London School of Economics and Political Sciences

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The EU's potential for domestic change beyond its borders.

Examining effective cooperation between EU civilian missions and host countries in the Eastern neighbourhood

Declaration

I certify that the thesis I have presented for examination for the MPhil/PhD degree of the London School of Economics and Political Science is solely my own work other than where I have clearly indicated that it is the work of others (in which case the extent of any work carried out jointly by me and any other person is clearly identified in it).

I declare that my thesis consists of 85,419 words.

Abstract

This thesis explores the conditions under which incumbent regimes in the Eastern Neighbourhood cooperate effectively with CSDP missions by adhering to and adopting the objectives set out by their mandates. In establishing whether and under what circumstances CSDP missions successfully cooperate with third country governments by inducing the acceptance of and adherence to their mandates, this thesis reclaims a focus on the local dimension of EU partner countries in order to explore the extent to which domestic stakeholders display agency in their relations with the EU and are able to constrain and/or facilitate its foreign policy. It thus asks: under what conditions do incumbent regimes in host countries embrace EU-driven strategies and reforms? The thesis examines two CSDP functions – rule transfer and confidence-building – across three CSDP missions in the Eastern Neighbourhood: the EUJUST Themis rule of law mission to Georgia, the European Union Border Assistance Mission to Moldova and Ukraine (EUBAM) and the European Union Monitoring Mission (EUMM) to Georgia.

Drawing on rational-choice assumptions and recent academic contributions to the Eastern Neighbourhood literature, this thesis starts from the premise that the sine qua non condition for effective cooperation between CSDP missions and incumbent regimes in the Eastern Neighbourhood is the compatibility between EU objectives and the incumbent regimes' intrinsic preference for gaining and/or maintaining political power. Defined as preferential fit, the 'match' between the goals of EU missions – as highlighted by their mandates – and the political agendas of national governments in ENP countries emerges as the necessary condition that facilitates effective EU-ENP cooperation. In addition to confirming the centrality of the agency-oriented concept of 'preferential fit' for the development of effective cooperation between the EU and its Eastern neighbours, the findings outlined in the four empirical-analytical chapters also identify the conditions which shape the cost-benefit calculations of national governments: 1. The competing strategies of domestic veto players; 2. The potential for alternative coalitions (Russia, US other international organisations); 3. The cost-effectiveness of threats and side-payments (i.e. EU policy-specific conditionality; and EU capacity-building).

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List of Abbreviations

ABL Administrative Boundary Line

ATP Autonomous Trade Preferences

BCP Border Crossing Point

CBM Confidence-Building Measure

CBSAR Common Border Security Assessment Report

CFSP Common Foreign and Security Policy

CIS Commonwealth of Independent States

CIVCOM Committee for Civilian Aspects of Crisis Management

CONOPS Concept of Operations

CSDP Common Security and Defence Policy

DCFTA Deep and Comprehensive Free Trade Area

ECHO European Commission's Humanitarian Aid Office

EFP European Foreign Policy

ENP European Neighbourhood Policy

ESDP European Security and Defence Policy

EU European Union

EUBAM European Union Border Assistance Mission

EUMM European Union Monitoring Mission

EUSR European Union Special Representative

FRONTEX European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

GTZ German Agency for Technical Cooperation

HCOJ High Council of Justice

HoM Head of Mission

IBM Integrated Border Management

IOM International Organization for Migration

IPRM Incident Prevention and Response Mechanism

JA Joint Action

JAA Joint Assistance Action

JBCO Joint Border Control Operation

JD Joint Declaration

MDBGS Border Guard Service of the Republic of Moldova

MDCS Customs Service of the Republic of Moldova

MoD Ministry of Defence

MoI Ministry of Interior

MoU Memorandum of Understanding

NSDC National Security and Defence Council

OSCE Organisation for Security and Co-operation in Europe

PSC Political and Security Committee

SCSU State Customs Service of Ukraine

UASBGS State Border Guard Service of Ukraine

UASCS State Customs Service of Ukraine

UN United Nations

UNDP United Nations Development Programme

UNOMIG United Nations Observer Mission in Georgia

VLAP Visa Liberalization Action Plans

Chapter 1

Introduction

The last two decades have seen momentous progress in the development of the European Union's foreign policy (EFP). The EU has evolved tremendously as an international actor, from an entity with only a loose mechanism of coordinating national foreign policies to an actor able to perform activities across a wide range of foreign policy areas, including diplomatic mediation, civilian and military missions as well as trade and association agreements and development aid. The EU's recently acquired importance in international politics is most visible in the rising number and scope of operations under its Common Security and Defence Policy (CSDP) which is an integral part of the Union's Common Foreign and Security Policy (CFSP). Civilian missions under the CSDP are generally considered among the main tools the EU has at its disposal to engage in crisis management and security governance, as opposed to military missions which have been deployed on a much smaller scale.[1]

The EU's approach to crisis management is shaped by the development of a comprehensive concept of security which underlines the necessity of addressing all conflict phases - from conflict settlement to conflict transformation. In practice this means that CSDP missions do more than enforce ceasefires and protect civilians in the aftermath of conflicts, which are traditionally the types of activities associated with crisis interventions. In addition, they work with host countries to reform their governance structures with a view to eradicating the root causes of conflicts. Thus, CSDP missions are involved in efforts to reform a variety of policy sectors and bring them in line with European best practice, from changing police laws in Bosnia and Herzegovina to supporting Libya in strengthening its border services. Given the ambitious scope of CSDP interventions with regard to generating domestic change in host countries, the effectiveness and potential impact of EU missions depends to a large extent on their ability to cooperate effectively with local regimes. The inextricable link between EU

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[1] Laure Delcour, 'The European Union, a security provider in the eastern neighbourhood?' *European Security* 19:4 (2010), 538.

foreign policy and the external environment within which the Union operates as an international actor, has been broadly acknowledged. There is a significant body of literature connecting EU foreign policy shortcomings with its inability to act according to the preferences and expectations of partner countries.[2] In addition, the EU itself acknowledges the need for EU operations to be 'adaptive to the needs of specific situations' and 'to respond with the expertise required to meet the challenge of each unique crisis situation'.[3] The Union has advocated for a needs-oriented approach which, apart from internal coordination, requires external coordination with other relevant actors on the ground and a greater understanding of the local political context.[4]

But, despite the acknowledgement on the part of both the academic community and the EU itself of the importance of the external environment for the success of EU foreign policy initiatives, a discussion of the role of external actors and their preferences has been largely absent from EFP debates. On one hand, the EU's ability to cooperate effectively with third countries has long been neglected in favour of analyses of internal developments. Specifically, studies of the CSDP have predominantly been preoccupied with explaining the emergence of a common security and defence policy at the EU level and the internal decision making-processes involved, rather than exploring the conditions which foster successful EU cooperation with countries at the receiving end of the CSDP. Where the question of CSDP engagement on the ground was raised, it typically resulted in ad hoc exercises in assessing mission performance, without any regard for a systematic analysis of the extent to which and the conditions under which CSDP missions could bring local actors on board in support of their mandates. At present there is no study that explores in a structured fashion whether and how CSDP missions succeed in cooperating effectively with their countries of deployment and under what conditions incumbent regimes in third countries can be persuaded to buy in to the EU's policy agenda. As far as

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[2] Christopher Hill, 'The Capability-Expectations Gap, or Conceptualizing Europe's International Role', JCMS: Journal of Common Market Studies, 31:3 (1993); Esther Barbé, Balancing Europe's eastern and southern dimensions (Florence: European University Institute, 1997); Karen E. Smith, European Union foreign policy in a changing world (Cambridge: Polity; Malden, MA: Blackwell Pub, 2003); Federica Bicchi, *European foreign policy making toward the Mediterranean* (New York: Palgrave Macmillan, 2007).
[3] Agnieszka Nowak, 'Civilian crisis management within ESDP'. In A. Nowak (ed). *Civilian crisis management: the EU way*. Chaillot Paper No. 90, (EU Institute for Security Studies, Paris, 2006), 29.
[4] Nowak, 'Civilian crisis management within ESDP', 36.

the role of external factors in shaping EU foreign policy outcomes is concerned, the literature is almost non-existent. As already noted, with very few exceptions the EFP literature is EU-centric and tends to investigate the foreign policy-making process from within rather than focus on the interactions between EU foreign policy instruments and external recipients. This is a regrettable omission which fails to consider an important aspect of the EU's effectiveness and legitimacy as an international actor. Exploring the role of the EU's external environment in facilitating or constraining the accomplishment of EU foreign policy objectives is a crucial piece of the 'EU as an international actor' puzzle.

In establishing whether and under what circumstances CSDP missions successfully cooperate with third country governments by inducing the acceptance of and adherence to their mandates, this thesis reclaims a focus on the local dimension of EU partner countries. The aim is to explore the extent to which domestic stakeholders display agency in their relations with the EU and are able to constrain and/or facilitate its foreign policy. The EU's increasing prominence as an international actor through the development of a Common Security and Defence Policy, as well as a more intense engagement with domestic actors in partner countries in the context of CSDP operations makes the investigation of the role of local actors a compelling endeavour. As the EU faces growing challenges on the international arena and its voice becomes more assertive in international affairs, European foreign policy cannot continue to look inwards. Its shape and direction depends as much on outsiders' preferences as on internal developments. This thesis aims to fill the gap in the literature by enquiring into the conditions under which incumbent regimes in third countries engage in effective cooperation with CSDP missions by subscribing to their goals and adopting their suggested policies and reforms. It thus asks: under what conditions do incumbent regimes in host countries embrace EU-driven strategies and reforms? The next section challenges the neglect of the topic by the EFP literature by spelling out why the study of the role of those at the receiving end of EU foreign policy is crucial for understanding the scope and indeed the success of the EU as an international actor.

1.1. The external environment of CSDP missions and the 'recipients'

Exploring what motivates third country governments to engage in cooperation with the EU in areas such as the security and justice sectors is an essential step in understanding the EU's stature as an international actor. While an overwhelming proportion of studies researching 'the EU's role in the world' have focused on institutional and operational capabilities as proxies for how the EU performs on the international arena, a growing number of contributions highlight the importance of the Union's external environment. This understanding of the EU's role as an international actor stems from an acknowledgement of the co-constitutive rapport between the EU and the outside world. The demand-side of EU foreign policy literature is concerned with the output of CFSP and its impact 'as a presence or as an actor, on the structure, processes and issue-areas of world politics'.[5] Compared to those studies which investigate what the EU as an international actor is and what it does, the literature which explores whether and how EU foreign policies, and in particular the CSDP, successfully engage with the outside world, represents a small proportion of EU studies. As Menon notes, there is a lacuna in the literature when it comes to explaining the substantive outcomes of CSDP instruments.[6] Of those contributions which do take an interest in CSDP outcomes the majority focus on the impact of CSDP on EU developments, rather than on the external environment. This is partly explained by the fact that 'students of ESDP have themselves displayed an obsessive preoccupation […] with the nature of the mechanism […] rather than the environment in which it resides', as one scholar notes.[7] It is also a consequence of the CSDP's relative novelty and the necessity to understand first and foremost how this new policy affects the Union, institutionally and organizationally, as well as the role it plays in the European integration process. The result of this neglect to investigate the role of the external environment in the EU's external relations has been 'a largely

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[5] Michael Merlingen and Rasa Ostrauskaite, 'Introduction. The European Union in International Security Affairs', in Michael Merlingen and Rasa Ostrauskaite *European Security and Defence Policy: An Implementation Perspective*, eds. Michael Merlingen and Rasa Ostrauskaite (London: Routledge, 2008), 1.
[6] Anand Menon, 'Power, Institutions and the CSDP: The Promise of Institutionalist Theory', *Journal of Common Market Studies*, 49:1 (2011), 92.
[7] Julian Lindley-French, 'In the Shade of Locarno? Why European Defence is Failing', *International Affairs*, 78:4 (2002), 790.

introspective EU foreign policy'.[8] Not only have analyses of EU foreign policy impact been few and far between, but those which have taken up the challenge of assessing CSDP effectiveness have done so out of a concern with the internal dynamics of policy-making.

It is argued here that investigating the drivers behind successful cooperation between CSDP missions and host countries is of crucial importance for a better understanding of the EU's role in the world. Firstly, it cannot be denied that the EU's status as a relevant actor in international politics is inextricably related to its foreign policy actions and their effects on EU partner countries. Smith suggests that 'debates about whether the EU is or is not a civilian power, a normative power, a superpower and so on, are not really leading us anywhere right now. (…) We should instead engage in a debate about what the EU does and why it does it and with what effect, rather than what it is'.[9] For Ginsberg, external political impact provides the EU with 'international influence and legitimacy as well as internal and external confidence' and ultimately 'squares the circle of EFP decision-making'.[10] Moreover, research on the extent to which the EU can fruitfully engage with its external environment (be it the international system, individual states, international organizations or NGOs) is crucial in order to provide substance to studies on the EU's role in the world. As Smith notes, 'too often, we lapse into assertions that the EU has either considerable or little influence, without the backing of clear, substantial evidence for such influence. "Proving" the EU has influence (or not, and what sort and why) requires considerable empirical research (…) - but unless we try to get to the bottom of this, we are left with unsubstantiated assertions about the EU's place/role/influence" - and, one needs to add, "power" - in the world'.[11] Investigations into how the EU can exercise such influence on the ground and the role of third country actors in facilitating or constraining it are greatly needed in order to inform debates about the EU's performance as an international actor.

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[8] Elisabeth Johansson-Nogués, 'The decline of the EU's "magnetic attraction"? The European Union in the eyes of neighbouring Arab countries and Russia', Working Paper No. 2011/1 (European Foreign Policy Unit, London School of Economics, 2011), 3.

[9] Karen E. Smith, 'The EU in the world: future research agendas', Working Paper No. 2008/1 (European Foreign Policy Unit, London School of Economics, 2008), 23.

[10] Roy H. Ginsberg, *The European Union in international politics: Baptism by fire* (Lanham, MD: Rowman & Littlefield, 2001), 2.

[11] Smith, 'The EU in the world', 22-23.

Secondly, understanding why and when third countries decide to cooperate with the EU contributes to better EU foreign policy-making through feedback mechanisms and organizational and institutional learning. As Ginsberg explains, if the EU critically investigates the reception of its actions and identifies and applies lessons, it can improve future policies and their implementation.[12] If the EU foreign policy decision-making system is conceived of as a dynamic process in which EU foreign policy output is converted into policy input through a feedback loop, then exploring the way in which outcomes are shaped by EU-third country interactions is crucial for the EU's internal learning and improvement.[13] An understanding of the interplay between its foreign policy actions and the external environment will also provide the EU with a clear picture of how the outside world perceives its role as an international security actor. This is important because the perceptions and acceptance of other international actors (be they global powers like the US, regional actors like Russia, other international security organisations like NATO or host countries where the EU deploys its foreign policy instruments) shape the possibilities and limits for EU external action. The literature concurs on the fact that, apart from good planning and appropriate resources, the effectiveness of CSDP operations is a function of how they 'connect with local leaders and public opinion in the field…the 'narrative' associated with each mission is a critical dimension of its political profile and visibility in the eyes of local interlocutors, potential spoilers and other crisis management partners'.[14] Thirdly, and perhaps most importantly, examining how EU foreign policy can be effective on the ground is indispensable for understanding the EU's contribution to international and human security and democratic developments. As Ginsberg and Penska point out, it makes little sense for the Union to invest in developing a fully-fledged common security and defence policy if it 'cannot add value to the security of host states and to other actors who either contribute to security or are affected by insecurity'.[15]

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[12] Roy H. Ginsberg and Susan E. Penska, *The European Union in global security: the politics of impact,* (Houndmills, Basingstoke, Hampshire; New York: Palgrave Macmillan, 2012), 40.

[13] Ginsberg, *The European Union in international politics,* 23.

[14] Giovanni Grevi, Damien Helly and Daniel Keohane, 'Conclusion: the next steps for ESDP'. In G. Grevi, D. Helly and D. Keohane (eds). *European Security and Defence Policy: the first ten years (1999-2009)* (EU Institute for Security Studies, Paris, 2009), 411.

[15] Ginsberg and Penska, *The European Union in global security*, 54.

1.2. The case studies

While there is a general suggestion in the EFP literature that domestic actors in third countries influence the scope, content and methods of the EU's foreign policy activities, the argument is nowhere more compelling than in the case of the Union's Neighbourhood Policy. The European Neighbourhood Policy (ENP) was conceived as a demand-driven framework and the EU's influence in the neighbourhood countries hinges upon their taking ownership of proposed policies and reforms. It has been argued that, while the enlargement process relies on the fulfillment of pre-designed criteria within an established timeframe, neighbourhood policies are put into motion by the partner countries' ownership of self-defined reforms.[16] This is because, in the absence of a membership perspective, the EU must be able to persuade third countries to comply with its norms and values, which involves a readiness to adapt its policy to the perception of neighbouring countries (and implicitly allow these to shape the policy outputs).[17]

The neighbourhood provides fertile ground for local forces to shape EU policy. The Action Plans on which the ENP is based are not unilaterally enforced by the EU according to its acquis (as in the case of candidate countries), but are negotiated with partner countries and rest on the principle of 'joint ownership'. However, in reality the ENP has not consisted in jointly agreed reform agendas and the development of policy and institutional frameworks that respond to the particular needs of ENP countries. On the contrary, it has to a large extent replicated the rule transfer mechanisms at the heart of the enlargement process with the significant difference that it did not offer a membership perspective. This, it is argued by the ENP literature, has resulted in considerable limits on the EU's potential to have impact in the neighbourhood. Domestic actors have typically resisted EU reforms because of the high costs involved and the absence of the big 'carrot' of membership. To the extent that enlargement had been identified as the most successful EU foreign policy due to its ability to export EU rules through conditionality, the ENP

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[16] In the enlargement process there is very little room for candidate countries to negotiate the rules and norms that they must internalise under the acquis communautaire. Local actors may oppose some of the EU's requests but they are unlikely to be able to selectively adopt rules or significantly shape their mode of implementation.
[17] Elsa Tulmets, 'Can the Discourse on "Soft Power" Help the EU to Bridge its Capability - Expectations Gap?', *European Political Economy Review* 7 (2007), 206; 217.

only replicated that success to a very limited degree.[18] At best, it contributed to enabling and strengthening incipient domestic reform processes, but did not make a difference in areas where there was no genuine domestic desire for change.[19] Illustrating this finding, Maier and Schimmelfennig concluded in 2007 that 'the EU has had no significant positive impact on the overall political and human rights situation in its neighbouring non-candidate countries.'[20]

The ENP is considered to be a weak and inconsistent framework for rule transfer and even more so for conflict mediation. It was conceived as a 'lite' version of the enlargement policy which retained the logic of rewards in exchange for reforms, but had little to offer. The ENP had specifically proclaimed that what it offered was 'everything but institutions', thus ruling out the perspective of membership for the ENP partners. The envisaged relationship between the EU and its neighbours was one of functional cooperation in areas of mutual interest and a gradual movement of the ENP countries towards the EU's regulatory standards and political values. However, limited rewards often failed to generate the kind of domestic changes that the EU was pressing for. This was partly because conditionality was weak and lacked credibility, with the EU failing to clearly draw the link between demands and rewards and often being ambiguous about its own requirements. On the other hand, the incentives were not considered significant enough to mitigate for the high costs of adopting wide-ranging reforms. The high costs of EU approximation were mostly related to political and economic costs incurred by business and governmental elites, the poor local capacity of countries in the neighbourhood and the lack of compatibility between EU and domestic policies, politics and polities. In the absence of the 'carrot' of membership these costs were prohibitive and restricted the EU's potential to have impact beyond its borders. Thus, it was maintained, given the lack of a membership perspective, poor governance, weak local capacities and a poor fit with EU structures, it was highly unlikely that the EU could have

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[18] Esther Barbé, Oriol Costa, Anna Herranz, Elisabeth Johansson-Nogués, Michal Natorski and Maria Sabiote, 'Drawing the Neighbours Closer … to What?' *Cooperation and Conflict* 44:4 (2009), 380.
[19] Antonio Missiroli, 'The ENP in future perspective'. In R. Whitman and S. Wolff. *The European neighbourhood policy in perspective: Context, implementation and impact* (Basingstoke: Palgrave Macmillan, 2010), 263.
[20] Sylvia Maier and Frank Schimmelfennig, 'Shared values: democracy and human rights'. In K. Weber, M.E. Smith, Michael and M.J. Baun, *Governing Europe's neighbourhood: Partners or periphery?* Manchester: Manchester University Press, 2007), 56.

substantial impact in its neighbourhood. The EU's Common Security and Defence Policy suffers from the same shortcomings as the broader ENP, despite CSDP missions being the most prominent EU foreign policy instruments. While CSDP operations were designed to operate at the political level, most missions fail to draw significantly on the CFSP policy framework. As a result, they are conceived as 'apolitical and technical' and can hardly be linked to broader conflict resolution frameworks.[21] Instead, they function in a similar way to the EU's other technical policy instruments which are part of the ENP framework.

The combination of high costs of EU-driven domestic change for the Eastern Neighbourhood partners and the limitations of the ENP and the CSDP as policy and institutional frameworks have led scholars to assume that, in the absence of substantial incentives such as membership conditionality, domestic actors in neighbourhood countries will resist EU influence given their cost averseness.[22] To the extent that the role of domestic actors in the EU's neighbourhood is considered, the default assumption tends to be that they are negatively inclined to comply with the EU's policy requirements because of the high costs involved and inadequate rewards. Nonetheless, empirical analyses of EU policy transfer in the Eastern Neighbourhood find that domestic actors are not merely cost averse, but can also support EU-driven domestic change despite the lack of a membership perspective.[23] This is puzzling in light of the findings of the Europeanisation and external governance literatures. On one hand, the Europeanisation scholarship finds that the EU's most successful rule transfer mechanism is membership conditionality. On the other hand, the external governance body of literature argues that, in the absence of a membership perspective, the EU succeeds to export rules through horizontal transnational networks, bypassing governmental actors. What, then, explains the fact that governments in the Eastern Neighbourhood have occasionally supported EU-driven domestic change?

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[21] Isabelle Ioannides, 'EU Civilian Capabilities and Cooperation with the Military Sector'. In E. Greco, N. Pirozzi, and S. Silvestri (eds). *EU Crisis Management: Institutions and Capabilities in the Making* (Quaderni IAI, November 2010), 44.

[22] Ulrich Sedelmeier, 'Europeanisation in new member and candidate states', Living Rev. Euro. Gov. 1:3 (2006), available at: http://www.livingreviews.org/lreg-2006-3, accessed on 11 August 2015.

[23] Esther Ademmer and Tanja A. Börzel, 'Migration, Energy and Good Governance in the EU's Eastern Neighbourhood', *Europe-Asia Studies*, 65:4 (2013), 583.

In trying to address this puzzle, the thesis explores the conditions under which incumbent regimes in the Eastern Neighbourhood cooperate effectively with CSDP missions by adhering to and adopting the objectives set out by their mandates. The missions specifically examined here are: the EUJUST Themis rule of law mission to Georgia, the European Union Border Assistance Mission to Moldova and Ukraine (EUBAM) and the European Union Monitoring Mission (EUMM) to Georgia. In addition to the Eastern Neighbourhood providing opportunities for incumbent regime to shape the scope of CSDP engagement on the ground, the three missions studied here present a wide diversity of mandates, allowing for a comprehensive analysis of the EU's main types of activities under the CSDP, identified here as confidence-building and rule transfer. Thus, the analysis is structured according to the type of activity the missions are engaged in, rather than investigating each mission mandate in part. It is important to introduce this analytical distinction because confidence-building activities tackle conflict issues directly whereas rule transfer aims to create an environment conducive to conflict resolution. As a result, the policy processes involve different sets of actors and are driven by distinct dynamics. Later in the chapter the two dimensions will be examined in more detail.

EUJUST Themis was deployed in Georgia in 2004 with a mandate to support the Georgian authorities in their efforts to reform the criminal justice system. While being a small scale mission, Themis's rule transfer mandate was significant because it was the EU's first rule of law operation, as well as the first ever mission to be deployed in the post-Soviet space. The mission lasted for only 12 months and reflected to a certain extent the ESDP's (at the time) early days when the deployment of missions was an exercise in improving foreign policy capabilities. EUBAM followed shortly, being deployed in 2005 with a border management mandate at the Moldovan-Ukrainian border. The mission is still on the ground with a broad mandate that includes the reform of Moldova's and Ukraine's border guard and customs services, as well as contributing to the settlement of the Transnistrian conflict. As such, EUBAM's activities encompass both a confidence-building and a rule transfer dimension, which will be analysed separately. Finally, the EUMM emerged as a result of the EU's involvement in mediating the Russia-Georgia war of August 2008 and was tasked with monitoring the ceasefire agreement facilitated by the French Presidency, contributing to the stabilisation and normalisation of the

security situation on the ground and facilitating confidence-building between conflict parties.

EUJUST Themis, EUBAM and the EUMM have been critically evaluated as 'reactive and *ad hoc*, hindered by institutional incoherence, the lack of a broad strategic vision for the EU's Eastern neighbourhood and the inability of Member States to agree on how to engage with Russia, a key strategic partner for the EU in that region', in addition to having vague and overambitious mandates beyond their capabilities.[24] While this thesis does not dispute the fact that the three missions have had and some continue to have significant shortcomings, it challenges those assessments which attribute their inability to fulfil their mandates solely to inadequate capabilities and a lack of coherence and coordination. This research argues that an agency-focused perspective which examines the role of incumbent regimes in Moldova, Ukraine and Georgia has the potential of revealing the conditions under which CSDP missions in the Eastern Neighbourhood can successfully fulfil their mandates through effective cooperation with host countries, beyond accounts of mission capabilities. The following section unpacks the notions of strategic interaction and effective cooperation in the context of the EU's foreign policy in order to clarify the focus of the thesis.

1.3. Strategic EU-ENP interactions and effective cooperation

This thesis explores the conditions under which incumbent regimes in third countries engage in effective cooperation with CSDP missions by subscribing to their goals and adopting their suggested policies and reforms. To a certain extent, the inquiry touches upon issues of EU 'impact', 'effectiveness', 'influence' and 'power' by underlining how the EU's success (variously conceived) is dependent on the preferences of incumbent regimes in third countries and their match with EU objectives. However, the focus of this study is much narrower. While EU 'impact', 'effectiveness', 'influence' and 'power' are complex indicators of the way in which the EU performs as an

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[24]Ariela Huff, 'The role of EU defence policy in the Eastern neighbourhood', Occasional Paper No 91, European Union Institute for Security Studies (EUISS), May 2011, 8.

international actor and would require the analysis of a wide range of variables, this thesis is specifically interested in investigating why and when third countries in the Eastern Neighbourhood decide to cooperate with the EU in the context of CSDP missions. The EU's ability to get third country governments on board when it comes to mandates of CSDP missions is a crucial part of the EU's success in international affairs, but it is only a piece of the puzzle. However, in order for the puzzle to be coherently and comprehensively assembled, each piece must be thoroughly understood and researched and its place in the bigger picture established through careful analysis. Thus, this research is essentially preoccupied with an instance of international cooperation, itself shaped by the interaction of what can be referred to as a demand and supply function[25]: the preferences of incumbent regimes in host countries and the strategic opportunities offered by CSDP mandates and the broader strategic environment.

As will be expanded further in Chapter 2, this thesis takes political individual and group actors as the unit of analysis and, by embracing a thick rationality assumption, posits that effective cooperation in the context of CSDP missions is a function of the interaction between CSDP mandates and the way in which the missions' resulting demands cater to the incumbent regimes' fixed preferences for political survival and power. By framing this interaction in terms of 'effective cooperation', this thesis elevates the status of third country governments as co-equals with the EU in determining the success of ENP-EU relations. In order to accomplish their objectives - as defined by their mandates – CSDP missions must co-opt ENP governments into cooperation towards the achievement of those goals. Indeed, the buy-in of national governments is of crucial importance for the ability of CSDP missions to pursue their mandate. If the operations deployed on the ground fail to respond to the preferences of partner countries or are at odds with the political agendas of incumbent regimes, they are likely to face significant obstacles in achieving their goals. Depending on the remit of each mission, their activities could affect institutions, bureaucracies, individual actors, policies, as well as relations between conflict parties (in the context of conflict settlement processes) and broader reform efforts. These will have to be analysed separately for each CSDP mission in light

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[25] Andrew Moravcsik, 'Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach', *Journal of Common Market Studies*, 31:4 (1993), 481.

of their individual and highly distinctive mandates. The mandates of the missions are therefore the most important reference point for assessing CSDP external impact and they represent the benchmark that this thesis will rely on in order to explore the policy objectives of CSDP missions.

In terms of their mandates, CSDP missions have several mechanisms at their disposal to engage host countries. As an 'institutionalized attempt on the part of European Union Member States to respond to the security challenges they confront'[26], the EU's Common Security and Defence Policy aims to tackle key threats such as terrorism, regional conflicts, state failure and organised crime. It does this by using its institutional and policy mechanisms to provide platforms for cooperation and to promote the transfer of EU rules to host countries. The CSDP is unique in its versatility among EU external policy instruments, drawing on both foreign policy tools such as conflict management and Europeanisation/external governance strategies consisting of the transfer of EU rules, norms, practices etc to host countries. This thesis thus distinguishes between these two functions typically fulfilled by CSDP missions - the confidence-building function and the rule transfer function.

Confidence-building measures (CBMs) are designed to foster interaction and cooperation between conflict parties. In the case of secessionist conflicts, this implies the participation not only of the legitimate authorities in host countries, but also of the de facto governments of the separatist entities. Thus, the confidence-building measures proposed by EU missions are more likely to achieve their goals if there is preferential fit between not only the leadership of ENP states and EU policy objectives, but also between the political elites of the secessionist entities (Transnistria, South Ossetia and Abkhazia) and EU-driven confidence-building measures. It is presumed that if the de facto authorities of these entities perceive their participation in confidence-building mechanisms as profitable for their political survival, they will be more inclined to have a constructive attitude towards such fora of negotiation. Albert, Diez and Stetter refer to this mechanism of EU influence as 'enabling impact' arguing that it 'relies on specific actors within conflict parties to link their political agendas with the EU' and thus justify

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[26] Menon, 'Power, Institutions and the CSDP', 83.

conciliatory moves which would not have been considered legitimate otherwise.[27] More broadly, the conflict mediation literature also acknowledges the importance of the perceived relationship between the outcome of mediation and the survival of conflict parties as one of the crucial factors affecting mediation interventions.[28]

Confidence-building measures work towards bringing conflict parties together and creating an atmosphere of mutual trust and stable expectations which reduces the chances of renewed violence and paves the way for a long-term political settlement. More concretely, CBMs facilitate cooperation between conflict parties on a variety of low key, practical issues which otherwise could be blocked by the lack of progress in political negotiations. Confidence-building measures have been defined as 'promoting institutionalised cooperation and stable expectations in a system of competitive nation-states'.[29] It is important to underline that, while closely intertwined with the broader conflict mediation framework, they are distinct from political negotiations between conflict parties. This is because CBMs aim to encourage cooperation over technical issues, rather than the highly political grievances which are often at the heart of conflicts, such as control over secessionist territories. Political disagreements tend to be protracted, with progress advancing slowly and frequently beleaguered by spoilers. As an intermediary stage in the conflict resolution process, confidence-building initiatives can precede the onset of political negotiations or can run in parallel with them, depending on how advanced cooperation between conflict parties is. As far as the CSDP is concerned, despite being formally embedded in the Common Foreign and Security Policy (CFSP), in practice CSDP missions have had low political profiles. In light of the functions CBMs are expected to fulfil, the focus in this thesis will be on the ability of CSDP missions to facilitate communication between conflict parties, as well as support them in resolving disputed technical issues. EUBAM's confidence-building activities are subsumed under the broad umbrella of the

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[27] Thomas Diez, Stephan Stetter and Mathias Albert, 'The transformative power of integration: conceptualising border conflicts'. In T. Diez, M. Albert and S. Stetter (eds), *The European Union and border conflicts: The power of integration and association* (Cambridge: Cambridge University Press, 2008), 27.

[28] Jacob Bercovitch and Allison Houston, 'Why do they do it like this?', *The Journal of Conflict Resolution* 44:2 (2000), 176.

[29] Raimo Väyrynen, 'The European Cooperation and Security Process Security Dilemmas and Confidence-Building Measures', *Bulletin of Peace Proposals* 16:4 (1985), 352.

5+2 negotiation process for the Transnistrian conflict. The mission is involved with the working group covering trade, customs and transport issues, focusing particularly on enhancing cooperation between Chisinau and Tiraspol in these areas, as well as facilitating the restoration of international transport corridors across Transnistria. On the other hand, the EUMM's mandate operates in close cooperation with the Geneva talks for the settlement of Georgia's territorial conflicts, while at the same time trying to dissociate the confidence-building platforms it works with on the ground from the broader settlement talks which are often politicised. The mission has developed regular cooperation mechanisms through which the Georgian government and the de facto Abkhazian, South Ossetian and Russian authorities can exchange information in order to prevent violent incidents from escalating, as well as work towards the normalisation of the security situation at the de facto border.

