

## The Europeanization of Romanian Foreign Policy: Mitigating European and National 'Misfits' in the International Criminal Court and Kosovo Cases

Mircea Micu\*

**Abstract\*\*:** *This article aims to tackle some of the challenges posed to the Europeanization research agenda and to examine the usefulness of the Europeanization approach to the study of national foreign policy (selecting Romania as a test case). It proposes a research design that lays emphasis on pinpointing and mitigating the 'misfit' between EU and national levels, and on the role of the 'political vulnerability' stemming from the EU conditionality imposed on candidate countries and from different perceptions of threat. The two case studies chosen refer to EU-Romanian disagreements over the International Criminal Court's jurisdiction and Kosovo's unilateral declaration of independence.*

**Keywords:** *Europeanization, Romanian foreign policy, political vulnerability, International Criminal Court, Kosovo.*

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### PRELIMINARY THEORETICAL CONSIDERATIONS

This paper makes the case for the use of an integrated model for the study of the Europeanization of public policy<sup>1</sup> in assessing the EU impact on national foreign policies (including those of new member states and candidate countries).

First, it assumes that the 'goodness of fit' argument, according to which the degree of '(mis)fit' between EU and domestic levels determines the intensity of adaptation pressures on domestic structures and policies, is the key to understanding the Europeanization process (Börzel 1999; Cowles, Caporaso and Risse 2001).

Despite adaptation pressures at work, change at the domestic level is not assumed as automatic and, when it occurs, it is considered to take different forms in individual countries due to the presence of domestic intervening variables (Radaelli 2003; Börzel and Risse 2003). EU-induced change is believed to follow the 'logic of consequentialism' and/or the 'logic of appropriateness' advocated by March and Olsen (1984, 1989, 1998), which combine explanations rooted in rationalist and sociological institutionalisms.

With regard to Börzel's 'downloading/uploading' argument, and Radaelli's concerns over confusing Europeanization with EU policy formation and integration, Bulmer and Burch

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\* **Mircea Micu** is a doctoral student in international relations at the University of Cambridge and a Romanian diplomat; currently on secondment to the European External Action Service (the views expressed herein are solely those of the author). E-mail: [mircea.micu@trinity.oxon.org](mailto:mircea.micu@trinity.oxon.org)

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<sup>1</sup> As suggested by Radaelli (2003:27-52).

have argued that, while the emphasis on the 'top-down' impact of the EU in national arenas still remains, adaptation is also the result of the necessity to ensure effective input into EU policy-making. They build on Radaelli's definition and describe Europeanization as 'a set of processes through which the EU political, social and economic dynamics interact with the logic of domestic discourse, identities, political structures and public policies'. That is to say that, besides a 'reception' dimension of Europeanization, whereby domestic institutions have to 'find suitable ways of processing EU business', there is also a 'projection' dimension, in which domestic institutions have to adapt their procedures in order to be able to make an effective contribution to those EU dynamics (Bulmer and Burch 2000, 2002, 2005).

There is another approach to Europeanization which implies horizontal, intra-European developments that may trigger change in domestic realms. Interaction and socialisation between member states, in a framework of European institution-building and policy-making (which may not necessarily lead to the strengthening of the EU system of governance), have the potential of reverberating in national arenas as well. One of the EU's principles, *united in diversity*, acknowledges and defends the many differences between member states. However, over time, within processes of interaction, socialisation and learning these differences may be attenuated, even in the absence of a clear systemic 'misfit' generated by the EU. The organisational literature draws attention to the "ability to detect and correct errors [or less effective institutional setups] and thereby improve the functioning of an organisation" (Olsen and Peters 1996: 4), which reflects "a position that is comparable with the 'misfit' starting-point common in the Europeanization literature" (Bulmer 2007: 54). In other words, through interaction at the European level that does not necessarily aim at producing an EU institution or policy, some participants assimilate more effective organisational methods from other, better performing, participants in order to improve their performance in European-imbued domestic policy areas.

Second, the Europeanization concept may be applied to the study of national foreign policy, despite the 'unique' nature of foreign policy decision-making at the EU level.

There are reasons to believe that the 40-year European foreign policy co-operation has produced 'formal and informal rules, procedures, policy paradigms, styles, "ways of doing things", shared beliefs and norms' (elements of Radaelli's definition of Europeanization (2003: 30)), which to a greater or lesser extent, may generate adaptation pressures and induce change in national arenas. This has been made possible by the 'embedded character' of foreign policy co-operation, which, for various reasons, drove participating countries into a form of "inter-governmentalism [that] in theory [may] not erode sovereignty, [but] in practice, over time, has ties that bind" (Hill and Wallace 1996: 10).

