam Protocol of 1945, which also enshrined the ‘orderly and humane’ standard and provided for international supervision of the transfer and reparations for property. However, these plans were not realised, and expulsions started before an international commission was formed, mostly under violent conditions whereby reportedly up to two million people died.<sup>83</sup> Ten to twelve million Germans were forced from their homes.<sup>84</sup>

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<sup>80</sup> Quoted in Jackson Preece, ‘Ethnic Cleansing’, p. 828.

<sup>81</sup> Quoted in *ibid.*, p. 828.

<sup>82</sup> Eduard Beneš, ‘The Organization of Postwar Europe’, *Foreign Affairs*, January 1942, p. 238.

<sup>83</sup> Jackson Preece, ‘Ethnic Cleansing’, p. 829. Ethnic Germans were also expelled from Romania and Yugoslavia, although the Potsdam Protocol did not mandate this.

Despite the brutality, the policy was considered legitimate and practical, as evidenced by the fact that thereafter, bilateral treaties on the exchange of ethnic minority populations were also signed and implemented between various other countries, including Czechoslovakia and Hungary, Hungary and Yugoslavia, Yugoslavia and Italy, the Soviet Union and Poland, and the Soviet Union and Czechoslovakia in 1946.<sup>85</sup>

Outside the European context, similar debates were taking place about diversity and the benefits of partition or separation between peoples, most notably in India. For decades tensions had run deep in the movement for independence from colonial rule between a territorial conception of ‘all-India’ and particularist Hindu, Muslim, and other nationalisms. Following the religiously based partition decided in the negotiations of 1946/7, the all-India nationalists did inherit control over a strong centralised state. However, the partition had already fractured ideas of inclusiveness and ‘left millions stranded on the wrong side of frontiers of one or other of two (and later three) nation states, where they have failed to receive protection or achieve full citizenship’.<sup>86</sup>

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<sup>84</sup> Mazower, ‘The Strange Triumph’, p. 387. Jackson Preece, ‘Ethnic Cleansing’, quotes the number of fourteen million.

<sup>85</sup> Jackson Preece, ‘Ethnic Cleansing’, p. 829.

<sup>86</sup> Joya Chatterji, ‘Nationalisms in India, 1857–1947’, in John Breuilly (ed.), *The Oxford Handbook of the History of Nationalism* (Oxford: Oxford University Press, 2013).

## **2.5. Post-World War Two Developments: Human Rights**

Responses to the role of national minorities in the Second World War were ambivalent.<sup>87</sup> Approaches to diversity were once again being contested. Following the horrors perpetrated against minorities by the Nazis, strong arguments were made for the need to protect minorities from their own states. At the same time, doubts and suspicion prevailed regarding the concept of collective or differentiated rights, which many associated with irredentism, ethno-nationalism, or duplicity. The League of Nations minority rights regime had been discredited.

Minority rights came to be seen as contrary to international peace and security, and remained absent from the key documents created after World War Two. Nevertheless, there was a pressing sense that the kind of crimes witnessed during the war had to be prevented in the future, and the concept of individual human rights offered that promise. This was the thinking behind the creation of a stronger international body, the United Nations Organisation, with human rights at its core.

One can trace a development by which, in response to the collectivism inherent in the National Socialist ideology, early in the war both Roosevelt and Churchill started to make references to the defence of the rights of *individuals*, as opposed to collectives. Individual human rights thus became a key theme in the thinking and planning for the post-war era.<sup>88</sup> For the British and the Americans, the concept of individual human rights aligned well with predominant liberal thinking

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<sup>87</sup> Jackson Preece, 'Minority Rights in Europe', p. 85.

<sup>88</sup> Mazower, 'The Strange Triumph', p. 385.

and was considered a natural response to fighting fascist dictatorship. Despite on-going racial segregation in the USA, this came more naturally to the Americans, given their Constitution, than to the British, in light of the Empire.

The states that had minority treaties forced on them in the interwar years were also strongly opposed to repeating this experience. In 1942, Beneš wrote:

The protection of minorities in the future should consist primarily in the defense of human democratic rights and not of national rights. Minorities in individual states must never again be given the character of internationally recognized political and legal units, with the possibility of again becoming sources of disturbance.<sup>89</sup>

Those critical of collective minority rights prevailed, as evidenced by the approach taken to diversity on an international level following World War Two. The system that emerged with the UN Charter focused on individual rights and had only very limited enforcement capacity.<sup>90</sup> In contrast to the advanced minority rights regime of previous decades, minorities received no mention in the UN Charter or the Universal Declaration of Human Rights. While some reference was made to the treatment of minorities in the peace treaties, this cannot be compared with the ambitious provisions of 1919.

While the UN Charter made extensive mention of human rights, it also unequivocally enshrined the sovereign rights of states. Thus, the focus on human rights in the UN system ultimately remained without concrete enforcement mechanisms. This may be contrasted to the European Convention on Human Rights (ECHR), drafted in 1950, which established the European Court of Human

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<sup>89</sup> Beneš, 'The Organization of Postwar Europe', p. 239.

<sup>90</sup> Mark Mazower described this as 'a definite step backwards' in terms of minority protection compared to the League system, Mazower, 'Minorities and the League of Nations', p. 58.

Rights offering an enforceable structure at least on a regional basis. However, the ECHR did not make specific reference to minority rights or the issues arising in states with mixed populations either, even though it outlawed discrimination on the grounds of ‘association with a national minority’.<sup>91</sup>

The US leadership was highly influential in shaping the post-World War Two international system. Whereas minority demands in Europe and particularly Eastern Europe had historically centred on the desire of minorities to resist unwanted attempts at assimilation into the majority—culturally, linguistically, or religiously—the US understanding stemmed from the particular experience of a liberal, multicultural, and traditionally immigrant state. As such, American thinking on the issues focused on the demands of outsiders being denied the insider status they desire, even though the context of minorities in Europe was quite different.<sup>92</sup> While the forms of cultural autonomy that were first granted in the League Minorities Treaties were meant to protect minorities from unwanted attempts of assimilation by their nationalising states, individual human rights did not offer such protection, partly because the separateness of minorities was seen as a problem that had exacerbated the horrors of the war.

The experience of Nazi abuse of minority rights rhetoric with regards to the largest majority in Europe, the Germans, as a cover for fifth column activities, while displaying such obvious contempt for the protection of other minorities’ rights contributed to human rights rising to such prominence in the post-war order.

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<sup>91</sup> European Convention on Human Rights, Article 14.

<sup>92</sup> Jackson Preece, ‘Minority Rights in Europe’, p. 85.

Following the expulsion of German minorities throughout Europe described above, there were two responses to the experiences of genocide among Europe's other big minority, the Jews, each emblematic of the dominant strands of thinking at the time. One was national self-determination in the form of Zionism, and the other the strengthening of an international human rights regime, since the League's minority rights system had failed to protect the Jews of Europe. Those who found themselves again a minority in the West were mostly sceptical of any collectivist approach. They 'felt that being singled out as a minority was itself inviting trouble: better to stand—as they had done in the nineteenth century—on their rights as individuals than as a group'.<sup>93</sup>

## **2.6. The Cold War**

During the Cold War, the trend of focusing on individual human rights that had emerged following World War Two continued. Managing internal diversity was left to individual states, and no minority rights texts were adopted by any international organisation in this period. The international mechanisms that were created within the UN and regional bodies such as the Conference on Security and Cooperation in Europe (CSCE), later renamed Organisation for Security and Cooperation in Europe (OSCE), focused on non-discrimination guarantees. There was no indication of differentiated rights, for example in the field of language, let alone cultural autonomy. The same is true for the ECHR, which, though limited to Europe, was the most important international human rights development of the

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<sup>93</sup> Mazower, 'The Strange Triumph', p. 388.

period. The 1975 Helsinki Final Act of the CSCE was the first to mention minorities again, however, it too focused mostly on individual human rights and non-discrimination.<sup>94</sup>

While at the international level there were no significant normative or legal developments regarding diversity and minority-majority relations, liberal multiculturalism was taking hold domestically in many democracies in the West from the 1960s onwards. Particularly, conditions that encouraged minorities to make claims for recognition, and those that made dominant groups more open to such claims coalesced in this period. Over the following decades this led to a shift in Western democracies in such areas as language policy, education, centralisation, cultural institutions, state symbols, settlement policies, and immigration.<sup>95</sup> While most Western democracies had gone through a process of nation-building at some point in their histories, touching on many of these policy areas with the aim of entrenching the domination of a single ethno-national group over the state, now the idea that the state belonged to all its citizens and not to a dominant group was on the rise. Many Western democracies also established federal or quasi-federal systems, where subunits could exercise some level of self-government, while others institutionalised language rights or guaranteed representation in state bodies, thus accommodating sub-state identities rather than suppressing them. At the international level, there was also a gradual shift towards acceptance of positive, group-differentiated measures, for example in the context of indigenous rights.<sup>96</sup>

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<sup>94</sup> Jackson Preece, 'Minority Rights in Europe', p. 87.

<sup>95</sup> Kymlicka, *Multicultural Odysseys*, pp. 61–86.

<sup>96</sup> *ibid.*, p. 36.

According to Kymlicka, the multiculturalism that emerged in the West in the later part of the Cold War transformed nation-building, rather than replacing it.<sup>97</sup> He suggests that a shift started to occur at the international level in the 1980s, which he describes as the early days of the rebirth of minority rights. At the UN this took place along two tracks; one for indigenous peoples and one for minorities, the latter focusing on the right to enjoy one's culture, rather than autonomy or self-government, but including an acceptance of positive, group-differentiated measures.<sup>98</sup>

When the Cold War ended, many of the old questions regarding diversity and minority-majority relations returned to the international sphere with renewed relevance. None of the states emerging from communism were ethnically homogeneous and the 1990s saw a wave of new international instruments being created. However, in striking parallels to the past, these instruments were again not universal in nature, and continue to be marred by conceptual inconsistencies and lack of agreement between states.<sup>99</sup> These are discussed in more detail in the subsequent chapter.

## **2.7. Conclusion**

This chapter illustrated the complex history of thinking and practice relating to diversity, from which contemporary normative commitments emerge, and adds a historical perspective to the (apparent) current consensus on the issue in the case of

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<sup>97</sup> *ibid.*, p. 83.

<sup>98</sup> *ibid.*, p. 36.

<sup>99</sup> Fink, 'Minority Rights', p. 397.

post-conflict Kosovo. It helps illuminate the evolution that led to the above-mentioned Kaufmann argument about separation of populations becoming unacceptable today. In the overall examination of commitments to multi-ethnicity, the chapter addressed the origins of these normative commitments and thus helps to explain them. These earlier experiences contextualise the commitments that are studied in this thesis. As demonstrated, ideas about and experiences of minority rights, human rights, and national self-determination played a key role in the evolution of thinking about diversity. This evolution was not a straightforward one; diversity has always been a contentious issue that sparked disagreement and debate. Far from a straightforward historical trajectory towards strong normative commitments to multi-ethnicity, this chapter paints a complex picture. It illustrates how diversity was contested and negotiated in relation to normative and consequentialist considerations in the past, and how approaches taken historically developed alongside other norms, oscillating between indifference, elimination, and recognition of ethnic difference.

The historical perspective offered in this chapter suggests that diversity has always been subject to fierce normative debate, as it goes to the core of state identity and legitimacy. When nationalism was dominant there was greater acceptance of policies to eliminate or deny diversity. However, these were controversial even then. Today, while policies such as population transfers have become unthinkable, the promotion of diversity or multiculturalism remains riddled

with inconsistencies and contradictions that the international community continues to grapple with.<sup>100</sup>

Finally, there are no easy conclusions to be drawn about the norms with which and against which the normative commitments to multi-ethnicity developed over time. The principles of national self-determination and ideas about self-government and recognition have at times led to quite varied and contradictory outcomes. The twentieth century experiments in international institutionalisation of minority rights and the population transfers that sometimes went hand in hand with these are evidence of these tensions. All the while, normative changes interplayed with other consequentialist and strategic considerations. While it seems today that certain normative structures, such as the global human rights regime, are unshakable, it is still entirely unclear how these principles can, will, or should deal with claims for recognition of groups within states, particularly in situations of ethnic conflict.

The trends described in this chapter are all part of an on-going experiment. Thinking about diversity and the challenges it entails for states continues to evolve and to be negotiated in discourses, practices, and policies both at the domestic and international levels. As this thesis demonstrates with respect to international thinking and policymaking in Kosovo, this experiment is a complex one that defies simple categorisation.

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<sup>100</sup> See, e.g. Lise Morjé Howard, 'US Foreign Policy Habits in Ethnic Conflict', *International Studies Quarterly*, vol. 59, no. 4, 2015, pp. 721–34.

The next chapter looks more closely at the particular regional context of international commitments to multi-ethnicity in Kosovo, including the European minority rights trend of the 1990s and approaches taken to multi-ethnicity in the international responses to the dissolution of Yugoslavia.



### **III. Approaches to Multi-Ethnicity in post-Cold War Europe and the Balkans**

This chapter offers further insight into the normative developments that preceded the pursuit of multi-ethnicity in the case of Kosovo, which is examined in depth in the remainder of the thesis. It picks up at the end of the Cold War and focuses specifically on the regional dimension relevant to Kosovo, discussing the emerging minority rights regime in post-Cold War Europe as well as approaches to multi-ethnicity in post-conflict situations in the former Yugoslavia. The chapter builds on the previous one, which provided a historical perspective on normative approaches to multi-ethnicity until the Cold War. It thus completes the thesis's first section on normative developments preceding the international peace- and state-building project in Kosovo.

The chapter examines more closely the immediate regional backdrop to the international efforts in multi-ethnicity promotion in post-conflict Kosovo, namely the normative environment in Europe following the end of the Cold War in relation to approaches to diversity. I begin with a discussion of the legal and normative developments in the field of minority rights during the 1990s. Particularly in Europe, the end of the Cold War brought majority-minority relations back to the attention of international organisations, after half a century of minority issues being considered purely domestic matters. This shift came about due to the combination of a rise of multiculturalism in the West, and the securitisation of minority issues in the post-communist East. The chapter's second part relates specifically to international responses to the violent dissolution of Yugoslavia, and what these responses, ranging from a strategic recognition policy to the international mediation of peace treaties and post-conflict institutional arrangements, suggest

about shifting international ideas about ethnic diversity and legitimate statehood. The two parts are inter-linked since the two phenomena influenced one another: International responses to the wars that accompanied Yugoslavia's dissolution were embedded in a specific normative context and moment in history; likewise, the emerging European minority rights regime was influenced by these wars and international responses to them.

The questions arising in the 1990s relate to normative developments discussed in the foregoing chapter, most importantly the nineteenth century idea of sovereignty and self-determination as inherently linked to peoplehood, which was often ethnically defined. With the end of the Cold War and the political changes this brought to Europe, the dilemmas posed by this idea returned to the sphere of international relations with renewed urgency. In striking similarities with previous periods discussed above, this was especially the case when the ethnic characteristics of the population did not match state borders, which historically came to the fore most pressingly in the context of the dissolution of empires or federal states, and most violently in the context of wars that occasioned ethnically targeted displacement.

The 1990s thus saw renewed international interest in group-differentiated rights for minority groups, e.g. in the sphere of language and culture, as well as in autonomy arrangements for minorities. Additionally, the decade also included the first large-scale international attempt to revert ethnically motivated forced displacement, constituting a significant shift away from previous approaches, discussed above, which favoured ethnic homogeneity. By the 1990s, conceptions of legitimate statehood had come to reject homogeneity and espouse ethnic diversity. A principled commitment to outlawing and undoing ethnically homogenising state-

building measures had emerged. However, the principle of national self-determination based on ethno-national characteristics was not abandoned. Rather, it now formed the basis for a politics of granting recognition, cultural rights, and autonomy to domestic minority groups in the name of said principle.

### **3.1 Europe's Post-Cold War Minority Rights Regime**

#### **Developments in the West**

As described above, the devastation of World War Two was followed by disillusionment with the inter-war minority rights regime and ushered in a period of scepticism about minority rights at the international level. Instead, a focus on individual rights became the primary approach to diversity, as well as a strengthening of the principle of state sovereignty. The end of the Cold War represented an opportunity for change in this regard internationally, which built on domestic shifts in relation to diversity that had taken place in the West in preceding decades.

The end of superpower rivalry represented an opportunity for international organisations to reclaim a role of actively shaping international relations. At the same time, when communism collapsed as a legitimating system in Eastern Europe, the threat of state disintegration and ethnic conflict added urgency to this role. Ethnic, linguistic, and national identities quickly gained political saliency in much of the former communist bloc, adding to political uncertainty throughout the Balkans, Eastern Europe, and the Caucasus.

From the 1960s onwards minorities in Western democracies had started to demand increased state recognition, for example in the form of cultural rights.<sup>1</sup> Over the course of the following decades a shift towards a ‘politics of recognition’ of minority groups took place. Some states like Canada explicitly declared a policy of multiculturalism, in a move away from identifying the state exclusively with its traditionally dominant cultural, ethnic, or religious group. The 1980s and 1990s were characterised by what Brubaker termed a ‘differentialist turn’ in many policy areas including immigration, cultural rights for minorities, and the rights of indigenous people, constituting ‘a shift towards greater sensitivity to difference’.<sup>2</sup> With this shift, loosening the strict, colour-blind application of individual rights, the term ‘promotion’ in the context of minority rights became more common, implying that the state could actively support e.g. minority-language media or cultural organisations as public goods.<sup>3</sup>

While some claim that this trend towards increased recognition was later abandoned in favour of more integration-based policies,<sup>4</sup> other findings suggest that the multiculturalism policies, such as territorial autonomy, official language status, guaranteed representation in governments, and public funding of minority

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<sup>1</sup> Kymlicka, *Multicultural Odysseys*, pp. 61–86.

<sup>2</sup> Rogers Brubaker, ‘The Return of Assimilation? Changing Perspectives on Immigration and its Sequels in France, Germany, and the United States’, *Ethnic and Racial Studies*, vol. 24, no. 4, 2001, pp. 531–48, cited in Gwendolyn Sasse, ‘Securitization or Securing Rights? Exploring the Conceptual Foundations of Policies Towards Minorities and Migrants in Europe’, *Journal of Common Market Studies*, vol. 43, no. 4, 2005, p. 679.

<sup>3</sup> Stephen Deets, ‘Reimagining the Boundaries of the Nation: Politics and the Development of Ideas on Minority Rights’, *East European Politics and Societies*, vol. 20, no. 3, 2006, pp. 428–9.

<sup>4</sup> Christian Joppke, ‘The Retreat of Multiculturalism in the Liberal State: Theory and Practice’, *British Journal of Sociology*, vol. 55, no. 2, 2004, pp. 237–57.

culture, education, and media, that emerged in liberal democracies since the 1980s have not been reversed.<sup>5</sup>

The early 1990s were characterised by a unique combination of ‘rising reliance on nationalism for legitimacy in the East and increased support for minorities in the West’,<sup>6</sup> which Kymlicka identifies as the source of renewed international activity regarding ethnic diversity. It was this combination of hope and fear that explains the 1990s shift in international organisations’ stances on minority issues: ‘fear of the spread of ethnic conflict after the collapse of Communism, and a hope for the possibility of a viable liberal-democratic form of multiculturalism’.<sup>7</sup>

### **Developments in the post-Communist East**

In relation to questions of diversity and ethnic politics, the post-Cold War period is often compared to the period immediately following World War One, most notably by Rogers Brubaker in *Nationalism Reframed*.<sup>8</sup> His analytical framework, based on the three elements of nationalising states, national minorities, and external national homelands, is applicable to both historical moments. The analogy between the interwar and post-Cold War periods entails the break-up of ethnically mixed empires and socialist federal structures, respectively, and political

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<sup>5</sup> Keith Banting & Will Kymlicka, ‘Is There Really a Retreat From Multiculturalism Policies? New Evidence from the Multiculturalism Policy Index’, *Comparative European Politics*, vol. 11, no. 5, 2013, p. 577. For the full definitions of ‘multiculturalism policies’, see Multiculturalism Policy Index, <http://www.queensu.ca/mcp/> (accessed 3 September 2016)

<sup>6</sup> Deets, ‘Reimagining the Boundaries’, p. 429.

<sup>7</sup> Kymlicka, *Multicultural Odysseys*, p. 48.

<sup>8</sup> Brubaker, *Nationalism Reframed*.

authority in some cases being reconfigured along national lines, as well as the ‘elaborate international machinery [that] was set up to monitor and protect the rights of national minorities’ after such reconfiguration.<sup>9</sup>

Comparable to the end of empire, with the end of the Cold War and the transition out of communism, the old idea of linking sovereignty to peoplehood, and its accompanying dilemmas, became critically relevant in Eastern Europe once again. Though officially nationalism was frowned upon under communism, many of these states had already institutionalised titular and minority nations prior to 1989.<sup>10</sup> Some communist states, notably Yugoslavia, also had experience of granting territorial autonomy to ethnic minorities.<sup>11</sup> For populations across post-communist Eastern Europe, with class-based identification now rejected, ethno-linguistic group identity, which often crossed political borders, became increasingly politically salient. Eastern Europe experienced a return of nationalism as a potent force, as ‘local elites saw in [it] a means of sustaining their hold on power’.<sup>12</sup> Many of the post-communist countries started to focus on strengthening ‘the position of the titular nationality, thereby running the risk of discriminating against, alienating and politicizing minority groups.’<sup>13</sup> The democratisation of Eastern Europe fed into this development, and after the transition, the constitutions

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<sup>9</sup> Brubaker, *Nationalism Reframed*, p. 8.

<sup>10</sup> Deets, ‘Reimagining the Boundaries’, p. 427.

<sup>11</sup> Sabrina P. Ramet, *The Liberal Project and the Transformation of Democracy: The Case of East Central Europe* (College Station: Texas A&M University Press, 2007), p. 45.

<sup>12</sup> *ibid.*, p. 41.

<sup>13</sup> Sasse, ‘Securitization or Securing Rights’, p. 685.

of almost all post-communist states in Eastern Europe made reference to either popular or, often explicitly, to *national* sovereignty.<sup>14</sup>

Furthermore, migrations following the shrinking of political space, discussed in the preceding chapter, contain another parallel between post-World War One and post-communist Europe. When the borders of many Eastern European states opened with the collapse of communism, combined with the resurgence of nationalism, large population movements again took place along ethnic lines, with minorities in Eastern Europe migrating to their kin states such as Turkey, Germany, Hungary, and others.<sup>15</sup> In the case of the break-up of socialist federal states, so-called ethnic reversals also took place, where previously dominant groups became national minorities in new, nationally defined (and often actively nationalising) states, which contributed to increased migration to respective national homelands.<sup>16</sup>

In this context, the dissolution of multi-national states like Czechoslovakia, Yugoslavia and the Soviet Union into their constituent units during the 1990s contributed to minority rights once again receiving significant international attention. Minority rights were widely considered critical for containing instability. An emerging broad consensus in favour of a more solid minority rights regime in Europe developed in that period, particularly in response to the violence during the dissolution of Yugoslavia. This shift in international normative stance has been attributed to a securitisation of minority rights, i.e. a belief that the ‘the promotion

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<sup>14</sup> Ramet, *The Liberal Project*, p.41–2.

<sup>15</sup> Brubaker, *Nationalism Reframed*, p. 155.

<sup>16</sup> *ibid.*, pp. 148–78; Riga & Kennedy, ‘Tolerant Majorities’.

of national minority rights could help to prevent, to contain, and to resolve these conflicts.<sup>17</sup> Perceived security threats in relation to minorities included the risk of civil unrest, possibly leading to secession, as well as, given the transnational nature of ethno-linguistic groups in Europe, the risk of foreign intervention on behalf of minorities. This fear was based on historical precedents throughout European history, from the pre-Westphalian period, over Germany in the 1930s, to the involvement of Serbia and Croatia in violence on behalf of their ethnic kin during the 1990s.<sup>18</sup>

Due to this securitisation of minority issues, and in another parallel to the interwar years, the guarantee of minority rights was again used as a condition for the recognition of the new states by the European Community (EC), later European Union (EU), as well as for integration into regional organisations.<sup>19</sup> The inclusion in 1993 of minority protections in the EU accession criteria for aspiring member states is particularly noteworthy, given that minority rights had never before formed part of EU law or policy.<sup>20</sup> These developments are discussed next.

### **Developments at the European Level**

Minority rights were taken up by international organisations specifically in relation to East-Central Europe and the former Soviet Union as both a security concern and an individual human rights issue. Minority-majority relations and the

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<sup>17</sup> Caplan, 'European Organizations', p. 272.

<sup>18</sup> Deets, 'Reimagining the Boundaries', p. 441.

<sup>19</sup> Jackson Preece, 'Minority Rights in Europe', p. 88–9.

<sup>20</sup> Kymlicka, *Multicultural Odysseys*, p. 37.

grievances of minorities were considered potential obstacles to democratisation, as well as potentially destabilising socio-economic issues. The challenge was upon these organisations to offer effective protection to minorities while reassuring states that the politicisation of the League of Nations period would not be repeated.<sup>21</sup>

The principal developments regarding approaches to diversity following the Cold War in Europe emanated from the Conference for Security and Cooperation in Europe (CSCE), in 1995 renamed Organisation for Security and Cooperation in Europe (OSCE), and the Council of Europe (CoE). Both are European organisations with membership spanning the entire continent, including the former communist states in the East. The former was created with a focus on security, and the latter on human rights. Compared to the EU with its integrated legal system, the enforcement mechanisms available to these organisations is more limited, however, their broad membership and lower levels of politicisation and public attention, allowed them from the 1990s onwards to advance a minority rights agenda in Europe. This agenda was strengthened by the EC's recognition policy towards new states, discussed below, and later the EU's accession policy, both of which incorporated the legal and normative developments in favour of minority rights. Developments emanating from the OSCE and CoE, coupled with the EU accession process, were thus able to spread minority rights into post-communist Europe.

A number of legal and institutional developments took place reflecting a shift in thinking about diversity. The 1990 Paris Charter of the CSCE built upon

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<sup>21</sup> Jackson Preece, 'Minority Rights in Europe', p. 89.

the Helsinki Final Act but for the first time explicitly linked minority rights to peace and stability, thus making them of international concern. The Charter stated that ‘peace, justice, stability and democracy, require that the ethnic, cultural, linguistic and religious identity of national minorities be protected and conditions for the promotion of that identity be created.’<sup>22</sup> The minority rights mentioned there and in other CSCE documents included, among others, the right of members of national minorities to form their own associations, including across borders, to use their languages freely in private and public, to conduct religious ceremonies, and importantly, education, in the minority language.<sup>23</sup>

At the same time, in the early 1990s the UN Sub-Commission for the Prevention of Discrimination and Protection of Minorities, which during the entire Cold War did not deal with minority issues, started working on what became in 1992 the UN Declaration on the Rights of Persons Belonging to National, or Ethnic, Religious and Linguistic Minorities. This declaration, which has no enforcement mechanism attached to it, is still the furthest minority rights have been developed on a global scale. It is telling that it took the UN so long to create this document, which still ‘lingers in relative obscurity’.<sup>24</sup> On the global level hesitation about the concept of minority rights thus persisted, even at times such as the immediate post-Cold War period, when conditions were favourable for its revival.

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<sup>22</sup> Charter of Paris For a New Europe, November 1990. <http://www.osce.org/mc/39516> (accessed 3 September 2016), p. 7.

<sup>23</sup> Jackson Preece, ‘Minority Rights in Europe’, p. 89.

<sup>24</sup> Liebich, ‘Minority as Inferiority’, p. 243.

However, this was not the case on the regional level in Europe. In 1992, the CoE's European Charter for Regional or Minority Languages (ECRML) made extensive provisions for the right to use minority languages in a range of social, economic, and political fields. A number of measures for states to take to promote the use of these languages in public life were also set out in the Charter, in areas such as education, justice, public services, and the media, among others. The Charter, focusing on language rights specifically, together with the even broader Framework Convention on the Rights of National Minorities (FCNM, discussed below) that followed three years later, together make up the CoE's major contribution to the legal development of minority rights – globally, they constitute the only two binding treaties on the issue.

In 1993, the Parliamentary Assembly of the CoE (PACE) called for the adoption of an additional protocol to the ECHR specifically on the rights of national minorities.<sup>25</sup> The recommendation notably included a number of innovations, namely the protection from forced assimilation and the prohibition of forced population transfers.<sup>26</sup> This was innovative, insofar as up to that point there was no explicit legal prohibition of ethnic cleansing short of genocide, which was

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<sup>25</sup> PACE, Recommendation 1201 (1993), 'Additional protocol on the rights of minorities to the European Convention on Human Rights', <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15235&lang=en>, accessed 5 September 2016

<sup>26</sup> Article 3 of the proposed Protocol reads: 'Every person belonging to a national minority shall have the right to express, preserve and develop in complete freedom his/her religious, ethnic, linguistic and/or cultural identity, without being subjected to any attempt at assimilation against his/her will.' Article 5 reads: 'Deliberate changes to the demographic composition of the region in which a national minority is settled, to the detriment of that minority, shall be prohibited.' PACE Recommendation 1201.

outlawed by the Genocide Convention.<sup>27</sup> These two innovative additions to the proposed minority rights architecture in Europe must be understood as responses to the ethnic cleansing taking place at that time in Bosnia and Herzegovina (BiH), as well as ‘other assimilationist campaigns such as those carried out against ethnic Turks and Muslims in Bulgaria, and against ethnic Hungarians and Germans in Romania under the old Communist regimes.’<sup>28</sup>

When compared to historic approaches to diversity discussed in the previous chapter, the first half of the 1990s indeed constituted a definitive shift away from previous thinking and practice, when ‘international society [had been] prepared to accept ethnic cleansing in the interests of international peace and security’.<sup>29</sup> Additionally, if accepted, the PACE recommendation would have led to the first ever enshrining of a right to autonomy for national minorities in international law, since it proposed that territorially concentrated minorities ‘shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status’.<sup>30</sup> This article, too, can be understood in relation to the on-going securitisation of minority issues throughout post-communist Europe. It was hoped at the time that territorial autonomy might entail the solution to on-going violence in BiH, or that such a legal norm could prompt a return to more autonomy for Kosovo, thus defusing that conflict.<sup>31</sup> However, the idea of codifying

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<sup>27</sup> Convention on the Prevention and Punishment of the Crime of Genocide, adopted in United Nations General Assembly Resolution 260, entered into force on 12 January 1951.

<sup>28</sup> Jackson Preece, ‘Minority Rights in Europe’, p. 90.

<sup>29</sup> Jackson Preece, ‘Ethnic Cleansing’, p. 840.

<sup>30</sup> PACE recommendation 1201, Article 11.

<sup>31</sup> Deets, ‘Reimagining the Boundaries’, p. 436.

a *right* to autonomy was highly controversial for its possible implications for state integrity, and remains so, as discussed in Chapter Five on local self-government below. When the PACE recommendation was not followed up on, autonomy was also not picked up again by the FCNM, and European minority rights bodies focused more on the enshrining and codifying a right to political participation.

The most important development in European minority rights came in the middle of the decade in the form of the above-mentioned CoE Framework Convention for the Protection of National Minorities (FCNM), opened for signature in 1995. The FCNM was the first legally binding multilateral instrument concerning the protection of national minorities. Together with the above-mentioned ECRML that focuses on language rights, the two remain the world's only legally binding treaties on issues pertaining to minorities explicitly. The FCNM required states to promote conditions for minorities to maintain and develop their culture, identity, and language, as well as to facilitate access to the media and education in minority languages.

The FCNM carried forward some of the innovations from the 1993 PACE recommendation regarding the prohibition of assimilationist culture policies and state policies aimed at changing demographic facts on the ground to disadvantage minorities. These were included as a response to the very recent ethnic cleansing that had taken place in BiH. The FCNM was the first legally binding document to outlaw lesser forms of assimilationist state practice aimed at altering linguistic and cultural identities, and explicitly prohibit forced displacement of minorities, thus enshrining an explicit prohibition of ethnic cleansing into international law, at least regionally.

The Convention can thus be considered ground breaking for the legal innovations discussed above, as well as for the fact that minority issues were once again deemed a legitimate subject of a multilateral treaty, after decades of being considered exclusively matters of domestic jurisdiction. However, it must also be noted that the FCNM was in many ways a continuation of, rather than break with, the above-mentioned post-World War Two emphasis on individual human rights and the centrality of state sovereignty. Firstly, it offered protection explicitly to ‘persons belonging to national minorities’, rather than to minority groups as such.<sup>32</sup> Secondly, states were accorded a wide margin of appreciation in their interpretation of the term ‘national minority’, evidence of a prevailing ‘privileging of state rights over collective (or even individual) minority rights’.<sup>33</sup> Officially, the term ‘Framework’ is meant to highlight ‘the scope for member states to translate the Convention’s provisions to their specific country situation’,<sup>34</sup> which allowed ratifying states to make efforts to minimise the list of potential beneficiaries of minority rights. Regarding the definition of what constitutes a national minority, the Convention’s ‘Advisory Committee overseeing the monitoring and reporting process has ... warned of arbitrary and unjustified distinctions’.<sup>35</sup>

Furthermore, neither the FCNM nor the ECRML were included within the jurisdiction of the European Court of Human Rights, which only addresses claims

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<sup>32</sup> Tove H. Malloy, *National Minority Rights in Europe* (Oxford: Oxford University Press, 2005).

<sup>33</sup> Katherine Nobbs, ‘The Effective Protection of Minorities in the Wider Europe: Counterbalancing the Security Track’, in Marc Weller, Denika Blacklock, & Katherine Nobbs (eds.), *The Protection of Minorities in the Wider Europe* (Basingstoke: Palgrave Macmillan, 2008), p. 278.

<sup>34</sup> Council of Europe, FCNM Factsheet, <http://www.coe.int/en/web/minorities/fcnm-factsheet> (accessed 6 September 2016).

<sup>35</sup> Sasse, ‘Securitization or Securing Rights’.

of violations of individual human rights enshrined in the ECHR, limited thus to cases of discrimination against minorities, rather than positive rights to e.g. language.<sup>36</sup> Rather, an Advisory Committee to the FCNM and an Expert Committee to the ECRML were created ‘to engage states party in a softer form of implementation dialogue’.<sup>37</sup>

Additionally, in 1992 the OSCE created the post of High Commissioner on National Minorities (HCNM) as an ‘instrument of conflict prevention at the earliest possible stage ... in regard to tensions involving national minority issues’.<sup>38</sup> This highly personalised office was created under the OSCE’s security pillar and is tasked with containing and de-escalating tensions involving national minorities and providing early warning and early action in situations where a minority issue might develop into a conflict. As an independent office, the High Commissioner can travel to countries, meet with minority groups, and solicit expert opinions, without requiring approval of the OSCE or its member states. Following the widespread adoption of the FCNM and the attention that minority issues were awarded in the EU accession process, the HCNM also importantly started to offer recommendations and guidelines to assist states in implementing their obligations under the FCNM.

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<sup>36</sup> ECHR, Article 14 lists ‘association with a national minority’ as grounds upon which discrimination is prohibited.

<sup>37</sup> Marc Weller, ‘Introduction: The Outlook for the Protection of Minorities in the Wider Europe’ in Weller et al. *The Protection of Minorities*, p. 3.

<sup>38</sup> HCNM Mandate, see Conference for Security and Co-operation in Europe, 1992 Helsinki Summit, Helsinki Document: ‘The Challenges of Change’, <http://www.osce.org/mc/39530> (accessed 6 September 2016).

Various OSCE recommendations and guidelines followed, which outlined in more detail how these rights are to be put in practice by states party to the FCNM, aiming to define the emerging European minority rights and protection standards. Seven such documents have been produced to date, including recommendations on education rights and linguistic rights of national minorities, on the participation of national minorities in public life, and on policing in multi-ethnic societies, amongst others.<sup>39</sup> These guidelines have been applied by the Convention's Advisory Committee in its monitoring and have shaped the interpretation of FCNM standards over the years.

Despite the advances made through the FCNM for minority rights in Europe, their continuously disputed and controversial nature is evident in the fact that in 1996 the Committee of Ministers of the CoE decided not to follow up on the above-mentioned PACE recommendation for an additional protocol to the ECHR on national minorities.<sup>40</sup> Other proposals to turn the UN Declaration on the Rights of Persons Belonging to National, or Ethnic, Religious and Linguistic Minorities into a legally binding convention, or include it in a regional one such as the ECHR, have also been consistently rejected ever since.<sup>41</sup>

In addition to legal developments in Europe, most notably the FCNM and ECRML, it was the inclusion of approaches to diversity in the conditionality criteria attached to state recognition and membership in the EU that propelled

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<sup>39</sup> OSCE High Commissioner on National Minorities, Thematic Recommendations and Guidelines, <http://www.osce.org/hcnm/66209>, accessed 6 September 2016

<sup>40</sup> PACE, Resolution 1866 (2012), 'An additional protocol to the European Convention on Human Rights on national minorities', <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18074&lang=en>, accessed 5 September 2016.

<sup>41</sup> Kymlicka, *Multicultural Odysseys*, p. 41.

minority rights into renewed prominence. In the early 1990s, minority issues were taken up explicitly as conditions for state recognition in the context of the dissolution of Yugoslavia,<sup>42</sup> more on which below, and in the EU's accession criteria for the post-communist aspiring member states.

The reference to minorities in the 1993 Copenhagen criteria that defined eligibility for membership in the EU was remarkable, given that the *acquis communautaire*, the body of EU law that prospective member states would have to adopt, did not include minority protections beyond strong anti-discrimination guarantees. Among the 'old' EU member states there existed a range of different approaches to ethnic diversity, from outright denial of the existence of minorities to wide-ranging cultural rights and autonomy arrangements.

During the accession process it was widely understood that minority *rights* had now become a European standard and a condition for EU membership. However, this reading somewhat overstates the decisiveness of the trend towards a Europe-wide minority rights regime, since 'the actual wording of the condition is more cautious, asking potential member states to safeguard the "respect for and the protection of minorities", while deliberately avoiding a reference to "rights" or "national minorities".'<sup>43</sup> The actual norms being promoted in the field of minority protection remained rather vague, and led to ambiguous policy outcomes throughout post-communist Europe.<sup>44</sup> The most decisive element in favour of

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<sup>42</sup> Malloy, *National Minority Rights*, p. 58.

<sup>43</sup> Gwendolyn Sasse, 'Kymlicka's Odyssey—Lured by Norms into the Rocks of Politics', *Ethnicities*, vol. 8, no. 2, 2008, p. 269.

<sup>44</sup> Sasse, 'Securitization or Securing Rights', p. 687.

minorities in the accession process was the fact that the EU made ratification of the FCNM and ECRML a condition of membership for aspiring member states. This is particularly noteworthy since this requirement was not applied to existing members.<sup>45</sup> Of those, four have still not ratified the FCNM: France, Greece, Belgium, and Luxembourg, with even more remaining outside the ECRML.

The 1990s had brought new developments in international thinking and practice relating to diverse states. The linguistic and cultural guarantees known from the League of Nations period resurfaced. Additionally, prohibitions against assimilation and forced population transfer represented innovative approaches to developments in minority-majority relations on the ground in a number of post-communist states. Finally, the very fact that minority rights were again thought of as a legitimate issue of international policy and concern, and no longer an exclusively domestic matter, was a major normative shift away from a state-centric logic that had prevailed between 1945 and 1989.

However, despite the legal advances in rights and protections for minorities, and the number of monitoring and reporting mechanisms institutionalised since the 1990s in Europe under the auspices of the CoE and OSCE, there is still ‘no coherent policy on minorities ... within the EU, [and] minority issues remain intensely controversial.’<sup>46</sup>

The processes described in this part of the chapter reflect the shift that took place following the Cold War within international organisations in attitudes

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<sup>45</sup> Nobbs, ‘Effective Protection’, p. 279.

<sup>46</sup> Weller, ‘Introduction’, p. 1.

towards ethnic diversity, ‘away from older assimilationist models of the nation state to more pluralistic conceptions of the nation and the state.’<sup>47</sup> As illustrated above, this shift came as a response to the combination of conditions in the West that favoured a ‘politics of recognition’, combined with the urgency sensed by international organisations resulting from the securitisation of minority issues in the post-communist East. The legal and normative developments just examined reflect the result, which was a growing ‘commitment to the ideas that diversity should be seen as a normal and natural feature of contemporary societies, [and] that the distinctive identities of minorities ... must be recognized and accommodated.’<sup>48</sup>

This represented a break from most of the post-World War Two period, which can be described in two phases:

The first was the denial of any ‘rights’ associated with identity. The second was the decision that proper European policy was for states to assist in the preservation of minority culture and language. While this new direction toward positive state action toward minorities began before the collapse of communism, its fullest elaborations came in response to the wars of Yugoslav secession.<sup>49</sup>

It is to this element that the remainder of the chapter is devoted.

### **3.2 Approaches to Multi-Ethnicity in International Responses to the Dissolution of Yugoslavia**

International responses to the violent dissolution of Yugoslavia, including diplomatic initiatives, peace-making attempts, interventions, and peacekeeping

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<sup>47</sup> Boulden & Kymlicka, *International Approaches*, p. 4.

<sup>48</sup> *ibid.*, p. 4.

<sup>49</sup> Deets, ‘Reimagining the Boundaries’, pp. 427–8.

missions, are also indicative of international approaches to diversity. These responses are situated within the historical and regional context discussed in this chapter. The various approaches taken to conflicts in the former Yugoslavia by the international community represent an important prelude and backdrop to the case of international peace- and state-building in Kosovo. While these initiatives and responses were of course ‘reactions to specific sets of circumstances, they have contributed to the articulation and establishment of general norms as well’.<sup>50</sup>

In light of the longer historical perspective discussed in Chapter Two, international policy following the dissolution of Yugoslavia includes both continuity and change from past practice and thinking on diversity. Not unlike in the post-World War One era, in relation to the wars in Yugoslavia there was again a widely held belief within the international community that ‘the promotion of national minority rights could help to prevent, contain and resolve these conflicts’.<sup>51</sup> Building upon the legal developments that strengthened minority rights in Europe in the 1990s, minority issues had become a topic of international interest once again. However, while during the first half of the twentieth century ethnic homogeneity was considered beneficial for peace and stability, and normatively desirable based on the principle of national self-determination, by the 1990s conceptions of legitimate statehood had shifted. Neither cultural assimilation nor violent expulsion was now considered compatible with the normative framework of human rights and the increased recognition and appreciation of diversity in the West. While ethno-national characteristics were still believed to underlie legitimate

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<sup>50</sup> Caplan, ‘European Organizations’, p. 274.

<sup>51</sup> *ibid.*, p. 272.

self-determination claims, and as such, the idea of the nation-state as an expression of this right by the dominant group in a state had not withered, this very principle now also formed the basis for granting recognition, cultural rights, and autonomy to domestic minority groups.

As such, the solution to the mismatch of demographic characteristic of populations with their political boundaries was now neither to re-draw borders nor to condone the movement of people, but rather, to enshrine various policies in favour of minorities domestically.

The two logics of action, discussed in the Introduction, can be applied to understand the driving factors behind these developments, firstly towards an internationalisation of minority issues, and secondly towards greater recognition of rights linked to group membership. Both the logic of appropriateness and the logic of consequences were at play in this shift, which, as discussed above, had roots both in normative shifts in the West regarding diversity and recognition (i.e., shifts in conceptions of appropriateness), and in the humanitarian and security concerns arising from the possibility of renewed ethno-political conflict in Europe (i.e., new consequentialist concerns). These have additionally been linked to fears about migration, as ‘the EU’s activity in the Balkans illustrates the interlinking of its policy priorities for securing and stabilizing its borders, promoting the protection of minorities as a norm, and averting migration.’<sup>52</sup>

International responses to the dissolution of Yugoslavia, and what they indicate about approaches to diversity, are briefly examined in the following

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<sup>52</sup> Sasse, ‘Securitization or Securing Rights’, p. 685.

segment through three international policy responses to the Yugoslav crisis. First, the conditions attached to recognition of new, post-conflict states in Yugoslavia are evidence of prevailing normative conceptions of legitimate statehood. Second, international attempts to reverse the ethnically homogenising effects of forced displacement, or ethnic cleansing, are evidence of a rejection of homogeneity and thus a break with previous international thinking and practice. Third, the institutional frameworks imposed on post-conflict states in the former Yugoslavia reflect approaches to managing diversity that are emblematic of the 1990s.

As shall be seen, the international preference in the 1990s for a reversal of ethnically-motivated displacement and a re-mixing of populations, as well as for institutional arrangements entailing various forms of recognition of minority claims through autonomy and power-sharing, stand in stark contrast to earlier approaches to diversity after war, described in the preceding chapter. By the 1990s, the elimination of difference and resulting ethnic homogeneity was neither desirable nor even acceptable to the international community. During the dissolution of Yugoslavia, the

elimination of ethnic differences [and] the use of violent means for such a purpose, including the forcible redrawing of boundaries ... [was] anathema. Even noncoercive instruments, such as assimilation, are problematic in an era when it is accepted that national minorities are entitled to preserve their distinctiveness consistent with the right to self-determination and broadening conceptions of human rights.<sup>53</sup>

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<sup>53</sup> Caplan, 'European Organizations', p. 281.

## **The International Recognition Policy during Yugoslavia's Dissolution**

As mentioned above, the 1990s marked the beginning of 'an explicit link between democracy, conflict prevention and minority protection',<sup>54</sup> most notably through the CSCE, later OSCE. Additionally, when Yugoslavia's dissolution began, characterised as it was by ethno-nationalist rhetoric and later violence, European states were confronted with the challenge of formulating a common response. The first question was whether and under what conditions to recognise the break-away republics of the former Yugoslavia after the first declarations of independence by Slovenia and Croatia, on 25 June 1991.<sup>55</sup>

The EC set out to formulate a common recognition policy, which can be read as indicative of international approaches to diversity. The joint policy, reached by the end of 1991, is evidence both of the above-mentioned shift in favour of minority rights, and the securitisation of these rights. In relation to the discussion in the Introduction about approaches to the regulation of ethnic conflict, international responses to the Yugoslav crisis focused on *managing*, rather than *eliminating* difference, and favoured some degree of cultural, political, and territorial autonomy for minorities as proposed peacebuilding measures.<sup>56</sup>

The EC's recognition policy was established in three sets of documents.<sup>57</sup> First, recognition was made conditional upon acceptance of the terms lined out in

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<sup>54</sup> Sasse, 'Securitization or Securing Rights', p. 681.

<sup>55</sup> Laura Silber & Allan Little, *The Death of Yugoslavia*, revised ed. (London: Penguin Books, 1996), p. 154.

<sup>56</sup> Caplan, *Europe and the Recognition of New States*, p. 5. See also McGarry & O'Leary, *Politics of Ethnic Conflict Regulation*.

<sup>57</sup> Caplan, *Europe and the Recognition of New States*, p. 16.

the Peace Conference on Yugoslavia's draft Convention of 4 November 1991, known as the 'Carrington Plan', which contained a chapter on 'human rights and rights of national or ethnic groups'.<sup>58</sup> The Peace Conference on Yugoslavia was led by Lord Carrington of the United Kingdom, who had been tasked by the EC Council of Foreign Ministers to negotiate with the parties to the conflict. The talks took place in the Hague during the autumn of 1991.<sup>59</sup> Secondly, the EC's conditional recognition policy was defined in the 'Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union' and the 'Declaration on Yugoslavia', both adopted on 16 December 1991 at the EC Council of Ministers meeting.<sup>60</sup> These documents referenced the CSCE minority rights guarantees as conditions for recognition, and invited the Yugoslav republics to make their case for independence to an Arbitration Commission. Finally, the third set of documents were the opinions of this so-called Badinter Commission, an Arbitration Commission made up of five members chaired by Judge Robert Badinter of France.<sup>61</sup> The Badinter Commission was established in the framework of the Peace Conference to counsel the EC on the legal dimension of the dissolution of Yugoslavia. In December 1991, the EC invited the Yugoslav republics that wished to become independent to apply to the Badinter Commission, which would base its

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<sup>58</sup> Peace Conference on Yugoslavia, Treaty Provisions for the Convention (at 4 November 1991), reproduced in Caplan, *Europe and the Recognition of New States*, p. 191.

<sup>59</sup> Silber & Little, *Death of Yugoslavia*, pp. 190–6.

<sup>60</sup> 'Declaration on the "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union"' and 'Declaration on Yugoslavia', Extraordinary EPC Ministerial Meeting (Brussels), EPC Press Releases P.128/91 and P.129/91, 16 December 1991, reproduced in Caplan, *Europe and the Recognition of New States*, pp. 187–90.

<sup>61</sup> Silber & Little, *Death of Yugoslavia*, p. 200. Opinions of the Arbitration Commission on the former Yugoslavia, reprinted in Weller, *The Crisis in Kosovo 1989–1999*.

opinions on public international law, the Yugoslav constitution, as well as ‘various guidelines, including conditions for individual and minority rights’.<sup>62</sup>

In addition to referencing the values of rule of law, democracy, and human rights in general, the above-mentioned documents making up the EC’s conditional recognition policy gave a prominent role to ‘guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE’.<sup>63</sup> The documents also included reference to the inviolability of borders, disarmament, nuclear non-proliferation and regional stability.

Taking this stress on minorities one step further, the draft Carrington Plan included extensive autonomy arrangements for territorially concentrated minorities, going far beyond the international or even European norm. Chapter II on ‘human rights and rights of national or ethnic groups’ foresaw that ‘areas in which persons belonging to a national or ethnic group form a majority shall enjoy a special status of autonomy’,<sup>64</sup> which included far reaching provisions such as an own legislative body, a regional police force, and a judiciary. The conditions formulated for state recognition in the former Yugoslavia, and particularly the ‘special status’ autonomy arrangements for minorities, ‘represented the boldest and most

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<sup>62</sup> James Gow, *Triumph of the Lack of Will: International Diplomacy and the Yugoslav War* (London: Hurst & Company, 1997), p. 63.

<sup>63</sup> EPC Declaration on the Recognition of New States in Eastern Europe and the Soviet Union, 16 December 1991.

<sup>64</sup> Peace Conference on Yugoslavia, Treaty Provisions for the Convention (at 4 November 1991), Chapter II, article 2.c. This element of the draft Carrington Plan was inspired by the model of autonomy negotiated for the Alto Adige/South Tyrol region in northern Italy after World War Two (Caplan, *Europe and the Recognition of New States*, p. 31.)

controversial attempt to accommodate the self-determination demands of minority groups in the former Yugoslavia.<sup>65</sup>

It is worth noting that conditionality continued to feature in the European engagement with these post-conflict states following the end of the wars, not only through the specific peace-keeping initiatives described below, but most importantly through the accession process for aspiring EU member states. The former Yugoslav republics, which initially defined themselves in exclusive national terms, such as Slovenia, Croatia, and Macedonia,<sup>66</sup> have all during the process of gaining EU candidate status, ‘either amended their constitutions or adopted national legislation to give effect, first to the relevant minority rights provisions of the EC’s draft convention referred to above and subsequently to the minority rights elements of the European Commission’s “Copenhagen criteria.”’<sup>67</sup>

Noteworthy about this process is the explicit use of political and security-related criteria in the conditional recognition of new states, evidence both of a widely held belief that minority rights and autonomy would help calm the security situation on the ground, and a reflection of standards of appropriateness for diverse states imposed by international actors. Given that state recognition was traditionally considered ‘on the basis primarily of non-political criteria’,<sup>68</sup> the EC’s conditional recognition policy during the dissolution of Yugoslavia represented ‘a

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<sup>65</sup> Caplan, *Europe and the Recognition of New States*, p. 30.

<sup>66</sup> Robert M. Hayden, ‘Constitutional Nationalism in the Formerly Yugoslav Republics’, *Slavic Review*, vol. 51, no. 4, 1992, pp. 654–73.

<sup>67</sup> Caplan, ‘European Organizations’, p. 279. For example, Chapter II of the Carrington draft Convention ‘would continue to serve as a common point of reference in negotiations between the Macedonian government and its ethnic Albanian population in subsequent years.’ (Caplan, *Europe and the Recognition of New States*, p. 41.)

<sup>68</sup> Caplan, *Europe and the Recognition of New States*, p. 9.

striking departure from historic convention [by] predicat[ing] diplomatic recognition on the fulfilments of a series of novel political conditions by the aspiring state entities'.<sup>69</sup>

In practice, the joint European recognition policy failed to materialise, with Germany recognising the independence of Croatia before the Badinter Commission had given its opinion.<sup>70</sup> Despite this fact, it has been noted that 'the practical difficulties associated with establishing a common European Union foreign policy do not diminish the normative significance of the Badinter Commission's findings nor the historic continuity they represent',<sup>71</sup> alluding to the post-World War One imposition of standards for minority rights on newly independent states in Eastern Europe. While many critics have dismissed the above-mentioned documents as window-dressing or covers for interests of key states, they remain relevant in the context of this study, since, as Richard Caplan points out, 'the architects of [the EC's recognition] policy gave serious thought to how recognition might be used effectively to mitigate the conflict and to prevent its further expansion'.<sup>72</sup>

Nor did European recognition conditionality live up to the hope that it would contribute to greater security for minorities in the former Yugoslavia. On the contrary, violence in the region only intensified following 1991, particularly in BiH, where war raged for another four years following these early diplomatic initiatives, leaving almost 100,000 dead and displacing nearly half of the country's

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<sup>69</sup> Caplan, *Europe and the Recognition of New States*, p. 24.

<sup>70</sup> Gow, *Triumph of the Lack of Will*, pp. 61–6.

<sup>71</sup> Jackson Preece, 'Minority Rights in Europe', p. 88–9.

<sup>72</sup> Caplan, *Europe and the Recognition of New States*, p. 16.

population of four million.<sup>73</sup> However, for the purposes of this discussion, the success of these conditionality measures is less important than their content. It is argued here that the conditions attached to recognition in the former Yugoslavia reflect important dimensions of both consequentialist and normative thinking among international actors in the 1990s, representing shifts from previous approaches to diversity.