In addition to confidence-building measures, CSDP missions contribute to eradicating the root causes of conflicts by becoming involved in efforts to reform a variety of policy sectors in host countries and bring them in line with European and international standards. By contrast to confidence-building measures, rule transfer works indirectly by inducing the incumbent governments of host countries (but not necessarily the de facto secessionist regimes) to embrace EU or international rules, norms and practices. The reasoning behind this strategy, which lies at the heart of Europeanisation and external governance processes, is that policies and institutions which fulfil democratic and efficiency requirements enhance structural stability and thus prevent violent conflict in the long term. The external governance literature points out that the rules promoted by the EU to non-candidate countries are much broader than strictly the Union's *acquis communautaire*. While still very keen to encourage third countries to adopt its own rules, outside the accession process the EU is more flexible and promotes policy convergence on the basis of international, as well as bilateral rules. As Barbé et al find, the EU and third countries can work together in order to establish new rules or the

EU can facilitate the adoption of international rules, which while not exclusive to the Union are typically shared by member states.[30]

These observations are particularly relevant to the activities of CSDP missions which rarely operate in policy fields regulated under the *acquis communautaire* but more often than not promote internationally recognised standards with respect to the rule of law, border management, security sector reform etc. As a result, this thesis will address the rule transfer function of CSDP missions on the understanding that the rules promoted are not limited to narrowly defined EU rules, but include international and even bilaterally agreed rules. Another clarification that must be made at this stage is that by 'rules' this thesis refers generically to norms, procedures, standards, practices etc, that can include, but are not limited to, 'rules for regulation and distribution in specific policy areas, rules of political, administrative, and judicial process, and rules for the setup and competences of state and sub-state organizations'.[31] Finally, in investigating the extent to which incumbent regimes in host countries are willing to embrace EU rules, this thesis encompasses the various stages of rule transfer as operationalised by Europeanisation and external governance studies: rule selection, adoption and application stages[32], without necessarily distinguishing between them for the purpose of the analysis. This is because this thesis is not primarily concerned with 'measuring' third countries' compliance with external rules. EUJUST Themis's rule transfer mandate aimed to support the Georgian authorities in the reform of the criminal justice system but since there are no common EU norms with respect to this particular policy area, the mission's recommendations revolved broadly around European/continental rule of law standards. EUBAM's activity spans a much wider range of activities which include both international rules, such as customs legislation and practice which follow World Customs Organization (WCO) guidelines, and EU acquis, such as the implementation of the Union's trade acquis required under the DCFTA.

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[30] Esther Barbé, Costa Oriol, Anna Herranz Surrallés and Michal Natorski, 'Which rules shape EU external governance? Patterns of rule selection in foreign and security policies', *Journal of European Public Policy*, 16:6 (2009), 836.

[31] Frank Schimmelfennig and Ulrich Sedelmeier, *The Europeanization of Central and Eastern Europe* (Ithaca, NY: Cornell University Press, 2005), 7.

[32] Schimmelfennig and Sedelmeier, *The Europeanization of Central and Eastern Europe*; Sandra Lavenex and Frank Schimmelfennig. (2009). 'EU rules beyond EU borders: Theorizing external governance in European politics', *Journal of European Public Policy* 16:6 (2009).

1.4. Methodology: research design and data sources

As already noted, this thesis examines two CSDP functions – rule transfer and confidence-building – across three CSDP missions in the Eastern Neighbourhood. Given the particular nature of their mandates, EUJUST Themis, EUBAM and EUMM display an interesting variety of activities among their tasks; however their distribution is not equivalent across each operation, meaning that some of the missions perform only one function (EUJUST Themis: rule transfer; EUMM: confidence-building) while others perform both (EUBAM). While the resulting analysis is not symmetrical in the sense of allowing for an investigation of how each mission performs on each of the identified CSDP dimensions, in light of the overarching Eastern Neighbourhood focus of this thesis, depth of analysis and comprehensiveness were chosen over comparative rigour. Therefore, this research undertakes a two-by-two analysis of the rule transfer CSDP function (EUJUST Themis and EUBAM) and the confidence-building function (EUBAM and EUMM). By exploring all three missions and their mandates across the dimensions that are relevant to each of them, this thesis aims to provide an in-depth study of how incumbent regimes in the Eastern Neighbourhood can successfully engage with and embrace CSDP-mandated policy initiatives and reforms.

This research relies extensively on primary sources and thus makes a substantial original contribution to the Eastern Neighbourhood literature. Firstly, the thesis draws extensively on EU official reports, as well as progress reports and press releases of each individual mission. In addition, 23 semi-structured interviews were conducted by the author with mission staff, as well as EU and national officials. The interviews were conducted both as part of on-the-ground fieldwork in Brussels, Moldova, Ukraine and Georgia, as well as a number of other locations (i.e Warsaw), and via Skype. Finally, the research has made significant use of classified US cables which have proved to be a valuable source of information. While the use of Wikileaks as a data source for academic research is yet to permeate the mainstream methodological approaches in international relations and political science, this thesis argues that the US diplomatic cables represent a valuable and legitimate source for policy-oriented research, despite their contentious

provenance. Not only is the information contained in the cables likely to be unobtainable through other means, but it may well be more frank and unbiased than information produced for public consumption.[33] As such, Wikileaks cables represent a rich repository of primary sources which can provide unique insights into political relationships and strategies and, by corroboration with other sources, have the potential of shaping new debates in international relations, as well as re-evaluating old concepts and theories.

On the other hand, the use of Wikileaks raises a number of justified legal, ethical and methodological questions which should be explored as part of the due process which every scholarly work must undergo with respect to its research design and methodology.[34] Legally and ethically, the charge most frequently levelled against leaked information of the type found in the Wikileaks cables is that it was obtained illegally. However, while this may be relevant for those actually committing the act of leaking classified information and even for those deciding its publication, there is no reason to believe that using this information for academic research purposes could be either legally or ethically objectionable. Once the information is publically available, it can be hardly argued that a particular piece of research has seriously harmed national security or that it has caused harm to individuals, organisations or governments. Research merely interprets and applies information readily made public as part of Wikileaks cables and is thus not responsible for the repercussions of their publication, since access to such information could be obtained independently of the scholarly work itself. This why this thesis draws on un-censored cables, directly citing from them and avoiding to redact the names of individuals identified – in addition to the fact that the identities of particular individuals are relevant for establishing the nature of relations and interests at the heart of strategic interactions between political actors, this exercise would have been largely futile given that a simple Internet search could have easily revealed the redacted information. Finally, a methodological concern which should not be easily discarded is data quality. In light of the nature of the information contained in Wikileaks cables, how can a researcher be sure of its authenticity and reliability? While surely legitimate, this concern applies to much of

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[33] Michael Gill and Arthur Spirling, 'Estimating the Severity of the WikiLeaks U.S. Diplomatic Cables Disclosure', *Political Analysis*, 23 :2 (2015), 299.
[34] Gabriel J. Michael, 'Who's Afraid of WikiLeaks? Missed Opportunities in Political Science Research'. *Review of Policy Research*, 32:2 (2015).

the data researchers use in their studies, regardless of whether it has been procured through formalised methods. Interviews are regarded as some of the sources most likely to provide original, first-hand information, and yet how can the interviewer ensure that the interviewee provides truthful, authentic information? This is, however, not enough reason to reject the usefulness of sources such as leaked classified cables or interviews, but rather underlines the necessity to always corroborate information generated by these sources with accounts provided by alternative sources. This thesis endeavours to do this to the utmost possible extent by seeking to back up (or contradict) information obtained from Wikileaks cables with insights from interviews, as well as other sources such as media accounts and official EU and national documents.

Chapter 2

Explaining EU-host country effective cooperation: what role for domestic stakeholders?

This chapter outlines the theoretical framework of the thesis. It starts by reviewing two broad strands of literature that speak to the issue of EU cooperation with third countries: the eclectic literature on the EU as an international actor and the academic scholarship on Europeanisation and external governance. Despite their claim of addressing issues of EU foreign policy impact, effectiveness and/or success, these bodies of literature are characterised by considerable shortcomings which limit their ability to explain the conditions under which the EU can effectively cooperate with countries in its neighbourhood without either completely neglecting the Union's external environment or treating it as a structural, mediating variable that filters the adaptive pressures of Europeanisation. Having clarified the inadequacy of these scholarly contributions for providing an explanation of EU foreign policy cooperation that accounts for the agency of actors in recipient countries, the rest of the chapter presents the theoretical framework proposed by this thesis. Drawing on assumptions derived from rational-choice theory and recent academic contributions to the Eastern Neighbourhood literature, the framework endorsed by this research claims that the intrinsic motivation of national governments in host countries to gain and/or maintain political power is key to understanding the opportunities for and limits of the adoption of EU-driven strategies and reforms.

2.1. The EU as an international actor: actorness, presence, capabilities

As Jørgensen observes while pondering which works on European foreign policy to take to the proverbial desert island, the study of European Foreign Policy is a 'seductive yet deliberately chosen ambiguous' rich field encompassing a broad range of subject areas.[35] One way to structure this seemingly large and not entirely coherent body of literature is through the lens of Hill and Smith's three complementary perspectives which provide a wide-ranging picture of the EU's role in the international system and can also be used to helpfully order the literature addressing the EU's international relations and/or foreign policy. Thus, the EU can be thought of as: 1. a subsystem of international relations; 2. part of the wider processes of international relations; 3. a major power impacting on contemporary international relations.[36]

The scholarly contributions concerned with the EU as a subsystem of international relations are particularly interested in how member states and other EU institutional actors succeed in coordinating their preferences in order to produce foreign policy outcomes.[37] This focus was slow to emerge, being largely overshadowed by ontological concerns over whether and to what extent the EU could be considered an international actor[38] and an overarching empirical preoccupation with the content of the EU's external relations. Hill was among the first to note this limitation in the literature

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[35] Knud Erik Jørgensen, 'The Study of European Foreign Policy: Trends and Advances'. In K. E. Jørgensen, Å. Kalland Aarstad, E. Drieskens, K. Verlin Laatikainen and B. Tonra (eds), *The SAGE Handbook of European Foreign Policy Vol. 1*(London: SAGE, 2015), 14.

[36] Christopher Hill and Michael Smith, 'International Relations and the European Union: Themes and Issues'. In C. Hill and M. Smith (eds). *International relations and the European Union* (Oxford: Oxford University Press, 2011), 8.

[37] Karen E. Smith, *The making of EU foreign policy : the case of Eastern Europe*, 2nd ed. (Basingstoke: Palgrave Macmillan, 2004); Daniel C Thomas, *Making EU foreign policy : national preferences, European norms and common policies* (Basingstoke: Palgrave Macmillan, 2011); Christopher Hill, 'Renationalizing or Regrouping? EU Foreign Policy Since 11 September 200', *JCMS: Journal of Common Market Studies* 42:1(2004); Michael Smith, 'Toward a theory of EU foreign policy-making: multi-level governance, domestic politics, and national adaptation to Europe's common foreign and security policy', *Journal of European Public Policy* 11:4 (2004).

[38] Johan Galtung, *The European Community: a superpower in the making* (London: Allen and Unwin, 1973); Gunnar Sjöstedt, *The external role of the European Community* (Farnborough: Hants, 1977).

and advocate for the study of the role of national foreign policies in producing collective action at European level.[39] The findings of studies concerned with the role of member states within the broader architecture of EU foreign policy point to decision-making dynamics being primarily driven by national governments, and in particular the large member states[40], but at the same time there are indications that, while the 'national context remains paramount, the organizational context cannot be neglected'.[41] Thus, the Europeanisation of member states' foreign policies and actors has been of considerable interest in the literature. The issue has been approached either at a theoretical and methodological level[42] or by tracing processes of socialization of foreign policy actors.[43]

In addition, contributions on the EU as a subsystem of international relations are concerned with the ideas that member states feed into the notion of the EU as an international actor, with different conceptions of 'power' as the most common expression of the member states' vision for a European foreign policy. Analyses of the EU as a 'civilian'[44], normative[45], transformative[46] or ethical[47] power, reveal a preoccupation with the ideational dimension of the EU's international role and the principles that underpin its external action. Studies exploring the drivers behind the EU's Common Security and Defence Policy have identified a wide variety of factors accounting for why the EU decides to deploy civilian and military operations, including the national interests and

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[39] Christopher Hill, *The actors in Europe's foreign policy* (London: Routledge, 1996); Ian Manners and Richard G. Whitman, *The foreign policies of European Union member states* (Manchester: Manchester University Press, 2001).

[40] Catherine Gegout, 'EU Conflict Management in Africa: The Limits of an International Actor', *Ethnopolitics* 8:3-4 (2009); Jolyon Howorth, 'France, Britain and the Euro-Atlantic Crisis' *Survival* 45:4 (2003); James Sperling, 'Germany and European Security Governance: How well Does the Birmingham Model Perform?', *European Security* 18: 2 (2009); Charlotte Wagnsson, 'Divided Power Europe: Normative Divergencies among the EU 'Big Three'', *Journal of European Public Policy* 17:8 (2010).

[41] Frédéric Mérand, Mathias Bonneu and Samuel Faure, 'What do ESDP actors want? An exploratory analysis', *European Security* 18:3 (2009), 342.

[42] Kyriakos Moumoutzis, 'Still Fashionable Yet Useless? Addressing Problems with Research on the Europeanization of Foreign Policy', *JCMS Journal of Common Market Studies* 49:3 (2011).

[43] Ana E. Juncos and Karolina Pomorska. 'Invisible and unaccountable? National Representatives and Council Officials in EU foreign policy', *Journal of European Public Policy* 18:8 (2011); Geoffrey Edwards, 'The New Member States and the Making of EU Foreign Policy', *European Foreign Affairs Review* 11:2 (2006).

[44] François Duchêne, 'Europe's role in world peace'. In R. Mayne (ed). *Europe tomorrow: Sixteen Europeans Look Ahead* (London: Fontana, 1972).

[45] Ian Manners, 'Normative Power Europe: A Contradiction in Terms?', *JCMS: Journal of Common Market Studies* 40:2 (2002).

[46] Tanja A. Börzel and Thomas Risse, 'The Transformative Power of Europe: The European Union and the Diffusion of Ideas', Free University Berlin Kolleg-Forschergruppe, 2009, Working Paper no. 1.

[47] Lisbeth Aggestam, 'Introduction: ethical power Europe?' *International Affairs* 84:1 (2008).

domestic political considerations of member states[48], the spillover effect of the neofunctionalist logic of integration[49] and international power structures[50]. In substantive terms, studies of the EU as an international security provider have investigated the norms and/or interests that drive the EU when responding to conflicts (i.e. human security versus utility-driven policy).[51]

A distinct strand of literature which could be subsumed under the 'EU as a subsystem of international relations' category is represented by historical accounts of the evolution of EU foreign policy processes and structure.[52] These works cover a wide range of aspects that marked the transition from the EPC to the CFSP through to the changes introduced by the Lisbon Treaty: the increasing legalization of foreign policy cooperation;[53] the growing institutionalization of the policy-making structures underpinning the CFSP;[54] the emerging communitarisation of foreign policy.[55] The largest part of the literature addressing the EU's role in the world and the operation of its

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[48] Benjamin Pohl and Niels van Willigen, 'Analytic Eclecticism and EU Foreign Policy (In)action, Global Society 29:2 (2015).

[49] FrédéricMérand, *European Defence Policy. Beyond the Nation State* (Oxford, Oxford University Press, 2008).

[50] Adrian Hyde-Price, 'Normative' power Europe: a realist critique, *Journal of European Public Policy*, 13:2 (2006).

[51] Argyro Kartsonaki and Stefan Wolff, 'The EU's responses to conflicts in its wider neighbourhood: human or European security?, *Global Society* 29:2 (2015).

[52] Simon Nuttall, *European political co-operation* (Oxford: Clarendon Press, 1992); Simon Nuttall, *European foreign policy* (Oxford: Oxford University Press, 2000); Elfriede Regelsberger, Philippe de Schoutheete and Wolfgang Wessels, *Foreign policy of the European Union: from EPC to CFSP and beyond* (Boulder, Colo: Lynne Rienner, 1997); Christopher Hill and Karen E. Smith, *European foreign policy: key documents* (London: Routledge, 2000); Ramses A. Wessel, *The European Union's Foreign and Security Policy: A Legal Institutional Perspective* (Leiden; Boston: Martinus Nijhoff Pub, 2005); Martin Holland, M. (ed.), *Common Foreign and Security Policy: The Record and Reforms* (London: Pinter, 1997); Finn Laursen and Sophie Vanhoonacker (eds.), *The Intergovernmental Conference on Political Union: Institutional Reforms, New Policies and International Identity of the European Union* (Dordrecht: M. Nijhoff Publishers, 1992); Simon Duke, *The elusive quest for European security from EDC to CFSP* (Houndmills: Macmillan in association with St. Antony's College, Oxford, 2000).

[53] Michael E. Smith, 'The legalization of EU foreign policy', *JCMS Journal of Common Market Studies* 39:1 (2001).

[54] Simon Duke, 'CESDP: Nice's Overtrumped Success?', *European Foreign Affairs Review* 6:2 (2001); Karen E. Smith, 'The end of civilian power EU: a welcome demise or cause for concern?' *International Spectator* 35:2 (2000).

[55] Fraser Cameron, 'Building a common foreign policy: do institutions matter?'. In J. Peterson and H. Sjursen (eds) *A common foreign policy for Europe: competing visions of the CFSP* (New York: Routledge, 1998); Ben Tonra, 'Committees in Common: Comitology and the Common Foreign and Security Policy'. In T. Christiansen and E. Kirchner (eds.) *Administering the New Europe: Inter-Institutional Relations and Comitology in the European Union* (Manchester: Manchester University Press, 2011); David Spence, *The European External Action Service: European diplomacy post-Westphalia* (New York: Palgrave Macmillan, 2015).

foreign policy is, however, preoccupied with the extent to which the Union can act as part of the wider processes of international relations. As such, the predominant focus is on the EU's capabilities to perform foreign policy functions, which have typically been assessed as sub-optimal. The EU's inability to act successfully on the international arena can be attributed to a number of factors which have been explored at length in the literature. The absence of a genuinely 'European' identity[56] and the lack of democratic control over the CFSP[57] have been found to undermine the EU's public legitimacy and its quest for international actorness. The issues of coherence (the EU's ability to speak with one voice and/or its ability to harmonise its various sectoral foreign policies) and consistency (the EU's ability to make purposeful collective decisions and stick to them) come up regularly in analyses of EU international performance which variously draw attention to the disjuncture between formal calls for greater coherence and foreign policy implementation,[58] the doubtful relationship between greater institutionalisation of the CFSP and policy coherence and effectiveness[59] and even the lack of correlation between coherence and effectiveness.[60] Empirical studies of the EU's involvement in different policy areas reveal that the EU more often than not struggles to act coherently and consistently across policy sectors such as migration[61], crisis management[62], and democracy promotion.[63]

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[56] Jan Zielonka, *Explaining Euro-paralysis: why Europe is unable to act in international politics* (Houndmills, Basingstoke, Hampshire: Macmillan Press, 1998).

[57] Esther Barbé, 'The evolution of CFSP institutions: Where does democratic accountability stand?', *The International Spectator* 39:2 (2004); Christopher Lord, 'Accountable and Legitimate? The EU's International Role'. In C. Hill and M. Smith (eds), *International Relations and the European Union* (Oxford: Oxford University Press, 2005).

[58] Geoffrey Edwards, 'The EU's foreign policy and the search for effect', *International Relations* 27:3 (2013); Delcour, 'The European Union; Jan Orbie and Karen Del Biondo, 'The European Union's 'Comprehensive Approach in Chad: Securitisation and/or Compartmentalisation?', *Global Society* 29:2 (2015).

[59] Ana E. Juncos, *EU foreign and security policy in Bosnia: the politics of coherence and effectiveness* (Manchester: Manchester University Press, 2013); Michael E. Smith, 'The European External Action Service and the security–development nexus: organizing for effectiveness or incoherence?', *Journal of European Public Policy* 20:9 (2013).

[60] Daniel C. Thomas, 'Still Punching below Its Weight? Coherence and Effectiveness in European Union Foreign Policy', *JCMS Journal of Common Market Studies* 50: 3 (2012).

[61] Thomas Demmelhuber, 'The European Union and illegal migration in the southern Mediterranean: the trap of competing policy concepts', *The International Journal of Human Rights* 15:6 (2011).

[62] Catriona Gourlay, 'European Union procedures and resources for crisis management', *International Peacekeeping* 11:3 (2004).

[63] Peter Seeberg, 'The EU as a realist actor in normative clothes: EU democracy promotion in Lebanon and the European Neighbourhood Policy', *Democratization* 16:1 (2009).

The development of EU institutions and policy instruments that can support foreign policy action is of particular interest in the literature, with assessments generally pointing to a positive trend in this area,[64] but at the same time underlining the challenges of consensus-based decision-making mechanisms[65] and the difficulty of establishing effective cooperation in sensitive policy areas, as illustrated by the European Defence Agency.[66] Studies concerned with particular foreign policy instruments typically explore their evolution, often from a neofunctionalist perspective[67] or their effectiveness and/or success.[68] The literature dedicated to the EU's capabilities in the context of its Common Security and Defence Policy (CSDP) is, without a doubt, the most prolific. Civilian and military missions represent the most prominent foreign policy instruments the EU can resort to in order to intervene in high-intensity conflict situations, as well as post-conflict stabilisation and reconstruction. The versatility of CSDP missions has meant that they have been successfully deployed across a variety of regions and policy areas. However, while their number, scope, range and seemingly beneficial impact has been positively assessed,[69] EU operations have also been widely criticised for their limited scale, failure to enhance the Union's military capabilities,[70] lack of flexibility and autonomy on the ground[71] and the absence of a coherent strategic vision,[72] among others.

By comparison to studies preoccupied with the nature of the EU as an international actor and the way in which it acts in the context of the wider processes of

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[64] Christopher Hill, 'Closing the Capability-Expectations Gap?'. Paper for the Fifth Biennial International Conference of the European Community Studies Association of the United States, 29 May-1 June 1997, Seattle, Washington; Richard G. Whitman and Stefan Wolff, *The European Union as a global conflict manager* (Abingdon; New York: Routledge, 2012).

[65] Giovanni Grevi, 'ESDP Institutions'. In Grevi G., D. Helly and D. Keohane. (eds). European Security and Defence Policy: the first ten years (1999–2009). EU Institute for Security Studies, Paris, 2009.

[66] Jozef Batora, 'European Defence Agency: A Flashpoint of Institutional Logics', *West European Politics* 32:6 (2009).

[67] Neil Winn and Christopher Lord, *EU foreign policy beyond the nation state: joint actions and institutional analysis of the common foreign and security policy* (Basingstoke: Palgrave, 2001).

[68] Martin Holland, *European Union common foreign policy: from EPC to CFSP joint Action and South Africa* (Basingstoke: Macmillan, 1995); Steven Blockmans and Ramses A. Wessel, 'The European Union and Crisis Management: Will the Lisbon Treaty Make the EU More Effective?', *Journal of Conflict & Security Law* 14:2 (2009).

[69] Chris J. Bickerton, Bastien Irondelle and Anand Menon, 'Security Co-operation beyond the Nation-State: The EU's Common Security and Defence Policy', *JCMS Journal of Common Market Studies* 49:1 (2011).

[70] Anand Menon, 'Empowering paradise? The ESDP at ten', International Affairs 85:2 (2009).

[71] Daniel Korski and Richard Gowan, 'Can the EU Rebuild Failing States? A Review of Europe's Civilian Capacities' (London: European Council on Foreign Relations, 2009).

[72] Paul Cornish and Geoffrey Edwards, 'The strategic culture of the European Union: a progress report', *International Affairs* 81:4 (2005).

international relations, the literature which explores the impact of the EU on the international system is limited in scope. Hill and Smith's third perspective thus - of the EU as a major power impacting on contemporary international relations – is sparsely represented in the literature. While there is now a significant body of works on the impact of the EU's foreign policy, it is primarily concerned with either how decision-making processes and policies reflect back on the EU's ability to learn and improve its performance as an international actor[73] or with Europeanisation processes. Scholarly contributions which focus on the impact of the EU on the international system are few and far between and fall short of providing analytically sound analyses of impact, examining instead expected (rather than actual) impact[74] or placing the emphasis on the elusive concepts of performance, effectiveness or success rather than the extent to which the EU makes a difference in international politics. As such, some of the literature which claims to address issues of impact would more appropriately belong to the second category discussed above, given its concern with processes rather than outcomes. While studies of EU impact on international politics encounter the difficulty of grasping large-scale dynamics such as the shifting global balance of power and the associated challenge of identifying the EU's role within such a complex systemic phenomenon, there has been a certain interest in the literature in looking at the impact of the EU's foreign policy on other international actors (i.e. international organisations, regional powers). Nonetheless, with very few exceptions,[75] this body of literature also conflates the study of impact with assessments of foreign policy performance, effectiveness, evaluations of achievements and shortcomings, to the point of not making the difference between impact (a change in the behaviour or characteristics of the international actors the EU interacts with) and the factors driving that change.[76] This is apparent particularly in analyses of CSDP impact on

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[73] Eva Gross, The Europeanization of national foreign policy: Continuity and change in European crisis management (Basingstoke; New York: Palgrave Macmillan, 2009).

[74] Barry Posen, 'ESDP and the structure of world power', *The International Spectator* 39:1 (2004); Jolyon Howorth and Anand Menon, 'Still Not Pushing Back', *Journal of Conflict Resolution* 53:5 (2009).

[75] Emil Kirchner, 'Common Security and Defence Policy peace operations in the Western Balkans: impact and lessons learned', *European Security* 22:1 (2013).

[76] Nathalie Tocci, *The EU's role in conflict resolution: promoting peace in the European Neighbourhood* (London: Routledge, 2007); Bruno Coppieters, Michael Emerson, Michel Huysseune, Tamara Kovziridze, Gergana Noutcheva, Nathalie Tocci and Marius Vahl (eds), *Europeanization and conflict resolution: case studies from the European periphery* (Flensburg: European Centre for Minority Issues, 2004).

third countries, which are typically ad hoc exercises in assessing mission effectiveness and tend to be relegated to the final section of descriptive mission overviews.[77]

While this review is useful for the purpose of situating the EU foreign policy literature within the broader context of IR studies, the overwhelming trend among scholarly contributions dealing with the EU's role in international affairs is to inquire into the nature of the Union as an international actor.[78] The interest in the ontology of the EU leaves little room for integrating EU foreign policy studies within the IR discipline, by affirming a sui generis, non-generalisable identity, and promoting an inward-looking perspective. As a result, with very few exceptions,[79] the main focus of scholarly contributions has been the EU's internal actorness and power.[80] This is largely explained by the EU's relatively new and unique identity on the international stage, which prompted questions primarily related to the degree to which EU international activities were the output of an autonomous and effective international actor and thus whether the EU could be considered a full-fledged actor in global politics. Interest in the EU's actorness is closely related to debates regarding the EU as a power in international relations, and an overarching focus on EU internal processes. The assumption of most studies is that the EU, far from being a traditional international actor, possesses sui generis qualities that represent the key to understanding the effectiveness and success of its external policies. The most notable of these qualities has been identified as the Union's ability to export its own model of stability and prosperity through economic and political rather than military means, which has won the EU the title of 'civilian', but also 'normative', 'ethical' and 'civilising' power.

The implicit point of reference in some of the early accounts of EU foreign policy has been the unitary state, resulting in assessments which investigated the extent to which

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[77] Giovanni Grevi, Damien Helly and Daniel Keohane eds, European Security and Defence Policy: the first ten years (1999-2009) (EU Institute for Security Studies, 2009).

[78] Jørgensen, 'The Study of European Foreign Policy', 23.

[79] Annemarie Peen Rodt, Richard G. Whitman and Stefan Wolff, 'The EU as an International Security Provider: The Need for a Mid-range Theory', *Global Society* 29:2 (2015).

[80] John Peterson and Helen Sjursen, *A common foreign policy for Europe?: Competing visions of the CFSP* (New York: Routledge, 1998); Zielonka, 'Explaining Euro-paralysis'; Nuttall, 'European foreign policy'; Smith, 'European Union foreign policy in a changing world'; Karen E. Smith, 'The EU in the world: future research agendas', Working Paper No. 2008/1 (European Foreign Policy Unit, London School of Economics); Ben Tonra and Thomas Christiansen, *Rethinking European Union foreign policy* (Manchester: Manchester University Press, 2004).

the EU acted as a state in international politics and its acceptance as a legitimate and relevant actor by the other international players. The concept of 'presence' has been variously employed as an alternative to the notion of 'actor', most famously by Allen and Smith. They claimed that Western Europe had a 'variable and multidimensional presence' in international affairs, an argument that aimed to highlight both its failure to act as a unified actor and its significant salience and cohesive impact despite this shortcoming.[81]

Bretherton and Vogler envisage actorness as the locus of interaction between three elements: opportunity, presence and capability, whereby opportunity represents the structural environment within which the EU acts; presence represents the ability to project external influence and shape the understandings, expectations and behaviour of others; and capability is composed of structural prerequisites of an international actor and the actual performance of actor behavior. The international context, or opportunity in Bretherton and Vogler's terminology, influences both the European Union itself and the external demands for it to act, and is one of the crucial factors in explaining the Union's external behaviour. 'Presence' represents the ability to project external influence and shape the understandings, expectations and behaviour of others. The importance attached to the EU by third actors is determined by two sets of factors: the character and identity of the EU, where character refers to the Union's political system composed of the member states and the common EU institutions and identity refers to shared understandings about what the EU is and what it does; and the external, unexpected consequences of the Union's internal priorities.[82] Presence thus situates itself at the frontier between the inside and the outside by telling a story about how the EU, by virtue of its existence (and not purposive action) exerts influence beyond its borders. On the contrary, an actor's capability is 'a measure of the autonomous unit's capacity to behave actively and deliberately in relation to other actors in the international system'.[83] Capability is composed of structural prerequisites of an international actor (reflecting its potential capacity –social, institutional - to perform as an actor) and the actual

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[81] David Allen and Michael Smith, 'Western Europe's presence in the contemporary international arena'. *Review of International Studies,* 16:1 (1990), 20.

[82] Charlotte Bretherton and John Vogler, *The European Union as a global actor* (2nd ed.). (London; New York: Routledge, 2006), 27.

[83] Gunnar Sjöstedt, *The external role of the European Community* (Farnborough: Hants, 1977), 16.

performance of actor behaviour. For Hill, the European Community's capabilities can be conceived of in terms of its ability to agree, its resources and the instruments at its disposal.[84] Drawing on Sjöstedt's work, Bretherton and Vogler propose four requirements for actorness: a shared commitment to a set of common values; domestic legitimation of external policies, actions and priorities; the ability to identify priorities and formulate policies, reflected by the concepts of consistency and coherence; and the availability of, and capacity to utilize, policy instruments such as diplomacy, economic and military tools.[85]

The conception of actorness outlined by these contributions stands out as constructed through the interplay of internal and external factors. Thus, one of the core contentions of the literature addressing the EU's role as an international actor is that the EU's potential to act effectively in the international arena is shaped both by the functions fulfilled and the capabilities possessed by the Union itself, on one hand, and the perceptions held of its role by third parties, on the other hand. In line with the notion that actorness is shaped by the interaction of internal and external factors, Hill argued in 1993 that the EU's international performance was characterised by a 'capability-expectations gap' between what the Union could deliver as an international actor and what outsiders expected of it. This was presumably the result of overstated hopes vested in the EU's future power on the international scene which had talked up EU capabilities, to the point where a significant capability-expectations gap developed. This discrepancy, it was argued, could potentially generate 'debates over false possibilities both within the EU and between the EU and external supplicants'.[86] Hill aimed to use the 'capability-expectations gap' as a conceptual tool for applying systems theory to European foreign policy, where the CFSP is seen as a sub-system of the broader international system, characterized by both internal dynamics and external influence. Indeed, the capability-expectations gap is seen as providing a conceptualisation of the interactions between: 1. Internal and external factors; 2. Agency and structure; 3. The imagined and the real.[87]

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[84]Hill, 'The Capability-Expectations Gap', 315.

[85] Bretherton and Vogler, *The European Union as a global actor,* 30.

[86] Christopher Hill, 'Closing the Capability-Expectations Gap?'. Paper for the Fifth Biennial International Conference of the European Community Studies Association of the United States, 29 May-1 June 1997, Seattle, Washington.