The deepening and widening of the European foreign and security policy, especially since the establishment of CFSP, has formalised the political obligation of EU member states to coordinate their national foreign policies and has consolidated the 'reflex condition' and the body of policy decisions and orientations of the EU to the extent to which a "form of symbiosis [has been created] in which states are increasingly reliant upon the efficiency of the collective policy process" rendering each member state the 'hostage' of its peers (Tonra 2001: 3-4).

This paper proposes a conceptualisation of mechanisms of Europeanization of national foreign policy in line with Vaquer i Fanés's definition of Europeanization as "a process of foreign policy change at the national level originated by adaptation pressures and new opportunities

generated by the European integration process" (2001: 5)<sup>2</sup>. According to this proposal, the downloading/reception dimension of Europeanization of national foreign policy is shaped by the presence of various 'models' of foreign policy co-operation at the European level: a) consolidated or well-established 'models' (especially those regarding formal and informal rules, styles, 'ways of doing things' and norms), which can generate high adaptation pressures, in case of a 'misfit'; and b) 'weaker' models (EU policy guidelines, positions, declarations), which generate adaptation pressures of lower intensity.

Furthermore, following Bulmer's and Burch's logic, the uploading/projection dimension of the Europeanization of national foreign policy implies that, in order to 'upload' national preferences to the European level and to take advantage of the opportunity structure created by the EU, a participating country needs to be institutionally 'fit' with the (strong or weak) EU 'models' that the co-operation in the foreign policy sphere have already produced.

Third, Europeanization patterns may differ in the case of candidate countries due to the power asymmetry which characterises the EU-candidate countries relationship<sup>3</sup>. In this particular instance, the presence of strong or weak EU 'models' render vertical and horizontal mechanisms of Europeanization in the foreign policy domain even more relevant.

In this context, the paper introduces an intervening variable termed 'political vulnerability' - inspired from Schmidt's 'economic vulnerability', which among other intervening variables, explains the mechanism of domestic economic adjustment, whereby countries in a relative weak position in relation to the EU tend to give in to adaptation pressures more easily, as the choice of inertia cannot be afforded (Schmidt 2002: 898).

One version of 'political vulnerability' concerning the Europeanization of EU candidate countries has been revealed by Grabbe (2003: 318) who notes that such states face additional EU constraints, generated by a relationship of 'obvious interdependence and power asymmetry'. It is argued that accession is beneficial for both the EU and candidate countries (in terms of trade, market expansion, security, etc.), but that the latter are in a rather 'vulnerable' position given their economic and institutional shortcomings and the accession criteria imposed on them. As a consequence, an easier process of Europeanization may be facilitated, because, in this context, adaptation pressures may carry a different, enhanced weight<sup>4</sup>.

Another form of 'political vulnerability' stems from the different ways in which EU member states (and candidate countries) perceive and tackle security threats due to the relative weakness of the EU in the area of collective defence and the European East-West mismatch over defining and addressing Europe's security challenges (Edwards 2006).

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<sup>2</sup> It is assumed that foreign policy developments are also a reflection of, and gateway to, the domestic domains of Europeanization (as defined by Radaelli 2003: 35), so that the study of EU-national policy 'misfits' is not an end in itself, but a way in which more meaningful 'misfits' between domestic (political and cognitive-normative structures) and EU levels are revealed.

<sup>3</sup> It has been shown before that candidate countries, as well, were subjected to similar EU adaptational pressures as current member states (Grabbe 2003).

<sup>4</sup> The argument has been empirically tested in a study on the Europeanization of Turkish foreign policy by Eryilmaz (2007).

## FRAMEWORK OF ANALYSIS

### Challenges to the Europeanization research design

In order to address some of the methodological concerns surrounding the Europeanization theorising attempts<sup>5</sup>, this paper proposes a research design that makes it possible to track the Europeanization process starting from the 'misfit' between the domestic and EU levels.

Firstly, the 'goodness of fit' argument does not only provide a sound basis for the theorising of Europeanization, but, at the same time, can inform methodology and guide the Europeanization research design in the desired direction, that of demonstrating the EU causal significance. The 'goodness of fit' represents a derivative of the European-level factor, as long as a '(mis)fit' can only occur between an EU legal obligation, incentive, 'model', etc. and elements of the domestic structures. By pinpointing the EU-domestic 'misfit', the EU-driven causality becomes obvious. The European-level factor is the explanatory variable that triggers the Europeanization process and that activates (or not) other explanatory variables (intervening/facilitating variables). In horizontal processes of socialisation (lesson-drawing and social learning), it is the European-related epistemic community that first reveals the existence of a difference between the organisational performances of participating actors/countries (a softer version of 'misfit').