Firstly, the inclusion of minority issues in attempts at international peace-making breaks with practice in preceding decades where these were treated as domestic matters, while simultaneously constituting a revival of approaches from the post-World War One period. Secondly, a normative shift towards greater recognition of minority claims and rights is detectable, with wider implications for minority-majority relations globally, as well as for conceptions of sovereignty, self-determination, and legitimate statehood. For example, while the Badinter Commission's findings reaffirmed that sovereignty applied to territorial units such as the Yugoslav republics only, and denied e.g. the self-proclaimed independent Serb and Croat republics within BiH the right to secede, it did open the path towards an international recognition of a right to autonomy. While the Commission's opinions decidedly did not include the right of ethnic groups to form a state, they did suggest that minority groups within a state had the right to self-determination, which could 'entail the right to levels of autonomy—that is, to political and cultural prerogatives and powers, perhaps of self-governance,

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<sup>73</sup> Soeren Keil & Valery Perry, eds., *State-building and Democratization in Bosnia and Herzegovina* (Farnham, Surrey: Ashgate, 2015), p. 3.

operable within the boundaries of a state'.<sup>74</sup> It has also been argued that, within Europe at least,

... by insisting on respect for minority rights as a condition for diplomatic recognition, the EC has arguably given new meaning to what sovereign statehood means . . . entail[ing], inter alia, the assumption of particular responsibilities in the treatment of a state's national minorities.<sup>75</sup>

This shift with regard to international thinking about diversity is particularly evident when recognition conditionality is examined in conjunction with the post-conflict state-building policies of international actors in the two decades since the war, to which the chapter turns in the following part.

### **International Attempts to Reverse Ethnic Cleansing**

In addition to the initial challenge of formulating a policy on the recognition of new states in the former Yugoslavia, approaches to diversity are also manifested in the range of further international responses to Yugoslavia's dissolution. This range of responses form an important backdrop to the case of post-conflict Kosovo, discussed in the remainder of the thesis, as they are indicative of normative shifts that had taken place by the 1990s, particularly in Europe, with regard to the question of ethnic diversity.

In response to the wars in Croatia (1991-1995), BiH (1992-1995), and on-going tensions in Macedonia eventually leading a violent insurgency in 2001, the international community played an important part in shaping many of the region's

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<sup>74</sup> Gow, *Triumph of the Lack of Will*, p. 77.

<sup>75</sup> Caplan, 'European Organizations', p. 277.

post-war polities. The international peace- and state-building projects in the region over the last two decades took many forms, including the involvement of international mediators who negotiated peace treaties and drafted key documents such as post-war constitutions, international organisations like the UN and NATO sending peacekeeping missions, and the EU monitoring the post-conflict states on their long path towards candidate status and eventual membership. In BiH, Croatia, and Kosovo, donor states as well as international organisations like UNHCR led an enormous effort to facilitate the return of displaced persons to their homes. The international presence in the region also significantly shaped the institutional design of post-war states.

The case discussed in depth in this thesis, post-conflict Kosovo, must be understood before the backdrop of these international experiences, some of which preceded the intervention in Kosovo, most notably BiH, from which lessons were drawn by the actors in question, and some of which took place simultaneously, such as the international involvement in finding an end to violence in Macedonia in 2001. They are also indications of the normative environment in which the Kosovo case was situated, and add further evidence of the above-mentioned developments in international approaches to diversity, which represent both historical continuity and change.<sup>76</sup>

In addition to the recognition policy described above, once large-scale violence had engulfed the former Yugoslavia, international responses to the

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<sup>76</sup> For reasons of space this part of the chapter can only offer briefly noted points about the regional dimension. Where specific lessons were drawn for Kosovo from other international peace- and state-building activities in the former Yugoslavia, these are discussed in more detail in subsequent chapters.

conflict included attempts to reverse a pattern of ethnically targeted displacement, or ethnic cleansing. International attempts to reverse this phenomenon are understood here as another important indication of normative approaches to multi-ethnicity in the 1990s. These contrast starkly with earlier responses to displacement in the region and beyond, discussed in the preceding chapter most notably in reference to the internationally sanctioned population transfer in the Lausanne Treaty of 1923. Evidently, by the 1990s, ethnic homogeneity as a result of war was no longer acceptable to the international community.

Additionally, the institutional arrangements established in post-war states in the former Yugoslavia under significant influence of international actors demonstrate a strong tendency towards the recognition of group claims, notably in various forms of autonomy for minorities, as well as power-sharing and veto rights for ethnic groups at the state level. These institutional features of post-war states in the region, most importantly in BiH and Macedonia, are discussed below, as context for the Kosovo case that is examined in depth in the subsequent section. Throughout the region, international organisations were profoundly involved in managing the ethnic diversity of post-war states. In BiH, the Office of the High Representative was established to monitor the implementation of the Dayton Accord that ended the war, which contained BiH's post-war constitution.<sup>77</sup> The High Representative was later given broad authority, including to pass laws and dismiss elected officials.<sup>78</sup> In parts of Croatia the UN enjoyed executive powers

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<sup>77</sup> The General Framework Agreement for Peace in Bosnia and Herzegovina, known as the Dayton Accord, was signed in Dayton, Ohio, in November 1995.

<sup>78</sup> Caplan, *International Governance*, pp. 20–1.

through UNTAES, the United Nations Transitional Administration for Eastern Slavonia, Baranja, and Western Sirmium.<sup>79</sup> As will be discussed in detail in the second section of this thesis, the United Nations Interim Administration Mission in Kosovo (UNMIK) effectively established a UN protectorate in Kosovo.<sup>80</sup> While in Macedonia international influence was not formalised to this extent, in all these cases of internationally imposed ethnic power-sharing, ‘the importance of the role of international actors cannot be overstated.’<sup>81</sup> This role was crucial in ending the violence, as well as in the negotiation and implementation of the respective peace agreements.

As mentioned above, the wars that accompanied the dissolution of Yugoslavia were characterised by a strategy of ethnic cleansing.<sup>82</sup> The term ‘ethnic cleansing’, today widely used, was first coined during these conflicts, and ‘has proved the enduring lexicographical legacy of the Yugoslav war’.<sup>83</sup> The strategy consisted of using the ‘demonstrative capacity of the violence and the partial elimination of population to induce mass migration’,<sup>84</sup> rather than engaging in direct combat. This was done with the aim of creating ethnically pure territories in strategic locations. Ethnic cleansing can be understood as a particularly violent state-building strategy, as was the case with the project for a ‘Greater Serbia’ in

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<sup>79</sup> UNTAES was established in January 1996 and administered Eastern Slavonia for two years. See Caplan, *International Governance*, pp. 18–19.

<sup>80</sup> Caplan, *International Governance*, p. 19.

<sup>81</sup> Soeren Keil, ‘Power-Sharing Success and Failures in the Western Balkans’, in Keil & Perry, *State-building and Democratization*, p. 197.

<sup>82</sup> James Gow, *The Serbian Project and its Adversaries: A Strategy of War Crimes* (London: Hurst & Company, 2003)

<sup>83</sup> Silber & Little, *Death of Yugoslavia*, p. 244.

<sup>84</sup> Gow, *Triumph of the Lack of Will*, p. 41; Silber & Little, *Death of Yugoslavia*, pp. 244–57.

BiH and Croatia, as well as the Croatian expulsion of its Serbs from the Krajina region in 1995.<sup>85</sup> Similar tactics were again employed in Kosovo during the war in 1999.<sup>86</sup>

In Yugoslavia, ethnic cleansing had a historical dimension, too, both through actual violence and in its subtler forms of forced cultural assimilation.<sup>87</sup> Throughout Yugoslav history, there were times and regions in which a balance between the demands of ethnic minorities and state interests was achieved, and others that were characterised by attempts to assimilate minorities or exclude them from the state.<sup>88</sup> Overall, the recurrence of ethnic cleansing ‘reflects the official perception of minorities as a threat undermining the cohesion of the dominant nation. The prevailing official perception favoured homogeneous states not least because they were perceived to be more secure.’<sup>89</sup>

One distinct policy area in which the international response to the Yugoslav crisis offers evidence of shifting approaches to diversity and multi-ethnicity is the response to the large-scale, ethnically targeted campaigns of displacement that characterised those conflicts. These responses, most notably to displacement in BiH and Croatia, are an important backdrop to the subsequent section. It has been said that the international community’s entire strategy in the region of the former

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<sup>85</sup> Silber & Little, *Death of Yugoslavia*, p. 360.

<sup>86</sup> Heather Rae, *State Identities and the Homogenisation of Peoples* (Cambridge: Cambridge University Press, 2002), pp. 165–211.

<sup>87</sup> Klejda Mulaj, ‘A Recurrent Tragedy: Ethnic Cleansing as a Tool of State Building in the Yugoslav Multinational Setting’, *Nationalities Papers*, vol. 34, no. 1, 2006, pp. 21–50.

<sup>88</sup> Mulaj, ‘A Recurrent Tragedy’. For a historical overview, see for example John R. Lampe, *Yugoslavia as History: Twice There Was a Country*, 2nd ed. (Cambridge: Cambridge University Press, 2000).

<sup>89</sup> Mulaj, ‘A Recurrent Tragedy’, p. 40.

Yugoslavia was based on a commitment to building a multi-ethnic society; thus raising the stakes later on for Kosovo as well as the international community in this pursuit.<sup>90</sup>

Annex 7 of the Dayton Accord states that ‘all refugees and displaced persons have the right freely to return to their homes of origin.’<sup>91</sup> It also enshrined the right to restoration or compensation of property lost during the war. Important in this context is the explicit reference to a right to return to one’s *home* of origin, rather than simply to return to the country or region. This formulation can be interpreted in light of the ethnically homogenising effects of displacement in BiH, and a desire to ensure a re-mixing of ethnic groups. As it turned out, in this and in other cases, returning large numbers of the displaced to *homes* in regions or villages where they now constituted a minority surrounded by a hostile population was the most difficult policy to implement. ‘Minority returns’ thus became a major project of the international community in BiH.

The scale of the international endeavour was unprecedented, and described as, together with a similar process in Croatia, the ‘most far-reaching attempts to bring about restitution resulting from massive derogation of property rights during conflict.’<sup>92</sup> This became one of the major benchmarks for the international peace- and state-building project in post-war BiH. Paddy Ashdown, former High Representative in the country said about this unprecedented international

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<sup>90</sup> ESI, *Lausanne Principle*, p. 2.

<sup>91</sup> Dayton Accord, Annex 7, Article 1.

<sup>92</sup> Miriam J. Anderson, ‘The UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (The Pinheiro Principles): Suggestions for Improved Applicability’, *Journal of Refugee Studies*, vol. 24, no. 2, 2011, p. 306.

commitment to minority returns: ‘We’ve invented a new human right here, the right to return after a war’.<sup>93</sup>

However, making this right a reality proved extremely challenging. The obstacles to minority returns were many, and are discussed in more detail in the case of Kosovo below. They ranged from the reluctance and fear of minorities to return, to socio-economic barriers and obstructions by local officials who opposed the return of minorities.<sup>94</sup> After all, their displacement had not been a by-product, but the core aim of the violence. In BiH, the ethnic cleansing did not end with the cease-fire, but continued through opposition to return by local populations and authorities, e.g. by Croat and Serb authorities offering incentives for relocation.<sup>95</sup> Even though the return of minorities and ethnic re-mixing were cornerstones of the Dayton Accord,<sup>96</sup> minority return largely failed and only relatively few of the displaced returned to take up ‘permanent residence in areas where they would be a minority.’<sup>97</sup>

This was history’s ‘largest international effort to support minority returns following an ethnic conflict’,<sup>98</sup> and it marked a significant shift away from previous

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<sup>93</sup> International Crisis Group (ICG), *The Continuing Challenge of Refugee Returns in Bosnia and Herzegovina*, 2002, p.ii (mentioned in Megan Bradley, *Refugee Repatriation: Justice, Responsibility and Redress* (Cambridge: Cambridge University Press, 2013), p. 123.)

<sup>94</sup> Carl Dahlman & Gearóid Ó. Tuathail, ‘The Legacy of Ethnic Cleansing: The International Community and the Returns Process in Post-Dayton Bosnia-Herzegovina’, *Political Geography*, vol. 24, no. 5, 2005, pp. 569–99. For a book-length examination of this process, see Gerard Toal & Carl Dahlman, *Bosnia Remade: Ethnic Cleansing and Its Reversal* (Oxford: Oxford University Press, 2011).

<sup>95</sup> International Crisis Group (ICG), *Minority Return or Mass Relocation?* 1998.

<sup>96</sup> Howard Adelman & Elazar Barkan, *No Return, No Refuge: Rites and Rights in Minority Repatriation* (New York: Columbia University Press, 2011), p. 79.

<sup>97</sup> *ibid.*, p. 74.

<sup>98</sup> *ibid.*, p. 74.

approaches to diversity following ethnic conflict. The provisions for restitution and compensation for property after forced displacement applied in the former Yugoslavia during the 1990s indeed ‘would have been unthinkable during the first half of the twentieth century when property loss resulting from conflict was both legitimate and permanent.’<sup>99</sup>

### **Constitutional Designs for Managing Multi-Ethnicity**

The peace agreements that ended the conflicts in the former Yugoslavia, most notably the Dayton Accord for BiH, but also later accommodations in Kosovo and Macedonia, have entailed constitutional reforms that focused on minority rights, autonomy, and the return of displaced persons.<sup>100</sup> Additionally, they are remarkable for the fact that the international organisations in their attempt to resolve what were essentially ethno-national conflicts over territory, sovereignty, and self-determination, ‘have less focused on the re-drawing of borders, but rather on the re-design of institutional systems within the countries.’<sup>101</sup> This tendency is linked to international approaches to diversity that had emerged by the 1990s. For example, a top priority for the mediators of the Dayton Accord was to retain BiH’s integrity as a single state.<sup>102</sup> As discussed above, in previous periods, a redrawing

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<sup>99</sup> Anderson, ‘UN Principles on Housing’, p. 318.

<sup>100</sup> Florian Bieber, ‘Institutionalizing Ethnicity in Former Yugoslavia: Domestic vs. Internationally Driven Processes of Institutional (Re-)Design’, *The Global Review of Ethnopolitics*, vol. 2, no. 2, 2003, p. 4.

<sup>101</sup> *ibid.*, p.4

<sup>102</sup> See e.g. Richard C. Holbrooke, *To End a War*, revised edition (New York: Modern Library, 1999).

of borders or an internationally condoned population transfer would have presented another viable option. By the 1990s, this option was no longer acceptable.

The Dayton Accord represented an ambiguous compromise that, while maintaining BiH as a single state, also included many partitionist elements. BiH's post-war constitution, contained in Annex 4 of the Accord, prescribed the division of BiH into two entities with considerable autonomy, linked by a weak central government in Sarajevo.<sup>103</sup> The Bosnian Serb entity, Republika Srpska, stretched over 49% of Bosnia's territory, and the Croat-Muslim entity, the Federation of Bosnia and Herzegovina, was allotted 51%, and was itself divided into ten cantons. Furthermore, an elaborate system containing elements of federalism, ethnic quotas, veto powers, and consociational power-sharing was established in Dayton. In an attempt to reach a settlement that would be both acceptable to all parties and in line with prevailing international normative commitments, the constitution did not settle the 'fundamental issue that divided the parties before Dayton – whether Bosnia's future lie in reintegration or further separation.'<sup>104</sup>

Dayton created an elaborate system that included two consociational arrangements, one in the state as a whole and one among the sub-units, the cantons, of the Federation of Bosnia and Herzegovina.<sup>105</sup> These include all of the classic consociational features outlined by Lijphart,<sup>106</sup> including mandatory grand-coalition

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<sup>103</sup> Dayton Accord, Annex 4.

<sup>104</sup> Ivo H. Daalder, *Getting to Dayton: The Making of America's Bosnia Policy* (Washington, D.C.: Brookings Institution Press, 2000), p. 161.

<sup>105</sup> Marc Weller & Stefan Wolff, 'Bosnia and Herzegovina Ten Years after Dayton: Lessons for Internationalized State Building', *Ethnopolitics*, vol. 5, no. 1, 2006, p. 4.

<sup>106</sup> Lijphart, *Democracy in Plural Societies*.

governments at the state level, wide-ranging autonomy of the two entities, proportional representation of BiH's constituent peoples and powerful veto mechanisms. The constitution of Annex 4 thus outlines BiH as a state in which the principle of majority rule is permanently constrained by provisions aimed at equal representation between the three constituent peoples and the safeguarding of their vital interests.

The Dayton constitution has been the subject to extensive criticism, for allegedly partitioning the state and rewarding ethnic cleansing,<sup>107</sup> creating an unworkable bureaucratic structure, entrenching group rights to the detriment of human rights (particularly of citizens who do not belong to one of the three 'constituent peoples'),<sup>108</sup> and undermining democracy by incentivising ethno-nationalist clientelism.<sup>109</sup> The constitution is indeed riddled with tensions between its separation- and integration-based aspects, which however, are at least partly to be explained by the fact that the constitution was drafted while war was still raging in BiH, as part of a peace agreement that inevitably required uncomfortable compromise.

James Kennedy and Liliana Riga have further linked the ambivalent formula of the Dayton Accord to a more fundamental contradiction within the normative commitments that drove its US drafters. These were driven by two key,

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<sup>107</sup> Erin K. Jenne, 'The Paradox of Ethnic Partition: Lessons from de facto Partition in Bosnia and Kosovo', *Regional & Federal Studies*, vol. 19, no. 2, 2009, pp. 273–89; Bose, *Bosnia after Dayton*.

<sup>108</sup> Gro Nystuen, *Achieving Peace or Protecting Human Rights? Conflicts Between Norms Regarding Ethnic Discrimination in the Dayton Peace Agreement* (Leiden; Boston: Martinus Nijhoff Publishers, 2005).

<sup>109</sup> David Chandler, *Bosnia: Faking Democracy after Dayton*, 2nd ed. (London and Sterling: Pluto Press, 2000).

yet contradictory liberal beliefs. On one hand, there was what Kennedy and Riga call a ‘Millian’ recognition of the benefits of homogeneity for both security and democracy, and on the other a belief in a ‘liberal-legalist’ framework that could make multi-ethnicity work.<sup>110</sup> This latter, domestically informed belief also entailed ‘that the creation of multiethnicity itself was a valuable aspiration.’<sup>111</sup> This resonates well with international normative commitments to multi-ethnicity witnessed in the context of Kosovo, examined in depth in subsequent chapters. In BiH, too, international actors were partly driven by a concern ‘to avoid a post hoc normative endorsement of the violence’,<sup>112</sup> for example in their insistence on the right of minorities to return to their homes of origin.

Kennedy and Riga coin the term ‘liberal homogeneity’ for the Dayton compromise in which a non-partitioned state with a single constitution was created, which however was made up of two ethnically homogenous and highly autonomous entities. The focus on returns was a liberal-legalist tool to enable multi-ethnicity in the long term. Despite all the criticism it received, and ‘despite enshrining collective rights and territorial homogeneity, multi-ethnicity—or a pluralised, nonhomogenous Bosnia—was the ultimate goal.’<sup>113</sup>

Some of the Dayton Accord’s institutional features were repeated in power-sharing institutions that resulted from internationally drafted peace agreements in

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<sup>110</sup> James Kennedy & Liliana Riga, ‘A Liberal Route from Homogeneity?: US Policymakers and the Liberalization of Ethnic Nationalists in Bosnia’s Dayton Accords’, *Nationalism and Ethnic Politics*, vol. 19, no. 2, 2013, pp. 163–86.

<sup>111</sup> Kennedy & Riga, ‘A Liberal Route from Homogeneity’, p. 164.

<sup>112</sup> *ibid.*, p.166

<sup>113</sup> *ibid.*, p.181

Macedonia and Kosovo thereafter, which all shared a ‘Yugoslav legacy [that] left an imprint on the management of inter-ethnic relations, in view of the elaborate system of non-democratic power sharing and minority rights which the country had instituted and which was supported at the international level.’<sup>114</sup> The use of reserved seats for specific ethnic groups was not exclusive to these cases of significant international involvement, they also featured in the constitutional arrangements of Montenegro (for Albanians) and Croatia (for Italians, Hungarians, and Serbs).<sup>115</sup> In the case of Macedonia, the Ohrid Framework Agreement that ended the violence in 2001 also included strong provisions for language rights and decentralisation, catering to the Albanian minority’s demands for cultural rights and greater self-government. Despite the fact that the Ohrid Framework Agreement includes in its basic principles that ‘there are no territorial solutions to ethnic issues’,<sup>116</sup> the changes to municipal boundaries that it entailed were based on new municipal boundaries creating more ethnically homogeneous municipalities.<sup>117</sup>

### **3.3. Conclusion**

This chapter examined approaches to multi-ethnicity in post-Cold War Europe, adding the regional and immediate historical context to the international state-building project in post-conflict Kosovo, which the remainder of this thesis

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<sup>114</sup> Florian Bieber, ‘Power Sharing after Yugoslavia: Functionality and Dysfunctionality of Power-sharing Institutions in Post-war Bosnia, Macedonia, and Kosovo’, in Sid Noel (ed.), *From Power Sharing to Democracy: Post-Conflict Institutions in Ethnically Divided Societies* (Montréal: McGill-Queens University Press, 2005), p. 88.

<sup>115</sup> Bieber, ‘Power Sharing after Yugoslavia’, p. 92.

<sup>116</sup> Ohrid Framework Agreement, August 2001, Article 1.2.

<sup>117</sup> Ohrid Framework Agreement, August 2001 Article 3.

discusses. Following the historical perspective in the preceding chapter, a number of shifts that characterised the 1990s in Europe can be drawn from this discussion. We have seen that during this period, due to a combination of developments in the democratic West and the post-communist East, minority rights re-emerged as a topic of concern for international organisations. Additionally, the dissolution of Yugoslavia and international responses to it further entrenched an idea of legitimate statehood that involved ethnic diversity, with international attempts to reverse ethnic cleansing and promote the recognition of minority rights, autonomy, and power-sharing in post-conflict states.

In contrast to earlier approaches to diversity that favoured, where possible, ethnic homogeneity, more recent approaches have been described as ‘multiculturalist’ solutions’,<sup>118</sup> or an ‘international proliferation of liberal multiculturalism’.<sup>119</sup> Kymlicka goes as far as arguing that the very idea of the ‘model’ state has changed over the course of the twentieth century. What used to be considered deviations from the norm has shifted to being considered ‘normal’. While this is an overstated assertion on the global scale, it does resonate with the European post-Cold War experience. For example, the highly centralised and unitary state of France was long considered the quintessential modern state, a model to which those on the periphery aspired. Today, by contrast, the homogeneous unitary state may be becoming an anachronism, as France now

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<sup>118</sup> Riga & Kennedy, ‘Tolerant Majorities’, p. 478.

<sup>119</sup> Kymlicka, *Multicultural Odysseys*.

constitutes an outlier within the EU in its refusal to acknowledge the existence of minorities within its borders.<sup>120</sup>

On the international level, while there ‘clearly has been a *substantial normative shift* on the issue of minority rights following the end of the Cold War, [most importantly in the fact that] after 1989, *minority questions were once again legitimate subjects of international society*’,<sup>121</sup> their legal codification has also come up against serious hurdles. Thus far, no coherent application of minority rights has developed across the continent, let alone globally. There remains a ‘lingering uncertainty among many international decision-makers about whether greater sensitivity to ethnic diversity really is desirable or necessary.’<sup>122</sup> The fact that some of the standards for treatment of minorities and approaches to diversity were imposed on post-communist states while not universally adopted in Western Europe has further weakened their credibility, casting doubts on the extent to which membership conditionality can strengthen these norms. In another indication of the dual historical processes of continuation and change with regard to minority issues in Europe, this pattern is not new, rather, it is ‘continuing the paternalistic double standards evidenced in the League of Nations regime.’<sup>123</sup>

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<sup>120</sup> Kymlicka, *Multicultural Odysseys*, p.42. Kymlicka also describes the example of Romania, which at the end of the Cold War, when it sought to ‘re-join Europe’, was reminded of its position after the end of the Habsburg Empire. Back then, a key strategy in its struggle for justified independence was to point out its (almost) homogenous population. When it tried to do the same seventy years later, it had the opposite effect. To be seen as a ‘normal European’ country, it now had to actively recognise its minorities. This is an example of the real implications for state legitimacy these normative changes can have.

<sup>121</sup> Jackson Preece, ‘Minority Rights in Europe’, p. 91.

<sup>122</sup> Boulden & Kymlicka, *International Approaches*, p. 14.

<sup>123</sup> Malloy, *National Minority Rights*, p. 82.

The 1990s represented a unique moment for international efforts in the field of minority rights, particularly in Europe. There were significant advances in recognising cultural and linguistic rights, and norms against assimilation or forced displacement of minorities were put into several international documents. While a new consensus around a rejection of homogeneity had formed, the basic principle of self-determination pertaining to ethnic groups was not rejected. In fact, that principle, which in the past had been used to condone displacement or other ethnically exclusive measures of state-building, was by the 1990s employed to argue for state recognition of minority claims, cultural identities, and rights.

However, as evidenced in the preceding discussion, approaches to diversity remain contested internationally. The international responses to conflicts in the former Yugoslavia, discussed briefly in this chapter, show how tensions about the role of ethnic diversity and recognition of ethnic groups in post-conflict contexts remain unresolved, despite a definitive shift towards a rejection of ethnic homogeneity after war. The effects of this shift are evident in the policies studied in Section Two below, as the international community in Kosovo was operating from a normative position based on the prohibition of both forced assimilation and ethnic cleansing. However, the international promotion of multi-ethnicity in post-conflict Kosovo, as examined in depth in the subsequent section, still ran into a host of conceptual inconsistencies and empirical challenges.



## **Section Two: Manifestations of International Normative**

### **Commitments: The Pursuit of a Multi-Ethnic Kosovo, 1999–2012**

This second section of the thesis elaborates on the three policy areas that are identified as manifestations of international normative commitments to multi-ethnicity, constituting the empirical core of the thesis. The three chapters, covering policies on the return of displaced persons, the decentralisation of government to the local level, and group-differentiated rights for minorities, provide a critical examination of normative commitments to multi-ethnicity as manifested in international policymaking in Kosovo between 1999 and 2012. Each of the chapters in this section provides an empirical examination of the respective policy area, followed by a discussion of the different notions of multi-ethnicity revealed by policymaking in that field. Before the empirical examination of the promotion of multi-ethnicity in these fields, I offer here a brief historical background on key developments during the post-conflict period in Kosovo.

#### **Brief Historical Background and Key Developments 1999–2012**

This preliminary segment offers some historical background to Kosovo and a brief overview of the main developments that shaped the post-conflict period from 1999 to 2012. This is by no means an exhaustive discussion, since the period is covered in more detail in the subsequent chapters through the lens of the policies related to the return of displaced persons (Chapter Four), the decentralisation of government to the local level (Chapter Five), and the provision of minority rights (Chapter Six).

Kosovo has always had a diverse population, with the strongest disputed claims to the land coming from the Serb and Albanian communities, who for most of

its history constituted Kosovo's largest groups, and whose historic ties to the territory are strongest. Smaller communities include the Roma, Ashkali, and Egyptian communities (in the post-war period often referred to jointly under the acronym RAE), as well as the Bosniak, Gorani, Turkish, Croat and Montenegrin communities. The scope of this thesis does not allow for a detailed history of inter-ethnic relations in Kosovo, however, some key points are presented here.<sup>1</sup>

Kosovo had been the administrative and cultural centre of the medieval Serbian state from the late twelfth century onwards, and some of the most important Serbian Orthodox religious heritage sites are located in Kosovo. The battle of Kosovo Polje in 1389, a key event later venerated in Serbian national culture and historiography, led to an end of Serbian rule in Kosovo and ushered in five centuries of Ottoman rule in the Balkans. During the Balkan Wars Kosovo saw heavy fighting and was in 1918 incorporated into Serbia as part of the Kingdom of Serbs, Croats, and Slovenes, the first incarnation of a Yugoslav state. This coincided with the creation of an independent Albanian state to its south, which however did not include large parts of the Albanian-speaking population in neighbouring Serbia/Kosovo, Montenegro, Macedonia, and Greece. Serbs remember these events as the liberation of Kosovo, whereas Albanians speak of a conquest.<sup>2</sup> Thereafter, for most of the twentieth century, the territory of today's Kosovo formed part of Serbia. From 1945 onwards Kosovo was an autonomous province of Serbia, then part of the Socialist Federal Republic of

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<sup>1</sup> Thorough historical studies include Noel Malcolm, *Kosovo: A Short History* (London: Macmillan, 1998); Oliver Jens Schmitt, *Kosovo: kurze Geschichte einer zentralbalkanischen Landschaft* (Wien: Böhlau, 2008); Miranda Vickers, *Between Serb and Albanian: A History of Kosovo* (London: Hurst & Company, 1998).

<sup>2</sup> Tim Judah, *Kosovo: What Everyone Needs to Know* (New York: Oxford University Press, 2008), p. xix.

Yugoslavia (SFRY), a federation made up of 6 republics and two autonomous provinces. In 1961, two thirds of Kosovo's population were Albanians. Kosovo reached further levels of autonomy through the 1974 Yugoslav constitution, which put it de facto on equal footing with the other republics, including through representation at the central level. However, it did not enjoy the legal right to secede, formally vested only in the republics of the SFRY.

At the last census in which all Kosovo's communities participated in 1981, Albanians constituted a majority of 77.5%, with Serbs the largest minority at 13.2%.<sup>3</sup> Socialist Yugoslavia attempted to unite its peoples under the banner of 'Brotherhood and Unity', however, inter-ethnic relations in Kosovo had historically been tense. They worsened significantly with the decision by Serbian president Slobodan Milošević to abolish Kosovo's legal autonomy in 1989 and restore direct rule from Belgrade. The 1990s were characterised by Serbian authorities' repression of the Kosovo-Albanian population, mass dismissals of Albanians from public employment, violent protests, and the establishment by Kosovo-Albanians of a parallel, underground state system providing healthcare and education. During this decade, the two communities existed in near-total segregation.<sup>4</sup>

Following the Yugoslav wars of dissolution in Slovenia, Croatia, and Bosnia and Herzegovina (BiH) in the early 1990s, violent conflict broke out between the Kosovo Liberation Army (KLA) and Yugoslav security forces in 1998, marked by KLA attacks on Yugoslav targets and disproportionate retaliation by police and

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<sup>3</sup> Vickers, *Between Serb and Albanian*, p. 318.

<sup>4</sup> Judah, *Kosovo: What Everyone Needs to Know*, p. 73.

military forces against civilians.<sup>5</sup> The international community engaged in a number of failed attempts at diplomatic resolution of the crisis.<sup>6</sup> Eventually NATO intervened in March 1999 with a bombing campaign against Yugoslavia justified under the doctrine of humanitarian intervention.<sup>7</sup> This intervention was undertaken without a UN Security Council (UNSC) mandate. During the bombing, Yugoslav forces intensified the violence and hundreds of thousands of Kosovo-Albanians were displaced in an effort to ethnically cleanse them from the province.<sup>8</sup>

After the military intervention Serbian forces withdrew from Kosovo and were replaced by NATO's multinational Kosovo Force (KFOR). UNSC Resolution 1244 established the United Nations Interim Administration Mission in Kosovo (UNMIK), and tasked it with creating a functioning interim administration pending determination of Kosovo's final status. The 'status question', i.e. whether Kosovo would become an independent state or remain part of Serbia, had been left unresolved, since UNSC Resolution 1244 had established Kosovo as an international protectorate, while simultaneously reaffirming FRY's sovereignty and territorial integrity. Nevertheless, the Serbian state effectively retreated from most of Kosovo and UNMIK took over all

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<sup>5</sup> After SFRY dissolved, from 1992-2003, the two remaining republics, Serbia and Montenegro, became the Federal Republic of Yugoslavia (FRY). In 2003 FRY was renamed the State Union of Serbia and Montenegro, until Montenegro voted for independence in 2006 leaving two independent states: the Republic of Serbia, and Montenegro.

<sup>6</sup> Some of these, including the Hill Proposal of 1998 and the Rambouillet Agreement of 1999 are discussed in more detail in subsequent chapters.

<sup>7</sup> For an in-depth treatment of the war see Tim Judah, *Kosovo: War and Revenge*, 2nd ed. (New Haven, Conn; London: Yale University Press, 2002); Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press, 2000).

<sup>8</sup> Judah, *Kosovo: What Everyone Needs to Know*, p. 88.

state functions after the conflict,<sup>9</sup> except for the predominantly Serb-inhabited North of Kosovo, where Serbian sovereignty de facto continued beyond 1999.

The weeks and months following UNMIK's arrival were marked by chaos and a near-total breakdown of the rule of law. In this situation the KLA filled the vacuum and seized local power in much of Kosovo.<sup>10</sup> The vast majority of displaced Albanians returned to the province following the bombing and departure of Serbian forces, many to destroyed villages and homes. For Kosovo's minorities, particularly Serbs and Roma, however, the violence and displacement intensified in the early period following the bombing.<sup>11</sup> Serb properties were routinely occupied by Kosovo-Albanians and minorities faced forced evictions, violence, and harassment. The international community, now in charge of security and policing in Kosovo, failed for the most part to protect them.

UNMIK was the largest civilian mission the UN had ever undertaken and the tasks it faced in post-war Kosovo were unprecedented in range and scale, from humanitarian assistance, economic recovery and the rebuilding of infrastructure, to setting up a functioning administration, policing and justice system, public service provision and finally setting the ground for a resolution of Kosovo's unresolved status question. UNMIK cooperated with other international organisations through its pillar structure: Pillar I on humanitarian assistance was headed by UNHCR and phased out at the end of 2000. Pillar II on civil administration was led by the UN, while the

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<sup>9</sup> Caplan, *International Governance*.

<sup>10</sup> Judah, *Kosovo: What Everyone Needs to Know*, p. 93.

<sup>11</sup> Bogdan Ivanisevic, 'Legacy of War: Minority Returns in the Balkans', *Human Rights Watch World Report*, 2004.

OSCE was in charge of Pillar III on institution-building, and the EU was responsible for Pillar IV on economic reconstruction. UNMIK was headed by the Special Representative of the Secretary General (SRSG), in whom executive powers were vested. UNMIK soon proceeded to build Kosovo's Provisional Institutions of Self-Government (PISG), including a parliamentary assembly, government, and municipal structures, and started to gradually transfer responsibility to these local institutions. However, the SRSG remained the final authority, able to revoke laws and remove officials from public office. A central challenge pertaining to the PISG was the inclusion of minorities, particularly the Serb minority, who continued to look to Belgrade as their capital.

Responding to increased demands by Kosovo-Albanians for an end to international administration and for Kosovar independence, UNMIK in late 2003 devised the so-called 'Standards before Status' policy. It defined a number of standards relating to democratic governance and the treatment of minorities that Kosovo would have to achieve before its outstanding status question could be discussed.

However, in March 2004, Kosovo saw renewed violence, with thousands of Kosovo-Albanians participating in riots directed against the UN, Kosovo-Serbs, and other minorities, leaving 19 dead, several thousand displaced, and dozens of Orthodox churches and monasteries torched.<sup>12</sup> The riots had caught the international organisations in Kosovo by surprise, and led the international community to judge that talks on Kosovo's final status had to commence. After over a year of

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<sup>12</sup> OSCE Mission in Kosovo, Department of Human Rights and Rule of Law, *Human Rights Challenges Following the March Riots*, 2004, p. 4.

negotiations, the Comprehensive Proposal for the Kosovo Status Settlement, also known as the Ahtisaari Plan, which provided for Kosovo's 'supervised independence', failed to be signed by both parties.<sup>13</sup> Nevertheless, Kosovo unilaterally declared its independence in February 2008 on the basis of the Ahtisaari Plan.<sup>14</sup> With that, a new international organisation, the International Civilian Office (ICO), again enjoying executive powers, was deployed to Kosovo to supervise the implementation of the plan. Kosovo's unilateral declaration of independence was certainly unilateral with respect to Serbia, however, it was planned and executed in close consultation with foreign partners, most notably the US and key EU states, whose recognition of statehood followed shortly. The EU also established a strong presence in Kosovo offering it the perspective of eventual European integration, despite disagreement among EU member states about Kosovo's status. The largest ever EU Rule of Law Mission, EULEX, was deployed to support the Kosovar judiciary and police.

Serbia has not recognised Kosovo's declaration of independence and until recently called on Serbs in Kosovo to boycott the new state.<sup>15</sup> It also continued to provide state services in Serb-majority enclaves in Kosovo, as well as in the North, where the institutions of independent Kosovo have no reach.<sup>16</sup> In July 2010, the

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<sup>13</sup> The plan was named after Martti Ahtisaari, the Finnish diplomat who led the negotiations in his role as Special Envoy for Kosovo appointed by the UN Secretary General. In 2008, Ahtisaari was awarded the Nobel Peace Prize for, amongst others, his efforts in Kosovo.

<sup>14</sup> For accounts of the process leading to Kosovo's independence, see James Ker-Lindsay, *Kosovo: the Path to Contested Statehood in the Balkans* (London: I.B. Tauris, 2009); Marc Weller, *Contested Statehood: Kosovo's Struggle for Independence* (Oxford: Oxford University Press, 2009).

<sup>15</sup> Judah, *Kosovo: What Everyone Needs to Know*, p. 146.

<sup>16</sup> While this goes beyond the time scope of this thesis, it is worth noting that agreements between Kosovo and Serbia mediated by the EU in 2013 and 2015 are meant to extend Pristina's authority to Kosovo's North, however, with limited effect to date.

International Court of Justice ruled that the unilateral declaration of independence had not been in violation of international law.<sup>17</sup>

To sum up, Kosovo experienced a very high degree of international involvement in shaping the nature of its post-conflict polity. This is evident in the UN administration of the territory, the international involvement in the ultimately unsuccessful status negotiations, the endorsement of Kosovo's independence by a number of influential states, and the continued international presence in monitoring, oversight and executive roles in Kosovo.<sup>18</sup>

These briefly noted developments are examined further in this second section of the thesis through the lens of three policy areas that illustrate the international normative commitments to multi-ethnicity in post-conflict Kosovo. These three chapters examine the development and implementation of policies in the areas of minority returns, decentralisation, and minority rights, tracing commitments to multi-ethnicity through the post-conflict period and examining how different notions of multi-ethnicity were negotiated by international organisations on the ground.

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<sup>17</sup> The question posed to the Court was extremely narrow, referring only to the act of declaring independence, against which there is no legal prohibition. The judgment therefore does not touch on whether the people of Kosovo had a right to self-determination, or more importantly, whether Kosovo has fulfilled the requirements of statehood. See Richard Caplan, 'The ICJ's Advisory Opinion on Kosovo', *PeaceBrief* 55, United States Institute of Peace, 17 September 2010.

<sup>18</sup> See e.g. Andrea Lorenzo Capussela, *State-Building in Kosovo: Democracy, Corruption and the EU in the Balkans* (London: I.B.Tauris, 2015); Aidan Hehir, ed., *Kosovo, Intervention and Statebuilding: The International Community and the Transition to Independence* (London: Routledge, 2010).

#### **IV. Displaced Persons and their Right to Return: Integration or Enclavisation?**

This chapter discusses minority returns policy from 1999 to 2012 as one of the manifestations of international normative commitments to multi-ethnicity. The return of persons displaced by the conflict was one of the priorities of the international community in post-conflict Kosovo. Due to the patterns of flight and return that quickly became apparent at the beginning of the territory's international administration, this turned into a key policy area for the project of a multi-ethnic Kosovo. For example, UNMIK's Office for Returns and Communities (ORC) called on the 'international community to demonstrate its commitment to securing a multi-ethnic future for Kosovo through support for minority returns'.<sup>1</sup>

In the most basic sense, for Kosovo to be multi-ethnic, it had to have members of different groups living on its territory. However, various factors combined to inhibit the return of Kosovo's minority population from initial conflict-related displacement, and contributed to many minorities continuing to leave Kosovo during the period of international administration. Kosovo was thus becoming increasingly mono-ethnic, dominated by an ever-larger Albanian majority. Consequently, the policy area of returns, and minority returns specifically, took on a central role for the international community. If Kosovo was to be multi-ethnic, the return of non-Albanians had to be ensured.<sup>2</sup> This presented the international community with a host of challenges, discussed in detail below.

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<sup>1</sup> UNMIK Office for Returns and Communities (ORC), *Strategy for Sustainable Returns*, 2003, p. 3.

<sup>2</sup> Ian King & Whit Mason, *Peace at any Price* (London: Hurst & Company, 2006), p. 155.

International policymaking in the field of minority returns was closely linked to the normative vision of a multi-ethnic, diverse post-war Kosovo. This vision aligned well with the policy discourse that saw multi-ethnicity as ‘the most basic principle of international policy in the Balkans’,<sup>3</sup> with e.g. a prominent think tank calling for policies supporting minority returns in Kosovo as an urgent area in which ‘international action is needed to defend multi-ethnicity’.<sup>4</sup>

This chapter illustrates how the strong normative commitment to a largely unspecified goal—multi-ethnicity—was negotiated against the difficult reality on the ground in the context of the international administration of Kosovo. The lack of specificity around the idea of multi-ethnicity meant that different conceptualisations of the term were employed during the period. Various notions of multi-ethnicity are highlighted in this chapter, as well as an important shift that took place following the March 2004 riots regarding the question of *where* minorities would be allowed or encouraged to return to. As will become evident in the subsequent chapters examining decentralisation and minority rights, the international commitments to multi-ethnicity could contain notions ranging from simply the presence of different groups in Kosovo, to their proactive recognition, to the idea of integration between groups. The question of segregation vs. intermixing of ethnic groups on the ground in Kosovo is a recurring feature of this section of the thesis, which corresponds to the theoretical tension in the concept of multi-ethnicity between recognition, which can entail separation, and integration.

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<sup>3</sup> ESI, *Lausanne Principle*, p. 5.

<sup>4</sup> *ibid.*, p. 18.

In the field of minority returns policy, specifically, these shifting understandings of multi-ethnicity manifest themselves in the question of where in Kosovo returning minorities were to be settled. In the post-war years, for reasons discussed below, Kosovo saw a trend towards increased segregation and enclavisation of minority life. This type of demographic settlement pattern was problematic for international commitments to multi-ethnicity. Segregated communities living in near total separation were not compatible with the vision of a multi-ethnic Kosovo that conceptualised the term as entailing integration between groups. International policymaking in this period reflected this, by supporting returns only to places of origin, aiming for a reversal to a—possibly imagined—pre-war inter-mixed reality. However, this was simply not feasible in reality, and often did not reflect the wishes of the displaced population.

A shift thus took place following the 2004 riots leading to acceptance on the part of international actors in Kosovo of increased territorial segregation. The aim of multi-ethnicity was still present, but now redefined in less integrative terms to allow return to places other than the returnees' original homes. This development took place while the returns process was highly politicised in the context of the ongoing dispute with Serbia over Kosovo's future status, and has parallels in the policymaking examined in the subsequent chapter on decentralisation. Both policy areas saw notions of multi-ethnicity shifting towards increased recognition of ethnic separation, but continued to frame this recognition in the name of a strong normative commitment to multi-ethnicity.

#### **4.1. Displacement from Kosovo**

International policy regarding the return of those who had fled or were forced from their homes was based on the *right to return* and the *right to property* derived from international human rights standards.<sup>5</sup> These principles were enshrined in UNSC Resolution 1244, the basis of the international presence in Kosovo, which mandated the international security presence to ‘establish a secure environment in which refugees and displaced persons can return home in safety’,<sup>6</sup> and defined the responsibilities of the international civilian presence to include ‘assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo’.<sup>7</sup> As UNMIK started transferring responsibilities to local authorities in 2001, these principles were also included in the Constitutional Framework for Provisional Self-Government in Kosovo (CFPSG), which confirmed the right of all refugees and displaced persons to ‘return to their homes, and to recover their property and personal possessions’.<sup>8</sup>

As had been the case in other parts of the former Yugoslavia that experienced ethnically targeted displacement during war, the return of displaced persons to areas where they belonged to the majority after the conflict took place relatively quickly after the fighting had ended. Following the end of the NATO bombing campaign in June 1999, the return of Kosovo-Albanian refugees to

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<sup>5</sup> Article 13(2) of the Universal Declaration of Human Rights enshrines the right to return, as do Article 12(2) and (4) of the International Covenant on Civil and Political Rights (ICCPR). The European Convention on Human Rights (ECHR), Protocol 4 Article 2, guarantees the right to liberty of movement and the freedom to choose one’s residence within one’s state territory.

<sup>6</sup> United Nations Security Council Resolution 1244, article 9.c.

<sup>7</sup> *ibid.*, Article 11.k.

<sup>8</sup> Constitutional Framework for Provisional Self-Government in Kosovo, Article 3.4.

Kosovo was one of the largest spontaneous returns of refugees in history, with approximately 477,000 Kosovo-Albanians, over half of all the refugees, returning to the province within three weeks of the end of the war.<sup>9</sup> Within the first few months, 700,000 had returned, most of them as spontaneous voluntary returnees without international assistance, and a smaller number as part of forced returns from Western European host countries.<sup>10</sup> As had been the case in BiH and Croatia before, the major difficulty turned out to be the return of minorities.<sup>11</sup> The combination of reluctance to return, destruction or illegal occupation of property (often by members of another ethnicity who were themselves displaced from their homes by the conflict), hostility from local authorities and residents, and outright violence, meant that throughout the former Yugoslavia the ethnic cleansing seen during the fighting was only partially reversed, and in some places even consolidated, in the post-war period.<sup>12</sup>

The return of Kosovo's displaced minority population was among the most ambitious of the international community's goals. Hostility between the Albanian majority and the Serb minority was intense following a decade of latent conflict, repression, and segregation, and a brutal Serbian campaign to expel most Kosovo-Albanians from the province before and during the NATO bombing in 1999. There

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<sup>9</sup> Vjeran Pavlaković, 'Refugee Returns in Kosovo: Learning from the Mistakes in Bosnia and Croatia', *Human Rights Review*, January-March 2000, p. 109.

<sup>10</sup> S/2000/538 Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo. 6 June 2000.

<sup>11</sup> Ivanisevic, 'Legacy of War'; Rebecca Brubaker, 'From the Unmixing to the Remixing of Peoples: UNHCR and Minority Returns in Bosnia', *New Issues in Refugee Research*, UNHCR Research Paper No.261, August 2013.

<sup>12</sup> For a thorough examination of the most striking case of BiH, see Toal & Dahlman, *Bosnia Remade*.

was little interest among many Kosovo-Albanians in the return of Kosovo-Serbs.<sup>13</sup>

The same was true of the Roma community, many of whom were expelled or fled in the wake of the war ‘because Albanians believed them to be Serbian collaborators’.<sup>14</sup>

These and other minorities had fled Kosovo during and immediately after the NATO war in large numbers in the context of the chaos that characterised the immediate post-war period. The arrival of KLA fighters and displaced rural Kosovo-Albanians in Kosovo’s cities coincided with the displacement of most of Kosovo’s urban Serbs. Much of the rural minority population was also displaced, either internally within Kosovo, or in neighbouring Serbia or Montenegro. During that period, crime, harassment, and violence were widespread, directed both at minorities and intra-Albanian rivals or perceived traitors. Although the available numbers on displacement and return are disputed, this immediate post-war reality is generally understood to have led to a substantial exodus of Kosovo’s non-Albanian minorities.<sup>15</sup>

Estimates of the numbers of displaced persons vary.<sup>16</sup> According to UNHCR, as of 2002, an estimated 230,000 members of Kosovo’s minority

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<sup>13</sup> King & Mason, *Peace at any Price*, p. 206.

<sup>14</sup> Judah, *Kosovo: What Everyone Needs to Know*, p. 104.

<sup>15</sup> Independent International Commission on Kosovo, *The Kosovo Report*, pp. 104–5; Guido Ambroso, ‘The Balkans at a Cross-Road: Progress and Challenges in Finding Durable Solutions for Refugees and Displaced Persons from the Wars in the former Yugoslavia’, *Refugee Survey Quarterly*, vol. 25, no. 4, 2006, p. 147.

<sup>16</sup> Individuals displaced from Kosovo into FRY (Serbia or Montenegro) are referred to as internally displaced persons (IDPs), rather than refugees, since the latter term indicates displacement into a foreign country, and there is no UN-recognised international border between Kosovo and Serbia. Sometimes UNHCR and ORC used the term ‘internally internally displaced persons’ to refer to IDPs within Kosovo-proper. My use of the term displaced person refers to all those who had fled

communities were displaced in neighbouring territories, 87% of these in Serbia, 12% in Montenegro and 1% in Macedonia. Of these, 68% were ethnic Serbs, 13% Roma/Ashkali/Egyptian, 8% Montenegrin, 4% Bosniak and 7% belonging to other communities.<sup>17</sup> Adding the 3,471 Serbs that according to UNHCR returned to Kosovo until 2002, this would put the number of originally displaced Kosovo-Serbs in the region at approximately 160,000. Tens of thousands of minority Kosovars were also displaced within Western Europe,<sup>18</sup> and several thousand within Kosovo, concentrated in the main Serbian enclaves in the municipalities of Gracanica and Strpce, as well as in the Northern part of Mitrovica, illustrating the ethnically homogeneising tendencies of displacement.<sup>19</sup>

There are several limitations to this data, particularly on Serb displacement from Kosovo, which was politically most sensitive. Firstly, most of the policy papers, including UNHCR publications, and subsequent academic writing, have used numbers that seem to come from only one registration exercise carried out by the Serbian government in early 2000. According to this count, published in April 2000, there were 187,129 IDPs from Kosovo in Serbia, of whom 141,396 were Serbs, 19,551 were Roma and 7,748 were Montenegrins.<sup>20</sup> Much of the literature has linked this number to the post-war violence in Kosovo, described above. However, research by the European Stability Initiative (ESI) suggests that most

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their homes during the 1998/1999 conflict and the 2004 riots, i.e. refugees and IDPs, unless otherwise noted.

<sup>17</sup> Based on UNHCR data, cited in ORC, *Strategy for Sustainable Returns*, p. 4.

<sup>18</sup> *ibid.*, p. 4.

<sup>19</sup> *ibid.*, p. 4.

<sup>20</sup> cited in ESI, *Lausanne Principle*, p. 18.

Kosovo-Serb IDPs (125,653) left Kosovo during the bombing campaign, between April and June 1999, rather than after it. Only 35,532 declared to have left between July and October 1999, after the Yugoslav Army had withdrawn and was replaced by NATO troops.<sup>21</sup>

However, Serbia claimed after the war that 230,000 minority Kosovars had been displaced, later raising the number to 280,000, of which the vast majority were Serbs, but also including 37,000 Roma.<sup>22</sup> This number is almost certainly exaggerated, since according to the 1991 census only 214,235 Serbs and Montenegrins were living in Kosovo,<sup>23</sup> of which some likely already departed during the 1990s. Nevertheless, numbers in this range were repeated in policy documents throughout the period, and while organised return was tracked, there was very limited follow-up on these demographic shifts. The ORC in its 2003 strategy spoke of more than 200,000 minority Kosovars who had been displaced,<sup>24</sup> and UNHCR continued to report in 2007 that 223,000 IDPs from Kosovo were awaiting return in Serbia and Montenegro.<sup>25</sup> Most policymakers acknowledged the limitations of this data, and some commentators believe ‘at least 100,000’ to be a reasonable estimate of the number of displaced Serbs.<sup>26</sup>

For most of the post-conflict period, no reliable census data was available on Kosovo, since the last census in which all of Kosovo’s ethnic groups

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<sup>21</sup> *ibid.*, p. 18.

<sup>22</sup> Judah, *Kosovo: What Everyone Needs to Know*, p. 100.

<sup>23</sup> *ibid.*, p. 101.

<sup>24</sup> ORC, *Strategy for Sustainable Returns*

<sup>25</sup> UNHCR Workplan on IDP Operations, Informal Consultative Meeting, 24 May 2007

<sup>26</sup> King & Mason, *Peace at any Price*, p. 285.

participated had taken place in 1981, allowing only for rough estimates of the size of Kosovo's remaining minority population.<sup>27</sup> The 1981 number of a 77.5% Albanian majority and a 13.2% Serb minority certainly changed significantly, not only due to the conflict but also due to earlier migration and differing birth rates. During the international administration, in 2003 the Statistical Office of Kosovo working under UNMIK estimated that 88% of Kosovo's population were Albanian, 7% Serb, and 5% other minorities. In 2008, their updated estimate was of 92% Albanian, 5.3% Serb and 2.7% others,<sup>28</sup> putting Kosovo's Serb minority at around 111,000 to 130,000 persons.<sup>29</sup> These were the prevalent estimates during the status negotiations, upon which many of the minority rights provisions in the Ahtisaari Plan were based.

In 2011, the Statistical Agency of Kosovo, now part of the newly created Republic of Kosovo institutions, undertook the first internationally recognised census in 30 years.<sup>30</sup> The results found the population of Kosovo to be smaller than previous estimates had suggested. The previously widely cited number of 2 million inhabitants was now believed to be at just under 1.8 million. The minority population was also found to be much smaller than expected, with the Serb and Bosniak minorities at 1.5% and 1.6% respectively, and other groups under 1%

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<sup>27</sup> The 1991 Yugoslav census was boycotted by the Albanian population in Kosovo and thus does not offer reliable figures of the entire population, although it does provide the number of Serbs in Kosovo cited above – highlighting the likely exaggeration of the number of Serbs displaced in 1999.

<sup>28</sup> Judah, *Kosovo: What Everyone Needs to Know*, p.2

<sup>29</sup> *ibid.*, p.14

<sup>30</sup> European Union Office in Kosovo, The International Monitoring Operation final assessment of the 2011 Kosovo Census on Population and Housing, [http://eeas.europa.eu/delegations/kosovo/press\\_corner/all\\_news/news/2012/21092012\\_02\\_en.htm](http://eeas.europa.eu/delegations/kosovo/press_corner/all_news/news/2012/21092012_02_en.htm), accessed 18 March 2014

each, alongside an Albanian majority of 92.9%. However, these results are not reliable either, since the Kosovo institutions were unable to carry out the census in the mostly Serb- and Roma-inhabited north of Kosovo, and it was additionally characterised by a partial boycott on the part of Serbs and Roma in the South.<sup>31</sup> Therefore, and based on election participation data, it is clear that the minority population, most notably Kosovo's Serbs and Roma, are likely to be more numerous.<sup>32</sup> Using the votes cast in the 2010 elections to calculate the extent of the census boycott, and adding the estimated 45,000 Serbs in the North of Kosovo leads to an estimate of Serbs making up 4.5% of Kosovo's population.<sup>33</sup>

#### **4.2. Obstacles to Minority Returns: Security, Property, and Livelihoods**

The return of minorities was closely linked to some of the most important policy areas affecting minorities, including security, the rule of law, property rights, freedom of movement, access to public services, participation in civil and political structures, and socio-economic prospects.<sup>34</sup>

#### **Security and Freedom of Movement**

Following the end of the war and the return of Kosovo-Albanian refugees, violence against minorities was rampant. Overall estimates of the number of Serbs

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<sup>31</sup> Gëzim Visoka & Elvin Gjevori, 'Census Politics and Ethnicity in the Western Balkans', *East European Politics*, vol. 29, no. 4, 2013, pp. 479–98.

<sup>32</sup> European Centre for Minority Issues (ECMI), *Minority Communities in the 2011 Kosovo Census Results: Analysis and Recommendations*, Policy Brief, December 2012.