[87] Hill, 'Closing the Capability-Expectations Gap?'

The conceptualisation of internal and external factors as jointly shaping the EU's international actorness was a significant development in EU foreign policy studies, but contributed little to providing an understanding of how CSDP missions could cooperate effectively with host countries. While it was acknowledged that the expectations of domestic actors affected the potential effectiveness of the EU's foreign policies, the pre-theoretical nature of these arguments meant that they offered no insights into the mechanisms of this process. The relationship between opportunity, presence and capabilities, and between capability and expectations, was merely assumed as mutually constitutive without any specification of mechanisms of influence. This is hardly surprising given that the EU's external environment remained underdeveloped as a concept. Bretherton and Vogler's 'opportunity' and Hill's 'expectations' are under-specified and abstract notions and do not provide an understanding of how external factors can affect the EU's role as a global actor. The literature on the EU as an international actor was never meant to address the issue of EU foreign policy impact, since its main concern was with the 'nature of the beast' rather than the effects of its foreign policies. Its focus was thus ontological, rather than teleological, which is what studies of impact would have been preoccupied with. Nonetheless, the findings of this body of literature have informed assessments of the EU's performance and effectiveness as an international actor and the criteria used to investigate EU actorness were broadly incorporated in analyses of EU impact. This has resulted in a distinct body of analyses which identified EU foreign policy capabilities as one of the main factors accounting for the success or lack thereof of the EU's common security and defence policy.

The proliferation of descriptive works on CSDP capabilities has been partly the consequence of the defining role of capabilities for the existence of EU foreign policy. From its very beginning, the CSDP was perceived not only as a policy in its own right, but also as a means to enhance member states' capabilities, particularly the military ones, and bolster the EU's power and actorness.[88] As a result, explanations of the CSDP's effectiveness were framed as a function of capabilities, while largely ignoring the role of the external environment and the importance of domestic actors in host countries. Policy recommendations identified the necessity for the EU to improve its resources in terms of

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[88]Menon, 'Empowering paradise?', 232.

personnel, hardware and financial resources, as well as enhance its institutional and policy instruments and strengthen internal coherence. While providing a great deal of useful empirical detail on the working of CSDP missions, these studies remain descriptive accounts which merely point out the strengths and weaknesses of CSDP tools without, however, comprehensively analysing whether and how effective cooperation between CSDP missions and host countries can take place.

The potential relevance of the literature on the EU as an international actor for the study of cooperation between CSDP missions and host countries is related to an undertsanding of actorness as shaped by the interaction of EU internal and external factors. Particularly relevant in this context is the suggestion that the EU's potential to act effectively in the international arena is shaped both by the functions fulfilled and the capabilities possessed by the Union itself, on one hand, and the perceptions held of its role by third parties, on the other hand. However, the literature has overwhelmingly focused on the role of internal factors, with a particular focus on EU foreign policy capabilities, while failing to develop an understanding of the role of external factors. It is difficult to see how a conceptual approach that fails to provide an understanding of the external environment within which CSDP missions operate would be appropriate for investigating cooperation between CSDP missions and host countries. The literature on the EU as an international actor - with its focus on CSDP capabilities - does not provide the necessary conceptual and theoretical tools to analyse the extent to which host countries effectively participate in and cooperate with EU missions. The concept of 'actorness' captures the EU's ability to agree on, adopt and implement foreign policies but has no explanatory power when it comes to the effects of these policies on the ground. CSDP capabilities do influence performance and effectiveness in the field but an exclusive focus on them glosses over what is undoubtedly a necessary condition for CSDP success: the buy-in of the host countries. It is the domestic structures and actors in these countries which emerge as crucial in explaining effective EU-host country cooperation, but notions such as 'opportunity' and 'expectations' fail to provide the analytical insight that would allow for an investigation of effective cooperation between EU missions and host countries. The next section explores the potential of a better-suited body of literature – Europeanisation – to shed light on this issue.

2.2. Europeanisation: An institutionalist perspective on EU impact on third countries

One of the most relevant strands of literature exploring the engagement of the European Union with third countries is represented by research on Europeanisation. While the first decades of the EU's existence were dedicated to efforts at explaining the process of European integration and the dynamics of European policy-making, the mid-1990's brought about an interest in whether and how the EU impacts 'upon policy changes, institutional transformations or…even identity changes – and under what conditions'.[89] This research initially focused on domestic change in the member states but soon expanded its area of interest to cover candidate states, associated countries (Norway, Switzerland) and neighbours. The EU arguably had the potential to affect domestic change beyond its borders across a wide range of dimensions and through a variety of mechanisms which became the focus of the newly-developing Europeanisation literature. In one of the most widely-cited definitions of Europeanisation, Ladrech describes it as 'a process reorienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national politics and policy-making'.[90] For Europeanisation scholars the relationship between the EU and third countries is not one of cooperation between partners, but one of rule transmission from a provider (EU) to recipients (third countries). This literature on EU *impact on* rather than *cooperation with* third countries conceives of the Union as a system of governance rather than an international actor. Nonetheless, it is the comprehensive account of the domestic environment of third countries provided by Europeanisation studies that makes this body of literature particularly relevant for this thesis. This is a dimension which is largely unexplored by IR studies of the EU as an international actor, preoccupied as they are with the macro dynamics of international politics.

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[89] Tanja A. Börzel and Thomas Risse, 'Europeanization: The Domestic Impact of European Union Politics'. In Knud Jørgensen, Mark Pollack and Ben Rosamond (eds), *Handbook of European Union politics* (London; Thousand Oaks, Calif.: SAGE, 2006), 483.
[90] Robert Ladrech, 'Europeanization of Domestic Politics and Institutions: The Case of France'. *JCMS: Journal of Common Market Studies,* 32:1 (1994), 69.

The Europeanisation scholarship has often been 'placed within some type of institutional perspective', as Featherstone points out.[91] This is why attempts at explaining Europeanisation often start with the 'goodness of fit' argument, according to which the extent of the 'misfit' between European and domestic policies, processes and institutions determines the scope for domestic change: the wider the gap between domestic and European-level structures, the greater the scope for domestic change.[92] This hypothesis relies on the assumption that the emergence of distinct structures of governance at European level is not sufficient for generating domestic change. Europeanisation processes must be accompanied by adaptational pressures on domestic structures. While low adaptational pressure as a result of compatible EU and domestic structures removes the need for domestic change, high adaptational pressure in response to sharp differences between EU and national structures is likely to produce inertia rather than change, given the challenge of 'digesting' and 'metabolising' European standards. Domestic change is likely to be significant, it has been argued, 'when adaptational pressure falls between the two extremes'.[93]

The existence of 'misfit' between domestic and European structures followed by the exercise of adaptional pressure, are nonetheless only part of the explanatory framework of Europeanisation. As Börzel and Risse explain, they conceptualise the 'goodness of fit' argument as 'an enabling condition for the domestic impact of Europe, a starting point without much weight in and of itself'.[94] Whether adaptional pressure can generate concrete domestic change depends on a set of mediating/intervening factors. The most common conceptualisation of domestic adaptational processes as a result of Europeanisation draws on two strands of the 'new institutionalism' in political science: rational choice (or rationalist) institutionalism and sociological (or constructivist) institutionalism.[95] These perspectives postulate that there are two distinct 'logics' to the

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[91] Kevin Featherstone, 'Introduction: In the name of "Europe"'. In K. Featherstone and C.M. Radaelli (eds). *The Politics of Europeanization* (Oxford: Oxford University Press, 2003), 13.
[92] Thomas Risse, Maria Green Cowles and James Caporaso, 'Europeanization and Domestic Change: Introduction'. In M. Green Cowles, J. Caporaso and T. Risse (eds). *Transforming Europe: Europeanization and domestic change* (Ithaca, N.Y.: Cornell University Press, 2001), 2.
[93] Claudio M. Radaelli, 'The Europeanization of Public Policy'. In K. Featherstone and C.M. Radaelli (eds). *The Politics of Europeanization* (Oxford: Oxford University Press, 2003), 45.
[94] Börzel and Risse, 'Europeanization', 492.
[95] Börzel and Risse, 'Conceptualizing the domestic impact of Europe', 58.

way institutions work: a logic of consequentialism (or consequences) and a logic of appropriateness.

2.2.1. Rational choice institutionalism – EU impact through reinforcement by reward?

According to rational choice institutionalism, actors follow a 'logic of consequences', which affects the structure of opportunities and constraints within institutions and thus the distribution of power.[96] This is because rational, goal-oriented and purposeful actors act instrumentally in order to maximise their preferences by drawing on the resources at their disposal. They thus engage in resource exchange which results in a redistribution of resources, empowering some over others.[97] In the context of Europeanisation processes, the misfit between European and domestic structures provides societal and/or political actors with new opportunities and constraints to pursue their interests.[98] Schimmelfennig and Sedelmeier's external incentives model is a rationalist, actor-centred bargaining model which works through conditionality and which, in the authors' opinion holds the greatest explanatory value for Europeanisation in Central and Eastern European candidate countries. According to rational choice institutionalism, actors behave instrumentally in order to maximise the attainment of their preferences and that requires a highly strategic behaviour including cost-benefit calculations.[99] Thus, membership conditionality in Central and Eastern Europe was effective because domestic actors evaluated the benefits of EU membership as exceeding the costs involved by the adoption of the required reforms.

Given the prominence of institutions in channelling strategic behaviour within the rational choice institutionalist model of Europeanisation, there are several intervening factors which mediate the ability of domestic actors to exploit opportunities and avoid

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[96] Featherstone, 'Introduction', 15.
[97] Tanja A. Börzel, 'Europeanization: How the European Union Interacts with its Member States'. In Simon Bulmer and Christian Lequesne, Christian (eds). *The member states of the European Union* (New York: Oxford University Press, 2005), 52.
[98] Börzel and Risse, 'Conceptualizing the domestic impact of Europe', 58.
[99] Peter Hall and Rosemary Taylor, 'Political Science and the Three New Institutionalisms', *Political Studies,* 44:5 (1996), 944-45.

constraints presented by Europeanisation processes. Börzel and Risse identify two intervening factors: the existence of multiple veto points in domestic institutions empower actors to resist adaptational pressures from the EU, while the existence of enabling formal institutions provides material and ideational resources that actors can use to exploit EU opportunities.[100] The importance of multiple veto points and formal institutions is also underlined by Rise et al (2001) who argue that these are structural factors which shape the way policy-making structures respond to adaptational pressures by defining opportunity structures and redefining interests (differential empowerment of actors). Schimmelfennig and Sedelmeier find that, in addition to veto players, characteristics related to how conditionality is applied are also relevant, specifically the determinacy of conditions, the credibility of conditionality and the size and speed of rewards.[101] Thus, the 'logic of consequences' put forward by rational choice institutionalism suggests that Europeanisation generates domestic change by creating the conditions for a reconfiguration of the distribution of resources at the domestic level which in turn empowers actors differentially.[102]

The conclusions of the Europeanisation literature regarding the potential for the EU to generate domestic change in third countries highlight the greater scope for domestic change in candidate countries, as compared to member states.[103] The reason is, of course, the accession process and its associated conditionality mechanism. By relying on reinforcement by reward, rather than persuasion, the EU has been more effective in producing impact. Thus, Moravcsik and Vachudova have shed light on the dynamics of enlargement and the strict conditionality mechanism underpinning it by explaining why candidate countries accept to comply with the drastic conditions of the accession process. According to them 'East European states take part in the laborious accession process because EU membership brings tremendous economic and geopolitical benefits' and

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[100] Börzel and Risse, 'Conceptualizing the domestic impact of Europe', 58.
[101] Frank Schimmelfennig and Ulrich Sedelmeier, *The Europeanization of Central and Eastern Europe* (Ithaca, NY: Cornell University Press, 2005), 13.
[102] Börzel and Risse, 'Conceptualizing the domestic impact of Europe', 58.
[103] Heather Grabbe, 'Europeanization goes East: Power and Uncertainty in the EU Accession Process'. In K. Featherstone and C.M. Radaelli (eds). *The Politics of Europeanization* (Oxford: Oxford University Press, 2003), 323.

because 'the basic asymmetry of interdependence and thus power is evident'.[104] While candidate countries have little to offer to the EU, given their small economies, and little bargaining advantage due to the strong desire of political elites and societies to join the European bloc, the Union holds the promise of membership, trade and aid which allows it to set the rules of the game.[105] As Sedelmeier emphasises, most Europeanisation studies find that the EU has been more successful in exporting its rules through conditionality rather than normative persuasion and socialisation, thus confirming the premises of rational choice institutionalism.[106]

2.2.2. Sociological institutionalism: EU impact through normative persuasion?

Sociological institutionalism predisposes actors to internalising institutional norms and becoming persuaded by their legitimacy, thus acting in accordance with a 'logic of appropriateness' This Europeanisation mechanism is described by Knill and Lehmkuhl as 'framing integration' since domestic change takes place as a result of the EU altering the beliefs and preferences of domestic actors through socialisation processes.[107] Radaelli also refers to horizontal or 'framing' Europeanisation as involving a dynamic based on the market and/or socialisation processes. In this case domestic change takes place not through a superimposition of a pre-defined EU model on domestic structures, but through consumer choice and the diffusion of ideas.[108] This mechanism reflects Schimmelfennig and Sedelmeier's social learning model which assumes that Europeanisation is determined by perceptions of appropriateness rather than by external incentives.[109]

Given its distinct understanding of social action, the logic of appropriateness assumes different types of intervening factors which mediate the internalisation of EU

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[104] Andrew Moravcsik and Milada A. Vachudova, 'National Interests, State Power, and EU Enlargement', *Perspectives* 10:2 (2002/2003), 22-23.
[105] Grabbe, 'Europeanisation Goes East', 306.
[106] Ulrich Sedelmeier, 'Europeanisation in new member and candidate states', *Living Rev. Euro. Gov*. 1:3 (2006). Available at: http://www.livingreviews.org/lreg-2006-3, accessed on 11 August 2015.
[107] Featherstone, 'Introduction', 14.
[108] Radaelli, 'The Europeanization of Public Policy', 41.
[109] Schimmelfennig and Sedelmeier, *The Europeanization,* 18.

rules than the logic of consequences. Thus, whether third countries internalise new norms and develop new identities depends in Börzel and Risse's view on two mediating factors: the existence of norm entrepreneurs at the domestic level who persuade others to redefine their interests and identities and the existence of a political culture and other informal institutions which are conducive to consensus-building and cost-sharing.[110] When these two factors are present, the 'logic of appropriateness' suggests that Europeanisation will produce domestic change through socialisation and collective learning processes.[111] Schimmelfenning and Sedelmeier agree that the existence of a compatible political culture (a factor which they refer to as 'resonance') is highly important, but add that the legitimacy of rules and process and the compatibility between EU and domestic identities can also play a significant role in determining Europeanisation. Risse at al also point out to the significance of political and organisational cultures and learning for shaping the way policy-making structures respond to adaptational pressures by redefining identities.[112]

2.3. Beyond membership: EU foreign policy impact as a result of external governance?

While Europeanisation had been able to explain the EU's impact on the policies, polities and politics of member states and candidate countries, the framework encountered difficulties capturing the EU's relations with countries which were not offered or did not seek membership. The scholarly response to this dilemma was the EU external governance literature which sought to explain the expansion of the EU's legal boundary - its acquis communautaire - beyond the circle of member states and accession candidates. The external governance literature assumed that, given the absence of strong incentives in the form of membership conditionality, domestic change in the neighbourhood (and other non-candidate countries) takes place mainly through mechanisms of persuasion and socialisation shaped by the legitimacy and legalisation of EU norms. The external governance approach provided a framework for exploring the

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[110] Börzel and Risse, 'Conceptualizing the domestic impact of Europe', 59.
[111] Ibid.
[112] Risse et al, 'Europeanization and Domestic Change', 12.

conditions under which the EU's transfer of rules to third countries is effective, focusing on functional, horizontal, mechanisms of rule export through transgovernmental networks rather than the top-down mechanism of membership conditionality. Thus, the most germane explanation for the impact of external governance has been identified at the institutional level and assumes that impact derives from institutional processes of norm diffusion and policy transfer.[113]

This structural understanding of EU rule transfer processes posits that EU external behaviour is primarily shaped by internal EU modes of governance and hence subject to institutional path-dependency.[114] Confirming this assumption, Lavenex, Lehmkuhl and Wichmann show that, rather than reflecting the macro-structures of foreign policy frameworks such as the EEA or the ENP, EU external governance modes are consistent with internal sectoral dynamics. For instance, while the ENP represents a weakly legalized framework in which the EU and partner countries have a formally symmetrical relationship, the sectoral commitments of member states tend to showcase a higher degree of obligation than the macro-institutional level would indicate.[115] As a result, it was assumed that the likelihood of effective external governance increases with the degree of institutionalisation of a specific policy at EU level as well as with the degree of legalisation and legitimacy of EU rules.[116] External governance would thus presumably have a stronger impact in policy sectors under Community competence or which are subject to a high degree of EU regulation as opposed to policy sectors outside the acquis.

In addition to the degree of institutionalisation of a particular policy, which is claimed to hold the greatest explanatory potential, the external governance literature has acknowledged that there are other factors which affect external governance, such as the domestic structures of third countries.[117] The domestic structure explanation relies on the same institutional logic that underpins external governance approaches broadly, therefore hypothesising that the impact of governance depends on the compatibility between institutional structures at the domestic and EU level. Specifically, the effectiveness of

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[113] Sandra Lavenex and Frank Schimmelfennig, 'EU rules beyond EU borders: Theorizing external governance in European politics', *Journal of European Public Policy* 16:6 (2009), 794.
[114] Lavenex and Schimmelfennig, 'EU rules beyond EU borders', 802.
[115] Sandra Lavenex, Dirk Lehmkuhl and Nicole Wichmann, 'Modes of external governance: A cross-national and cross-sectoral comparison' *Journal of European Public Policy* 16:6 (2009), 829.
[116] Langbein and Börzel, 'Introduction', 575.
[117] Lavenex and Schimmelfennig, 'EU rules beyond EU borders', 803-804.

external governance is believed to increase with the resonance of EU rules and the EU compatibility of domestic institutions.[118] Unlike enlargement Europeanisation which found that rational choice institutionalism explains domestic change through the mechanism of conditionality, external governance largely confirms assumptions which resonate with a sociological approach to historical institutionalism. In the absence of conditionality, the best predictor for domestic change is the degree of legalisation and legitimacy of EU rules.[119]

Unlike the literature on the EU as an international actor, the Europeanisation and external governance approaches provide a comprehensive conceptualisation of the domestic environment of third countries. By drawing on new institutionalist approaches, they are also theoretically well equipped to explore the issue of EU impact. The overarching argument advanced by the so-called 'misfit' model is that the scope of EU impact is shaped by the structural gap between EU and national policies and the resulting adaptive pressures from the supranational onto the national level. Europeanisation thus is a function of the EU's institutional framework of rules, norms, procedures, etc, and its relation to domestic institutional structures. The 'fit' or 'misfit' between EU-level and national institutions affects the behaviour of actors by providing strategic or cognitive templates for interpretation and action.[120] However, the exclusive focus on institutional constraints has limited the explanatory potential of these approaches. One of the implications of the dominant institutionalist perspective on EU impact is that policy actors are reduced to 'mediating' factors and deprived of any significant degree of agency.[121] This becomes particularly relevant in the context of the European Neighbourhood Policy, which is a weakly institutionalised framework. If in the case of candidate countries the adaptive pressures encompassed by the accession process were compelling enough to assume the unquestionable support of domestic actors for the enlargement agenda, the preferences of ENP partners cannot be taken for granted to the same extent. Given the absence of a membership perspective, it is more likely that national governments will engage selectively in cooperation with the EU, depending on

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[118] Lavenex and Schimmelfennig, 'EU rules beyond EU borders', 804-805.
[119] Lavenex and Schimmelfennig, 'EU rules beyond EU borders'.
[120] Hall and Rosemary Taylor, 'Political Science and the Three New Institutionalisms', 939.
[121] Cornelia Woll and Sophie Jacquot, 'Using Europe: Strategic action in multi-level politics', *Comparative European Politics,* 8:1 (2010), 112.

their political agendas. Thus, the agency of domestic political actors in the neighbourhood emerges as crucial for an analysis of the EU's impact in the region. Consequently, this thesis removes the analysis of EU impact from the overarching institutionalist frameworks employed by the Europeanisation and external governance literatures, thus ceasing to assume that the behaviour of actors in response to EU inputs is necessarily shaped by institutional constraints. Instead, it is argued that institutions are only one of the possible constraints on actor behaviour, in addition to other factors that form the broader strategic environment, such as technology or the strategic choices of other actors. As such, the approach taken here takes as its primary focus the individual agency of national governments in ENP countries and the extent to which the preferences of political elites and the strategic setting surrounding them shape the scope for effective cooperation with the EU by influencing actors' choices. This is essentially a rational-choice approach which relies on rationalist assumptions about the characteristics of actors and their social interactions. However, as it will be shown later in the chapter, rational-choice theory is a general methodological approach whose theoretical assumptions need to be substantiated with specific insights provided by mid-range theories that operate at a greater level of empirical detail.

The next section presents the theoretical framework of this thesis which draws on rational-choice theory complemented by the domain-specific insights of a recent strand of literature on the EU's impact on the Eastern Neighbourhood, itself borrowing from Europeanisation and external governance studies.

2.4. The role of external agency in shaping EU host country effective cooperation: a theoretical framework

The relatively new body of literature which attempts to account for the distinct dynamics in the EU's relationship with the Eastern Neighbourhood takes a more agency-focused approach, in contrast to typical institutionalist Europeanisation and external governance approaches. Thus, while drawing on scholarly contributions to these literatures in order to explain domestic changes driven by the EU in the region, the recent

analyses re-evaluate many of their assumptions. The result has been a revision, rather than a complete overhaul of the understanding and conceptualisation of EU impact. The factors previously identified as relevant for explaining EU impact by Europeanisation and external governance perspectives were tested against policy developments in the Eastern Neighbourhood and the resulting findings emphasised the particularities of the ENP context. Among the factors found to hold explanatory power for EU impact in the Eastern Neighbourhood are the political preferences of domestic governments[122], domestic veto players[123], interdependence with Russia[124] and policy-specific conditionality.[125] Through its focus on the role of the strategic calculations of domestic actors, this strand of literature moves away from the structural understanding of EU influence and emphasises the role of domestic governmental preferences, thus rebuffing some of the claims made by earlier analyses of EU impact.

For instance, the external governance core institutionalist assumption, according to which EU impact is more likely in highly institutionalised and legalised policy areas, has been qualified by the recent contributions to the ENP literature. In countering the argument that the institutional continuity between the EU's internal and external norms is crucial for effective governance, these studies point at empirical findings which fail to confirm the institutional hypothesis. Thus, Dimitrova and Dragneva (2013) show that a highly institutionalised area such as the EU's state-aid policy displays a lower degree of convergence by Ukraine than foreign policy, which is a distinctly intergovernmental policy sector. In addition, scholars also found some diversity within equally institutionalised policy sectors, such as telecommunications and food safety[126] and the EU's environmental acquis.[127] As far as the adoption of EU technical rules by Ukraine is concerned, Langbein and Wolczuk find no correlation between strong codification of EU

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[122] Esther Ademmer and Tanja A. Börzel, 'Migration, Energy and Good Governance in the EU's Eastern Neighbourhood', *Europe-Asia Studies*, 65:4 (2013).

[123] Antoaneta Dimitrova and Rilka Dragneva, 'Shaping Convergence with the EU in Foreign Policy and State Aid in Post-Orange Ukraine: Weak External Incentives, Powerful Veto Players', *Europe-Asia Studies* 65:4 (2013).

[124] Dimitrova, and Dragneva, 'Shaping Convergence with the EU'; Julia Langbein, 'Unpacking the Russian and EU Impact on Policy Change in the Eastern Neighbourhood: The Case of Ukraine's Telecommunications and Food Safety', *Europe-Asia Studies*, 65:4 (2013).

[125] Ademmer and Börzel, 'Migration, Energy and Good Governance'.

[126] Langbein, 'Unpacking the Russian and EU impact'.

[127] Aron Buzogány, 'Selective Adoption of EU Environmental Norms in Ukraine. Convergence á la Carte', *Europe-Asia Studies* 65:4 (2013).

rules and strong rule adoption.[128] The conclusion that emerges from these analyses is that policy-specific factors that merely take account of institutional density and legalisation cannot explain the highly selective import of EU governance in the Eastern Neighbourhood. The strong hierarchical organisational structures typical of state administrations and governmental agencies in former Soviet states makes external governance via horizontal and network channels a far-fetched possibility.[129] This is certainly the case for those institutions which EUJUST Themis, EUBAM and EUMM work with, such as Georgian rule of law institutions (Ministry of Justice, General Prosecutor's Office, Supreme Court), the Moldovan and Ukrainian border guard and customs service, as well as those institutions with security and conflict settlement responsibilities (Georgia's Ministries of Interior and Defence). Instead, authors point to the role of domestic preferences and their interplay with external pressures and incentives as more relevant factors for explaining the EU's impact in the Eastern Neighbourhood.

Despite identifying a number of relevant explanatory factors for EU-driven policy change in the region, these analyses fail to clearly specify the theoretical assumptions they rely on, as well as the relationship between the different variables. As such, all the factors identified are assumed to operate at the same level and to have the potential to facilitate or hinder EU impact to the same extent. Thus, the preferences of national governments and their compatibility with EU policy objectives – a variable referred to as preferential fit – is assumed to influence EU impact in a manner similar to policy-specific conditionality or the provision of incentives in the form of capacity-building. As far as the theoretical premises of these contributions are concerned, the failure to make them explicit has resulted in a confusing combination of assumptions which are not always consistent with each other. Thus, despite the advocated emphasis on 'domestic agency and its preferences for change'[130] in explicit contrast to the institutionalist-focused category of policy misfit, most studies maintain an understanding of the EU-driven policy

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[128] Julia Langbein and Kataryna Wolczuk, 'Convergence without membership? The impact of the European Union in the neighbourhood: Evidence from Ukraine', *Journal of European Public Policy*, 19:6 (2012), 875.

[129] Dimitrova, and Dragneva, 'Shaping Convergence with the EU', 662.

[130] Ademmer and Börzel, 'Migration, Energy and Good Governance', 583.

change processes in the Eastern Neighbourhood as the result of structural adaptation pressures.[131] This thesis aims to be more explicit in its theoretical assumptions.

To begin with, the approach taken here is not embedded in an institutionalist understanding of EU impact, but draws on a rational-choice framework by positing that whether and to what extent CSDP missions successfully cooperate with their local counterparts depends on the strategic choices of incumbent governments, themselves shaped by the interaction between governmental preferences and the broader strategic environment. While rational-choice theory acknowledges that both domestic and international institutions can partly define the strategic setting within which actors interact, it also recognises that there are a variety of other constraints on the actors' ability to make decisions. One of these is without a doubt the strategic choices of other actors that populate a given environment. In order to advance their interests and achieve their goals actors engage in strategic interactions with other actors, often negotiating or bargaining over the terms of cooperation and conflict. In a very encompassing enumeration, Moravcsik highlights a large number of factors that can potentially affect the outcome of bargaining processes and which can be grouped in three categories: 1. Institutional factors such as the institutional setting of an interaction; 2. Information-related factors such as the level and symmetry of information and the extent of communication; 3. Factors related to the other actors in the game such as the relative preferences, risk-acceptance, impatience and skill of the negotiating parties; the cost-effectiveness of threats and side-payments; the cost-effectiveness of alternative policies and coalitions.[132] It is this latter category that this thesis finds as particularly relevant in explaining why, given their preferences, domestic governments decide to engage in cooperation with CSDP missions or not. The strategic moves of other relevant actors – domestic or external – shape the cost-benefit calculations of incumbent regimes in ENP countries and thus have a direct influence on the governments' decisions to cooperate with the EU or not. The rest of this section discusses in detail the rational-choice

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[131]Julia Langbein and Tanja A. Börzel, 'Introduction: Explaining Policy Change in the European Union's Eastern Neighbourhood', *Europe-Asia Studies,* 65:4, (2013), 577.
[132] Andrew Moravcsik, 'Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach', *JCMS: Journal of Common Market Studies*, 31:4 (1993), 497.

premises that this thesis relies upon and, taking these as a starting point, proceeds to outline the thesis' theoretical framework, including the specification of hypotheses.

2.4.1. Rational-choice theory

The rational-choice approach has been characterised as a 'second order' - or meta - theory which advances a set of core assumptions about social actors and their behaviour without, however, substantiating these with issue-specific insights that would allow for the direct application of the theoretical postulations to the study of particular social phenomena, such as European integration or enlargement.[133] The implication of the general character of the assumptions is that rational-choice is 'wide open in terms of specific substantive content'.[134] Put differently, rational-choice can be thought of as a methodological approach which needs a high degree of specification with regards to its unit of analysis and the endogenous, as well as exogenous, elements of the theory before it can usefully be employed as an analytical framework.

The first thing to be clarified when embarking on an analysis embedded in rational-choice assumptions is the appropriate unit of analysis, that is: who are the relevant actors? As an agency-oriented approach, rational-choice takes the individual as the primary actor in society.[135] This is not to say that aggregate actors such as organized groups cannot be subjects of rational-choice analyses, but that 'it is the purposive, intentional, self-propelled behaviour of individuals that aggregate into outcomes: structures neither constitute this behaviour nor constitute the actors'.[136] To the extent that the methodological individualism at the heart of rational-choice theory assumes that an analysis should always be able to reduce outcomes to individual actors, structural IR theories – such as neorealism – problematically aggregate individual actors at the state

[133] Mark A. Pollack, 'Rational choice and EU politics' in *Handbook of European Union Politics*, K. E. Jørgensen, M. A. Pollack and B. Rosamond eds. (London; Thousand Oaks, Calif.: SAGE, 2006), 32.
[134] Duncan Snidal, 'Rational choice and international relations' in *Handbook of International Relations*, W. Carlsnaes, T. Risse-Kappen and B.A. Simmons eds. (Los Angeles, Calif.; London: SAGE 2013), 86.
[135] Kristen Renwick Monroe, 'Paradigm Shift: From Rational Choice to Perspective', *International Political Science Review,* 22:2 (2001), 153.
[136] Paul MacDonald, 'Useful Fiction or Miracle Maker: The Competing Epistemological Foundations of Rational Choice Theory'. *American Political Science Review* 97:4 (2003), 558.

level. While the state-as-actor assumption provides scholars with a practical way of exploring international relations dynamics, it remains contentious for its ability to 'black-box' domestic developments. IR research has responded to this criticism not by abandoning the notion of states as aggregate actors – as problematic as this is for rational-choice – but by expanding and qualifying it through unpacking 'states' into domestic components.[137] In the framework of theories of EU integration, Moravcsik's intergovernmentalism strikes this uneasy balance between treating states as unitary actors in their external behavior while acknowledging that internally 'contention among domestic political groups' is defining for how states behave vis-à-vis other states.[138] As a result, Moravcsik can maintain that 'the fundamental actors in international politics are individuals and groups'[139] while at the same time claiming that 'political institutions permit governments, even if disaggregated, to act "as if" they were unitary.[140] This thesis subscribes to this position but, given its much more restricted focus than Moravcsik's three-pronged rationalist framework comprising complementary theories of state preferences, interstate bargaining and institutional choice, it takes political individual and group actors as its unit of analysis without reaching the state-level of aggregation. This is because this thesis is preoccupied with the role of domestic actors and their preferences in shaping the possibilities for EU influence in the Eastern Neighbourhood.

This brings into focus a further essential element of rational-choice approaches - that of actor preferences. Unlike structural theories which assume that outcomes reflect systemic imperatives rather than actors' motives and intentions, rational-choice approaches take actors' preferences as the cornerstone of explaining behaviour. Thus, Moravcsik's liberal intergovernmentalism is based on a conviction that 'variation in ends, not means, matters most', itself derived from a conception of actor behavior as being primarily a function of preferences, not capabilities.[141] Underpinning the conception of the individual actor is the rationality assumption which postulates that actors act

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[137] Snidal, 'Rational choice and international relations', 100.
[138] Andrew Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (London: UCL Press, 1999), 22.
[139] Andrew Moravcsik, 'Taking preferences seriously: A liberal theory of international politics', *International Organization* 51:4 (1997), 516.
[140] Moravcsik, 'The Choice for Europe', 22.
[141] Moravcsik, 'Taking preferences seriously', 522-23.

according to a goal-seeking and/or utility-maximization logic.[142] MacDonald breaks down the rationality assumption into three components, arguing that: 1. Actors are purposeful and goal-oriented agents, in contrast to acting on the basis of social norms and expectations; 2. Actors act according to preferences which are consistent, transitive and invariant; 3. Actors are driven by a utility-maximization logic which ensures that, in choosing between alternative courses of action, they opt for the one that provides the greatest benefits.[143] In addition to these general propositions, rational-choice also makes assumptions with regards to the nature of actor preferences, which are typically claimed to be material and self-interested.[144]

The rationality assumption at the basis of rational-choice approaches has long been criticised for its rigidity, particularly with regards to the related issues of the self-interested and material nature of preferences, on one hand, and their exogenous and thus fixed character, on the other hand. As far as the former is concerned, it has been argued that individual goal-seeking behavior is not limited to 'self-regarding or material interests but can include other-regarding and normative or ideational goals'.[145] This broadening of the understanding of 'rational behaviour' is to be understood in the context of a wider range of developments in rational-choice theory which sought to acknowledge the shortcomings of the theory in light of indisputable empirical evidence. As such, it was admitted that actors do not always seek to maximize their preferences; that institutions and culture shape preferences, interests and strategic choices; and that purposeful behaviour does not necessarily amount to self-interested behaviour. The notions of thick and thin rationality were introduced to distinguish between fixed, self-interested material preferences (thick rationality) and a more flexible conception of preferences which maintained their stable and transitive character, but abandoned the self-interested material character (thin rationality).[146] While addressing long-standing criticisms that had been leveled against the theory, these intellectual adjustments were seen by some as

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[142] Pollack, 'Rational choice and EU politics', 32.