Secondly, this approach can show how the Europeanization process is activated even if change at the domestic level has not yet occurred. It can show what domestic elements experienced an EU-induced change, what elements were under pressure to change and/or what elements could not have changed in spite of the pressure to do so.

Thirdly, concerning the Europeanization's endogeneity problem<sup>6</sup>, King, Keohane and Verba (1994) have suggested the breakdown of the independent variable into its exogenous and endogenous components. It is argued that the exogenous/independent component of the EU variable is the actual accomplishment of integration (through an EU legal obligation, incentive, 'model', etc.), which is less likely to be reversed or challenged by the changing domestic structures of member states, while the ongoing European integration process *per se* is the endogenous/dependent component, which is constantly fuelled by the interacting interests and ideas of EU members and institutions.

### The Europeanization of Romanian foreign policy: two case studies

The concept of Europeanization (based on the introductory assumptions) will be tested in two situations in which observable EU-domestic policy 'misfits' touched upon some of the core objectives of Romanian foreign policy: disagreements over the International Criminal Court's

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<sup>5</sup> Causal heterogeneity (Haverland 2007), endogeneity (Caporaso 2007) and 'bottom-up' research designing (Börzel 2002, Radaelli 2003).

<sup>6</sup> The 'goodness of fit' model asserts that European integration leads to adaptational pressures, which are mediated by domestic factors, and finally to outcomes (Cowles, Caporaso and Risse 2001). In this model, all variables are endogenous "since every variable is a function of some or all other variables in the model" (Caporaso 2007: 27). Thus, it has been argued that the model is closed-looped, given that the analysis terminates with the domestic adjustments and does not continue with the impact of these changes on European integration.

jurisdiction and Kosovo's declaration of independence<sup>7</sup>. The research model (proposed above) starts with the presentation of the observable foreign policy content 'misfit'. It then moves on to analysing the domestic/external sources of the national foreign policy output and the rationale behind the EU (or the majority of the EU member states') policy. The existing EU 'model' or 'centre of gravity', if firmly established, may generate high adaptation pressures; if present in a weaker form, may set off adaptation pressures of lower intensity. These pressures target directly the national foreign policy content, and indirectly the domains of Europeanization in which the real 'misfit' may be found. In this way, it is assumed that an 'unfit' policy output would lead the way to pinning down the real 'misfit' between the EU level and the domestic political structures, policy-making procedures and/or normative-cognitive structures<sup>8</sup>.

Attention will then be given to the intervening variables that may facilitate or hinder domestic change, and which can explain the likelihood and direction of Europeanization. It may be possible for change to occur with regard to the policy output, but not with regard to the domestic level where the 'hub of the problem' may be located, in which case Europeanization is just artificial. The selection of the two case studies takes into consideration Romania's foreign policy priorities (areas in which 'misfits' are more likely to occur) and the need for the variation of explanations (that should involve different vertical and horizontal Europeanization mechanisms).

Once more, the aim of this paper is not to pass definite verdicts on the degree of Europeanization of Romanian foreign policy, but merely to suggest ways in which the Europeanization of national foreign policy could be studied (starting from EU-national 'misfits'), while also giving some insights into the making of the Romanian foreign policy in the EU context.

### **EU-ROMANIAN 'MISFIT' IN THE INTERNATIONAL CRIMINAL COURT CASE**

In August 2002, Romania rushed into becoming the first country to sign a bilateral agreement with the US aimed at granting American subjects immunity from International Criminal Court (ICC) jurisdiction under Article 98 of the Rome Statute. Romania's decision to support the US in a matter that was highly controversial in Europe was less motivated by the fear of losing American military and economic aid (as required by the Nethercutt Amendment to the Foreign Appropriations Bill of 2004) and more by US backing for securing Romania's path towards NATO accession (the country's immediate strategic interest), which was under consideration at that time.

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<sup>7</sup> The choice for Romania as a test case is due to the scarcity of systematic analysis of Romanian foreign policy. The two case studies represent major events in Romania's foreign policy and satisfy the methodology's prerequisite of obvious EU-national 'misfit'. Given Romania's new member state status and its more extensive exposure to the EU during accession years, most cases, including the two herein, are expected to fall in the 'downloading/reception' dimension of Europeanization. The 'uploading/projection' dimension of Europeanization in the Romanian case will be tested in a separate paper.

<sup>8</sup> The sequencing of policy decisions and actions is based on the information obtained from elite interviews and the analysis of public discourses. For reasons of confidentiality, the names of the 14 top officials and scholars interviewed between April-June 2008 will not be revealed. Their affiliation is as follows: Romanian officials - interviewees 1, 4, 5, 6, 9, 10, 13, 14; European officials - interviewees 2, 3, 7, 11, 12; academics - interviewee 8.