<sup>33</sup> Capussela, *State-Building in Kosovo*, p. 84.

<sup>34</sup> OSCE/UNHCR, *Ninth Assessment of the Situation of Ethnic Minorities in Kosovo* (covering period September 2001–April 2002), p. 2.

killed in the first year of international administration range from 600 to 800.<sup>35</sup> In October 1999, a UNMIK staff member of Bulgarian nationality was attacked and killed in Pristina after speaking Serbian in public.<sup>36</sup> Minorities faced physical threats, forced evictions, harassment, and limited access to services and employment. The structures in charge of security and policing throughout the territory, KFOR and UNMIK Police, were slow to deploy and unprepared for the task of protecting minorities under threat.<sup>37</sup> Although they were mandated to protect minorities, KFOR was configured primarily to ensure the departure of Yugoslav forces and protect Kosovo's borders against aggression from Serbia. It seems that little thought was given to how order would be maintained within Kosovo after this initial aim was achieved.<sup>38</sup> Nevertheless, after an initial period of widespread chaos, the crime rate significantly diminished from 348 ethnically motivated murders in the first four months of international administration in 1999, to none in the first four months of 2002.<sup>39</sup> However, the lower inter-ethnic crime rate that UNMIK reported as a success in the period from 2002 onwards can also be interpreted as the outcome of increased ethnic segregation, discussed in more detail below, and the 'reluctance of fearful Serbs to venture out of their enclaves into majority Albanian areas'.<sup>40</sup> Minority return policy was at the heart of this dilemma, with international actors wanting to ensure minorities' safety, but at the

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<sup>35</sup> King & Mason, *Peace at any Price*, p. 110.

<sup>36</sup> United Nations Press Release GA/SM/109 14 October 1999, <http://www.un.org/press/en/1999/19991014.gasm.109.doc.html> (accessed 29 December 2015).

<sup>37</sup> King & Mason, *Peace at any Price*, p. 54.

<sup>38</sup> *ibid.*, p. 244.

<sup>39</sup> *ibid.*, p. 110.

<sup>40</sup> Ivanisevic 2004, 'Legacy of War'.

same time clearly feeling uneasy about the increased segregation between groups. As UNMIK was preparing and hoping for a significant number of minority returns in 2003, it was aware of the challenge of ‘maintain[ing] progress towards achieving a safe and secure environment while potentially undercutting this stability by increasing inter-ethnic interaction’.<sup>41</sup>

The question whether falling inter-ethnic crime rates were an indication of success in the pursuit of multi-ethnicity illustrates how even defining appropriate measures to report on the state of multi-ethnicity is tied to the various assumptions and competing understandings of the concept. If successful multi-ethnicity is assumed to involve inter-ethnic cooperation or even integration, then a lower inter-ethnic crime rate achieved through near-total segregation and enclavisation of the minority community cannot be understood as a sign of improved multi-ethnicity, as some members of the international community were portraying that number. However, if multi-ethnicity merely means the presence of different groups on the territory, irrespective of their level of interaction or relative isolation from each other, then it can indeed be considered a step in the right direction.<sup>42</sup>

The persistent sense of insecurity on the part of minorities continued to hamper minority returns, which was reinforced by practically non-existent rule of law, with hate crime, intimidation, and serious crimes including murder going unpunished in nearly all cases.<sup>43</sup> Criminal activity, both inter-ethnic and otherwise,

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<sup>41</sup> ORC, *Strategy for Sustainable Returns*, p. 7.

<sup>42</sup> Even the criteria for classifying a crime as inter-ethnic differed between various local and international organisations during the period, as discussed in Chapter Seven.

<sup>43</sup> OSCE/UNHCR, *Fourth Assessment of the Situation of Ethnic Minorities in Kosovo* (Period covering November 1999–January 2000), p. 8.

enjoyed high levels of impunity, particularly among former KLA fighters and leaders who took control of much of Kosovo through intimidation against political opponents, minorities, and alleged collaborators with the Serbian regime.<sup>44</sup> As the first few years of returns efforts were overshadowed by on-going impunity, it has been argued that the international administration's 'loudest message was the one created by its failure to provide security for minority communities'.<sup>45</sup>

However, the sense of security among minorities is partly based on perception, and therefore susceptible to politicisation and manipulation. It has also been questioned to what extent measures aimed at reassuring minorities were counter-productive in this respect. As soon as KFOR and UNMIK Police were fully deployed, the security and freedom of movement of members of Kosovo's minority communities was ensured through checkpoints at the entrance of their enclaves and troops and police units escorting minorities in protective convoys.<sup>46</sup> International Crisis Group already observed in 2002 that this heavy security had the 'negative effect of contributing to a siege mentality among the Serb community',<sup>47</sup> and might in the long run lead to perpetuating the isolation of Kosovo-Serbs. The security establishment was more critical of these approaches, with KFOR generally resisting escorts and UNMIK pushing for more.<sup>48</sup>

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<sup>44</sup> Michael Boyle, 'Revenge and Reprisal Violence in Kosovo', *Conflict, Security & Development*, vol. 10, no. 2, 2010, pp. 189–216.

<sup>45</sup> King & Mason, *Peace at any Price*, p. 84.

<sup>46</sup> King & Mason, *Peace at any Price*, p. 111; Judah, *Kosovo: What Everyone Needs to Know*, p. 103. The severity of this varied by region, with Serb enclaves in the West of Kosovo, such as Gorazdevac near Peja/Pec affected the worst.

<sup>47</sup> International Crisis Group (ICG), *Kosovo Roadmap (II): Internal Benchmarks*, March 2002, p. 18.

<sup>48</sup> King & Mason, *Peace at any Price*, p. 112.

## **Housing and Property Rights**

Any successful returns process would have to include the creation of a system to determine property claims, therefore, ‘from the beginning of the international community’s involvement in Kosovo, the issue of housing and property rights was high on the agenda’.<sup>49</sup> A large number of houses originally belonging to minorities in Kosovo were occupied by returning Kosovo-Albanians, many of whom had themselves lost their homes to the extensive destruction during the conflict. While many properties (housing both minority and majority Kosovars) in rural parts were partly or entirely destroyed, it was especially in the urban areas, which saw less destruction, where a significant proportion of displaced minorities’ properties were illegally occupied following the war.<sup>50</sup> Coupled with a breakdown in the rule of law, and the above-mentioned violence, this was a serious impediment to any international ambition to ensure the return of minority Kosovars.

The need to focus on property rights was also a lesson drawn from the international post-conflict presence in BiH, and part of a larger evolving trend of international standards for post-conflict peace-making and reconstruction that some have described as an emerging set of principles of *ius post bellum*.<sup>51</sup> The policies on property restitution, which formed an integral part of international attempts to

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<sup>49</sup> Anneke Smit, *The Property Rights of Refugees and Internally Displaced Persons: Beyond Restitution* (Abingdon and New York: Routledge, 2012), p. 66.

<sup>50</sup> OSCE/UNHCR, *Tenth Assessment of the Situation of Ethnic Minorities in Kosovo* (covering period May 2002–December 2002), p. 44.

<sup>51</sup> Carsten Stahn, “‘Jus ad bellum’, ‘jus in bello’ ... ‘jus post bellum’? - Rethinking the Conception of the Law of Armed Force”, *European Journal of International Law*, vol. 17, no. 5, 2006, pp. 921–43.

ensure Kosovo's multi-ethnicity, are in line with the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons, the so-called 'Pinheiro Principles'.<sup>52</sup> Particularly pertinent in Kosovo were the international policies related to Principles Two and Ten: the right to housing and property restitution and the right to voluntary return in safety and dignity. These two issues were closely linked to one another and framed in the context of building a multi-ethnic Kosovo.

The policies discussed here took place in the context of what the OSCE termed an 'impending property crisis' during the immediate and early post-war period.<sup>53</sup> This crisis consisted of property records displaced, precarious law enforcement, no functioning judicial system, and thus an inability to halt or even recognise the illegal occupation of properties, let alone to stop their burning and looting. Additionally, approximately 120,000 homes throughout Kosovo had been damaged or destroyed. The property situation was further complicated by Kosovo's particular history of socialism and discriminatory laws during the 1990s.<sup>54</sup> Even after UNMIK established a judicial system and started building local capacities, it was deemed that property rights, given their often inter-ethnic dimension, were too politically sensitive to burden the emerging domestic system with.

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<sup>52</sup> Principles on Housing and Property Restitution for Refugees and Displaced Persons. E/CN.4/Sub.2/2005/17. These were formally endorsed by the United Nations Sub-commission on the Promotion and Protection of Human Rights in August 2005.

<sup>53</sup> cited in Jose-Maria Arraiza & Massimo Moratti, 'Getting the Property Questions Right: Legal Policy Dilemmas in Post-Conflict Property Restitution in Kosovo (1999-2009)', *International Journal of Refugee Law*, vol. 21, no. 3, 2009, p. 428.

<sup>54</sup> During socialism, many urban properties formally belonged to so-called socially-owned enterprises (SOEs), whose employees were able to gain life-long occupancy rights. With the purging of Kosovo-Albanians from public employment, many lost their rights to housing and property on discriminatory grounds. Additionally, during the 1990s laws were enacted to deter the sale of property from Kosovo-Serb to Kosovo-Albanian ownership, with the aim of halting the increased outmigration of Serbs from Kosovo. This meant that many properties changed ownership through informal transactions, leaving Kosovo-Albanian buyers without registered property rights.

In response to this situation, UNMIK set up the Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC) to address post-conflict restitution of residential property.<sup>55</sup> The latter was a quasi-judicial commission determining property claims, and the former the administrative body managing the entire process from claim to implementation of decisions. It was an internationally run mass claims mechanism, through which UNMIK took on the task of restoring possessions lost during the 1990s and during the war.<sup>56</sup> HPCC was given exclusive jurisdiction to determine three types of residential claims, firstly concerning property rights lost due to discriminatory policies during the period 1989–1999; secondly concerning informal property transactions during the period 1989–1999; and finally, most importantly for the international project of minority returns, claims concerning involuntary loss of possession of residential property during or after 1999.<sup>57</sup> Over the course of its seven years existence, 94% of claims filed with HPCC were of the latter kind, and mostly came from Kosovo’s minority population, predominantly from Kosovo-Serbs.<sup>58</sup>

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<sup>55</sup> UNMIK Regulation 1999/23 On the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission and UNMIK Regulation 2000/60 On Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission.

<sup>56</sup> For a detailed discussion of the HPD and HPCC’s work, see Arraiza & Moratti, ‘Getting Property Questions Right’.

<sup>57</sup> OSCE Mission in Kosovo, Department of Human Rights, Decentralization and Communities, *Eight Years after: Minority Returns and Housing and Property Restitution in Kosovo*, 2007, p. 25. The decision to include redress for property rights violations dating back to 1989 constituted a break with previous practice, particularly the post-war restitution regimes put in place in BiH and Croatia. These only dealt with the most recent conflict treating the status quo before outbreak of war as ‘Time Zero’, see Anderson, ‘UN Principles on Housing’, p. 314–5.

<sup>58</sup> Housing and Property Claims Commission, *Final Report*, Pristina, 2007, p. 111. Some of these also included Kosovo-Albanians who had lost property in Kosovo’s mostly Serb-inhabited North and were unable to return. The significant number of displaced Roma, Ashkali, and Egyptian Kosovars were for the most part unable to benefit from this process of restitution, since most of them were landless inhabitants of informal housing settlements that had been systematically

Lessons from past displacement in the region, particularly in BiH, were interpreted as necessitating a focus on property rights as vital to returns.<sup>59</sup> However, this resulted in a policy that focused on what was arguably the simpler part of the process, while neglecting the aim of creating favourable conditions for a viable multi-ethnic reality on the ground.

HPD had a slow and problematic start due to lack of resources and poor management, but within two years had gained a reputation as an effective and successful institution that UNMIK prided itself on.<sup>60</sup> However, the successful resolution of property claims did not *in itself* contribute to the wider goal of multi-ethnicity, precisely because the focus on claims resolution on its own could not resolve the broader obstacles to return.<sup>61</sup> HPD was considered to have successfully fulfilled its mandate when it had implemented over 98% of the decisions concerning residential property claims. However, as the OSCE noted, ‘in these cases “implementation” does not mean that the claimants have repossessed (and/or returned) [to Kosovo]’.<sup>62</sup> The successful resolution of legal property claims rarely led to minorities returning to their places of origin. In many cases, minority

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destroyed in 1999. Since they had for decades either lived on public or socially owned land, tolerated by the authorities, or had engaged in informal transfers for their dwellings, most were left without registered property titles (see Arraiza & Moratti, ‘Getting Property Questions Right’, p. 434).

<sup>59</sup> Specific lessons drawn from the experience of property restitution and returns in Bosnia included knowledge of the particularities of the Yugoslav property system, such as SOEs and occupancy rights, and an international awareness of the risk of obstruction by local authorities, which led the process in Kosovo to be fully internationalised rather than a hybrid international-domestic mechanism (see Arraiza & Moratti, ‘Getting Property Questions Right’, p. 426).

<sup>60</sup> ESI, *Lausanne Principle*, p. 20.

<sup>61</sup> The different ways of measuring success in the pursuit of multi-ethnicity, and what this says about international commitments to it, are discussed in Chapter Seven.

<sup>62</sup> OSCE Mission in Kosovo, *Eight Years after*, p. 25.

families did not feel safe to live in the property restored to them, and preferred instead to sell it, during or after the claims process.<sup>63</sup> The result was that very few displaced persons belonging to ethnic minorities returned to live in their properties, even after successful repossession.

In practice, implementation of a claim decision was not straightforward. Until 2003, for example, HPD implemented HPCC decisions upon receiving them, without coordination with the claimant. This led to many cases where HPD secured repossession of a claimed property at a time when the claimant did not wish to return to Kosovo to take possession of it. Such properties ‘were in many cases immediately reoccupied, looted or even destroyed’.<sup>64</sup> Therefore, in 2003 HPD introduced a procedure whereby a claimant had to actively request implementation of the decision, in addition to being able to choose from three options for implementation: repossession, HPD-administration of the property or closure of the case without further implementation.<sup>65</sup> Only approximately 20% of claims decisions resulted in requests for repossession, and of those an even smaller number resulted in the former resident returning. Often the repossession option ‘meant that the successful claimant had found a buyer [for the property]’.<sup>66</sup> There are no exact number of sales in these cases, however, in 7.5% of cases the claimant withdrew the claim before a decision had been reached, often due to a sale, and another 7.7% of cases were requested to be closed following notification of the

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<sup>63</sup> Arraiza & Moratti, ‘Getting Property Questions Right’, p. 438.

<sup>64</sup> Housing and Property Claims Commission, *Final Report*, p. 68, note 235.

<sup>65</sup> <http://www.kpaonline.org/hpd/faqafterdecision.htm>, accessed 3 August 2016.

<sup>66</sup> Report of the Secretary General to the UN Security Council on the Interim Administration in Kosovo', UN doc. S/906/2006, 20 Nov. 2006, p. 16.

decision, also ‘normally due to a sale’.<sup>67</sup> The interviews conducted with local and international policymakers in the field of returns confirm this as a prevalent phenomenon that the international organisations in Kosovo found themselves unable to prevent.<sup>68</sup> Interviewees lamented that there was no effective way to legally halt these sales, and how prices started falling once it became clear that a critical number of Kosovo-Serbs in a specific neighbourhood were selling their homes to Albanians.<sup>69</sup>

The positive determination of a property claim was rarely sufficient for displaced persons to consider return a viable option, also due to a lack of communication between HPD and other agencies active in the returns process. As in BiH, UNMIK did not strategically implement groups of claims, for example in specific neighbourhoods ‘to achieve a “critical mass” for the return of displaced persons, even if some Serb IDP associations asked for such measures’.<sup>70</sup> One interviewee lamented that, ‘if [HPD] had actually gotten whole communities together and enabled collective decisions, people might have felt in a stronger position actually to return’.<sup>71</sup>

Beyond a lack of coordination, it was also simply quicker and easier to process a large number of property claims than to organise the return of the same

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<sup>67</sup> Arraiza & Moratti, ‘Getting Property Questions Right’, p. 438.

<sup>68</sup> Interviews with Former ICO official; Head of UNMIK Office of Community Support and Facilitation; Danish Refugee Council Kosovo Representative; Public Information Associate, UNHCR Kosovo; International advisor to Kosovo government on Community issues and former OSCE official, all September 2014, Pristina.

<sup>69</sup> Head of UNMIK Office of Community Support and Facilitation, interview, September 2014, Pristina.

<sup>70</sup> Arraiza & Moratti, ‘Getting Property Questions Right’, p. 436.

<sup>71</sup> Senior international analyst, interview, September 2014, Pristina.

number of families, and for KFOR to ensure their security upon return. For example, in 2003, HPD was making an average of 1,000 claims decisions per month, while the security situation for minorities was still far from stable. This was a number the police would not have been able to protect had they all in fact returned to live in their original homes.<sup>72</sup> Additionally, property repossession was often complicated in practice, temporary occupants were slow to vacate the properties and, when they did, these were often looted or burned down before the IDPs' return. As of September 2003, the number of actual repossessions still barely exceeded 2% of all claims.<sup>73</sup>

### **Livelihoods**

Finally, the ambitiously termed 2003 'Strategy for Sustainable Returns' alludes to the long-term challenge of stabilising minority communities in Kosovo, which includes access to public services, employment, and livelihoods. In 2000, UNHCR and OSCE noted that 'few minorities in the province today have jobs. As a result, many are heavily dependent on humanitarian assistance for survival. Similarly, minorities continue to face enormous obstacles in accessing health and education services'.<sup>74</sup> ORC noted in 2003 that 'displaced persons returning to Kosovo may no longer have access to their former sources of livelihood, and are joining a society that is fundamentally changed from that they left'.<sup>75</sup> The

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<sup>72</sup> Smit, Anneke, 'Property Restitution and Ending Displacement in Kosovo—Coordinated Effort or at Cross-Purposes?', *Northern Ireland Legal Quarterly*, vol. 55, no.2, 2004, p. 196.

<sup>73</sup> Ivanisevic, 'Legacy of War'.

<sup>74</sup> OSCE/UNHCR, *Fourth Assessments*, p. 3.

<sup>75</sup> ORC, *Strategy for Sustainable Returns*, p. 7.

disappearance of the Serbian state apparatus from Kosovo affected the livelihoods of potential urban Kosovo-Serb returnees, many of whom had held positions in public service or socially-owned enterprises, which were now dominated by Kosovo-Albanians. Reluctance to join UNMIK and PISG institutions, which were seeking minority staff, in addition to security concerns, further reduced the number of urban returns.

Instead of returning to Pristina, many Kosovo-Serbs relocated to the nearby village of Gracanica, where Serbia continued to offer employment in the public service. Many rural Kosovo-Serbs had lost access to farming land, with illegal construction on such land ripe and limited access to law enforcement and judicial remedies. It is unclear why, despite lessons from similar processes in BiH, HPD's mandate was restricted to dealing with residential properties. This hampered the returns process because many minorities, rural Serbs in particular, were subsistence farmers, and their livelihoods in case of return thus depended on the restitution of agricultural property.<sup>76</sup> As discussed below, this issue was taken up following the 2004 riots and eventually addressed in 2006 with the creation of the Kosovo Property Agency (KPA).

In 2003, UNMIK stressed the importance for minority returns of 'access to public and social services on equal terms, [as well as] the availability of employment opportunities in the public and private sector, and the ability to access those jobs without discrimination'.<sup>77</sup> However, Kosovo's extremely weak

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<sup>76</sup> Smit, *Property Rights of Refugees*, p. 69.

<sup>77</sup> ORC, *Strategy for Sustainable Returns*, p. 7.

economy, following a decade of isolation and divestment, a war that left most industry in ruins, and the highest poverty and unemployment rate in Europe, did not lend itself to such ambitious goals. Only very slow and limited progress was made on the economic front for any of Kosovo's ethnic groups, and Kosovo's minorities, most notably its Serbs as well as the even more marginalised Roma, Ashkali, and Egyptians, were even less likely to access the limited income opportunities available. Even as the immediate post-war violence decreased and freedom of movement for minorities improved in the later years of international presence in Kosovo, the problem of sustainable livelihoods persisted.<sup>78</sup>

#### **4.3. The Enclavisation of Minority Life in Kosovo**

Despite these obstacles, international actors remained firmly committed to the return of Kosovo's minority population. Guarded escorts for residents of Serbian enclaves were used to increase their freedom of movement within the territory of Kosovo. UNHCR organised so-called go-and-see visits for potential returnees to their places of origin, and significant funds were pledged for the restoration of houses, although these were usually not fully met. However, KFOR and UNMIK Police on many occasions admitted to not being able to protect returnees in large numbers.

It had become clear that the international community was not getting anywhere near a large-scale return of Kosovo-Serbs and other minorities, and as

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<sup>78</sup> Interviews with Danish Refugee Council Kosovo Representative; Senior international staff, Kosovo Property Agency; international staff, Kosovo Property Agency; Former UNHCR and UNMIK Office for Returns and Communities local staff, all September 2014, Pristina.

time passed this became increasingly less likely. The outstanding issue of Kosovo's future political status also contributed to discouraging returns. Potential returnees were deterred from returning while the province's future status remained unresolved, and with the passage of time many IDPs became more integrated in their locations of displacement.

The international community's commitment to its stated aim of minority returns, combined with the still precarious security situation on the ground resulted in the increased concentration of minorities in isolated enclaves throughout Kosovo, as well as in the municipalities north of the river Ibar, still de facto controlled by Serbia, including the northern half of the city of Mitrovica. Trends of minority returns and on-going displacement in the early post-war years led to a pattern of territorial segregation between communities, leading to the 'consolidation of the "enclavisation" of minority life in Kosovo',<sup>79</sup> by which small, rural minority communities or semi-urban mixed communities tended to experience drops in their minority population, while the population of larger mono-ethnic minority enclaves (whether semi-urban or rural) remained more stable. The capital was almost entirely emptied of Serbs, even though its pre-war Serbian population had been significant (16,898 Serbs and 4,169 Montenegrins registered in 1991),<sup>80</sup> with many former residents moving to the growing nearby enclave of Gračanica, which one interviewee in 2014 described as 'Pristina in exile'.<sup>81</sup> UNMIK and OSCE recognised the tendency of Serbs grouping together for safety of numbers,

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<sup>79</sup> OSCE/UNHCR, *Ninth Assessment*, p. 47.

<sup>80</sup> cited in ESI, *Lausanne Principle*, p. 34.

<sup>81</sup> Senior international analyst, interview, September 2014, Pristina.

for example: ‘Children are bussed to school in Gracanica/Ulpiana and it is reported that some departing families are relocating there permanently since it is perceived as a more secure location’.<sup>82</sup> Many interviewees confirmed this preference for larger mono-ethnic enclaves, acknowledging that ‘some [Kosovo-Serbs] don’t want to return to isolated places, they prefer Gracanica’.<sup>83</sup> A UNHCR official also conceded that

people in general like to return to where they think they can find a job, they can speak their language, their children can go to school .... So a Serb family didn’t like to come to Pristina, because there are no families there of Serb ethnicity. So they decided to go to Gracanica.<sup>84</sup>

Despite the international community’s stated aim to avoid ethnic segregation, Serbs did not feel safe to enter predominantly Albanian areas, including Pristina, the putative capital of a future Kosovo state, and it is highly doubtful that KFOR would have been able to protect them there in the early years of international administration. As a result, most spontaneous returns were to the predominantly Serbian north of Kosovo and to Serbian enclaves in the South.<sup>85</sup> The organised return of IDPs to their places of origin was criticised by some as unsustainable, creating more isolated enclaves that required a heavy international security presence.<sup>86</sup>

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<sup>82</sup> OSCE/UNHCR, *Fourth Assessment*, p. 18.

<sup>83</sup> International advisor seconded to Kosovo Ministry of Communities and Returns, interview, September 2010, Pristina.

<sup>84</sup> Public Information Associate, UNHCR Kosovo, interview, September 2014, Pristina.

<sup>85</sup> ICG, *Kosovo Roadmap*, p. 19.

<sup>86</sup> *ibid.*, p. 19.

This development sat very uneasily with understandings of multi-ethnicity that involved the inter-mixing of populations, and the hope for a gradual reduction in ethnic divisions and hostility. The fact that, in addition to being physically separated and isolated from the rest of Kosovo, many Kosovo-Serb enclaves continued to be served by Serbian state bodies meant they existed in an economic, political, educational, and linguistic reality that was entirely separate and contradictory to the rest of Kosovo.<sup>87</sup>

### **‘Return to Home of Origin’: Attempts to Counter Enclavisation**

Despite the above-mentioned difficulties and obstacles, the goal of an internationally led returns policy continued to be the reversal of the demographic realities within Kosovo that the conflict had created. Minorities ‘returning’ to ethnically segregated enclaves where they had not previously lived was not considered acceptable.<sup>88</sup> This was the case for two reasons, which can be considered pragmatic and normative in nature, illustrating a case of the logics of consequences and appropriateness reinforcing each other in the commitment to re-mixing ethnic groups in Kosovo. Firstly, it was a response to the politicisation of the returns process, and secondly a reflection of the genuine international commitment to a notion of multi-ethnicity that coexisted uneasily with segregation. This was the result of normative developments that had rendered ethnically

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<sup>87</sup> Carl T. Dahlman & Trent Williams, ‘Ethnic Enclavisation and State Formation In Kosovo’, *Geopolitics*, vol. 15, no. 2, 2010, pp. 406–30.

<sup>88</sup> International Crisis Group (ICG), *Return to Uncertainty: Kosovo’s Internally Displaced and the Return Process*, December 2002.

motivated displacement unacceptable to international actors. They therefore needed to be reversed.

Firstly, the returns process had been politicised significantly in light of the outstanding issue of Kosovo's future status. Given the ambiguity that UNSC Resolution 1244 maintained on whether and in what form Serbia would retain sovereignty over the province, the status, safety, and treatment of Kosovo's Serb population since the departure of Yugoslav forces was consistently used to make the case for a continued role for Belgrade in future arrangements in Kosovo. It is in this context that the numbers provided by Serbian officials regarding IDPs who could potentially return to Kosovo were widely believed to be exaggerated.<sup>89</sup> Many international officials working on returns policy on the ground identified the politicisation of the process emanating from Serbia as a key obstacle, finding that 'Serbia itself was not very cooperative in terms of returns. They used this issue as a political tool',<sup>90</sup> and that 'the Serbian government were disingenuous, they didn't really want returns particularly and they were never really honest about the numbers'.<sup>91</sup>

Furthermore, it has been argued that policymakers in Belgrade wanted to use the return of IDPs to create demographic patterns in Kosovo that could lead to the territory's eventual partition, e.g. through Serb-majority areas on territory contiguous to Serbia proper, such as in and to the north of the divided town

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<sup>89</sup> ESI, *Lausanne Principle*; Judah, *Kosovo: What Everyone Needs to Know*, p. 101.

<sup>90</sup> Head of UNMIK Office of Community Support and Facilitation, interview, September 2014, Pristina.

<sup>91</sup> Former strategy advisor to UNMIK SRSG, interview, January 2011, Oxford.

Mitrovica.<sup>92</sup> Any such settlement pattern implied the return of IDPs to places inside Kosovo where they had not originally resided.<sup>93</sup> Belgrade pursued this policy by arguing that the returnees' safety could only be guaranteed in territorially separate enclaves. As described above, this was not far from the truth. On the other hand, the argument that behind the returns process lay a Serbian master plan for undermining Kosovo's provisional government and its future independence and territorial integrity was used to justify hostility towards returnees and a lack of commitment to the process by Kosovo-Albanian leaders at the municipal level.<sup>94</sup>

Secondly, international policymakers were also committed to undoing the ethnic homogeneity the conflict had created in most of Kosovo as a result of the normative developments described in Section One above.<sup>95</sup> Ethnic cleansing could no longer be condoned as a tool of state-creation or conflict resolution in Europe. In reaction to attempts at politicisation and manipulation, UNMIK and UNHCR thus focused on a strategy of voluntary return of IDPs to their places of origin. The returns process was—at least rhetorically—elevated to supreme importance, which was later also reflected in the inclusion of minority returns in the 'Standards before Status' approach adopted in late 2003, making it a key benchmark for Kosovo to reach before status issues could be discussed.<sup>96</sup>

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<sup>92</sup> King & Mason, *Peace at any Price*, p. 208.

<sup>93</sup> This is closely related to Belgrade's proposals regarding decentralisation and territorial autonomy, discussed in the subsequent chapter.

<sup>94</sup> The Urban Institute, *I Was Born in that Village: Prospects for Minority Returns and Sustainable Integrated Communities in Kosovo*, June 2003, p. 28.

<sup>95</sup> Adelman & Barkan, *No Return*, p. 69.

<sup>96</sup> [www.unmikonline.org/standards](http://www.unmikonline.org/standards) accessed in May 2011, archived version available at <http://archive.is/U5OxE>.

In particular, international efforts and discourse on returns focused on returns to *homes* of origin, or places of origin, a development originating from the Dayton Accord that ended the war in BiH. There, too, the international community rejected on normative grounds the demographic realities created by ethnic cleansing strategies during the war, and committed itself to a lengthy and expensive process trying to re-establish multi-ethnicity by enshrining the right to return to *homes* of origin. From this follows that for the process to be hailed a success it would have to be seen to contribute to Kosovo's multi-ethnic character. The aim of the returns process was thus to re-create a certain degree of inter-ethnic mixing, rather than strict separation by ethnic belonging, since 'it would be a perverse outcome if the international intervention to stop ethnic cleansing in Kosovo were concluded by legitimating nationalist goals of ethnic segregation'.<sup>97</sup> If returns were to create ethnic enclaves, segregation or contiguous territory as 'facts on the ground' for future partition, international efforts would be considered to have defeated the purpose of ensuring Kosovo's multi-ethnic character.<sup>98</sup> This is indicative of an understanding of multi-ethnicity that is more developed than simply the presence of different groups in Kosovo, irrespective of their spatial distribution or levels of interaction. It is a notion of multi-ethnicity that problematises enclavisation. Therefore, implementing the right to return became closely linked to the overall aim of ensuring a multi-ethnic future for Kosovo, with multi-ethnic understood in more than a minimalist sense.

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<sup>97</sup> Dahlman & Williams, 'Ethnic Enclavisation', p. 424.

<sup>98</sup> Interviews with the former director of UNMIK's ORC and UNMIK's Head of Office of Community Support and Facilitation, April and September 2014, respectively.

ORC's 2002 concept paper on the right to sustainable return reflects this approach. It clearly prioritises supporting returns to *places of origin*, finding that 'the concept of relocation, including proposals for clusters of new settlements, is not conducive to the long-term goal of promoting a multi-ethnic society in Kosovo, and will not be endorsed by UNMIK'.<sup>99</sup> Fearing the manipulation of IDPs, the document stresses that return must be voluntary and the selection of return locations based on the 'wishes of IDPs to return to their places of origin, rather than on political considerations'. ORC uses the wording of UNSC Resolution 1244, which refers to the right to return to one's *home* in Kosovo, and concludes that 'organised return will be to the place of origin constituting the optimal durable solution to the current displacement. Resources are to be focused on the conditions at the location of origin'. This strategy also proposes a shift in KFOR and UNMIK Police's approach to community security, aiming at the 'gradual dismantling of protected enclaves, and to promote local-level integration and reconciliation'.<sup>100</sup>

In addition to the focus on return to homes of origin, and the corresponding decision not to support return to other locations, policies were implemented to stop the sale of minority property to Kosovo-Albanians. It is also in this context that the choice not to offer a compensation scheme through HPD can be understood—as efforts to halt or reverse the increased ethnic enclavisation in Kosovo.

As mentioned above, many minority owners sold their houses to Kosovo-Albanians, and UNMIK was confronted with a pattern of 'buying out' minorities,

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<sup>99</sup> UNMIK, *The Right to Sustainable Return: Concept Paper*, 17 May 2002, p. 2. This was confirmed in interviews with the former director of UNMIK's ORC and UNMIK's Head of Office of Community Support and Facilitation in April and September 2014, respectively.

<sup>100</sup> UNMIK, *Right to Sustainable Return: Concept Paper*

often involving physical intimidation and threats.<sup>101</sup> Efforts were made to halt this practice through a regulation that required the sale of property in predominantly minority areas to be vetted by the local municipal administrator before being approved by a local court.<sup>102</sup> However, this regulation was later addressed by Kosovo's Ombudsperson for its discriminatory nature (as it applied to minority sales only), and was found to be incompatible with international legal standards on property rights and the European Convention on Human Rights.<sup>103</sup> This is one example of the tensions encountered by the international community in pursuit of multi-ethnicity, where normative and legal commitments needed to be balanced against the pressures of reality on the ground.

Additionally, a conscious choice had been made not to offer compensation as a possible remedy for property loss through HPD, except in rare cases of competing claims. As previously in BiH, the international community opted for restitution in kind as the only available option.<sup>104</sup> A normative preference for return, particularly of minorities, and a desire to reverse ethnically homogenising trends on the ground at least partly explains this. As in BiH before, 'donors [who funded HPD's work] were unwilling to be accused of financially cementing forced

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<sup>101</sup> King & Mason, *Peace at any Price*, p. 113, confirmed by interviews with Former UNHCR and UNMIK Office for Returns and Communities local staff; Head of UNMIK Office of Community Support and Facilitation; International advisor to Kosovo government on Community issues and former OSCE official, all September 2014, Pristina.

<sup>102</sup> *ibid.*, p. 113; OSCE/UNHCR, *Tenth Assessment*, p. 49.

<sup>103</sup> Caplan, *International Governance*, p. 204; OSCE/UNHCR, *Ninth Assessment*, pp. 36–8.

<sup>104</sup> Smit, *Property Rights of Refugees*, p. 68; Bradley, *Refugee Repatriation*, p. 135.

displacement'.<sup>105</sup> The decision to exclude compensation as a remedy was controversial, given that HPD's work was embedded in a discursive framing of human rights and minority protection, particularly as it became clear that 'a large majority of the claimants preferred to sell their properties after recovering them, which begs the question as to whether restitution in kind was in the best interest of the displaced'.<sup>106</sup> As scholars of minority displacement in the context of ethnic conflict have noted, 'the issue of compensation as an alternative to restitution is central to conflict resolution'.<sup>107</sup>

Another alternative, HPD-administration of property, was offered from 2003 onwards. Initially, this meant that HPD could use a property following successful claims resolution to house those in humanitarian need, often previously illegal secondary occupants of properties that had been returned to their rightful owners through a successful HDP claim. This system ensured that the mass claims mechanism wouldn't itself lead to further displacement. Thereafter, in 2006 a rental scheme was implemented in an attempt to combat the sale to Kosovo-Albanians of minority-owned property after repossession.<sup>108</sup> This scheme offered displaced minorities who did not feel safe to return to Kosovo the legal and physical

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<sup>105</sup> Arraiza & Moratti, 'Getting Property Questions Right', p. 432. The fact that a large-scale compensation scheme, necessarily funded from abroad, would have also been more expensive offers another explanation.

<sup>106</sup> *ibid.*, p. 432.

<sup>107</sup> Adelman & Barkan, *No Return*, p. 6. Another critique of the emphasis on return and restitution over alternative solutions is offered by Giulia Paglione, 'Individual Property Restitution: From Deng to Pinheiro and the Challenges Ahead', *International Journal of Refugee Law*, vol. 20, no. 3, 2008, pp. 391–412.

<sup>108</sup> Arraiza & Moratti, 'Getting Property Questions Right', p. 438.

protection of their properties through the HDP, as well as a source of income, with the aim to avoid them having ‘no option but to sell their homes’.<sup>109</sup>

Despite all these efforts, ‘in all, the status quo ante was not restored’,<sup>110</sup> and enclavisation had become an entrenched reality in Kosovo, with Kosovo-Serbs in particular confined to ethnic enclaves and unwilling to return to their previous homes where these were located in mixed or Albanian-dominated areas. An interviewee working on property restitution noted that

it is actually not in our mandate to enable return. Our mandate is strictly legal .... But whether this has enabled return? My personal verdict is that it hasn't. I think the majority of Serbs and other minorities when they get their decision, they want to sell the property, and many have already sold it.<sup>111</sup>

#### **4.4. The March 2004 Riots and Commitments to Multi-Ethnicity**

As discussed above, from 1999 to 2004, key international actors including UNHCR and UNMIK pursued minority returns as a central objective, based on the principle that all returns should be to minorities' places of origin in order to negate the strategies of ethnic cleansing that characterised the war and immediate post-war period. Despite the efforts put into this policy area, virtually all assessments of the returns process during the post-conflict decade categorise the outcomes as

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<sup>109</sup> Housing and Property Claims Commission, *Final Report*, p. 69. Through this rental scheme, 12,997 properties throughout Kosovo are currently being administered by KPA, the HPD's successor agency. See <http://www.kpaonline.org/AdminTotal.asp> KPA, Total Administered Properties, accessed 3 August 2016.

<sup>110</sup> Arraiza & Moratti, 'Getting Property Questions Right', p. 440.

<sup>111</sup> Senior international staff of Kosovo Property Agency, interview, September 2014, Pristina.

inadequate, with just over 12,000 members of minority communities returning to Kosovo between 2000 and 2004.<sup>112</sup>

In March 2004, anti-minority and anti-UN riots took place in Kosovo that made the prospect of minority returns even bleaker. Over 50,000 Albanians participated in thirty-three major riots during two days, destroying churches and homes and further displacing over 4,000 minority Kosovars.<sup>113</sup> The violence began in the divided town of Mitrovica and quickly expanded into attacks on Serbs and Roma, including their property and cultural heritage sites all over Kosovo south of the Ibar river, both in urban centres and villages.<sup>114</sup> Notably, UNMIK was also targeted, while other international organisations were not.<sup>115</sup> Despite some claims to the contrary, there is little evidence that the violence was centrally organised.<sup>116</sup> It was rather a spontaneous outbreak of Kosovo-Albanian discontent with its continued status as a UN protectorate and the lack of economic and political progress since 1999. The riots exposed both the limited determination and capacity of the international security forces, and a ‘deep-seated Albanian frustration with

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<sup>112</sup> UNHCR, Office of the Chief of Mission, Pristina, Kosovo, *Statistical Overview: Update at End October 2014*, p. 4. Forced returns, mostly from EU countries and affecting predominantly the RAE communities, have been on the rise in recent years and are recorded and reported on separately. Voluntary return includes both spontaneous and organised returns. ‘Organised’ indicates that UNHCR was involved through Go-and-See visits and facilitation of contact with the municipalities, whereas spontaneous means the returnees decided on their own initiative to return, and thereafter registered with the municipality and/or UNHCR.

<sup>113</sup> International Crisis Group (ICG), *Collapse in Kosovo*, April 2004, p. 15; OSCE Mission in Kosovo, *Human Rights Challenges*, p. 4.

<sup>114</sup> ICG, *Collapse in Kosovo*, p. 15.

<sup>115</sup> *ibid.*, p. 29.

<sup>116</sup> *ibid.*, p. 17.

political affairs', of which many within the international community had been unaware.<sup>117</sup>

The riots were deeply traumatic for Kosovo's minorities and potential returnees displaced in Serbia and beyond. In addition to newly displacing several thousand people within Kosovo, the riots left minorities feeling more insecure and isolated. The burning of churches and homes

before the eyes of KFOR ... and UNMIK police [had the effect of] undermin[ing] the confidence of the minorities not only in the readiness of the ethnic Albanian majority population to accept them as an integral part of Kosovo's society, but also in the capacity of the international community's security forces to contain violence.<sup>118</sup>

The 2004 riots presented the international community with a moment of reckoning regarding the seemingly Sisyphean task of minority returns; in the words of UNMIK staff present at the time, to either 'accept reality or give up'.<sup>119</sup> When asked how the riots affected their work on inter-ethnic relations in Mitrovica, a former UNMIK official said:

It was all reversed. All the gains that we had made about pushing out the Serb administration, any idea of doing joint cultural activities or joint planning for the two sides of the municipality, just vanished. I think none of that has ever gotten to that stage again that we reached in 2003, that was probably the high point of where Mitrovica might have gone.<sup>120</sup>

The scale of violence had caught many in the international community by surprise, and led to the conclusion that it was time to determine Kosovo's future

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<sup>117</sup> Henry H. Perritt, Jr., *The Road to Independence for Kosovo: A Chronicle of the Ahtisaari Plan* (Cambridge, Cambridge University Press, 2010), p. 79; Senior international analyst, interview, September 2014, Pristina.

<sup>118</sup> Ambroso, 'Balkans at a Cross-Road', p. 148.

<sup>119</sup> King & Mason, *Peace at any Price*, p. 189.

<sup>120</sup> Former strategy advisor to UNMIK SRSG, interview, January 2011, Oxford.

status and the future role of the international presence in Kosovo. This constituted a major turning point in the post-war period.<sup>121</sup> It also led to some shifts in international thinking and policy on multi-ethnicity in Kosovo, which became evident in both internationally driven returns and decentralisation policy.<sup>122</sup> To the then head of UNMIK's ORC, the riots and their aftermath confirmed and brought to the fore the weaknesses of the returns project on both international and national sides:

The 2004 riots were a critical point. It certainly changed the course of return to Kosovo. I think it made it really clear how limited the possibilities were, given the absence of strong international engagement and the lack of deep-seated support for multi-ethnicity in Kosovo's leaders and people.<sup>123</sup>

After the riots, a review of their causes and consequences led UNMIK to adapt its policy that had been based on the 'Standards before Status' approach.<sup>124</sup> In particular, some of the goals and actions stated in the Kosovo Standards Implementation Plan (KSIP) of December 2003 were now prioritised, 'as a way of focusing the government's efforts on those Standards goals and related KSIP actions which most support "sustainable multi-ethnicity" [as] the most urgent and important Standards goals and actions'.<sup>125</sup> Multi-ethnicity was thus reinforced as the key priority for Kosovo, and remained one of the hardest to achieve, the riots having undermined most of the modest success in its pursuit over the previous four

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<sup>121</sup> Perritt, *Road to Independence*, p. 80.

<sup>122</sup> ICG, *Collapse in Kosovo*, p. 30.

<sup>123</sup> Former Head of UNMIK Office for Returns and Communities, interview, April 2014, New York City.

<sup>124</sup> Perritt, *Road to Independence*, p. 81.

<sup>125</sup> See [www.unmikonline.org/standards](http://www.unmikonline.org/standards) accessed in May 2011, archived version available at <http://archive.is/U5OxE>.

years. Nevertheless, while multi-ethnicity retained its prominent position in international policy in Kosovo, these reinforced and strongly held commitments to multi-ethnicity also had to adapt to a new, more sober reading of realities on the ground. As discussed below, this led to a shift towards more separation- and recognition-based notions of multi-ethnicity. The commitments remained, but they were transformed.

The riots led to a process of determining Kosovo's progress on the Standards in order to assess its readiness for status negotiations. The seminal report written by UN Special Envoy Kai Eide upon request of the Secretary General in 2005 assessed Kosovo's readiness to commence the political process to determine its future status. Some of Eide's conclusions called for breaks with established policy and a re-orientation of international efforts, which cannot be understood outside the context of the March 2004 riots.<sup>126</sup> The riots were the low-point in inter-ethnic relations in Kosovo since the international community had taken charge of the province. In many respects, Eide's report called for a shift in the policy on multi-ethnicity, affecting both the areas of minority returns and decentralisation. This approach can be summarised as 'rating the danger of institutionalising segregation as less important than the need to stabilise Kosovo's precarious statistical diversity'.<sup>127</sup> Eide noted that after over 5 years of international administration the situation with regard to the foundation for a multi-ethnic society was 'grim'. On the returns process, the report stated that it had 'virtually come to a

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<sup>126</sup> This was confirmed by many interviewees who worked in return policy, as well as other minority-related fields. See more on insights from interviews below.

<sup>127</sup> King & Mason, *Peace at any Price*, p. 207.

halt .... The great majority of the people who left Kosovo after June 1999 have not come back',<sup>128</sup> and that while reliable data was not available, 'there is a widespread view—including in the international community—that currently as many or more Kosovo-Serbs are leaving Kosovo than are returning [and] an increasing number of returnees are selling their property and leaving again'.<sup>129</sup> Overall, Eide concluded that the 'atmosphere in many places is not conducive to return. Multi-ethnicity is often not seen as a goal'.<sup>130</sup>

The report pointed to the main problems inhibiting returns, including access to services, freedom of movement, and repossession of land. None of this was new, as it had been stated in many previous UN documents.<sup>131</sup> However, Eide also stressed another, heretofore unquestioned factor: that the returns process was 'hampered by the fact that assistance is only provided to those who return to their home of origin'. Admitting, for example, that it was unlikely 'that those who fled Pristina in 1999 will return to their home of origin in the foreseeable future', the report argued for a more flexible policy to support the return of people to 'where they *can* live and not only to where they *have* lived',<sup>132</sup> while stressing that the need to guard from misuse of this policy for political manipulation.

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<sup>128</sup> S/2005/635, Letter dated 7 October 2005 from the Secretary-General addressed to the President of the Security Council, (Eide Report), p. 15.

<sup>129</sup> *ibid.*, p. 16.

<sup>130</sup> *ibid.*, p. 4.

<sup>131</sup> See for example the quarterly reports of the UN Secretary General on UNMIK, available at <http://www.unmikonline.org/Pages/UNMIK%20Key%20documents.aspx> (accessed 28 July 2016).

<sup>132</sup> Eide Report, p. 4, emphasis added.

The Eide report became one of the seminal documents produced by the UN during the international administration of Kosovo.<sup>133</sup> Mostly, it is remembered for changing the course of developments in Kosovo by giving the green light for status negotiations to commence. Furthermore, and relevant to this study, the report reinforced the central role of multi-ethnicity as a goal for the international community in Kosovo, while transforming that commitment to make it more compatible with the reality of ethnic segregation on the ground. In terms of policy changes, in addition to the newly endorsed support for minority returns to places other than homes of origin, Eide also recommended the creation of a ministry for returns and communities as a step towards multi-ethnicity,<sup>134</sup> and called for the inclusion of agricultural and commercial property in a reformed mass claims body to ensure the livelihoods of potential returnees.<sup>135</sup>

In 2006, ORC's Manual for Sustainable Returns was revised to take account of the transfer of competencies in the area of returns to the PISG, particularly the new Ministry of Communities and Returns (MCR) and the municipalities. Based on the recommendations of the Eide report, the revised manual also established a new policy regarding the support for minority returns to

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<sup>133</sup> The report was mentioned as critical by many interviewees without prompting, e.g. Former strategy advisor to UNMIK SRSG, interview, January 2011, Oxford; Former Head of UNMIK Office for Returns and Communities, interview, April 2014, New York City; Former local staff of ICG, UNMIK, and ICO; OSCE staff member; Senior international analyst; Head of UNMIK Office of Community Support and Facilitation, interviews, all September 2014, Pristina.

<sup>134</sup> 'The creation of a ministry responsible for community matters, human rights and returns' was recommended in a preliminary report by Eide, written immediately after the riots, which received less international attention, see S/2004/932 (November 2004), p. 17.

<sup>135</sup> The report recognised the gap in property restitution created by HDP's focus on residential property only, and identified the widespread illegal occupation of agricultural and commercial property as one of the major factors hindering returns. The newly established hybrid domestic-international Kosovo Property Agency (KPA) was thereafter mandated to resolve all outstanding residential, commercial and agricultural property claims. See OSCE, *Eight Years After*, p. 26.

places other than homes of origin.<sup>136</sup> The new document stressed a rights-based approach to returns, focusing specifically on the right of returnees to choose where to return to, along with a right to free and informed choice in this regard.<sup>137</sup> This policy was clearly a concession to the view that any significant return of IDPs to their original homes and communities was becoming exceedingly unlikely.<sup>138</sup> While the fundamental right to return to one's home of origin remained intact and this continued to be the 'preferred durable solution for displaced persons', the new manual also suggested that return to places other than the place of origin should be supported, since the free choice of where to 'return' to was the best way to ensure voluntary and sustainable returns. The document maintained that 'the primary focus of the return process is to reverse the effect of the conflict-related population movements and to end the situation of displacement',<sup>139</sup> and that thus all efforts must be made to enable IDPs to return to their places of origin through assistance in repossessing property and removal of all other obstacles. However, the document also allowed for IDPs to 'integrate in freely chosen alternative places, if such obstacles to return and reintegration can not be removed through feasible and reasonable efforts'.<sup>140</sup> The policy seems to have contributed to an eventual increase

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<sup>136</sup> The change in policy was felt on the ground; it was mentioned in interviews without prompting many years later by several interviewees who worked in return projects in Kosovo, including UNMIK official, Office of Community Support and Facilitation, previously Office for Communities and Returns; Public Information Associate, UNHCR Kosovo; and UNMIK official, Communities Section, all interviews September 2014, Pristina.

<sup>137</sup> UN Human Rights Committee, CCPR/C/UNK/CO/1/Add.1, pp. 5–6.

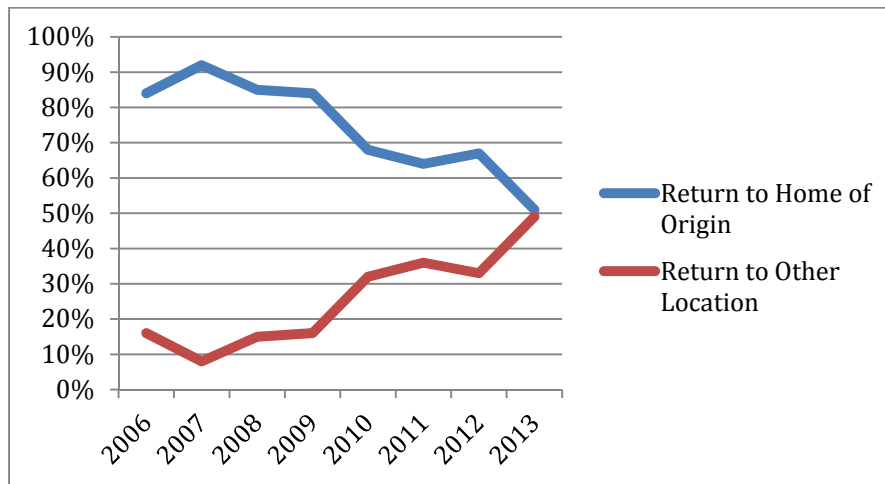
<sup>138</sup> Former Head of UNMIK Office for Returns and Communities, interview, April 2014, New York City.

<sup>139</sup> UNMIK Office for Returns and Communities (ORC), *Revised Manual on Sustainable Returns*, 2006, p. 8.

<sup>140</sup> *ibid.*, p. 8.

in minority returns to locations other than their places of origin, which in 2006 accounted for 16% of minority returns, in 2010 for 30%, and by 2013 for 51% of minority returns (see Figure 1).<sup>141</sup>

**Figure 1:**<sup>142</sup> Voluntary minority returns by place of return, 2006-2013



Many interviewees working on returns projects in Kosovo were keen to downplay this trend, suggesting some unease around the normative inappropriateness of return to ethnic enclaves was still prevalent. However, the frustration about the phenomenon of homes of Kosovo-Serb returnees in areas outside major Serb enclaves ending up empty after expensive internationally funded reconstruction was also voiced repeatedly.<sup>143</sup> Finally, the phenomenon of return to places other than homes of origin was also described as marginal due to

<sup>141</sup> Source: email communication with UNHCR officials in Pristina, March 2011 and September 2016. Because the ORC did not support organised voluntary returns to places other than homes of origin before 2006, no data broken down by type of return location (place of origin or not) was collected between 1999 and 2006, even though spontaneous returns to places other than origin presumably did take place.

<sup>142</sup> Source: email communication with UNHCR officials in Pristina, March 2011 and September 2016.

<sup>143</sup> This type of (mis)allocation of international donor funding, resulting in empty homes, was also common in BiH and Croatia a few years previously, see Anderson, 'UN Principles on Housing', p. 310.

the lack of available housing and land. Therefore, most returnees for lack of housing alternatives were stuck with either returning to their homes of origin or integrating in their places of displacement, predominantly in Serbia, as the vast majority of Kosovo-Serb IDPs did. In the context of the revised manual on sustainable return, the OSCE noted that it ‘does not contain, however, concrete procedures to be followed in such cases for the allocation of land and housing reconstruction assistance or the provision of housing units to the displaced in areas other than their home of origin’.<sup>144</sup> This is likely to have reduced access to this option to a limited number of minority IDPs.<sup>145</sup>

Despite the shift in policy towards supporting the return of minority IDPs to places other than their places of origin, indicating a degree of international acceptance of the demographic segregation taking shape in Kosovo, the number of minority returns remained low in the following years, at the modest number of between 1,000 and 2,000 returnees per year. Overall, according to UNHCR, only 24,387 persons belonging to a minority voluntarily returned to Kosovo over the entire period from 1999 to 2012.<sup>146</sup> The numbers of returns by year are indicated in Figure 2, with a peak recorded in 2003, followed by a clear drop in the following year coinciding with the March 2004 riots, from which there seemed to be no recovery thereafter.<sup>147</sup> No data is available on how many of the registered returnees

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<sup>144</sup> OSCE, *Eight Years After*, p. 20.

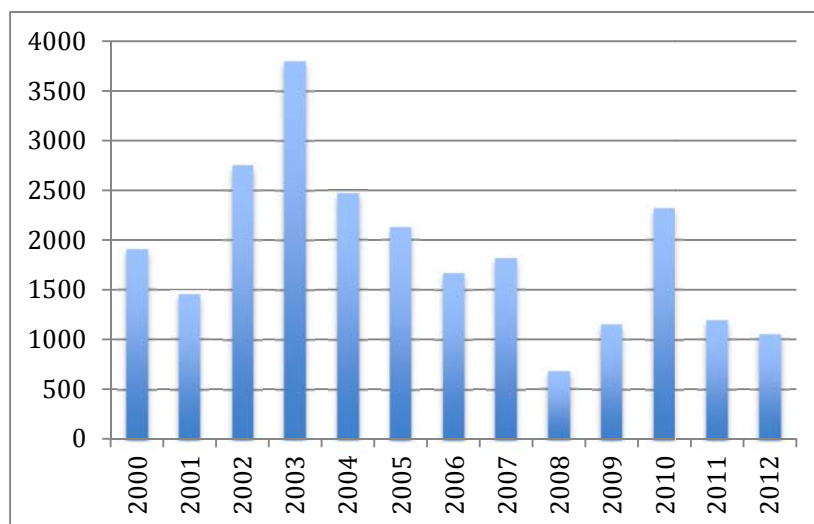
<sup>145</sup> Public Information Associate, UNHCR Kosovo, interview, September 2014, Pristina.

<sup>146</sup> UNHCR, *Statistical Overview*, p. 4. This includes Albanians returning to a Serb-majority municipality.