[143] Paul MacDonald. 'Useful Fiction or Miracle Maker: The Competing Epistemological Foundations of Rational Choice Theory'. *American Political Science Review* 97(4): 551–565, cited in *Understanding Foreign Policy Decision Making*, A. Mintz and K. DeRouen Jr (Cambridge: Cambridge University Press, 2010), 58.

[144] Monroe, 'Paradigm Shift', 153.

[145] Snidal, 'Rational choice and international relations', 87.

[146] Mintz and DeRouen Jr, 'Understanding Foreign Policy Decision Making', 58.

weakening the theoretical foundation of rational-choice and reducing it to the specification of a tautological relationship between preferences and behaviour.[147] Indeed, it is difficult to see how one could proceed with the analysis of actor behaviour once preferences cease to be conceived of as exogenous: if preferences themselves are shaped by behaviour, how can the circular causal argument be broken? Constructivists claim that the co-constitutive rapport between structure and agency makes this positivist analysis impossible and even undesirable, while rationalist analyses such as Moravcsik's explanation of European integration simply reject fixed preferences in favour of a liberal argument of domestically-shaped preferences, without addressing the tautological predicament.

This thesis maintains the thick rationality assumption, as well as rational-choice's original assumption of fixed, exogenous preferences, for purposes of theoretical parsimony but also because of the particular focus of its inquiry. Thus, while it is argued here that some actor preferences can be endogenous, shaped by identity, institutions or cultural practices, it must also be acknowledged that there is a stronger, invariant, type of preference – that for survival. This has been variously interpreted as a state's national interest for preserving and/or augmenting wealth, security and power, or, in the case of political leaders, the inexorable preference for gaining and maintaining political office.[148] Indeed, it is widely accepted that the primary concern of political leaders – overriding any other secondary preferences – is survival.[149] In subscribing to the thick rationality assumption this research makes a necessary concession in admitting the limitations of material self-interested and power-driven preferences and the fact that they work better in some contexts than in others.[150] Having said that, this thesis considers that the potential for effective cooperation between the EU and Eastern neighbourhood countries comes down to the survival strategies of ENP political leaders and is, as such embedded in a thick rationality conception.

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[147] Monroe, 'Paradigm Shift', 159.

[148] Moravcsik, 'Preferences and Power', 481; Evelyne Huber and Michelle Dion, 'Revolution or Contribution? Rational Choice Approaches in the Study of Latin American Politics'. *Latin American Politics and Society* 44:3 (2002).

[149] Bruce Bueno De Mesquita and Alastair Smith, 'Leader Survival, Revolutions, and the Nature of Government Finance', *American Journal of Political Science* 54:4 (2010).

[150] Huber and Dion, 'Revolution or Contribution?', 3.

So far it has been established that actors are goal-oriented and that they primarily pursue self-regarding material interests. If their preference for political survival is fixed - as it is assumed here - and thus cannot factor in any potential explanation of collective outcomes, how can these be explained then? In addition to positing methodological individualism and goal-seeking behaviour, rational-choice also claims that actors pursue their interests under constraints. The environmental constraints imposed on actors' behaviour can be institutional or strategic, but can also result from incomplete information.[151] Rational-choice institutionalism emphasises that both formal and informal institutions can constrain individual choice, while game theory underlines the importance of strategic interdependencies whereby individual payoffs depend on the choices made by others. At the same time, incomplete information can be the result of technological constraints. Thus, while maintaining actors and their preferences stable, rational-choice seeks to explain outcomes through the existence of constraints.[152]

Actors' preferences, together with the environmental constraints they face, shape the strategies they adopt in order to achieve previously identified goals. As such, purposeful actors act strategically by attempting to come as close as possible to the preferred outcome. According to Frieden, it is crucial to distinguish between preferences and strategies since actors only have preferences over outcomes (i.e. wealth, preservation of territory or sovereignty, political survival), but they do not have independent preferences over the means to achieve these.[153] Strategies follow from preferences but in ways that are contingent on the environment.[154] This thesis conceives of governments' preferences over outcomes as being defined by their domestic motivation to gain and/or maintain political power. As such, the preference for political survival is exogenously given and cannot be altered by changes in the strategic environment. What the broader setting does have the potential to influence however, are the strategies that governments adopt in order to ensure the maximisation of their political power. It is assumed here that any action that a government pursues – be it a policy proposal, the signing of an international treaty or the decision to go to war – is assessed against the objective of

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[151] Pollack, 'Rational choice and EU politics', 32.

[152] Snidal, 'Rational choice and international relations', 100.

[153] Jeffry A. Frieden, 'Actors and preferences' in *Strategic choice and international relations*, David A. Lake and Robert Powell eds (Princeton, N.J.: Princeton University Press, 1999), 45.

[154] Frieden, 'Actors and preferences', 45.

maintaining political power. If particular courses of action undermine the regime's political survival, the government can engage in bargaining processes in order to identify and negotiate the adoption of those strategies which are most likely to strengthen its grip on power.

This thesis identifies three factors that are likely to affect the strategies which governments in the Eastern Neighbourhood adopt in order to achieve their fundamental goal of preserving political power: 1. the competing strategies of domestic veto players; 2. the potential for alternative coalitions (Russia, US, other international organisations); 3. the cost-effectiveness of threats and side-payments.

The rest of this chapter explores the key notion of preferential fit – denoting the compatibility between the preference of ENP governments for maintaining political power and EU policies - and the conditions under which the three above-mentioned factors can shift the strategic calculations of incumbent regimes.

2.4.2. Preferential fit

As previously indicated, this thesis takes an actor-centred perspective by highlighting the crucial role of the preferences of political elites in facilitating or limiting the scope of EU foreign policy impact in the Eastern Neighbourhood. The core premise of the thesis is that the degree of compatibility between governmental preferences and EU policy objectives - the so-called preferential fit directly influences the potential for effective cooperation in the context of CSDP missions. The consistent and transitive nature of actors' preferences, as well as the utility maximisation logic implied in the rationality assumption at the heart of rational-choice approaches means that decision-makers are expected to rank preferences 'according to the degree of satisfaction of achieving these goals and objectives'.[155] Thus, in light of governments' preference for maintaining political power, their willingness to subscribe to EU policy goals and

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[155] Mintz and DeRouen Jr, 'Understanding Foreign Policy Decision Making', 57.

strategies can be ranked as: high if that policy course is calculated as likely to contribute to the regime's hold on power or even increase it; neutral if the chosen strategy is assessed as neither providing benefits (gaining/strengthening power) nor incurring costs (weakened/losing power); and low if a particular course of action is calculated as detrimental to the governments' goal of maintaining power. As such, we can speak of strong, passive or weak preferential fit between incumbent regimes' preferences and EU policy objectives.

The importance of compatibility between the EU and domestic environments is well-documented, although only from a structural-institutional perspective. As already noted, both the Europeanisation and the external governance literatures emphasise the importance of 'resonance' or 'compatibility between EU rules and domestic policy, institutional, cultural and organisational arrangements.[156] However, recent contributions to the literature exploring EU policy transfer in the Eastern Neighbourhood have challenged the thesis of the so-called policy and institutional misfit, which claims that the likelihood of successful policy transfer increases with the degree of compatibility between EU and domestic structures.[157] Thus, it has been argued that focusing on institutional and policy compatibility is of limited use in explaining EU influence in the Eastern Neighbourhood, since all of the Eastern neighbours display a high degree of misfit between national policy practices and institutional arrangements and those prevalent in the EU, and yet they still experience EU-driven policy change, albeit selectively.[158] Indeed, the Eastern neighbours are notoriously characterised by domestic structures that bear the legacy of their Soviet past, rather than reflecting their European aspirations. But while this has led scholars to conclude that there is a large gap between Eastern Neighbourhood and EU policy practices and institutional arrangements[159], the Eastern governance literature finds that even in the absence of such 'fit', EU-driven domestic change can still take place provided the political agendas of incumbent regimes

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[156] Schimmelfennig and Sedelmeier, *The Europeanization*; Lavenex and Schimmelfennig, 'EU rules beyond EU borders'.
[157] Lavenex and Schimmelfennig, 'EU rules beyond EU borders', 805.
[158] Langbein and Börzel, 'Introduction', 572.
[159] Langbein, 'Unpacking the Russian and EU impact', 631.

are compatible with EU practices and norms in a particular policy area. This is referred to in the literature as 'preferential fit'.[160]

Unlike 'resonance' which works according to the 'logic of appropriateness' and assumes that the impact of Europeanisation is mediated by domestic factors that facilitate or inhibit persuasion, 'preferential fit' responds to the rationalist 'logic of consequences'. Rather than being a result of EU persuasion mechanisms and incumbent governments' perceptions of appropriateness, the potential for effective cooperation between the EU and Eastern Neighbourhood regimes is in fact shaped by the cost-benefit assessments of ENP governments with regard to specific EU policy objectives. By contrast, the institutional and policy misfit perspective fails to take account of 'domestic agency and its preferences for change', as well as the propensity of domestic actors to also have 'positive' preferences for change rather than simply be cost averse.[161] Under circumstances of high degree of misfit with regard to institutions and policies, but compatibility between the political agendas of incumbent regimes and EU practices and institutional arrangements, it is possible to speak of preferential fit, which facilitates cooperation with the EU.[162] Thus, if the political leadership of a host country calculates that supporting EU rule transfer in a field such as customs reform will bring political benefits (i.e. because it will facilitate a visa-free travel regime with the EU which is one of the government's electoral promises), it will support EU-demanded reforms in that field; this would qualify as a case of strong preferential fit This can happen despite compliance costs related to the lack of compatibility between EU and domestic policies, politics and polities, showing that political benefits surpass structural costs.[163] Nonetheless, factors such as the competing strategies of other actors, notably domestic veto players, and the existence of alternative coalitions to the EU, can change the cost-benefit assessment on which perceptions of strong preferential fit are based, potentially converting it into weak preferential fit if the new costs introduced are found to be prohibitive. Passive preferential fit can also be effective, as when sector-specific reforms correlate with the overall governmental agenda, despite not bringing significant political

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[160] Langbein and Börzel, 'Introduction', 572.
[161] Ademmer and Börzel, 'Migration, Energy and Good Governance', 583.
[162] Langbein and Börzel, 'Introduction', 572.
[163] Ademmer and Börzel, 'Migration, Energy and Good Governance', 584.

gains, as long as they do not incur costs. Although weak preferential fit would normally indicate a disinclination to adopt EU policy objectives, side-payments can make the difference between non-engagement and cooperation with the EU because they have the potential of altering the cost-benefit calculations of governments, for example transforming weak preferential fit into passive preferential fit by mitigating some of the costs of cooperation. The next section explores in detail how the degree of preferential fit between incumbent regimes in the Eastern neighbourhood and EU foreign policy goals – and implicitly the potential for successful cooperation – is affected by a number of intervening factors.

To return to the key notion of preferential fit, the concept is defined here as 'a fit of preferences over policy outcomes' which draws on the motivation of incumbent elites to stay in power.[164] Governments in power will pursue the EU's preferred policy and institutional choices if this is seen as advancing their own political agenda or if it provides a way of gaining the upper hand over veto players. One of the most important considerations shaping the preferential fit of Eastern Neighbourhood governments is the strategic alignment of ENP governments with the EU, on one hand, or with Russia (or, less frequently, other international actors), on the other hand, because this can affect which decisions are the most beneficial or costly in terms of the incumbent regimes' strategies for political survival and power maximisation. Political competition in the Eastern Neighbourhood has typically been defined by the strategic alignment of political parties and coalitions with the 'Western' vector encompassing the EU and the US, or the 'Russian' vector. The Western/Russian political cleavage has grown into more than a debate over foreign policy orientation, defining the very dilemmas and conflicts within Eastern European societies. Thus, the West/East (or Russian) cleavage is as much about foreign policy as it is about the rule of law, economic policy and civil rights and freedoms, and defines the identity and policy positions of political actors to a greater extent than the traditional right/left or liberal/conservative cleavages. Therefore, in assessing the preferential fit of Eastern Neighbourhood governments with the objectives of CSDP missions, it will be important to consider the strategic alignment of the regime in question with either the West/EU or with Russia.

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[164] Ademmer and Börzel, 'Migration, Energy and Good Governance', 584.

The way in which preferential fit facilitates the impact of EU institutional and policy frameworks reflects the mechanism of differential empowerment of domestic actors, long identified by the enlargement literature as the main indirect mechanism of incentive-based Europeanisation models (in addition to top-down direct intergovernmental bargaining). According to the domestic empowerment argument, the adoption of EU-inspired reforms can provide different domestic actors with independent incentives – such as increasing their power and influence in the political arena – thus, changing the domestic opportunity structure in their favour and strengthening their bargaining power vis-à-vis their opponents.[165] However, the EU struggles to empower reform-oriented coalitions that aim to challenge governments in power in the Eastern Neighbourhood, due to the weakness of civil society, limitations on civil and political rights and pervasive corruption within state administrations.[166] As a result, domestic empowerment in the Eastern Neighbourhood does not work through a top-down process in which EU reforms represent an institutional framework that exerts pressures and creates incentives. Rather, it is the governments who are in the best position to self-empower themselves by selectively engaging in cooperation with the EU.[167] Börzel and Pamuk illustrate this process with regard to the fight against corruption in the Southern Caucasus, showing that in the absence of liberal reform coalitions, the incumbent regimes in the region instrumentalise the EU and selectively implement anti-corruption policies to the extent that this helps them gain and consolidate political power.[168]

This thesis assumes that the preferential fit between the preference for political power of Eastern Neighbourhood governments and the goals pursued by EU civilian missions is crucial in explaining successful cooperation in the context of CSDP missions. This is because the preferences of incumbent regimes are fixed, exogenous and therefore cannot be changed. Thus, the decision to cooperate with CSDP missions on the ground and to take on board their policy recommendations will inevitably be measured against

[165] Frank Schimmelfennig, and Ulrich Sedelmeier.. 'Introduction: Conceptualizing the Europeanization of Central and Eastern Europe' in *The Europeanization of Central and Eastern Europe*.Cornell studies in political economy (Ithaca, NY: Cornell University Press, 2005) 11-12.
[166] Ademmer and Börzel, 'Migration, Energy and Good Governance', 584.
[167] Ademmer and Börzel, 'Migration, Energy and Good Governance', 583; Schimmelfennig and Sedelmeier, 'Introduction', 12.
[168] Tanja A. Börzel and Yasemin Pamuk, 'Pathologies of Europeanisation: Fighting Corruption in the Southern Caucasus', *West European Politics* 35:1 (2012), 79.

the governments' intrinsic motivation to gain and/or maintain political power. While this fundamental preference cannot be altered, several factors can affect the governments' cost-benefit calculations, that is, their choice of strategies. The next section examines the intervening variables which have the potential of modifying the strategic calculations of incumbent regimes with respect to the EU missions' confidence-building and rule transfer functions. Drawing on rational-choice theory and recent contributions to the Eastern neighbourhood literature, this thesis identifies three factors likely to affect the strategies which governments in the Eastern Neighbourhood adopt in order to achieve their fundamental goal of preserving political power: 1. the competing strategies of domestic veto players; 2. the potential for alternative coalitions; 3. the use of EU threats and/or side-payments. These factors have been singled out for their ability to affect the cost-benefit calculations of governments with respect to the impact of cooperation with the EU on the incumbent regimes' goal to acquire, maintain and strengthen political power.

Rational-choice theory assumes that actors are aware of the alternative strategies available to them and the likely consequences of their choices and, as such, will opt for the alternative providing the highest expected utility.[169] In trying to make a utility-maximising decision, governments will compare the costs and benefits derived from each of the three intervening factors against each other. Thus, are the costs incurred by the competing strategies of domestic veto players higher than the costs of external threats and/or pressures? If they are, then governments are likely to undertake the course of action preferred by domestic veto players rather than the one advocated by external actors. The extent to which each of the identified factors is able to influence the strategies of incumbent regimes therefore depends on how it compares against the other factors in terms of costs vs benefits. This relationship will be captured by the hypotheses developed in the following sections which postulate the conditions under which each of the factors is likely to influence governments' strategies.

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[169] Monroe, 'Paradigm Shift', 153.

2.4.3. Choosing strategies: bringing together preferences and strategic settings

2.4.3.1. The competing strategies of domestic veto players

Rational-choice approaches place special emphasis on the role of individual preferences, assuming that outcomes reflect the nature and intensity of actor preferences, but at the same time acknowledge that behaviour is necessarily constrained by the broader environment. Among others, the strategies that actors choose to pursue in order to achieve their goals (preferences) are constrained by the choices of other actors. This is due to the fact that 'an actor cannot simply choose a course of action that produces its preferred outcome because the choices of others also affect that final result', therefore a particular strategy is selected 'both for its direct effect on the outcome and its indirect effect on the actions of others'.[170] When it comes to the strategic choices of governments, there are a number of actors whose actions and decisions have the potential of influencing outcomes and who therefore play an important role in the governments' decision-making process. Referred to in the literature as veto players, they represent 'individual or collective actors whose agreement is necessary for a change to the status quo.'[171] Originating in the notion of 'checks and balances', the veto player concept has been applied to institutional actors such as the President and the bicameral legislature, partisan actors 'generated by the political game'[172], but also informal veto players such as business networks. Although typically confined within national boundaries, veto players can also originate from the ranks of international actors, especially if the envisaged change has broader geopolitical reverberations.

The literature on the Eastern Neighbourhood has identified the existence of multiple veto players (both formal and informal) as a crucial factor affecting EU external

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[170] James D. Morrow, 'The Strategic Setting of Choices: Signaling, Commitment and Negotiation in International Politics' in D.A. Lake and R. Powell (eds) *Strategic Choice and International Relations* (Princeton, New Jersey: Princeton University Press, 1999), 77.
[171] George Tsebelis, *Veto players: How political institutions work* (Princeton, N.J.; Woodstock: Princeton University Press, 2002), 19.
[172] Tsebelis, *Veto players*, 19.

governance.[173] The enlargement Europeanisation scholarship had already highlighted the important role played by multiple veto points in domestic structures in mediating the transfer of EU rules.[174] Nonetheless, in the Eastern Neighbourhood veto players emerge also as influential informal actors who exert pressure on the governments in power not necessarily through constitutional or even political channels. . It has been argued that veto players are even more relevant in explaining the scope of EU-driven reforms in the Eastern Neighbourhood countries than in the former Central and Eastern European accession candidates due to 'low democratic quality, weak administrative capacities and prevalent corruption and clientelism'.[175] The fact that the EU's 'near abroad' is afflicted by weak rule of law systems, slow democratic reforms and pervasive corruption, as well as by the prevalence of state capture by business interests, contributes to poor governance. As a result, the concept of veto players in the neighbourhood must be expanded to include a wide range of relevant actors cutting across constitutional, institutional, political, economic and regional spheres. It is broadly accepted that EU-driven reforms can only produce domestic change if the interests of powerful economic elites and state authorities are not negatively affected.[176]

The control exerted by powerful entrepreneurs - the so-called winners of economic reform – on post-communist political systems is well documented[177] and shows the wide reach of these business networks which have the power to block reform efforts in order to maintain a status quo that is beneficial to them. These groups are able to exert a considerable level of influence on formal state structures where they often hold prominent governmental and parliamentary positions, but also by putting informal pressure on officials in positions of power. This has been a particularly salient issue in Ukraine where oligarchic clans have managed to penetrate the political system to an

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[173] Langbein and Börzel, 'Introduction'; Dimitrova, and Dragneva, 'Shaping Convergence with the EU'; Buzogány, 'Selective Adoption'.

[174] Tanja A. Börzel and Ulrich Sedelmeier, 'The EU dimension in European politics'. In Paul M. Heywood, E. Jones, M. Rhodes and U. Sedelmeier (eds.) *Developments in European Politics* (Palgrave Macmillan, Basingstoke, 2006); Christoph Knill and DirkLehmkuhl, 'The national impact of European Union regulatory policy: Three Europeanization mechanisms', *European Journal of Political Research* 41:2 (2002).

[175] Langbein and Börzel, 'Introduction', 576.

[176] Langbein and Börzel, 'Introduction', 576.

[177] Joel Hellman, 'Winners Take All: The Politics of Partial Reform in Postcommunist Transitions', *World Politics* 50:2 (1998), 203-234; Venelin Ganev, *Preying on the state: The transformation of Bulgaria after 1989* (Ithaca: Cornell University Press, 2007)

extraordinary degree and have continued to influence decision-making well beyond the country's initial transition period. An increasing number of scholarly contributions have examined the role of veto players in constraining EU-inspired policy change in Ukraine, particularly after the 2010 elections which brought pro-Russian President Yanukovych to power. Thus, the extensive state capture by powerful business interests in Ukraine explains the selective adoption and application of EU rules in the field of technical regulation, despite preferential fit between the EU and the Ukrainian government, policy-specific conditionality and the empowerment by the EU of domestic pro-reform constituencies.[178] The analyses of other policy sectors reveal a similar picture. The limited progress in convergence and compliance with EU state aid rules reflects the opposition of oligarchic groups and their allies in parliament who would have incurred losses as a result of policy change. The reversal in Ukraine's convergence with EU foreign policy decisions after 2010 can be understood in the context of the coming to power of Yanukovych and the return of the informal veto players who supported him.[179] Finally, the adoption of EU environmental norms by Kiev has been highly selective in light of opposition from key veto players in the construction and industrial development sectors.[180]

Whether influential veto players are able to affect governments' strategic calculations is a matter of the delicate domestic political balance and will have to be investigated on a case-by-case basis. So far analyses have shown that rent-seeking elites in the Eastern Neighbourhood keenly attempt to maintain control over the political system and manage to limit the impact of EU reforms if these threaten their ability to exercise such control, even when policy-specific benefits are on the table.[181] This could suggest that policy-specific conditionality may not be able to surpass the overarching influence of veto players who have penetrated deeply into the political and economic structures of post-Soviet states. On the other hand, if the specific benefits offered by the EU are considered attractive enough by the government in power and its overall preferences are compatible with the proposed policies, the obstructive role of veto players

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[178] Langbein and Wolczuk, 'Convergence without membership?', 875.
[179] Dimitrova, and Dragneva, 'Shaping Convergence with the EU', 678.
[180] Buzogány, 'Selective Adoption', 624.
[181] Dimitrova and Dragneva, 'Shaping Convergence with the EU', 678.

can be minimised. This is likely to happen at the beginning of a new political mandate when the new political leadership is trying to consolidate power and might try to reduce the influence of veto players that do not share its preferences, or before elections when the incumbent regime might regard compliance with EU-demanded reforms as a necessary condition for reelection.

Veto players are also important when it comes to the confidence-building aspects of EU missions. While EU civilian missions are typically involved in confidence-building measures that are limited to the technical aspects of conflict resolution, these are nonetheless difficult to isolate from the broader political implications of peace processes. The existence of various actors who obstruct peace processes because a comprehensive agreement would not be in their interest has long been identified as one of the most significant sources of peace-making failures.[182] Peace studies label these actors as 'spoilers' rather than veto players, but the term designates the same core feature identified by the Europeanisation and external governance literatures: an incompatibility between their interests and the changes brought about by EU-driven reforms or, in this case, a peace negotiation process. The literature on the EU's role in conflict management also identifies obstructive local actors as one of the elements of the conflict context which is likely to affect the effectiveness of the Union's ability to be a comprehensive security provider. There are, thus, good reasons to expect that domestic veto players will indirectly influence the prospect for successful cooperation between EU civilian missions and host countries in the Eastern Neighbourhood. Veto players are likely to be one of the factors that shape the strategies of incumbent regimes both with respect to the rule transfer and confidence-building functions. As EUJUST Themis, EUBAM and EUMM all operate in politically sensitive policy areas – rule of law, border management and conflict prevention and mediation – it is expected that a high number of veto players have been affected by the activities of the missions. It is therefore hypothesized here that:

H1: The ability of domestic veto players to alter the strategies of incumbent regimes decreases with:
   i.   the existence and cost-effectiveness of alternative coalitions to the EU

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[182] Stephen John Stedman, 'Spoiler Problems in Peace Processes', *International Security* 22:2 (1997), 5.

ii.   the cost-effectiveness of EU threats and side-payments

2.4.3.2. The potential for alternative coalitions

In the context of international cooperation actors inevitably assess the costs and benefits of engaging in cooperation with party A as opposed to party B, if the alternative is on the table and if the two options are mutually exclusive. This is part of the rational utility maximizing behaviour of decision-makers who want to ensure that the chosen strategy (cooperating with party A or B) is the most cost-effective way of achieving their goals. Keohane and Nye argue in their book 'Power and Interdependence' that international cooperation reflects patterns of 'asymmetrical interdependence', whereby countries better integrated in the international trade system and thus more 'interdependent' are expected to make more concessions during interstate bargaining.[183] This is because they stand to benefit more from liberalizing markets and are willing to pay a higher price for long-term gains. Similarly, Hirschman offers the example of two countries engaged in trade with each other which must stop their business interactions. In this situation, if the countries do not value the benefits from trade to the same extent, the one which values them more is in a weaker bargaining position and thus has less power.

Contributions to the literature on the EU's external governance in the Eastern Neighbourhood have acknowledged the importance of the Eastern neighbours' asymmetric interdependence vis-à-vis the EU as compared to their asymmetric interdependence with respect to Russia.[184] If the ENP countries are more dependent on Russia than on the EU in a particular policy sector, EU attempts at generating domestic change in that sector are unlikely to succeed. Thus, while showing that the EU's modes of external governance are mainly shaped by internal institutional patterns, Lavenex, Lehmkuhl and Wichmann point out that when it comes to the EU's neighbours, 'asymmetric interdependence matters' and power is pervasive in neighbourhood relations.[185] In a similar vein, Dimitrova and Dragneva find that the effectiveness of EU

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[183] Robert O. Keohane and Joseph O. Nye Jr., *Power and Interdependence: World Politics in Transition.* 3rd ed (New York, London: Longman, 2001), 9.
[184] Dimitrova, and Dragneva, 'Shaping Convergence with the EU'.
[185] Lavenex, Lehmkuhl and Wichmann, 'Modes of external governance', 830.

external governance in Ukraine is affected by patterns of interdependence between Ukraine and Russia: in trade, where Ukraine is increasingly dependent on the EU but has diminishing interdependence with Russia, the EU encounters small barriers to rule transfer; in foreign and security policy, where Ukraine's geopolitical interdependence with Russia is significant, there is a clash between the EU's governance approach and Russia's power politics approach; finally, when it comes to energy, Ukraine's large dependency on Russia, both infrastructural and economic, represents an important obstacle for EU governance in this field.[186] These conclusions, thus, seem to suggest that asymmetric interdependence and the power relations that result from it play a particularly important role in the EU's relations with its Eastern neighbours.

In trying to capitalize on the asymmetric interdependence in its favour, Russia has typically used the economic and energy dependence of Eastern European countries in order to pressure them into resisting the EU's influence. Thus, it has been argued that Russia is able to interfere with the EU's external governance in the Eastern Neighbourhood by taking advantage of the high interdependence with the former Soviet republics and using its leverage to extract policy outcomes that suit its interests.[187] In contrast with this rather simplistic view, recent scholarly contributions have challenged the unqualified assumption that the higher the interdependence between ENP countries and Russia, the greater the limitations on the EU's ability to transfer rules to Eastern Europe by showing that asymmetric interdependence in Russia's favour only undermines EU governance under a specific set of circumstances. Thus, Hagemann finds that Moldova's customs reform in accordance with EU standards was successful despite coercive interference from Russia.[188] Langbein also shows that high interdependence with Russia and Russian strong-armed behaviour does not always undermine convergence with EU standards, as illustrated by Moscow's import ban on Ukrainian dairy products which subsequently incentivised Ukrainian producers to adopt

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[186] Antoaneta Dimitrova and Rilka Dragneva, 'Constraining external governance: Interdependence with Russia and the CIS as limits to the EU's rule transfer in the Ukraine', Journal of European Public Policy 16:6 (2009), 867-869.
[187] Dimitrova and Dragneva, 'Constraining external governance', 854.
[188] Christian Hagemann, 'External Governance on the Terms of the Partner? The EU, Russia and the Republic of Moldova in the European Neighbourhood Policy', *Journal of European Integration* 35:7 (2013), 769.

EU food standards in order to gain access to the EU market.[189] In order to explain this puzzle, Ademmer draws on Keohane and Nye's concept of interdependence and identifies the specific conditions under which interdependence with Russia restricts or, on the contrary, enables EU policy transfer. Following Keohane and Nye's distinction between sensitivity and vulnerability interdependence, the argument made is that ENP countries are likely to embark on EU-driven reform processes if they are highly sensitive but not vulnerable to Russia.[190] Sensitivity interdependence refers to the extent to which a state is affected by its linkages to the outside world, without changing existing policies. On the contrary, high vulnerability interdependence with Russia is likely to undermine EU policy transfer.[191] This is because vulnerability interdependence is a measure of 'an actor's liability to suffer costs imposed by external events even after policies have been altered'[192] and measures the costliness of policy alternatives. Asymmetric interdependence, thus, is only relevant to the extent that it can affect the cost-benefit calculations of governments when it comes to choosing between cooperation with coalition A versus cooperation with coalition B.

The implication of these findings for the topic explored here is that the potential for effective cooperation between CSDP missions and the host countries in the Eastern Neighbourhood can be hindered by the latter's high degree of asymmetric interdependence with Russia under a specific set of circumstances. First of all, asymmetric interdependence of ENP countries with Russia will only pose a problem for civilian missions if their activities are perceived by Moscow as encroaching on its 'sphere of influence'. Russia has typically put pressure on those policy sectors in which it benefits from high sensitivity interdependence. In an attempt to raise the costs of the missions' activities for ENP countries, Moscow is thus likely to alter trade and energy cross-border flows through rising energy prices and imposing trade embargoes. Under these circumstances, the potential for EU civilian missions to successfully cooperate ENP governments will depend on two factors: firstly, the availability of alternative

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[189] Langbein, 'Unpacking the Russian and EU Impact', 652.

[190] Esther Ademmer, 'Interdependence and EU-demanded policy change in a shared neighbourhood', *Journal of European Public Policy* 22:5 (2015), 674.

[191] Vulnerability interdependence is a measure of 'an actor's liability to suffer costs imposed by external events even after policies have been altered' (Keohane and Nye, *Power and Interdependence*, 13); vulnerability measures the costliness of policy alternatives (Ademmer, 675).

[192] Keohane and Nye, *Power and Interdependence,* 13.

policy choices in the area targeted by Russia, which is the condition which determines whether a particular situation is characterised merely by sensitivity interdependence or vulnerability interdependence; and secondly, the costliness of adopting alternative policies.

Russia represents the obvious alternative coalition to the EU in the Eastern Neighbourhood given its perception of the region as pertaining to its 'sphere of influence' and its zero-sum foreign policy approach. However, a number of other international actors – great powers, international organisations, but also NGOs and other transnational groups – can also position themselves as alternative coalitions to the EU if their approaches with respect to particular issues in the Eastern Neighbourhood diverge. Depending on the specific issue being addressed, the domestic environments of Eastern Partnership members can be crowded by a multitude of NGOs, governmental agencies and international donors, each with their distinct agendas and approaches to reform processes. The demands for assistance from Eastern Neighbourhood governments have intensified over the years and so has the participation of a growing number of donors. In order to cope with the increasing demand, the EU has taken the lead in organizing international donors' coordination meetings in countries like Moldova, Ukraine and Georgia, bringing all the donors on the ground around the table and trying to coordinate assistance efforts. While these meetings can be useful in helping to avoid duplication and ensure that critical needs are met, a lack of transparency on both the donors' and the ENP countries' side has meant that coordination has often been limited to the rhetorical level and a division of labour has failed to take place in practice. Also, sharing confidence-building efforts between different donors works only when there is a commonality of purpose regarding the precise substance of reforms in a given policy sector. If different international organisations disagree regarding the direction and/or content of reforms their initiatives inevitably end up being at cross purposes.