Top Romanian officials were aware that their country's decision to support the US in its ICC endeavour might have generated dissatisfaction among EU member states (Interviewees 1 & 9). However, criticism was perceived as an accepted and acceptable price for achieving Romania's NATO objective. Romania's move generated the expected positive impact on US perceptions and attitudes towards NATO enlargement, but Romania had seriously underestimated the EU's reaction.

EU officials called Romania's decision a regrettable act, "a slap on the face of EU member states"; a candidate country like Romania was expected to participate in the elaboration of a common EU position towards the US request to waive ICC jurisdiction over its subjects (Interviewee 11). As the European Commission's spokesperson put it: "we regret this decision of Romania ... and we deplore that a candidate country to the EU has not waited until the European Union has established its position" (*Associated Press*, 8 August 2002).

Furthermore, it was implied that Romania's gesture might have affected the country's prospect for EU membership, though the EU never formally specified so. Besides the enormous dissatisfaction with Romania's decision, several EU member states responded in a manner that a key Romanian senior diplomat likened to a "shock" or "political isolation" comparable with the treatment meted out to Austria in 2000, after the People's Party agreed to form a governing coalition with Haider's Freedom Party. Other Romanian interviewees, however, downplayed the magnitude of EU's reaction (Interviewees 1, 5, 6 & 9).

Romania asserted that its bilateral agreement with the US in the ICC matter, which no EU member state had ever seen (Interviewee 11), was consistent with UNSC Resolution 1422<sup>9</sup>, which EU members fully endorsed. Romanian officials confided that "we were forced to choose between a long-term philosophical European problem and a practical and immediate one for the American side". It was admitted that Bucharest "should have contacted top European officials" prior to the signing of the agreement (Interviewee 1).

Romania's bilateral agreement with the US determined the EU to urge other candidate countries approached by the US to refrain from following Romania's example (*Washington Post*, 13 August 2002). In September 2002, the EU reached a common position which allowed member and candidate states to enter into Article 98 agreements with the US, but only with regard to immunity for US diplomats, military personnel and extradited persons, excluding other categories of US subjects (Council 2002).

In an attempt to accommodate the US requirements, Romania promised to ratify the agreement, facilitating this way greater US leverage on other countries (especially from Central and Eastern Europe). In reality, however, in order to also accommodate EU concerns, Romania has never put the bilateral agreement on the Parliament's agenda. Thus, the government carefully managed to delay the several deadlines suggested by the US until Romania became a formal NATO member in 2004, a moment when its ratification was no longer required or necessary.

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<sup>9</sup> In an attempt to appease US concerns over the safety of its missions abroad, the UN Security Council passed Resolution 1422 in July 2002 asking the ICC to refrain from starting or proceeding with an investigation or prosecution of personnel from any state, not party to the Rome Statute, involved in UN-authorized operations.

### Pinpointing two ‘misfits’ in relation to EU norms and guidelines

Firstly, the consultation norm had been strengthened and unchallenged since the beginning of European foreign policy co-operation. In practice, this norm represented the duty of participating countries “to consult with each other before adopting final positions of their own so that policies of their partners would not catch them by surprise” and so that “the development of a *communauté de vue* on what constitutes European interests can be facilitated” (Smith 2000: 615-6). The consolidation of this norm corresponded to the formation of an undisputed EU ‘model’ which made it difficult for any dissenting member to resist adaptation pressures stemming from the “force of attraction of the EU centre of gravity” (Radaelli 2003: 42). EU member states and institutions expected that this basic rule should be also applicable to countries that wished to join the EU, as seen in the Romanian case, where the significant ‘misfit’ between the EU ‘model’ and national practices was unambiguously revealed.

Before making the controversial ICC decision, top Romanian officials were convinced that the national prerogatives of EU member states in the foreign policy area took precedence over the norms and practices that the decades-long EU foreign and security co-operation had generated. Furthermore, in their opinion, the CFSP requirement to consult before making a foreign policy decision applied only to member states and not to candidate countries (Interviewee 1).

Though Romania agreed to implement all previous CFSP decisions, this was largely because none of them affected vital national interests (Interviewee 9). It was therefore understood in government that foreign policy matters of vital interest could be kept away from the EU agenda to the extent that not even communication and consultation with member states on a certain topic was necessary (Interviewee 1). This interpretation of CFSP principles may also have been encouraged by the little emphasis placed on foreign policy prerequisites during accession negotiation talks with Romania. Chapter 27, focusing on the fulfilment of CFSP requirements, was provisionally closed in the same month that it had been opened (June 2000) in a manner that resembled a mere formality (Interviewees 3 & 7).