<sup>147</sup> A limitation of the UNHCR data is that it starts in 2000 and thus ‘most likely under-reports returns since some returns occurred immediately following the conflict and not everyone was registered with the UNHCR’, as pointed out by Sandra F. Joireman, ‘Ethnic Violence, Local

remained in Kosovo, or how many minorities who had not been displaced in 1999 have since left.

Figure 2:<sup>148</sup> Voluntary minority returns by year, 2000 – 2012



Interestingly, while Kosovo-Serbs made up 68% of IDPs (Figure 3), they only accounted for 42% of returns (Figure 4). On the other hand, the RAE communities together only accounted for 13% of IDPs (Figure 3) but made up 41% of returnees (Figure 4).<sup>149</sup> The likely reason for this is that Kosovo-Serbs (and Montenegrins) faced fewer obstacles to integration in their places of displacement (mostly in Serbia and Montenegro) than RAE, who constitute the most marginalised sectors of society in the region, and were thus likely not welcomed by local authorities and communities in their places of displacement.

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Security and Return Migration: Enclave communities in Kosovo', unpublished paper presented at 2015 UK Conflict Research Society Conference, p. 12.

<sup>148</sup> UNHCR, *Statistical Overview*, p. 4. This includes Albanians returning to a Serb-majority municipality.

<sup>149</sup> It is likely that the returns statistics (Figure 4) counted Montenegrins as Serbs, since Montenegrins only gained formal recognition as a separate minority in 2011, which would make this contrast even more striking: Serbs and Montenegrins together made up 76% of IDPs, but only 42% of returnees.

Figure 3:<sup>150</sup> IDPs from Kosovo by ethnicity

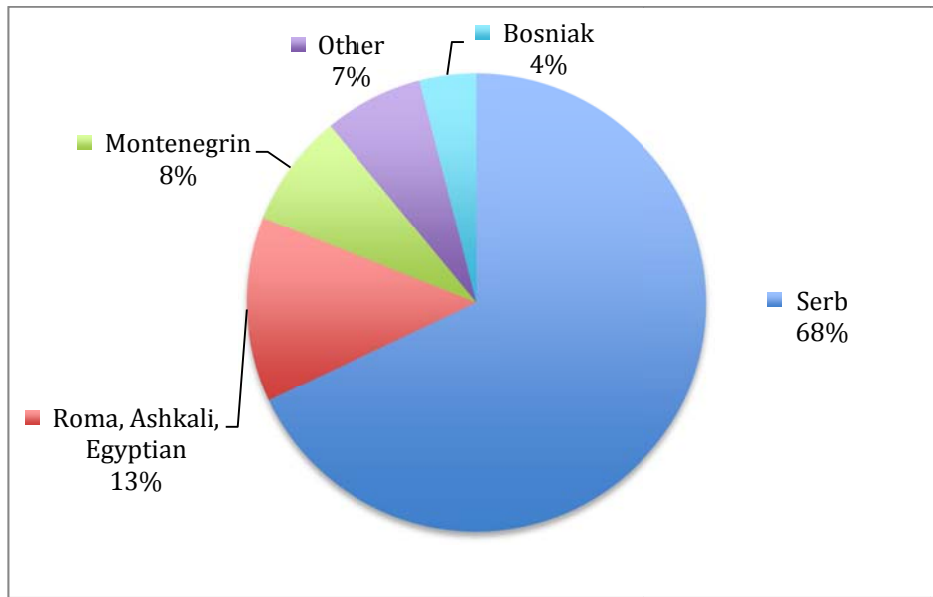
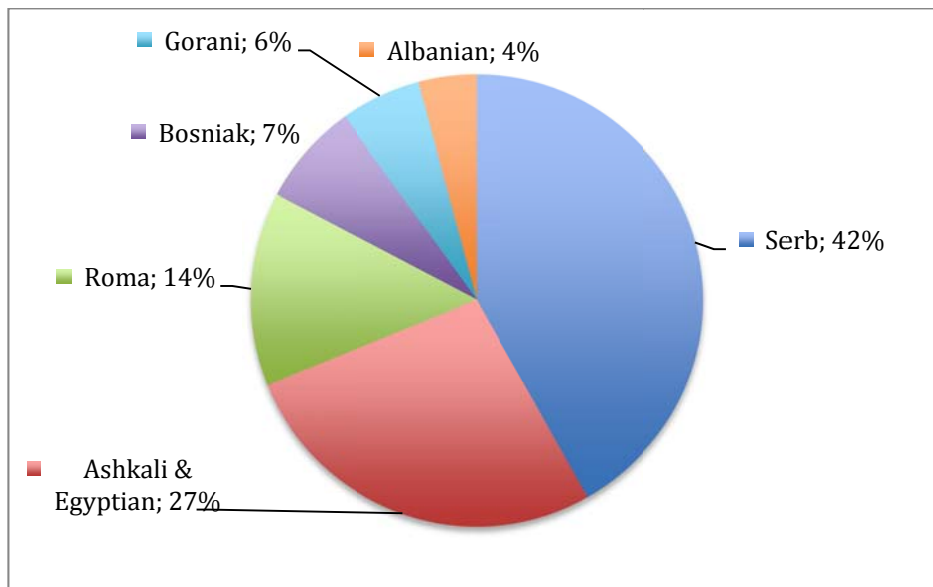


Figure 4:<sup>151</sup> Voluntary minority returns by ethnicity, 2000 – 2012



<sup>150</sup> ORC, *Strategy for Sustainable Returns*, p. 4. This does not include the ‘internally internally displaced’, i.e. minorities displaced within Kosovo, which the ORC estimated them to be in the several thousands.

<sup>151</sup> UNHCR, *Statistical Overview*, p. 4.

Overall, minority returns did not materialise to anywhere near the scale that international organisations working in this policy area had aimed for. All the above-mentioned factors, including security concerns, property issues, economic prospects, and the political environment of continued uncertainty about Kosovo's status for most of the post-war decade contributed to keeping the number of minority returnees low. The international administration was unable to significantly change this, as UNMIK reports until the end of the period under study attest. In 2012, socio-economic prospects, security, looting of uninhabited properties, and vandalism at religious sites were still being reported as pressing concerns affecting minorities in Kosovo, and inhibiting the return of IDPs.<sup>152</sup> International attempts to halt and counter the prevailing pattern of enclavisation, whereby particularly Kosovo-Serbs retreated into ethnic enclaves, lived in segregated communities, and had little interaction with Kosovo-Albanians, were also for the most part unsuccessful.

#### **4.5. Notions of Multi-Ethnicity**

The study of international policymaking regarding minority returns to Kosovo illustrates a number of important elements pertaining to international normative commitments to multi-ethnicity. Firstly, the above discussion illustrates that minority returns were considered central to the project of a multi-ethnic Kosovo, with international actors firmly committed to ensuring the return of

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<sup>152</sup> See e.g. the last report of the Secretary General on UNMIK within the period covered: S/2012/818 Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, November 2012, p. 8.

Kosovo's displaced minorities. There was a strong normative dimension to this commitment; ethnic cleansing and displacement leading to homogeneous territories had by the 1990s become an illegitimate basis for a new polity. Having played an instrumental part in shaping post-war Kosovo, the international community could not be seen to be complicit with such demographic changes. The only normatively acceptable vision for Kosovo thus had to include the return of minorities. Importantly, the international community's reputation was linked to this project, and facilitating minority returns was described by policymakers as 'crucial for the international community, which has already invested a great deal in Kosovo. At stake is whether Kosovo will be a multi-ethnic society looking to Europe, or an isolated, anachronistic place left in the past'.<sup>153</sup>

Secondly, while commitments to ensuring that Kosovo would be multi-ethnic were very strong, they, however, also varied in their understandings of multi-ethnicity, which shifted over time. Initially, the internationally supported returns process aimed at countering enclavisation and ensuring the re-mixing of populations that would lead to inter-ethnic contact, and potentially even integration. This can be understood as an integrationist notion of multi-ethnicity. However, the reality on the ground was far removed from such a vision. This fact was noted repeatedly in interviews as a source of frustration among the international officials in Kosovo, most of whom aspired to a notion of multi-ethnicity that would reverse the enclavisation. The tendency of Kosovo-Serbs and other minorities to retreat into mono-ethnic enclaves was clearly perceived to be

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<sup>153</sup> ORC, *Strategy for Sustainable Returns*, p. 3.

... in competition with ... the state-building norms shaping Euro-Atlantic interventions in the former Yugoslavia. ... [which] view Kosovo-Serbs and other minorities as becoming part of a multi-ethnic and democratic Kosovo. Instead of forming separatist enclaves, ... integration, not fragmentation, is the vision.<sup>154</sup>

The riots in March 2004 represented a turning point in international thinking about multi-ethnicity in Kosovo. The goal of multi-ethnicity was not abandoned; on the contrary, the Eide report reinforced it as one of the key standards for Kosovo to achieve in its path towards status resolution. However, while the commitments to multi-ethnicity remained strong, they also experienced a shift in conceptualisation of what multi-ethnicity should entail. A level of acceptance of enclavisation can be observed, paralleled by similar developments in other policy areas, notably decentralisation, where separation and recognition-based notions of multi-ethnicity gained currency. In this revised understanding of multi-ethnicity, pertaining to the returns process, enclavisation was accepted *for the sake of multi-ethnicity*. In other words, in the name of ensuring Kosovo's overall multi-ethnicity, a level of inter-ethnic segregation within Kosovo was accepted. This was a concession to the fact that minority life in mixed areas seemed, for the time being, highly unlikely in Kosovo. This development, whereby multi-ethnicity remained central, but transformed in light of realities on the ground illustrates how robust, yet vague, the initial international commitment was. Over time different policies, either aiming for integration or recognising separation, were endorsed, all in the name of multi-ethnicity.

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<sup>154</sup> Dahlman & Williams, 'Ethnic Enclavisation', p. 413.

This chapter examined international policymaking in the field of minority returns in Kosovo between 1999 and 2012. The policymaking and discourses around it are understood here as manifestations of the international normative commitments to multi-ethnicity that this thesis seeks to explain. It shows how minority returns, their numbers, as well as their spatial distribution in the post-conflict state are evidence of the various conceptualisations of multi-ethnicity in Kosovo. These ranged from elaborate notions entailing inter-mixing and integration between groups, to minimalist understandings that accept or endorse segregated and isolated communities; as long as overall demographic multi-ethnicity is ensured.

It has been pointed out in the literature that in discussing the future of Kosovo, ‘members of the international community often seem to equate multi-ethnicity with the presence of different groups on the territory, irrespective of their interaction’.<sup>155</sup> This corresponds to a minimalist understanding of multi-ethnicity, an approach to diversity informed by notions of indifference or benign neglect towards groups within the state. It is an understanding in which the lack of conflict, even as a result of limited contact or full-scale territorial segregation, is considered an indication of functioning, stable multi-ethnicity. This also relates to the aforementioned Kaufmann argument, whereby separation of groups is argued to contribute to stability. Regarding security policy, critics of the minimalist understanding of multi-ethnicity, as discussed in subsequent chapters, have pointed out that the policies that initially led to stability through separation in the longer

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<sup>155</sup> Bieber, ‘The Legal Framework’, p. 118.

term run the risk of freezing a conflict with harmful consequences for years to come. The most-cited example of this is the division of the city of Mitrovica, where a desire to stabilise inter-ethnic violence through separation led to an entrenched division of the city that has not been politically resolved to this day, constituting a continued security risk. Critics point particularly to the role that French KFOR troops played in establishing and perpetuating the division of Mitrovica through their understanding of stable multi-ethnicity as a lack of violence between groups, as well as due to a concern for the safety of their own troops.<sup>156</sup>

More elaborate and ambitious conceptualisations of multi-ethnicity were particularly evident prior to the 2004 riots, when UNMIK and UNHCR pursued a returns policy aimed at actively re-mixing Kosovo demographically, possibly even against the wishes of the displaced minority population, as evidenced by the policies described above.<sup>157</sup> The prevalent view prior to 2004 was highly critical of enclaves: ‘I came in on a mandate in 2002 which was all about return to places of origin. There was little support in the international community or within UNMIK to look at it differently. And at the time I was not critical of that’.<sup>158</sup> The notion of ‘multi-ethnicity as integration’ was later described by the director of UNMIK’s ORC as over-ambitious and unrealistic rhetoric, which in fact hampered the returns process.<sup>159</sup>

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<sup>156</sup> King & Mason, *Peace at any Price*, p. 112.

<sup>157</sup> ICG, *Return to Uncertainty*, p. 4.

<sup>158</sup> Former Head of UNMIK Office for Returns and Communities, interview, April 2014, New York City.

<sup>159</sup> Interview cited in King & Mason, *Peace at any Price*, p. 207.

As discussed above, this had both normative and consequentialist reasons, which included the fear of politicisation of the return process:

This idea that you create Serb enclaves created a lot of suspicions .... It was bound to create a huge amount of paranoia among the Kosovo-Albanians because it was seen as this deliberate attempt to create a fifth column in the country. It was overtly politicised and it was seen that way, and that was what hindered a lot of it.<sup>160</sup>

Those who worked in facilitating returns projects on the ground also confirm that initially ‘it was only [about return] to places of origin, and there was no discussion about it .... I mean, it was acknowledged but not discussed ... It was still a no-go area’,<sup>161</sup> indicating the strong normative consensus in favour of re-mixing ethnic groups among international actors in the early post-war years.

In retrospect, many interviewees voiced doubts about this initial policy, often linking this to the frustration about empty houses following internationally funded reconstruction in isolated areas: Serbs having been supported to return, but not remaining in Kosovo. As a long-standing UNMIK staff described it:

The mistake that was made was that the reconstruction of houses was only possible if people would return to their place of origin. And people due to many reasons could not return to their place of origin .... This slowed down the returns process in the very beginning.<sup>162</sup>

The riots are remembered as a wake-up call to this reality by all interviewees who witnessed them, and doubts were in retrospect voiced clearly:

Even if [the riots] hadn’t happened, I think probably the view that I came into Kosovo with and that my office worked under was overly optimistic

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<sup>160</sup> Former strategy advisor to UNMIK SRSG, interview, January 2011, Oxford.

<sup>161</sup> Danish Refugee Council Kosovo Representative, interview, September 2014, Pristina.

<sup>162</sup> Head of UNMIK Office of Community Support and Facilitation, interview, September 2014, Pristina.

about what could have been done in the time frames that were set. I'm not saying that without the riots we would have been successful and hundreds of thousands of people would have returned, but I do think that it made sense to pursue returns and see what could be accomplished. I think that there was room for a gradual process that could have built confidence and shown significant results, particularly in some places. But following 2004 the realistic possibilities for return to place of origin were substantially diminished, making a stronger case for a reassessment of that course.<sup>163</sup>

#### **4.6. Conclusion**

This chapter examined international policymaking in the field of minority returns between 1999 and 2012. It provides insights into the various notions of multi-ethnicity and how they are manifested in the policies pursued, ranging from the more minimalist understanding of different ethnicities simply living in the same territory, to more substantive and elaborate conceptualisations to do with notions of recognition and integration. It also illustrates how normative commitments were transformed by developments on the ground, and how international actors, employing both the logic of appropriateness and the logic of consequences, put their commitments to multi-ethnicity into practice in this policy area.

Throughout the period in question, the return of Kosovo's minorities was considered vital to any prospect for a multi-ethnic post-conflict Kosovo, however, this was a complex policy endeavour characterised by conceptual and empirical tensions. Particularly controversial was the question of where returning minorities were settling within Kosovo, given the tendency of increased ethnic enclavisation. Especially in the early period, until the March 2004 riots, international

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<sup>163</sup> Former Head of UNMIK Office for Returns and Communities, interview, April 2014, New York City.

commitments to multi-ethnicity exhibited a strong integrationist notion. Accordingly, the returns process was understood as a policy area in which to attempt to reverse the normatively problematic demographic effects of the war. Segregation was considered an illegitimate basis for both international administration and eventual independence.

However, as the riots in 2004 forced the international community to reassess its engagement in Kosovo, a transformation of the commitments to multi-ethnicity took place. The goal remained, and was even strengthened; however, now a certain level of recognition of the separation of groups—already a reality on the ground—was included in the name of ensuring Kosovo’s multi-ethnic character. International policy, and the thinking behind it, thus illustrates how a strong but rather vague commitment, like the one to multi-ethnicity, changed over time to adapt to the complex realities of post-war Kosovo. Similar developments took place in the policy area of decentralisation, which is examined next.



## **V. Decentralisation: Local Self-Government as Inclusion or Segregation?**

Decentralisation is another policy area at the heart of the international community's pursuit of multi-ethnicity in post-conflict Kosovo. This chapter offers an in-depth look at the policymaking on decentralisation in the period from 1999 to 2012. As described in the Introduction above, decentralisation is chosen alongside Chapter Four and Six on returns and minority rights, respectively, which are all understood as manifestations of international commitments to multi-ethnicity. The chapter explores policies on decentralisation as illustrations of the thinking on, and commitments to, diversity and multi-ethnicity within the international organisations active in post-war Kosovo.

The reason for choosing decentralisation, among the other two policy areas, relates to the perception of the international actors themselves, who considered it to be fundamentally tied to their vision of a multi-ethnic Kosovo, thus making the devolution of political administrative power to the local level a manifestation of their commitment to the overall goal of multi-ethnicity. As in the previous chapter on minority returns, this chapter reviews developments in this policy area between 1999 and 2012, and traces how international normative commitments to multi-ethnicity manifested themselves in policymaking on decentralisation. It highlights how international actors' understandings of multi-ethnicity were negotiated in policymaking, influenced by both normative considerations and developments on the ground. Decentralisation was considered one of the most significant policy areas in the pursuit of multi-ethnicity in Kosovo. It played a prominent role in the Kosovo status negotiations and was one of the international community's priorities on the

ground in the later part of the period covered in this study, following the declaration of independence in 2008.

The devolution of power to the local level has long been considered a potential tool to regulate the conflict in Kosovo.<sup>1</sup> However, this approach also raises controversial questions about the drawing of administrative boundaries based on the distribution of ethnic groups, the potential institutionalisation of segregation, and the possibility of entrenching divisions resulting from the conflict.<sup>2</sup>

The discussion in this chapter illustrates shifts over time in international thinking and practice on decentralisation in post-conflict Kosovo. The development over the period covered is characterised by a gradual acceptance of the idea of recognising segregation and existing territorial divisions, away from the early international conflict resolution attempts, which aimed to de-emphasise territorial divisions. This development is evident in two stages. From 2002 onwards there was a trend towards accepting the drawing of new boundaries along ethnic lines to reflect demographic realities on the ground. This was followed by a more explicitly recognition-based approach to self-government for minorities, which entailed asymmetric decentralisation for Serb-majority municipalities starting in 2006.

This trend is related to developments described in the last chapter in the area of minority returns. The eventual acceptance of ethnic enclaves as a result of minority returns patterns is linked to the institutional recognition of these enclaves as new municipalities where minorities, particularly Kosovo-Serbs formed local majorities.

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<sup>1</sup> The term conflict regulation is employed here as used by McGarry & O'Leary, *Politics of Ethnic Conflict Regulation*, which includes both the settlement and management of a conflict.

<sup>2</sup> Monteux, 'Decentralisation: The New Delusion', p. 163.

The ‘politics of recognition’, in this case, was understood as a tool of conflict management in so far as it was meant to induce Kosovo-Serbs to take part in Kosovo’s official structures.<sup>3</sup> This process, described in detail below, took place in light of attempts to resolve Kosovo’s status question and to address the role of Serbian-sponsored institutions in Kosovo. It therefore should not be understood as a purely normative shift, taking place in isolation from these consequentialist concerns.

### **5.1. Decentralisation, Self-Government, and Autonomy in Conflict Regulation**

At its core, decentralisation is about the principle of subsidiarity as the basis for local self-government, and is also applied in many states without a history of conflict. Its legal basis in Kosovo can be found in the CoE’s European Charter of Local Self Government, which is referred to in all relevant laws mentioned below.<sup>4</sup> The principle of subsidiarity holds that ‘public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen’,<sup>5</sup> i.e. by the ‘lowest level of government that is able to provide public services efficiently’.<sup>6</sup> Decentralisation in theory can take on an ethnic dimension when the composition of a state renders strong, centralised government potentially threatening to minorities, or when minority communities are territorially concentrated. If minority-inhabited areas receive enhanced powers from the central state level, decentralisation can cater to

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<sup>3</sup> Of the other minority groups only the Kosovo-Turks benefitted on equal footing with the Kosovo-Serbs from the decentralisation policies implemented in Kosovo.

<sup>4</sup> Council of Europe, European Charter of Local Self-Government, 1985.

<sup>5</sup> *ibid.*, Article 4.3

<sup>6</sup> Kosovo Law No. 03/L-040, Law on Local Self-Government, Article 3.

some of the common demands for greater self-government rights voiced by minorities.<sup>7</sup>

Decentralisation is seen as one of the tools of ethnic conflict regulation both in the scholarly literature and in the practice of post-conflict state-building and democratisation. In relation to democratisation, it can bring government closer to the people, making it more responsive to local needs, enhancing accountability and fostering local economic development. Relating to ethnic conflict, decentralisation can be a tool to empower territorially concentrated minorities with competencies devolved from the central level, while avoiding full-scale territorial autonomy, which is often associated with the risk of secession and disintegration of plural states. While decentralisation has been widely advocated for its potential to defuse ethnic conflict and especially reduce the risk of secession, its track record around the world is mixed.<sup>8</sup> Most studies look at a small number of cases to argue for or against decentralisation as a conflict regulation tool. One large-n study, attempting to explain decentralisation's varied record in ethnic conflicts around the world, describes the strength of regional parties, as opposed to decentralisation as such, as the key factor that accounts for decentralisation's more or less desirable effects on conflict.<sup>9</sup> While there is no scholarly consensus in the debate on institutional designs for divided

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<sup>7</sup> Kymlicka, *Multicultural Citizenship*, p. 27.

<sup>8</sup> Dawn Brancati, 'Decentralization: Fueling the Fire or Dampening the Flames of Ethnic Conflict and Secessionism?', *International Organization*, vol. 60, no. 3, 2006, pp. 651–85.

<sup>9</sup> *ibid.*

states, forms of decentralisation and autonomy are often cited as potential tools to stabilise post-conflict states.<sup>10</sup>

At the heart of the use of decentralisation for ethnic conflict regulation lies the idea that groups emerging from conflict require a level of self-rule, particularly minority groups who might experience ambivalence, mistrust, or hostility towards the state and its majority population. This relates to the normative developments reviewed in Chapter Two, which include the principle of self-determination and its salience in political thinking about diversity in and after conflict. As mentioned above, the right to self-determination and its incompatibility with the principle of territorial integrity of states is central to the problem confronting minorities wherever ethnic conflict occurs. Solutions based on autonomous regimes might help to solve that problem, and various forms of self-government have been proposed to alleviate minorities' concerns around the world. International law does not recognise a right to autonomy for ethnic minorities, however, developments discussed in Chapter Three in relation to the dissolution of Yugoslavia indicate that there might be a broadening consensus emerging on such a norm.<sup>11</sup> While this chapter focuses on policies of territorial autonomy, forms of so-called cultural autonomy will be discussed in the subsequent chapter on minority rights mechanisms in Kosovo.

Federalism, autonomy, and decentralisation are among the various potential institutional arrangements for states experiencing deep divisions or emerging from ethnic conflict. The definitions of these terms vary in the literature, but all imply the

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<sup>10</sup> *ibid.*

<sup>11</sup> See the discussion in Chapter Three above, particularly in relation to the opinions of the Badinter Commission and the recognition policy devised by the EC.

devolution of power from the central state level to that of a regional unit. The main differences between them pertain to the extent to which the central authorities retain ultimate decision-making power, and to whether they imply a power-sharing arrangement at the centre. Regarding the central-regional power dynamic, Ruth Lapidoth describes decentralisation as a more limited form of self-rule for the local level, which involves the *delegation* of powers from the centre. *Autonomy*, on the other hand, goes further to include the *transfer* of those powers to the local level. The delegation of powers in the former case remains ‘subject to the control and overriding responsibility of the centre’,<sup>12</sup> whereas the centre can only revise decisions of a truly autonomous authority in exceptional circumstances. Co-decision at the centre in federal arrangements often takes the form of bicameral legislatures, and may vary e.g. in the extent to which central state authorities may be obliged to take the views of regional authorities into account when a national law touches on regional interests.<sup>13</sup> In autonomous regimes, four types of powers can be defined in relation to the division of power between the centre and the periphery. These constitute powers reserved for central authority, powers fully transferred to autonomous entity, parallel powers, and powers that can only be exercised jointly.<sup>14</sup> With regard to finances, not all autonomous regions enjoy fiscal autonomy and not all have the right to raise taxes.

The differentiation between the terms decentralisation and autonomy, however, is not always determined by the division of such powers. In the case of the decentralisation arrangement in Kosovo—finally arrived at through the Ahtisaari

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<sup>12</sup> Ruth Lapidoth, *Autonomy: Flexible Solutions to Ethnic Conflicts* (Washington, D.C.: United States Institute of Peace Press, 1997), p. 51.

<sup>13</sup> Schneekener & Wolff, *Managing and Settling Ethnic Conflicts*, p. 30.

<sup>14</sup> Lapidoth, *Autonomy*, p. 34.

Plan—the level of overriding power held by the centre depends on the policy area in question, and differentiates between municipalities’ own, enhanced, and delegated competencies, adapting the mechanisms and scope of the centre’s supervisory authorities accordingly.<sup>15</sup> Furthermore, the type of decentralisation eventually instituted in Kosovo is not of a federal nature, as Kosovo defines itself as a unitary state rather than a federation. It can be more accurately described as a form of territorial pluralism institutionalised by way of decentralisation.<sup>16</sup>

This recognition-based approach taken in Kosovo, however, also entails the risk of potentially reinforcing conflict identities or deepening existing divisions. While bringing government closer to the people and allowing groups to take control of their own affairs at the local level might have a positive effect on democratisation, in the context of ethnic conflict these might also strengthen regional or ethnic identities, allow groups to discriminate internally against minorities in their self-governed units, or provide opportunities for secession.<sup>17</sup> Ethnically based decentralisation in post-conflict states has also been criticised for its risk of undermining the state-building process and accountability mechanisms.<sup>18</sup>

While decentralisation and autonomy are often associated with consociational models of power-sharing, the proponents of centripetalism also foresee a form of administrative federalism, which appeals to them for its ability to disperse power

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<sup>15</sup> Kosovo Law on Local Self-Government, Article 79.

<sup>16</sup> Allison McCulloch, *Power-Sharing and Political Stability in Deeply Divided Societies* (London: Routledge, 2014), p. 17.

<sup>17</sup> Brancati, ‘Decentralization’, p. 652.

<sup>18</sup> Lana Srzic ‘Decentralization as an Effective Tool of State-Building? The Cases of Bosnia and Herzegovina and Kosovo’, in Will Bartlett, Sanja Maleković & Vassilis Monastiriotis, eds., *Decentralization and Local Development in South Eastern Europe* (Basingstoke: Palgrave Macmillan, 2013).

away from the centre. However, the aim of this type of federalism is precisely the opposite from the one pursued in Kosovo, i.e. to create sub-national units that are heterogeneous in their demographic make-up and where the conflict groups mix at the local level.<sup>19</sup>

Developments reviewed in this chapter suggest that at the heart of the decentralisation debate in Kosovo was always the hope that granting autonomy to Kosovo's minorities, particularly the Kosovo-Serbs, would live up to the promise of the ethnic conflict regulation literature, i.e., that it would 'facilitate the inclusion of such segments into the broader institutional framework'.<sup>20</sup> It was therefore understood that 'the recognition of group difference [was the] starting point for the design of constituent units'.<sup>21</sup>

Decentralisation in Kosovo fits well in the regional context, where the principle of subsidiarity has become a cornerstone of EU policy. While initially pursued in order to counter fears of excessive centralisation within the EU, it has since 'come to empower minorities across Europe by allowing decisions traditionally falling within the dominion of the nation-state to be made at more local levels'.<sup>22</sup> In the context of this study, it is noteworthy that the international actors promoting decentralisation in Kosovo understood it not just as a way to improve local governance, but mainly as a tool to ensure stable multi-ethnicity. For example, the ICO, the lead organisation supporting the implementation of the Ahtisaari Plan, had a

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<sup>19</sup> McCulloch, *Power-Sharing*, p. 24.

<sup>20</sup> *ibid.*, p. 16.

<sup>21</sup> *ibid.*, p. 17.

<sup>22</sup> George Vasilev, 'EU Conditionality and Ethnic Coexistence in the Balkans: Macedonia and Bosnia in a Comparative Perspective', *Ethnopolitics*, vol. 10, no. 1, March 2011, p. 62.

unit for ‘Community Affairs’, which included the domains Decentralisation, Community Rights, and Religious and Cultural Heritage,<sup>23</sup> indicating that decentralisation was understood as a key component of multi-ethnicity promotion. International policymakers interviewed about their work in post-independence Kosovo particularly stressed this and considered decentralisation one of the international community’s key projects in Kosovo.<sup>24</sup> While decentralisation thus can be understood to have both a ‘functional’ and a ‘political’ purpose in Kosovo, it was this latter aspect of decentralisation that drove the international support for it.<sup>25</sup>

## **5.2. Decentralisation in pre-War Proposals**

Decentralisation already featured prominently in the various proposals for resolving the Kosovo conflict, both before the NATO war and thereafter. Despite the fact that these proposals did not materialise into agreements between the conflict parties, the approach taken by the international negotiators in their attempt to reach a negotiated solution reflects international actors’ assumptions about the conflict and its possible solutions. It also indicates what was considered both necessary and normatively desirable for a resolution of the conflict in light of Kosovo’s multi-ethnicity.

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<sup>23</sup> <http://www.ico-kos.org> website no longer online, a partially archived version can be found at <https://archive.is/eCagp> (accessed 4 August 2016).

<sup>24</sup> Former Head of Community Affairs, ICO, interview, April 2014, Berne; Former Head of Political Affairs, ICO, skype interview, September 2014; Former senior ICO official, skype interview, September 2014.

<sup>25</sup> Markus Schultze-Kraft & Engjellushe Morina, ‘Decentralisation and Accountability in War-to-Peace Transitions: The Case of Kosovo’, *IDS Bulletin*, vol. 45, no. 5, 2014, p. 97.

Before the NATO intervention the consensus within the international community was to allow Serbia to retain sovereignty over Kosovo, in line with the principle of territorial integrity of states.<sup>26</sup> In this setting, different notions of decentralisation, territorial autonomy and federalisation were to be employed to ensure Kosovo would remain part of the Federal Republic of Yugoslavia (FRY), while allowing Kosovo a wide range of powers. This approach has also been described as the ‘external dimension behind the devolution of power’.<sup>27</sup>

In the same vein, the so-called Hill Proposal of 1998 would have in effect given Kosovo a similar status to that of a third republic within FRY, alongside Serbia and Montenegro.<sup>28</sup> It stipulated that the basic territorial unit of local government would be the Communes, and that all responsibilities not expressly assigned elsewhere lie with the Communes.<sup>29</sup> Power was therefore to reside at the local level, arguably weakening the position of Pristina’s central institutions, but also that of Belgrade. Responsibilities of the Communes would include, among others, law enforcement, health, education, commerce, environment, and planning.<sup>30</sup> Each Commune was to have an Assembly, Council, executive bodies and a court.

After this proposal failed to win approval by the conflict parties, a final attempt at reaching a negotiated solution before the NATO intervention was held in

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<sup>26</sup> UN Charter, Article 2.

<sup>27</sup> Monteux, ‘Decentralisation: the New Delusion’, p. 175.

<sup>28</sup> The Hill Proposal, named after Christopher Hill, then US ambassador to Macedonia who negotiated the proposal between Belgrade and Pristina was the first serious attempt by the international community to achieve a settlement to the conflict between the KLA and the Serbian and Yugoslav (FRY) security forces.

<sup>29</sup> Hill Proposal, Article II.i.1.

<sup>30</sup> *ibid.*, Article II(5)4.

Rambouillet, France. In the resulting document, Communes were again described as the basic unit of local self-government.<sup>31</sup> Responsibilities of the Communes were similar to those in the Hill Plan, and primary responsibility for law enforcement lay with the Communal police units.<sup>32</sup> This clause was meant to address the serious security concerns between the two communities, and has been carried through to some degree into Kosovo's independent institutions a decade later, in which Serb-majority municipalities have participatory rights in the appointment of police station commanders.<sup>33</sup>

### **5.3. First Attempts at Decentralisation under UNMIK**

After UNMIK took charge of the province following international intervention, decentralisation continued to feature in the UN's administration of the territory. UNMIK regulation 2000/45 established 30 municipalities in Kosovo as the basic territorial unit of local self-governance, exercising all powers not explicitly reserved to the central authority, which at the time was UNMIK itself.<sup>34</sup> UNMIK started devolving responsibilities to the municipalities even before agreeing on the Constitutional Framework for Provisional Self-Government (CFPSG) in 2001. This decision was to do with the sensitive nature of Kosovo's still unresolved status.

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<sup>31</sup> Interim Agreement for Peace and Self-Government in Kosovo ('Rambouillet Agreement') Chapter 1, Article I(8).

<sup>32</sup> *ibid.*, Chapter 2, Article II(1)

<sup>33</sup> Law on Local Self Government, Article 23. Policing continued to be one of the thorny issues that remained unresolved in Kosovo's North, where the Ahtisaari Plan's decentralisation never took hold. Interestingly, even though this goes beyond the time scope covered by this study, the 'First Agreement of Principles Governing the Normalization of Relations', signed in April 2013, returns to this issue and stipulates that 'there shall be a Regional Police Commander for the four northern Serb-majority municipalities', who shall be a Kosovo-Serb nominated by the Ministry of Internal Affairs from a list provided by the northern municipalities.

<sup>34</sup> UNMIK/REG/2000/45 on Self-Government of Municipalities in Kosovo.

Strong central institutions in Pristina would constitute a threat in the eyes of minority communities, particularly the Kosovo-Serbs, who fiercely opposed eventual independence. Nevertheless, once the CFPSG was adopted UNMIK also actively supported institution-building at the central level.

The conflict regulation element of decentralisation was not yet prominent in UNMIK's early days, mostly because, as noted above, this period was characterised by reluctance on the part of Kosovo's most politically important minority, the Kosovo-Serbs, to participate in the UNMIK system. Kosovo-Serbs continued to look to Belgrade for political leadership and the provision of services. As discussed above, the displacement and return patterns had mostly confined minority life in Kosovo to ethnic enclaves. Belgrade was providing services and paying the salaries of healthcare workers, teachers, and police in the Kosovo-Serb enclaves and throughout the predominantly Serb-inhabited North of Kosovo. Therefore, it can be argued that through these 'parallel structures', as UNMIK and the PISG referred to them, Kosovo was already de facto decentralised along ethnic lines. Throughout this period, Belgrade successfully exerted pressure on Kosovo-Serbs to avoid involvement in Kosovo's nascent political institutions, which, it was feared, would eventually lead to an independent Kosovo.<sup>35</sup> While the level of boycott in the Serb enclaves throughout Kosovo varied, it was particularly the Serbs living in Kosovo's North who saw little need to cooperate with UNMIK and the PISG. These institutions thus failed to gain

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<sup>35</sup> Roland Gjoni, Anna Wetterberg, & David Dunbar, 'Decentralization as a Conflict Transformation Tool: The Challenge in Kosovo', *Public Administration and Development*, vol. 30, no. 5, 2010, p. 297.

any traction in the North, despite being the legitimate authorities on the ground according to UNSC Resolution 1244.<sup>36</sup>

The first time that decentralisation was raised explicitly as simultaneously a potential strategy for the inclusion of the Serb community in Kosovo's emerging political structures and as a tool for mitigating Kosovo's ethnic tensions was in 2002 by Special Representative of the Secretary General (SRSG) Michael Steiner in his Seven Point Plan for Mitrovica.<sup>37</sup> The plan was intended to offer a vision for the divided city and encourage its large Serb population, concentrated in the city's North, to participate in the Kosovo-wide local elections of October 2002. Decentralisation was proposed as the solution to bring Mitrovica's North and South under common UNMIK administration and eliminate the Kosovo-wide issue of Serb 'parallel structures', both of which were problems UNMIK had failed to resolve since 1999. Importantly, this plan was the first to concede the need for a degree of institutional recognition of ethnic segregation in Kosovo: the controversial idea of re-drawing administrative boundaries to reflect ethnic realities on the ground. Steiner's proposal acknowledged the fact that in Mitrovica as a whole, a municipality sharply divided between its Albanian inhabited South and Serb inhabited North, integrated decision making and public service provision was impossible, since not even freedom of movement had been achieved across the divided city. The plan thus included, for the

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<sup>36</sup> Exact population figures are not available, but ESI estimated in 2004 that approximately two thirds of Kosovo's remaining Serbs lived in the south (ESI, *Lausanne Principle*, p. 8).

<sup>37</sup> Michael Steiner, *A Choice for Mitrovica – the Seven Point Plan*, October 2002. In retrospect it is worth noting that decentralisation as a tool for the inclusion of Kosovo-Serbs had its beginning in Mitrovica, the one place where it has not managed to achieve its intended goal to this day. Autonomy in Mitrovica and the North continues to feature in on-going negotiations between Belgrade and Pristina.

first time, the limited institutionalisation of ethnically based self-government in Kosovo.

Academic critics have denounced this approach for aiming to “cantonise” Kosovo along ethnic lines as designed in Bosnia and Herzegovina’.<sup>38</sup> In relation to decentralisation, Steiner’s report stated that ‘common interests need to be decided jointly at the municipality level. But specific interests can be decided on a local level, in a municipal sub-unit’, by which was meant separate units for the Albanian and Serb parts of the municipality. These sub-municipal units (SMUs) were to have a local council, administrative organs and a budget, and would have authority to decide on issues of local importance. The offer of establishing municipal units for ‘sizeable non-majority communities’ was thereafter extended to all of Kosovo where participation in elections had taken place.<sup>39</sup>

Steiner’s proposal envisaged the longer-term inclusion of the Serb community in Kosovo’s political system, but in the short-term was directly concerned with their participation in the 2002 local elections. The plan corresponded with some Kosovo-Serbs’ hopes that ethnically based decentralisation could offer increased autonomy and protect them from domination by the Albanian majority. The devolution of functions such as education, health care, and planning to SMUs was meant to address the concerns of Serbs living in mixed municipalities where they constituted the overall minority. However, most Kosovo-Serbs perceived decentralisation as a cover for bringing them under Pristina’s authority. Steiner’s plan for Mitrovica did not come

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<sup>38</sup> Monteux, ‘Decentralisation: The New Delusion’, p. 178.

<sup>39</sup> Michael Steiner, Announcement, 21 October 2002.

to fruition, since his vision was ‘premised on strong Serb participation in municipal elections, which did not materialise’.<sup>40</sup>

Based on this initial approach of decentralisation as a potential tool for ethnic conflict regulation in Kosovo, Steiner in 2002 invited the CoE to propose a plan for local government reform in the territory. The CoE mission concluded that the European Charter of Local Self-Government required smaller units of local self-government than the ones established through the PISG in Kosovo. However, it also considered the organisational and financial feasibility of creating more and smaller units, especially given the limited resources available in Kosovo.<sup>41</sup> The recommendation made was to establish SMUs, transfer some municipal powers and responsibilities to them and establish a system in which responsibilities would be shared between the municipal and sub-municipal levels of government. Importantly, the proposal stipulated that SMUs should be established on the basis of *geographical* rather than ethnic criteria.<sup>42</sup> Despite this, the CoE mission clearly did have the ethnic dimension in mind: its recommendations did not preclude the creation of predominantly Serb SMUs—such as the enclaves of Gracanica and North Mitrovica—and emphasised that ‘such a unit would, in any case, be integrated into higher-tier multi-ethnic institutional structures’ at the municipal and central levels.<sup>43</sup>

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<sup>40</sup> King & Mason, *Peace at any Price*, p. 173.

<sup>41</sup> Council of Europe (CoE) Decentralisation Mission in Kosovo, *Reform of Local Self-Government and Public Administration in Kosovo*, November 2003.

<sup>42</sup> Shannon Kyla Burke, *Decentralization and Human Security in Kosovo: Prospects of Local Government Reform for Promoting Democracy, Development and Conflict Mitigation*, MA Thesis, Fletcher School of Law and Diplomacy, Tufts University, April 2005, p. 61.

<sup>43</sup> Cited in *ibid.*, p. 61.

The foreseen inclusion of these ethnically based SMUs into larger, presumably multi-ethnic structures, similar to Steiner's above-mentioned comments on his 2002 plan, speak to a desire to prevent accusations of endorsing purely mono-ethnic governance units. This indicates a tendency within the international community to interpret the commitment to a multi-ethnic Kosovo as favouring integration over separation. Kosovo-Serbs picked up on the idea of decentralisation, but continued to refuse to participate with the central authorities in Pristina. After the election boycott, an 'Assembly of Serbian Municipalities' was formed, to which the SRSG reacted by stating that 'UNSCR 1244 and the Constitutional Framework do not foresee institutions based on mono-ethnicity', and further that 'this has no legal relevance for Kosovo'.<sup>44</sup> This reaction must be understood in the context of the initial offer to Kosovo-Serbs, which was premised on their participation in elections. However, it is telling that Steiner framed his statement in a principled refusal of mono-ethnicity, even though the proposed SMUs also contained a level of recognition of ethnic separation.

The idea of decentralisation was received with great suspicion by both the Albanian and Serb publics in Kosovo. The CoE mission failed to engage local media to make decentralisation popular to local audiences.<sup>45</sup> Kosovo-Albanians perceived it as a cover for Serb autonomous entities in Kosovo, which would pave the way for eventual secession of Serb areas. Kosovo-Serbs, on the other hand, saw in decentralisation an attempt to persuade them to accept Kosovo's institutional structure

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<sup>44</sup> UNMIK Press Release, UNMIK/PR/906, '1244 does not foresee mono-ethnic institutions', 20 January 2003.

<sup>45</sup> King & Mason, *Peace at any Price*, p. 173.

that would eventually lead to an independent Kosovo. The idea remained hostage to Serb boycott and Albanian suspicions and did not initially materialise. The CoE mission's recommendations sparked further debate about decentralisation, but were not implemented.

After the failed attempt at enticing Serb turnout at the 2002 elections, decentralisation stalled. As was the case with a number of other initiatives in Kosovo, it was only taken up again after receiving new momentum following the watershed of the March 2004 riots.

### **The 2004 Riots and Decentralisation's Comeback**

Prior to the 2004 riots, the international community's approach to decentralisation in Kosovo was characterised by reluctance and concerns about the potentially destabilising effects of ethnically based territorial autonomy. This was consistent with the general policy in the region, and is evidenced in the relatively timid offer of creating SMUs for Kosovo's Serbs, which did not materialise. In this context, the reform and empowerment of local government was perceived as a preferable alternative to full-scale autonomy. While there was reluctance about the drawing of administrative boundaries along ethnic lines, there was also hope that decentralisation could prevent the possible disintegration of post-conflict states while catering to demands for greater self-rule by minorities.

Concerns about territorial autonomy resulted from the international community's experience of BiH's post-war division into two entities (and ten cantons in one of them), reflecting an institutional recognition of the demographic outcomes of a war characterised by large-scale forced displacement and continuing ethnic tensions. The international community was reluctant to institutionalise similar

autonomy arrangements in later conflicts in the region, notably in both Kosovo and Macedonia at the turn of the century, since the ‘fear of secession and homogenization within territorial autonomies through massive human rights violations (i.e. “ethnic cleansing”) [had] taken this approach off the agenda’.<sup>46</sup> Decentralisation was therefore seen as a more viable and normatively acceptable alternative to territorial autonomy, despite there being examples where territorial autonomy had worked, such as South Tyrol, Canada, and Spain.<sup>47</sup> It has been argued that the tendency of both the Rambouillet Agreement and Kosovo’s CFPSG to de-emphasise territorial divisions between ethnic groups reflected the international community’s hope that the de facto enclavisation of Kosovo-Serbs would not become a permanent feature.<sup>48</sup> This represented a departure from previous approaches taken in BiH, where territorial division along ethnic lines had been pursued as part of the peacebuilding effort. Florian Bieber critically points out that ‘the desire to de-emphasise ethnic enclaves also indicates the international community’s perhaps misguided desire to create a multi-ethnic Kosovo’.<sup>49</sup>

However, the anti-minority and anti-UN riots of March 2004 were a stark wake-up call for international actors in Kosovo and an illustration that their project of building a stable, multi-ethnic Kosovo was far from accomplished. The violence drew

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<sup>46</sup> Florian Bieber, *Institutionalizing Ethnicity in the Western Balkans: Managing Change in Deeply Divided Societies*, European Centre for Minority Issues, February 2004, p. 8.

<sup>47</sup> This approach can also be observed in the Ohrid Framework Agreement negotiated in 2001 to end the conflict in Macedonia, which stated that ‘there are no territorial solutions to ethnic issues’ (Article 1.2.), while at the same time proposing the reform of local government and re-drawing of municipal boundaries based primarily on ethnicity, in order e.g. to increase the number of municipalities in which, according to the Agreement, the minority Albanian population would cross the threshold for Albanian to become an official language.

<sup>48</sup> Bieber, ‘The Legal Framework’, p. 117.

<sup>49</sup> *ibid.*, p. 117.

attention to the increasing dissatisfaction and impatience on the part of Kosovo's Albanian population regarding the resolution of the territory's status question. In the wake of the riots, decentralisation gained renewed momentum as a possible tool for ethnic conflict regulation, and the international community became more open to measures that recognised Kosovo's existing territorial divisions and demographic realities. As the international community came under increasing pressure to make a decision regarding final status, talks on decentralisation resumed.<sup>50</sup> The renewed interest in the creation of ethnically based territorial units as part of the decentralisation agenda—as had first been proposed by Michael Steiner in his offer to create a SMU in Mitrovica's Serb-inhabited North—reflects an acceptance of the reality of territorial segregation in Kosovo. This acceptance can be considered in parallel to the shift described in the previous chapter on minority returns policy. There, the tendency of spontaneous returnees to settle in Serb enclaves, rather than in their ethnically mixed or Albanian-dominated places of origin, was gradually accepted by international actors, and eventually a more flexible returns policy was supported by UNMIK and UNHCR.

The comeback of decentralisation as a cure for Kosovo's ethnic conflict can be seen in the UNSC's presidential statement of April 2004, calling for 'new institutional arrangements respectful of the objective of building a democratic and multi-ethnic Kosovo to allow more effective local government through devolution of

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<sup>50</sup> Monteux, 'Decentralisation: The New Delusion', p. 162.

central non-reserved responsibilities to local authorities *and communities* in Kosovo'.<sup>51</sup>

UN Special Envoy Kai Eide, whose reports exemplified the shifts in international thinking on multi-ethnicity following the 2004 riots, also concluded from the riots that a novel approach to the interlinked issues of minority returns and decentralisation was needed. His initial report in November 2004 stated:

The violent events of March have demonstrated the urgent need to give the Serb minority greater authority over local administration in areas with a more concentrated Serb population. A political and institutional framework must be established, aimed at guaranteeing their continued presence in Kosovo.<sup>52</sup>

The steps taken towards further decentralisation in Kosovo following the riots indicate that these recommendations were interpreted as using formal decentralisation to empower communities—in the sense of the word used in Kosovo, i.e. ethnic minority communities—by creating new administrative boundaries in accordance with demographic facts. This was not an understanding of multi-ethnicity that entailed integration between communities or the blurring of divisions. Rather, it indicates a shift towards an understanding of multi-ethnicity that recognises difference, including the administrative recognition of ethnic segregation on the ground. In fact, that recognition in the form of ethnically based decentralisation was increasingly hailed as an important tool to ensure and strengthen Kosovo's multi-ethnicity.

A Working Group on Local Government made up of relevant UNMIK and PISG offices and supported by international experts from the CoE and OSCE was created, which went on to adopt a 'Framework Document on the Reform of Local

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<sup>51</sup> S/PRST/2004/13, Statement by the President of the Security Council, 30 April 2004, italics added.

<sup>52</sup> S/2004/932, November 2004.

Government' in mid 2004.<sup>53</sup> On the issue of territorial boundaries, the document stated that 'the basis for drawing territorial boundaries in rural areas should be clusters of villages with some geographical features, where citizens are connected by common needs and interests, cultural traditions, and language',<sup>54</sup> i.e. ethnic communities. In addition, the Ministry of Local Government Administration (MLGA) was created to complement the existing PISG ministries in 2005,<sup>55</sup> and a strategy for local Government Reform and Decentralisation was adopted in March 2005. This plan recommended further transfer of competencies to municipalities, as well as the creation of a number of new municipal units. These new units, to be created initially as Pilot Municipal Units (PMUs), were based on ethnic criteria and included the creation of Gračanica PMU located ten kilometres from Pristina. This institutionalised one of the largest Kosovo-Serb enclaves in the South, which had seen considerable population growth due to the settlement of many Serb IDPs there. This step affected Kosovo's putative future capital, Pristina, by dividing its original municipal territory and reflected the fact that many Kosovo-Serbs had not returned to their homes of origin in Pristina, but instead to Gračanica. Of the five PMUs, one had a Turkish majority, two a Serb majority, and two an Albanian majority.<sup>56</sup> The stated goal of the proposed reform was to 'contribute to ensuring sustainable government and living conditions ..., offer benefits to all communities, address their needs for security and

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<sup>53</sup> Working Group on Local Government, *Framework for the Reform of Local Self-Government in Kosovo*, July 2004.

<sup>54</sup> *ibid.*, Part V

<sup>55</sup> UNMIK/REG/ 2005/15 Amending UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo.

<sup>56</sup> UNMIK/DIR/2005/11 Administrative Direction Implementing UNMIK Regulation 2000/45 on Self-Government of Municipalities in Kosovo.

protection, and contribute to the integration of all communities into the democratic structures in Kosovo'.<sup>57</sup>

Belgrade, however, rejected this process, and there was little participation in the Serb-majority PMUs.<sup>58</sup> The plan was opposed on the grounds that the central government would still retain too much control over the municipalities, and that the proposed municipal boundaries did not offer a comfortable enough majority for the Kosovo-Serb population. Kosovo-Serbs in the potential new municipal units found themselves with limited room for manoeuvre, 'trapped between "ungenerous offers from Pristina" and Belgrade's insistence on a policy of "categoric non-participation"'.<sup>59</sup> Kosovo-Serb political parties boycotted the Assembly elections of October 2004 in protest of the March riots.<sup>60</sup> The non-Serb PMUs became full municipalities after the stipulated eighteen months test period.<sup>61</sup>

Following the 2004 riots, the Serbian government had proposed its own decentralisation plan as an answer to the precarious situation of Kosovo-Serbs and a solution for Kosovo's status question.<sup>62</sup> This plan indicates a very different understanding of decentralisation, when compared to proposals by the CoE and the PISG/UNMIK Working Group. It called for the establishment of an autonomous Serb region in Kosovo as the only way to ensure the security of Kosovo's Serb community.

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<sup>57</sup> Working Group on Local Government, *Framework for the Reform of Local Self-Government*.

<sup>58</sup> Monteux, 'Decentralisation: The New Delusion', p. 179.

<sup>59</sup> Jeta Xharra, 'Local Government Offer Fails to Enthuse Kosovo-Serbs', *Balkan Crisis Report* 571, August 2005.

<sup>60</sup> Gjoni et al., 'Decentralization as a Conflict Transformation Tool', p. 301.

<sup>61</sup> *ibid.*, p. 298.

<sup>62</sup> Government of Serbia, *A Plan for the Political Solution to the Situation in Kosovo and Metohija*, 29 April 2004, cited in Monteux, 'Decentralisation: The New Delusion'.

This plan foresaw the autonomous Serb region within Kosovo to consist of five districts based on the areas in which Serbs constituted a majority prior to 1999, irrespective of existing administrative boundaries, and included a large degree of autonomy, including a separate judicial system.

The different understandings of decentralisation by various actors become apparent in this context. The international community in Kosovo viewed it as a tool to achieve a stable, multi-ethnic Kosovo, by simultaneously retaining its territorial integrity and providing for minority communities' inclusion into the system. The Kosovo-Serbs, on the other hand, saw it as a means to achieve greater self-rule and maintain strong ties with Serbia, leading possibly to annexation, rather than inclusion into a new quasi-state system. Finally, for most Kosovo-Albanians decentralisation came to be understood pragmatically as the price they had to pay to achieve their main goal of independence.

#### **5.4. Asymmetric Decentralisation in the Ahtisaari Plan: Panacea for Inclusion or Enshrining Ethnic Separation?**

The seminal Eide report of 2005 embraced decentralisation as a key element for resolving Kosovo's troubled inter-ethnic relations. It contained recommendations for both the creation of new units of self-government along ethnic lines, as well as the extensive self-government rights in minority municipalities. The report envisaged a number of advanced rights for minority municipalities, including enhanced competencies in areas such as the police, justice, education, culture, the media and the economy. It also allowed for horizontal links among the Serb-majority municipalities and special ties between them and Belgrade. The report stated that this

will improve the ability of non-Albanian communities in Kosovo to protect their identity and livelihood, build their confidence in the future and encourage them to take a more active part in the governing institutions of Kosovo .... Such a framework could include a number of new municipalities where the Kosovo-Serbs, in particular, would have a comfortable majority.<sup>63</sup>

Despite providing for enhanced competencies in controversial areas such as justice and police, and links between Kosovo-Serb municipalities and Belgrade, the report presents this approach as strengthening both self-government for communities and the central authority in Pristina. It is worth noting that Eide placed this neatly in the regional context, mentioning that a similar approach was taken in Macedonia and Southern Serbia to the benefit of ethnic Albanian minorities there.<sup>64</sup> Along with the suggestion that minority returnees should be assisted also in returning to areas of Kosovo other than their places of origin, Eide's proposal for decentralisation has been described as a tactical victory for Belgrade.<sup>65</sup>

As the Eide Report concluded that the time had come to negotiate Kosovo's final status, decentralisation turned out to be a key and thorny issue taking up over half of the sessions during the fifteen rounds of negotiations in Vienna throughout 2006, which eventually resulted in the Ahtisaari Plan.<sup>66</sup> The negotiations were to commence under a common understanding of the ten guiding principles put forward by the Contact Group, which included the three big 'no's: No partition of Kosovo territory, no return to the pre-1999 situation, and no union of Kosovo with another

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<sup>63</sup> Eide Report, p. 17. The provisions about special ties with Belgrade are similar to the rights granted in the Dayton Accord for BiH's constituent peoples vis-à-vis their kin states, Croatia and Serbia.