It is perfectly in line with the argument of this thesis to maintain that alternative coalitions to the EU will only be considered if they prove to be cost-effective. But what shapes the cost-effectiveness of alternative coalitions to the extent that they can influence the strategic choices of decision-makers? As already pointed out, the influence of each of

the identified factors on the cost-benefit calculations of governments is relative to the influence of the other two factors. It is thus hypothesised that:

H2: The ability of alternative coalitions to the EU to alter the strategic calculations of incumbent regimes decreases with:

i.   the cost-effectiveness of EU threats and side-payments

ii.   the number of veto players who support the alternative coalition

2.4.3.3. The use of EU threats and side-payments

As strategic utility-maximizers, actors engage in the 'exchange of information, threats and promises'[193] during bargaining processes in order to ensure that the negotiation outcome reflects their preferences. Coercive strategies that make use of threats and aim to pressure negotiating parties by warning against non-cooperation and sanctions can be equally effective as supportive strategies that aim to increase the benefits available or offset certain costs by offering side-payments. Thus, although the EU rarely engages in coercive behaviour, the use of threats or at least persistent pressures can be effective if the cost of the expected consequences exceeds the benefit of non-cooperation. Conversely, if the issue under negotiation is likely to impose considerable losses on the host government then the offer of EU side-payments can help alter the regime's cost-benefit assessment and persuade it to engage in cooperation with the EU.

Given the vagueness that often characterizes the EU's offer of rewards outside an enlargement framework, one of the side-payments that the Union can make use of in the Eastern Neighbourhood is policy-specific conditionality. The Europeanisation literature exploring the accession of the Central and Eastern European countries is unambiguous about the role of membership conditionality in the adoption of the acquis communautaire. Numerous studies have shown that EU accession conditionality had been the key mechanism through which the Union promoted domestic change during the enlargement

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[193] Frank Schimmelfennig and Ulrich Sedelmeier, 'Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe', *Journal of European Public Policy* 11:4 (2004), 663.

negotiations.[194] At the same time, the lack of a membership perspective was blamed for the limited ability of the EU to export its policy and institutional models in the neighbourhood.[195] It was argued that, since accession conditionality had been successful in inducing EU-driven changes in Central and Eastern European candidate countries, the missing accession perspective for the Eastern neighbours was a crucial factor in their weak approximation of EU rules and standards.[196] Echoing this perspective, Schimmelfennig claims that, despite the multitude of factors that predisposes ENP countries to weak Europeanisation impact, it is the prospect of membership which appears to be an indispensable condition for Europeanisation.[197] Whitman and Wolff agree that it is the absence of substantial benefits coupled with the policy's focus on short-term objectives that erode the credibility of the ENP and deprive it of effective leverage.[198] While the ENP attempts to replicate the success achieved by the enlargement policy through conditionality, the modest benefits it offers are not enough to foster the costly reforms demanded by the EU. Thus, the almost unanimous scholarly conclusion regarding the potential success of the ENP has been that the policy is unlikely to have significant external impact in the absence of conditionality backed by a membership perspective.

The external governance approach is predicated on the fact that, in the absence of a membership perspective and the associated conditionality mechanism, the EU engages in rule transfer beyond its borders through multilateral forms of functional cooperation. But the Eastern Neighbourhood literature argues that while membership is not on offer, the EU still relies on policy-specific conditionality in order to incentivize ENP partners to engage in reforms.[199] Thus, recent contributions have found that EU conditionality works even in the absence of a membership offer, through policy-specific incentives that

[194] Milada Anna Vachudová, *Europe undivided: democracy, leverage, and integration after communism* (Oxford: Oxford University Press, 2005); Schimmelfennig and Sedelmeier, *The Europeanization*.
[195] Judith Kelley, 'New Wine in Old Wineskins: Promoting Political Reforms through the New European Neighbourhood Policy', *JCMS: Journal of Common Market Studies* 44:1 (2006); Sandra Lavenex, 'EU external governance in 'wider Europe'', *Journal of European Public Policy* 11:4 (2004).
[196] Dimitrova and Dragneva, 'Shaping Convergence', 660.
[197] Frank Schimmelfennig, 'Europeanization beyond Europe', Living Rev. Euro. Gov., 2:1 (2007), available at: http://www.livingreviews.org/lreg-2007-1, accessed on 3 August 2015.
[198] Richard G. Whitman and Stefan Wolff, 'Much Ado about Nothing? The European Neighbourhood Policy in Context'. In *The European neighbourhood policy in perspective: Context, implementation and impact* (Basingstoke: Palgrave Macmillan, 2010), 15.
[199] Langbein and Börzel, 'Introduction'.

provide enough benefits for ENP partners to be willing to adopt certain reforms, albeit in a selective manner. Policy-specific conditionality links policy-specific rewards such as market access and visa liberalisation to the fulfilment of EU reform requirements. By pursuing a quid pro quo strategy with respect to policy-specific change, the impact of this type of conditionality is understandably more limited than the offer of the 'big carrot' of accession. But while it is acknowledged that a concrete membership perspective adds a 'critical edge' to EU conditionality processes and facilitates wide ranging reforms, as opposed to sector-specific ones, targeted conditionality can be successful in triggering domestic change in certain policy sectors.[200] This is because, in the absence of the prospect of membership, ENP governments have different incentives to comply with EU demands in various policy fields, depending on the perceived implications of EU-driven changes on their own goals (preferential fit). One of the most enticing sector-specific rewards that the EU can offer is visa liberalisation, a 'carrot' which Eastern neighbours highly value and which can bring significant political capital to the incumbent government who achieves it.

In addition to policy-specific conditionality, capacity-building has been identified as an important factor in explaining the EU's impact on candidate and associate countries, due to its versatility as a Europeanisation instrument. Schimmelfennig and Sedelmeier (2005) argue that the size and speed of rewards is one of the main factors on which the cost-benefit balance of Europeanisation depends. Thus, the reward of membership is more likely to result in successful Europeanisation than that of association, as is a closer date to accession as opposed to a distant membership perspective. However, when the membership prospect is ambiguous or long-term, intermediate rewards in the form, for example, of trade and cooperation agreements, but also pre-accession support, are likely to facilitate domestic change.[201] In the case of the Eastern Neighbourhood, this translates into policy-specific conditionality and capacity-building. Thus, the EU can mitigate the adaptational costs faced by Eastern neighbours when adopting and implementing EU-demanded reforms through policy-specific conditionality and the provision of policy-specific capacity building. The two facilitating

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[200] Dimitrova and Dragneva, 'Shaping Convergence', 660, 679.
[201] Schimmelfennig and Sedelmeier, 'Introduction', 13.

factors can also support domestic change through an incentive-based mechanism. Just as policy-specific conditionality creates external incentives by providing its Eastern partners with specific rewards in exchange for reforms, capacity-building can offer financial and technical assistance in order to reinforce support for EU policies and differentially empower domestic actors.[202] Thus, capacity-building can work through reinforcement by reward and support, by differentially empowering domestic actors who are emboldened to support EU-driven reforms as a result to gaining access to additional resources.[203]

The third hypothesis therefore postulates that:

H3: The ability of EU threats and side-payments to alter the strategic calculations of incumbent regimes decreases with:

  i.   the number of veto players who oppose cooperation with the EU
  ii.   the existence and cost-effectiveness of alternative coalitions

Having outlined the theoretical framework of the thesis, the next chapter provides a discussion of the background to the deployment of the three missions examined here. This is meant to set the scene for the next four chapters which test the hypotheses identified in this chapter.

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[202] Tanja A. Börzel and Thomas Risse, 'From Europeanisation to Diffusion: Introduction', *West European Politics* 35:1 (2012), 7.
[203] Börzel and Risse, 'From Europeanisation to Diffusion', 7

Chapter 3

The deployment of EU civilian missions in the Eastern Neighbourhood: local context and early beginnings

This chapter provides a discussion of the EU's involvement in Moldova, Ukraine and Georgia prior to the deployment of EUBAM, EUJUST Themis and EUMM, followed by an account of the missions' early stages. The European Union's use of CSDP instruments in the Eastern Neighbourhood is to be understood in the context of the European Neighbourhood Policy (ENP) and the Eastern Partnership (EaP), but also against the background of momentous political developments in the region. EUBAM and EUJUST Themis were launched in 2005 and 2004 respectively, in the aftermath of the so-called 'colour revolutions' in Eastern Europe which brought to power pro-European, reform-minded governments. The EUMM was the result of an equally groundbreaking, though far from positive, event in the region: the August 2008 war between Russia and Georgia. The EU's three civilian missions in the Eastern Neighbourhood – the only ones until the launch of EUAM Ukraine in July 2014 – reflected the Union's difficulty in addressing security challenges at its Eastern border. The region is a source of instability given the presence of long-simmering secessionist conflicts and significant levels of organized crime, trafficking and illegal migration. Through its CSDP operations the EU has tried to address these issues by contributing directly to confidence-building between conflict parties, as well as by exporting EU and international regulatory frameworks and institutional templates meant to reform domestic institutions in Moldova, Ukraine and Georgia.

3.1. Background to EUBAM: The EU's involvement in Moldova and Ukraine

In order to fully grasp the role of the EU's engagement in Moldova, it is important to understand the historical and political context that characterised the country's emergence as an independent state from the Soviet Union. In the second half of the 1980's, under the leadership of Mikhail Gorbachev, the Soviet Union began a reform process which envisaged the country's gradual opening up ('glasnost') and restructuring ('perestroika'). The effect of these democratisation policies in ethnically divided societies such as Georgia and Moldova was to give rise to nationalist mobilisations. The Moldovan Popular Front's increasing popularity and its perceived campaign of 'Romanianisation' and possible unification with Romania triggered the dissatisfaction of non-Moldovan/Romanian speaking minorities of Moldova.[204] As a result, both the Gagauz Union Republic and the Dnestr Moldovan Republic proclaimed independence in 1990. But while order was shortly restored in Gagauzia, in Transnistria the situation developed into an episode of considerable violence. A ceasefire facilitated by Russia was concluded in July 1992, however, subsequent attempts to negotiate a settlement of the conflict invariably reached a deadlock. The conflict parties failed to come to a mutually acceptable agreement and international efforts stopped short of achieving a breakthrough, all of this resulting in virtually all the proposals made so far being vetoed by one of the parties.[205]

By 2000, it appeared that both sides were largely in favour of creating a 'common state,' but lacked a shared understanding of the concept. A significant development was the commitment by Russia at the OSCE summit in Istanbul in 1999 to withdraw its troops and equipment from Moldova and the enlargement of the OSCE mandate in 2002 to

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[204] The Moldovan Popular Front was a reform and national movement formed in May 1989 which demanded socio-political reforms, democracy and cultural autonomy. Vahl and Emerson, 'Moldova and the Transnistrian Conflict', In Coppieters, B., Noutcheva, G., Tocci, N., Kovziridze, T., Emerson, M., Huysseune, M. and Vahl, M. *Europeanization and Conflict Resolution: Case Studies form the European Periphery.* (Gent: Academia Press, 2004), 156.
[205] Richard Whitman, Stefan Wolff, Amanda Akcakoca and Thomas Vanhauwaert, 'After Georgia: Conflict Resolution in the EU's Eastern Neighbourhood', Issue Paper No. 57 (European Policy Centre, 2009), 20.

supervise this process. Perhaps the most controversial proposal to date has been the so-called 'Kozak Memorandum,' a settlement plan developed unilaterally by Russia and presented in November 2003, which 'would have opened the way to a Russian military presence until 2020 and Transnistria's de facto domination of the whole Moldova'.[206] In the absence of support from Western countries, the plan was rejected by Moldova's President Vladimir Voronin. This episode marked a major turning point in Moldova's foreign policy, which turned away from Moscow and swung toward the West. Partly owing to these internal changes, the negotiations format which included Russia, Ukraine and the OSCE as mediators, in addition to the conflict parties, was widened in 2005 to include the EU and the U.S. as observers.

On the background of these developments, the EU's involvement in the Transnistrian conflict was gradually stepped up. The enlargement process set to bring Moldova to the EU's borders, the EU's increased capability to contribute to stabilisation through the CFSP and CSDP and the Orange revolution in Ukraine, all contributed to encouraging more EU involvement in the conflict settlement process.[207] In an attempt to put pressure on the Transnistrian leadership, the EU imposed in February 2003 a travel ban against 17 Transnistrian leaders allegedly responsible for undermining the conflict settlement process.[208] While pressures through sanctions seemed to have an immediate effect, as Transnistria agreed to participate in a Joint Constitutional Commission established with the aim of drafting constitutional arrangements for a reunified Moldova, this was not long-lived – in 2004 the ban was extended to another 10 officials responsible for trying to close down Romanian language schools in Transnistria.[209] A significant step forward was, however, achieved in May 2003, when the European Commission initiated and mediated an agreement between Moldova and Ukraine on customs and border controls along the Transnistrian section of the Moldovan-Ukrainian frontier.[210] Also in

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[206] Nicu Popescu, 'The EU Special Representative for Moldova' (Eurojournal.org, 2005).

[207] Popescu, 'The EU Special Representative for Moldova', 33.

[208] Nicu Popescu, 'Europeanization and Conflict Resolution: A View from Moldova', in *Europeanization and Conflict Resolution: Case Studies form the European Periphery,* Bruno Coppieters, Gergana Noutcheva, Nathalie Tocci, Tamara Kovziridze, Michael Emerson, Michel Huysseune and Marius Vahl, (Gent: Academia Press, 2004), 8.

[209] Popescu, 'The EU Special Representative for Moldova', 33.

[210] Marius Vahl, 'The Europeanization of the Transnistrian Conflict', Policy Brief No. 73 (Centre for European Policy Studies, 2005), 3.

2003 the EU became an observer to the Joint Constitutional Commission, despite requests from the Moldovan government for a stronger involvement and the replacement of Russia's 14th army by an EU peacekeeping force.[211] This was the first time the EU participated officially in negotiations on the status of Transnistria and, while the initiative was not a success, it marked a symbolic change in the Union's willingness to be part of the conflict resolution process. The end of the same year brought what is often considered 'the most dramatic instance of EU involvement' in the development of negotiations, namely the intervention by EU High Representative Javier Solana advising President Voronin to dismiss the Kozak memorandum.[212]

Moldova was the first country of the newly-introduced European Neighbourhood Policy (ENP) to finalize negotiations on the three-year Action Plan (AP) in February 2005[213], followed shortly by Ukraine. The ENP can be seen as a progressive advance from the initial Partnership and Cooperation Agreements that defined the relations between the EU and the former Soviet republics in the 1990s towards contractual relationships which come closer to the pre-accession policy used for Central and Eastern European states or the stabilisation and association process in the Western Balkans. The Action Plans for Moldova and Ukraine both featured comprehensive lists of priorities which included common areas of concern related to democratic standards such as strengthening the stability and effectiveness of institutions guaranteeing democracy and the rule of law, democratic elections, freedom of the media and freedom of expression. It is important to note that both Action Plans raised the necessity for enhanced efforts towards achieving a viable solution to the Transnistrian conflict, as well as the need for improving border management standards and fighting corruption and that all of these objectives were subsequently included in EUBAM's mandate.[214]

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[211] Gwendolyn Sasse, 'The ENP and the EU's Eastern Neighbours: Ukraine and Moldova as test cases', The European Neighbourhood Policy in Perspective: Context, Implementation and Impact, Richard Whitman and Stefan Wolff eds., (Basingstoke: Palgrave Macmillan, 2010), 97.

[212] Vahl, 'The Europeanization', 2; Popescu, "The EU Special Representative for Moldova", 31.

[213] Elena Baracani, 'The European Neighbourhood Policy: A New Anchor for Conflict Settlement?', Global Europe Paper No.2, (University of Bath; University of Nottingham, 2008): 8.

[214] European Commission, 'EU-Moldova Action Plan', 2004, available at: http://ec.europa.eu/world/enp/pdf/action_plans/moldova_enp_ap_final_en.pdf, accessed on 6 August 2015.; European Commission, 'EU-Ukraine Action Plan', 2004, available at: http://www.enpi-info.eu/library/content/eu-ukraine-action-plan-0, accessed on 6 August 2015.

The differences in priorities, on the other hand, reflected the distinct circumstances of the two countries. Ukraine was clearly more advanced in its relationship with the EU and already preparing for the gradual removal of restrictions and non-tariff barriers, establishing dialogue on visa facilitation and the approximation of national legislation, norms and standards with those of the European Union.[215] Interestingly, following the Orange Revolution, the EU had been reluctant to renegotiate the AP for fear it might be perceived as an opening for a membership perspective. Instead, the Union added 'Ten Points' to the Action Plan to emphasise its support for Ukraine's choice to pursue wide-ranging reforms.[216] Ukraine would eventually become the first ENP country to start negotiations with the EU on an Association Agreement reflecting the progress made by Kiev as well as a deepened relationship with Brussels.[217] Ukraine's Association Agreement would ultimately become a model for the rest of the ENP partners.

Following the inclusion of Moldova into the ENP in 2004 and the signing of the AP in February 2005, the EU sought to increase its profile in the Transnistrian conflict and enhance the coherence of its policy. The Union appointed an EU Special Representative to Moldova with a mandate for conflict resolution and the opening of a European Commission delegation in Chisinau. The EUSR was invested with three key tasks: multilateral diplomacy, representation and mediation and a policy-making role; moreover, as a clear sign that the priorities of the EUSR and those of the ENP broadly coincided, the EUSR was given the mandate 'to maintain an overview of all European Union activities, notably the relevant aspects of the ENP Action Plan'.[218] The first EUSR to Moldova was Dutch diplomat Adriaan Jacobovits de Szeged, who had previously been the special envoy on Transnistria of the 2003 OSCE Dutch Chairman in Office. Among the achievements of his mandate are the development of an extensive, high-level network in the field and the support for the EU Border Assistance Mission (EUBAM) in terms of contributing to the political direction of the mission and enhancing the implementation of

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[215] European Commission, 'EU-Ukraine Action Plan'.
[216] Sasse, 'The ENP', 184.
[217] Sabine Fischer, 'The European Union and the Insiders/Outsiders of Europe: Russia and the Post-Soviet Space', *Review of European Studies,* 4:3 (2012), 34.
[218] Giovanni Grevi, 'Pioneering foreign Policy: The EU Special Representatives', Chaillot Paper No 106 (EU Institute for Security Studies, 2007), 66.

EUBAM's mandate.[219] His succesor, Kalman Mizsei carried forward these diplomatic efforts, initiated in 2005, and succeeded in facilitating several important meetings, such as the first meeting in seven years between Moldova's and Transnistria's parliamentary speakers, and a meeting between the Moldovan and Russian Prime Ministers.[220] At the end of 2005 the EU decided to launch EUBAM, a mission which, though not undertaken strictly in the context of the CSDP, was meant to 'play an important role in building preconditions for seeking a peaceful settlement of the Transnistrian conflict' by 'reducing the risk of criminal activities such as trafficking in persons, smuggling, proliferation of weapons and customs fraud'.[221] In addition, EUBAM was tasked with supporting Moldova and Ukraine in approximating EU border management standards.

3.1.1. Ready, steady, go: the complexities of getting EUBAM off the ground

EUBAM, similarly to EUJUST *Themis,* is to be regarded as a novelty in the EU's civilian crisis management toolbox. At the time of its deployment it not only had an innovative mandate merging border monitoring and capacity-building, but represented a unique case of a mission that was neither a distinct CSDP mission (although the EU Council exercises political oversight), nor an exclusively EC-managed operation (due to the participation of EU Member States).[222] The idea of a border monitoring mission goes back to Moldova's attempts at persuading Ukrainian authorities to only recognise official Moldovan customs documents (as opposed to Transnistrian ones) and the proposal to hold joint checks on the Ukrainian side of the border sector under Transnistrian control, where Chisinau did not have access.[223] Having failed to convince the Ukrainian side to cease its indirect support for the illicit cross-border activities on this border segment,

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[219] Grevi, 'Pioneering foreign Policy', 67; 69.

[220] Gwendolyn Sasse, 'The ENP', 196.

[221] European Commission, 'Solana and Ferrero-Waldner to launch Border Assistance Mission in Odessa 30 November', Press release, 29 November 2005, available at:
http://europa.eu/rapid/pressReleasesAction.do?reference=IP/05/1488&guiLanguage=en , accessed on 15 March 2011.

[222] George Dura, 'The EU Border Assistance Mission to the Republic of Moldova and Ukraine' in *European Security and Defence Policy: the first ten years (1999-2009)*, Giovanni Grevi, Damien Helly and Daniel Keohane eds. (EU Institute for Security Studies, 2009), 282.

[223] Dura, 'The EU Border Assistance Mission', 277.

Moldova turned to the European Commission, leading the latter to facilitate a trilateral meeting on 11 March 2003 in Brussels. The meeting resulted in a Protocol being signed between the Customs Services of Moldova and Ukraine in Kiev on 15 May 2003 on 'Mutual recognition of shipping, commercial and customs documents supply' in which Ukraine undertook to recognise solely goods or cargo bearing Moldovan stamps.[224]

As with EUJUST *Themis*, in the case of EUBAM the competitive relationship between the Council and the Commission was evident from the early stages of the mission. Thus, there are competing accounts of the mission's institutional origin. On one hand, sources in the Council Secretariat claim that the initial plan was for EUBAM to be a wholly CSDP operation, whereas Commission sources argue that the mission was the result of an OSCE request dating back to 2003 which was eventually resurrected by a desk-officer in DG Relex in the context of the Orange Revolution.[225] Ultimately it would be a request from the two countries that initiated the actual planning of the mission. On 2 June 2005 the Presidents of Moldova and Ukraine addressed a joint letter to High Representative Javier Solana and President of the EC Jose Manuel Barroso requesting assistance in capacity building for border management on the entire Moldovan-Ukrainian border. Specifically, assistance was requested in order to establish an 'international customs control arrangement and an effective border monitoring mechanism on the Transnistrian segment of the Moldovan-Ukrainian State border'.[226] There was agreement at the Commission level and among the member states to respond positively to what was considered a 'unique request'. As a consequence a joint EU Council Secretariat/Commission Fact-Finding Mission was sent to Moldova and Ukraine between 23 and 29 August 2005.[227] The mission found that accounts of arms trafficking and major illegal migration routes were most likely overstated but that vehicle trafficking and smuggling of goods were overwhelmingly present.[228] It recommended that the EUSR's

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[224] Dura, 'The EU Border Assistance Mission', 277.

[225] Xymena Kurowska and Benjamin Tallis, 'EU Border Assistance Mission: Beyond Border Monitoring', *European Foreign Affairs Review* 14 (2009), 49.

[226] EUBAM, 'Progress Report 2005-2010. Main achievements in border management by the partner services in five years of EUBAM activity', 2011, available at: http://www.eubam.org/files/AOSU%20Progress%20Report%20final.pdf, accessed on 3 June 2011, 5.

[227] European Commission, 'Information Note to the Council on the adoption of financing decision for the establishment of an EU Border Assistance Mission to Moldova and Ukraine under the EC Rapid Reaction Mechanism for €4 million', RELEX/A4 REG PA (05) D/700815, 27 October 2005.

[228] Kurowska and Tallis, 'EU Border Assistance Mission', 49.

team be enhanced with border control experts and strongly supported the Commission's earlier proposal to establish a border assistance mission as an EC project. In light of the necessity to ensure complementarity between various EU instruments on the ground, it was decided that the Head of Mission will also be accredited as Senior Political Advisor to the EUSR. Moreover, this move would act as a reassurance to the PSC that it retained the political oversight of the overall EU engagement. A further issue highlighted by the fact-finding mission was that in order for EUBAM to be deployed, a formal agreement between the Moldovan and Ukrainian authorities on the mission's mandate and tasks was necessary.[229] This took the form of a Memorandum of Understanding (MoU) between the European Commission and the governments of Moldova and Ukraine which was signed on 7 October 2005 by Commissioner Benita Ferrero-Waldner and the respective Moldovan and Ukrainian foreign ministers.

According to the MoU, the overall objectives of the mission were: contributing to the implementation of the EU ENP Plans with Moldova and Ukraine and the Council decisions on Moldova and Ukraine; developing appropriate operational and institutional capacity in both countries in order to provide for effective border control and surveillance; contributing to the resolution of the Transnistria conflict by reducing the risk of illicit activities and security threats; improving transnational cooperation on border management.[230] On 7 November 2005 Council Joint Action 2005/776/CFSP was adopted amending the mandate of the European Union Special Representative for Moldova. Accordingly, he was tasked 'to enhance the effectiveness of border and customs controls and border surveillance activities in Moldova and Ukraine along their common border, with a particular focus on the Transnistrian section, notably through an EU Border Mission'. He was also made accountable, through a support team led by the double-hatted Head of the Mission/Senior Political Adviser to the EUSR, for: assuring political overview of activities related to the Moldovan-Ukrainian border; analysing Moldova's and Ukraine's commitment to improving border management; promoting

[229] EUBAM, 'Progress Report 2005-2010', 5.
[230] European Commission, Government of the Republic of Moldova and Government of Ukraine, 'Memorandum of understanding between the European Commission, the Government of the Republic of Moldova and the Government of Ukraine on the European Commission Border Assistance Mission to the Republic of Moldova and to Ukraine', available at: http://europa.eu/legislation_summaries/foreign_and_security_policy/cfsp_and_esdp_implementation/ps0002_en.htm, accessed on 5 April 2012, 7-8.

cooperation between Moldova and Ukraine on border issues, with a view to the settlement of the Transnistrian conflict.[231]

EUBAM was launched on 30 November 2005 with an initial mandate for two years. For the first six months the mission was financed by the European Commission through the RRM (with a total budget of €4 million), in addition to co-financing in kind from member states who provided the majority of personnel through the secondment of border guards and customs officials.[232] Initially 69 EU experts were deployed to work alongside 40 local staff.[233] Subsequent phases of the mission saw both an increase in the number of personnel and an enhanced budget. In January 2008 the mission comprised 233 staff, of which 122 were international staff and 111 local staff, and by November 2009 the budget had been increased to approximately €44.2 million (comprised of €4 million RRM financing, roughly €16 million provided under the TACIS programme and €24 million ENPI financing).[234] Following this period of growth, the mission was subsequently restructured and streamlined with a confirmed budget of €14.8 million for the period 2015-2017 and 80 international staff from 13 EU member States, and 116 national staff from Moldova and Ukraine.[235]

The MoU emphasised the advisory nature of EUBAM by making it clear that the mission's staff will not have the authority to enforce the laws of Moldova and Ukraine and thus lack any executive powers. Their competences, as laid out in the MoU, included: the right to make unannounced visits to any location on the Ukrainian-Moldovan border, to be present and to observe customs clearance in progress, to examine and to copy customs import documents and supporting commercial records, and to review official books and records that do not include state secrets.[236]

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[231] EU Council, 'Council Joint Action 2005/776/CFSP of 7 November 2005 amending the mandate of the European special Representative for Moldova', available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32005E0776, accessed on 10 September 2015.

[232] European Commission, 'Information Note to the Council'.

[233] EUBAM, 'Annual Report 2005/2006. European Union Border Assistance Mission to Moldova and Ukraine' (2007), 6, available at: http://www.eubam.org/files/Report_Engl_2005-2006.pdf, accessed on 4 April 2015.

[234] Dura, 'The EU Border Assistance Mission', 281.

[235] Please see www.eubam.org.

[236] European Commission, Government of the Republic of Moldova and Government of Ukraine, 'Memorandum of understanding', 2.

EUBAM's headquarters are in Odessa and the mission has six field offices on the Moldovan-Ukrainian border (at Otaci, Chisinau, Basarabeasca, Kuchurhan and Kotovsk) and in Odessa Port.[237] The external management of the mission was entrusted to DG RELEX, which initially cooperated closely with the EuropeAid Co-operation Office and the EC Delegations in Kiev and Chisinau. The oversight of the programme would subsequently be devolved to the EC Delegation in Kiev in order to ensure a smooth transition between the RRM and TACIS. Since EUBAM is a Commission-run operation and the EC lacks operational capacities, an implementing partner had to be contracted in order to technically implement the mission and provide all administrative functions. The obvious choice for this role was the United Nations Development Programme (UNDP), which has developed something of a 'symbiotic' relationship working with the EC on similar projects in the region.[238] The UNDP has significant experience with large and logistically complex operations, has public law status, has had a presence in both countries and, in addition, has implemented comparable EC TACIS projects (such as the Border Management Programme in Central Asia – BOMCA and Belarus-Ukraine-Moldova Action on Drugs – BUMAD). Nonetheless, as EUBAM grew increasingly discontent with UNDP's costs and rules over recent years, the prospect of changing the implementing partner was raised. In addition to being expensive – according to EUBAM's leadership 10% of the mission's budget was used on UNDP-related costs – the UN programme also started displaying less flexibility.[239] This situation incentivised EUBAM to look for a new implementing partner and, as of the end of 2013, the International Organisation for Migration (IOM) replaced UNDP.

Over its lifetime, EUBAM has had 3 Heads of Mission. Hungarian national Major-General Mr Ferenc Banfi was nominated as the first Head of Mission and acted in

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[237] EUBAM, 'European Union Border Assistance Mission to Moldova and Ukraine Brochure' (2008), available at http://www.enpi-info.eu/library/content/eu-border-assistance-mission-moldova-and-ukraine-brochure, accessed on 4 April 2012, 7-9.

[238] Kurowska and Tallis, 'EU Border Assistance Mission', 52.

[239] One of the UNDP rules stipulates that staff from EU member states cannot have contracts longer than five years, which was regarded by EUBAM as a particularly difficult challenge to the mission's performance. While the mission initially obtained a waiver under a gentlemen's agreement, the UNDP allegedly refused to continue the deal. As a result, nine members of staff, including the Head of Mission, the Deputy Head of Mission and key members of the strategic and analyst teams had to be replaced in 2014. Interview EUBAM leadership, 4 April 2013, Odessa.

this post until 31 December 2009 when he resigned. He was succeeded by Mr Udo Burkholder, a German national with 30 years of experience within the Border Guard and Federal Police of Germany, who served as acting Head of Mission from 1 January 2010 until 18 May 2010 when he assumed the full position of Head of Mission. The current HoM, Mr Francesco Bastagli, had a long United Nations career, serving as Assistant Secretary-General (2005-2006), Special Representative of Kofi Annan for Western Sahara and Deputy Head of the UN Mission in Kosovo (2002-2005), among others. EUBAM's mandate has been extended several times with the current mandate expiring on 30 November 2017.

3.2. Background to EUJUST Themis and EUMM: The EU's engagement in Georgia

Similarly to Moldova, Gorbachev's perestroika and glasnost policies had a considerable impact on Georgia in the late 1980s. As Moscow was loosening its grip over the Soviet Union's republics, Georgian nationalism materialised into a series of measures that threatened to weaken the autonomous status enjoyed by communities such as the South Ossetians and Abkhazians up to that point.[240] In August 1989 Georgian was declared the sole official language of the country and in April 1991 Georgia declared independence.[241] Subsequent decisions such as cancelling the autonomous status of South Ossetia and the restoration of the pre-Soviet Constitution of 1921 – which failed to specify Abkhazia's autonomy – triggered armed hostilities in both provinces. While ceasefires put an end to violence by 1994, the status of both South Ossetia and Abkhazia still remains unresolved.

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[240] Abkhazia was an 'autonomous republic' within the Soviet Georgian republic, a status which, without granting it formal sovereignty or the right to secession, was still highly valued at the symbolical level; South Ossetia was an 'autonomous region' of Georgia, which placed it at the bottom of the complex federal structure of the Soviet Union, where autonomous regions were subordinated to autonomous republics, which in turn were subordinated to Union republics, themselves subordinated to the Soviet political system. Coppieters, 'The Georgian-Abkhaz Conflict', 193; 197.

[241] Mehmet Bardakci, 'EU Engagement in Conflict Resolution in Georgia: Towards a More Proactive Role', *Caucasian Review of International Affairs* 4:3 (2010), 216-17.