But it is also worth mentioning that Brussels-exposed Romanian officials had recommended, from the very beginning, that Bucharest should not seal the ICC deal with the US (Interviewee 9). This suggests that élite socialisation with EU norms, procedures and practices achieved by Romania, until that point, was not significant enough to make a difference at the domestic level, or at least, not beyond the awareness and reasoning that this advice had generated.

Secondly, another EU ‘model’ that triggered a ‘framing’ mechanism of Europeanization<sup>10</sup> was represented by the Council policy guidelines issued in September 2002, which were meant to be taken into consideration by non-NATO EU member states and candidate countries when approached by the US to enter into bilateral ICC agreements (Council 2002).

These guidelines were not mandatory, but were supposed to be followed by the countries in question in good faith. The ‘misfit’ between these recommended guidelines and the US-Romanian bilateral agreement was exposed by the European Commission’s 2002 progress report on Romania:

Romania has ratified the Rome Statute establishing the ICC. In August 2002, Romania signed a bilateral agreement with the USA on the non-surrender of each others’ nationals

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<sup>10</sup> One of the soft framing mechanisms of horizontal Europeanization, as referred by Radaelli (2003: 43), is triggered by minimalist directives and non-compulsory regulations.

to the ICC. Regrettably, this decision was taken without adequate prior consultation with the EU. It does not comply with the guiding principles laid down by the Council on 30 September 2002 (Commission 2002).

### **Two complementary 'logics' and the role of 'political vulnerability'**

First, Romania seemed to have learnt the importance that EU member states attached to the consultation norm to the extent that such a situation was to be avoided in the future. This was achieved after the appreciation on the Romanian side that communication and consultation did not represent an obligation always to agree with the view of the majority of countries participating in foreign policy co-operation, but instead, it represented a commitment to share information for a better understanding of each other's national positions and for fostering the development of common views on what should constitute European interests (Interviewees 4, 5, 6 & 9).

In Romanian quarters, the need to share information became clear and to consult before making foreign policy decisions was thought to be appropriate. However, in this particular instance, it is difficult to draw a conclusion on the degree of internalisation of the consultation norm. In this case, there is not enough evidence to suggest that the outcome of Europeanization<sup>11</sup> was either transformation or absorption<sup>12</sup>, a 'thicker form of learning' or 'simple learning' (differentiation suggested by Radaelli 2003: 38-40). More similar cases have to be analysed in order to be able to conclude that the change produced internally represented a discontinuity with past practices, as opposed to mere accommodation.

In normal circumstances (in the case of EU member states), the 'logic of appropriateness' may well suffice or be dominant in explaining the accommodation or adjustment of national foreign policy in order for the EU and domestic levels to 'fit' with each other, especially with regard to an issue like the consultation norm. But, in Romania's case, an intervening variable (its candidate country status) played a role in rendering a second logic (of 'consequentialism') also significant. For a 'politically vulnerable' candidate country like Romania, the internalisation of the consultation norm might also have taken place through coercion (rather than mimetism)<sup>13</sup>, at stake being the EU membership itself. It has been shown that Romanian élites were convinced of the 'appropriateness' of the consultation norm, but they also admitted that by not behaving in a 'European manner', Romania might have run the risk of losing EU membership. Thus,

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<sup>11</sup> The four possible outcomes of Europeanization identified by Börzel (1999), Cowles, Caporaso and Risse (2001), Hérietier (2001) and Hérietier and Knill (2001), which cover both the extent (or magnitude) of change and its direction are retrenchment, inertia, absorption and transformation.

<sup>12</sup> Hérietier (2001) defines absorption as the process of accommodating non-fundamental policy demands without altering the core of domestic structures and policies. In contrast with absorption, transformation implies a fundamental, paradigmatic, 'third-order' change that affects the core of the Europeanization domains (Hall 1993).

<sup>13</sup> This is a vertical mechanism of Europeanization that stems from a case of 'positive' integration, in which the EU imposes a model of domestic change (coercion), which states are bound to implement with little room for manoeuvre (Knill and Lehmkuhl 2002). This can also be applied to candidate countries in the process of EU enlargement. Adaptational pressures are not only generated by binding 'models', but also by the 'models' upheld by a critical mass of member states. These member states confront the remaining dissenting countries with "the force of attraction of the EU's 'centre of gravity'", influencing them to adopt the majority's model (mimetism) (Knill and Lehmkuhl 2002; DiMaggio and Powell 1991, Radaelli 2003: 42).

it is implied that, on this occasion, *appropriateness and consequentialism* mattered in a complementary manner.