<sup>64</sup> *ibid.*, p. 17.

<sup>65</sup> King & Mason, *Peace at any Price*, p. 207.

<sup>66</sup> Monteux, 'Decentralisation: The New Delusion', p. 179; Marc Weller, 'The Vienna Negotiations on the Final Status for Kosovo', *International Affairs*, vol. 84, no. 4, 2008, p. 672.

state or part thereof.<sup>67</sup> Decentralisation was also mentioned as one of those guiding principles for the negotiations, as a process that ‘should facilitate the coexistence of different communities and ensure equitable and improved access to public services’.<sup>68</sup>

The discussions in Vienna chiefly concerned the number and boundaries of municipalities, as well as the extent of their powers of self-governance.<sup>69</sup> At the time of negotiations there were only four municipalities in Kosovo in which the local majority was Kosovo-Serb.<sup>70</sup> The main aim of the Serbian delegation in Vienna in this regard was to redraw municipal boundaries to create more Serb-majority municipalities, and their position throughout the talks was that there should be fourteen such municipalities in Kosovo.<sup>71</sup> Additionally, their vision included a union of these municipalities that would constitute a quasi-federal entity between the municipalities and the central level. Ahtisaari and his team, however, were wary of such an approach, drawing on lessons from the creation of two entities for BiH in the Dayton Accord. Ahtisaari considered this a solution that had looked good on paper but was unworkable in practice. The mediators’ priority was therefore to focus on an outcome that would be functional, while at the same time taking into account the level of decentralisation that was already a reality on the ground.<sup>72</sup> Simultaneously, the Kosovar delegation’s chief concern was with the outcome of the status question, where their aim was full independence, for which they were willing to compromise on

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<sup>67</sup> Perritt, *Road to Independence*.

<sup>68</sup> Contact Group Guiding Principles, Principle 4.

<sup>69</sup> Weller, ‘Vienna Negotiations’, p. 671.

<sup>70</sup> Perritt, *Road to Independence*, p. 146.

<sup>71</sup> *ibid.*, p. 147.

<sup>72</sup> *ibid.*, p. 125.

many issues. However, the delegation was initially strongly opposed to the idea of asymmetric decentralisation, i.e. Serb-majority municipalities receiving more far-reaching powers than others, and had to be ‘pushed hard’ to modify this initial opposition.<sup>73</sup>

During the negotiations, Serbia favoured territorial approaches to Kosovo’s multi-ethnicity over legal or institutional ones, and thus decentralisation was one of the areas where the Serb delegation took the most active role.<sup>74</sup> The Serbian negotiating team demanded 15 new Serb-inhabited municipalities, some of which would have had only several hundred inhabitants.<sup>75</sup> It was further proposed that Kosovo-Serb IDPs would ‘return’ to these new areas, rather than to their places of origin. The Pristina delegation suggested the establishment of three new Serb-majority municipalities, an offer that was later extended to five under ‘intense international pressure’.<sup>76</sup> The Kosovo delegation also resisted the proposal for municipalities to be granted the right to form collective units or regions, fearing the division of its territory. On this and on the issue of Serb-majority municipalities’ relationship with Serbia-proper, the concerns of the Kosovo delegation were mostly overruled in the final document.<sup>77</sup>

The Ahtisaari Plan, finally presented in March 2007 after 14 months of negotiations, which provided for Kosovo’s supervised independence and foresaw the creation of five new as well as the enlargement of one existing Serb-majority

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<sup>73</sup> Perritt, *Road to Independence*, p. 125.

<sup>74</sup> Weller, ‘Vienna Negotiations’.

<sup>75</sup> *ibid.*, p. 671.

<sup>76</sup> *ibid.*, p. 671.

<sup>77</sup> Marc Weller, ‘Kosovo’s Final Status’, *International Affairs*, vol. 84, no. 6, 2008, p. 1223–43.

municipality.<sup>78</sup> In total, eight new municipalities were created under the plan, including two new Albanian-majority and one Turkish-majority municipality.

The Plan outlined municipalities' own competencies and competencies delegated from the central level.<sup>79</sup> Additionally, the proposal foresaw an element of asymmetrical decentralisation in 'extended own municipal competencies' for only certain municipalities.<sup>80</sup> All Serb-majority municipalities were granted enhanced competencies in the areas of cultural affairs, and participatory rights in the appointment of police station commanders. Furthermore, the Serb-majority municipalities of Gracanica, Strpce and Mitrovica North were granted competence for secondary health care while Mitrovica North was given additional authority over higher education, thus potentially bringing the Serbian-run university in North Mitrovica into the Kosovo state system. Serb-majority municipalities were also explicitly granted the right to cooperate with each other in the provision of services when exercising their extended own competencies.<sup>81</sup> Additionally, all legislation concerning competencies and boundaries of municipalities were considered in the Ahtisaari Plan issues of 'vital interest', which cannot be changed without a special legislative procedure including a majority of non-Albanian deputies.<sup>82</sup>

Furthermore, municipalities were entitled to cooperate within areas of their own competencies among themselves as well as with institutions of the Republic of

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<sup>78</sup> Ahtisaari Plan, Attachment to Annex III.

<sup>79</sup> *ibid.*, Annex III, Articles 3&5

<sup>80</sup> *ibid.*, Article 4

<sup>81</sup> *ibid.*, Article 4.3

<sup>82</sup> Constitution of the Republic of Kosovo, 2008, Article 81. See also Lars Burema, 'Decentralisation in Kosovo: Creating a Multi-Ethnic State or Furthering Ethnic Isolation', in Bartlett et al., *Decentralization and Local Development*, p. 104.

Serbia, which was allowed to provide financial assistance. However, such coordination and financial assistance had to be notified to and authorised by Kosovo's Ministry of Local Government Administration (MLGA).<sup>83</sup> These provisions were quite controversial for the Kosovo delegation, which feared that inter-municipal cooperation could turn into an intervening layer of government between municipalities and central authorities.<sup>84</sup> However, international mediators pointed to the fact that this was in line with the CoE's 'European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities' of 1980. Other minority municipalities, such as the Turkish-majority Mamusha, did not receive any enhanced competencies.

Finally, the Ahtisaari Plan provided for the potential establishment of new municipalities. In settlements of 5,000 inhabitants or above that are made up of at least 75% non-majority community members, the state was encouraged to 'engage in consultations [with that community], with a view to establishing other new municipalities.'<sup>85</sup> Since Kosovo's independence, the Bosniak community has advocated for the creation of their own municipality in Kosovo's South.<sup>86</sup> However, these attempts remained low on the international agenda in Kosovo, since the decentralisation process was chiefly designed with the Kosovo-Serbs in mind.<sup>87</sup> The reasons raised against the creation of new municipalities in the post-independence

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<sup>83</sup> *ibid.*, Article 10

<sup>84</sup> Perritt, *Road to Independence*, p. 148.

<sup>85</sup> Ahtisaari Plan, Annex III, Article 12.4. The same wording is used in Kosovo Law No. 03/L-041 on Administrative Municipal Boundaries, Article 12.

<sup>86</sup> Project manager, ECMI Kosovo, skype interview, May 2009; Gëzim Krasniqi, 'Equal Citizens, Uneven Communities: Differentiated and Hierarchical Citizenship in Kosovo', *Ethnopolitics*, vol. 14, no. 2, 2015, p. 209.

<sup>87</sup> Former senior ICO official, skype interview, September 2014.

period are presented as pragmatic ones, to do with feasibility, size, capacity, and economic prospects, given that the Ahtisaari plan had already ‘imposed on Kosovo ... an excessive degree of decentralisation that now exacts a heavy toll on scarce administrative capacity.’<sup>88</sup> However, international supporters of the decentralisation outlined in the Ahtisaari Plan concede that many of those municipalities, particularly the Kosovo-Serb ones, were and continue to be equally small, lacking in capacity and ill-suited for local self-government, and that it is mostly their specific ethnic make-up that warrants their status as a municipality.<sup>89</sup>

### **Controversies around Decentralisation**

As with reference to earlier proposals for decentralisation, the policies contained in the Ahtisaari Plan remained controversial among both the Albanian and Serbian public in Kosovo. In the context of the Vienna negotiations, the concessions made to majority-Serb municipalities in Kosovo were ‘seen by Kosovo-Serbs as a bribe to buy acceptance of independence, while Kosovo-Albanians question[ed] their leaders’ continued policy of asymmetric decentralization’.<sup>90</sup> The international mediators, however, ‘considered decentralization key to ending the stalemate and ensuring a sustainable multi-ethnic co-existence’.<sup>91</sup>

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<sup>88</sup> Capussela, *State-Building in Kosovo*, p. 177.

<sup>89</sup> Former senior ICO official, skype interview, September 2014. Excluding North Mitrovica, all Serb-majority municipalities have an estimated population of between 5,000 to 10,000 citizens, with only Gracanica at 18,000. Their levels of ethnic homogeneity vary from 72% to 99%. Data from Burema, ‘Decentralisation in Kosovo’, p. 103.

<sup>90</sup> Gjoni et al., ‘Decentralization as a Conflict Transformation Tool’, p. 291.

<sup>91</sup> *ibid.*, p. 302.

Because the idea of multi-ethnicity through decentralisation raised suspicion, especially among Kosovo-Albanians, the term ‘decentralisation’ acquired a negative connotation in Kosovo.<sup>92</sup> For example, a survey conducted in 2006 showed very low support for ‘decentralisation’ among Kosovo-Albanians, and significantly higher support among Kosovo-Serbs.<sup>93</sup> However, when asked whether ‘local authorities should be entitled to as many responsibilities as possible, so that citizen needs can be addressed by those who understand those needs best’, there was much broader support also among Kosovo-Albanian respondents.<sup>94</sup> This suggests that there is something about the word decentralisation that is perceived negatively by Kosovo-Albanians, most likely resulting from the above-mentioned fears of Serb autonomy and eventual secession or partition of Kosovo.

According to a public opinion survey conducted in April 2008 on the reform of local government in Kosovo, 76% of the Kosovo population supported decentralisation in their municipality, but only 51% supported the creation of new municipalities.<sup>95</sup> The contention thus relates to the creation of new municipalities, the aspect of decentralisation that institutionalises ethno-demographic realities, since the criteria for re-drawing municipal boundaries in Kosovo has been ethnicity. However, these numbers do not reveal whether this is evidence of a principled opposition to the drawing of borders along ethnic lines, or a more specific opposition to minorities,

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<sup>92</sup> Monteux, ‘Decentralisation: The New Delusion’, p.178; Interviews with various civil society representatives in Pristina, September 2010.

<sup>93</sup> At this stage the idea of creating new, Serb-majority municipalities had become accepted, which made decentralisation more appealing to most Serbs.

<sup>94</sup> Reported in Kosovo Institute for Policy Research and Development (KIPRED), *Ethnic Centralisation and the Perils of Confusing Solutions*, January 2007.

<sup>95</sup> UNDP Kosovo, *Strategic Pulse Research Kosova, Reform of Local Government: Opinion Survey*, April 2008.

particularly Kosovo-Serbs, being granted self-government rights in an independent Kosovo. Bieber describes domestic criticisms of the various forms of institutionalisation of ethnicity in post-conflict states, including in BiH and Macedonia, and how civic discourses have emerged in those countries that critique the way ethnic quotas and minority rights have been co-opted by ethno-nationalist elites. These civic critiques argue that these measures have further entrenched divisions, rather than contributing to inter-ethnic peace. However, he points out that due to the severity of the inter-ethnic segregation and divisions in Kosovo, such a civic-liberal critique has not emerged there.<sup>96</sup> This is confirmed by interviews with local political and civil society actors in Pristina who opposed decentralisation, some of whom seem to pay lip service to a civic critique of ethnic decentralisation, which, however, appears to be driven by mistrust about Serbia's intentions in Kosovo. The most prominent domestic critique of the decentralisation process in Kosovo came from the opposition movement *Lëvizja Vetëvendosje*, which was behind a 2007 graffiti campaign that covered public spaces in Kosovo with the statement: 'decentralisation = partition = war'.<sup>97</sup>

Decentralisation was often seen as a foreign-imposed policy, and it drew more attention for the creation of Serb-majority municipalities, around which the controversies centred, rather than the benefits that all of Kosovo's population could gain from the process. This frustrated the international officials in the field, who spent time and efforts 'discussing and explaining and advocating what the Ahtisaari

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<sup>96</sup> Florian Bieber, *Institutionalizing Ethnicity in the Western Balkans*, p. 11.

<sup>97</sup> Jens Narten, 'Dilemma of Promoting "Local Ownership": The Case of Postwar Kosovo', in Roland Paris & Thomas D. Sisk, eds., *The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations*, (London; New York: Routledge, 2009), p. 275.

package was all about. Because everybody knew what Ahtisaari was all about, everybody critiqued it, but nobody had ever read it. So there were a lot of conspiracies and assumptions'.<sup>98</sup>

The negative attitudes to decentralisation only changed at the level of the Kosovo-Albanian political elite when decentralisation was linked directly to independence. On the Kosovo-Serb side, views seem to have shifted to some degree in the municipalities in the South, where a level of pragmatism about the territory's unlikely return to Serbian sovereignty led to increased participation in local politics, particularly since the 2009 local elections.<sup>99</sup> In the North, however, the decentralisation process foreseen in the Ahtisaari Plan was never implemented.<sup>100</sup>

### **Internationally Driven Implementation**

The provisions contained in the Ahtissari Plan were directly incorporated into Kosovo's Constitution and laws, and it was also constitutionally enshrined that in the case of inconsistencies between those and the Ahtisaari Plan, the latter would prevail.<sup>101</sup> The post-independence decentralisation process thus followed the Ahtisaari Plan described above, and the ICO was mandated to ensure its implementation by the Kosovo government. The most important laws resulting from the Plan were passed by the Assembly of Kosovo within the first ten months following independence,

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<sup>98</sup> Former senior ICO official, skype interview, September 2014.

<sup>99</sup> European Centre for Minority Issues (ECMI), Kosovo Special Report: Community Political Parties and Government Formation, February 2011.

<sup>100</sup> It remains to be seen to what extent the 2013 *First Agreement of Principles Governing the Normalization of Relations* between Kosovo and Serbia will be implemented on the ground in North Kosovo.

<sup>101</sup> Kosovo Constitution, Chapter XIII, Article 143.3.

including those on decentralisation, the rights of minorities, and religious and cultural heritage. These laws were drafted under guidance of the ICO and often took the wording directly from Ahtisaari Plan. International actors, including the EU and bilateral donor states, played a key role in the implementation of the decentralisation process and the establishment of new municipalities, both through financial support and pressure exerted on the Kosovo government.

In its own Lessons-Learned Report, written following the end of supervised independence and the dissolution of the organisation, the ICO described decentralisation and the protection of religious and cultural heritage as ‘the core tasks’ of the Ahtisaari Plan,<sup>102</sup> and as a ‘critical process’.<sup>103</sup> It also acknowledged that the decentralisation effort was ‘largely led and coordinated by the ICO’.<sup>104</sup> In practical terms, the ICO created municipal preparatory teams, recruited staff and created the first official structures in the new municipalities. This was not only a technically challenging undertaking, since some of these municipalities were small, rural, and lacked infrastructure and skilled staff; it was also politically very sensitive. The ICO invested significantly in outreach to the local communities and had to recruit the staff carefully to balance political expediency, technical skills, and transparency.<sup>105</sup>

The new municipalities were set up following Kosovo’s November 2009 local elections. The process was generally considered an international success story, with the exception of the North of Kosovo, where the local Serb majority widely refused to

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<sup>102</sup> International Civilian Office (ICO), *State Building and Exit: The International Civilian Office and Kosovo’s Supervised Independence 2008-2012*, December 2012, p. 15.

<sup>103</sup> *ibid.*, p. 19.

<sup>104</sup> *ibid.*, p. 32.

<sup>105</sup> Former senior ICO official, skype interview, September 2014.

participate in elections, and where the existing municipal structures, financed from Belgrade, could not be brought under the control of the Pristina government.<sup>106</sup> Nevertheless, apart from the North, many Kosovo-Serbs in the rest of Kosovo seemed to have drawn the conclusion that participation in the newly created municipal structures benefitted them, and despite calls for a boycott from Belgrade, the Kosovo-Serb turnout was ten times higher in the 2009 local elections organised by the independent Kosovo institutions than in the November 2007 local elections organised by UNMIK.<sup>107</sup> The ICO's final report in 2012 acknowledged that the organisation 'closed before some of its most important achievements (in particular functioning municipalities with minority community representation and protection) could be deemed irreversible. It did not achieve one of the single most substantial and important aspirations—a new municipality of Mitrovicë/Mitrovica North'.<sup>108</sup>

Many analysts have argued that decentralisation lacks legitimacy in the eyes of the Serbs in Northern Kosovo because it was linked to Kosovo's status as an independent state.<sup>109</sup> When differentiating between decentralisation as an internal reform (as discussed between 1999 and 2005), and decentralisation during the final status talks (from 2005 to 2007), Gjoni et al. find that attitudes about the willingness of Kosovo-Serbs to work with Kosovo-Albanians dropped drastically after the Ahtisaari plan was revealed and decentralisation was tied to independence. As long as the status of Kosovo remained unclear, the proposals of asymmetric decentralisation

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<sup>106</sup> International Crisis Group (ICG), *North Kosovo – Dual Sovereignty*, March 2011.

<sup>107</sup> Kosovo Institute for Policy Research and Development (KIPRED), *Decentralization in Kosovo I: Municipal Elections and the Serb Participation*, December 2009.

<sup>108</sup> ICO, *State Building and Exit*, p. 140.

<sup>109</sup> Gjoni et al., 'Decentralization as a Conflict Transformation Tool', p. 292.

had improved attitudes about the willingness of Kosovo-Serbs to cooperate with their Kosovo-Albanian counterparts.<sup>110</sup>

Other observers have criticised the decentralisation process for failing to address the issues underlying governance problems in Kosovo, including the lack of accountability at the local level.<sup>111</sup> Many also consider the degree of decentralisation excessive, given Kosovo's small size and limited financial and human resources, describing decentralisation as a 'symbolic but marginal issue ... , which generated a stream of good laws that produced either negligible or damaging effects'.<sup>112</sup> As one interviewee stated,

some of [the new municipalities] are so small. The bureaucratic and administrative costs have to be significant for a place like Ranillug, which is just tiny .... And creating another small municipality that a few thousand people would live in, does that make sense? I don't know. To me it doesn't.<sup>113</sup>

### **5.5. Notions of Multi-Ethnicity**

This chapter has examined international policymaking on decentralisation in Kosovo between 1999 and 2012. The policy and discourses around it are understood here as manifestations of the international normative commitments to multi-ethnicity that this thesis seeks to explain. The chapter shows how commitments to multi-ethnicity were negotiated through the policies related to territorial organisation within Kosovo and crucially through the question of whether, to what extent, and in which

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<sup>110</sup> *ibid.*, p.303. These findings are based on UNDP Kosovo Early Warning Surveys.

<sup>111</sup> Schultze-Kraft & Morina, 'Decentralisation and Accountability'; Capussela, *State-Building in Kosovo*.

<sup>112</sup> Capussela, *State-Building in Kosovo*, p. 177.

<sup>113</sup> International NGO staff working in the field of returns, interview, September 2014, Pristina.

context to draw administrative boundaries along the lines of the demographic distribution of ethnic groups. The processes and developments described here are thus closely linked to the previous chapter on minority returns, where the spatial distribution of returnees was also salient in putting international commitments to multi-ethnicity into practice.

While initially committed to a notion of multi-ethnicity that was wary of recognising separation and sought ways to integrate ethnic groups, the international organisations on the ground and the mediators of Kosovo's status gradually veered towards a more recognition-based understanding of multi-ethnicity in offering Kosovo's Serbs and other minorities own administrative units for self-government, while remaining aware of their potentially destabilising and conflict-reinforcing effects.

Similarly to the examination in the previous chapter on minority returns, in relation to decentralisation one also finds that commitments to multi-ethnicity were consistently strong among international actors in Kosovo, however, these commitments often lacked specification and were not without tensions. The potential institutional recognition of the increased enclavisation of Kosovo's minorities in the post-conflict decade remained controversial throughout the period, and while it was framed as central to the pursuit of multi-ethnicity, it was also recognised as potentially in conflict with that goal. The lack of specification of the multi-ethnic vision, however, also allowed for more flexibility in adapting international policymaking to developments on the ground in Kosovo.

The interviews with policymakers in this field indicate unease among most interviewees regarding the territorial segregation between ethnic groups in Kosovo during the post-war period. Thus, contrary to a minimalist understanding of multi-

ethnicity, this indicates a more substantive notion of the concept. The segregation in daily life between Kosovo's Serb and Albanian populations, even those living in very close proximity from one another between Pristina and Gracanica was disturbing to many interviewees. In post-war Kosovo, the separation of its Albanians and Serbs was so stark that personal contacts were often limited to select spaces such as the offices of international organisations.<sup>114</sup> However, the role decentralisation plays in this is a question of judgment, when asked about decentralisation and its effects on inter-ethnic relations, one interviewee noted: 'It is working. Was it the best idea? No, because it enforced that division along ethnic lines. In a way it cemented this division. Gracanica is a different world from Pristina. If Gracanica was part of Pristina municipality, a lot of Serbs would have to come to Pristina'.<sup>115</sup>

However, a state can also be understood to be embracing its multi-ethnicity by recognising claims to self-government and drawing administrative boundaries along ethnic lines. This is certainly how many international policymakers conceptualised multi-ethnicity in Kosovo in relation to decentralisation. The most prominent argument *against* this conceptualisation of multi-ethnicity concerns the separation such recognition implies. Countering this, proponents who view the decentralisation process as a tool for fostering multi-ethnicity argue that 'it is not decentralisation that has split [Albanians and Serbs], they were already split. That was done by the war, not by decentralisation. But decentralisation makes integration and communication

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<sup>114</sup> Orli Fridman, 'Unstructured Daily Encounters: Serbs in Kosovo after the 2008 Declaration of Independence', *Contemporary Southeastern Europe*, vol. 2, no. 1, 2015, pp. 173–90.

<sup>115</sup> Former local staff of ICG, UNMIK, and ICO, interview, September 2014, Pristina.

possible'.<sup>116</sup> Decentralisation, in this view, allowed minorities to take part in state structures by giving them a local majority and some self-government. As one former UNMIK official said in relation to SRSG Steiner's initial proposals for creating a Serb-majority SMU in Northern Mitrovica:

We couldn't see any other way forward, we couldn't see how a municipality with such an Albanian majority that Serbs could never do well in elections and could never have any sense of being able to control any of the issues for themselves, how that could function.<sup>117</sup>

The concepts of inclusion and participation were key to many interviewees' understandings of multi-ethnicity. Both decentralisation and special representation rights, examined in the subsequent chapter, can be understood as tools for the inclusion and participation of Kosovo's minority communities. Decentralisation is understood by the majority of interviewees as a reassurance for minorities, and it is also in this context that the proposed solutions for Mitrovica were framed: 'the idea was that the only way to create any reassurances for the Serbian community would be to acknowledge a separate Northern Mitrovica municipality ..., upholding the right to return, but giving the Serbs a majority in the North'.<sup>118</sup>

Many interviewees mentioned the tension inherent in the framing of administrative separation with the aim of political inclusion, while the idea of necessary assurances following the history of conflict in Kosovo was also salient:

Creating municipalities along ethnic lines in principle is no good for inter-ethnic reconciliation. But having in mind the hostility between the two communities, it's always good to raise the confidence of the community ... by

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<sup>116</sup> Kosovo Minister of Local Government Administration, interview, September 2010, Pristina.

<sup>117</sup> Former strategy advisor to UNMIK SRSG, interview, January 2011, Oxford.

<sup>118</sup> *ibid.*

devolving powers locally and having these powers allocated along ethnic lines, initially.<sup>119</sup>

The idea that this ethnic self-governance should not last forever indicates certain apprehension about the idea of recognising ethnic separation and endorsing enclavisation, which indicates that more integrationist notions of multi-ethnicity were prevalent. Many interviewees expressed their hope that in the future the boundaries created in the decentralisation process would become increasingly less relevant, and inter-municipal cooperation would with time lead to ethnic integration.<sup>120</sup>

The idea of linking decentralisation closely to minority empowerment through the creation of new municipalities was also strongly opposed by organisations such as Minority Rights Group International, which claimed it amounted to endorsing segregation.<sup>121</sup> Support for the policy was often framed in pragmatic or *realpolitik* terms, but an underlying sense that there was a normative inappropriateness remained:

When I read [the Ahtisaari Plan] for the first time I was alarmed. I thought, there are functioning multi-ethnic municipalities ... now they will be torn apart and ethnic borders will be created .... However, it is a concession to the realities on the ground, according to the textbook it is disturbing at first sight, but on second thought it is a pragmatic path that can lead to a more or less reasonable future.<sup>122</sup>

The same interviewee explicitly called the creation of ethnically based municipalities a ‘lesser evil’ in light of the facts on the ground:

The segregation of society is a reality. That Serbs don’t live in Pristina anymore but outside, in Gracanica, it’s just the way it is. It’s probably the

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<sup>119</sup> Research Director, Kosovo think tank, interview, September 2010, Pristina.

<sup>120</sup> Former senior ICO official, skype interview, September 2014.

<sup>121</sup> Clive Baldwin, *Minority Rights in Kosovo under International Rule*, Minority Rights Group International (MRG), 2006.

<sup>122</sup> Former Head of Community Affairs, ICO, interview, April 2015, Berne.

lesser evil to say, ok, we'll create a separate municipality, then they'll have their own mayor, own schools, because this reflects reality.<sup>123</sup>

At a similarly pragmatic level, there is also the view of multi-ethnicity as a price to be paid for independence. This corresponds to the local, Kosovo-Albanian view on policies promoting multi-ethnicity:

There was always a general understanding and acceptance that whatever the Ahtisaari Plan brings we have to accept. Because it was served to this people in that way, as a compromise we have to make in exchange for the statehood we are gaining. This is why no one could actually challenge decentralisation.<sup>124</sup>

On the Kosovo-Serb side, the promise of real self-government, with devolved powers and budgets, as well as employment opportunities in newly created municipal administrations, was mentioned as the biggest 'carrot' in convincing Kosovo-Serbs to join Kosovo's state institutions: 'I think decentralisation was decisive with respect to giving the Serbs their part of the cake, decision-making powers, and a seat in the administration .... It was a game-changer'.<sup>125</sup>

## **5.6. Conclusion**

This chapter examined international policymaking on decentralisation in Kosovo between 1999 and 2012. During this period, decentralisation formed a key part of the international pursuit of a multi-ethnic Kosovo. Approaches to decentralisation evolved over time from attempts to de-emphasise territorial divisions

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<sup>123</sup> Former Head of Community Affairs, ICO, interview, April 2015, Berne.

<sup>124</sup> Kosovar civil society activist, interview, September 2010, Pristina.

<sup>125</sup> Former Head of Community Affairs, ICO, interview, April 2015, Berne.

between ethnic groups, to policies that could be described as entailing a ‘politics of recognition’ and a growing acceptance of ethnic segregation in Kosovo.

International thinking throughout the period saw a dual function in decentralisation in Kosovo. On the one hand, it represented an opportunity for self-government for Kosovo’s Serbs, on the other, it was hoped that this would facilitate their inclusion into Kosovo’s official structures. Underlying the former was an assumption that, given the realities on the ground, Kosovo-Serbs would have to be allowed to govern themselves. The latter was based on the strong commitment to creating a multi-ethnic reality in Kosovo. There was some unease among the international community about the drawing of boundaries along ethnic lines, indicating the prevalence of an integrationist notion of multi-ethnicity. However, after initial attempts in the form of SMUs failed, the idea gained traction as a tool to ensure the inclusion of Serbs in Kosovo’s nascent state structures through the creation of new municipalities ensuring local majorities for Kosovo-Serbs, combined with asymmetrical decentralisation for Serb-majority municipalities.

The chapter illustrates the ways in which international normative commitments to multi-ethnicity were transformed by developments on the ground in Kosovo. International actors considered decentralisation a vital tool for creating a multi-ethnic post-conflict Kosovo, however, in this as in other spheres this was a complex policy endeavour characterised by conceptual and empirical tensions and inconsistencies. While integration and a re-orientation away from ethnic identities, politics, and interests was advocated on the one hand, many policies also identified the group-based aims and interests of Kosovo’s ethnic groups and did not deny them political realisation.



## **VI. Minority Rights: Entrenching or Blurring Divisions?**

This chapter discusses the international promotion of multi-ethnicity in the policy area of minority rights, the third manifestation of international normative commitments to multi-ethnicity in post-conflict Kosovo that I examine. The discussion in this chapter thus completes the second section of the thesis, which constitutes its empirical core examining international policymaking in post-conflict Kosovo between 1999 and 2012. The final section, which follows below, completes the critical examination of these commitments, drawing on insights from the empirical discussions in Section Two.

In this chapter, Will Kymlicka's three forms of group-differentiated rights are employed as a framework for the discussion. These forms are: self-government rights, poly-ethnic rights, and special representation rights.<sup>1</sup> These are rights that can be added to the protection of individual rights in order to accommodate a multi-ethnic population. I examined the first form of Kymlicka's three group-differentiated rights, that of self-government, in the preceding chapter on decentralisation in relation to the forms of territorial autonomy that were used in Kosovo to empower and protect minorities. The latter two forms are examined in this chapter and are jointly referred to as minority rights.

Poly-ethnic rights, according to Kymlicka, are meant to enable minority citizens to take equal part in public life by treating them differently in the name of equality. Realising these rights may involve the state supporting cultural practices of a minority or exemptions from generally applicable laws and regulations that

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<sup>1</sup> Kymlicka, *Multicultural Citizenship*, p. 27.

disadvantage specific groups.<sup>2</sup> In Kymlicka's view, poly-ethnic rights, 'unlike self government rights, are usually intended to promote integration into the larger society, not self government'.<sup>3</sup> As this chapter shows, however, it is not at all evident that poly-ethnic rights have this desired effect. Indeed, the policies related to language, education, and cultural rights implemented in Kosovo have been intensely controversial for their potential to contribute to the segregation of minorities within society.

Kymlicka's third form, special representation rights, include provisions that ensure the representation of certain groups in official bodies, including in the legislature, executive, and judiciary. These are defended in the name of both inclusion and integration, as well as an insurance for minorities against the 'tyranny of the majority'. In Kosovo, in particular, these were seen as a way to entice particularly the Kosovo-Serb minority to participate in the political structures of post-conflict Kosovo both before and after the declaration of independence. These policies, too, have been contentious: in an attempt to manage difference, they might in fact enshrine it into the political system to a damaging degree.

The chapter examines, first, the special representation rights for minorities, and, second, poly-ethnic rights for minorities in Kosovo during the period between 1999 and 2012. In my discussion of poly-ethnic rights, I focus on the aspect of language and culture. Following this empirical discussion of minority rights, the

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<sup>2</sup> *ibid.*, p. 31.

<sup>3</sup> *ibid.*, p. 31.

final part of the chapter identifies the various notions of multi-ethnicity held by international actors and how these were negotiated in their policymaking.

This chapter examines the minority rights provisions contained in various institutional designs proposed or implemented in Kosovo. These are understood as manifestations of the international normative commitments to multi-ethnicity. As in the previous chapters in this section, the examination of policymaking leads to the identification of a number of notions of multi-ethnicity held by international actors, which are examined at the end of the chapter. Normative commitments to multi-ethnicity exhibited different understandings of the concept, from integrationist to separation-based ones, and with various levels of recognition accorded to minorities.

The issues raised by minority rights in this chapter are at the heart of the bigger question of what it might mean to be a multi-ethnic state, and relate back to the normative developments discussed in Section One, which led to minority rights becoming a legitimate concern of international organisations in the 1990s. International support for these policies can be understood through the lenses of both the logic of appropriateness and the logic of consequences. Regarding the former, the intervention and state-building project in Kosovo took place in a normative environment that favoured the recognition of diversity in the form of minority rights. Regarding the latter, the emphasis on minority rights on the part of international organisations can also be understood in light of international attempts to resolve Kosovo's outstanding status issue by creating a stable political structure recognised by all groups within the state. Both the logic of appropriateness and the logic of consequences were thus operating.

On the ground, the minority rights policies were confronted with Kosovo's unique reality: a significant boycott by the Kosovo-Serbs; the role played by Serbia in fostering parallel institutions; limited focus on Kosovo's non-Serb minorities; problems of resources, capacity, and weak governance; and a political reality of having emerged from a recent conflict in which the commitment of the majority Kosovo-Albanians to these rights was far from evident.

The minority rights enshrined in the various documents discussed in this chapter can best be described as a combination of civic and group-based arrangements. The tension between the liberal-individualist and the communitarian-collectivist approaches to diversity, discussed in the literature reviewed in the Introduction, are thus evident in the institutional design of post-war Kosovo. This has been described as an 'ambivalent formula'<sup>4</sup> that melts together 'elements of multiculturalism and civic republicanism',<sup>5</sup> leading to a mismatch between the "liberal" state ideal and its practice of "group differentiation".<sup>6</sup>

### **6.1. Minority Rights for whom? 'Community Rights' in the Kosovo Context**

While the Serbian minority in Kosovo has always been the largest and politically most relevant minority group, there are a number of other communities who benefit from the group-differentiated rights discussed in this chapter. Most official documents, including the Ahtisaari Plan and the Kosovo Constitution,

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<sup>4</sup> Pol, Bargués-Pedreny, 'From Promoting to de-Emphasizing 'Ethnicity': Rethinking the Endless Supervision of Kosovo', *Journal of Intervention and Statebuilding*, vol. 10, no. 2, 2016, p. 228.

<sup>5</sup> Krasniqi, 'Equal Citizens, Uneven Communities', p. 202.

<sup>6</sup> *ibid.*, p. 198.

speak of the Albanian, Serbian, Roma, Ashkali, Egyptian, Turkish, Bosnian, and Gorani communities. The term ‘communities’, rather than minorities, is a custom carried over from earlier international proposals to resolving the Kosovo conflict, which sought to avoid prejudging Kosovo’s future status by defining which group would be in the minority: Albanians within an undivided Serbia, or Serbs within an independent Kosovo.<sup>7</sup> In this context the term ‘community rights’ has also been referred to as ‘a euphemism for minority rights’,<sup>8</sup> because of the negative connotation that term carried for Kosovo-Serbs. In this chapter the terms are used interchangeably.

As shown below, while in many parts of Kosovo’s minority rights system these communities are formally equal, and many of the community rights also apply to Kosovo-Albanians in places where they are the local minority, in practice, there is a stark difference between the various minority groups in Kosovo. The international community generally focused much more of its attention on the Kosovo-Serbs than on other groups throughout the period under investigation. Kosovo has therefore been described as exhibiting a hierarchical citizenship arrangement, whereby ‘some communities are more equal than others’.<sup>9</sup> Analysing both the legal and socio-political situation, Gëzim Krasniqi distinguishes between the core dominant and core non-dominant communities (Albanians and Serbs

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<sup>7</sup> Bieber, ‘The Legal Framework’, p. 117.

<sup>8</sup> Perritt, *Road to Independence*, p. 155.

<sup>9</sup> Krasniqi, ‘Equal Citizens, Uneven Communities’, p. 203.

respectively), as opposed to the semi-peripheral and peripheral communities (Kosovo's other minority groups).<sup>10</sup>

All the above-mentioned proposals for resolving Kosovo's conflict, including the Ahtisaari Plan and Kosovo's Constitution grant a range of special minority rights.<sup>11</sup> In some cases these collective rights are subject to a group's size, such as in the Hill Proposal, where the threshold is set at constituting five per cent of the population. The Ahtisaari Plan defines those who are granted additional rights more broadly as 'inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of Kosovo',<sup>12</sup> and speaks of the special representation rights for 'Communities that are not in the majority in Kosovo'.<sup>13</sup> Kosovo's Law on the Protection and Promotion of the Rights of Communities and their Members also defines its remit in relation to communities not in the majority in Kosovo, but includes in this definition those members of the majority 'who are not in the majority in a given municipality'.<sup>14</sup> Additionally, the problem of defining membership of these communities is solved by enshrining the free choice to be treated or not to be treated as a member of a

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<sup>10</sup> Krasniqi classifies the remaining communities as follows—Turks: semi-peripheral community, Gorani and Bosniak: elusive peripheral communities, Montenegrins and Croats: unrecognised communities, and RAE: invisible communities. See Krasniqi, 'Equal Citizens, Uneven Communities', p. 203.

<sup>11</sup> Unless otherwise stated, the rights granted in the Ahtisaari Plan were incorporated into Kosovo's Constitution and laws.

<sup>12</sup> Ahtisaari Plan, Annex II, Article 1.1.

<sup>13</sup> *ibid.*, Annex I, Article 3.

<sup>14</sup> Kosovo Law No.03/L-047 on the Protection and Promotion of the Rights of Communities and their Members, Article 1.4. (Law on Communities). This is relevant since the ethnic cleansing patterns in Kosovo was a two-way process. While many Serbs were displaced from majority-Albanian areas, Albanians were also displaced from Serb-dominated areas, and in Northern Kosovo, 'the purging of Albanians had become a systematic state policy, driven by Serbia proper' (King & Mason, *Peace at any Price*, p. 208). These rights were thus designed to apply also to Albanians in the case of their return to Kosovo's Northern, Serb-majority municipalities.

community, as well as the principle that ‘no disadvantage shall result from that choice or from the exercise of the rights connected to that choice’,<sup>15</sup> although that is an aspirational rather than empirical statement.

In line with the overall policy of building a multi-ethnic Kosovo, it was UNMIK’s aim from the beginning to make the new institutions multi-ethnic and bilingual. However, as a result of widespread Serb refusal to participate in this process, threats from Belgrade against Kosovo-Serbs working for the UN, and the security situation in post-war Kosovo, the institutions created by the international community in the immediate post-war period were, ironically, some of the most ethnically homogeneous Kosovo had ever seen.<sup>16</sup> While the following elaboration illustrates how numerous legal and institutional mechanisms were set up for the protection of minority rights in Kosovo, most of these mechanisms lagged behind in implementation, which often had to be ensured through international pressure.<sup>17</sup>

Many of these standards were elaborated on during negotiations between international mediators and delegations representing Kosovo and Serbia. Additionally, during the 2006 status talks Kosovo’s minorities were consulted through the so-called Consultative Council for Communities (CCC), a body made up of representatives of Kosovo’s minority communities, established as part of the

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<sup>15</sup> This principle is taken from the Framework Convention for the Protection of National Minorities (FCNM), Article 3.1.

<sup>16</sup> King & Mason, *Peace at any Price*, p. 70. A stark exception to this is the Kosovo Police Service (KPS), which has been hailed a success for being Kosovo’s most multi-ethnic and professional institution.

<sup>17</sup> Emma Lantscher, ‘Protection of Minority Communities in Kosovo: Legally Ahead of European Standards—Practically Still a Long Way to Go’, *Review of Central and East European Law*, vol. 33, 2008, pp. 451–90; see also King & Mason, *Peace at any Price*, p. 112.

PISG within the office of Kosovo's president.<sup>18</sup> Minority rights played a key role throughout the status negotiations.<sup>19</sup> As mentioned above, Belgrade focused on territorial solutions rather than proposals based on human and minority rights, and argued for autonomy, or a specific understanding of decentralisation, as the primary means to protect the interests of minorities.

The Kosovo delegation was more open to compromise when negotiating the rights of communities and issues of governance within Kosovo, which was understood as a necessary concession towards fulfilling their most important political goal of independence.<sup>20</sup> Pristina thus came to the negotiations with a well-prepared proposal on a range of special rights and institutional mechanisms for the protection of minorities, but remained sceptical about power-sharing mechanisms, including guaranteed representation in parliament and government and proposed veto powers. However, the mediators strongly favoured these measures and most of them made their way into the final document.<sup>21</sup> Belgrade preferred stronger power-sharing measures, such as greater blocking powers for minorities in parliament, and

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<sup>18</sup> Weller, 'Vienna Negotiations', p. 666. In different laws and documents the CCC is referred to variably as either the 'Consultative Council for Communities' or the 'Community Consultative Council'. Based on the reference in the Kosovo Constitution (2008), I use the term 'Consultative Council for Communities'.

<sup>19</sup> *ibid.*

<sup>20</sup> *ibid.*, p. 669.

<sup>21</sup> Florian Bieber argues, however, that that while Kosovo possesses some features of power-sharing, it also lacks some crucial ones, such as firm veto powers for minorities or a second chamber of parliament for ethnicities, such as in Bosnia. See Bieber, *Institutionalizing Ethnicity in the Western Balkans*, p. 2. and Bieber, 'The Legal Framework', p. 126. It is worth noting here that these pieces were both written in 2004, before formal territorial autonomy for minorities was enshrined in the Ahtisaari Plan, reflecting a 'refusal to recognise [Kosovo-Serb] enclaves, based in part on the international community's desire that the enclaves do not become permanent' and the 'concerns of the international community, and the Albanian political elite, [about] territorialisation of minority-majority relations' (Bieber, 'The Legal Framework'), which arguably shifted after 2004, as discussed in Chapter Four above.

arrangements for separate legal and political life for the Serb community in Kosovo, most of which was denied by the mediators.

## **6.2. Representation Rights**

### **Theory**

The claim for special representation rights is usually based on the idea that, in order to protect their rights and ensure they do not suffer disadvantage based on their group association, minority groups require guaranteed representation in state institutions. This concern is not limited to post-conflict situations of multi-ethnic states. The underrepresentation of certain groups, such as women, the poor, or ethnic minorities in political life has been raised in many democracies.<sup>22</sup> The claim for representation rights can be justified either with the argument of ‘mirror-representation’, assuming that the legislature should reflect the population, or with historical circumstance or systemic disadvantage suffered by the minority group, in which case special representation rights can be understood as a form of ‘political affirmative action’, for example to make up for previous exclusion.

Kymlicka has argued that group representation is not inherently illiberal or undemocratic, but that it can be understood as a logical extension of straightforward mechanisms of representation, such as the common practice of ‘re-districting’. This involves drawing the boundaries of local constituencies in such a way as to make them correspond with ‘communities of interest’, such as workers, farmers, or linguistic groups in order to ensure their representation in countries

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<sup>22</sup> Kymlicka, *Multicultural Citizenship*, p. 32.

with first-past-the-post electoral systems.<sup>23</sup> The possibility of expanding this right to non-territorial groups that tend to be underrepresented, such as women, has been discussed in several countries, too.<sup>24</sup> Since Kosovo is a single electoral district, district boundaries cannot be used to resolve problems of underrepresentation. Additionally, during much of the post-conflict period, Kosovo's minorities and particularly the Kosovo-Serbs boycotted Kosovo elections. Nevertheless, even if Kosovo's minorities turned out to vote at the same rate as their majority counterparts, there are good reasons for guaranteeing them representation, based on the recent history of conflict and their marginalised position, both of which make mainstream politics in Kosovo unlikely to be sensitive to minorities' particular concerns.

This argument is different from the idea of so-called 'mirror-representation', which suggests that the legislature should ideally mirror the population in terms of language, ethnicity, gender, and other characteristics. This presumes that a person can best be represented by someone of their own ethnicity, language, or gender, which is a problematic assumption that 'taken to its conclusion ... seems to undermine the very possibility of representation itself'.<sup>25</sup> Empirical evidence also suggests that the mere presence of minority representatives is not sufficient for 'substantive representation of minority interests',<sup>26</sup> as this ignores the importance of electoral accountability. Minority representatives elected

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<sup>23</sup> *ibid.*, pp. 132–5.

<sup>24</sup> *ibid.*, p. 137.

<sup>25</sup> *ibid.*, p. 140.

<sup>26</sup> Jelena Lončar, 'Electoral Accountability and Substantive Representation of National Minorities: The Case of Serbia', *East European Politics and Societies and Cultures*, vol. 20, no. 10, 2016, p. 1.

directly by minority constituencies, e.g. through separate electoral districts or as part of political parties expressly representing minority groups tend to represent minority interests better than those who are elected or nominated by ethnically mixed constituencies or parties.<sup>27</sup>

Most proponents of group representation argue not in terms of mirror representation, but in contextual terms of systemic disadvantage or historical injustice. The argument for ensuring a threshold of minimal representation, rather than proportional representation to the weight of that community in the overall state, asserts that in order to ensure the community's interests are not ignored, they need a 'seat at the table', regardless of their share of the population. For example, calls for a minimum threshold of women in various bodies is more often heard than arguments for a fifty per cent requirement of women, e.g. in parliaments.<sup>28</sup>

In Kosovo, however, the measures pursued have led to the over-representation of minorities in relation to their demographic weight, as discussed below. Over-representation may be justified in cases where proportional representation of small groups would lead to tokenism, whereby the few representatives of the group are ignored within the institutions where they serve. For their views to be effectively represented, they may need a threshold that is higher than the seats that proportional representation would grant them.

International law codifies *participation* rights, establishing that 'persons belonging to minorities have the right to participate effectively in cultural,

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<sup>27</sup> *ibid.*, p. 13.

<sup>28</sup> Kymlicka, *Multicultural Citizenship*, p. 147.

religious, social, economic and public life ... [and] in decisions on the national and, where appropriate, regional level'.<sup>29</sup> Additionally, Kosovo is bound by the Framework Convention for the Protection of National Minorities (FCNM) to 'create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them'.<sup>30</sup>

Representation in state bodies is a prerequisite for participation in public life. The various proposals and laws over the period in question have included wide-ranging guarantees for representation in Kosovo's political structures, including representation in the assembly, presidency of the assembly, government, civil service and public administration, the judiciary, the security and police sector, at the local level in municipal assemblies and at deputy mayor level, as well as through special mechanisms such as a Parliamentary Committee on the Rights and Interests of Communities and the CCC within Kosovo's presidential office.

### **Special Representation Rights in Various Proposals**

#### ***Representation in Parliament***

All the international proposals for resolving the Kosovo conflict foresaw representation rights for minorities in its Assembly. The Rambouillet Agreement, the last attempt at diplomatic resolution of the crisis before NATO's intervention, had proposed an Assembly made up of 120 seats, of which eighty would be directly

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<sup>29</sup> UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Article 2.

<sup>30</sup> FCNM, Article 15.

elected and forty reserved for national communities. Ten of these forty were reserved for small communities comprising 0.5-5% of the overall population, to be distributed proportionally, and thirty for communities of more than five per cent, to be distributed equally, i.e. between the Albanian and Serb communities.<sup>31</sup> With time, the different proposals became more inclusive of smaller, non-Serb minorities and more favourable to their representation, e.g. by dropping the reference to a five per cent threshold for representation in certain bodies.

The Constitutional Framework for Provision Self-Government (CFPSG) introduced under UNMIK provided for minority representation in the PISG,<sup>32</sup> with a hundred Assembly seats distributed proportionally on the basis of votes received and the remaining twenty seats reserved for minority representatives, including ten seats for Serbs, and ten for other minorities.<sup>33</sup> A Committee on Rights and Interests of Communities was also established within the Assembly, which could review draft laws in light of communities' interests and of the seven members of the Presidency of the Assembly, one had to be from a Kosovo-Serb party and one from a party representing another minority community.<sup>34</sup>

The reserved seats system meant that parties representing minorities still competed for the hundred available seats along with all other political parties, but could additionally count on the twenty reserved seats, for which the other parties were not eligible. These twenty seats are thus meant in addition to the seats won

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<sup>31</sup> Rambouillet Agreement, Chapter 1, Article II(1).

<sup>32</sup> UNMIK/REG/2001/9 on a Constitutional Framework for Provisional Self-Government in Kosovo, 15 May 2001.

<sup>33</sup> *ibid.*, Article 9.1.3.

<sup>34</sup> *ibid.*, Articles 9.1.12 and 9.1.7.

proportionally by minority parties among the entire electorate. This system of *reserved* seats was maintained in the Ahtisaari Plan, but was limited to the first two electoral mandates after independence, after which the same number of seats was to be understood as *guaranteed* seats, meaning that if minority parties won below the number of guaranteed seats (ten for Serbs, ten for other minorities), these would be topped up to the minimum of twenty total minority seats.<sup>35</sup> Accordingly, the elections of December 2010 were the last time that the set-aside *reserved* seats were used, resulting in twenty-five deputies representing minorities, including the twenty reserved seats.<sup>36</sup> The Ahtisaari Plan also included a limited ethnic veto, in the requirement of a supermajority—including a majority of minority representatives in the Assembly—for laws of particular interest to minorities, such as laws relating to the rights of communities, the use of language, or changes to municipal boundaries.<sup>37</sup>

Most of these documents ensure the representation of communities by allocating those reserved seats to the candidates, parties and coalitions that ‘having

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<sup>35</sup> Ahtisaari Plan, Annex 1, Article 3.3.; Kosovo Constitution, Article 64.2 and 148.

<sup>36</sup> ECMI Kosovo, *Special Report*. Although this is beyond the timeframe of the thesis, which ends with the end of Kosovo’s supervised independence in 2012, it is worth noting that in 2014, this provision played a role in the calling of early parliamentary elections. Minority parties tried to extend the reserved seats rule for two more terms in exchange for their approval of the creation of a Kosovar army, which they were able to veto thanks to a double-majority rule for issues sensitive to minorities. This was blocked by the Kosovo-Albanian opposition parties, which led to the calling of new election. The reserved seat system was not maintained, and minority parties consequently won only the assigned twenty seats in the 2014 elections. Calculated into a PR system, these seats would equal 16.66% of the vote share. For Kosovo-Serbs with their reserved ten seats this would be equivalent to 8.3%, roughly double their current population share, based on available estimates. See Corinne Deloy, *Early Elections in Kosovo after the Dissolution of Parliament* (Fondation Robert Schuman, 2014).

<sup>37</sup> Perritt, *Road to Independence*, p. 168.

declared themselves representing<sup>38</sup> a particular community, while the above-mentioned Hill Proposal of 1998 had stated that ‘the remaining forty Members shall be elected by the members of qualifying national communities’.<sup>39</sup> There is an important distinction between the two as they indicate different understandings of representation. When defined by the representatives’ ethnicity, as most of the discussed documents do, it implies an assumption that a person can only truly be represented by someone who shares their language, gender, class or ethnicity.<sup>40</sup> The focus in this understanding of representation is on the personal characteristics of the elected candidate. This rule ensures that there are members of that group in parliament, but it does not ensure that they are truly accountable to the group. This is a potential conflict between the idea of mirror representation and democratic accountability. Additionally, having guaranteed seats in parliament for a minority can also have the adverse effect of majority deputies feeling ‘freed’ of their responsibility to take an interest in issues concerning that minority.

The language used in the Hill Proposal, on the other hand, focuses on the electorate by creating a separate electoral list for the forty guaranteed seats, which is the equivalent to gerrymandered constituencies in a different electoral system, and ensures that the group who elects these representatives has a clear line of accountability to them. The elected representatives will reflect whom the voters

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<sup>38</sup> This is the wording in the Ahtisaari Plan and in Kosovo’s Constitution. The Rambouillet Agreement simply speaks of national communities ‘having’ a certain number of seats.

<sup>39</sup> Hill Proposal, Article II(2)1.

<sup>40</sup> Kymlicka, *Multicultural Citizenship*, p. 138.

selected, irrespective of the candidates' ethnicity, since they could in theory choose to be represented by someone of a different group than their own.<sup>41</sup>

The OSCE which worked on institution-building and elections, and was also monitoring the situation of minorities in Kosovo, remarked after the first post-war parliamentary elections in November 2001 that the electoral system had fulfilled the aim for which it was designed by ensuring 'significant representation of minority community parties in an Assembly otherwise dominated by Kosovo Albanian ethnic majority parties'.<sup>42</sup> However, the lack of accountability of elected minority representatives to their electorate has also been observed, thereby confirming the weakness of mirror representation.<sup>43</sup>

The overrepresentation resulting from the reserved seats system was remarkable, particularly in the first assembly elections in 2001, where Kosovo-Serbs overwhelmingly voted for the 'Coalition Return', which won twelve seats in addition to the ten reserved ones. The outcome was thirty-five minority deputies in the assembly, almost a third of the seats for what was at the time estimated to be below ten per cent of the population, with twenty-two Serb, five Bosnian, three Turkish, two Egyptian, two Ashkali and one Roma deputy.<sup>44</sup> This number was impressive, particularly when compared to later elections that were marked by Serb boycott. In the 2004 elections, no additional seats were won by minorities outside

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<sup>41</sup> *ibid.*, p. 147.

<sup>42</sup> OSCE/UNHCR, *Ninth Assessment*, p. 38.

<sup>43</sup> OSCE/UNHCR, *Tenth Assessment*, p. 60.

<sup>44</sup> OSCE, *Kosovo Assembly Elections 2001 – Certified Results*, 2001, <http://www.osce.org/kosovo/20466> (accessed 3 September 2016).

the twenty reserved seats.<sup>45</sup> In those elections, less than one per cent of Serbian voters cast their ballots, despite OSCE-run polling stations operating in Serbia and Montenegro to encourage IDPs to vote.<sup>46</sup> This was the result of Belgrade's call to Kosovo-Serbs to boycott the elections. The leadership in Belgrade had advised Kosovo-Serbs not to vote in protest of the 2004 riots, and following the experience that three years of participating in the PISG had brought the Serbs very few advances.<sup>47</sup>

In the 2007 elections, twenty-four minority seats were won, however, the Serbs did not go beyond their ten reserved seats.<sup>48</sup> These ten Serb deputies operated on the basis of very limited legitimacy, as they had been elected by just 200 to 300 votes per seat, whereas the average majority party was required to achieve over 5,000 votes per seat. In December 2010, the last election with set-aside seats, minority political parties managed to win twenty-five seats in the Kosovo Assembly, with around 55,000 votes, compared to the 170,000 votes received by LDK, the second largest party in the assembly, reaching twenty-seven seats.<sup>49</sup> There was, however, an upward trend in minority voter turnout; between the 2007 and 2010 elections, whereby the Turkish community almost doubled its turnout, while the Serb turnout was around seven times higher in 2010.<sup>50</sup> This trend can be

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<sup>45</sup> OSCE, *Kosovo Assembly Elections 2004 – CRC Results*, 2004, <http://www.osce.org/kosovo/25332> (accessed 3 September 2016).

<sup>46</sup> National Democratic Institute for International Affairs (NDI), *Kosovo 2004 Central Assembly Elections*, [https://www.ndi.org/files/1761\\_ksv\\_assembly\\_102604.pdf](https://www.ndi.org/files/1761_ksv_assembly_102604.pdf) (accessed 5 September 2016).

<sup>47</sup> King & Mason, *Peace at any Price*, p. 202.

<sup>48</sup> ECMI Kosovo, *Special Report*.