Conflicts have occasionally re-erupted since the mid-1990s, but it was in the wake of the Rose Revolution that tensions intensified.[242] The relatively stable status quo was upset as Georgian President Eduard Shevardnadze lost the presidential election to Mikhail Saakashvili in 2003 and a series of domestic changes ensued.[243] The new leadership embarked on a state-building and conflict resolution effort which, while bringing significant contributions to reforming and strengthening state capacities, did not bring about a more democratic polity and to an even lesser degree a solution to the conflicts. On the contrary, President Saakashvili's nationalist agenda of remilitarisation and pushing for the reintegration of the secessionist regions led to renewed violence and instability in the two break-away territories. Besides intensifying tensions with South Ossetia and Abkhazia Georgia was also experiencing deteriorating relations with Russia, which worsened after Kosovo's unilateral declaration of independence in February 2008 and Russia's subsequent steps towards de facto annexation of these two regions.[244] It was against this tense background that Georgia tried to forcefully reintegrate South Ossetia by sending troops to Tskhinvali in August 2008 and setting off a five-day war with Russia. The EU responded promptly and, under the leadership of French President Nicolas Sarkozy, brokered a ceasefire within days of the outbreak of the war. While the agreement successfully ended the war and Moscow formally withdrew from Georgia in October 2009, 3.700 Russian troops each remained in South Ossetia and Abkhazia and Russia declared it would keep warships in Abkhazia permanently.[245]

Prior to the 2003 Rose Revolution, the EU's engagement in Georgia was essentially technical and economic, lacking completely a CFSP dimension which was felt would have clashed with Russia's influence which loomed large over the region.[246] Between 1992 and 2002 the EU's main instrument for political and economic reform in Georgia was the Technical Assistance to the Commonwealth of Independent States

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[242] Michael Merlingen and Rasa Ostrauskaite, 'EU Peacebuilding in Georgia: Limits and Achievements' (Leuven Centre for Global Governance Studies, Working Paper No. 35, 2009), 7.

[243] Nathalie Tocci, 'The EU and Conflict Resolution in Turkey and Georgia: Hindering EU Potential through the Political Management of Contractual Relations', *Journal of Common Market Studies,* 46: 4 (2008), 880.

[244] Merlingen and Ostrauskaite, 'EU Peacebuilding in Georgia', 8.

[245] Bardakci, 'EU Engagement in Conflict Resolution', 217.

[246] Merlingen and Ostrauskaite, 'EU Peacebuilding in Georgia', 11.

(TACIS) programme.[247] However, in the wake of the positive developments triggered by the Rose Revolution and as a result of the EU Security Strategy, which called for a more active interest in the region, an EU Special Representative for the South Caucasus was appointed in 2003. The mandate of the first EUSR for the South Caucasus, Heikki Talvitie, was merely one of 'assisting in conflict resolution' and supporting the efforts of other actors such as the UN Secretary General and his Special Representative, and the OSCE; it also included developing contacts with local actors, strengthening EU dialogue with other international actors and assisting the Council in further elaborating a policy towards the region.[248] Despite its limited mandate, this 'travelling' EUSR was significantly involved in mediation efforts between Tbilisi and the separatist authorities of the Adjara region and also contributed to negotiations over the crisis in South Ossetia in 2004.[249] The following years saw the development of a more prominent role of the EU in Georgia through the deployment of the first ever rule of law mission in the CSDP framework, EUJUST *Themis*, and the progressive expansion of the EUSR's mandate.

In 2004 the three South Caucasian countries (Georgia, Armenia and Azerbaijan) were included in the European Neighbourhood Policy (ENP). Through its Action Plans, the ENP provides a framework for integration into European economic and social structures by embracing a wide range of issues, its underlying rationale being that of promoting political, economic and institutional reforms. The priorities of Georgia's Action Plan are: strengthening rule of law, democratic institutions, respect for human rights and fundamental freedoms; improving the business and investment climate through a transparent privatisation process and fight against corruption; encouraging economic development, poverty reduction, social cohesion and the protection of environment; enhancing cooperation in the field of justice, freedom and security; strengthening regional cooperation; promoting peaceful resolution of internal conflicts; cooperation on

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[247] TACIS is a foreign and technical assistance programme implemented by the European Commission to help members of the Commonwealth of Independent States (as well as Mongolia), in their transition to democratic market-oriented economies. Since 2007 TACIS has been replaced by the European Neighbourhood and Partnership Instrument (ENPI). For more information on TACIS, see: http://ec.europa.eu/europeaid/where/neighbourhood/overview/index_en.htm.

[248] Grevi, 'Pioneering foreign Policy', 57.

[249] Bardakci, 'EU Engagement in Conflict Resolution', 224.

foreign and security policy; cooperation in the areas of energy and transport.[250] All these objectives aim to draw Georgia closer into the EU legislative and regulatory framework and at the same time to address what the Union understands as the root causes of protracted conflicts: poor governance, economic underdevelopment, poverty and perceptions of 'otherness'.[251]

The launch of EUJUST *Themis*, together with the inclusion of the three South Caucasian countries in the ENP, contributed to an upgrade of the role of the EUSR. Its mandate was extended to incorporate a locally-based support team to follow-up on the activities of EUJUST *Themis* after the end of its operations in the summer of 2005, the provision of support to Georgian border guards and a more active role in conflict resolution.[252] The brief war between Georgia and Russia in 2008 provided the context for the EU to acquire a conflict manager role in the region. Apart from its decisive involvement in achieving a ceasefire, it took several other steps to strengthen its presence on the ground: it appointed a special EUSR for the crisis in Georgia, dissociating this issue from the mandate of Peter Semneby, the EUSR for the South Caucasus, and deployed an EU Monitoring Mission (EUMM) whose objectives included monitoring the security situation on the ground and implementing the agreements, establishing contacts between parties and informing EU policy.[253] The EUMM made a noteworthy contribution to containing hostilities in the post-conflict area through monitoring the resettlement and treatment of internally displaced persons (IDPs), the freedom and security of civilians, law enforcement, de-mining and the humanitarian situation in the conflict area, among others; however, it has been argued that its role was confined to prevention rather than positive contribution to conditions conducive to peace.[254] The 2008 Georgian crisis also saw a more politically salient involvement of the EU as the Union became an official co-chair of the Geneva process, together with the UN and OSCE, in contrast with its previous roles in the context of settlement negotiations (observer status in the Joint

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[250] European Commission, 'EU-Georgia Action Plan' (2005) available at: http://ec.europa.eu/world/enp/pdf/action_plans/georgia_enp_ap_final_en.pdf, accessed on 7 March 2011, 4-11.
[251] Merlingen and Ostrauskaite, 'EU Peacebuilding in Georgia', 11; 16.
[252] Tocci, 'The EU and Conflict Resolution in Turkey', 885.
[253] Gwendolyn Sasse, 'The European Neighbourhood Policy and conflict management: a comparison of Moldova and the Caucasus' in *EU conflict management.* Hughes, J. ed., (London: Routledge, 2010), 103.
[254] Merlingen and Ostrauskaite, 'EU Peacebuilding in Georgia', 24.

Control Commission for South Ossetia and participation in the Group of Friends through some of the member states in Abkhazia).[255]

3.2.1. Rocky beginnings: EUJUST Themis's rationale and its difficult inception

EUJUST Themis represented a premiere in the EU's conflict resolution repertoire from several points of view: it was the first rule-of-law mission deployed by the EU under CSDP and the first ever CSDP operation in the post-Soviet space.[256] Its rationale can be understood as responding to both external and internal imperatives of the EU. On one hand, it was meant to show the Union's support for Georgia's recently embarked upon path of reform and democratisation in the aftermath of the Rose Revolution. A security argument was also put forward – although Georgia was considered to be stable following the Rose Revolution, it was thought that the situation could easily deteriorate and consequently undermine regional security, as well as the democratic process; the EU's presence on the ground through a rule of law mission would arguably contribute to embedding stability in the region.[257] On the other hand, it was considered a good test case for the EU's civilian crisis capabilities in the area of rule of law and it was expected that the lessons learned during the mission would be 'developed and implemented in other possible future ESDP operations'.[258] As the first operation in the former Soviet Union, Themis was also thought to be a good test for the EU's relations with Russia.[259]

The possibility of deploying a rule of law mission under the CSDP in Georgia emerged for the first time as an informal suggestion within the Estonian Permanent

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[255] Richard Whitman and Stefan Wolff, 'The EU as a Conflict Manager? The Case of Georgia and its Implications', *International Affairs*, 86:1 (2010), 7.

[256] Xymena Kurowska, 'The rule of law mission in Georgia (EUJUST *Themis*)' in *European Security and Defence Policy: the first ten years (1999-2009)*, Giovanni Grevi, Damien Helly and Daniel Keohane eds., (EU Institute for Security Studies, 2009), 202.

[257] EU Council, 'Council Joint Action 2004/523/CFSP of 28 June 2004 on the European Union Rule of Law Mission in Georgia, EUJUST THEMIS' (2004).

[258] EU Council Secretariat, 'EU Rule of Law Mission to Georgia – EUJUST *Themis,* Background', THE/02 (update 2), 19 April 2005.

[259] Damien Helly, 'EUJUST Themis in Georgia: an ambitious bet on rule of law', in *Civilian crisis management: the EU way*, Agnieszka Nowak ed., Chaillot Paper No. 90 (EU Institute for Security Studies, 2006), 91.

Representation to the EU in December 2003.[260] The proposal was received favourably, enjoying the support of the Irish Presidency. The Council thus decided in March 2004 to send an exploratory mission to Georgia to identify potential problems in the Georgian justice system and assess the need for a rule of law mission. The exploratory team found that Georgia's justice system was in need of international assistance and recommended the deployment of a rule of law mission which would focus on reforms targeted at rendering the system more coherent and effective, including the reform of the penitentiary system.[261] Following the advice of the Committee for Civilian Aspects of Crisis Management (CIVCOM) to the Political and Security Committee (PSC), a proper Council fact-finding mission was sent to Georgia between 10 and 21 May 2004. In particular, the mission was to pay special attention to: the added value of a rule of law mission to the reform of the justice system in Georgia; the need to ensure coherence and complementarity with other EU instruments and international actors on the ground; the adequacy of the EU's capabilities for such a mission; the financing procedures; and the security of personnel.[262]

Despite the mission's solid rationale and the initial enthusiasm that it was welcomed with, its nature, form and structure soon became subject to controversy and resulted in a difficult inception of the operation. A first issue of contention was whether a CSDP mission was the right framework for a rule of law operation in Georgia. The 'crisis' component of the operation signalled an intervention into an already tense situation and, while in the aftermath of the Rose Revolution Georgia's security was yet to be consolidated, the country was hardly 'in crisis'. This was a position typically embraced by the European Commission (EC) who had good reasons to desire the deployment of EUJUST Themis outside the CSDP framework. Firstly, the Commission was already involved in assisting with justice-related reforms in Georgia. Under the Rapid Reaction Mechanism (RRM)[263] and the policy advice budget line, the EC

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[260] Helly, 'EUJUST Themis in Georgia', 92; Xymena Kurowska, 'More than a Balkan Crisis Manager: The EUJUST Themis in Georgia' in *European Security and Defence Policy. An Implementation Perspective,* Michael Merlingen and Rasa Ostrauskaitė eds (London: Routledge, 2008), 99.

[261] Kurowska, 'The rule of law mission in Georgia', 204.

[262] CIVCOM note on a possible Rule of Law Mission to Georgia in the context of ESDP, 8778/04, 23 April 2004.

[263] The Rapid Reaction Mechanism was created in 2001 in order to enable the European Commission to take 'rapid action (…) in specific areas in response to or avoid real or potential crisis situations or

Delegation to Georgia had assisted the Ministry of Justice in reforming the Prosecutor's office and the penitentiary system and had provided technical assistance and policy advice to the Interior Ministry.[264] Thus, the Commission preferred enhancing and expanding these activities rather than launching a 'civilian crisis management' operation. Secondly, it regarded the deployment of Themis under the CSDP as an encroachment upon its area of expertise, since the international promotion of legal reforms had traditionally fallen within its remit.[265]

On the other hand, there were strong arguments for organising the mission under the CSDP and outside the Commission's framework. To begin with, a CSDP operation would have ensured the Council had effective control of the mission, whereas the EC outsources its international projects to third parties because it lacks operational capacities. Moreover, unlike the Commission's assistance programmes, CSDP operations can be launched rapidly and are able to provide the EU with enhanced visibility due to their political rather than merely technical character.[266] The Commission ultimately lost the fight against the launching of a CSDP mission but it continued to defend its reform portfolio from infringements from EUJUST Themis. Themis ultimately progressed as a CSDP operation and the overall political control and strategic direction of the mission was provided by the Political and Security Committee, under the responsibility of the Council.[267] Nonetheless, the EC would keep oversight over the penitentiary reform issue, which it regarded as its area of expertise.[268] This is only one example of how inter-institutional politics has played out in the overall organisation of the mission and is certainly one of the positive instances of Commission-Council cooperation. The competition between the two institutions has often generated fragmentation of EU engagement in Georgia and, it has been argued, a mandate that did not quite respond to the country's needs.[269]

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conflicts'. The RRM was replaced in 2007 by the Instrument for Stability. For more information on the RRM, see: http://europa.eu/legislation_summaries/other/r12701_en.htm.

[264] Helly, 'EUJUST Themis in Georgia', 89.

[265] Kurowska, 'More than a Balkan Crisis Manager', 100.

[266] Kurowska, 'The rule of law mission in Georgia', 204.

[267] EUJUST Themis, 'Facts on EUJUST THEMIS', 2004, available at: http://www.eeas.europa.eu/csdp/missions-and-operations/eujust-themis-georgia/pdf/26102004_factsheet_eujust-themis-georgia_en.pdf, accessed on 15 September 2015, 2.

[268] Kurowska, 'More than a Balkan Crisis Manager', 101.

[269] Kurowska, 'More than a Balkan Crisis Manager', 102.

On 28 June 2004 the Council adopted Joint Action 2004/523/CFSP which officially established the EU Rule of Law Mission in Georgia, EUJUST Themis. The role of EUJUST Themis was 'to contribute to Georgia's stability and transition by supporting overall coordination of the relevant Georgian authorities in the field of criminal justice reform'.[270] The mission's mandate was generous and provided for assistance to the Georgian government in reforming the criminal justice sector, particularly: guidance for the new criminal justice reform strategy, support for the Georgian authorities in their efforts towards judicial reform and anti-corruption, support for the planning of new legislation, support for international and regional cooperation in the area of criminal justice.[271] In fulfilling its mandate, Themis had to ensure complementarity with EC programmes and other donors' programmes. The mission's structure comprised the Head Office in Tbilisi, composed of the Head of the Mission and staff, as well as senior legal experts co-located in various rule of law institutions and assisted by Georgian legal assistants. The Head of the Mission was nominated on 30 June in the person of the French judge Sylvie Pantz. She reported to SG/HR Javier Solana through the EU Special Representative for the Southern Caucasus, Heikki Talvitie.[272]

As far as mission experts are concerned, they remained under the authority of the member states by which they were seconded. EUJUST Themis was deployed to Georgia on 16 July 2004. A total of eight European rule of law experts were co-located with Georgian authorities and were given a one-year mandate to assist their local counterparts in evaluating the justice system, drafting a criminal justice reform strategy and elaborating an implementation plan.[273] The European experts were co-located at the following key positions within the Georgian authorities: the Ministry of Justice, the Ministry of Interior, the General Prosecutor's Office, the Supreme Court of Georgia, the High Council of Justice, the Public Defender's Office, the Court of Appeal Tbilisi and the City Prosecutor's Office Tbilisi.[274] The financing made available by the EU to cover the

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[270] Helly, 'EUJUST Themis in Georgia', 87.
[271] EU Council, 'Council Joint Action 2004'.
[272] EU Council, 'Facts on EUJUST THEMIS', 2.
[273] Merlingen and Ostrauskaite, 'EU Peacebuilding in Georgia', 22.
[274] EU Council, 'Facts on EUJUST THEMIS', 3.

expenditure related to the mission totalled over €2 million.[275] EUJUST Themis comprised a planning phase to begin by 1 July 2004 and an operational phase to begin by 15 July 2004. As part of the former, the planning team would draw up an operation plan (OPLAN) based on a comprehensive situation assessment, which had to be approved by the Council.[276] The mission's operative plan envisioned three consecutive phases: an assessment phase, a drafting phase and an implementation-planning phase. Each phase focused on specific objectives: 1. the comprehensive assessment of the Georgian criminal justice system by Themis; 2. the drafting of a reform strategy by a high-level working group composed of local and Themis experts; 3. the formulation of a plan for the implementation of the reform strategy by a high-level strategy group again made up of local and Themis experts.[277] Apart from setting out an action plan, the mission's OPLAN was also supposed to provide a benchmarking system 'to enable a systematic evaluation of the mission'.[278] The next section assesses the mandate of EUJUST Themis with a view to establishing the impact of its functional objectives.

3.2.2. EUMM: the challenges of post-conflict stabilisation

The European Union Monitoring Mission to Georgia was deployed as a result of the EU acquiring a unique conflict mediation role in the Southern Caucasus. The Russian-Georgian war of August 2008 provided an opening for the EU under the dynamic French Presidency to become actively involved in peace negotiations and the subsequent post-conflict security arrangements in Georgia. On 10 August 2008 the EU Presidency, in cooperation with the OSCE, launched a negotiation mission, which resulted in the signing of the Six Point Ceasefire Agreement by Russia and Georgia.[279] The ceasefire agreement, reached on 12 August and signed on 15-16 August, was loosely worded and terse in its provisions: (1) no resort to force; (2) a definitive cessation of

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[275] Xira Ruiz Campillo, 'La mision EUJUST Themis en Georgia', *UNISCI Discussion Papers*, Num. 7, (Universidad Complutense de Madrid, 2005), 10.
[276] EU Council, 'Council Joint Action 2004'.
[277] Kurowska, 'The rule of law mission in Georgia', 206.
[278] Helly, 'EUJUST Themis in Georgia', 92.
[279] Sabine Fischer, 'The European Union Monitoring Mission in Georgia (EUMM)' in European Security and Defence Policy: the first ten years (1999-2009), Giovanni Grevi, Damien Helly and Daniel Keohane eds. (Paris: The European Union Institute for Security Studies, 2009), 380.

hostilities; (3) free access to humanitarian assistance; (4) the withdrawal of Georgian military to the places of permanent deployment; (5) the return of Russian armed forces on the line preceding the start of hostilities; while awaiting an international mechanism, Russian peacekeeping forces will implement additional security measures; (6) Opening of international discussions on security and stability modalities in Abkhazia and South Ossetia.[280] The agreement thus envisaged the deployment of an international mechanism to monitor the ceasefire and the initiation, as soon as possible, of international talks regarding the post-conflict security and stability arrangements in South Ossetia and Abkhazia. On 1 September 2008 the French Presidency convened an extraordinary European Council meeting in Brussels, which endorsed the six point ceasefire agreement and decided on the deployment of a CSDP mission in order to oversee the implementation of the plan.

In preparation for the establishment of the CSDP observer mission the EU dispatched a number of exploratory and preparatory teams tasked with gathering information, assessing the needs on the ground and defining the potential areas of activity of the prospective CSDP operation. Thus, even before the 1 September European Council meeting the Council Secretariat had sent two exploratory teams to Georgia in order to assess the situation on the ground and reinforce the team of the EUSR for the South Caucasus. In parallel, the Commission dispatched a crisis assessment team, in addition to the European Commission's Humanitarian Aid Office (ECHO) team that had already been tasked with monitoring the humanitarian situation in Georgia.[281] A fact-finding mission was dispatched following the 1 September European Council with the aim of 'defining the modalities for an increased European Union commitment on the ground, under the European Security and Defence Policy'.[282] Once the tasks of the future CSDP mission were broadly defined and its potential responsibilities identified, a joint Council/Commission exploratory team was sent to prepare the mission's concept of

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[280] International Crisis Group, 'Russia vs Georgia: The Fallout', Crisis Group Europe Report N°195, 22 August 2008, 4.

[281] Fischer, 'The European Union Monitoring Mission', 381.

[282] Council of the European Union, 'Presidency Conclusions', extraordinary European Council, 1 September 2008 (Brussels, 6 October 2008), available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/102545.pdf, accessed on 23 July 2014.

operations (CONOPS).[283] The six-point plan was followed on 8 September by an additional implementation agreement concluded by Russia and Georgia, after intense diplomatic efforts by Commission President Barroso and French President Sarkozy.[284] Finally, the additional measures agreed upon in order to implement the ceasefire plan paved the way for the deployment of the EUMM, by stipulating 'the full withdrawal of Russian peacekeeping forces from the zones adjacent to South Ossetia and Abkhazia to pre-conflict lines […] within 10 days after the international mechanism is in place, no later than October 1, 2008 […] involving no less than 200 EU observers'.[285] As a result, the Council Secretariat dispatched an advance team to prepare the deployment on the ground and the EC Delegation and the EUSR for the South Caucasus team in Tbilisi facilitated and coordinated the various EU actors in the field. [286]

The input provided by the multitude of exploratory, fact-finding and preparatory teams sent to Georgia prior to the EUMM's deployment contributed to defining the mandate of the mission and the drafting of the Joint Action (JA) which represented its legal basis. The EUMM was given a broad mandate to 'contribute to stabilisation, normalisation and confidence building whilst also contributing to informing European policy in support of a durable political solution for Georgia' through civilian monitoring of the parties' actions, including full compliance with the six-point Agreement.[287] Over 200 civilian monitors were tasked with monitoring compliance of the Agreement by all sides, mainly through 24h patrols particularly in the areas adjacent to the South Ossetian and Abkhazian Administrative Boundary Lines (ABLs), observing the situation on the ground and reporting on incidents.

Within only two weeks of the adoption of the JA the EU was able to deploy the EUMM on the ground, enabling monitors to begin patrols on 1 October 2008. The mission's field presence consisted of its Headquarters in Tbilisi and four regional offices in Tbilisi, Gori, Kashuri and Zugdidi, although some of these would subsequently be

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[283] Fischer, 'The European Union Monitoring Mission', 381.
[284] Whitman and Wolff, 'The EU as a Conflict Manager?', 93.
[285] Civil Georgia, 'New Agreement in Force', 8 September 2008, available at: http://www.civil.ge/eng/article.php?id=19435, accessed on 30 May 2014.
[286] Fischer, 'The European Union Monitoring Mission', 381.
[287] Council of the European Union, 'Council Joint Action 2008/736/CFSP of 15 September 2008 on the European Union Monitoring Mission to Georgia, EUMM Georgia', L248/26, Official Journal of the European Union, 17 September 2008.

relocated. The monitors initially came from 22 member states (but gradually came to cover all EU member states) and consisted largely of police recruits. While this diversity had the potential of equipping the mission with a broad range of skills and experience, the initial strategy of organising the patrols around national contingents meant that the unique skills of robust Italian Carabinieri could not be combined with those of national contingents more used to community policing.[288] As the mission was purely civilian and lacked any executive powers, the monitors were unarmed and their prerogatives were limited to monitoring and reporting activities rather than the actual provision of security.

The immediate task of the EUMM was to oversee the withdrawal of Russian forces from Georgian territory that they had occupied during the August war. The withdrawal process proved to be highly challenging given that, in the aftermath of the ceasefire, 'Russia not only failed to withdraw, it expanded territory under its control beyond the pre-war conflict zones' occupying as many as 51 villages it did not control before the war, according to the Georgian government.[289] In addition, although the EUMM was mandated to cover the whole territory of Georgia within the country's internationally recognised borders, Russia and the de facto authorities in Abkhazia and South Ossetia have so far denied mission representatives access to the breakaway territories.[290] Therefore, the mission is unable to perform monitoring actions on the territories of South Ossetia and Abkhazia, a limitation that reduces its potential impact on the security situation around the ABLs. As a result, the six-point agreement has not been fully implemented to this day (specifically point 5 remains to be implemented) because of Russia's refusal to withdraw its military personnel and equipment from both South Ossetia and Abkhazia.[291] As far as Moscow's position on the issue is concerned, it considers point 5 of the six-point agreement superseded by its recognition of South Ossetia and Abkhazia.[292]

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[288] Mary Martin, 'Crossing boundaries: The European Union Monitoring Mission to Georgia', In M. Martin and M. Kaldor (eds) *The European Union and human security* (London, New York: Routledge, 2010), 134.
[289] David L. Phillips, 'Implementation Review: Six Point Ceasefire Agreement between Russia and Georgia', National Committee on American Foreign Policy and the Institute for the Study of Human Rights, August 2011, 10.
[290] EUMM, available at: http://www.eumm.eu/en/about_eumm, accessed on 30 April 2014.
[291] European Union Monitoring Mission in Georgia (EUMM), available at: http://www.eumm.eu/en/about_eumm, accessed on 30 April 2014.
[292] Fischer, 'The European Union Monitoring Mission', 383.

In addition to its tasks related to the monitoring of security developments, the mission also tackles issues related to the normalisation process including the monitoring of the resettlement and treatment of internally displaced persons (IDPs), the freedom and security of civilians, law enforcement, de-mining and the humanitarian situation in the conflict area, among others; however, it has been argued that its role was confined to prevention rather than positive contribution to conditions conducive to peace.[293] The mission's significance is also enhanced by being the only internationally mandated presence in Georgia after Russia succeeded in preventing the continued operation of the UN and OSCE missions in Abkhazia and South Ossetia, respectively.[294] The EUMM also participates in the Geneva talks which include Georgia and Russia, as well as the US, UN, OSCE and EU as international mediators. The mission is meant to provide the negotiation forum with objective, impartial information regarding security developments on the ground, thus providing a factual basis for further discussions. However, the Geneva talks have found it difficult to promote confidence-building between conflict parties. The constant re-emergence of the issue of 'recognition' of the two breakaway regions as an irreconcilable difference between Georgia on one hand, and Russia, South Ossetia and Abkhazia, on the other hand, has meant that negotiations have not succeeded in making significant progress.

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[293] Merlingen and Ostrauskaite, 'EU Peacebuilding in Georgia', 24.
[294] Whitman and Wolff, 'The EU as a Conflict Manager?', 93.

Chapter 4

The EU Border Assistance Mission to Moldova and Ukraine: building working relationships through confidence-building

EUBAM does not have a specific mandate to engage directly with the conflict parties in the context of confidence-building measures[295] and its activities in this area have been largely ad hoc, depending on the needs and willingness of the Moldovan and Transnistrian parties to cooperate. Its contribution to the settlement of the Transnistrian conflict, as formulated under the Memorandum of Understanding signed by the Moldovan and Ukrainian Presidents in 2005, was envisaged as the indirect result of enhanced border control which was expected to curb illegal cross-border activities and lead to a subsequent improvement in the regional security situation. However, given its vagueness, EUBAM's mandate has been variously interpreted to accommodate the changing circumstances on the ground and to provide the mission with the opportunity to engage in those areas where it could be most effective. The mission was believed to be in a strong position to provide support to confidence-building measures with regard to the Transnistrian conflict given its presence and expertise on the ground, as well as its network of contacts at technical level among Moldovan, Transnistrian and Ukrainian transport and customs officials. The lack of a formal mandate to cooperate directly with the Transnistrian authorities has nonetheless meant that the mission's confidence-building initiatives take place in an ad hoc manner rather than being embedded in a well-structured institutional framework. Thus, EUBAM's role in this area includes establishing contacts between relevant actors, providing practical solutions to customs, trade and transportation issues between Moldova and Transnistria and assisting with the

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[295] Roxana Cristescu and Denis Matveev, 'Peacebuilding and Conflict Prevention in Moldova: the role of the EU' (paper presented at the Civil Society Dialogue Network (CSDN) Member State Meeting 'Conflict Prevention and Peacebuilding in the EU's Eastern Neighbourhood and the Western Balkans', Bucharest, Romania, 28 June 2011).

implementation of the Joint Declaration which introduced a new customs regime at the Moldovan-Ukrainian border in 2006.[296]

Being a purely advisory mission who lacks executive powers, EUBAM is not involved in the political negotiation process under the 5+2 format, but its confidence-building work is coordinated with the overall political effort to settle the conflict. By monitoring the implementation of the Joint Declaration and supporting the Moldovan, Transnistrian and Ukrainian parties in their efforts to resolve customs, trade and transportation issues, the mission is effectively involved in 'economic confidence-building' which 'entails a positive policy of assuring economic security and linking the adversaries by means of material ties'.[297] EUBAM's role in the conflict settlement negotiations consists of providing support to technical confidence-building measures between Moldovan, Transnistria and Ukraine , including the organisation of meetings, roundtables, trainings and study tours for customs experts and drafting technical evaluations and recommendations to address outstanding issues such as railway traffic and border demarcation.

The rest of this chapter explores EUBAM's two most prominent confidence-building achievements, outlining the mission's contribution to the resolution of some of the most protracted practical issues that impeded cooperation between Moldova, Transnistria and Ukraine – the implementation of a new customs regime at the Ukrainian-Moldovan border and the resumption of railway traffic through Transnistria. At the same time, this chapter will seek to identify the conditions under which cooperation between EUBAM and the Moldovan, Transnistrian and Ukrainian parties was possible by investigating when relevant parties to a conflict can be expected to participate in confidence-building measures. Given the preferential fit assumption, cooperation is expected only if EUBAM's confidence-building recommendations are perceived as beneficial, or at the very least as not detrimental, to the Moldovan and Ukrainian governments' and the Transnistrian de facto authorities' goal of strengthening political power. Whether Moldovan, Transnistrian and Ukrainian political elites will choose a strategy of cooperation or not will depend on the influence of veto players, alternative

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[296] Djuric, 'Evaluation of the European Union Border Assistance Mission', 39.
[297] Väyrynen, 'The European Cooperation', 350.

coalitions and, EU threats and side-payments on their cost-benefit calculations. The chapter establishes whether and under what circumstances these factors alter the governments' strategic calculations in light of their fixed preferences for power.

4.1.   The Joint Declaration: implementing the customs regime at the Moldovan-Ukrainian border

EUBAM's involvement in monitoring the implementation of the Joint Declaration (JD) on establishing effective border control on the Moldovan-Ukrainian border represents perhaps its highest-profile operational activity.[298] At the end of 2005, one month after the deployment of EUBAM, the Prime Ministers of Moldova and Ukraine signed a Joint Declaration on the effective implementation of the customs regime on their common border, in a renewed push to curb illegal trade activities from Transnistria. Essentially, the JD 'provides a legal framework for companies based in the Transnistrian region of the Republic of Moldova to perform import and export business, while maintaining the integrity of the customs territory of Republic of Moldova under the control of the Chisinau authorities'.[299] Moldova's attempts at introducing a new customs regime at its border with Ukraine had been ongoing for several years, with each initiative undermined by vested interests in Ukraine and Transnistria, where considerable profits were allegedly being made as a result of smuggling across the Transnistrian segment of the border.[300]

In 2001 Presidents Voronin and Kuchma concluded an agreement on the creation of joint customs posts and the withdrawal of old customs stamps by Kiev. However, this resulted in nothing more than claims by Ukrainian officials that 'nothing in international and national legislation obliges [them] to block the introduction of Transnistrian goods in

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[298] EUBAM, 'Annual Report 2005/2006. European Union Border Assistance Mission to Moldova and Ukraine' (2007), 6, available at http://www.eubam.org/en/, accessed on 4 April 2015.

[299] EUBAM, 'Progress Report 2005-2010. Main achievements in border management by the partner services in five years of EUBAM activity', 2011, 16, available at: http://www.eubam.org/en/, accessed on 3 June 2015.

[300] Steven Lee Myers, 'Ukraine battles smugglers as Europe keep close eye', *International New York Times*, 28 May 2006, available at: http://nyti.ms/29QDKBX, accessed on 24 April 2016.

the Ukrainian territory without new stamps'.[301] Under growing international pressure, a further protocol was signed in May 2003 under which Ukraine committed to allow on its territory only goods from Transnistria that carried Moldovan customs stamps. But despite the formal agreement, Kiev continued to tolerate illegal trade from Transnistria much to the exasperated frustration of Chisinau. Efforts at establishing legal trade across the Moldovan-Ukrainian border continued after the 2004 Orange Revolution in Ukraine, but the implementation of the new customs regime only entered into force following EUBAM's deployment and the signing of the Joint Declaration. In effect, the JD does not stipulate new regulations but it undertakes to re-implement the previously agreed upon customs protocol signed by Moldova and Ukraine in 2003, which had not been enforced by Ukraine.