Second, the EU policy guidelines on the ICC caused Romania serious policy problems, which led in the end to a policy shift. This shift was rather awkward because Romania did not adjust its agreement with the US in line with the EU guidelines, but, instead, never ratified it in Parliament. Romania tried to buy time to appease both the EU and the US: Europeans were told that it would take some time to re-negotiate the bilateral agreement with the US (in order not to endanger Romania's NATO accession), while the Americans were told that it would take some time to ratify it, in order to persuade the Europeans that Romania did not weaken the ICC enterprise (and furthermore to avoid any change of mind in EU member states regarding Romania's accession to the EU) (Interviewees 1, 5 & 9).

The 'logic of consequentialism' might have been more relevant in this latter instance as it seems to have worked in two divergent ways, since Romania also needed the US support to secure a more immediate objective than EU accession: NATO accession. Romania's craftily-managed delay in decision-making led in the end to securing NATO accession, moment after which, the object of 'misfit' between EU and domestic levels swiftly disappeared.

#### **EU-ROMANIAN 'MISFIT' IN THE KOSOVO CASE**

Kosovo's unilateral declaration of independence of February 2008 threw Romania in the camp of the very few EU member states that officially and explicitly rejected the state recognition<sup>14</sup>. Romania's main argument was that the recognition of Kosovo's independence, against Serbia's will, ran counter to the principles of international law and created a dangerous precedent that could be followed by other break-away regions in Eastern Europe and the Caucasus (e.g. Băsescu 2007). At the same time, however, Romania pledged not to block EU initiatives on Kosovo and called for the integration of Serbia into the Euro-Atlantic structures.

The most salient threats to Romania's own sovereignty and territorial integrity were thought to be the implications of Kosovo's independence for the secessionist prospect of Hungarian-dominated parts of Romania and of other regions in Romania's neighbourhood (e.g. Transnistria, Ossetia, Abkhazia). Romania strongly defended its position challenging thus the position of a vast majority of EU member states. Most states that have recognised Kosovo's independence declared that their action was an exception to international law principles and that no other recognition would take place.

Given this, the best scenario for Romanian officials (Interviewee 4) was one in which Serbia came to terms with the irreversibility of Kosovo's new status and made the choice of becoming a member of the Euro-Atlantic community. The longer it took for Serbia to concede defeat over Kosovo, the harder it would be for Romania to deal with the policy complications generated in the EU context.

Such a complication has arisen with the establishment of the EU presence in Kosovo through EULEX, a 'technical' mission approved on February 4th, 2008 by the Council of the EU. This mission was supposed to assist and support Kosovar authorities in the rule of law

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<sup>14</sup> This position has not changed after the publication of the International Court of Justice's opinion on Kosovo, which rendered its unilateral declaration of independence not in breach of international law (ICJ Advisory Opinion No.141 of 22 July 2010).

field (mainly on police, judiciary and customs matters). Though not all EU member states have recognised Kosovo's independence<sup>15</sup>, the EULEX mission was seen by many as a state-building endeavour strengthening the newly self-proclaimed state of Kosovo.

While Spain declared that it would neither recognise Kosovo nor contribute to the EULEX mission due to its ambiguous legal status, Romania, despite its opposition to recognition, decided to pledge almost 10% (the largest contribution) of the international personnel involved in this mission. Romania was clearly torn between its desire, on the one hand, to contribute to regional stability and the consolidation of EU's common foreign policy co-operation, and, on the other hand, what it saw as its obligation to defend principles of international law and vital national interests (Interviewee 10). The legality of EULEX became a policy issue for Romania because, from an international law perspective, it might have ended up recognising Kosovo de facto (as party in state-building missions), cancelling thus its de jure 'persistent objection' to Kosovo's independence cultivated over the years (Interviewee 8).

In June 2008, however, the UN Secretary General, used his prerogatives granted by UNSC Resolution 1244 of 1999 to put forward a proposal for the reconfiguration of UN presence in Kosovo, implying that EULEX would function within the UN framework. Formally placing EULEX under the UN umbrella was exactly what Romania needed in order to resolve its divergent concerns, at least temporarily.

### **The 'misfit': sovereign vs. 'ethical' foreign policy or different readings of international law?**

The 'misfit' in this situation was not just a simple clash of policy choices at EU and domestic levels, but rather a conflict between a self-interested national foreign policy, which prioritised the sovereign rights of states, and an evolving 'ethical' EU foreign policy that favoured the universal rights of individuals. Sjursen brought this difference to surface in an attempt to reassess the concept of the EU as a 'normative power' which promotes norms and values rather than interests, acknowledging that "there is a potential tension in the EU's external policy between its emphasis on multilateralism, which rests on external sovereignty, and on human rights, as core principles in its foreign policy orientation" (2006: 249). In line with Honneth's argument (1997: 167), that in modern times civil societies play a more independent role in international affairs and that the 'moral obligations of universalism' are no longer a burden for individuals or states, Sjursen claims that a truly 'normative' EU will push for the transformation of international power politics towards a 'cosmopolitan' law of people (2006: 247).