<sup>49</sup> *ibid.*

<sup>50</sup> *ibid.*

explained as a response to the decentralisation process. The creation of new municipalities had raised the stakes of local elections, leading initially to increased minority turnout in the 2009 local elections,<sup>51</sup> and later in national elections, too.

Predictably, the overrepresentation of minorities resulting from this electoral design also led to resentment among the Albanian majority, and to a ‘renewed sense of mobilisation of the majority with the immediate effect of increasing patriotism and decreasing cross-ethnic votes even further’.<sup>52</sup> The practical effects of minority overrepresentation remained limited and did not provide minorities, particularly the Kosovo-Serbs, with meaningful powers to address their needs. Instead of strengthening their position in the Assembly, possibly as coalition partners, in immediate post-war elections it had the effect of forcing the rival Albanian parties into a wide coalition.<sup>53</sup> Later on, the largest Kosovo-Serb party SLS became a partner in PDK’s governing coalition and took on the reserved roles for Ministers and Deputy Ministers foreseen in the Ahtisaari Plan. However, the effects of these special representation provisions on minority life in Kosovo are disputed. It has been argued that, rather than furthering the interests of minority constituents, the overrepresentation of minorities in political structures has instead bolstered rent-seeking and the use of public office for private

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<sup>51</sup> Burema, ‘Decentralisation in Kosovo’, p. 106.

<sup>52</sup> Kosovo Institute for Policy Research and Development (KIPRED), *Reforming the Electoral System of Kosovo*, 2003, p. 13.

<sup>53</sup> *ibid.*, p. 13.

gain, which, however, is a phenomenon equally prevalent among the majority and minority populations in Kosovo.<sup>54</sup>

Further criticism related to the imposed nature of the CFPSG and the lack of public participation in designing Kosovo's electoral rules.<sup>55</sup> It has also been pointed out that the rights of communities in the CFPSG were not put up for general consultation with minority communities, but were drafted by a small group of Serb leaders.<sup>56</sup> The Kosovo-Serb representatives who were consulted seem to have been picked by Belgrade authorities, whose interests focused on Kosovo's political status, rather than minority rights arrangements within it.<sup>57</sup> This is another indication of how the status question complicated international efforts to promote multi-ethnicity.

The way minority representation was promoted and understood as based on the characteristics of the 'representatives', rather than the electorate, implying that parties have to identify as minority parties prior to elections, also defeated any remote possibility of cross-ethnic parties emerging in Kosovo.<sup>58</sup> As discussed above, some scholars have advocated designing electoral systems in post-conflict settings with the aim of creating incentives for majority parties to appeal to minority voters.<sup>59</sup> The system employed in Kosovo discourages this practice, which

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<sup>54</sup> Capussela, *State-Building in Kosovo*, p. 88.

<sup>55</sup> KIPRED, *Reforming the Electoral System*.

<sup>56</sup> Baldwin, *Minority Rights in Kosovo*, p. 20.

<sup>57</sup> *ibid.*, p. 27.

<sup>58</sup> KIPRED, *Reforming the Electoral System*, p. 16.

<sup>59</sup> Horowitz, 'Making Moderation Pay'.

was unlikely to occur given the major cleavage between the Serb and Albanian communities.<sup>60</sup>

Following the introduction of the CFPSG with all its provisions for minority representation, the high turnout of Kosovo-Serbs in the first subsequent election was assumed to be of great importance by the international community, given these measures were designed with the aim of convincing Kosovo's minorities to participate in the nascent democratic structures. This preoccupation with elections 'reflected the widespread perception in Western capitals that Serb non-participation would represent a significant failure for UNMIK's efforts to build a multi-ethnic society in Kosovo.'<sup>61</sup> Hence, elections were one of the key benchmarks for success that the international community used to evaluate its own efforts. As described above, at least until the 2004 riots, UNMIK also 'measured its own success in fostering multi-ethnicity by the number of displaced Serbs and people of other ethnic minorities who had returned to Kosovo'.<sup>62</sup> Minority voter turnout was held to be equally important as a measure for multi-ethnicity, since the minority representation provisions had been designed to foster their participation in Kosovo's official structures. In this area, like in the ones described in the previous two chapters of this section, the reality on the ground shifted over the post-conflict period. While at the start minorities did vote, the 2004 riots led to a boycott of elections by Kosovo-Serbs.

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<sup>60</sup> KIPRED, *Reforming the Electoral System*, p. 19.

<sup>61</sup> International Crisis Group (ICG), *Kosovo: Landmark Election*, November 2001, p. 13.

<sup>62</sup> King & Mason, *Peace at any Price*, p. 154.

The boycott did not relate only to elections. Most Kosovo-Serbs also rejected the Kosovo institutions and service-providers who had only a limited presence in Serb-majority areas of Kosovo during the post-conflict decade. Serbia continued to fund its ‘parallel structures’, particularly in the fields of health and education, discussed in detail below. The shift towards renewed participation only happened after the introduction of the Ahtisaari Plan and the creation of new minority-run municipalities, although this did not extend to the North of Kosovo, where these measures were not implemented.

### ***Minority Representation in Government, Civil Service and Public Administration***

All of the above-mentioned proposals for Kosovo, including the CFPSG, included provisions for minority representation in Kosovo’s government and administrative bodies, including guaranteed ministerial appointments.<sup>63</sup> According to the CFPSG, at least one minister must be a Serb, and another one a representative of a non-Serb minority,<sup>64</sup> and the same rules were upheld by the Ahtisaari Plan.<sup>65</sup> While minority representative participation in government can be a key instrument in overcoming group exclusion and ensuring that minority interests are addressed, the arrangement risks setting up disjointed cabinets in which members either ‘divide power without sufficient cross-group coordination

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<sup>63</sup> E.g. the Hill Proposal required every national community with of minimum five per cent of the population to be represented in the government (Article II, Part II.12.a), and for the administrative bodies to be ‘representative of the population and national communities of Kosovo’ (Article II. Part II.13.a).

<sup>64</sup> UNMIK/REG/2001/9, Article 9.1.3.

<sup>65</sup> Ahtisaari Plan, Annex I, Article 5.

and cooperation between ministers or exclude less significant groups from substantial decision-making through parallel institutions or other tools.’<sup>66</sup>

Below cabinet, all the proposals discussed here also guarantee minorities to be ‘fairly represented at all levels in the Administrative Organs’,<sup>67</sup> holding that the composition of the civil service must reflect the diversity of the people of Kosovo. Community members are entitled to equitable representation in employment at all levels in public bodies and publicly owned enterprises.<sup>68</sup> This includes the police service in areas inhabited by the respective community, as well as the security sector including defence and intelligence, the Judiciary and the prosecution service.<sup>69</sup>

In order to enable such equitable representation, the Law on the Rights of Communities mandates the state to develop initiatives such as public employment programs and specially targeted measures aimed at overcoming direct and indirect discrimination.<sup>70</sup> This law, outlining many of the rights discussed in this chapter, was one of independent Kosovo’s laws resulting directly from the Ahtisaari Plan, it was part of an initial package of laws that entered into force in June 2008 after a special procedure introduced by the ICO.<sup>71</sup>

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<sup>66</sup> Bieber, *Institutionalizing Ethnicity in the Western Balkans*, p. 6.

<sup>67</sup> Rambouillet Accords, Chapter 1, Article IV(2)a.

<sup>68</sup> Ahtisaari Plan Annex II, Article 4.4; Kosovo Constitution, Article 61.

<sup>69</sup> Law on Communities, Article 9.5.

<sup>70</sup> *ibid.*, Article 9.2.

<sup>71</sup> ICO, *State Building and Exit*, p. 10. Alongside the Law on Communities, other laws relevant to minorities passed in this package included the Law on Establishment of Special Protective Zones (with respect to the Serbian Orthodox Church), Municipal Border, Use of Symbols, and others. Capussela, *State-Building in Kosovo*, p. 155 points out that the ICO’s special procedure for passing

The legal guarantee of equal representation in state organs proved to be one of the hardest to implement. In 2002, only 2.3% of civil servants were members of Kosovo's minorities, which was related to the fact that the PISG were set up in Pristina, from which virtually all Serbs had left, and most did not feel safe in.<sup>72</sup> A 2010 report indicates that this number had grown in certain institutions, but overall, the representation of minorities in Kosovo's civil service remained inadequate, considering the laws in place.<sup>73</sup> Creating a representative civil service is more challenging than creating representative governments or parliaments, because hiring is a slower process than an election and it is also necessary to make equitable representation in the public administration compatible with its professionalisation.<sup>74</sup>

### ***Representation at the Municipal Level***

Minority representation is also guaranteed at the local level in both municipal assemblies and municipalities' executive organs. The Rambouillet Agreement foresaw an Executive Council in each Commune,<sup>75</sup> in which national community representation would be guaranteed at three per cent, a lower threshold

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these laws meant there was no parliamentary debate on any of them, thus highlighting the internationally imposed nature of these provisions.

<sup>72</sup> King & Mason, *Peace at any Price*, p. 113. Beyond employment of members of minorities, there was also a symbolic level to this, which seriously hampered the inclusion of Kosovo Serbs and indicates their sense of non-belonging to the emerging post-war state. A Serb from Mitrovica is quoted asking: 'How can Pristina be our capital if we can't even go there?' (*ibid.*, p. 203).

<sup>73</sup> Office for Community Affairs, Office of the Prime Minister of Kosovo, *Policy Study No.1: Employment of Members of Non-Majority Communities within Kosovo Civil Service and Publicly Owned Enterprises*, March 2010, p. 9.

<sup>74</sup> Bieber, *Institutionalizing Ethnicity in the Western Balkans*, p. 7.

<sup>75</sup> In both the Hill Proposal and the Rambouillet Agreement municipalities were referred to as Communes.

than on the national level.<sup>76</sup> UNMIK regulation 2000/45 then required each municipal authority to set up a Communities Committee and a Mediation Committee to represent minority interests.

Additionally, the Ahtisaari Plan ensured that in municipalities with at least ten per cent of the population belonging to minority communities, there had to be a Deputy Chairperson of the Municipal Assembly in charge of promoting inter-community dialogue and serving as formal focal point for addressing the minority's concerns and interests.<sup>77</sup> Representation of minority communities at the municipal level was also guaranteed in the executive organ of each municipality where the total number of members of communities exceeds ten per cent in the form of a Deputy Mayor for Communities who assists the Mayor and advises them on issues related to minority communities.<sup>78</sup>

International actors widely reported having to pressure municipal authorities to comply with these rules, as well as complaining that the effectiveness of special committees on community interests was very limited in practice.<sup>79</sup>

### ***Representation in the Judiciary***

In all these proposals a minimum participation of minorities in the judiciary in Kosovo was also foreseen. The Hill Proposal provided for at least one judge in Kosovo's proposed Constitutional Court and one in its Supreme Court to be from

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<sup>76</sup> Rambouillet Agreement, Chapter 1, Article VIII(3).

<sup>77</sup> Ahtisaari Plan, Annex II, Article 4.5.

<sup>78</sup> Law on Local Self Government, Article 61.

<sup>79</sup> OSCE/UNHCR, *Tenth Assessment*, p. 62 (cited Baldwin, *Minority Rights in Kosovo*, p. 20).

each national community.<sup>80</sup> The Ahtisaari Plan later stated that ‘the composition of the judiciary shall reflect the ethnic diversity of Kosovo’, and that the composition of any court must reflect the ethnic composition of the territorial jurisdiction of the respective court.<sup>81</sup> It set up the Kosovo Judicial Council, whose task is to ensure that Kosovo courts reflect the multi-ethnic character of the state, as well as to ensure their professionalism, impartiality, and independence. In order to do this, the Council is explicitly mandated to give preference to members of communities that are underrepresented in the judiciary in the appointment of judges.<sup>82</sup> A minimum of fifteen per cent of the Judges of the Supreme Court, and at least three judges, have to be members of minority communities.<sup>83</sup> Additionally, in any district court, at least fifteen percent of the judges, and a minimum of two, must be from minorities.<sup>84</sup>

While all allocation of political office on the basis of ethnicity raises questions about assigning legitimacy to group rather than interest-based representation, this issue is even more problematic in regard to the judiciary.<sup>85</sup> After all, ethnic quotas in the judiciary imply that a judge has an ethnic interest, and thus in applying the law is not guided by the law only. This assumption is also apparent in the Rambouillet Agreement, which contained provisions to ensure that, if requested, criminal cases could be moved to be held in a Commune where the

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<sup>80</sup> Hill Proposal, Article II(3).

<sup>81</sup> Ahtisaari Plan, Annex IV, Article 2; Kosovo Constitution, Articles 104.2-104.3.

<sup>82</sup> Kosovo Constitution, Article 108.2.

<sup>83</sup> Ahtisaari Plan Annex IV, Article 1.1; Kosovo Constitution, Article 103.3.

<sup>84</sup> Ahtisaari Plan Annex IV, Article 1.2; Kosovo Constitution, Article 103.6.

<sup>85</sup> Bieber, *Institutionalizing Ethnicity in the Western Balkans*, p. 20.

dominant national community would be same as the defendant's, or that at least one member of the judicial council would be of the same community as the defendant.<sup>86</sup> While during Kosovo's immediate post-conflict years judges indeed regularly displayed an ethnic bias,<sup>87</sup> it is arguably problematic to maintain ethnic quotas in the judiciary as a permanent feature in a democratic state of the rule of law.

Apart from problems of accountability raised above, there is some ambivalence about strict quota representation among human and minority rights activists, who argue that representation by quotas can actually lead to more rigid divisions along ethnic lines, and reduce majority politicians' responsiveness to minority issues.<sup>88</sup> These advocates criticise ethnic quotas in state institutions for entrenching segregation and failing to address discrimination.<sup>89</sup> In this view, the quota representation system is part of a larger understanding of multi-ethnicity that displays a bias towards segregation, rather than integration, evident e.g. in security policies that favour enclavisation and the separate provision of public services, such as separate health and education systems. It has also been pointed out that this approach has elevated ethnic identity to 'one of the primary, if not the only, criteria in political life'.<sup>90</sup> As such, the risk is that these institutional structures, by enshrining political representation and participation on the basis of group

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<sup>86</sup> Rambouillet Agreement, Chapter 1, Article V(4).

<sup>87</sup> King & Mason, *Peace at any Price*, p. 64.

<sup>88</sup> Baldwin, *Minority Rights in Kosovo*, p. 21.

<sup>89</sup> *ibid.*, p. 23.

<sup>90</sup> Bieber, *Institutionalizing Ethnicity in the Western Balkans*, p. 4.

membership, ‘can “freeze” ethnic confrontation and transpose most political disputes into ethnic ones’.<sup>91</sup>

### **6.3. Poly-ethnic Rights to Culture, Language, and Education**

Despite the fact that ‘representation has been seen as a panacea for group inclusion’, throughout the international community’s involvement in the countries of the former Yugoslavia, the above-mentioned measures for representation in institutions cannot replace firm protections of ‘other group based rights in fields of culture and education’.<sup>92</sup> These rights fall under Kymlicka’s category of ‘poly-ethnic rights’, which he defines as those rights and exemptions that enable minorities to continue their cultural practices without being disadvantaged in overall society.<sup>93</sup> Kymlicka argues that poly-ethnic rights are usually intended to promote integration into overall society, not self-government or exclusion, although this remains disputed. The final part of this chapter illustrates the tension inherent in these policies. For most policymakers a multi-ethnic state *has* to recognise separate group rights. However, the separation, and at times segregation, that may result from such recognition runs counter to a notion of multi-ethnicity predicated on cooperation and integration.

The right of minorities to enjoy their own culture and use their own language is enshrined in international law.<sup>94</sup> In Kosovo, additional group-

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<sup>91</sup> *ibid.*, p. 15.

<sup>92</sup> *ibid.*, p. 22.

<sup>93</sup> Kymlicka, *Multicultural Citizenship*, pp. 30–1.

<sup>94</sup> ICCPR, Article 27.

differentiated rights were always understood as a key component of a multi-ethnic state. Already in the Hill Proposal, national communities and their members were to have additional rights to the ones enjoyed by all citizens of Kosovo.<sup>95</sup> The Rambouillet Agreement likewise provided for extensive additional rights for national communities and their members. Each national community would elect its own institutions and have the right to free use of language and symbols, separate educational institutions, guaranteed access to media, and the right to ‘protect national tradition on family law’.<sup>96</sup> The approach to poly-ethnic rights thus contained a significant degree of self-government or personal autonomy. Non-territorial, so-called personal autonomy, is a form of devolution of power that consists of granting a minority group special powers and representative institutions that are not bound to any specific region, in cases when a significant ethnic minority lives dispersed among the majority population of a state.<sup>97</sup>

As UNMIK began to establish a judiciary in post-war Kosovo, the existing legal framework was still marked by a recent past of ethnically based discrimination. The initial decision to continue applying Yugoslav law as interim law created backlash among Kosovo-Albanians.<sup>98</sup> UNMIK reversed this decision in December 1999 and proceeded to apply the laws valid in Kosovo prior to the abolition of Kosovo’s autonomy in 22 March 1989. Laws from the 1990s were

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<sup>95</sup> Hill Proposal, Article I.1.

<sup>96</sup> Rambouillet Agreement, Chapter 1 Article VII.

<sup>97</sup> Lapidoth, *Autonomy*, p. 37.

<sup>98</sup> David L. Phillips, *Liberating Kosovo: Coercive Diplomacy and US Intervention*, (Cambridge, Mass.: MIT Press, 2012), p. 122.

only to apply if they were not discriminatory in nature.<sup>99</sup> This created a legal break with the period of discrimination for Kosovo-Albanians.<sup>100</sup> Nevertheless, as described in Chapter Four above, the UN mission struggled to create law and order in Kosovo, particularly when it came to the rights of minorities.

Kosovo's post-war legal and constitutional system included a combination of individual rights, strong anti-discrimination guarantees, and poly-ethnic rights specific to minority communities. The CFPSG of 2001 made reference to a number of human rights treaties that the PISG was bound by and that were directly applicable in Kosovo, despite the fact that due to its unresolved status Kosovo had no recourse to these treaty bodies or courts.<sup>101</sup> The CFPSG also referenced the advanced European minority rights framework, including the ECRML and the CoE's FCNM, which were discussed in Chapter Three above.

The Ahtisaari Plan continued to enshrine extensive cultural, education, and language rights for minorities, which were translated into Kosovo law.<sup>102</sup> The Plan obliges the state to ensure the conditions enabling communities to enjoy their right to express, maintain and develop their culture, including through financial assistance.<sup>103</sup> The state is also to refrain from, and protect members of communities

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<sup>99</sup> UNMIK/REG/1999/24 on the Law Applicable in Kosovo, 12 December 1999.

<sup>100</sup> Selatin Kllokoqi, Blerim Ahmeti, Glauk Konjufca, & Valon Murati, *The Role of Human and Minority Rights in the Process of Reconstruction and Reconciliation for State and Nation-Building: Country Specific Report Kosova*, European Academy Bozen/Bolzano, 2008, p. 25.

<sup>101</sup> These include the Universal Declaration of Human Rights, the European Convention on Human Rights, and the International Convention on Civil and Political Rights.

<sup>102</sup> Ahtisaari Plan, Article 3.

<sup>103</sup> Kosovo Constitution, Article 58.1.

from, any policies or practices aimed at assimilation against their will.<sup>104</sup> Albanian and Serbian were established as Kosovo's official languages, and Turkish, Bosnian and Romani given the status of official languages at the municipal level or languages in official use at all levels, depending on the respective population share in each municipality.<sup>105</sup> Additionally, Turkish is an official language in the municipality of Prizren despite not meeting the five per cent criteria. This is evidence of the strong advocacy by the Turkish community in Kosovo, through which Turkish has gained the status of 'language in official use' in five other towns throughout Kosovo, including the capital.<sup>106</sup>

The Ahtisaari Plan and Kosovo's Constitution guarantee members of minorities the right to use their language and alphabet freely in private and in public, as well as in their relations with the municipal authorities in areas where they represent a sufficient share of the population. Members of communities are further guaranteed the right to have their personal names registered in original form and in the script of their language.<sup>107</sup> Localities and streets are to be named in a manner that reflects their multi-ethnic and multi-linguistic character,<sup>108</sup> and all laws adopted by the Assembly issued and published in the official languages as well as in Bosnian and Turkish.<sup>109</sup>

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<sup>104</sup> *ibid.*, Article 58.6.

<sup>105</sup> Ahtisaari Plan, Article 1.6; Kosovo Constitution, Article 5.

<sup>106</sup> Krasniqi, 'Equal Citizens, Uneven Communities', p. 208.

<sup>107</sup> Kosovo Law No. 02/L-37 on the Use of Languages, Article 27.

<sup>108</sup> Kosovo Constitution, Articles 59.8, 59.9.

<sup>109</sup> Law on Languages, Article 5.4.

Free public education in one of the official languages of Kosovo was enshrined as a right at all levels of education.<sup>110</sup> In addition, pre-school, primary and secondary public education must be made available to members of communities in their own language, where this is not an official language of Kosovo, ‘with the thresholds for establishing specific classes or schools for this purpose being lower than normally stipulated for educational institutions’.<sup>111</sup> Schools that teach in a language that is not an official language in Kosovo can design their own programs within an overall integrated curriculum and are entitled to include their own culture, history and traditions into these programs.<sup>112</sup> Minority schools are also allowed to produce their own curriculum, including the use of Serbian textbooks. Where the Ministry of Education, Science and Technology objects to a Serbian curriculum or textbook, the Law on Education in the Municipalities of Kosovo provides for an independent commission to be established, to which the matter can be referred.<sup>113</sup> Moreover, in order to ensure that the education system in Kosovo reflects the spirit of multicultural identity of the state, the national educational curriculum is required to cover the ‘history, culture and other attributes of communities traditionally present in the country to foster the spirit of respect, understanding and tolerance among all communities in Kosovo’.<sup>114</sup>

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<sup>110</sup> Kosovo Constitution, Article 59.2.

<sup>111</sup> *ibid.*, Article 59.3.

<sup>112</sup> Law on Communities, Article 8.7.

<sup>113</sup> Kosovo Law No. 03/L-068 on Education in the Municipalities of the Republic of Kosovo, Article 12.4.

<sup>114</sup> Law on Communities, Article 8.10.

It has been pointed out that these rights go ‘far beyond the international standards and, indeed, those that apply in other countries, as they appear to apply to all communities, at all times and in all places’.<sup>115</sup> However, they are also characterised by a wide gap between legal obligations and implementation on the part of Kosovo’s authorities. For example, Serbian language schools are not yet offered under the Kosovo education system, there is a lack of qualified teachers for the minority curriculum, inadequate textbooks for the curriculum for smaller minorities such as the Bosniaks and Turks, and no available opportunities in the education system for majority students to learn Serbian as a second language.<sup>116</sup>

Particularly the smaller minorities in Kosovo have demanded access to education in their languages, as the case of the Bosniak community shows, who have insisted that ‘cultural assimilation is being forced upon them *de facto* and that the lack of access to education in the Bosnian language will discourage Bosniak families from returning’.<sup>117</sup> The OSCE and UNHCR conclude that despite the resource limitations and low number of students requiring education in the Bosnian language, ‘in Kosovo, the right [to mother tongue education provided by the state] has a special significance [and] thus, there is a special obligation ... as this right is integrally linked with the right to remain in Kosovo, and the right of displaced families to return’.<sup>118</sup>

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<sup>115</sup> Baldwin, *Minority Rights in Kosovo*, p. 22.

<sup>116</sup> European Centre for Minority Issues (ECMI), *Protecting and Promoting Education for Minority Communities: A Manual for Municipal Officials*, 2009, pp. 12–14.

<sup>117</sup> OSCE/UNHCR, *Ninth Assessment*, p. 24.

<sup>118</sup> *ibid.*, p. 24.

Some of the implementation problems in regard to language rights are essentially security issues, such as the widespread destruction of road and street signs in minority languages, and threats and violence against people speaking Serbian or other minority languages in public in Albanian-dominated areas of Kosovo. This illustrates the interdependence of the challenges faced by the international community in promoting multi-ethnicity in post-conflict Kosovo.

#### **6.4. Notions of Multi-ethnicity**

This chapter has examined the minority rights proposed and implemented in Kosovo from 1999 to 2012, which were driven primarily by international actors. The special representation and poly-ethnic rights discussed above illustrate a number of competing notions of multi-ethnicity, ranging from minimalist to more substantive notions, which are reviewed below.

##### **Minimalist Notion of Multi-Ethnicity: The Liberal-Individualist Approach**

Firstly, and in line with the liberal-individualist approach discussed in the Introduction, a minimalist notion of multi-ethnicity is one that proposes a ‘colour-blind’, or ethnically blind state, which does not actively recognise ethnic groups. While the international community for the most part did not follow this model in Kosovo, elements of this approach are evident in Kosovo’s advanced anti-discrimination legislation and the civic elements of its Constitution. This notion of multi-ethnicity was most apparent among interviewees in the context of the perceived risks of the ‘politics of recognition’. Accordingly, some interviewees defined their vision of Kosovo as a multi-ethnic state most importantly in terms of equal opportunities, including a stress on the need for strong anti-discrimination

guarantees.<sup>119</sup> An understanding of multi-ethnicity that takes no particular stance on the nature of interactions between groups, can, however, also lead to segregation, where the state takes no active measures to counter such tendencies. On the other hand, some measures taken in the name of multi-ethnicity might themselves hasten such division and segregation.

The special representation and poly-ethnic rights described in this chapter are in tension with an understanding of multi-ethnicity that focuses on measures of the liberal-individualist kind, because they go beyond the concept of equality to include differentiated, i.e. unequal treatment of certain groups in society. The preference for a minimalist approach to multi-ethnicity, focusing on equality at the expense of group-differentiation, was only raised in the context of the risks that these group-differentiated rights carry. In relation to the potential drawbacks of more explicit guarantees of minority rights, pertinent regional examples came up repeatedly among interviewees, particularly the international community's experience in Bosnia and Herzegovina (BiH). The Ahtisaari Plan was lauded as building on the experiences of the international community in Croatia, BiH, and Macedonia and managing to avoid the (perceived) mistakes made in the Dayton and Ohrid agreements that ended these conflicts.<sup>120</sup> Some of the perceived improvements on these settlements were that in the Ahtisaari Plan 'minority rights hold for all minorities and not just for one [or some], that group rights can never trump individual rights, which is something that went wrong in Bosnia, [and] that

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<sup>119</sup> Senior ICO official, interview, September 2010, Pristina; UN Development Coordinator/UNDP Resident Representative, interview, October 2010, Pristina.

<sup>120</sup> Former Head of Community Affairs, ICO, interview, April 2014, Berne.

individuals can decide on their own whether they declare themselves part of a minority.<sup>121</sup> The fact that minority representation and veto powers did not go so far as to allow the entire state to be paralysed was also repeatedly mentioned as a positive lesson drawn from past state-building experience, since in Kosovo the need for a double majority, including a majority of minority votes in the assembly, was restricted to issues of vital importance to minorities.

### **More Substantive Notions: the Importance of Language**

Many international officials hold understandings of multi-ethnicity that go far beyond the liberal-individualist version of a neutral, civic, or colour-blind state. These interviews suggest a deeper, more substantive notion of multi-ethnicity, defined as something other than simply the co-existence of different groups within a state. This notion problematises as antithetical to multi-ethnicity the separation and segregation that took place in post-war Kosovo under international administration. One interviewee described this as ‘*genuine* multi-ethnicity, where it isn’t just a Serb village ... next to an Albanian village’ and included social contacts between groups and knowledge of each other’s languages in this definition.<sup>122</sup> Another senior UNMIK official lamented that ‘it’s never gotten off the ground, *genuine* multi-ethnicity. Show me a town, a city, a village where Albanians and Serbs actually live side by side, interacting on a daily basis. That’s very, very rare’.<sup>123</sup>

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<sup>121</sup> *ibid.*

<sup>122</sup> Former strategy advisor to UNMIK SRSG, interview, January 2011, Oxford.

<sup>123</sup> UNMIK Head of Office of Political Affairs, interview, September 2014, Pristina.

Language is a recurring theme that is central to many interviewees' understanding of multi-ethnicity. Most interviewees understand language in relation to enabling inter-ethnic cooperation and integration, and find the fact that many of Kosovo's Serbs and Albanians don't share a common tongue very troubling for the prospect of a multi-ethnic Kosovo. Yet, many of the policies adopted and supported by international actors, as described in this chapter, indicate a different role for language rights. This role is more in line with arguments for recognition, and is potentially divisive rather than integrative. It focuses not only on the minority group's right to use their language in public and in state institutions, but also to teach and maintain it, often in separate educational and cultural institutions. Language rights can thus be understood and translated in both potentially separating and integrative ways, and are identified as a key issue in the pursuit of a multi-ethnic Kosovo. As one official put it:

the very profound problem in Kosovo is that there is no common language of communication. And there is no plan to fix that. When you speak to the people from the Kosovo government their first response is: "I guess English will have to be the common language of communication".<sup>124</sup>

Language is critical in the context of recognition of minority identities. Declaring Serbian an official language in Kosovo should in theory allow for more equal opportunities for Serbian speakers in the public sphere, and in their interaction with the state, were these provisions implemented as foreseen. The literature has debated whether policies that aim to protect and ensure the continued use of a language are problematic from a liberal perspective that envisions the state to remain neutral towards such substantive goals, or whether languages should

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<sup>124</sup> Senior ICO official, interview, September 2010, Pristina.

rather be understood as a collective resource for individuals to make use of, similarly to the use of clean air.<sup>125</sup> As Kymlicka points out, it is possible for a state in its quest for neutrality to have no official religion, but it would be impossible not to have an official language. This illustrates the pitfalls of ‘benign neglect’: there would always be those who benefit from being born into speaking the official language of the state.<sup>126</sup>

Most interviewees voiced a preference for stronger focus on bilingualism, particularly bilingual education, which, however, is not a reality in Kosovo, neither in law nor in practice.<sup>127</sup> While many among the older generation of Kosovars, depending on region, are bilingual, this is no longer the case for the younger, post-conflict generation. One interviewee linked this explicitly to the notion of a multi-ethnic state: ‘There is still a lot to do to make it feel like a multi-ethnic state. One of the main problems is that the new generations are growing apart, with many not being able to speak each other’s languages’.<sup>128</sup> A great deal of attention was paid to the provisions for language rights, particularly in the work of the OSCE and ICO, and it was one of the areas where significant pressure from the international community had to be exerted to ensure the implementation of policies.<sup>129</sup>

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<sup>125</sup> Taylor, *Multiculturalism*, p. 55.

<sup>126</sup> Kymlicka, *Multicultural Citizenship*, p. 45.

<sup>127</sup> Deputy Director of Department for Human Rights and Communities, OSCE Mission in Kosovo; International advisor seconded to Kosovo Ministry of Communities and Returns; UN Development Coordinator/UNDP Resident Representative, interviews, September/October 2010, Pristina.

<sup>128</sup> Former ICO advisor on religious and cultural heritage, interview, September 2014, Pristina.

<sup>129</sup> International advisor seconded to Kosovo Ministry of Communities and Returns, interview, September 2010, Pristina; Former ICO staff, skype interview, April 2015.

Language rights were particularly difficult to implement in Kosovo, not only due to limited political will from the majority community following years of Serb domination in Kosovo, but also due to limited human and financial capacity.<sup>130</sup> One former official reflects on this, stating that with hindsight the process of e.g. developing laws and regulations for the use of minority languages at the local level was far removed from reality. An external policy expert would come, ‘they would say: this is how it should look .... There is amazing legislation, but we came with absurdly high standards, which simply cannot be implemented on the ground’.<sup>131</sup> The reasons mentioned for this include lack of funds for translation services and lack of qualified translators, which meant that breaches of these language rights were almost inevitable. Those international actors tasked with overseeing the implementation of Kosovo’s advanced language rights thus wondered whether the drafters of the Ahtisaari Plan had put any thought into the practical implications of making Serbian a second national language, given the small number of non-Albanian speakers in Kosovo.<sup>132</sup>

Other interviewees, on the other hand, stressed the necessity of implementing these laws to ensure Kosovo’s multi-ethnicity, described the capacity and cost issues as ‘red herrings’,<sup>133</sup> and bemoaned the fact that the economic

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<sup>130</sup> Globalisation and dominance of English also contributed to the limited attractiveness of Albanian or Serbian respectively as default second languages for either minority or majority Kosovars.

<sup>131</sup> Former ICO staff, interview, April 2015.

<sup>132</sup> *ibid.*

<sup>133</sup> Former senior ICO official, skype interview, September 2014.

benefit of learning Serbian, the language of an important neighbour and trade partner, was not understood among Kosovo-Albanians.<sup>134</sup>

### **Recognition**

One of the recurring features of more substantive understandings of multi-ethnicity is the notion of recognition. The need for a ‘politics of recognition’<sup>135</sup> is often cited in the context of fostering a diverse, multi-ethnic state, and recognition is closely tied to the institutional features introduced by international actors in post-conflict Kosovo discussed above. Many interviewees stressed the importance of special rights to support and protect minority language and cultural expression as central to their understanding of multi-ethnicity:

This is where the “melting pot” has failed, in not recognising that [people] need their cultural roots, and this cannot be equalised. You can have a common second language or business language, this is possible. But it is not enough. I am more and more convinced that you need not only mother tongue education, but also certain subjects, music, tradition, etc. for minorities, and in the end this is good for tolerance between ethnicities.<sup>136</sup>

Contrary to this, and discussed in more detail below, there is also wariness about the potential for separation and segregation resulting from understandings of multi-ethnicity implying the recognition of group identities and claims. For example, one community rights professional shared a desire to move away from group-specific curricula, ‘towards a curriculum that is neutral, that is respectful of

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<sup>134</sup> Former senior ICO official, skype interview, September 2014; Deputy Director of Department for Human Rights and Communities, OSCE Mission in Kosovo, interview, September 2010, Pristina.

<sup>135</sup> Taylor, *Multiculturalism*.

<sup>136</sup> Deputy Director of Department for Human Rights and Communities, OSCE Mission in Kosovo, interview, September 2010, Pristina.

the different groups that live in Kosovo .... We are nowhere near completing that process yet, and its also politically very sensitive'.<sup>137</sup> In practice, apart from allowing for separate minority curricula, no active measures in such a direction have been taken in Kosovo.

Some of the potential risks of recognition outlined in the Introduction prove relevant in the case of the politics of recognition implemented in Kosovo. First there is the risk that public recognition of minority groups, including their claims for self-government, representation and cultural rights, may lead to the proliferation of minorities and minority claims. This has happened in Kosovo with the Montenegrin community requesting official recognition in mid-2008,<sup>138</sup> followed by the Croat community, as well as existing communities demanding further recognition in the form of new, separate municipalities.<sup>139</sup> Eventually both the Montenegrin and Croat communities were included in the amended Law on Communities in 2011, however, this only translated into additional seats for representatives of those communities on the CCC.<sup>140</sup>

As shown above, the various proposed settlements for post-war Kosovo became more favourable to its smaller minorities over time, recognition-based

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<sup>137</sup> Senior ICO Official, interview, September 2010, Pristina.

<sup>138</sup> Petrit Çollaku, 'Kosovo Montenegrins to be Recognised by Law', *Balkan Insight*, April 2010.

<sup>139</sup> See the unsuccessful efforts of the Gorani and Bosniak communities to create their own municipalities under the provisions of the Ahtisaari Plan, discussed in Chapter Five above.

<sup>140</sup> Kosovo Law No. 04/L-020 on Amending and Supplementing of the Law No.03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in Republic of Kosovo, December 2011. See Krasniqi, 'Equal Citizens, Uneven Communities', p. 209. Of the various special representation mechanisms available to communities, the CCC is one of the less politically effective, as it is based within the office of the president and not the prime minister, and can only issue non-binding recommendations (Interview with former UNHCR and UNMIK ORC local staff, September 2014).

understandings of multi-ethnicity thus seem to have increased on the part of the drafters of these designs. This development may be explained concerns about the potentially discriminatory nature of singling out the Kosovo-Serbs for special minority rights,<sup>141</sup> and by a desire to lower the stakes in the negotiations between the main parties to the conflict, Kosovo-Serbs and Kosovo-Albanians through inclusion of guarantees to other minorities. There is a historical element to this, too. In fact, the initial recognition of some of Kosovo's smaller minorities came as part of an 'often-deliberate fragmentation of minorities'<sup>142</sup> practiced by Serbia and other post-Yugoslav nation-states emerging in the 1990s. It was Serbia under Milošević that recognised the Egyptian and Ashkali as communities distinct from the Roma, as well as the Gorani as a separate Slav Muslim category.<sup>143</sup> To these have been added other smaller minorities since Kosovo's independence. Despite this, the Ahtisaari Plan includes asymmetrical elements favouring the Kosovo-Serbs, most notably in the decentralisation of enhanced competencies to certain Serb-majority municipalities only. One interviewee mentioned that 'this is the problem I see with the Ahtisaari Plan, when it comes to a real, proper multi-ethnicity. Because if you

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<sup>141</sup> This discriminatory element came to the fore in the international experience in BiH, where the focus on the three largest ethnic groups, declared 'constituent peoples' in the post-war constitution, led to special representation rights and quotas for constituent peoples throughout the political system, which, however, excluded citizens not belonging to those groups, so-called Others. When two Bosnian citizens of Jewish and Roma origin took their ineligibility to stand for election to Bosnia and Herzegovina's Presidency and House of Peoples to the European Court of Human Rights, the Court ruled that this was discriminatory and in contravention of the European Convention on Human Rights, see *Sejdić and Finci v. Bosnia and Herzegovina*, ECtHR December 2009.

<sup>142</sup> Florian Bieber, 'The Construction of National Identity and Its Challenges in Post-Yugoslav Censuses', *Social Science Quarterly*, vol. 96, no. 3, 2015, p. 883.

<sup>143</sup> It is likely that this was done in order to further fragment minorities, thus strengthening the dominant role of Serbs as the majority group.

speak about multi-ethnicity, for me that word includes more than two, not Albanians and Serbs only, but also the others'.<sup>144</sup>

In light of those above-mentioned criticisms, the promotion of a multi-ethnic state by recognising group identities may also strengthen cohesion within ethnic groups because of perceived competition between groups, as Bieber has argued, 'a multi-ethnic Kosovo thus reduces the possible differences between Albanians and establishes a majority-minority dichotomy, which is easily disadvantageous for the minority due to its small size'.<sup>145</sup>

The decentralisation process, while contributing to an increase in Kosovo-Serb voter turnout, also reduced the need of majority politicians to feel accountable to minority voters. This was mentioned by those international interviewees who were wary of the separating effects of the politics of recognition. It was pointed out, for example, that before the carving out of new municipalities for minorities, mayors 'used to campaign for Serbian votes in Serbian. It was much more multi-ethnic'.<sup>146</sup> The new municipalities and the ethnic division this brought to the local elections are thus seen as undermining multi-ethnicity, rather than strengthening it.

However, many interviewees considered the special representation rights a necessary *protection* for minorities, especially given the extent to which these are outnumbered numerically in Kosovo. According to one interviewee, 'making that work as a democracy is a huge challenge, unless you've got very substantial, almost anti-democratic protections in place .... If you've got a five per cent

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<sup>144</sup> OSCE staff member, interview, September 2014, Pristina.

<sup>145</sup> Bieber, 'The Legal Framework', p. 120.

<sup>146</sup> International NGO staff working in the field of returns, interview, September 2014, Pristina.

minority who you want to protect, “one man one vote” doesn’t get you very far.’<sup>147</sup> In fact, beyond ensuring minimal representation, the Ahtisaari Plan set up the possibility for Kosovo-Serbs to act as potentially powerful kingmakers in coalition negotiations.<sup>148</sup> Furthermore, these rights were meant to ensure Kosovo-Serbs and other minorities effective veto power on laws in certain areas relevant to their core interests. However, given the still relatively low voter turnout among Kosovo-Serbs, there hasn’t been significant use of these powers to date. As one commentator remarked, between the 2004 riots and the decentralisation process of 2009 the Kosovo-Albanian political elite got used to Kosovo-Serbs not participating politically at the central level at all. Thereafter, the minority parties that did take part in elections acted as coalition partners to the government, which made it unlikely for them to aggressively use these powers. However, this arrangement ‘had some benefits in that it has made the atmosphere between Albanians and Serbs so mild ... it has really helped smoothen, at least south of the Ibar, inter-ethnic relations’.<sup>149</sup>

Overcoming the Kosovo-Serb boycott of elections after 2004, and ensuring Kosovo-Serb participation in the newly created institutions, were key aims of the minority rights provisions in the Ahtisaari Plan. In this context, while these were certainly measures that were perceived as imposed from abroad on the Kosovo-Albanians, and as simply necessary in order to achieve independence, the representation rights at central level also created for the majority Kosovo-

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<sup>147</sup> Former Head of Political Affairs, ICO, skype interview, September 2014.

<sup>148</sup> *ibid.*

<sup>149</sup> Senior international analyst, interview, September 2014, Pristina.

Albanians ‘a group of loyal minorities’.<sup>150</sup> However, of the inducements available to generate Kosovo-Serb participation in the new state structures, decentralisation trumped minority rights according to one participant in the process:

[decentralisation] was a game-changer. Because the thing about minority rights is, it’s hard to capture, it’s elusive, especially when you have weak rule of law. What does that earn me, that I have a right to a bilingual administration? When the state is so weak, how can I expect to get documents or correspondence in Serbian? I mean, you can put that into a constitution, but it won’t be a big carrot for any Serb .... It is worth as much as it is worth. And those deputy ministers and deputy mayors, at times this was more of a decoration than reality.<sup>151</sup>

### **Integration**

The concept of integration goes beyond co-existence and suggests actively de-emphasising the dividing lines between groups. Critical accounts of the international administration of post-war Kosovo seem to assume that ethnic integration was its overall goal.<sup>152</sup> However, as this study shows, this is not necessarily true. Rather, different notions of multi-ethnicity formed a complex interplay, resulting in the policies described in this and previous chapters. While on the one hand displaying notions of multi-ethnicity that allow for policies of recognition and, to some extent, separation, the international involvement in Kosovo simultaneously demonstrates notions of multi-ethnicity that imply integration and a blurring of divisions. These can be seen amongst other areas with regard to official symbols.

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<sup>150</sup> Former Head of Community Affairs, ICO, interview, April 2014, Berne.

<sup>151</sup> *ibid.*

<sup>152</sup> King & Mason, *Peace at any Price*, p. 113.

The Ahtisaari Plan prescribes that Kosovo's national symbols, including the flag, seal and anthem must reflect its multi-ethnic character.<sup>153</sup> When a competition was announced for designing Kosovo's new flag in 2007, the criteria banned the use of symbols and colour schemes of either the Albanian or Serbian national flags.<sup>154</sup> As a result, the proposals for flags mostly used images of Kosovo's map. The one that was eventually adopted resembles the flag of the European Union, with six stars surrounding the shape of the map of Kosovo. The six stars are said to symbolize six different communities that make up Kosovo's population.<sup>155</sup> The use of the map as the only visual signifier linking the flag to Kosovo reinforces a territorially defined identity that does not relate specifically to any ethnic or national group, but rather to a shared European identity as evidenced in the colours blue and yellow. In the spirit of multi-ethnicity, Kosovo also has a wordless anthem, aptly titled 'Europe'.

In the same vein, a 2010 Constitutional Court ruling required the municipality of Prizren to change its municipal emblem, which included an image of the League of Prizren building, considered the birthplace of modern Albanian nationalism. The ruling stated that the emblem did not reflect the multi-ethnic character of the municipality and thus violated the rights of Prizren's minority communities to protect and promote their identities.<sup>156</sup> The case was brought to the

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<sup>153</sup> Ahtisaari Plan, Article 1.7.

<sup>154</sup> Krenar Gashi, 'Kosovo Confused Amid Efforts to Choose a New Flag', *Balkan Insight*, June 2007.

<sup>155</sup> Stephanie Schwandner-Sievers & Isabel Ströhle, 'An Ethnography of "Political Will": Towards a Thick Description of Internal Scripts in Post-War Kosovo', *Südosteuropa. Zeitschrift für Politik und Gesellschaft*, vol. 60, no. 4, 2012, p. 509.

<sup>156</sup> Kosovo Constitutional Court, Case No.KO 01/09.

court by the municipality's former deputy mayor for minorities, himself a member of the Bosniak minority.<sup>157</sup>

Notably, the seminal Eide report, commissioned after the 2004 riots, which in many policy areas strengthened approaches that critics have associated with segregation and the entrenching of division, also called in resolute terms for integration, arguing for a reconsideration of local identities:

The Kosovo Albanians must seek to define their identity in a way which is not at the expense of others. They must understand the pressure felt by minorities against their identity, their culture and their livelihood .... All the communities must make an effort to base their future on inclusiveness, modernisation and democracy, rather than on separation and ethnic belonging.<sup>158</sup>

To many interviewees it was precisely this lack of a civic identity in Kosovo that contributed to their disillusionment with the idea of creating a multi-ethnic Kosovo: 'there is nothing to keep the two societies together. There's nothing that links them, other than a joint love of the land of Kosovo .... But otherwise, the language, the culture, the religion, are all different'.<sup>159</sup>

### **'Multi-Ethnicity': Entrenching or Blurring Divisions?**

Many interviewees, while embracing recognition as central to their notion of multi-ethnicity, also expressed unease about policies that endorse separation. As

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<sup>157</sup> Lawrence Marzouk, 'Kosovo: Court Bans Prizren Emblem', *Balkan Insight*, March 2010. Incidentally, this judgment faced intense opposition from civil society locally. Despite pressure from the ICO on the municipality, the ruling was effectively ignored. See Andrea Lorenzo Capussela, 'A Critique of Kosovo's Internationalized Constitutional Court', *European Diversity and Autonomy Papers*, vol. 2, 2014, pp. 13–14.

<sup>158</sup> Eide Report, p. 20.

<sup>159</sup> Advisor to Kosovo government on Communities and former OSCE official, interview, September 2014, Pristina.

one international official put it, ‘the potential negative aspects of [minority rights] are groups becoming side-lined and losing access to opportunities because they have to exist as a group, not having the opportunity of full integration’.<sup>160</sup> The possibility that these policies might be temporary was thus a recurring theme. The basis of this view is an idea of multi-ethnicity focusing on equal opportunities, which views special rights as temporary measures for achieving eventual equality and a softening of divisions between groups: ‘If I could chose, then I would hope that this would only be certain affirmative action to empower certain ethnic communities for a while, and then ideally borders would be blurred a bit’.<sup>161</sup>

A double-track approach to minority rights was also advocated, comparing it to the pursuit of gender equality:

it’s the same thing, you can’t say it’s either gender mainstreaming or women-specific projects, sometimes you need both, and both are equally crucial. If someone is left behind, sometimes we need targeted projects which really focus on getting them up to speed. But on the other hand you also need to be careful that you’re not only focusing on minority specific projects, because ... the aim is to reintegrate minorities into mainstream society and not to support this compartmentalisation, and I think that remains a challenge.<sup>162</sup>

Others also recognised this tension: ‘It’s kind of paradoxical, in that we are understandably obsessed with protecting communities from each other, and getting away from discrimination based on nationality [or] ethnicity. And then the first

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<sup>160</sup> Senior ICO official, interview, September 2010, Pristina.

<sup>161</sup> Deputy Director of Department for Human Rights and Communities, OSCE Mission in Kosovo, interview, September 2010, Pristina.

<sup>162</sup> UN Development Coordinator/UNDP Resident Representative, interview, October 2010, Pristina.

thing we do is start defining and protecting everyone based on ethnicity, which maybe increases the distinction.’<sup>163</sup>

The risk of these policies further entrenching separation came up repeatedly, suggesting that integration was a prevalent element in the understanding of multi-ethnicity among international actors, even if the policies pursued in its name sometimes undermined these integrationist goals. One UNMIK official defined the sorrow state of Kosovo, by referring to the very minimal interaction between the two groups, which ‘sometimes only happens at institutional level .... With these divisions and segregation, they are still far away from achieving a multi-ethnic society’.<sup>164</sup> There was also awareness of the potential downsides of policies pursued in the name of multi-ethnicity, even of the measures originally taken to protect minorities, such as the so-called ‘humanitarian buses’ that have facilitated freedom of movement for minorities in Kosovo since 1999. In the context of recent discussions about funding for these bus routes, a senior UNMIK official mentioned that, while these are necessary, ‘we consider that ... they’re not leading to the reconciliation of the population, because everyone has their own transport and people don’t mix’.<sup>165</sup>

This was also reflected in local responses and evaluations of the international project for a multi-ethnic Kosovo, with some civil society actors and former local staff of international organisations noting the lack of contact between

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<sup>163</sup> Former Head of Political Affairs, ICO, skype interview, September 2014.

<sup>164</sup> UNMIK official, Office of Community Support and Facilitation, previously ORC, interview, September 2014, Pristina.

<sup>165</sup> Head of UNMIK Office of Community Support and Facilitation, interview, September 2014, Pristina.

groups: ‘There is hypocrisy in all this, because they are all the time saying “multi-ethnicity”, and at the same time this “multi” is without interaction’.<sup>166</sup> Economic development was considered by both local and international interviewees to be the missing element that could have facilitated this desired and elusive cooperation and social integration.<sup>167</sup> Instead of putting the concept of multi-ethnicity at the centre of its discourse, one local interviewee stressed that the international community ‘should have talked [about] integration, they should have talked [about] cooperation. And most importantly they should have talked [about the] economy. The economy is the key to this’.<sup>168</sup> This speaks of a frustration with the reality on the ground, characterised by a private sector so weak that public employment became one of the only sources of livelihood, thus entrenching a patronage system—for majority and minority communities alike—that weakens governance in general in Kosovo.<sup>169</sup> This economic dimension is one of the reasons the decentralisation process, with its creation of job opportunities within municipal structures and control of budgets, had such appeal to the Kosovo-Serb community, who generally lacked access to those opportunities at the central level.<sup>170</sup>

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<sup>166</sup> Deputy Head, *Lëvizja Vetëvendosje*, interview, September 2010, Pristina.

<sup>167</sup> Mentioned in interviews e.g. by former local staff of ICG, UNMIK, and ICO, interview, September 2014, Pristina; Former Head of Community Affairs, ICO, interview, April 2014, Berne; Former senior ICO official, skype interview, September 2014.

<sup>168</sup> Former local staff of ICG, UNMIK, and ICO, interview, September 2014, Pristina.

<sup>169</sup> Capussela, *State-Building in Kosovo*.

<sup>170</sup> Former Head of Political Affairs, ICO, skype interview, September 2014; Senior international analyst, interview, September 2014, Pristina.

## **6.5. Conclusion**

Policies in the field of minority rights, including representation rights for minorities in state structures and poly-ethnic rights relating to language, education, and culture were designed to recognise and protect the identities of Kosovo's minorities, and importantly, to ensure their participation and integration into the state. These legal and institutional arrangements were largely imposed on Kosovo in the various documents drafted by international actors, and their implementation was either driven or supervised by international organisations such as UNMIK and ICO during the post-war period. Normative and consequentialist considerations were at play in designing these minority rights arrangements, as they aimed to resolve the conflict and build both a functioning and normatively acceptable post-conflict Kosovo.

Minority rights in the Kosovo context were framed as a tool to foster the inclusion and participation of minorities, and particularly to entice Kosovo-Serb participation following the war. While this strategy of inclusion succeeded to some extent, particularly following the introduction of further self-government rights in the form of decentralisation through the Ahtisaari Plan, the minority rights provisions also encouraged further separation between groups, with ethnic categories becoming central to the political system. All of these at times contradictory measures were taken in the name of Kosovo's multi-ethnicity, a largely unspecified but central goal that was present throughout the international administration of Kosovo.

To sum up, this second section has examined international commitments to multi-ethnicity as they were manifested in policymaking between 1999 and 2012. Three policy areas in which the international community actively shaped the post-

war polity, and through which it attempted to ensure Kosovo's multi-ethnic character, were reviewed: minority returns, decentralisation, and minority rights. In all of these policy areas, international organisations on the ground were firmly committed to the central but largely undefined goal of multi-ethnicity. This section reviewed the various understandings of multi-ethnicity evidenced in international policymaking in pursuit of this goal, ranging from minimalist notions of multi-ethnicity informed by a liberal-individualist tendencies, which were rare, to more substantive notions that entail the state's recognition of group identities, based on communitarian approaches discussed in the Introduction. These more substantive notions of multi-ethnicity included visions of multi-ethnicity that entailed integration, however, the recognition-based policies pursued often led to further separation between groups.

International actors in Kosovo had to negotiate their commitments to multi-ethnicity with the difficult post-war reality, and in this process shifted in their notions of multi-ethnicity over time responding to developments on the ground, though without ever abandoning the goal. Initially, policymaking was marked by a desire to reverse the separation that had taken place during and after the conflict, as evidenced in returns policies aimed at re-mixing ethnic groups, and a reluctance to institutionally recognise ethnic enclaves. A trend over time towards more recognition-based notions of multi-ethnicity can be discerned, most notably in the international reactions to the 2004 riots. The dilemma between the hope for integration between groups, and the level of segregation implied by some of the policies pursued in the name of Kosovo's multi-ethnicity was never fully resolved.

Some local political actors problematised the minority rights and other measures pursued by international actors in the name of multi-ethnicity, finding

that ‘the idea of multi-ethnicity degenerated the moment we started talking about multi-ethnicity .... The moment we started bringing it into the public discourse I think things got worse and the differences became visible and, well, you see the results.’<sup>171</sup> To many in the international community, on the other hand, these measures seemed necessary, because inter-ethnic relations were already ‘so polarised, and it was so much on the surface as an issue [that] affirmative action and a quota system may just be necessary in some countries for a much longer time, or maybe always’.<sup>172</sup> This tension is discussed in the subsequent final section, which completes the critical examination of commitments to multi-ethnicity in Kosovo drawing on the preceding empirical discussion of policies on returns, decentralisation and minority rights.

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<sup>171</sup> Kosovar civil society activist, interview, September 2010, Pristina.

<sup>172</sup> Former strategy advisor to UNMIK SRSG, interview, January 2011, Oxford.

### **Section Three: Explanations for International Normative Commitments to Multi-Ethnicity**

Following the discussion of the origins and manifestations of international normative commitments to multi-ethnicity in Sections One and Two respectively, this final section completes the thesis by exploring explanations for these commitments. Chapter Seven employs the conceptual framework outlined in the Introduction to identify explanations for the international normative commitments to multi-ethnicity in post-war Kosovo. It draws both on the insights gained from the study of policymaking in the areas examined in Section Two, as well as on an in-depth analysis of forty semi-structured and unstructured interviews conducted during the course of this research with international and Kosovar policymakers. Thereafter, the Conclusion identifies the study's key findings and draws from these a number of implications for the study and practice of international state-building in Kosovo and beyond.