The implementation of the customs regime is of crucial importance for Moldova. By registering with the Moldovan authorities, Transnistrian businesses can operate legally, thus contributing to increasing Chisinau's customs revenues and curbing smuggling and illegal cross-border activity. In addition to improving Moldova's oversight of foreign trade activities from Transnistria, the JD has provided Transnistrian businesses with significant incentives for operating within the legitimate Moldovan legal framework: by adhering to the framework set up by the JD, Transnistrian operators enjoy a system of trade preferences such as lower tariffs or duty free on the goods they export.[302] This is because, under these conditions, Transnistrian exporters enjoy the Autonomous Trade Preferences (ATP) regime granted to Moldova by the EU. The number of Transnistrian companies that have registered with the State Register Chamber of Moldova has increased steadily from 380 in 2007 to more than double - 769 - in 2012.[303] In 2012 the Moldovan government amended legislation which regulated the registration of Transnistrian economic operators and the reimbursement of customs duties for imported goods to allow Transnistrian companies which are not registered with Moldovan authorities to also clear goods with the Moldovan Customs Services without

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[301] Radu Vrabie, 'New customs regime and Ukrainian factor: main piece of resistance or weak link?', e-Democracy, 17 May 2006, available at:
http://www.e-democracy.md/en/monitoring/politics/comments/20060517/, accessed on 31 August 2015.
[302] EUBAM, 'Annual Report European Union Border Assistance Mission to Moldova and Ukraine, December 2008- December 2009', 2010, 14, available at http://www.eubam.org/en/, accessed on 4 April 2015.
[303] EUBAM Annual Reports 2007, 2008, 2009, 2010, 2011, 2012, available at http://www.eubam.org/en/.

having to pay customs duty and VAT.[304] As a result of these sustained measures, almost all Transnistrian exporters are currently registered with the Moldovan authorities and more than 50% of Transnistrian exports now go to the EU.[305] The new customs regime has thus contributed to a degree of economic integration between Moldova and Transnistria, with both of them operating under the same legal framework and displaying similar trading patterns.

Given its non-executive, advisory mandate, EUBAM's role is limited to monitoring the implementation of the Joint Declaration, rather than contributing to its enforcement. The mission has provided advice to implementing partners and has particularly supported the Moldovan authorities in collecting statistics on the processes of registration and reimbursement, providing regular reporting of its findings.[306] It has also provided oversight of foreign trade activities by Transnistrian companies in order to ensure compliance with the necessary conditions for the ATP regime, as well as increasing the capacity of the Moldovan customs service to verify the origins of goods.[307] EUBAM has also brought its own contribution to improving the existing customs regime by developing technical proposals meant to facilitate legal trade from and to Transnistria, such as in the area of clearance of goods imported by the breakaway region.[308] The mission has been instrumental in monitoring the correct implementation of the terms of the Joint Declaration, with EUBAM monitors present at the border in order to observe compliance with the agreed procedures and take note of any technical issues that arose, as well as offer advice and assistance when appropriate.[309] As a result, EUBAM has been credited with being 'directly responsible for increasing transparency in trade involving

[304] EUBAM, 'Annual Report European Union Border Assistance Mission to Moldova and Ukraine, 1 December 2010 – 30 November 2011', 2012, 15, available at http://www.eubam.org/en/, accessed on 12 November 2014.

[305] Nicu Popescu and Leonid Litra, 'Transnistria: A bottom-up solution', Policy Brief No. 63, European Council for Foreign Relations, 2012, 8.

[306] EUBAM, 'Annual Report 2005/2006', 6.

[307] EUBAM, 'Annual Report European Union Border Assistance Mission to Moldova and Ukraine 2007', 2008, 6, available at http://www.eubam.org/en/, accessed on 4 April 2012.

[308] EUBAM, 'Annual Report European Union Border Assistance Mission to Moldova and Ukraine 2008', 2009, 9, available at http://www.eubam.org/en/, accessed on 4 September 2015.

[309] Please see EUBAM website, http://www.eubam.org/en/glossary/j/joint_declaration.

the Transnistrian region'[310] and thus making a significant contribution to establishing effective border control on the Moldovan-Ukrainian border.

The presence of the mission has undoubtedly played a crucial role in the implementation of the customs regime under the terms defined by the JD, particularly as far as Ukraine's compliance is concerned. Despite previous attempts at enforcing jointly agreed customs regulations on the Transnistrian segment of the Moldovan-Ukrainian border, Ukraine had always failed to respect its obligations. It was only after EUBAM became involved in the implementation process and Kiev came under increasing pressure from the international community, that Ukraine observed its responsibility to ensure the legality of trade to and from Transnistria. Thus, the mission itself noted that by 2010 'the UASCS continues to fulfil the provisions of the JD ensuring that the entry of cargo into UA [Ukraine] bears the relevant registration, export stamps and customs clearance carried out by MDCS'.[311]

Through its role in monitoring the implementation of the customs regime between Moldova and Ukraine, EUBAM has contributed to confidence-building between the two neighbours in a number of ways. The mission has been highly successful in supporting Moldova and Ukraine to develop mechanisms for information exchange and joint risk analysis.[312] For the purposes of ensuring that the export and import activities of Transnistrian companies take place under Chisinau's customs authority, effective cooperation between Moldova and Ukraine is crucial. The observance of the Joint Declaration has achieved its main purpose of bringing as much of the Transnistrian business sector as possible under Moldova's legal framework. As a technical measure, it has contributed to a certain degree of economic integration between Moldova and Transnistria, however, there can be no genuine re-integration between the two entities in the absence of mutual political will. The fact that the JD's success in determining an increasing number of Transnistrian companies to register with the Moldovan authorities has taken place in the face of Tiraspol's fierce opposition means that in reality little

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[310] US Embassy Chisinau, 'European Commission Head downbeat on Moldova', Cable 08CHISINAU1078, 31 October 2008, available at: https://wikileaks.org/plusd/cables/08CHISINAU1078_a.html, accessed on 30 August 2015.

[311] EUBAM, 'Annual Report European Union Border Assistance Mission to Moldova and Ukraine, 1 December 2009- 30 November 2010', 2011, 18, available at http://www.eubam.org/en/, accessed on 4 April 2012.

[312] Interview government official at the Ministry of Foreign Affairs, Chisinau, Moldova, 25 March 2013.

confidence has been built between the two parties. While the Moldovan government was keen to return Transnistria's business activity under its control, Tiraspol strongly opposed the measure which would have deprived it of significant revenues from illegal trade.

4.2. Setting the scene: unpacking the political agenda of the Ukrainian government

For the first four years of EUBAM's operation on the ground, Moldova was led by a communist government turned pro-European which was broadly supportive of EU integration but did not make significant efforts to advance reforms. In March 2005 Vladimir Voronin and his Party of Communists of the Republic of Moldova (PCRM) gained re-election on a pro-European platform, following a previous mandate (2001-2005) which had been characterised by strong pro-Russian inclinations. One of the reasons for the change in foreign policy focus was a strong wave of public discontent with the introduction of Russian as a second official language that resulted in large street demonstrations between January and April 2002.[313] But the main development that emboldened Voronin to seek a rapprochement with the EU was the failed Kozak Memorandum of 2003 which the Moldovan President initially endorsed only to change his mind as a result of pressure from the international community.[314] Understanding the change in public mood as well as the political leverage offered by an EU-oriented foreign policy, Voronin and a significant part of PCRM [315] quickly shifted to advocating for closer relations with Brussels and the initiation of a broad reform programme. However, despite being enticed by the potential geopolitical benefits of closer integration with the

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[313] Luke March, 'From Moldovanism to Europeanization? Moldova's Communists and Nation Building', *Nationalities Papers*, 35:4 (2007), 601.

[314] The Kozak Memorandum was a unilateral plan for the settlement of the Transnistrian conflict developed by Putin's special envoy and close ally Dmitri Kozak which would have granted Transnistria de facto veto power over changes to Moldova's constitution, including a potential decision to join the European Union.

[315] It should be mentioned that PCRM was far from being a monolithic political party as hardliners in the party continued to oppose pro-European policies; Paul Quinlan, 'Back to the Future: An Overview of Moldova Under Voronin', *Demokratizatsiya*, 12:4 (2004), 495.

EU, the communist leadership lacked the political commitment to press ahead with reforms and its achievements remained modest.[316]

The support for EUBAM, nonetheless, can be said to stand out as exceptionally strong among the political elites in Chisinau[317] and is to be attributed to Moldova's hope that the presence of the mission on the ground could incentivise Ukraine to comply with the jointly agreed customs regime. Being able to control the trade activities of Transnistrian businesses was of vital importance for Moldova. Not only did the registration of Transnistrian companies with Moldovan authorities enhance Chisinau's customs revenues, but it also consolidated its claim to sovereignty over the separatist region, both of which were key objectives of the government.[318] If Moldova's adherence to the Joint Declaration and support for EUBAM's role in implementing it were to be expected in light of its previous efforts at bringing Transnistrian trade under its authority, Ukraine's acquiescence is more puzzling. Given that Ukraine had previously not only agreed but also formally committed to implement the customs regime required by Chisinau and failed to do so on a number of occasions, what explains Kiev's enforcement of the Joint Declaration? Consistent with the argument of this thesis, Ukraine's implementation of the JD can be explained by the ability of external pressures to make non-cooperation prohibitively costly for the Ukrainian government and thus transform weak preferential fit into strong preferential fit. This was possible, on one hand, because Russia was not deemed to be a viable alternative and, on the other hand, because the cost of ignoring external pressures was assessed as higher than that of not conceding to the strategies of veto players. As a result, the acceptance of the conditions of the customs regime framework, including EUBAM's monitoring functions, was the optimal strategy for the Ukrainian government given its preference for maximising political power.

This cost-benefit calculation must be understood in the context of the strategic alignment of the incumbent regime vis-à-vis the two competing foreign policy alternatives: the West/EU, on one hand, and Russia, on the other hand. A regime that came to power on a pro-European platform, such as the Yushchenko government, would

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[316] Claire Gordon, 'The EU as a reluctant conflict manager in Moldova', 121.

[317] Interviews with Moldovan officials at the Ministries of Interior and Foreign Affairs, 25 and 26 March 2013, Chisinau, Moldova.

[318] Wim van Meurs, 'Moldova ante portas: the EU Agendas of Conflict Management and "Wider Europe"', Center for Applied Policy Research, University of Munich, 2004, 5.

most likely suffer politically if it was seen to act against the EU's policy recommendations. At the same time, while the Yanukovych government (as of March 2006) was not similarly bound by pro-European electoral commitments – on the contrary, it had come to power on pledges to mend the relationship with Russia[319] – the early stages of its mandate were characterised by a more balanced approach and a willingness to continue close cooperation with the EU.

The timing of EUBAM's deployment at the end of 2005 was particularly auspicious, coinciding with the aftermath of the Orange Revolution and a re-affirmation of pro-EU sentiments across the region. In Ukraine the presidential elections of December 2004 brought Viktor Yushchenko to power on a Euro-Atlantic integration election platform. In addition to the overall pro-EU orientation of this new leadership, the government specifically supported EUBAM and agreed to enforce the re-introduction of the new customs regime monitored by the mission. As the rest of this section will show in detail, in light of Kiev's previous hesitation to cooperate with Moldova on the management of the Moldovan-Ukrainian border, the new leadership was keen to improve its international image and show that it was a committed partner in the conflict resolution process in Transnistria. Although Ukraine was to experience a long period of political turmoil and instability, the country maintained its pro-Western course during Yushchenko's presidency. The new political elites were fully aware of how, in President Yushchenko's words, Ukraine 'was stretched Christ-like on a cross, crucified between West and East', but it was the pro-EU choice that ensured the political survival of the new leadership and EUBAM was part of this.[320] The European strategic choice represented a mechanism of legitimation and credibility which validated Yushchenko and his political allies in the eyes of the 'Orange' electorate.

This broad pro-European consensus threatened to be upset in the spring of 2006 when, due to inconclusive parliamentary election results, the leader of the Party of Regions Viktor Yanukovych was nominated as Prime Minister. His nomination raised fears of a change in Ukraine's pro-Western orientation and a return to closer relations

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[319] Paul Kubicek, 'Problems of post-post-communism: Ukraine after the Orange Revolution', *Democratization* 16:2 (2009), 335.

[320] US Embassy Kiev, 'Ukraine: Yushchenko And Codel Frist Discuss Coalition, Ukraine's Strategic Place, Bilateral Issues', Cable 06KIEV1481, 13 April 2006, available at: https://wikileaks.org/plusd/cables/06KIEV1481_a.html, accessed on 1 September 2015.

with Russia. While not signaling a complete turnaround in Kiev's foreign policy, Yanukovych's premiership and the early stages of his subsequent presidency (from 2010 onwards) marked a period of difficult attempts to maintain a balance between the European and Russian vectors.[321] As elaborated further in this section, Yanukovych's coming to power shed doubt over Ukraine's commitment to continue implementing the Joint Declaration with Moldova. But while the agreement itself would likely not have been signed if Yanukovych had been in power in 2005, by 2010 the facts on the ground (i.e. an increasing number of Transnistrian companies registering with the Moldovan authorities, the anticipated end of Smirnov's rule) did not conclusively indicate that a change in policy would bring significant political benefits.[322]

The unique dynamics created by the coming to power of the 'Orange camp' together with the unprecedented focus of the international community on political developments in Ukraine contributed to a context in which a failure to observe the JD would have incurred prohibitively high political costs for Yushchenko's government. Viktor Yushchenko came to power in the aftermath of the Orange Revolution on a pro-Western platform which strongly endorsed an EU and NATO perspective for Ukraine. One of the first foreign policy initiatives of the newly elected President was the so-called 'Yushchenko plan' - a comprehensive plan for the settlement of the Transnistrian conflict which proposed a special legal status for the Transnistrian region within Moldova and envisaged free and fair elections of the Transnistrian Supreme Soviet under international monitoring.[323] It was against this background that Ukraine also welcomed the deployment of EUBAM and renewed its commitment to implement the customs regime agreed upon with Moldova in 2003.

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[321] Taras Kuzio, 'Twenty years as an independent state: Ukraine's ten logical inconsistencies', *Communist and Post-Communist Studies* 45:3-4 (2012), 436.

[322] This is consistent with the statement of a leading EUBAM official that 'nobody in Ukraine is currently questioning the Joint Declaration', Interview EUBAM leadership, 4 April 2013, Odessa, Ukraine.

[323] Oleh Protsyk, 'Moldova's Dilemmas in Democratizing and Reintegrating Transnistria', *Problems of Post-Communism* 53:4 (2006), 31.

4.2.1. Explaining the implementation of the customs regime at the Moldovan-Ukrainian border: costly external pressures

Despite the seemingly favourable context for cooperation with the EU, the enforcement of the JD raised different challenges for the Ukrainian government. To be sure, the implementation of the customs regime was a painful measure for Ukraine. The country suffered significant financial losses both as a result of diminished and/or more costly trade with Transnistria and the reduced profitability of its investments in the breakaway region (i.e. the Ribnita metallurgy plant). The government's determination to enforce the provisions of the Joint Declaration despite its clear disadvantages puzzled some of those familiar with the situation, such as Russian Special Envoy for Transnistria Valery Nesterushkin who claimed that the only possible explanation was that 'someone' had made the Ukrainians an 'offer they could not refuse'.[324] But while the economic costliness of the new customs regime did not necessarily translate in political costs – especially as the government could shield itself behind the EU's demands – the strong opposition from veto players threatened to destabilise even further an already fragile governing coalition. As such, the competing strategies of veto players who opposed the JD in no ambiguous terms affected the cost-benefit calculations of the government to a considerable extent. The diverse political leadership rallied around Yushchenko was willing to avoid the implementation of an agreement that had negative repercussions on a host of domestic actors (notably those who benefitted from the illegal trade with Transnistria) for as long as possible, particularly since the enforcement of the JD did not bring any obvious immediate benefits. This strategy of countering a potential backlash from domestic veto players by making declaratory commitments but failing to put them into practice led to a protracted implementation process.[325] As a result, Ukraine's commitment to implement the customs regime did not come by easily and a number of

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[324] US Embassy Moscow, 'Transnistria: Russia opposes Ukrainian customs enforcement', Cable 06MOSCOW2260_a, 7 March 2006, available at:
https://wikileaks.org/plusd/cables/06MOSCOW2260_a.html, accessed on 1 September 2015.
[325] President Yushchenko himself allegedly gave a verbal order in 2005 against the introduction of the customs regime; Oazu Nantoi, 'Republic of Moldova: Past and Present', The Institute for Public Policy, Chisinau, 2007, cited in Marcin Kosienkowski, *Continuity and Change in Transnistria's Foreign Policy After the 2011 Presidential Elections* (The Catholic University of Lublin Publishing House: Lublin 2012), 33.

attempts at re-introducing the 2003 protocol failed. This was as much a consequence of opposition from internal veto players as well as the government's own hesitations.[326] Having taken steps at enhancing Ukraine's involvement in the conflict settlement process, the Yushchenko government tried to present itself as a balanced mediator giving equal consideration to the interests of the Moldovan and Transnistrian parties. Kiev was therefore reluctant to introduce strict border controls for fear of alienating the Transnistrians and attempted to postpone the implementation of the new rules as much as possible. Despite Prime Minister Yulia Timoshenko signing a governmental decision on 26 May 2005 and two orders stipulating the entry into force of the 2003 protocol within 45 days, the regime at the border remained unchanged for the next six months and Transnistrian goods could still transit without Moldovan custom stamps.[327] The final straw came when, despite having signed the Joint Declaration with Moldova and agreeing to re-instate the customs regime on the common border as of 25 January 2006, Kiev continued to ignore its obligations.

The government came under intense criticism from both the EU, who was directly involved in the process through EUBAM, and the US. The issue was raised not only by diplomats on the ground such as the EUSR to Moldova Adrian Jacobovits de Szeged but also at higher political level by EU High Representative for the CSDP Javier Solana and US Deputy Secretary of State David Kramer.[328] In the face of such a resolute reaction from the international community and with a few weeks left until the 26 March 2006 parliamentary elections, the government ultimately caved in and started implementing the terms of the Joint Declaration on 3 March 2006.[329] The border regime continued to be challenged by domestic veto players even after the Ukrainian government's decision to implement the customs protocol with Moldova. The Ukrainian border guards and customs service opposed the customs agreement and EUBAM's presence on the border, notably because they reduced opportunities for corruption. The UASBGS and UASCS reportedly even put pressure on the National Security and Defence Council (NSDC) to

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[326] Vladimir Socor, 'Ukraine steps in to close Europe's biggest black hole', Eurasia Daily Monitor 3: 46 (2006).
[327] Vrabie, 'New customs regime and Ukrainian factor'.
[328] Vrabie, 'New customs regime and Ukrainian factor'.
[329] Socor, 'Ukraine steps in to close Europe's biggest black hole'.

'do away with both EUBAM and the customs agreement.'[330] Of the political parties, Yanukovych's opposition Party of Regions was the main voice criticising the customs regime, arguing that its provisions were not in line with international trade practice which does not require companies to have special registration or export permits and stamps in order to export their goods.[331] In agreeing to enforce these measures, Party of Regions representatives argued, Ukraine was merely giving in to Moldova's unreasonable demands.[332]

The position of the Party of Regions naturally created unease about Ukraine's commitment to the JD when the parliamentary elections of March 2006 delivered an inconclusive result, triggering the nomination of Viktor Yanukovych as Prime Minister. Yanukovych's support for the enforcement of the Moldovan-Ukrainian customs protocol was at best ambiguous. The new Prime Minister had been Yushchenko's Orange Revolution rival and his image had been badly tarnished by the events in late 2004. With a reformed profile and new political goals, Yanukovych was now keen on changing his reputation in the EU and US as 'a pro-Russian, non-democratic oligarch'.[333] On the other hand, he remained under significant pressure from his own party, as well as Russia and Transnistria, to reverse or at least modify the customs regime. When asked by an American diplomat whether a Regions-led government would support maintaining the JD in force, Yanukovych's answer was evasive and made his interlocutor 'nervous'.[334] But despite the difference in foreign policy views between President Yushchenko and Prime Minister Yanukovych, the Ukrainian government did not change its stance on the

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[330] US Embassy Kyiv, 'Ukraine/Moldova: Transnistria and bilateral irritants', Cable 07KYIV665_a, 22 March 2007, available at: https://wikileaks.org/plusd/cables/07KYIV665_a.html, accessed on 5 September 2015; at the same time, the NSDC Secretary Anatoly Kinakh himself appeared to support Transnistrian and Russian interests in the matter, Socor, 'Ukraine steps in to close Europe's biggest black hole'.

[331] US Embassy Kiev, 'Ukraine/Moldova/Transnistria: EUR DAS Kramer supports Ukraine-Moldova customs protocol implementation', Cable 06KIEV1021_a, 15 March 2006, available at: https://wikileaks.org/plusd/cables/06KIEV1021_a.html, accessed on 31 August 2015; the opposition of the Party of Regions to the customs regime is also acknowledged by Vrabie, 'New customs regime and Ukrainian factor'.

[332] US Embassy Kiev, 'Ukraine/Moldova/Transnistria'.

[333] US Embassy Kyiv, 'Ukraine: Embattled FM Supports Engagement With Yanukovych – "He Has Changed"', Cable 06KYIV4295_a, 17 November 2006, available at: https://wikileaks.org/plusd/cables/06KYIV4295_a.html, accessed on 8 July 2015.

[334] US Embassy Kiev, 'Ukraine/Moldova/Transnistria: EUR DAS Kramer urges continuing role with political leaders, MFA', Cable 06KIEV2964_a, 31 July 2006, available at: https://wikileaks.org/plusd/cables/06KIEV2964_a.html, accessed on 31 August 2015.

customs agreement after the latter came to power.[335] Yanukovych attempted to use his leverage to pressure Moldova into agreeing to a so-called 'Transit Protocol' sought by the Transnistrians and which was a poorly disguised version of a draft previously presented by Moscow. However, having failed to obtain this modification of the customs regime, the Prime Minister appeared to accept the need to honour the protocol in place. This seems to have been the result of his realisation that any unilateral move on Ukraine's part to withdraw from the JD with Moldova would be blamed squarely on him and would damage his international and domestic reputation, this time irreparably.

If internal veto players were not able to shift the strategic choices of Ukraine's incumbent regime, powerful external forces could also have potentially influenced the governmental agenda of the Ukrainian, and even Moldovan, leaders. Externally, the main actor who strongly opposed the enforcement of the Moldovan-Ukrainian Joint Declaration was, predictably, Russia. Moscow felt that the compulsory registration of Transnistrian companies with Moldovan authorities undermined its influence in Transnistria, by potentially opening the door to a gradual reintegration. A thorough implementation of the customs regime could lead to Transnistria's economy becoming more reliant on trade with the EU rather than on Russian subsidies. This perception of the customs rules being a threat to its ability to influence political developments in Moldova incentivised Russia to oppose them in the strongest terms. Thus, Moscow went to great lengths to publicly voice its protest over the measures, starting with a statement by Foreign Minister Sergei Lavrov followed by daily statements condemning Ukraine by the Russian Ministry of Foreign Affairs, to a State Duma declaration and a visit to Tiraspol. The new customs rules were characterised as an 'economic blockade' on Transnistria and it was claimed that 'Russia's interests are directly affected' as well.[336] In an attempt to regain its veto power, Moscow proposed a revised customs protocol that aimed to roll

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[335] US Embassy Kiev, 'Ukraine: EUR A/S Fried visit: the foreign policy tug-of-war in a Yanukovych cabinet', Cable 06KIEV3464_a, 8 September 2006, available at: https://wikileaks.org/plusd/cables/06KIEV3464_a.html, accessed on 8 July 2015; also see remarks by European Commissioner for External Relations and European Neighbourhood Policy Benita Ferrero-Waldner during a European Parliament debate, 25 October 2006, available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20061025+ITEM-011+DOC+XML+V0//EN&language=RO.
[336] Vladimir Socor, 'Russia slams 'economic blockade' of Transnistria', Moldova.org, 9 March 2006, available at: http://www.moldova.org/russia-slams-economic-blockade-of-transnistria-10421-eng/, accessed on 11 July 2015.

back the provisions of the JD. Significantly, Russia included itself as a signatory along with Moldova, Ukraine and Transnistria, in a move that laid bare its claim to have a say in developments at the Moldovan-Ukrainian border.[337]

In addition to its direct attempts to undermine the customs regime, Russia also positioned itself as an alternative coalition to Ukraine's and Moldova's cooperation with the EU. In trying to alter the cost-benefit calculations of the Ukrainian and Moldovan governments, Moscow aimed to capitalise on its asymmetric interdependence with Moldova and Ukraine by taking advantage of its position as the main destination for Chisinau's and Kiev's agricultural products. At the time both countries could be said to be exposed to high sensitivity interdependence in trade vis-à-vis Russia in general but particularly with respect to certain products such as wine, meat and dairy products. Thus, in 2006 Moldova's wine exports to Russia represented approximately 80% of the totality of its wine exports, making Chisinau overly reliant on trading with Moscow.[338] Moldova's sensitivity interdependence was augmented by the fact that wine production represented circa 25% of its GDP. As far as Ukraine was concerned, in 2005 99.9% of meat and 74.9% of dairy exports went to Russia.[339] By targeting products for which Russia was the main market, Moscow aimed to use its leverage in order to undermine the new customs regulations. In February 2006 Russia imposed a ban on the import of meat and dairy products from Ukraine[340] and in April 2006 it introduced a wine blockade against Moldova.[341] The decisions were justified on health and sanitary grounds: Moldovan wine was claimed to contain dangerous substances such as pesticides and Ukrainian meat and dairy had allegedly breached food safety standards due to poor veterinary controls.

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[337] US Embassy Moscow, 'Transnistria: 'Three plus two' talks in Moscow', Cable 06MOSCOW4198_a, 20 April 2006, available at: https://wikileaks.org/plusd/cables/06MOSCOW4198_a.html, accessed on 15 August 2015.

[338] BBC News, 'Russian wine move draws protests', 30 March 2006, available at: http://news.bbc.co.uk/1/hi/world/europe/4860454.stm, accessed on 20 July 2015.

[339] Andrej Szeptycki, 'Trade Relations between the Russian Federation and Ukraine', *The Polish Institute of International Affairs*, Research Paper No. 8, January 2008, 31.

[340] Szeptycki, 'Trade Relations', 40.

[341] C.J. Chivers, 'A Russian "Wine Blockade" Against Georgia and Moldova, *The New York Times*, 6 April 2006, available at: http://www.nytimes.com/2006/04/06/world/europe/06russia.html?_r=0, accessed on 10 July 2015.

Despite these formal reasons for the bans, there is little doubt that Russia deliberately tried to use the asymmetric interdependence between itself and, Moldova and Ukraine in the trade sector in order to put pressure on the implementation of the new customs regime on the Transnistrian border and EUBAM's involvement in the process. According to analysts, the Moldovan 'wine-embargo arrived as a result of the EU Border Mission set up along the common borders of Ukraine and Moldova' and the alleged 'economic blockade'.[342] Elsewhere, Russia's use of economic sanctions against Moldova in the form of trade embargoes, as well as the rise in gas prices, are also seen as an attempt to punish Chisinau for extending customs control to Transnistria.[343] More revealing, US diplomats interpreted some of the provisions of the customs protocol proposed by Russia to replace the JD as hints 'at a Russian offer of quid pro quo to the Moldovans: this protocol in exchange for a repeal on the ban on imports of Moldovan wine'.[344]

Nonetheless, as highlighted in a conversation with a US Delegation composed of a number of American Senators, despite Russia's 'unsubtle hints' in the form of a gas price hike and the meat and dairy ban, Yushchenko was committed to 'make decisions about Ukraine's future solely on the basis of Ukrainian national interests, […] not on the narrow interests of certain political forces'.[345] The broader view of Ukraine's government was that, in the post-Orange Revolution climate, it was imperative that Kiev honours the customs agreement and supports EUBAM because 'it was not possible to return to the Kuchma period when the border was simply a huge smuggling zone'.[346] Vladimir Voronin, while a member of the Communist party in Moldova and supportive of a

[342] Dan Amonte, '"Wine' warfare at the doorstep: nothing new just business for Russia', Institute for Development and Social Initiatives Viitorul, Chisinau, Issue 8, August 2010, 3-4; Anatol Gudim, 'Transnistria: Conflicts and Pragmatism of the Economy', Centre for Strategic Studies and Reforms / CISR, July 2006, 4.

[343] Botan, 'The hostages of Transnistrian regime'.

[344] US Embassy Moscow, 'Transnistria: "Three plus two" talks in Moscow'.

[345] US Embassy Kiev, 'Ukraine: Yushchenko And Codel Frist Discuss Coalition, Ukraine's Strategic Place, Bilateral Issues', Cable 06KIEV1481, 13 April 2006, available at: https://wikileaks.org/plusd/cables/06KIEV1481_a.html, accessed on 13 July 2015; in the same vein, President Yushchenko was quoted by EUSR for Moldova Adriaan Jacobovits de Szeged as saying that he 'remains 100 percent behind' the new border control regime, Andrew Rettman, 'Moldova instability could get worse', euobserver, 3 May 2006, available at: https://euobserver.com/economic/21488, accessed on 23 March 2016.

[346] US Embassy Kyiv, 'Ukraine: Embattled FM Supports Engagement With Yanukovych – "He Has Changed"', Cable 06KYIV4295_a, 17 November 2006, available at: https://wikileaks.org/plusd/cables/06KYIV4295_a.html, accessed on 8 July 2015.

broadly pro-Russian foreign policy, became noticeably less inclined to pursue a Moscow-led policy after rejecting a deal for Transnistria's autonomy that provided for a significant Russian troop presence (the Kozak Memorandum). As a result, after 2003 he stepped up Chisinau's cooperation with the West and the European Union. With regards to Russia's pressures on Moldova in the aftermath of the new customs regime, Voronin qualified them as 'an attempt by Moscow to cause the Moldovan economy to collapse'.[347] However, the benefits derived from the implementation of the customs protocol with Ukraine outweighed any costs incurred by the Russian wine ban by far. Moldova had long sought Ukraine's cooperation in enforcing the customs regime and the accomplishment of this goal with EUBAM's support was a considerable achievement for the Voronin government.

In the end, Russia's attempts to put pressure on Moldova and Ukraine in a sector where both countries were sensitive to modifications in cross-border flows (trade) were not able to change the strategic calculations of the two countries, and implicitly modify their strategy of cooperation with EUBAM on the customs regime issue. According to the second hypothesis of this thesis, the ability of alternative coalitions to the EU to alter the strategic calculations of incumbent regimes decreases with the cost-effectiveness of EU threats and side-payments. The EU's willingness to offer both Ukraine and Moldova access to European markets can be seen as a side-payment designed to lower the costs of resisting Russia's coercive tactics for the two countries. While this was not something that could be achieved overnight and involved wide-ranging convergence with EU food safety standards, the perception of political leaders that an alternative market existed and they could gain access to it contributed to their resilience to withstand Russia's pressures. But while Russia's attempts at positioning itself as an alternative coalition can be said to have been offset by the EU's offer of market access, there is yet another factor that could have contributed to shifting the Ukrainian government's strategy away from cooperation with EUBAM: the competing strategies of domestic veto players. However, despite the initial reluctance of the Yushchenko government to enforce the customs regime at the Ukrainian-Moldovan border given strong domestic opposition, the regime was ultimately

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[347] US Consulate Munich, 'President Voronin Pushing Forward On Transnistra Settlement', Cable 08MUNICH69, 16 April 2008, available at: https://wikileaks.org/plusd/cables/08CHISINAU417_a.html accessed on 13 July 2015.

persuaded to implement the Joint Declaration by external pressures from the EU and US. According to H1, the ability of veto players to alter governments' strategies decreases with the cost-effectiveness of EU threats and side-payments. It is argued here that the factor which ultimately tilted the balance in favour of enforcing the customs regime was the EU's and US' use of threats (external pressure).

As previously noted, the potential influence of each of the three factors – veto players, alternative coalitions and EU threats and side-payments – depends on the perceived cost-effectiveness of the others. Thus, each factor has the potential of altering the cost-benefit calculations of governments by increasing or reducing the costs and benefits that come with the deal (in this case, cooperation with EUBAM). The decisive factor will be the one which is deemed to generate the optimal cost-effective outcome. In this case, the enforcement of the JD was opposed by domestic and external veto players and was subject to threats and pressures from both the EU and US, and Russia, which positioned itself as an alternative coalition. Russia's threats were cancelled out by the EU's offer of side-payments in the form of market access, leaving domestic veto players and EU and US pressures as the competing factors in altering the Ukrainian government's strategy. Given that these two factors were pushing Ukraine in different directions (non-cooperation versus cooperation with EUBAM in implementing the JD), the Yushchenko regime had to calculate what would be more costly in light of its preference for maintaining power: disregarding the demands of the domestic players or those of the EU and US? The government's assessment appears to have been that, despite the implementation of the customs regime being opposed by a multitude of veto players, the cost that these could have inflicted on the regime's political survival and power would have been lower than the cost of ignoring external pressures from the EU and US. Indeed, the role of the US is likely to have been crucial in shaping the outcome of this strategic interaction and allows for a specification of the initial hypothesis: EU threats and pressures are potentially more effective when backed up by other relevant international actors. Particularly when the EU creates common front with the US, the impact of their threats and pressures is likely to be significant. This is also related to the existence of alternative coalitions: the more international actors join a bloc which aims to put pressure on an individual country the less options the latter has in terms of seeking cooperation

with alternative coalitions. As a Western-oriented regime, the Yushchenko government relied on the EU and the US for international, but also domestic, legitimacy and was particularly vulnerable to the costs imposed by these two actors.