This 'normative' EU 'model', calling for an 'ethical' foreign policy in which universally accepted human rights should be superior to the rights of sovereign states, was also applied in a previous episode involving Kosovo, which triggered the 1999 NATO campaign against Serbia. Attempts were made to reconcile international law with the universal rights of people by proposing a new doctrine of humanitarian intervention. Legalising the use of force for cases of human rights abuses has never materialised given the complexity of such an endeavour. Instead, for reasons of expediency, the countries participating in the Kosovo intervention preferred to justify their actions through the existing body of international law and the re-interpretation of UN Security Council resolutions (Interviewee 8; Gray 2006: 594-7).

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<sup>15</sup> 22 out of 27 as of April 2011.

The same sort of legalistic re-interpretation (of Resolution 1244) has been used to justify the recognition of Kosovo's independence by a vast majority of EU member states. Countries, which recognised Kosovo's independence, were not successful in convincing Romania of the superiority of their moral, 'ethical' justification over the self-interested rationale behind Romania's opposition (Interviewee 5).

The arguments deployed to justify EU's EULEX mission to Kosovo were the same as those used to justify Kosovo's recognition (Council 2008). From whatever angle the Kosovo recognition was looked at, either moral or legal, the 'misfit' between the EU and Romanian domestic level was obvious.

Since a majority of EU member states supported the notion of an 'ethical' foreign policy towards Kosovo, and the legality of Kosovo's independence, the emerging EU critical mass or 'centre of gravity', generated adaptation pressures forcing dissenting member states to mimic the behaviour of the majority.

Though it may well be argued that the recognition of Kosovo's self-proclaimed status is illegal under international law (Interviewee 8), it would be difficult to demonstrate that Romania's defence of well-established principles of international law was free of self-interest. Romania, which may have felt vulnerable to internal and external secessionist attempts, viewed Kosovo's independence as a dangerous precedent for its own and others' sovereignty. The association with Spain, Slovakia, Greece and Cyprus (the other non-recognising EU countries) in this regard was not accidental.

### **The persistence of security-related 'political vulnerability' and the consequences of inertia**

Romanian officials acknowledged that pressures to recognise Kosovo's new status were stronger prior to the actual declaration of independence in February 2008. Thereafter, the Kosovo's recognition issue has shied away from Romania's bilateral agenda with the independence-recognising EU member states (Interviewee 5).

However, adaptation pressures have not disappeared completely. The invisible force of attraction generated by the EU foreign policy *engrenage* was still evident, especially in situations like EULEX, which implied an EU presence in a status-ambiguous Kosovo. Representatives of other EU countries were confident that undecided EU member states and other non-EU states would eventually end up recognising Kosovo<sup>16</sup>. There was also an expectation, on the part of the EU recognising states, that this dynamics would be enough to put pressure on Romania, without the need to engage in further bilateral discussions on the morality or legality implied by this recognition (Interviewee 12).

The 'logic of appropriateness' in this case functioned only to the extent to which there was unanimous agreement that the Kosovar population needed the support of the international community. The 'logic' stopped functioning when the discussion turned to deciding the means to achieve this objective. Lack of consensus on this matter generated an awkward situation, in which those member states recognising Kosovo perceived EULEX as an instrument for consolidating the newly-born state of Kosovo, while Romania read it as an instrument for

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<sup>16</sup> Nevertheless, the number of recognising states between July 2008 and April 2011 only increased to 75 (representing 39% of the 192 UN member states). Furthermore, it seems that the impact of the ICJ Advisory Opinion on Kosovo's declaration of independence on the non-recognising states has not been dramatic.

stabilising the state of Serbia, which included Kosovo (Interviewee 5).

Romania fully supported the idea of EULEX being under the UN umbrella. The neutral-status proposal for the re-organisation of the international presence in Kosovo, put forward by the UN Secretary General, helped Romania mitigate its inner conflict between legal concerns and desire to achieve stability in Kosovo (Interviewees 9 & 14). The 'misfit' between EU and domestic levels has been so great that a profound policy change is not likely to take place in the short and medium term, period in which other policy problems, similar to the EULEX dilemma, may occur.