## **VII. Explaining Commitments to Multi-Ethnicity in Kosovo: Normative and Consequentialist Considerations**

This chapter completes the critical examination of international commitments to multi-ethnicity in post-conflict Kosovo. It builds on the previous section, which examined the policy areas of minority returns, decentralisation, and minority rights as manifestations of international commitments to multi-ethnicity. The chapters in Section Two empirically illustrated how ‘multi-ethnicity’ as an ideal and a goal influenced policymaking in those fields, and how this largely unspecified concept was negotiated in policymaking. Different understandings and notions of multi-ethnicity were uncovered in these previous chapters, ranging from the mere presence of various ethnic groups in Kosovo, to co-operation, integration, and the recognition of difference.

This chapter draws on the framework of the two logics of action discussed in the Introduction above,<sup>1</sup> as well as on Section One that situated the pursuit of multi-ethnicity by international actors in Kosovo in their political, historical, and regional context. It aims to unpack the international commitments to multi-ethnicity by tracing both normative and consequentialist considerations that help explain them. For this purpose, the chapter employs the lens of both logics of action: the logic of appropriateness and the logic of consequences or effectiveness.

The first part addresses normative or value-based considerations, which focus on the perceived appropriateness of multi-ethnicity as a strategy and goal.

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<sup>1</sup> March & Olsen, ‘Institutional Dynamics of International Political Orders’; James G. March & Johan P. Olsen, ‘The Logic of Appropriateness’, in Robert E. Goodin, Michael Moran, & Martin Rein, eds., *The Oxford Handbook of Public Policy*, (Oxford: Oxford University Press, 2006), pp. 689–708.

Thereafter, considerations based on instrumental rationality are discussed, which evaluate the effectiveness and consequences of multi-ethnicity. A third part of the chapter, predicated on constructivist understandings the relationship between norms and identity, explores how the identity and self-image of international actors help explain their commitments to multi-ethnicity. This includes how international policymakers were constrained, first by the purpose of the initial intervention in Kosovo, second by international actors' identity and self-image as impartial, and, finally, by a desire to be viewed as successful in their engagement in Kosovo. Thereafter, implicit assumptions underlying the international commitments to multi-ethnicity are elaborated, which add to a critical understanding of the phenomenon in question. The final segment discusses the implications of these findings, the most important of which was the significant gap between local and international understandings of and approaches to multi-ethnicity in Kosovo.

### **7.1. Normative Considerations**

As the preceding section has demonstrated, normative considerations played an important role in policymaking on minority returns, decentralisation, and minority rights in post-war Kosovo, informing the commitments of international actors to multi-ethnicity. There was a widely held normative stand in support of diversity, as a value in its own right. In the post-war context, this was coupled with a principled rejection of both mono-ethnicity resulting from ethnic cleansing and the underlying assumptions of ethnic homogeneity being the basis for modern

states, described above as the ‘anti-Lausanne consensus’.<sup>2</sup> The historical and regional background for understanding the normative dimension of these commitments, I explored in Section One.

According to the UN Independent Expert on Minority Issues, the aim of the international minority rights regime is to create societies in which ‘various national, ethnic, religious and linguistic groups are able to live confidently together, communicate effectively, and recognise value in their differences and in their society’s cultural diversity’.<sup>3</sup> Embracing diversity was mentioned by many interviewees as both the morally and politically right thing to do. It was moral in contrast to the normatively unacceptable ethnic cleansing that took place during the conflict. It was political because, as one advisor said, ‘it helps calm down the politics in the region, because it keeps Serbia from playing a political game that is quite destructive’.<sup>4</sup> These political, consequentialist logics are discussed below.

While diversity is valued over ethnic homogeneity and exclusivity, there is also hesitation among international actors about possibly over-emphasising ethnicity and thus creating or entrenching division. This suggests an ideological commitment not only to diversity as such, but to integration between groups. Unease about the possibility that recognition of difference could cause increased separation between groups led many of my interviewees to describe the recognition-based policies of multi-ethnicity promotion as akin to affirmative action. As discussed in the Introduction, affirmative action itself is not contrary to

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<sup>2</sup> ESI, *Lausanne Principle*.

<sup>3</sup> quoted in Baldwin, *Minority Rights in Kosovo*, p. 5.

<sup>4</sup> Former strategy advisor to UNMIK SRSG, interview, January 2011, Oxford.

the model of the difference-blind society, since it is normally understood as a temporary measure. This was voiced by several interviewees: ‘If I could choose then I would hope that this would only be a certain affirmative action to empower certain ethnic communities for a while, and then ideally borders would be blurred a bit’.<sup>5</sup>

From the research conducted it is clear that international actors promoted multi-ethnicity because this seemed like the ‘right thing to do’; precisely along the lines described in the ‘logic of appropriateness’.<sup>6</sup> This was stated clearly, including by interviewees who were aware of the elusiveness of multi-ethnicity in Kosovo and mentioned the difficulties inherent in such a goal. One said that multi-ethnicity was pursued because it was ‘morally right’.<sup>7</sup> When mentioning how important it was to be fully committed to minority returns and re-integration, despite the difficulties on the ground, this interviewee made the normative case clear: ‘that’s just what we stand for, especially in Europe, we can’t accept a state which violates the rights of its minorities. Kosovo as that kind of state would just not be the kind of state we would want to deal with’.<sup>8</sup> This shows a strong idea, shared by other interviewees, of legitimate statehood in which a normative commitment to diversity is central. It was also mentioned as an important precondition for broader international recognition of newly-independent Kosovo, indicating that given the international normative framework within which potentially recognising states

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<sup>5</sup> Deputy Director of Department for Human Rights and Communities, OSCE Mission in Kosovo, interview, September 2010, Pristina.

<sup>6</sup> March & Olsen, ‘The Logic of Appropriateness’.

<sup>7</sup> Former strategy advisor to UNMIK SRSG, interview, January 2011, Oxford.

<sup>8</sup> *ibid.*

operated, mono-ethnicity, or a post-conflict Kosovo that was not self-defined as multi-ethnic, would have difficulty gaining recognition. In fact, in addition to actually protecting minorities and providing for their integration into Kosovo's structures, the policies examined in this study also had an international audience: an international community evaluating Kosovo's legitimacy as a self-proclaimed state in the global arena. In that sense, the policies prescribed in the Ahtisaari Plan can be understood as a way of making Kosovo's independence normatively acceptable to the world:

The Ahtisaari Plan was a very elaborate structure to protect minorities and particularly the Serbs, and to reassure outsiders, international outsiders, that really everything was being done to protect Serbs and therefore it was safe to recognise [Kosovo]. That's the underlying message in the plan.<sup>9</sup>

There is evidence of this in the large number of states that were explicit in justifying their recognition of Kosovo 'based on its decision to build a multi-ethnic and democratic state'.<sup>10</sup>

When discussing some of the hesitations among the Kosovo-Albanian political elite with regard to the vision of a multi-ethnic Kosovo, this idea of legitimate statehood was raised again, in relation to those leaders themselves being aware of and wishing to appeal to a dominant international view of appropriateness. According to one international policymaker, 'they understand that they cannot appear as leaders as kicking part of the society out. So, whether they like it or not, that's another question, but they have understood that this is how the

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<sup>9</sup> Former Head of Political Affairs, ICO, skype interview, September 2014.

<sup>10</sup> Edward Newman & Gëzim Visoka, 'The Foreign Policy of State Recognition: Kosovo's Diplomatic Strategy to Join International Society', *Foreign Policy Analysis*, 2016, p. 8.

modern world functions'.<sup>11</sup> Another interviewee mentioned that even former KLA strongmen who had recently fought an ethno-nationalist insurgency war quickly took on the narrative of multi-ethnicity, partly because they pragmatically understood that 'the international community will see [them] as pariahs if [they] don't address these minority issues in a responsible way'.<sup>12</sup> Overall, multi-ethnicity and its associated policies were understood to be central to the international community's mission in Kosovo, largely because a logic of appropriateness was operating. International actors felt that this was the right concept to uphold. This made pragmatic discussion of alternatives, including a redrawing of borders or the re-settlement of populations practically unthinkable, even though these had been acceptable practice only a few decades earlier. One interviewee put it succinctly, stating that it 'absolutely had to be at the centre of our policy to insist that the Kosovo-Albanians do the morally right thing and take responsibility for the minorities'.<sup>13</sup>

## **7.2. Consequentialist Considerations**

As mentioned above, the two logics of action are not mutually exclusive, and consequentialist considerations operated simultaneously to normative ones. Examining the logic of consequences at play helps explain the policies and commitments to multi-ethnicity in Kosovo. This includes seeing multi-ethnicity as a tool to encourage Kosovo-Serb 'buy-in' to the nascent state-building project, as a

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<sup>11</sup> Former senior ICO official, skype interview, September 2014.

<sup>12</sup> Former strategy advisor to UNMIK SRSG, interview, January 2011, Oxford.

<sup>13</sup> *ibid.*

means of reducing tensions between Kosovo and Serbia, or as a concession for gaining Kosovo's independence. Some of these explanations involve a normative dimension, too, which is discussed in more detail below.

In both documentary and interview sources, all types of group-differentiated rights and policies pursued in post-conflict Kosovo, including self-government, special representation, and poly-ethnic rights were discursively framed as mechanisms for the purposeful *integration* of Kosovo's minority communities into the emerging state structures, with a strong emphasis on the Kosovo-Serb community due to its boycott of Kosovo institutions, services, and symbols. The Kosovo-Serb boycott of Kosovo's elections and institutions had seriously hampered both Kosovo's legitimacy internationally, and its ability to function domestically. Its potential effects on remedying this legitimacy deficit was one of the rationales proposed for convincing the mostly reluctant majority community of the importance of Kosovo's multi-ethnicity: 'I always try to say to the Kosovo institutions, if you were to take more responsibility [for minority rights] it would also be easier for them to be *true* Kosovo-Serbs, and not Belgrade-guided Kosovo-Serbs'.<sup>14</sup> The relationship between policies associated with multi-ethnicity and achieving buy-in from minorities was made most explicit in relation to decentralisation. International actors considered decentralisation the most significant 'carrot' that could overcome Kosovo-Serb boycott. The Kosovo-Albanian dominated government in Pristina, tasked with implementing the

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<sup>14</sup> Deputy Director of Department for Human Rights and Communities, OSCE Mission in Kosovo, interview, September 2010, Pristina.

Ahtisaari Plan and creating new municipalities for minorities, understood this logic as well, as expressed by the Minister of Local Government Administration in 2010:

It's not that they were together and decentralisation separated them. The Serbs were living in enclaves. And through decentralisation we start a movement towards integration. So the purpose of decentralisation is an opportunity for them to overcome the situation of being separated and isolated.<sup>15</sup>

Regional stability was another important reason for the international focus on multi-ethnicity in Kosovo. Given on-going and lingering tensions around minority issues in neighbouring countries, one interviewee remarked, 'I think that that kind of acceptance of diversity is very crucial for the stability of the region and of Kosovo'.<sup>16</sup> The regional political dimension was emphasised in relation to the role of Serbia in the status negotiations as well as in the context of returns policy. As discussed in Chapter Four above, the returns process was highly politicised. The number of displaced persons, their potential locations of return, and the conditions on the ground relating to their safety all became part of an intense policy and media battle between Kosovo and Serbia. Organisations tasked with realising the human rights of displaced persons, such as UNHCR and UNMIK, found their task becoming increasingly politicised and manipulated by different parties. When asked why the right to return and other minority rights were still pursued despite all the difficulty, one practitioner said that in addition to wanting to do the morally right thing,

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<sup>15</sup> Kosovo Minister of Local Government Administration, interview, September 2010, Pristina.

<sup>16</sup> UN Development Coordinator/UNDP Resident Representative, interview, September 2010, Pristina.

It's also politically right. It helps calm down the politics in the region, because as long as Serbia has a claim in saying 'look at Kosovo, it's violating the rights of the Serb and the Roma minority', Serbia has an ability to play a political game that is quite destructive in the region. Whereas, if you really focus on insisting that the Kosovo-Albanians have to take responsibility for their minorities, there isn't that same ability to manipulate existing tensions.<sup>17</sup>

Regional stability and a desire to avoid minority issues escalating into violence that might necessitate further international intervention was also a central concern: 'it's in the interest of the international community to uphold the respect for community rights because the whole mess started from the disrespect of community rights of the other side'.<sup>18</sup>

At a more pragmatic level, there is also the view of multi-ethnicity as a price to be paid for independence:

It just seemed that if Kosovo was going to, in a way, *earn its independence*, the Kosovo-Albanians would have to take responsibility for the Serb minority and the Roma minority and other minorities in Kosovo. And that's also what informed the 'Standards before Status' policy.<sup>19</sup>

Multi-ethnicity was presented as a necessary condition for independence and it was communicated and understood in instrumental terms by the political actors involved. While this can be framed as an instrumental policy choice, this trade-off also had an important normative dimension: *why* multi-ethnicity mattered to the international community in the first place. The instrumental, or consequentialist, reasoning is what seems to resonate with the local view on the discussed multi-ethnicity policies, as a local interviewee remarked:

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<sup>17</sup> Former strategy advisor to UNMIK SRSG, interview, January 2011, Oxford.

<sup>18</sup> Former ICO official, interview, September 2014, Pristina.

<sup>19</sup> Former strategy advisor to UNMIK SRSG, interview, January 2011, Oxford.

There was always a general understanding and acceptance that whatever the Ahtisaari Plan brings we have to accept. Because it was served to people in that way, as a compromise we have to make in exchange for the statehood we are gaining. This is why no one could actually challenge decentralisation.<sup>20</sup>

This dynamic has a historical precedent in the minority rights treaties that were imposed on new states after World War One in exchange for their recognition. Both instances suggest that there may also be competing notions of sovereign statehood at work in relation to external multi-ethnicity promotion.<sup>21</sup>

Commitments to multi-ethnicity were also closely tied to the question of Kosovo's status. It was particularly the idea that Kosovo, were it to become a recognised state, would have to be a multi-ethnic *state* that had salience for the international community. While mono-ethnicity was not seen as necessarily desirable in smaller, non-state units either, its acceptance was more likely in those contexts, as evidenced by the creation of largely mono-ethnic municipalities within Kosovo. If, however, a sovereign state were to result from the international intervention and decade-long UN administration of Kosovo, it became imperative for this state to be multi-ethnic. A mono-ethnic state in this context would have been perceived as an indictment of the entire international engagement in Kosovo. However, UNSC Resolution 1244 had locked the international community, and UNMIK in particular, into a position of status-neutrality. This, and the lack of consensus on final status within the international community, hindered the development of a clear vision for Kosovo's multi-ethnicity. Multi-ethnicity

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<sup>20</sup> Kosovar civil society activist, interview, September 2014, Pristina.

<sup>21</sup> Jackson Preece, 'Minority Rights in Europe', p. 80.

remained an undeniable goal, one that was framed in mostly normative terms but remained largely unspecified.

While the acceptability of saying this in public increased over the post-conflict years, any return to Serbian sovereignty already seemed unlikely to many in the international community in the early 2000s. However, this expected end state was linked to multi-ethnicity, as one UNMIK official explained ‘I think people assumed there would be an independent Kosovo. But we wanted it to be given as promised, basically, once there were basic conditions that allowed for a certain level of multi-ethnicity’.<sup>22</sup> The foreseen outcome of Kosovo’s status was officially left undefined in the Vienna negotiations, however, Ahtisaari himself signalled to all parties including Serbia before the negotiations began that independence was the preferred outcome.<sup>23</sup> It was also made clear to the Kosovo delegation that this would be a form of ‘conditional independence’, which was a way to ‘try to extract as much as possible from the Kosovo-Albanians in exchange for [independence], in terms of guarantees and agreement to modalities of government that would provide as much guaranteed space as possible for the Serbs in particular, and other minorities’.<sup>24</sup>

Various interviewees referred to this dynamic as a deal that the Kosovo-Albanians understood, which involved accepting protections for Serbs in return for independence. Once the Vienna negotiations had put the option of independence on

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<sup>22</sup> Former Head of UNMIK Office for Returns and Communities, interview, April 2014, New York City.

<sup>23</sup> Katri Merikallio & Tapani Ruokanen, *The Mediator: A Biography of Martti Ahtisaari* (London: Hurst & Company, 2011), p. 340.

<sup>24</sup> Senior international analyst, interview, September 2014, Pristina.

the table, resistance from Kosovo-Albanian political actors to these minority protections waned significantly. As one former UNMIK staff recalls, remembering the early 2000s when Kosovo's status was not yet discussed: 'there was a huge amount of resistance among Kosovo-Albanians towards any of those [minority protection] measures back when we were in Kosovo, but it's just interesting how the politics changes entirely once they get what they wanted, which was independence'.<sup>25</sup> It was the riots of 2004, and the following Eide report, which changed this. As a Kosovo-Albanian politician describes:

Until 2004 you had multi-ethnicity as an aim and as a tool, but there was nothing beyond that. 2004 gave a perspective, to show that multi-ethnicity is a tool to reach that perspective, which is independence .... We came to a point in which the political mainstream leadership ... understood that we ... have to work on this multi-ethnicity concept and the reward will be independence.<sup>26</sup>

Even after independence, the pull of eventual EU membership was mentioned as the main tool that allowed for implementation of often-unpopular policies granting minorities special rights.<sup>27</sup> The Kosovo-Albanian political elite made frequent references to Kosovo's multi-ethnic character, which, however, as discussed further below, must be understood in the context of the dependence of local elites on the international community.<sup>28</sup>

The ICO, tasked with monitoring and supporting the implementation of the Ahtisaari Plan, tried to frame the need to implement multi-ethnicity policies in the

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<sup>25</sup> Former strategy advisor to UNMIK SRSG, interview, January 2011, Oxford.

<sup>26</sup> High-ranking Kosovo Government official, interview, September 2014, Pristina.

<sup>27</sup> Policy Advisor on Religious and Cultural Heritage to the EU Special Representative to Pristina, interview, September 2014, Pristina.

<sup>28</sup> Annika Björkdahl & Ivan Gusic, "Global" Norms and "Local" Agency: Frictional Peacebuilding in Kosovo', *Journal of International Relations and Development*, vo. 18, no. 3, 2015, p. 277.

context of the on-going dispute with Serbia, which continued to reject Kosovo's independence. The dual task of persuading Kosovo-Serbs to participate in state structures, particularly in the newly created municipalities, while convincing the Kosovo-Albanians to own this process to their advantage, was described in consequentialist terms by those who took part in it:

The recognition did grow within the political establishment in Pristina from the Albanian side, that it's actually good for them. That this way they get a few Kosovo-loyal Serbs, and it's the best strategy for them so they can say vis-à-vis Belgrade and the North: look, we did our part.<sup>29</sup>

The Kosovo-Serbs also had pragmatic reasons to cooperate, as mentioned in Chapter Five on decentralisation, which most interviewees assumed to be linked to the allocation of political power and scarce resources. As a former political analyst put it:

They wanted to have patronage where it actually mattered for them, which was in Pristina, so they would both have a security guarantee from Pristina, and also some of the money that was available from Pristina and from the internationals. Because as Belgrade's finances got worse they were putting an increasingly limited pie into the North and less into the South. And then you had the whole dynamic of the SLS getting so deeply into the patronage politics of Pristina that it became sort of an appendage of Thaçi's PDK.<sup>30</sup>

Consequentialist logics have thus also been used widely to explain adherence to policies promoting multi-ethnicity described in this thesis, both on the part of the international and local actors involved.

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<sup>29</sup> Former Head of Community Affairs, ICO, interview, April 2014, Berne.

<sup>30</sup> Senior international analyst, interview, September 2014, Pristina.

### **7.3. The Role of Identity and Self-image among International Actors**

As mentioned in the Introduction, constructivist scholars have studied how identity influences the way political actors define their interests rather than presuming those interests as given based on material factors. In this view, norms and values can be regulatory or constitutive in nature: they can shape how actors behave or how they see and understand themselves.<sup>31</sup> The above discussion examined how norms, e.g. the positive understanding of diversity, affected political strategies on the part of international actors, i.e. the regulatory element of norms. This segment draws on their constitutive nature; the way international actors' identities are also shaped by their normative environment. As mentioned above, the relationship between norms, interests, and identities is recursive and circular. Norms affect interests, identities, and policies, but policies and identities also reproduce and reconstruct normative structures.<sup>32</sup>

Three elements are discussed here, each illustrating how international actors' identity and concerns about their image influenced commitments to multi-ethnicity. These include how international actors felt constrained firstly by the initial purpose of their intervention in Kosovo, secondly by an identity and desired self-image as impartial actors, and finally by a desire to be viewed as successful in their involvement in Kosovo. These elements influenced international approaches and commitments to multi-ethnicity in various ways, for example, the desired image as successful interveners led to an approach to multi-ethnicity that favoured quantifiable results.

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<sup>31</sup> Kowert & Legro, 'Norms, Identity, and their Limits', p. 452.

<sup>32</sup> Jepperson, et al., p. 53.

The initial purpose of intervening in Kosovo continued to inform the identity and self-image of international actors on the ground. Prior to intervention, Tony Blair described the international community's mission in these words: 'We cannot let the evil of ethnic cleansing stand. We must not rest until it is reversed'.<sup>33</sup> Thereafter, commitments to multi-ethnicity continued to be informed by a self-image centred on the original purpose of intervention: the reversal of ethnic cleansing. As a KFOR press statement read, following the shooting of a prominent Kosovo-Serb in Pristina: 'NATO and KFOR came to Kosovo to stop Mr. Milošević's violence against Kosovar Albanians – and we achieved this. But we did not come here to allow the reverse of the ethnic cleansing, now directed against non-Albanian ethnic groups'.<sup>34</sup> A similar statement by Javier Solana, then EU High Representative for Common Foreign and Security Policy, who had been Secretary General of NATO during the Kosovo campaign, made during a visit to Kosovo in the aftermath of the 2004 riots, epitomised this for one of the interviewees: 'He said: "I did not authorise the bombings to protect Kosovo-Albanians if the Kosovo-Albanians are now ready to turn around and victimise the Serb minority". That struck a very strong chord with me about why we were there'.<sup>35</sup> Backing down from a commitment to building a multi-ethnic Kosovo thus would have contravened international actors' self-image that resulted from the framing of the

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<sup>33</sup> Tony Blair, *Speech to Chicago Economic Club*, 22 April 1999, <https://www.globalpolicy.org/component/content/article/154/26026.html> (accessed 15 September 2016).

<sup>34</sup> KFOR press update, 3 November 1999, <http://www.nato.int/kosovo/press/1999/k991101a.htm>, (accessed 11 September 2016).

<sup>35</sup> Former strategy advisor to UNMIK SRSG, interview, January 2011, Oxford.

initial intervention. This dynamic reinforced the international normative commitments to multi-ethnicity.

Furthermore, a self-image of impartiality—and the desire to uphold such an image to others—suggests another possible explanation of international commitments to multi-ethnicity. Since in the case of Kosovo international intervention changed the local power dynamics irreversibly, and to the disadvantage of local Kosovo-Serbs, the promotion of policies of multi-ethnicity can be understood as an attempt to maintain an image and self-image as an impartial actor, despite the political consequences of the initial intervention. There is a historical dimension to this, too. Despite the fact that the literature generally avoids explanations of minority rights regimes drawing on competitive and punitive relations among states,<sup>36</sup> the policies imposed in the pursuit of a multi-ethnic Kosovo can be conceived of as a way of denying the Kosovo-Albanians full-scale ‘victory’ over the territory. It has been argued that, historically, minority rights developed as an indemnity offered to defeated parties and imposed by the great powers. This formula, which ‘balances the victory of one party with concessions to the defeated party [that] are expressed in terms of minority rights’,<sup>37</sup> was used by the great powers in Europe in the nineteenth century, and, it is argued, continue to be employed by the international community in the Balkans today.

Finally, there is a desire on the part of interveners for the intervention to be deemed successful. This need for a success story also influenced the commitments

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<sup>36</sup> Liebich, ‘Minority as Inferiority’, p. 244.

<sup>37</sup> *ibid.*, p. 263.

to multi-ethnicity and its promotion. Despite the reality of strained inter-ethnic relations throughout the period in question, and the limited success of international policies in changing that reality, the international community continued to work towards multi-ethnicity in Kosovo. This can partly be explained by the need of international actors to self-characterise as not giving in to set-backs. Bernard Kouchner, UNMIK's first SRSG, while acknowledging the inter-ethnic violence and intimidation that characterised the period, nevertheless, 'as his successors would, clutched at ephemeral indications that trends might be improving'.<sup>38</sup> UNMIK has also been described as a 'report-driven mission', a phenomenon not unique to the international administration of Kosovo.<sup>39</sup> One local interviewee described how this affected the international approach to multi-ethnicity:

they had this mantra which now looking back we can define as 'stability above all'. So all they cared about was stability .... No matter what the situation on the ground they would be satisfied and fulfil their mission as long as they had some good reports to submit back to New York'.<sup>40</sup>

Some authors argue that this 'stability above all' approach, partly driven by a need to be viewed as successful, contributed to impunity for inter-ethnic crimes and planted the seeds for problems that continue to impede Kosovo's democratic development to this day. Andrea Capussela speaks of a 'non-aggression pact' that UNMIK early on entered into with the KLA and emerging Kosovo-Albanian

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<sup>38</sup> King & Mason, *Peace at any Price*, p. 69.

<sup>39</sup> Research Director, Kosovo think tank, interview, September 2010, Pristina.

<sup>40</sup> *ibid.*

political elites, which formed the basis for weaknesses in governance and rule of law throughout the post-war period.<sup>41</sup>

This ‘stability above all’ approach meant that impunity prevailed for large parts of both the Kosovo-Albanian and Kosovo-Serb elites, who were needed on board for the project of a ‘stable and multi-ethnic’ Kosovo to succeed. One local critic argues that UNMIK short-sightedly stressed the need for the two groups to ‘reconcile’ in the name of multi-ethnicity, while neglecting the issue of justice for past crimes. In this reading, UNMIK’s judicial system failed to address war crimes not just because they were inherently difficult, but because criminal trials would have increased inter-ethnic tensions, e.g. through allegations of collective guilt on either side.<sup>42</sup> The extent to which the violence of the early post-war period can be attributed to an international unwillingness, as opposed to inability, to prosecute and halt it, remains highly disputed, with the academic literature divided on the issue.<sup>43</sup> Many interviewees voiced regret at what was perceived as policies that sent the wrong message in the early days of the international administration:

There was too much tolerance in the first year of tit for tat violence or retribution. And unfortunately SRSG Kouchner was quoted on a number of occasions as saying ‘oh you can’t be too harsh on the Kosovars, after all they were the victims, etc.’ – well, both were victims.<sup>44</sup>

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<sup>41</sup> Capussela, *State-Building in Kosovo*.

<sup>42</sup> Deputy Head, *Lëvizja Vetëvendosje*, interview, September 2010, Pristina.

<sup>43</sup> See e.g. King & Mason, *Peace at any Price*; Capussela, *State-Building in Kosovo*; Boyle ‘Revenge and Reprisal’; James Ker-Lindsay, ‘The UN and the Post-intervention Stabilization of Kosovo’, *Ethnopolitics*, vol. 11, no. 4, 2012, pp. 392–405; Lars Burema, ‘Reconciliation in Kosovo: A Few Steps Taken, a Long Road Ahead’, *Journal on Ethnopolitics and Minority Issues in Europe*, vol. 11, no. 4, 2013, pp. 7–27.

<sup>44</sup> Senior UNMIK official, interview, September 2014. Telling in this statement is also the implicit equation of ‘Kosovars’ with ‘Albanians’, which happened repeatedly during the interviews conducted with international staff of these organisations.

Of course, stability was not only a convenient benchmark that contributed to the desired image of a *successful* international presence in Kosovo, it was also valued due to concerns for international military and civilian staff on the ground. Avoiding violence in Kosovo was a priority, particularly as tolerance for international casualties decreased over time and media attention focused increasingly away from Kosovo toward more recent interventions in Afghanistan and Iraq. A reluctance to risk coalition forces' lives and safety had already been a feature of the NATO air war, and this only became more pronounced over time.<sup>45</sup> However, the reluctance in key capitals to take a strong stance against 'trouble-makers' both among Kosovo's Albanian and Serb communities and thus to show a strong will to end the on-going violence of the immediate post-war years was resented by some international staff on the ground in Kosovo.<sup>46</sup>

A case in point is the ethnic division of Mitrovica, viewed by most commentators as the starkest evidence of a failure to build multi-ethnicity in Kosovo. The division of the city along ethnic lines resulted from the concern of French KFOR troops for their own safety, which was retrospectively widely criticised as a mistake.<sup>47</sup> Because KFOR did not immediately take control of the North, Kosovo-Albanian IDPs, predominantly from Northern Mitrovica, who

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<sup>45</sup> Operation Allied Force was conducted in a very casualty-averse manner. US President Clinton was particularly anxious to avoid military casualties following the troop losses in Somalia a few years earlier. This was one of the reasons NATO's intervention remained an air war with no ground strategy, even though key events that had legitimised the humanitarian intervention were taking place on the ground. See e.g. Andrew L. Stigler, 'A Clear Victory for Air Power: NATO's Empty Threat to Invade Kosovo', *International Security*, vol. 27, no. 3, 2002, pp.124–57; Michael Mandelbaum, 'A Perfect Failure: NATO's War Against Yugoslavia', *Foreign Affairs*, vol. 78, no. 5, 1999, pp. 2–8

<sup>46</sup> UNMIK Head of Office of Political Affairs, interview, September 2014, Pristina.

<sup>47</sup> King & Mason, *Peace at any Price*, p. 112.

wanted to return home after the bombing were initially denied access, which ‘allowed Kosovo-Serb IDPs, fleeing from southern Kosovo, to occupy the empty Kosovo-Albanian properties, which is still a cause for friction’.<sup>48</sup>

This led to the ethnic segregation and de facto administrative division of the city, with a large number of both Kosovo-Serbs and Kosovo-Albanians displaced on either side of the city and unable to return to their original homes. The division of Mitrovica can be interpreted as a stability-driven policy, influenced by a desire to portray a successful international intervention as evidenced by the absence of inter-ethnic violence, even at the cost of entrenching separation between groups. As one critic noted:

They came here and saw that there are two communities fighting each other. So the mission is to maintain peace. That means peace is maintained as long as these two communities don’t kill each other and there are good reports to submit to New York that no one died. So what did they do? They put tanks between the two communities and sealed them completely .... That’s what they cared about. They didn’t care about reconciliation.<sup>49</sup>

A desire to evaluate the international intervention and post-war administration of Kosovo as successful also affected an understanding of multi-ethnicity that is measurable in numbers. This explains the focus placed on inter-ethnic crime rates, minority turn-out at elections, and numbers of minority returnees, irrespective of whether they returned to ethnic enclaves or mixed areas, and irrespective of their living conditions upon return, as preferred indicators of Kosovo’s multi-ethnicity. As discussed throughout Section Two of this study, these

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<sup>48</sup> International advisor to Kosovo government on Community issues and former OSCE official, interview, September 2014, Pristina.

<sup>49</sup> Research Director, Kosovo think tank, interview, September 2010, Pristina.

notions of multi-ethnicity co-existed with other, more elaborate ones, which if applied could have made the international project of a multi-ethnic Kosovo appear less successful. The need to prove success in terms of numbers was raised by interviewees who recognised the limitations of this one-dimensional approach. For example, those who worked in adjudicating property claims for displaced Kosovo-Serbs were aware of the practical and political limitations of adjudication alone, since actual repossession of property relied additionally on the ability of returnees to safely repossess their property, live free from harassment, prevent re-occupation in case of absence, and to secure livelihoods and access to services.<sup>50</sup> However, even when they suspected that there were inconsistencies in the cadastre that should have been examined before further property claims were adjudicated, KPA was reportedly under pressure to continue adjudicating in order to prove their success in the area of property rights for minorities: ‘the donors pushed for numbers ... , there was so much pressure to have the numbers for donor funding.’<sup>51</sup>

#### **7.4. Underlying Assumptions**

The following part of the chapter examines some of the assumptions underlying international commitments to multi-ethnicity, which are rarely made explicit. These add to a critical understanding of these commitments and help explain them. Firstly, there was among international actors an assumption about

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<sup>50</sup> Senior international staff of Kosovo Property Agency, interview, September 2014, Pristina.

<sup>51</sup> Because cadastral data was not freely shared between government agencies, approximately 18,000 decisions had to be overturned after discovering that the claimed parcels of land did not correspond with the correct cadastral data (Senior international staff of Kosovo Property Agency, interview, September 2014, Pristina).

Kosovo's supposed multi-ethnic past, which had to be restored. This assumption drives commitments to multi-ethnicity in many policy areas, particularly relating to minority returns. Furthermore, the international community assumed the importance of ethnic belonging in Kosovo, leading to an ethnicity-centred view of the conflict and post-conflict reality, which influenced commitments to multi-ethnicity. An assumption about the ethnic character of the conflict in Kosovo, and corresponding assumptions about the parties to that conflict also help explain some of the findings from previous chapters. Finally, the paradoxical phenomenon whereby international actors are normatively committed to multi-ethnicity, while being sceptical about the attainability of this vision, is discussed, adding to the critical examination of these commitments.

### **Restoring a Multi-Ethnic Past**

As shown in this work, the aim of fostering multi-ethnicity in Kosovo was repeatedly stated by international actors following the 1999 intervention and throughout the post-war decade. In many instances, this vision was even defined explicitly as the 're-creation' of a multi-ethnic Kosovo.<sup>52</sup> In documents and speeches, international actors referred to their task of *preserving*, *restoring*, or *recreating* diversity and multi-ethnicity. However, as with other statements of the commitment to multi-ethnicity, what precisely was being preserved or restored was often left unspoken, raising questions about whether this might be referring to an imagined rather than real past. There was clearly an assumption among

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<sup>52</sup> Eric A. Witte, 'Reconstructing Kosovo: The Ethnic Dimension', in Kurt Spillmann & Joachim Krause, eds., *Kosovo: Lessons Learned for International Cooperative Security* (Bern: Peter Lang, 2000), p. 81.

international actors that Kosovo had a multi-ethnic past; whichever of the above notions of multi-ethnicity this may refer to. Several interviewees demonstrated such an assumption.

While it is an undisputed fact that Kosovo's demographic balance changed after 1999 and the size of its minority population declined, it is not clear that greater interaction, recognition, and integration existed between groups prior to the war, in a way commensurate with the more substantive notions of multi-ethnicity discussed above. This is particularly true for the 1990s, a period characterised by ethnic segregation, when Albanians were expelled from public institutions and built a separate, parallel system including separate health and education services.<sup>53</sup> In the minimalist statistical sense, Kosovo is less multi-ethnic today than it was prior to the conflict. Accordingly, an official raised the question regarding the position of Kosovo's Serbian community: 'the question is: who are we talking about? Are we talking about the people who live here today, or the people who *should* be living here today? Which is a different matter?'.<sup>54</sup> Another interviewee also framed the policies described in this thesis, e.g. the special representation rights for minorities in Kosovo's state structures, as a way to attempt to preserve or restore a previous demographic reality, by insisting that Kosovo-Albanians accept the fact that a large (and disputed) number of Serb 'IDPs who had relocated to Serbia proper, had to still be considered as citizens of Kosovo'.<sup>55</sup>

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<sup>53</sup> Vickers, *Between Serb and Albanian*, p. 289.

<sup>54</sup> Senior ICO official, interview, September 2010, Pristina.

<sup>55</sup> Advisor to Kosovo government on Communities and former OSCE official, interview, September 2014, Pristina.

Several interviewees, however, also alluded to more than the mere presence of minorities, lamenting for example that ‘we don’t live in *mixed* societies here anymore’.<sup>56</sup> The sense that international policies on multi-ethnicity were built on a desire to preserve or recreate a multi-ethnic past was also evident in the reading of the Ahtisaari Plan as ‘essentially a very conservative document, trying to preserve ... as much as is possible of Serb communities and other communities as they were, in a way it’s almost an attempt to preserve as much as possible of the previous Yugoslav settlement in aspic’.<sup>57</sup>

Scholars have pointed out that an assumption of a multi-ethnic past characterised by cooperation and integration is not an accurate reflection of much of Kosovo’s history, and that therefore ‘the creation of a multi-ethnic Kosovo based on peaceful coexistence has to create a new state of Serb-Albanian relations – and not re-establish previously existing political arrangements’.<sup>58</sup> This misconception arguably led the international community to adopt over-ambitious goals in its pursuit of multi-ethnicity.<sup>59</sup> The Eide report also noted that this idealised, ethnically integrated past had probably never existed, offering a more cautious assessment of Kosovo’s past and its potential future: ‘Kosovo will not in the foreseeable future become a place where Kosovo Albanians and Kosovo Serbs are integrated. They probably never were’.<sup>60</sup> The report epitomised international

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<sup>56</sup> International advisor seconded to Kosovo Ministry of Communities and Returns, interview September 2010, Pristina.

<sup>57</sup> Senior international analyst, interview, September 2014, Pristina.

<sup>58</sup> Bieber, ‘The Legal Framework’, p. 119.

<sup>59</sup> King & Mason, *Peace at any Price*, p. 3.

<sup>60</sup> Eide Report, p. 20.

resignation about the more integrationist notions of multi-ethnicity following the 2004 riots, which led to a shift towards recognition-based notions of multi-ethnicity entailing separation between groups.

### **Ethnicity-Centred Discourse**

Another assumption underlying the normative commitments to multi-ethnicity is related, but somewhat contradictory to, the assumption of a multi-ethnic past in Kosovo. It is evident in the ‘dominance of an ethnicity-centred discourse, which reduces both the causes of conflict and the post-conflict reality to ethnic identity’.<sup>61</sup> The correlating assumptions are that ethnic groups are entirely fixed entities with little internal diversity, that intergroup relations are thus of a zero-sum nature, and that individuals’ rights and preferences can only be defined and catered for through their group affiliation. These are the same assumptions that form the basis of the ‘ethnic security dilemma’, described in the Introduction. The understanding of the post-conflict reality purely through the lens of ethnic conflict explains some of the policies pursued in the name of a normative commitment to multi-ethnicity, which, however, led to separation and the entrenchment of ethnic identity. A Kosovo-Albanian activist, critical of this assumption, found that:

The politics of nation-building practiced here is no longer nation-building, it is ethnicity- or communities-building. What is Kosova to [the international community]? Kosova is an aggregation of groups living close to each other, and the mantra of this is multi-ethnicity ... They see Serbs, Turks, Albanians, and so we have Serbian solutions, Turkish solutions,

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<sup>61</sup> Florian Bieber, *Institutionalizing Ethnicity in the Western Balkans*, p. 9.

Albanian solutions. Like in the Ahtisaari Plan; what you see there are solutions on an ethnic basis.<sup>62</sup>

This underlying assumption has critics in the academy.<sup>63</sup> Aidan Hehir finds that ‘UNMIK’s central failing has been the status it has afforded to ethnicity. Despite the suggestion that UNMIK has promoted multi-ethnicity, the administration adopted existing ethnic categorisations as legitimate political cleavages and incorporated these identities into the new political system’.<sup>64</sup> In Hehir’s view, translating ethnic categories into politics, as proposed by many post-conflict scholars who advocate power-sharing and consociational arrangements, is thus contrary to multi-ethnicity. Hehir evidently subscribes to a more integrationist notion of multi-ethnicity, finding normatively problematic the recognition-based conceptualisations of multi-ethnicity manifested in policies like special representation and minority rights. The international organisations promoting these policies have been criticised by some scholars for viewing all of Kosovo’s political and social reality through an ethnic lens, thus reifying the dominant ethnic groups into monolithic entities with corresponding presumed interests. Critical scholars have argued that this ethnicity-centred approach ignores longstanding debates within anthropology and sociology that have problematised immutable and

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<sup>62</sup> Deputy Head, *Lëvizja Vetëvendosje*, interview, September 2010, Pristina. ‘Kosova’ is the Albanian word for Kosovo, which is being increasingly used by Kosovo-Albanians in English, often to make a political point about the state’s de facto overwhelmingly Albanian character.

<sup>63</sup> For example Aidan Hehir, ‘Autonomous Province Building: Identification Theory and the Failure of UNMIK’, *International Peacekeeping*, vol. 13, no. 2, 2006, pp. 200–13; Isa Blumi, ‘Ethnic Borders to a Democratic Society in Kosova: The UN’s Identity Card’, in Florian Bieber & Židas Daskalovski, eds, *Understanding the War in Kosovo* (London; Portland, OR: Frank Cass, 2003), pp. 217–36.

<sup>64</sup> Hehir, ‘Autonomous Province Building’, p. 210.

primordial conceptions of ethnicity.<sup>65</sup> They also point to anthropological work on Kosovo specifically, which recounts a history that includes more co-existence, movement along ethnic and religious frontiers, cultural diffusion, and softer boundaries between ethnic groups than is usually presumed in the policy and political science literature.<sup>66</sup>

These critiques raise the possibility of policies pursued in the name of multi-ethnicity further entrenching ethnic identities and thus hindering the process of resolving the (presumed) inter-ethnic conflict. As discussed in Chapter Six on minority rights, there is a risk that the minority protection measures, which are considered necessary to ensure their continued presence in Kosovo, thus making it at least in a minimalist, statistical sense, multi-ethnic, might in fact hinder the emergence of a pan-ethnic, civic, Kosovar identity. Furthermore, the critique of this assumed centrality of ethnicity in international thinking posits that ““Albanians” and “Serbs” in Kosova are ... analytical constructs used in a discourse of distinction that has powerful implications for how the international community has administered the region’,<sup>67</sup> and that Kosovars ‘are forced to act within boundaries of behaviour set by the discourse of ethnicity’.<sup>68</sup> Firstly, this means that all other cleavages among e.g. Kosovo-Albanians, such as rural-urban, regional, or by political affiliation during Communism and during the 1990s, are overlooked. This

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<sup>65</sup> Brubaker, *Ethnicity Without Groups*.

<sup>66</sup> Ger Duijzings, *Religion and the Politics of Identity in Kosovo* (London: Hurst & Company, 2000) Fridman points out that the book was published in 2000, and ‘captures realities that in many ways no longer exist in Kosovo’. Duijzings relates in the book’s Preface that the manuscript was finalised before the NATO bombings, and that ‘It is sad that this book now bears testimony to a world that may have ceased to exist’ (p. xii). See Fridman, ‘Unstructured Daily Encounters’, p. 175.

<sup>67</sup> Blumi, ‘Ethnic Borders’, p. 218.

<sup>68</sup> *ibid.*, p. 228.

makes it ‘impossible for individual communities, which never constituted a single “Albanian” unit, to represent themselves outside the parameters of their assumed “ethnic” identity’.<sup>69</sup> Secondly, this leads to a process where legitimacy to act politically relies on a non-compromising stance in this emerging zero-sum game between ethnic groups: ‘One’s anti-Serb or anti-Albanian credentials have become of great political value in the context of a Kosova divided discursively along ethnic lines’.<sup>70</sup> Among Kosovo-Albanians, for example, one’s role within the emerging narrative of national liberation took on supreme importance in the post-war political arena, however, in a way that the international administration struggled to recognise and address.<sup>71</sup> The resulting differences between local and international conceptions of, and approaches to, multi-ethnicity are discussed in more detail below.

The focus on ethnicity is also related to the self-image concerns of the international community, discussed above, and the resulting focus on stability. Reading the conflict in simple terms as being between two ethnic groups allows for a more straightforward understanding of the task faced: rather than guiding a complex, diverse society through multiple transitions—from war to peace, from one-party rule and communism to multi-party democracy and a liberal market economy, and from a federal structure to an independent state—the aim became simply to ensure that two ethnic groups no longer engage in active violence. Once viewed in these terms, multi-ethnicity, otherwise an elusive goal, becomes much

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<sup>69</sup> *ibid.*, p. 220.

<sup>70</sup> *ibid.*, p. 232.

<sup>71</sup> Di Lellio & Schwandner-Siever, ‘The Legendary Commander’; Schwandner-Sievers & Ströhle, ‘An Ethnography of “Political Will”’.

more easily quantifiable and success in its pursuit more measurable and attainable.

A senior international official admitted that much:

I think it was quite a simplistic approach: we must stop Serbs and Albanians from killing each other. That is our predominant focus, therefore stability is our predominant guiding benchmark .... So every issue was seen in terms of the ethnic communities .... And I suspect that was possibly unavoidable, given what brought the international community into the region in the first place.<sup>72</sup>

One way this manifested itself was in the reporting on inter-ethnic crimes, the definition of which in fact varied among organisations. For example, a EULEX official complained that ‘UNMIK was constantly reporting overblown numbers of inter-ethnic crimes’.<sup>73</sup> This was because UNMIK classified as ‘inter-ethnic crimes’ all incidents that ‘involved members of non-majority communities or that could in any way impact the perception of security by members of non-majority communities’.<sup>74</sup> The same definition was used by the OSCE. Even though EULEX was more concerned ‘with incidents that involve intentional crimes’, and therefore classified a smaller number of crimes as ‘inter-ethnic’, the differences among the international organisations were not as significant as the difference between their reports and the numbers recorded by the Kosovo Police. The Kosovo Police generally reported a much smaller number of incidents as ‘inter-ethnic crimes’,

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<sup>72</sup> Former Head of Political Affairs, ICO, skype interview, September 2014.

<sup>73</sup> EULEX official, interview, September 2014, Pristina.

<sup>74</sup> Email communication with Operations Officer, Office of the Chief of Staff, EULEX, October 2014.

since their definition of an inter-ethnic crime was an ethnically *motivated* crime, a fact that could only be determined following an investigation.<sup>75</sup>

Here are two extremes of the ambiguous politics of classifying crimes: on the one hand, classifying every crime involving minorities automatically as an inter-ethnic crime might be evidence of an exaggerated, ethnicity-centred view of Kosovo, on the other hand, refusing to register inter-ethnic crimes might be a convenient way of downplaying an existing problem. For example, as mentioned by many interviewees discussing returns policy, vandalism of minority property is often cited as a key impediment to return, however, much of the phenomenon takes place in the context of empty, reconstructed houses of Serb returnees who continue to live semi-permanently in Serbia. These properties are repeatedly looted.<sup>76</sup> It is impossible to conclusively judge whether this is opportunistic crime in the context of widespread poverty, or an act of political violence motivated by ethnic intolerance with the aim of making minorities feel unwelcome in Kosovo.<sup>77</sup>

Various interviewees also agreed with the more critical view, proposed e.g. by authors like Capussela, that the international focus on multi-ethnicity was

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<sup>75</sup> Email communication with Operations Officer, Office of the Chief of Staff, EULEX, October 2014. Kosovo police and courts suffer from serious case backlogs, and there is reportedly no database to update the record of a crime as inter-ethnic following an investigation. Conversations on the ground suggested that many within the international community suspect this is due to a lack of political will on the part of the majority to acknowledge and address the extent of anti-minority crimes.

<sup>76</sup> Housing and Property Claims Commission, *Final Report*, p. 68, note 235.

<sup>77</sup> Interviews with Policy Advisor on Religious and Cultural Heritage to the EU Special Representative to Pristina; Head of UNMIK Office of Community Support and Facilitation; UNMIK official, Office of Community Support and Facilitation, previously UNMIK regional office in Peja/Pec, all September 2014, Pristina.

somewhat misplaced,<sup>78</sup> since inter-ethnic relations were not the most pressing issue in Kosovo:

Sometimes the international community focuses on ethnicity too much, to a fault. Frankly, I think the biggest problems in Kosovo are about economics, corruption, and governance. And the international community comes to those after it comes to ethnicity, and I think that's a mistake.<sup>79</sup>

Capussela makes this case strongly, arguing that the most significant impediment to successful international state-building throughout the post-war period was Kosovo's 'social order', in which corruption was deeply embedded, rather than the '*symbolic but marginal issues* [such as] decentralisation, minority protection, cultural heritage',<sup>80</sup> that the international community concentrated on. Capussela cites the underlying problem of weak governance and rule of law in Kosovo, which affect all ethnic groups, as the reason that many of the policies on multi-ethnicity described in this thesis fail to have their intended effects.<sup>81</sup>

### **The Parties to an Ethnic Conflict**

A third set of assumptions concern the parties to the conflict. Shifting standpoints on the role and nature of the parties to the presumed ethnic conflict in Kosovo also influenced the international community's commitment to multi-ethnicity. Initially, most international sympathy lay with the Kosovo-Albanians, as 'most UNMIK and KFOR regarded the local Albanian population as the aggrieved

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<sup>78</sup> Capussela, *State-Building in Kosovo*.

<sup>79</sup> Former Head of Political Affairs, ICO, skype interview, September 2014.

<sup>80</sup> Capussela, *State-Building in Kosovo*, p.177, emphasis added.

<sup>81</sup> *ibid.*, pp. 87–8.

party in a one-sided conflict'.<sup>82</sup> Following the war, this shifted to an understanding on the part of the international community of Kosovo-Serbs and other minorities as the primary victims in Kosovo.<sup>83</sup> It has been pointed out that throughout their engagement, Kosovo's international administrators perceived their host society through 'such de-politicised categorisations as victim or perpetrators'.<sup>84</sup> Little or no effort was made 'to integrate the experiences that both communities had accumulated prior to intervention'.<sup>85</sup> This lack of understanding, including the fact that the international community 'imagined they were coming to rescue a population of victims – who by definition, it was thought, must be either politically inert or benign',<sup>86</sup> naturally led to some miscalculation in policy design, including the failure of KFOR to prepare for the scale of anti-minority violence in Kosovo.

It has been noted that the media heavily influenced the international intervention in Kosovo.<sup>87</sup> Lacking explicit UNSC authorisation, but being justified by its proponents under the emerging doctrine of humanitarian intervention,<sup>88</sup> NATO's war epitomised what the high-level Independent International Commission on Kosovo later called a 'gap between legality and legitimacy'.<sup>89</sup> The need for a humanitarian intervention in Kosovo also relied on perceptions of guilt

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<sup>82</sup> King & Mason, *Peace at any Price*, p. 80.

<sup>83</sup> Witte, 'Reconstructing Kosovo', p. 88.

<sup>84</sup> Di Lellio & Schwandner-Siever, 'The Legendary Commander', p. 525.

<sup>85</sup> King & Mason, *Peace at any Price*, p. 80.

<sup>86</sup> *ibid.*, p. 261.

<sup>87</sup> Babak Bahador, *The CNN Effect in Action: How the News Media Pushed the West toward War in Kosovo* (New York; Basingstoke: Palgrave Macmillan, 2007).

<sup>88</sup> See e.g. Weller, *Contested Statehood*, pp. 156–64.

<sup>89</sup> Independent International Commission on Kosovo, *The Kosovo Report*, p. 10.

about a failure to intervene in time in both BiH and Rwanda a couple of years earlier. The rhetoric surrounding the intervention thus relied on intense moral and emotional appeals. For example, UK Prime Minister Tony Blair called the NATO campaign ‘a battle between good and evil; between civilisation and barbarity’.<sup>90</sup>

This manifested itself also in a stark reading of the ‘sides’ to the conflict, which was later overturned when faced with the post-war reality of the flight of Kosovo-Serbs. The afore-mentioned ‘ethnicity-centred’ view of Kosovo was almost inevitable, given that the

media reportage of the situation in Kosovo in 1999 invariably adopted ethnic categorisation as a means by which the dispute was explained. The initiation of Operation Allied Force increased the perception of ‘good’ Albanians versus ‘bad’ Serbs, as NATO and other supporters of the intervention portrayed their actions in terms of a moral crusade against oppression ... , ignor[ing] the nuances of the situation in favour of ethnic and moral generalizations.<sup>91</sup>

NATO’s intervention was necessarily built on a strong sense of moral judgment of good and bad, and as such ‘increased this ethnic polarization as the conflict in Kosovo became portrayed as inter-ethnic with easily identifiable aggressors (the Serbs) and victims (the Albanians)’.<sup>92</sup> However, this view quickly changed as post-conflict reality became one of Kosovo-Albanian dominance, and the international community was confronted with new, and possibly less straightforward realities of inter-group relations on the ground. A local staff who worked with international organisations in Kosovo described how members of the international community confronted this shift, and in his view, quickly replaced the

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<sup>90</sup> Cited in Capussela, *State-Building in Kosovo*, p. 37.

<sup>91</sup> Hehir, ‘Autonomous Province Building’, p. 201.

<sup>92</sup> *ibid.*, p.206

roles in the good vs. evil dichotomy: ‘They come here, now they’re on the ground, and they see a different picture. Now they see an Albanian attacking a Serb .... And that was another mistake: now the international community was essentialising, was seeing all Albanians as perpetrators’.<sup>93</sup> The local critique of this was that the conflict was read for its inter-ethnic Serb-Albanian element, making it an instance of ethnic conflict, rather than for its element of state repression, a reading which would make it a conflict between a population and a state apparatus, with Serbia, rather than Kosovo’s Serb population, being the counterpart to the repressed Kosovo-Albanians seeking independence.

When discussing the potentially detrimental effects of over-emphasising ethnic categories in their organisation’s work, one former ICO official asked:

Why was there an international intervention in Kosovo in the first place? Well, because Serbian security forces and paramilitary attacked all that was Albanian. The conflict started as an ethnic conflict, so of course this ethnic conflict had to be resolved .... I think the ethnic element had to be addressed, and for Belgrade, but also for Pristina, this was at the centre. I don’t think that too much attention was given to [the ethnic dimension]. It could not have been done differently.<sup>94</sup>

### **Committed to the Unattainable? Disenchantment and Resignation**

Finally, despite the significant commitment to multi-ethnicity and its translation into difficult and resource-consuming policymaking, there was no corresponding assumption about the attainability of this vision among international actors in Kosovo. The interviews conducted suggest significant disenchantment

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<sup>93</sup> Former local staff of ICG, UNMIK, and ICO, interview, September 2014, Pristina.

<sup>94</sup> Former Head of Community Affairs, ICO, interview, April 2014, Berne.

with and scepticism about the idea of a multi-ethnic Kosovo, alongside the overwhelming commitment to it. Richard Caplan explains the reasons for the international community not abandoning the goal of multi-ethnicity as ‘not necessarily reflect[ing] strong optimism about the prospects for establishing a viable multiethnic/multicultural society but, rather, a reluctance to accept the implications of the failure to do so’.<sup>95</sup>

In the minimalist, purely demographic understanding of multi-ethnicity, doubts were voiced by many interviewees about its attainability, especially when it came to internationally-driven returns policy, acknowledging that ‘the demographics were already such that mostly old people were living in those Kosovo-Serb villages, the young people had already gone to Serbia to study. So there wasn’t much of a critical mass of people who really genuinely wanted to return’.<sup>96</sup> Future prospects were viewed equally sceptically, as one interviewee predicted: ‘If the situation here doesn’t change in next ten years, most minorities will emigrate’,<sup>97</sup> and many interviewees also described the fact that most minority enclaves were predominantly inhabited by elderly people, whereas the younger generation was either leaving Kosovo or uninterested in returning from their places of displacement: ‘no young person wants to stay here. So this diversity of multi-

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<sup>95</sup> Caplan, ‘European Organizations’, p. 275.

<sup>96</sup> Former strategy advisor to UNMIK SRSG, interview, January 2011, Oxford.

<sup>97</sup> International advisor seconded to Kosovo Ministry of Communities and Returns, interview September 2010, Pristina.

ethnicity that we have now, I'm not sure whether we will also have this in the future'.<sup>98</sup> These doubts were widespread:

There was also a huge amount of scepticism by our own staff on the ground of how much real minority return could happen, and probably for good reasons .... It never seemed very realistic that there would be a great deal of returns, so in some ways the focus ended up being more on the protection of those Serbs and Roma who stayed, rather than really trying to very actively promote return.<sup>99</sup>

Considering other, more substantive notions of multi-ethnicity, SRSG Harri Holkeri concluded following the March 2004 riots that 'the concept of multi-ethnic Kosovo that the international community has been persistently attempting to implement in recent years is no longer tenable'.<sup>100</sup> Interviewees equally expressed doubts in this regard: 'I'm not massively optimistic about "true coexistence" ... I think it's an awkward reality, but I still think it's worth having the provisions in place for those who are now there and trying to safeguard them for the time that there are Serbs in Kosovo'.<sup>101</sup>

The policy area of minority returns was one in which interviewees were particularly disheartened by the mismatch between ambitions based on their strong normative commitments, and the realities on the ground. Repeated mention was made of internationally funded support for Kosovo-Serb returnees that resulted in expensively reconstructed but empty houses, because the 'returnees' continued to effectively reside in their places of displacement in Serbia. These houses often

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<sup>98</sup> Deputy Director of Department for Human Rights and Communities, OSCE Mission in Kosovo, interview, September 2010, Pristina.

<sup>99</sup> Former strategy advisor to UNMIK SRSG, interview, January 2011, Oxford.

<sup>100</sup> Quoted in Hehir, 'Autonomous Province Building', p. 200.

<sup>101</sup> Former strategy advisor to UNMIK SRSG, interview, January 2011, Oxford.

became targets of burglaries and vandalism, causing frustration among international advocates and funders of minority returns. There was much pessimism in this regard among the interviewees. This disappointment did occasionally make its way into official documents, most notably in the Eide report which stated that ‘while reliable overall statistics are hard to find, there is a widespread view—including in the international community—that currently as many or more Kosovo Serbs are leaving Kosovo than are returning’.<sup>102</sup> The lack of reliable statistics on this issues is not entirely surprising, given the above-mentioned desire on the part of international actors to prove ‘success’ in building a multi-ethnic Kosovo. As a local member of civil society who spent many years working on returns for international organisations put it: ‘there’s no such data [on how many returnees leave again, or sell their homes after receiving donor assistance for reconstruction], because it’s not politically affordable to produce such data’.<sup>103</sup>

The phenomenon of empty, reconstructed homes was mostly explained with reference to the generally poor economic prospects in Kosovo, lack of sustainable livelihoods and job opportunities for minorities beyond initial international assistance, and limited access to public services. These were the most-cited factors impeding sustainable return in the later period of international engagement in Kosovo, whereas during the first five years following the conflict security and freedom of movement for minorities were key drivers.

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<sup>102</sup> Eide Report, p. 16.

<sup>103</sup> Former local staff of UNHCR and UNMIK Office for Communities and Returns, interview, September 2014, Pristina.

An additional source of pessimism regarding minority returns, specifically, was the harmful politicisation of the issue, which made it very difficult to determine and work towards the genuine interests of potential returnees. The need for ownership of the returns process by the majority population, and genuine buy-in to the vision of a multi-ethnic Kosovo was raised by many interviewees, in the context of their disillusionment at not having been able to create such an environment:

It was so hard ..., because even amongst the most liberal Kosovo-Albanians there wasn't much space for that discussion. But realistically the only way a returns project like that can be successful is if you build true support for a multi-ethnic entity that the majority population had real support for .... It can't just be the international mission, or else you can't succeed.<sup>104</sup>

Pessimism within the international community was also drawn from previous experiences in the region, e.g. with reference to the fact that mostly elderly Serbs had returned to Croatia. Similar patterns were witnessed in Kosovo. One of the reasons, among many, that explain this was the limited economic prospect for young minority returnees, while the elderly could at least draw on pensions.<sup>105</sup>

Resignation was linked to various factors, including the lack of buy-in among the majority, the demographic balance, and language barriers between the two main groups, making Kosovo a far less likely candidate for multi-ethnicity in the eyes of interviewees than other regional examples such as BiH or Macedonia. For example, 'given the numeric split, even under the best Serb numbers of

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<sup>104</sup> Former Head of UNMIK Office for Returns and Communities, interview, April 2014, New York City.

<sup>105</sup> Former ICO advisor on religious and cultural heritage, interview, September 2014, Pristina.

ninety/ten, it's a very small population .... I do think that influenced what was possible in Kosovo'.<sup>106</sup> The numbers made some sceptical about the suitability of the goal of multi-ethnicity, or whether it was a realistic descriptor, as one official put it:

well we don't have [multi-ethnicity], we have reluctant cohabitation at the moment, if that's the right word for it even. And there will be Serbs who stay here. Of course there will, but not in large numbers, not in numbers to make it a multi-ethnic society per se. Ninety-five percent of the population is Kosovo-Albanian. That's not really a multi-ethnic society.<sup>107</sup>

The lack of grassroots support for the multi-ethnic vision was also a prominent disillusioning factor, as well as the instrumental rather than genuine buy-in by Kosovo-Albanian political elites:

I think at the level of public education, the issue of nationalism is still very dangerous. There is a lot of ignorance, a lot of anxiety .... I think in many ways the vision of a multi-ethnic and peaceful, tolerant Kosovo which is kind of at the core of the international approach, is not realistic'.<sup>108</sup>

This interviewee continued to say that

multi-ethnicity is the goal, but it's a very elusive one. It's at the heart of the project here .... But is it a realistic goal? There are some small signs of success and progress, you have Serbian ministers here, the government is setting an example, the assembly has allocations, but is that filtering through down to society? That's a real struggle. And it's probably an unrealistic one. As long as the international community is here it will be a major condition. And they'll be sort of forced into it, to please Brussels.

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<sup>106</sup> Former Head of UNMIK Office for Returns and Communities, interview, April 2014, New York City.

<sup>107</sup> International advisor to Kosovo government on Community issues and former OSCE official, interview, September 2014, Pristina.

<sup>108</sup> Policy Advisor on Religious and Cultural Heritage to the EU Special Representative to Pristina, interview, September 2014, Pristina.

They're watching the carrot. But it's certainly not something that comes from inner conviction.<sup>109</sup>

Scholars also note how local political actors have at times been able to instrumentalise internationally imposed policies for their own goals. While seemingly complying with minority rights measures, some argue that the framing of 'minority relevant legislation as a sacrifice for Kosovo's independence rather than as a step towards recognition of minorities [has promoted] inter-ethnic distance and intolerance'.<sup>110</sup>

The precariousness of the gains made in pursuit of multi-ethnicity was also mentioned, particularly in view of demographic changes and expected diminished international influence in Kosovo over the time. The prospects painted were accordingly grim: 'this will become a mono-ethnic society by and large in twenty years'.<sup>111</sup> Beyond the pure statistical reality of multi-ethnicity, in the form of the presence of different groups, some also considered the institutional structures put in place under more elaborate notions of multi-ethnicity very fragile. For example, the viability of the newly created Serb-majority municipalities, resulting from the decentralisation process, was also questioned, with one interviewee who spent many years working on minority issues in the OSCE and later advising the Kosovo authorities directly, predicting that barring one or two, most Serb-majority municipalities in Kosovo's South will disappear.<sup>112</sup> The same interviewee also

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<sup>109</sup> *ibid.*

<sup>110</sup> Jelena Lončar, 'State-Building and Local Resistance in Kosovo: Minority Exclusion through Inclusive Legislation', *Communist and Post-Communist Studies*, 2016, pp. 1–12.

<sup>111</sup> International advisor to Kosovo government on Community issues and former OSCE official, interview, September 2014, Pristina.

<sup>112</sup> *ibid.*

predicted that there would soon be attempts to abolish the ten per cent reserved seats for Kosovo-Serbs, which were enshrined in the Ahtisaari Plan and Kosovo's constitution.

The strongest response in this regard came from an interviewee who worked in returns policy in Kosovo for many years:

There is no multi-ethnicity here in the Balkans. Everyone is where they want to be. There is only very little return and that's how it'll always be. Kosovo's Constitution reads like it was written by God. It's totally unrealistic. There can be no multi-ethnicity here. This is the Balkans, and no one wants to be a minority here.<sup>113</sup>

### **7.5. Implications: A Local–International Divide**

One of the implications arising from this critical examination of international commitments to multi-ethnicity is a substantial disconnect between local and international understandings of and views on multi-ethnicity in Kosovo.<sup>114</sup> Attempts by the international community to foster local support for a multi-ethnic Kosovo have had limited success, and scholars have noted that 'in today's Kosovo, "multi-ethnicity" remains little more than rhetoric. It has not resonated within the local society or led to the establishment of a civil culture of ethnic tolerance and rule of law'.<sup>115</sup>

As discussed in Section Two, many of the policies aimed at fostering multi-ethnicity in Kosovo, from a minimalist understanding evidenced in returns projects

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<sup>113</sup> Senior international official in the field of returns, interview, September 2014, Pristina.

<sup>114</sup> Vjosa Musliu & Jan Orbie, 'MetaKosovo: Local and International Narratives', *The British Journal of Politics & International Relations*, 2015, pp. 1–17.

<sup>115</sup> Narten, 'Dilemma of Promoting "Local Ownership"', p. 273.

to ensure the presence of minorities, to more recognition-based approaches including self-government and special representation rights, were politically controversial particularly among Kosovo-Albanians. The laws and policies on multi-ethnicity that were promoted, endorsed, or imposed by the international community were often perceived instrumentally by the Albanian majority in Kosovo. Kosovo-Albanians framed these policies either as concessions for gaining independence, or conditions for continued international support and prospective Euro-Atlantic integration. However, the internationally imposed nature of many of these policies was mentioned repeatedly as a reason for why they often failed to be implemented fully, or to have the desired effects. Some argue this was because the international organisations in Kosovo were operating in isolation from and with a limited understanding of the local society.<sup>116</sup> The failure to predict the March 2004 riots is a case in point: ‘that was a failure of UNMIK to understand the society. You’re running this place, this society, and you’re failing to understand what 90% of society aspires to, fears, and wants’.<sup>117</sup>

The imposition of blueprints and templates for managing a diverse state, which were not suited to local conditions, was also mentioned.<sup>118</sup> The fact that there was limited public debate or consultation on these questions, and the lack of accountability of international policymakers to the local electorate, particularly UNMIK in its early years, resulted in a lack of local ownership. Key documents such as the Constitutional Framework of 2001 and the Ahtisaari Plan were written

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<sup>116</sup> Former Head of UNMIK Office for Returns and Communities, interview, April 2014, New York City.

<sup>117</sup> Former local staff of ICG, UNMIK, and ICO, interview, September 2014, Pristina.

<sup>118</sup> UNMIK Head of Office of Political Affairs, interview, September 2014, Pristina.

without input from the public. Following the declaration of independence, laws and policies that were sensitive to minority issues continued to be drafted with substantial involvement of the ICO and passed through the Kosovo Assembly under special procedure without parliamentary debate.<sup>119</sup> One local civil society activist remarked about the decentralisation process:

Like other processes in Kosovo, [it] was introduced to us without any debate, the same was done with our constitution, then the privatisation process.... No one ever consulted local people, so there is no local ownership of all these very fancy processes.<sup>120</sup>

As a long-standing UNMIK staff summarised: ‘the issue of multi-ethnicity has unfortunately been something that the international community has always tried to persuade the Kosovo-Serbs and Kosovo-Albanians to accept, to take on, to apply, to promote, but with extremely poor success’.<sup>121</sup>

Local critiques of the policies resulting from more substantive notions of multi-ethnicity, such as self-government, special representation, and poly-ethnic rights, became increasingly voiced throughout the years of international administration in Kosovo, but were usually expressed in ethno-nationalist, rather than civic terms.<sup>122</sup> In other words, it was not so much the entrenching of ethnic identity into politics and the resulting deepening of divisions between groups that was questioned, but rather the focus on minorities and denial of Kosovo-Albanian symbolic ownership of the state.

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<sup>119</sup> Capussela, *State-Building in Kosovo*, p. 155.

<sup>120</sup> Kosovar civil society activist, interview, September 2010, Pristina.

<sup>121</sup> UNMIK Head of Office of Political Affairs, interview, September 2014, Pristina.

<sup>122</sup> Gëzim Visoka, ‘International Governance and Local Resistance in Kosovo: The Thin Line between Ethical, Emancipatory and Exclusionary Politics’, *Irish Studies in International Affairs*, vol. 22, no. 1, 2011, pp. 99–125.

Other post-conflict societies in the Western Balkans, notably BiH and Macedonia, saw a civic critique of the group rights and recognition-based policies that were instituted following the conflicts. These critiques emanated from moderate intellectuals and human rights activists who proposed alternatives aimed towards ‘lessening the emphasis of ethnicity in the institutional system to the degree of entirely abolishing group-based representation’.<sup>123</sup> However, in Kosovo this position remained exceptionally rare, and calls for such changes of Kosovo’s institutional arrangements were usually argued along ethno-nationalist rather than civic-integrationist lines.<sup>124</sup>

Most notable in this context is the protest movement *Lëvizja Vetëvendosje* (henceforth *Vetëvendosje*), which in 2010 became the largest opposition party in Kosovo.<sup>125</sup> *Vetëvendosje* rejects the suggested positioning of Kosovo as multi-ethnic and diverse, offering a powerful counter-narrative to the internationally endorsed one. The movement campaigned during UNMIK years for an end to international administration, as well as championing issues of poverty, corruption and unresponsive government in Kosovo. *Vetëvendosje*’s ideology combines post-colonial and traditional left-wing elements with ethno-nationalism.<sup>126</sup> It gained much of its political traction through the fact that the international vision for a

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<sup>123</sup> Florian Bieber, *Institutionalizing Ethnicity in the Western Balkans*, p. 11.

<sup>124</sup> It must be kept in mind, however, that Kosovo also differed significantly from the other two states, due to the relative size of its Albanian majority and the recent protracted period of Serbian repression of Kosovo-Albanians since the rise of Milošević.

<sup>125</sup> *Lëvizja Vetëvendosje* is Albanian for ‘Movement for Self-Determination’.

<sup>126</sup> Stephanie Schwandner-Sievers, ‘Democratization through Defiance? The Albanian Civil Organization “Self-Determination” and International Supervision in Kosovo’, in Vesna Bojicic-Dzelilovic, James Ker-Lindsay, & Denisa Kostovicova, eds., *Civil Society and Transitions in the Western Balkans* (Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, 2013), pp. 95–116.

multi-ethnic Kosovo did not resonate with local Albanian experiences and preferences. The majority of Kosovo-Albanians perceive the 1999 war and the post-conflict decade as part of a longer political process of national liberation leading to their independence. This independence was aspired to and imagined in the form of a nation-state whose symbolic and linguistic character would be overtly Albanian, rather than a bilingual state, self-defined as diverse, and with ethnically neutral symbols.<sup>127</sup> Consequently, the idea of a multi-ethnic Kosovo does not resonate with many Kosovo-Albanians. By resisting the international vision for a multi-ethnic Kosovo, which the Kosovo government adopted for largely instrumental reasons, *Vetëvendosje* thus acquired a significant level of ‘legitimacy through defiance’.<sup>128</sup> This example illustrates a point made increasingly since the ‘the local turn’ in the study of post-conflict state-building: that resistance to and rejection of the international state-building agenda can be ‘used strategically to attempt to enhance the legitimacy and power of certain local agents’.<sup>129</sup>

Many international observers lamented the ‘lack of political will’ to carry out the policies of multi-ethnic state-building on the part of Kosovars. This can be understood as a failure, or refusal, to recognise that a domestic political will exists, but that it does not align with the internationally driven agenda. As an anthropologist and a historian of Kosovo jointly point out: ‘this domestic political will stands in direct contradiction to the internationally demanded political will of

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<sup>127</sup> Dana M. Landau, ‘The Quest for Legitimacy in Independent Kosovo: The Unfulfilled Promise of Diversity and Minority Rights’, *Nationalities Papers*, vol. 45, no. 3, 2017, pp. 442-63.

<sup>128</sup> Klejda Mulaj, ‘The Problematic Legitimacy of International-Led Statebuilding: Challenges of Uniting International and Local Interests in Post-Conflict Kosovo’, *Contemporary Politics*, vol. 17, no. 3, 2011, p. 249.

<sup>129</sup> Björkdahl & Gusic, “Global” Norms and “Local” Agency’, p. 273.

building a state which prioritises the protection of non-majority rights [and] promotes multi-ethnicity.<sup>130</sup> The ambitious nature of the international actors' state-building endeavour in this regard has been described as an attempt to 're-educate the people of Kosovo',<sup>131</sup> and to 'utterly transform Kosovar society'.<sup>132</sup> There is thus a serious discrepancy between the local and international perceptions of multi-ethnicity in Kosovo.

KFOR and UNMIK attempted to alter this, including by appealing to local public opinion; however, this was often done 'with little understanding of political communications, and even less of the cultural context in which they were operating'.<sup>133</sup> A KFOR billboard campaigning for inter-ethnic tolerance showed the following image:



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<sup>130</sup> Schwandner-Sievers & Ströhle, 'An Ethnography of "Political Will"', p. 507.

<sup>131</sup> Hehir, 'Autonomous Province Building', p. 203.

<sup>132</sup> King & Mason, *Peace at any Price*, p. 239.

<sup>133</sup> *ibid.*, p. 247.

The text reads: ‘If they can be tolerant... so can you! Become tolerant!’.

Local interviewees described these campaigns as ‘paternalistic’,<sup>134</sup> ‘ridiculous’,<sup>135</sup> and ‘insulting our intelligence’.<sup>136</sup> The international community was criticised for portraying the conflict as inherent:

They are comparing us to animals. You are the dog and you are the cat, so you have nothing in common apart from being animals .... Because they think that we have some inherent obstacle; that we cannot live together; that’s why they propagate tolerance.<sup>137</sup>

These approaches thus fail to resonate with local audiences, partly because they seem to gloss over their respective past experiences of multi-ethnicity.

Accordingly, the past becomes an obstacle to the realisation of such inter-ethnic tolerance as these adverts aim to instil. To international administrators in Kosovo, when confronted with the post-war flight of Kosovo-Serbs, the promotion of multi-ethnicity became a priority that ‘required a quick “resetting” of Kosovo to a time-less present of multi-ethnic tolerance’.<sup>138</sup> In a speech given in one of the newly established Serb-majority municipalities in Kosovo, International Civilian Representative and EU Special Representative Peter Feith, the highest ranking international official in Kosovo, explicitly linked reconciliation to the forgetting of the past. Comparing Kosovo to the post-war experience in his own country, the Netherlands, he made the following, remarkable claim:

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<sup>134</sup> Kosovar civil society activist, interview, September 2010, Pristina.

<sup>135</sup> Deputy Head, *Lëvizja Vetëvendosje*, interview, September 2010, Pristina.

<sup>136</sup> *ibid.*

<sup>137</sup> *ibid.*

<sup>138</sup> Di Lellio & Schwandner-Siever, ‘The Legendary Commander’, p. 526.

Terrible things happened in the Netherlands and in Western Europe. The first years of my childhood we discussed what happened and what the enemy had done, the occupying enemy in my country. And then fortunately we shifted. We started looking towards the future, *we forgot about the past*. We started looking towards European reconciliation.<sup>139</sup>

This message reaches local audiences, but is received with unease.

Following the declaration of independence in February 2008, a new monument was unveiled in the centre of Kosovo's capital, consisting of the word 'newborn' in large, yellow capital letters in the middle of a public square. One interviewee pointed out that this implies a clear cut with all of Kosovo's history, denying the value of people's previous experiences: 'We are newborns, so before this we didn't even exist, we are starting from right now'.<sup>140</sup> There is an impression that the multi-ethnic state-building project to some extent demanded a denial of the history of the Kosovo-Albanian struggle for self-determination. This history is associated with Albanian national symbols, which were excluded in the criteria for creating the new state's symbols, based upon the requirement in the Ahtisaari Plan that Kosovo's flag and emblem should 'reflect its multi-ethnic character'.<sup>141</sup>

However, considering post-war Kosovo's broader cultural landscape, commemorative practices, and toponymy, the 'newborn' monument represents an exception to the rule.<sup>142</sup> In the capital and other predominantly Albanian-inhabited areas, public space is dominated by monuments to heroes of Albanian history or the international community associated with the 1999 intervention, whereas Serb-

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<sup>139</sup> Press Conference, 'After the conflict – real life', October 2010, italics added.

<sup>140</sup> Kosovar civil society activist, interview, September 2010.

<sup>141</sup> Ahtisaari Plan, Article 1.7.

<sup>142</sup> Denis S. Ermolin, 'When Skanderbeg Meets Clinton: Cultural Landscape and Commemorative Strategies in Postwar Kosovo', *Croatian Political Science Review*, vol. 51, no. 5, 2014, pp. 157–73.

inhabited areas feature predominantly symbols and names derived from Serbian national history.<sup>143</sup> This reality clearly ‘deeply contradicts the declared aspiration to build a common state and national identity among all of the peoples of Kosovo’.<sup>144</sup>

## **7.6. Conclusion**

This chapter completes the critical examination of international commitments to multi-ethnicity in post-conflict Kosovo, building on the previous two sections that examine the origins and manifestations of international normative commitments to multi-ethnicity. This chapter has unpacked the international commitments to multi-ethnicity by tracing both normative and consequentialist considerations that help explain them, and further discussed how identity and self-image also contribute to explaining the commitments in question. Various unspoken underlying assumptions about Kosovo, its history, and its conflict were also examined as further elements that explain the complex commitments by international actors to building a multi-ethnic Kosovo. One of the implications of these findings is the serious disconnect between local and international understandings of and approaches to multi-ethnicity. As demonstrated throughout this thesis, the idea of multi-ethnicity remained to a large extent unspecified in the international discourse, despite the strong commitments to it. In the interplay between domestic and international actors, this ambiguity around what multi-ethnicity means also allowed for the co-optation of the international commitment to

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<sup>143</sup> Dahlman & Williams, ‘Ethnic Enclavisation’, p. 411.

<sup>144</sup> Ermolin, ‘When Skanderbeg Meets Clinton’, p. 170.

multi-ethnicity for local political ends through an open space for local actors' interpretations of it.<sup>145</sup>

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<sup>145</sup> See e.g. Gross, 'The Journey from Global to Local'.

## **VIII. Conclusion**

‘Kosovo shall be a multi-ethnic society, which shall govern itself democratically, and with full respect for the rule of law, through its legislative, executive, and judicial institutions.’<sup>1</sup> Thus reads the first article of the Comprehensive Proposal for the Kosovo Status Settlement, known as the Ahtisaari Plan, adopted in 2007. This document outlined the conditions under which the former province of Serbia declared its independence the following year, after nine years as a UN protectorate in what constituted the most extensive international post-conflict state-building project to date.

Why is ‘multi-ethnic’ the first feature attributed to Kosovo in this key document? And what is meant by ‘multi-ethnic’ in this context? These are the questions this study has sought to answer. In this work, I have critically examined the role of international commitments to multi-ethnicity in Kosovo’s post-conflict state-building process, and have argued that the commitment to ensuring Kosovo’s multi-ethnic character is not only about stabilising Kosovo in the long term, but is also indicative of a normative outlook on what constituted legitimate statehood and the appropriate management of ethnic diversity in the late twentieth century.

The following provides a summary of the study’s main findings, draws implications and lessons, and points to avenues for further research.

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<sup>1</sup> Ahtisaari Plan, Article 1.1. (General Principles).

### **8.1. International Normative Commitments to Multi-Ethnicity**

This study set out to critically examine a feature of the international engagement in post-conflict Kosovo that has received only limited scholarly attention to date: the international normative commitments to multi-ethnicity. Despite multi-ethnicity being a central goal of the international engagement in post-conflict Kosovo, it was a largely unspecified goal, and its origins, nature, and criteria by which to measure its success remain insufficiently understood. This is true in two senses. Firstly, the actors studied in this thesis—international organisations pursuing multi-ethnicity in Kosovo—did not define what was meant by multi-ethnicity. Secondly, academic debates on post-conflict peace- and state-building have left these phenomena’s normative dimension under-explored and under-theorised.

Much of the existing literature on post-conflict state-building has treated approaches to ethnic diversity following war as instrumental tools of conflict regulation. These are understood as means to the pre-determined end, which is peace and stability in places that have witnessed violence. In this thesis, I have gone beyond that understanding, by using the logic of appropriateness, discussed in the Introduction, as an additional lens through which to make sense of the international state-building endeavour. It is hoped that this perspective can lend further insights about the actors involved in peace- and state-building, as well as about the normative environment that structures and constrains their action.

As Boulden and Kymlicka note, the prevailing tendency among scholars of post-conflict scenarios to focus on the period following inter-communal violence through the lens of crisis management, revolving for example around the diffusion

of potential spoilers to peace agreement in the context of ethnic diversity, indicates that

the literature is isolated from broader debates about the larger and longer-term dynamics and processes by which international actors shape everyday assumptions about the appropriate and normal governing of ethnic diversity. International organizations are not just involved in trying to rescue failed states; they are also involved in shaping our everyday understandings of what a ‘normal’ state looks like, and we need to better understand how approaches to failure or crisis are informed by perceptions of success.<sup>2</sup>

These ‘perceptions of success’ are the central interest of this study. As demonstrated in the preceding three sections, the multi-faceted international attempts to build a multi-ethnic Kosovo are indicative of international normative frameworks in which this project took place. In other words, the study of international state-building in Kosovo goes beyond the scope of what international organisations evaluated as *necessary* for Kosovo to return to peace and stability. It extends to the important but under-explored dimension of what was considered *desirable* in the pursuit of building a legitimate post-conflict polity. Thus, the case of international state-building in Kosovo, which placed multi-ethnicity at the centre of the endeavour, is indicative of prevailing conceptions of legitimate statehood and the normatively acceptable management of diversity in the late twentieth and early twenty-first centuries.

The thesis has sought to answer two inter-related questions: what was meant by multi-ethnicity on the part of its proponents, and what explains the prominence of commitments to this idea. At the outset, I proposed an in-depth,

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<sup>2</sup> Boulden & Kymlicka, *International Approaches*, p. 5.

critical examination of normative commitments to multi-ethnicity on the part of the international community in post-conflict Kosovo to answer these questions.

Taking the form of three sections, this study has examined the origins and manifestations of these commitments, and offered explanations for them. The first section traced the main historic developments that led to multi-ethnicity featuring so centrally in the international approaches to peace- and state-building in Kosovo in 1999. The second section explored international policymaking in post-conflict Kosovo as a manifestation of these commitments, by examining three distinct but inter-related policy areas through which international actors sought to promote multi-ethnicity: the return of displaced persons, decentralisation of government to the local level, and minority rights. This part of the thesis identified different notions of multi-ethnicity held by international actors, answering the question of what their vision of a multi-ethnic Kosovo actually entailed. The international organisations committed to multi-ethnicity were found to hold various competing notions of the concept, which shifted over time in response to developments on the ground. Finally, the third section explored explanations for the commitments in question, answering the question of why they were so central to the international community. This section in particular employed an interpretive approach, drawing on interviews with policymakers to identify the considerations driving the commitments, as well as uncover underlying assumptions that remain unacknowledged.

As argued in the Introduction, while both the logic of appropriateness and the logic of consequences surely operated in the process of international policymaking, a focus on the former proved fruitful for an investigation of this kind, since the normative dimension of international peace- and state-building is

understudied and under-theorised. Furthermore, this study has shown how prevailing normative commitments and preferences constrain the choices available to international policymakers and thus impact even the articulation of seemingly consequentialist strategies.

## **8.2. Key Findings**

Kymlicka has observed that ‘the attempts to internationalise multiculturalism and minority rights are running into a veritable minefield of conceptual confusions, moral dilemmas, unintended consequences, legal inconsistencies and political manipulation.’<sup>3</sup> This study of international normative commitments to multi-ethnicity in post-conflict Kosovo illustrates his point.

A key contribution of this study lies in its demonstration of how the normative commitments to multi-ethnicity are significantly far more complex than the academic literature has acknowledged. Behind the seemingly straightforward commitments to multi-ethnicity lie deep tensions and internal contradictions. Because the goal of multi-ethnicity was strong but at the same time vague and unspecified in the international engagement in Kosovo, different notions of multi-ethnicity could be negotiated in policymaking. Through the foregoing chapters, a picture of an elaborate undertaking characterised by powerful commitments emerged. However, these commitments lacked specification and internal consistency and were based on unacknowledged assumptions.

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<sup>3</sup> Kymlicka, *Multicultural Odysseys*, p. 8.

## **Origins of International Normative Commitments to Multi-Ethnicity**

Section One focused on the origins of these commitments by surveying normative developments preceding the international state-building project in post-conflict Kosovo. It found that the history of thinking and practice in relation to multi-ethnicity was marked by continuous contestation beginning as early as the nineteenth century, due to the tension between ethnic diversity and prevalent conceptions of statehood as based on the principle of national self-determination. This was particularly true where the ethno-national characteristics of a population did not align with political borders, which often shifted in the context of war, disintegrating empires, and political upheavals.

A dual process of continuity and change marks the history of approaches to multi-ethnicity. Specifically, while minority rights were promoted by international organisations as a tool to manage diversity twice during the twentieth century—at its beginning, and at its end—an early twentieth century preference for ethnic homogeneity, even at the expense of large-scale displacement, was by the 1990s replaced in favour of a principled commitment to ethnic diversity. Furthermore, minority rights, premised on the assumption that the recognition of group identities and the granting of group-differentiated rights to self-government, cultural expression, or special representation would contribute to peace, were also deeply contested. Since minorities were primarily understood as a potential source of insecurity, the possibility of minority rights weakening the state was a major concern. The post-World War One minority rights regime was mostly imposed by the Great Powers on states in the periphery; it remained weak, inconsistent, and unevenly applied. The idea was largely abandoned after World War Two in favour of individual rights.

The 1990s represent the historical and regional backdrop against which the Kosovo state-building project took place. As Chapter Three illustrated, in the 1990s, ethnic diversity was revived as a topic of international concern. The controversies surrounding minority rights were also re-ignited in the context of the end of the Cold War, the disintegration of post-communist federal states, and the threat of renewed ethno-political conflict in Europe. On the one hand, the 1990s in Europe were reminiscent of the post-World War One era, with the changing of political borders, minority issues returning to international attention, and minority rights again inconsistently imposed. On the other hand, an important shift had taken place during the twentieth century. By its last decade, homogeneity was no longer desirable or even acceptable by prevailing international normative standards.

This development, discussed in Chapter Three, indicates a shifting conception of the relationship between ethnic diversity and legitimate statehood. International responses to the dissolution of Yugoslavia brought this shift to the fore most starkly. Diversity was now valued as a positive characteristic of states, lending them legitimacy, while state attempts to deny or eliminate diversity were anathema. The international community began to outlaw these practices, which had previously been considered, if at times morally questionable, than at least instrumentally beneficial. In the context of the Yugoslav wars, international organisations attempted to reverse the ethnic cleansing that had taken place. These efforts were framed as critical to the international post-conflict engagement in the region, alongside growing support for a politics of recognition. Minority rights, autonomy guarantees, and power-sharing mechanisms were all put in place in post-conflict states in the Balkans in order to safeguard multi-ethnicity, which by then

was a widely accepted goal for the international community. However, the idea of national self-determination was never outright rejected. While by the 1990s states were expected to show greater acknowledgment of their diverse make-up, the principle of national self-determination still operated, only now it formed the basis for a politics of recognition, rather than requiring ethnic homogeneity.

By the time of the international state-building project in post-conflict Kosovo at the end of the twentieth century, the international normative commitments to multi-ethnicity were solidly entrenched. These were contextualised by the principled rejections of ethnic cleansing and lesser forms of cultural assimilation and the general rise in multiculturalism and the politics of recognition in the West. However, concerns about the potentially destabilising effects of some of these policies remained, as they had throughout history.

### **Notions of Multi-Ethnicity: From Integrationist Ambitions to a Politics of Recognition**

As described in the Chapters Four, Five, and Six, international state-building in Kosovo was driven by a strong commitment to the largely unspecified goal of multi-ethnicity. International state-builders in Kosovo negotiated their commitments to multi-ethnicity through policymaking in the various fields related to diversity and minority–majority relations.

Multi-ethnicity, as a concept, remained unspecific and inconsistent, which on the one hand provoked tensions and inconsistencies, and on the other hand allowed for flexibility in international policymaking and adaptations of the normative goal to realities on the ground. This study finds that notions of multi-ethnicity shifted from early integrationist understandings to those that endorsed a politics of

recognition. This shift can be understood as a concession to the reality of enclavisation and segregation of Kosovo's minorities. This is particularly evident from the examination of policymaking from 1999 to 2012 in the areas of returns and decentralisation.

As discussed in Chapter Four, the policies to support the return of displaced minorities, particularly Kosovo-Serbs, formed a key part of international attempts to ensure Kosovo's multi-ethnic character. In this policy area tensions surrounding the issue of ethnic enclaves were most prominent. The enclavisation of minority life in Kosovo was anathema to notions of multi-ethnicity centred around integration and inter-mixing between groups, since segregation contrasts with anything but a very minimal conception of multi-ethnicity, which was not prevalent among international actors in Kosovo. Rather, integrationist notions of multi-ethnicity were dominant among international actors, particularly UNHCR and UNMIK, in the first years following the war. These actors sought to use the returns process to reverse the ethnic segregation of Kosovo. However, as shown with reference to security, livelihoods, and property rights, this effort largely failed.

The riots of 2004 took the international presence in Kosovo by surprise, and occasioned a shift in notions of multi-ethnicity that changed the policy on minority returns. This shift reflected a growing acceptance within the international community of territorial segregation between ethnic groups in Kosovo. The goal of multi-ethnicity remained, but was transformed. Instead of being seen as contrary to multi-ethnicity, ethnic enclaves became gradually accepted *for the sake of* Kosovo's multi-ethnicity. Securing at least a small number of minority returns, even if they returned to live in separate, predominantly Kosovo-Serb, enclaves, was

compatible with a commitment to multi-ethnicity understood in less integrative terms.

This transformation indicates the strength and extent of normative commitments to multi-ethnicity on the part of international actors. When faced with difficulties, the commitments were not abandoned. I argue that multi-ethnicity could not be abandoned because the international community operated within a constraining normative framework that valued multi-ethnicity as a central requirement for the legitimacy of a post-conflict state like Kosovo. Thus, since the commitment could not be abandoned, it had to be transformed.

This finding is confirmed in the examination of international policymaking on decentralisation, another key area in which international organisations, most notably the ICO, located their work of multi-ethnicity promotion. Chapter Five identified the tensions surrounding decentralisation in Kosovo in its potential to either integrate minorities by granting self-government rights, or further institutionalise their segregation by drawing administrative boundaries along ethnic lines. Complementing the decision to abandon a returns policy aimed at actively dismantling minority enclaves, these enclaves were later recognised as separate municipalities in the name of safeguarding Kosovo's multi-ethnicity.

The eventual endorsement of ethnic enclaves was preceded by an initial desire to integrate minorities and refuse the recognition of segregation on the ground. Decentralisation of power to the local level was originally hoped to contribute to the state-building process in a neutral, colour-blind manner for all citizens of Kosovo. Over time, a recognition-based notion of multi-ethnicity was gradually applied to decentralisation; originally in the proposal to draw boundaries along ethnic lines, and later in the granting of asymmetrical powers of self-

government to specific groups, notably Kosovo-Serbs, to entice them to integrate into Kosovo's official structures. Following the declaration of independence, the decentralisation process outlined in the Ahtisaari Plan framed the creation of new municipalities for Kosovo's minorities—effectively endorsing homogeneity at the local level—as a feature of Kosovo's multi-ethnicity. In other words, it was given central importance because it was presented as a measure to ensure Kosovo's multi-ethnic character, which remained of vital importance. While this notion of multi-ethnicity eventually came to dominate policymaking, its inherent tensions were evident to international policymakers, who were aware of the risks posed by excessive self-government and separation. Additionally, and similarly to the minority returns process, decentralisation was marred by politicisation. Both Kosovo-Serbs and Kosovo-Albanians displayed high levels of suspicion and scepticism about it.

Lastly, it can be noted that the minimalist notion of multi-ethnicity, which takes no stance on group identity and eschews recognition of ethnic categories was rare among the international actors in post-conflict Kosovo. The politics of recognition, for example in the form of minority rights, had become the prevailing approach to diversity in this context.

The tensions inherent in minority rights and other group-differentiated policies were not lost on the international state-builders in Kosovo. Chapter Six found that in the area of minority rights, including both special representation rights and poly-ethnic rights to language, culture, and education, international organisations pursued a politics of recognition while sensing unease about the potentially dividing effects of these policies. Given the Kosovo-Serb boycott of Kosovo's institutions and elections for much of the post-conflict period, many of

these measures were proposed as a tool for their inclusion into Kosovo's state structures. However, they also had the effect of maintaining separate linguistic, cultural, and institutional realities. The special representation rights designed to ensure the participation and representation of minorities also created accountability deficits, precluded the possibility of cross-ethnic voting, and did not succeed in significantly improving the real lives of persons belonging to minorities in Kosovo.

Chapter Six argued that while the politics of recognition seemed to international actors an effective and appropriate tool for including minorities into Kosovo's state structures, a prevalent underlying aim of these policies was to achieve integration between ethnic groups. Ironically, it was often the recognition-based policies pursued in the name of multi-ethnicity that undermined such desired integration. This is most evident in relation to language and symbols, where policies of recognition often had dividing, rather than integrating effects.

In the sphere of language policy, international state-builders committed to multi-ethnicity found that for Kosovo to be multi-ethnic it had to actively promote the use of both Serbian and Albanian languages in the public sphere. However, this study also finds a preference for bilingualism among international actors in Kosovo. While they supported the rights of minorities to maintain their own language, international actors were also concerned about the lack of a common language for all citizens, and the fact that the linguistic barrier precluded inter-ethnic contact. This tension remained unresolved.

In the realm of public symbols, the international pursuit of multi-ethnicity included both the recognition of group symbols and the creation of new, inclusive ones. However, the desired integrative effects of this policy did not materialise in this area either. The Ahtisaari Plan demanded that Kosovo's state symbols reflect

its multi-ethnic character by precluding any symbolic reference to either the Albanian or Serbian flags. Rather, a flag and anthem alluding to an ethnically neutral, geographically defined identity was adopted for the newly independent state. Attempts were also made to fill the public sphere with similar symbolic markers of Kosovo's new, civic identity. However, as demonstrated in Chapter Seven, these attempts failed to resonate with local preferences, and in reality Kosovo's public sphere was shaped by the separate existence of Albanian and Serb identities and symbols, rather than their transformation into new Kosovar ones. While Albanian flags adorned the streets of Pristina, and its toponymy was dominated by references to Albanian national history, public space in Gračanica, only ten kilometres away, was dominated by Serbian national references and symbols. The distance between the two was geographically small but politically vast, and was considered highly problematic by most international state-builders in Kosovo since it contrasted with their visions for a multi-ethnic state. However, this reality was partly the result of policies pursued in the name of multi-ethnicity by international actors, since the minority rights provisions imposed in the Ahtisaari Plan, modelled after advanced European minority rights standards, provided for the right of communities 'to use and display symbols of their community'.<sup>4</sup> This is indicative of the tension inherent in pursuing an integrationist vision of multi-ethnicity through policies of recognition.

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<sup>4</sup> Law on Communities, Article 5.6.

## **Explanations of Commitments**

The study's third and final section sought to explain international normative commitments to multi-ethnicity in post-conflict Kosovo. Insights in this section were based on the previous section's analysis of the commitments' manifestations in international policymaking, and how these were negotiated in light of realities on the ground. Chapter Seven finds that both normative and consequentialist considerations played a role in shaping commitments to multi-ethnicity. However, contrary to much of the literature that frames peace- and state-building in predominantly rationalist, utility-maximising, and thus consequentialist terms, I focused on the logic of appropriateness to highlight the under-studied normative dimension of international state-building. This approach offers important insights into the phenomenon.

Chapter Seven revealed how even consequentialist thinking, which views policies pursued in the name of multi-ethnicity as instrumental conflict regulation tools, is constrained by normative dimensions that are often overlooked. For example, even if multi-ethnicity is framed as a condition for independence in a consequentialist bargaining situation between the international community and local elites, or between the Albanian majority and the Serb minority in Kosovo, prevailing standards of appropriateness shape the parameters of this negotiation. As demonstrated, the international state-building endeavour took place in a context of shifting conceptions of legitimate statehood that increasingly included the recognition of ethnic diversity and rejected homogeneity as a legitimate basis for post-conflict polities. This limited the options available to international actors in their engagement with post-conflict Kosovo.

In addition to normative and consequentialist considerations, I also found that identity and self-image concerns of international actors add to explaining their commitment to multi-ethnicity. This is in line with the assumptions of constructivist scholarship on international organisations and the international diffusion of norms.<sup>5</sup> Concerns about maintaining an impartial and successful image as interveners and state-builders, as well as the need to conform to organisational identities, also account for some of the ways in which the goal of multi-ethnicity was implemented in practice. For example, international actors' desire to be viewed—and to view themselves—as successful in their pursuit of multi-ethnicity led to a focus on policies that would make multi-ethnicity quantifiable and, thus, success in its pursuit seemingly attainable. Furthermore, this desire also drove the prioritising of stability in Kosovo, for example in an understanding of multi-ethnicity as entailing no open hostility between groups. This logic was used to justify guarded enclaves for minorities in the name of multi-ethnicity.

By uncovering and examining important unspoken assumptions underlying international normative commitments to multi-ethnicity, this thesis makes a contribution towards a better understanding of an under-explored dimension of the international state-building project. As demonstrated, assumptions about a—possibly imagined—multi-ethnic past, the centrality of ethnicity in Kosovo, or the nature of ethnic conflict drove international thinking and practice in the pursuit of multi-ethnicity. However, these were rarely made explicit by the actors involved, and have not been studied in depth in the academy.

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<sup>5</sup> Finnemore & Sikkink, 'International Norm Dynamics'.

Finally, the findings of this study strengthen my claim about the power of the normative environment in shaping the actions of international organisations. The fact that so many of the international actors in Kosovo interviewed for this study exhibited disenchantment with and resignation about the project of building a multi-ethnic Kosovo, yet that the goal has never been publicly abandoned, indicates the powerful and constraining normative environment in which these actors found themselves. In this environment, multi-ethnicity held such normative sway as a goal that it was maintained, despite disenchantment and resignation. Mono-ethnicity could not be endorsed. Thus, where ethnic homogeneity had become the reality on the ground, as in the case of Kosovo-Serb enclaves, this could only be accepted when re-framed *in the name of* and *for the sake of* Kosovo's overall multi-ethnicity. This is suggested by the findings on the returns and decentralisation policies pursued by international actors in post-conflict Kosovo.

### **8.3. Implications and Avenues for Further Research**

The findings of this thesis contain implications for both the theory and practice of post-conflict state-building in contexts of ethnic diversity, some of which are discussed below. Additionally, I highlight potential avenues for further research that result from this study.

Firstly, from the examination of international normative commitments to multi-ethnicity in Kosovo, an important implication arises pertaining to the wide gap between local and international approaches to multi-ethnicity. Scholars have long acknowledged the difficulty in 'defining state-building policies that are

appropriate, effective, and legitimate, not only in the eyes of the interveners, but also for the local elites and general population of the country'.<sup>6</sup> As my findings illustrate, this difficulty persists. The international state-building project in Kosovo largely failed to resonate with local views on multi-ethnicity, thus creating the basis for contestation of the project between its international drivers and those whose state was being built. I have argued that this is explained by the failure of international state-builders to acknowledge and address local experiences with multi-ethnicity in the past, as well as, importantly, local understandings of group identity and nationhood. This led to different state-building projects being pursued in parallel by local and international actors in Kosovo, with negative implications for the legitimacy and sustainability of the institutions designed and built by the international community.

For the practice international peace- and state-building, the implication of this finding is that the inclusion of local perspectives and actors matters immensely. However large the resources invested by international organisations seeking to transform post-conflict states and societies, these mechanisms will not be effective without efforts to understand local actors' priorities and political self-understandings. In particular, treating a post-conflict society, including its institutions, as a *tabula rasa* further deepens the divide between local and international priorities, as seen in this study, where local interviewees resented the fact that the multi-ethnic state-building project necessitated a clear cut with, and

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<sup>6</sup> Roland Paris & Timothy D. Sisk, *Managing Contradictions: The Inherent Dilemmas of Postwar Statebuilding*, Research Partnership on Postwar Statebuilding, International Peace Academy, November 2007, p. 4.

denial of their collective past. Particularly in the context of a relatively recent legacy of violence, efforts must be made to take seriously the political self-understandings and identities of local actors.

Additionally, as many of the policies pursued in the name of multi-ethnicity in Kosovo illustrate, limited local commitment to foreign-imposed policies coupled with these policies' ambitious scope can lead not only to suboptimal implementation on the ground, but will also likely weaken the standing of the norms in whose name the policies are pursued. For example, several interviewees remarked on the 'absurdly' high standards for minority rights imposed on post-conflict Kosovo in a context of scarce resources, inadequate capacity, and very limited political will on the part of the local administration. Frustration with this reality among international actors was palpable, as was a sense that the longer these laws continue to exist on paper only, or are very inadequately implemented on the ground, the weaker the commitment to working towards the overall goal of multi-ethnicity will become. For the practice of post-conflict state-building this suggests that a less ambitious but more selective approach, adapted to local realities, might prove a more effective and sustainable way to promote norms in the long term.

The findings of this study are also relevant for other cases of ethnic diversity following conflict. In particular, the tensions uncovered in international policymaking in Section Two indicate that when competing notions of a goal exist, a lack of clarity about the appropriate tools and measures to employ in its pursuit will prevail. The ill-defined commitments to multi-ethnicity led to tensions and inconsistencies in policymaking, and while some of these were probably inevitable given the complex nature of the endeavour, a lesson that can be applied to future

cases is that efforts should be made to understand and address these tensions, rather than deny them.

For the literature on post-conflict multi-ethnic states, this study's findings suggest that some of the prevalent typologies may be inadequate for capturing the dynamics in question. Most of the literature on ethnic conflict uses typologies that classify policies as 'partitionist' or 'integrationist'.<sup>7</sup> In this kind of framework, minority rights, returns policies that aim at re-mixing populations, consociationalism, and power-sharing are usually all considered 'integrationist', or accommodative elements, because they seek to integrate different groups and institutionalise the state's diversity.<sup>8</sup> However, as this study has shown, many of these policies have a politics of recognition at their core. As demonstrated in Section Two, recognition of group claims and identities, though often classified as 'integrationist', can have important dividing effects. For example, it is not obvious why power-sharing in the form of quotas and veto powers for minorities should be classified as integrationist, since these recognition-based policies can also entrench difference and harden divisions between groups. This potential is not captured by a straightforward dichotomy between separation- and integration-based elements of peace treaties, since these typologies usually classify policies for their presumed effects, rather than questioning what underlying vision of diversity they exhibit. My findings call for a more nuanced study of the policies normally labelled 'integrationist', including by examining the notions of multi-ethnicity or diversity

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<sup>7</sup> See e.g. Jenne, 'Paradox of Ethnic Partition'.

<sup>8</sup> See e.g. Timea Spitka, *International Intervention, Identity and Conflict Transformation: Bridges and Walls between Groups* (Abingdon: Routledge, 2016), p. 3.

under which these operate. Unpacking the tensions within these notions could aid in building typologies that can capture, rather than simplify, the complexity of the endeavour.

Finally, the findings in this study concerning the failure of international actors to adequately relate the international state-building project to local preferences and self-understandings contribute to the growing local turn in the study of peace- and state-building. This literature has demonstrated how foreign-imposed norms are at times co-opted by local political actors.<sup>9</sup> However, even this critical scholarship, which has delivered innovations like the concept of hybrid peacebuilding, has paid only limited attention to the normative dimension that shapes the interests of both the international and local actors in the first place. The findings of this study thus also suggest the need for theories of peace- and state-building to take the normative dimension of these phenomena seriously, particularly in the way it constrains political action. As demonstrated in this critical examination of international normative commitments to multi-ethnicity in Kosovo, a close study of a concept that goes unquestioned by the actors themselves can generate new insights into international policymaking. Unpacking the competing notions and underlying assumptions of a stated commitment can illuminate it and uncover new dimensions of the phenomenon in question. Employing this approach to explain some of the inconsistencies and tensions found in international policymaking is a first step towards improving both the theory and practice of international state-building.

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<sup>9</sup> Björkdahl & Gusic, ““Global” Norms and “Local” Agency”.

#### **8.4. Conclusion**

Following NATO's intervention in Kosovo in 1999, a number of international organisations set out to undertake the enormous task of administering Kosovo, reconstructing its institutions and infrastructure, and leading it on a path towards peace and eventual statehood. At the heart of this project, which was unprecedented in scale, was a vision for a multi-ethnic Kosovo. This goal was given central importance by the international actors involved, and the need to maintain, establish, or re-create Kosovo's multi-ethnic character drove a range of policies during the post-conflict period. As demonstrated in this study, international commitments to multi-ethnicity were strong, but also vague, and the policies pursued in the name of multi-ethnicity demonstrate shifting and competing notions of what a multi-ethnic state might look like. These commitments were shaped by the prevailing normative environment in which the international state-building project took place. International actors' identity and image concerns, as well as unspoken assumptions about the conflict also influenced the commitments. Furthermore, in the areas of minority returns, decentralisation, and minority rights, international actors had to negotiate their commitments to multi-ethnicity with realities on the ground, resulting in a complex policy challenge.

This study sought to examine international normative commitments to multi-ethnicity in Kosovo, and its findings, regarding both the notions of multi-ethnicity and the explanations for multi-ethnicity's prominence in the international state-building project are described above. While the aim of this examination was not to evaluate the success of the international promotion of multi-ethnicity, but rather to examine what success might look like in the eyes of those who pursue it, the continued segregation of ethnic groups in Kosovo to this day is worth noting, as

is the on-going contestation of the policies imposed by the international community in the name of multi-ethnicity. While the role of international organisations in Kosovo has diminished since supervised independence formally came to an end in 2012, international actors continue to shape the political reality in Kosovo and in the region, notably through the on-going EU-led dialogue between Kosovo and Serbia. The policies described in this thesis, including minority rights and decentralisation, continue to be re-negotiated as part of this dialogue, the results of which remain to be seen. With the conflict still in living memory, the outcome of the international pursuit of multi-ethnicity should not be judged prematurely. However, by offering an in-depth examination of the international pursuit of multi-ethnicity in a range of policy areas, this thesis has highlighted the tensions and inconsistencies within the international state-building project in Kosovo. It is hoped that this may contribute to our understanding of this complex undertaking.

## **List of Interviews**

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1. Project manager, European Centre for Minority Issues Kosovo, 13 May 2009, Skype.
2. Senior ICO official, 23 September 2010, Pristina.
3. Deputy Director of Department for Human Rights and Communities, OSCE Mission in Kosovo, 23 September 2010, Pristina.
4. International advisor seconded to Kosovo Ministry of Communities and Returns, 27 September 2010, Pristina.
5. Official, European Commission Liaison Office, 27 September 2010, Pristina.
6. UN Development Coordinator and UNDP Resident Representative, 4 October 2010, Pristina.
7. Former strategy advisor to UNMIK's SRSG, 19 January 2011, Oxford.
8. Former Head of UNMIK Office for Returns and Communities, 29 April 2014, New York City.
9. Former local staff of ICG, UNMIK, and ICO, 5 September 2014, Pristina.
10. Policy Advisor on Religious and Cultural Heritage to the EU Special Representative to Pristina, 5 September 2014, Pristina.
11. International NGO staff working in the field of returns, 10 September 2014, Pristina.
12. Senior international staff of Kosovo Property Agency, 10 September 2014, Pristina.
13. International staff of Kosovo Property Agency, 10 September 2014, Pristina.
14. Danish Refugee Council Kosovo Representative, 10 September 2014, Pristina.
15. Head of Office of Political Affairs, UNMIK, 11 September 2014, Pristina.
16. UNMIK official, Communities Section, 11 September 2014, Pristina.
17. Senior international official in the field of returns, 11 September 2014, Pristina.
18. Former ICO Advisor on Religious and Cultural Heritage, 12 September 2014, Pristina.

19. Local staff of EU Special Representative to Pristina, 12 September 2014, Pristina.
20. OSCE staff member, 12 September 2014, Pristina.
21. Senior international analyst, 12 September 2014, Pristina.
22. Former local staff of UNHCR and UNMIK Office for Returns and Communities, 12 September 2014, Pristina.
23. EULEX official, 14 September 2014, Pristina.
24. Head of UNMIK Office of Community Support and Facilitation, 15 September 2014, Pristina.
25. UNMIK official, Office of Community Support and Facilitation, previously Office for Communities and Returns, 15 September 2014, Pristina.
26. UNMIK official, Office of Community Support and Facilitation, previously UNMIK regional office in Peja/Pec, 15 September 2014, Pristina.
27. Former ICO official, 15 September 2014, Pristina.
28. EULEX official, 16 September 2014, Pristina.
29. Public Information Associate, UNHCR Kosovo, 16 September 2014, Pristina.
30. International advisor to Kosovo government on community issues and former OSCE official, 16 September 2014, Pristina.
31. Former senior ICO official, 18 September 2014, Skype.
32. Former Head of Political Affairs, ICO, 30 September 2014, Skype.
33. Former Head of Community Affairs, ICO, 2 April 2015, Berne.
34. Former ICO staff, 2 April 2015, Skype.

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1. Director, Kosovo think tank, 14 September 2010, Pristina.
2. Kosovar civil society activist, 15 September 2010, Pristina.
3. Research Director, Kosovo think tank, 21 September 2010, Pristina.
4. Kosovo Minister of Local Government Administration, 22 September 2010, Pristina.
5. Deputy Head, *Lëvizja Vetëvendosje* ('Self-determination Movement'), 24 September 2010, Pristina.
6. High-ranking Kosovo Government official, 14 September 2014, Pristina.

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