The 'logic of consequentialism' implied that the cost of recognising Kosovo and of moving towards a predominantly 'ethical' foreign policy was too high and harmful to vital interests. Romania's non-recognition was justified by the 'boomerang effect' that such a move might have triggered in Transnistria's case (Bănescu 2007). Romanian officials tried to dismiss the argument that Romania's opposition was motivated by a fear of secessionist attempts on its own territory:

[Foreign Minister Cioroianu:] We strongly insisted that, when we were talking about the necessity of not transforming Kosovo into a precedent, we were not referring to Transylvania...that was not the idea. Our main concern is the way in which the unilateral declaration of independence of Kosovo may affect other regions, such as Transnistria, which interests us directly (*Cotidianul*, 27 September 2007).

These concerns, it has been argued, would never materialise, because Kosovo is a sui generis case and no similar recognition would take place in Romania's vicinity (Interviewees 2 & 13). Countries that have already recognised Kosovo's independence did not consider that their vital interests were at stake and did not share Romania's fears concerning the threats that the recognition might have created or enhanced. As a result, the existing 'misfit' seemed to be reinforced by the different ways in which threats have been constructed at the EU and domestic levels, and by Romania's self-induced sense of security-related 'political vulnerability' in relation to the risks which secessionist attempts might have posed to its and other's territorial integrity.

The outcome of this Europeanization attempt seems to be a sort of inertia<sup>17</sup>, as the rationale used by the vast majority of EU member states for the recognition of Kosovo was not internalised by Romania. Instead, Romania had to face the (EU-induced) policy problems that its non-recognition of Kosovo had generated.

In the Kosovo situation, the source of 'misfit' was not the institutional capacity to produce change (even if there were few veto players - president, government and parliament - they all showed unbreakable unity over the matter). The source lay at the normative-cognitive level, which is more difficult to influence and where change occurs over a longer period of time. It is argued that change leading to recognising Kosovo's independence, if it ever occurred, may have also been traced at the level of public discourses. Discourses usually preface a shift in traditional policy paradigms and preferences (Schmidt 2002; Radaelli 2003), and may even signal a change in the perception of Romania's 'self' in the European and wider context. So

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<sup>17</sup> Radaelli (2003: 37) describes inertia as a "situation of lack of change [which] may simply happen when a country finds that the EU political architectures, choices, models, or policy are too dissimilar to domestic practice [and which] may take the forms of lags, delays [...] and sheer resistance to EU-induced change".

far there has been no indication of shifting public discourses. Discourses justifying Romania's position on Kosovo's status have been unvarying for the past three years or so, before and after Kosovo's declaration of independence (Interviewees 5 & 10).

### **CONCLUDING REMARKS**

The aim of this paper was to test the methodological utility of the Europeanization research toolkit in the study of national foreign policy, while also providing some insight in the making of Romanian foreign policy. It attempted to identify the 'misfit' between EU and domestic levels in two Romanian case studies, to pinpoint the national elements targeted by adaptation pressures, to detect the direction and magnitude of domestic change, when it occurred, and to explain domestic change using the logics of 'appropriateness' and 'consequentialism' and the informing capacity of the relevant intervening variables.

The ICC case study has shown the importance of well-established EU 'models' in the area of foreign policy co-operation, such as the consultation norm, and the expectation, on the part of EU member states, that these models be internalised by candidate countries as well. Not only were these models seen as 'appropriate', but the refusal to adopt them, might have endangered EU membership. Furthermore, even 'weaker' EU 'models', such as policy guidelines, carried more weight in relation with 'politically vulnerable' countries than in relation with existing member states. Another observation has been the fact that serious EU/US divergences posed a challenge to the Europeanization of the Romanian foreign policy, which seemed to favour the US over the EU on security matters.

In the second Kosovo case study, the 'misfit' between EU and domestic levels was more difficult to define, but the adaptation pressures were obvious. It was not clear if the 'misfit' represented a dichotomy between an 'ethical' EU foreign policy, based on the moral pre-eminence of human rights, and a self-interested Romanian foreign policy, based on the defence of sovereign rights, or between two different readings of international law. In this case, adaptation pressures generated from a powerful EU 'centre of gravity' targeted fundamental elements of cognitive-normative structures (norms, paradigms, legacies, discourses). Romania's inertia and impossibility to mitigate this 'misfit' stirred (and will most likely continue to do so) policy problems in other areas (as shown in the EULEX case).

The paper put forward the concept of 'political vulnerability' in connection with two factors that may facilitate or hinder Europeanization processes: the candidate country status and different perceptions of threat. Nevertheless, its full significance depends on further research into countries which may also be 'politically vulnerable' such as small-sized countries and countries in need to perform side-payments or to exchange support across EU policy areas.

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