4.3. The Moldovan-Transnistrian railway dispute

Following an improvement in the political climate after the election of a more open leadership in Tiraspol in 2012, confidence-building measures became increasingly accepted by Transnistria's new President, Yevgeny Shevchuk. EUBAM and its niche activity with respect to customs regulations and cross-border transport were well placed to coordinate CBMs in this area, as well as become involved in the relevant expert working groups within the 5+2 negotiations. Negotiations under the 5+2 format include Moldova and Transnistria as parties to the conflict, Ukraine, Russia and the OSCE as mediators, and the EU and US as observers. After having been suspended between 2006 and 2011, formal negotiations resumed in late 2011 in the context of a renewed push for a solution generated by the Meseberg process.[348] Despite initial optimism regarding the resumption of negotiations, the developments were disappointing: while some progress was achieved in confidence-building measures, the political process continues to be deadlocked.[349] The negotiations under the 5+2 format are structured around three 'baskets' of issues: socio-economic; legal, humanitarian and human rights; and a comprehensive settlement (including institutional, political and security issues).[350] The

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[348] The Meseberg process consisted of a common German-Russian initiative put forward in June 2010. Known as the Meseberg Memorandum, it proposed the creation of an EU-Russia Political and Security Committee as a forum for cooperation on European security issues such as the Transnistrian conflict. In exchange for a role in European security decision-making, Russia would contribute to progress in the resolution of the conflict between Chisinau and Tiraspol. Popescu and Litra, 'Transnistria', 1.
[349] Woehrel, 'Moldova: Background and US Policy', 2.
[350] Ivan, 'Transnistria – Where to?', 3.

discussions are further organised in specific working groups, each dealing with confidence-building measures on technical issues in various policy sectors.[351]

Given the suspension of political negotiations between 2006 and 2011, EUBAM's technical confidence-building activities were limited during this period. The few confidence-building measures initiated were ad hoc and failed to produce results given the difficult political relations between Moldova and Transnistria at the time. One of the few significant initiatives before 2011 was EUBAM's proposed organisation of three mutual visits of customs experts to Chisinau, Tiraspol and Odessa in order to 'encourage mutual dialogue and understanding of customs procedures between MDCS and "Transnistrian customs officials"'.[352] The year 2011 marked an important milestone in the resumption of technical cooperation between Chisinau and Tiraspol, with a number of bilateral meetings being organised as a result of EUBAM's mediation efforts. At first the mission met separately with representatives from Chisinau and Tiraspol in order to assess the positions and concerns of each party and identify potential solutions to outstanding customs and railway issues. This was followed by a breakthrough in bilateral cooperation in September 2011. With EUBAM's support, a working group meeting was arranged between customs representatives from Chisinau and Tiraspol who had not been officially engaged in dialogue since 2001.[353] Moreover, in November 2011 EUBAM hosted a trilateral meeting at its Headquarters in Odessa which brought together Moldovan and Transnistrian customs and railway representatives, as well as representatives from Odessa railways as observers. The meeting explored possibilities for the full resumption of rail freight traffic through Transnistria and examined further areas in which customs cooperation between Chisinau and Tiraspol could be enhanced. This meeting marked the resumption of the customs dialogue between Moldova and Transnistria and was followed by intensified contacts between the two parties.

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[351] There are eight working groups in total: Economy and Trade; Health; Agriculture and Environment; Transport and Communications; Infrastructure Development; Demilitarisation and Security; Humanitarian Aid; Education and Science.

[352] EUBAM, 'Annual Report December 2008- December 2009. European Union Border Assistance Mission to Moldova and Ukraine' (2010), 14, available at http://www.eubam.org/en/, accessed on 24 August 2015.

[353] EUBAM, 'Annual Report 1 December 2010- 30 November 2011. European Union Border Assistance Mission to Moldova and Ukraine' (2012), 26, available at http://www.eubam.org/en/, accessed on 25 August 2015.

EUBAM has been instrumental in advancing technical cooperation between conflict parties from 2011 onwards. Most notably, the mission was a key actor who contributed to the full resumption of railway traffic through Transnistria in April 2012. The breakthrough came in the context of a positive constellation in political relations between Chisinau and Tiraspol, itself a consequence of the change in political leadership in Transnistria. EUBAM's contribution to the process consisted in its preparatory technical work, making concrete proposals on technical issues and enhancing contact between the Moldovan and Transnistrian customs and railway experts. The mission organised a series of expert meetings in January-February 2012 which aimed to involve stakeholders in the settlement of customs and railway issues, followed in March 2012 by a meeting at the OSCE Headquarters in Chisinau where EUBAM presented its latest proposals for the resumption of full-fledged rail freight traffic through Transnistria. The proposals contained provisions for a mechanism of joint customs control under the single office and one-stop shop concepts.[354] These meetings provided useful platforms for cooperation and communication and were well placed to lay the ground for the agreement of a protocol on the joint customs control in April 2012. The protocol was developed by experts on both sides and was in line with EUBAM's technical proposals.[355] As a result, full railway traffic across Transnistria was resumed on 26 April 2012 after having been interrupted for six years.[356]

This represents the greatest achievement of confidence-building measures with regard to the resolution of outstanding technical issues between the Moldovan and Transnistrian conflict parties so far. EUBAM's preliminary work in providing technical support and advice and facilitating communication between key stakeholders contributed significantly to the success of this agreement. The resumption of railway traffic would not have been possible in the absence of the political détente between Chisinau and Tiraspol and the political agreement reached just weeks before the customs protocol, on 30 March 2012. It is important to note that the resumption of railway traffic between

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[354] EUBAM, 'Annual Report 1 December 2011- 30 November 2012. European Union Border Assistance Mission to Moldova and Ukraine' (2013), 15, available at http://www.eubam.org/en/, accessed on 25 August 2015.

[355] EUBAM, 'Annual Report 1 December 2011- 30 November 2012', 15.

[356] The Transnistrian authorities suspended railway transport in 2006 in reaction to the enforcement of the new customs regime between Moldova and Ukraine, monitored by EUBAM.

Moldova and Transnistria had been previously attempted in 2007 when Moldova's President Voronin put forward a confidence-building proposal that stipulated cooperation between Moldovan and Transnistrian experts in order to re-establish the full operation of the railway traffic.[357] However, the intransigence of the former de facto Transnistrian President blocked any attempts at rapprochement. Tiraspol counter-proposed an arrangement that effectively required the establishment of economic relations between two distinct legal and economic entities, thus implying a degree of recognition for the secessionist province. The proposal was firmly rejected by Chisinau, revealing the difficulty of cooperating on practical issues when there is little political common ground to start from. Technical confidence-building cannot achieve significant progress in the absence of a political breakthrough, but once communication is re-established at a high-level, it is crucial that the practical issues can be readily implemented. EUBAM ensured that the customs dialogue that had been restored at the end of 2011 achieved significant progress in generating consensus between Moldovan and Transnistrian customs and railways specialists, which allowed for the railway traffic to be resumed without delay as soon as the political conditions were in place.

In order to pave the way for sustainable cooperation between Chisinau and Tiraspol in the customs area, EUBAM built on the successful resolution of the railway issue, but also on the effective implementation of the customs regime, and decided to initiate joint trainings for Moldovan and Transnistrian customs experts. Thus, in May 2012 the training initiative 'Building customs capacity towards modernisation' introduced customs professionals from both banks of the Nistru river to EU best practice regarding trade facilitation tools, customs control processes, joint border control, rules of origin and the use of risk analysis in the examination of freight.[358] In March 2013 an EUBAM and OSCE confidence-building initiative brought together customs representatives from Chisinau and Tiraspol in a joint study visit at the German-Swiss border in order to experience first-hand how cooperation at joint customs posts takes place and familiarise themselves with joint customs procedures. Following the study visit

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[357] US Embassy Chisinau, 'Budget losses result in personal profits', Cable 08CHISINAU112, 6 February 2008, available at: https://wikileaks.org/cable/2008/02/08CHISINAU112.html, accessed on 28 August 2015.
[358] EUBAM, 'Annual Report 1 December 2011- 30 November 2012', 15.

EUBAM hosted a meeting for customs experts where it presented its proposals for the implementation of joint customs posts and joint anti-smuggling operations.

In addition to the resumption of railway freight traffic, EUBAM raised a number of other issues in the context of confidence-building measures between Moldova and Transnistria. One of the most pressing concerns is the restoration of international transport corridors for passenger and cargo services. At the 5+2 talks in September 2012 EUBAM presented a technical proposal on potential ways of registering Transnistrian number plates which would allow them to join international road traffic.[359] As a result of joint efforts by EUBAM, OSCE and the EU Delegation in Chisinau, some progress was achieved and in 2013 Chisinau agreed on a neutral design for the number plates. However, the mission's recommendations regarding the registration of vehicles – requiring a special re-registration of Transnistrian vehicles through joint registration and technical inspections, as well as exchange of vehicle data by the relevant institutions in Chisinau and Tiraspol – have still not led to a compromise solution.[360]

EUBAM has to a certain degree been able to foster communication between Moldovan and Transnistrian customs and railway experts, but the scale of the interactions has been limited. In order for EUBAM's efforts to bring the two parties together to result in improved communication and enhanced trust, the various initiatives such as bilateral meetings, joint trainings and study visits must be organised in a more regular and systematic fashion. As far as the resolution of outstanding practical issues is concerned, the mission has so far only been able to contribute to the resumption of full railway traffic between Moldova and Transnistria. As the next section explores in more detail, EUBAM's role in the resumption of railway traffic in 2012 should be regarded as an indication that under conditions of strong preferential fit civilian missions can contribute to genuine domestic change in host countries. Thus, the successful outcomes of technical negotiations hinge on political windows of opportunity, meaning that EUBAM and its confidence-building measures would unlikely be able to have concrete impact if the political conditions did not allow it. Whether technical progress can lay the foundations

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[359] EUBAM, 'Annual Report 1 December 2011- 30 November 2012', 16.
[360] EUBAM, 'Annual Report 1 December 2012- 30 November 2013. European Union Border Assistance Mission to Moldova and Ukraine' (2014), 18, available at http://www.eubam.org/en/, accessed on 27 August 2015.

for improved political relations and an eventual conflict settlement, as the logic of confidence-building measures seems to imply, remains doubtful. In Moldova and Transnistria this effect is yet to be observed, as the two parties are not even remotely close to a political agreement. While the change of political leadership in Tiraspol has allowed for the intensification of technical cooperation, the lack of progress in the political negotiations has continued to characterise the 5+2 framework.

4.4. Explaining the resumption of railway traffic across Transnistria: changing leadership, new strategies

The issue of railway traffic between Moldova and Transnistria aptly illustrates the way in which the incumbent regimes' preferential fit can be shaped by the existence of veto players. The origin of the so-called 'railway war' lies in Tiraspol's 2004 abusive seizure of the property of 'Moldova Railways' on Transnistrian territory - consisting of railroad locomotives, cars and administrative facilities – which resulted in the effective loss by Chisinau of control over Moldovan national railway assets on the left bank of the Nistru river.[361] In retaliation against the implementation of the new customs regime in 2006 and the deployment of EUBAM, the Transnistrian authorities went even further and suspended railway transport, forcing trains from Moldova to bypass Transnistria by taking a circuitous route of almost 400km.[362] The railway traffic was partially resumed after six months when a series of temporary agreements were signed between Moldovan, Ukrainian and Russian operators. Nonetheless, rail transportation to and from Transnistria remained highly problematic. The conditions of the transport regime made it impossible for Transnistrian companies to ship cargo, which incentivised some of them - such as Ribnita Steel Plant and Ribnita Cement Plant - to arrange separate deals with Moldova Railways. However, using privately owned railway cars to ship their product from Transnistria incurred prohibitively high costs on these heavy industry enterprises and significantly reduced their profit margins. At the same time, the situation continued

[361] US Embassy Chisinau, 'Budget losses result in personal profits'.
[362] Tomasz Horbowski, 'Moldova: Trains Will Go Through Transnistria', *Eastbook*, 31 March 2012, available at: http://www.eastbook.eu/en/2012/03/country-en/moldova-en/moldova-trains-will-go-through-transnistria/, accessed on 28 august 2015.

to hurt Moldova's economy as well, given that in order to avoid Transnistria's 100% cargo tax, Chisinau would use an alternative, lengthier, railway line in order to export goods through Ukraine.

In light of the obvious damaging effects of the railway regime on the economies of both Moldova and Transnistria, it would have seemed natural for both sides to seek a solution to the dispute. Instead, Tiraspol continued to support the status quo which greatly benefitted long-time President Igor Smirnov's inner circle. In Transnistria political and economic interests are 'highly personalised' and have for a long time been concentrated in the hands of the de facto leader.[363] Smirnov had governed the separatist region in authoritarian fashion since its secession from Moldova in the early 1990's. Over the years, Smirnov had succeeded in securing extensive control over governance structures in Transnistria by building a wide power network around himself supported through profits from privatisations and gas fees – paid by Transnistrian citizens but only partially if at all passed on to Russian suppliers.[364] Due to this intricate web of political and economic interests, Smirnov was reluctant to allow cooperation between Transnistria and Moldova to evolve significantly. Economic diversification could in the long term lead to political pluralism which threatened to undermine his tight grip on the main levers of power in the separatist region. It has been argued that close associates of Smirnov, including his daughter-in-law Marina Smirnova, his Deputy Aleksandr Korolyov and Security Council Deputy Secretary Yuri Soukhov, owned a number of Odessa-based intermediary companies which allowed them to gain significant profits, with minimal contributions to the Transnistrian budget.[365] Korolyov in particular was personally invested in maintaining the suspension of railway traffic. The 2004 seizure of Moldova Railway assets was allegedly carried out by Korolyov's militiamen and brought him substantial personal profits, which explains 'his ongoing stance as a hardliner in the railway issue'.[366] The existence of these influential veto players in Transnistria was

[363] Wolff, 'The Transnistrian issue', 10-11.

[364] Manfred Grund, Hans Martin Sieg and Kristin Wesemann, 'Transnistria and the future security architecture in Europe', *Konrad-Adenauer-Stiftung International Reports*, Issue 9/10, 2011, available at: http://www.kas.de/wf/en/33.28726/, accessed on 29 August 2015.

[365] US Embassy Chisinau, 'Budget losses result in personal profits'.

[366] US Embassy Chisinau, 'Transnistrian power struggles over succession', 11 July 2008, Cable 08CHISINAU746_a, available at: https://wikileaks.org/plusd/cables/08CHISINAU746_a.html, accessed on 30 August 2015.

without a doubt an important factor which obstructed the resolution of the railway dispute.

Smirnov's political fate and thus the de facto regime's preferential misfit with the economic openness advocated by the EU and the broader international community was increasingly shaped by the government's ability to maintain Transnistria isolated. Smirnov and his 'Vice President' Korolyov shared a 'bunker mentality' according to which Transnistria should preferably remain closed to the outside in order to protect its cultural and political identity from hostile neighbours.[367] Preventing Transnistria from economically integrating with Moldova and the EU also served an important self-preservation purpose for Smirnov's regime. Despite the dominant political position enjoyed by Smirnov and his entourage, economically they had been pushed into a corner by Russian asset owners and the Sheriff group.[368] The difficult financial situation in Transnistria forced Smirnov to carry out an extensive programme of privatisation in the course of which large parts of heavy industry and the energy sector were acquired by Russian businesses, with other sectors of the economy being taken over by the Sheriff conglomerate. Both these groups shared an interest in a certain degree of economic liberalisation allowing for increased trade and business opportunities. While Sheriff's initial success was largely due to its close collaboration with Smirnov, the limited economic growth potential of Transnistria coupled with the de facto President's resistance to change resulted in divergent economic interests between the two. As a result, Sheriff placed its interests behind the reform-minded Obnovleniye (Renewal) party which aimed to bring about substantial reforms meant to restrict the power of the President and enhance the authority of the Parliament. The party won the majority of seats in Transnistria's Supreme Soviet both in 2005 and 2010.[369] At the same time, Russian investments in Transnistria (Moldova Steel Works in Ribnita is majority owned by Alisher Usmanov, a close Kremlin ally) suffered from the trade impediments that accompanied Smirnov's policies, notably the closing of the railway link to Moldova.

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[367] Grund, Sieg and Wesemann, 'Transnistria and the future security architecture in Europe',
[368] Sheriff is the second-largest Transnistrian company established in 1993 as a foreign limited liability company by two former Transnistrian members of the special services, Ilya Kazmaly and Victor Gushan. The corporation operates a wide variety of businesses, such as petrol stations, supermarkets, a TV channel, a publishing house etc, as well as owning a football club, and is actively involved in politics through the open support offered to the Renewal party.
[369] Grund, Sieg and Wesemann, 'Transnistria and the future security architecture in Europe'.

Thus, limiting Smirnov's power and ultimately challenging his previously unquestioned control over the secessionist territory represented a common vector not only between the interests of the Sheriff group and Russian entrepreneurs in Transnistria, but also between the higher-level political interests of the Obnovleniye party and Moscow.

The preferential misfit of the Smirnov regime with respect to re-establishing a railway connection with Moldova is to be understood in light of the perceived competitive advantage this move would have given its political competitors. Already by 2007 Smirnov's power was weakening as a result of Russia severing its financial assistance to the separatist region and the de facto President's own 'increasingly nervous […] and erratic and irrational behaviour'.[370] His 'uncompromising' policies vis-à-vis Moldova and knee-jerk rejection of Voronin's confidence-building proposals were increasingly opposed by the more flexible de facto Speaker of the Supreme Soviet Yevgeny Shevchuk, as well as other members of the executive such as the de facto Foreign Minister Valery Litskai.[371] Aware of his growing political isolation[372], Smirnov clung to his ability to obfuscate cooperation with Moldova and opening up Transnistria's economy for fear that such a policy will empower his political opponents. As a result, the railway dispute was not fully resolved until after Smirnov's 2011 electoral loss and the unexpected coming to power of Shevchuk.

Even before winning the presidential elections of December 2011, Shevchuk had gained notoriety as being more responsive to Chisinau's initiatives than Smirnov, while rebuffing the latter's desperate attempts to tackle a growing budget deficit with increased taxes on corporate profits and utility and food prices.[373] In his position as the Speaker of the Transnistrian parliament and Chairman of the Obnovleniye party between 2005 and 2009, Shevchuk consistently acted as a counterbalance to Smirnov's policies. While his resignation in 2009 as a result of a conflict between Obnovleniye and Smirnov over Transnistria's constitutional reform marginalised him politically, it also enabled him to run as an independent for the 2011 presidential election on an anti-corruption and reform

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[370] US Embassy Chisinau, 'Transnistria: Smirnov's power weakening', Cable 07CHISINAU1275, 22 October 2007, available at: https://www.wikileaks.org/plusd/cables/07CHISINAU1275_a.html, accessed on 28 August 2015.
[371] US Embassy Chisinau, 'Transnistria: Smirnov's power weakening'.
[372] During a visit of Spanish Foreign Minister Moratinos, Smirnov allegedly claimed that 'everyone is ignoring me, even the Russians'. US Embassy Chisinau, 'Transnistria: Smirnov's power weakening'.
[373] US Embassy Chisinau, 'Transnistria: Smirnov's power weakening'.

platform, winning a solid 38.5% of votes in the first round and a staggering 73.9% in the second round.[374] The overwhelming public support he enjoyed, coupled with his relatively weak political position, meant that his leadership had to be focused on pragmatic steps to improve the economic climate in the separatist region and the lives of Transnistrians.

Shevchuk seemed to understand that limited cooperation with the EU could greatly benefit Tiraspol, while allowing it to maintain deadlock in political negotiations.[375] On one hand, he needed to show that he could improve living conditions in Transnistria in order to consolidate his regime, while on the other hand being aware that he did not muster the political influence both locally and with Russia to broker a political settlement. It is against this background that his 'personal pragmatism, along with a structural predisposition to cooperation'[376] has resulted in enhanced dialogue and confidence-building measures with Chisinau. He has called for an agenda focused on practical issues such as lifting trade restrictions between Transnistria and Moldova and restoring transport and communication links such as railway traffic and telephone service.[377] This has marked a move away from the uncooperative policies of the previous regime of Igor Smirnov who resisted any substantial cooperation with Moldova and the EU. Shevchuk's preferential fit with the objective of forging closer ties with Moldova, albeit limited to low key practical issues, has consequently contributed to reaching a number of agreements between Chisinau and Tiraspol, including the resumption of railway traffic across Transnistria. It is unlikely that this dispute could have been resolved in the absence of a change in Transnistria's leadership and consequently a change in the strategies of the incumbent regime.

Comparing the Smirnov and Shevchuk regimes, it is clear that they had the same fixed preference to acquire and consolidate political power but different strategies to achieve this goal. Their diverging strategies must be understood in relation to the broader strategic environment – and in particular the three factors identified by this thesis as likely to influence the decisions of governments – but without losing sight of the

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[374] Wolff, 'The Transnistrian issue', 11.
[375] Interview local staff EU Delegation to Chisinau, 29 March 2013, Chisinau, Moldova.
[376] Popescu and Litra, 'Transnistria', 3.
[377] Woehrel, 'Moldova: Background and US Policy', 3.

legitimation mechanisms which allow political elites to claim political power in the first place. In the case of the de facto authorities of secessionist territories such as Transnistria, South Ossetia and Abkhazia, this mechanism of legitimation as either aligned with the West or with Russia becomes less relevant in light of these entities' overwhelming dependence on Moscow. As far as Transnistria is concerned, Shevchuk never intended to portray his leadership as providing an alternative to Tiraspol's allegiance to Russia, but ran his campaign on a promise of economic recovery which was to be achieved through increased openness to cooperation with Moldova and the EU. Although this did not suggest a substantial change in Transnistria's position, it meant that Shevchuk's ability to maintain and consolidate power depended on the extent to which he could successfully cooperate with Chisinau and improve the living standards of Transnistrians who voted him into power. His coming to power removed many of the veto players who had blocked any initiative to negotiate the resumption of railway traffic between Moldova and Transnistria under Smirnov, thus clearing the way for a potential agreement.

In the absence of veto players and EU threats and side-payments (which were made redundant by the already strong preferential fit between Shevchuk's goals and EUBAM's policy objectives), only the existence and cost-effectiveness of alternative coalitions could have altered the new de facto regime's strategy of cooperating with Moldova. However, Russia does not appear to have played an obstructive role in the resolution of the railway dispute. While Moscow is weary of Transnistria forging closer ties with Moldova to the extent that a redefinition of the relationship would deprive Russia of a veto in Chisinau's and Tiraspol's affairs, it has not been wholly opposed to a certain degree of reintegration between the two banks of the Nistru river. Fully aware that without Transnistria Moldova is likely to drift away from its sphere of influence, Russia is keen on sponsoring a settlement plan where Tiraspol would have significant powers within a reintegrated Moldova.[378] Thus, Moscow takes a relaxed attitude to rapprochement measures between Chisinau and Tiraspol as long as they do not deprive Transnistria of a degree of autonomy that ensures the continued influence of Russia in Moldova. This explains why Moscow did not oppose the resumption of railway traffic, but on the other hand felt threatened by the enforcement of the new customs regime

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[378] Popescu and Litra, 'Transnistria', 4.

which effectively brought Transnistrian trade under Moldova's control. At the same time, the restoration of rail connections with Moldova benefitted Russian economic interests in Transnistria, which were also negatively affected by the suspension of traffic. The asymmetric interdependence between Transnistria and Russia had been unexpectedly reduced in 2007 by Moscow's unilateral decision to sever financial assistance to the separatist region. Although such a situation would be expected to lead to an attempt by Transnistria to find alternative sources of assistance or compensate for the losses by identifying new ways of creating revenue, this is not what Tiraspol did. The resumption of railway traffic was one of the measures that would have enabled businesses to expand their profits and improve the overall economy which by the end of 2007 was severely deteriorating, also due to a record draught over the summer of 2007. But Smirnov found himself in a bind, having lost Russia's support but realising that opening up Transnistria would have spelled the end of his leadership. As a result, despite a weakening asymmetric interdependence with Russia that could have led to closer relations with Moldova and the EU, Smirnov chose to dig his heals in and continue to keep Transnistria isolated as the only course of action that could have helped him preserve power.

The resumption of railway traffic between Moldova and Transnistria shows how the strategies adopted by the Smirnov and Shevchuk regimes (to cooperate or not with Moldova and the EU) were crucially shaped by the leaders' attempts to gain and/or maintain and consolidate power and their interpretation of the broader trategic environment. Smirnov obstinately refused to engage in cooperation because he viewed his political survival as depending on Transnistria's continued isolation. His position was reinforced by the existence of a wide network of veto players whose economic interests were served by the limited economic opportunities within Transistria. Shevchuk, on the other hand, had come to power on a moderate pro-reform platform which relied to a great extent on the prospect of opening Transnistria to cooperation with Moldova and the EU. He thus had a strong interest in achieving the resumption of railway traffic and his strategic calculations were not encumbered by the existence of veto players, EU threats or side-payments or the coercive strategies of alternative coalitions (i.e. Russia).

4.5. Conclusion

This chapter has examined EUBAM's confidence-building mandate by focusing on two prominent technical issues that the mission was involved with. The implementation of the customs regime at the Moldovan-Ukrainian border and the resumption of railway traffic across Transnistria represent two of the most successful practical issues that the Moldovan, Transnistrian and Ukrainian parties have been able to cooperate on. EUBAM was able to provide a type of specialised technical support on the ground which no other international actor could offer and thus created unique opportunities for communication between the conflict parties, as well as between Moldova and Ukraine.

The degree of preferential fit between the preferences of the Yushchenko regime and the objective of cooperating with EUBAM over the implementation of the customs regime was shaped as much by the government's Euro-Atlantic strategic alignment, as it was by the economic costs of the Joint Declaration for Ukraine. This explains the ambiguous position of the Ukrainian leadership and its reluctance to press ahead with the enforcement of the agreement. The cost-benefit calculations of the government indicated that both strategies – implementing the customs regime or merely committing to it but not acting on the commitment – incurred costs. On one hand, the pro-European Orange electorate could sanction the government for not following through with its promises of reform and the fight against corruption. On the other hand, the enforcement of the JD would have led to significant economic losses for a number of businesses and diminished the profitability of Ukraine's investments in Transnistria, which could have also harmed the government's popularity. The competing strategies of veto players and Russia's coercive attempts at positioning itself as an alternative coalition increased the costs of implementing the customs regime. Yushchenko was subjected to significant pressures from domestic veto players and Russia in order to change policy direction on the customs regime issue. In addition, Moscow was able to inflict considerable economic damage on Ukraine through its exploitation of the asymmetric interdependence between the two countries. Competing pressures – pushing for the enforcement of the customs agreement – were exerted by the EU jointly with the US. This was, in a nutshell, the strategic

environment that constrained the behaviour of the Ukrainian government. The decision to concede to international pressures and implement the JD can be explained by an assessment of the costs of continuing to tolerate illegal Transnistrian trade in the face of Western opposition as exceeding the costs inflicted by the behaviour of veto players and Russia. The latter's coercive measures against Ukrainian trade were successfully counteracted by the EU offering Kiev the opportunity to gain access to European markets. The joint EU-US pressures on Ukraine increased the perceived costs of a decision to not implement the Joint Declaration with Moldova and, in the run-up to the parliamentary elections of March 2006, made the government weary of the potential implications in terms of domestic support and international reputation. Indeed, the fact that the EU's threats/pressures were backed up by the US might have rendered the costs of non-compliance prohibitive. Thus, it can be argued that an endorsement of the EU's coercive strategies by the broader international community, and the US in particular, is likely to increase their effectiveness.

The railway dispute between Moldova and Transnistria raised the challenge of a perceived compatibility between the political agenda of the regime in Tiraspol and the confidence-building measures proposed to address this significant outstanding issue. Smirnov's firm disinclination to engage with Voronin in negotiations over the railway stalemate, despite the economic losses that both Moldova and Transnistria were suffering, was   the result of a deep preferential misfit, strengthened by a powerful network of domestic veto players. This was confirmed by the change in policy brought about by the new Transnistrian government in 2012, when the more progressive Yevgeny Shevchuk came to power. Better served politically by a policy of limited cooperation and economic integration with Moldova, Shevchuk's government worked on resolving a number of practical issues with Chisinau, with the resumption of railway traffic being the most prominent dispute resolved. Shevchuk's preferential fit with respect to the prospect of resuming railway traffic between Moldova and Transnistria was very strong to begin with, being part of his electoral pledge to improve Transnistria's economy. Following his electoral success, the new Transnistrian leader was highly motivated to strike an agreement with Moldova in order to show that he can deliver on his promises. The strategic environment was also favourable, as the prominent veto players that had

dominated Smirnov's time in power had been removed and Russia did not feel threatened by the normalisation of railway traffic and thus did not resort to coercive moves. Thus, Shevchuk's behaviour was not subject to significant constraints and he was able to maintain the initial strong preferential fit with respect to allowing Transnistria to engage in limited, technical cooperation with Moldova and the EU.

Chapter 5

The European Union Monitoring Mission to Georgia: breaking deadlocked security relationships

The EUMM operates in a highly challenging political environment, having been deployed in order to monitor the implementation of the ceasefire between Georgia and Russia, following the August 2008 war. The mission's mandate is technical and includes monitoring, analysing and reporting on the stabilisation and normalisation processes, as well as confidence-building measures at the technical level and informing EU policy. The EUMM's confidence-building mandate requires the mission to 'contribute to the reduction of tensions through liaison, facilitation of contacts between parties and other confidence building measures'.[379] While also tasked with overseeing the stabilisation and normalisation processes in the aftermath of war, the confidence-building dimension of the EUMM's mandate is crucial for the mission's long-term contribution to conflict resolution. The EUMM has deployed a variety of CBMs ranging from monitoring the compliance of the conflict parties with the ceasefire agreement to encouraging parties to exchange information and give notification of military manoeuvres, as well as establishing information and observation routines between them in the form of regular communication platforms. Specifically, the mission has developed regular cooperation mechanisms through which the Georgian government and the de facto Abkhazian, South Ossetian and Russian authorities can exchange information in order to prevent violent incidents from escalating, as well as work towards the normalisation of the security situation at the de facto borders.

The EUMM's activity has been intertwined with the conflict settlement negotiations under the framework of the Geneva discussions. The mission's reports and analyses feed into the preparation of the Geneva talks between the parties to the conflict. The Head of EUMM participates at the talks as the mission's representative and briefs the other participants on the latest security developments around the Administrative

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[379] Council of the European Union, 'Council Joint Action 2008/736/CFSP of 15 September 2008'.

Boundary Lines (ABLs) between Georgia, and South Ossetia and Abkhazia.[380] As a result of the fragile security situation in the aftermath of the August 2008 war, the EUMM proposed the establishment of 'joint mechanisms with the relevant participants … in order to prevent and, where necessary, respond to incidents that could cause suffering to civilian populations and/or risk deterioration of the situation'.[381] The incident settlement mechanism under the form of the Incident Prevention and Response Mechanism (IPRM) is meant to be a non-political forum that addresses practical challenges to the security of people living in the areas surrounding the ABLs. EUMM Head of Mission Hansjörg Haber stressed that 'the idea is to leave the issues pertinent to the Geneva talks to Geneva and address in the IPRM concrete questions that affect the lives of people on the ground.'[382]

The Geneva talks have been unable to move forward despite some arrangements to detach more practical issues form the difficult status discussions. The negotiations take place under two configurations: plenary sessions at which Russia, Georgia and the US participate, and informal working groups held under the auspices of the EU, UN and OSCE and including representatives from South Ossetia and Abkhazia.[383] However, the sensitivity of issues like the return of refugees (which Abkhazia objects to because it would turn Abkhazians into a minority again) and the non-use of force (which Russia refuses to consent to claiming it is not a party to the conflict), have blocked any meaningful progress in the working groups. The only accomplishment with regard to the non-use of force issue and which can be credited to the EUMM is the signing of two Memoranda of Understanding with the Georgian Ministries of Defence and Interior which limit Tbilisi's military movements. The rest of this chapter explores what can be considered the EUMM's most notable achievements with respect to confidence-building: the MoU with Georgia in the context of its commitment to the non-use of force and the

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[380] Fischer, 'The European Union Monitoring Mission', 385.

[381] Co-Chairs of the Geneva Discussions, 'Proposals for joint incident prevention and response Mechanisms', 18 February 2009, Geneva, available at: http://www.consilium.europa.eu/uedocs/cmsUpload/mechanismENG.pdf, accessed on 30 June 2015.

[382] EUMM, 'EUMM proposes measures to allow free access of the population to religious sites at the fourth Incident Prevention and Response Mechanism meeting', 4 September 2009, available at: http://www.eumm.eu/en/press_and_public_information/features/1649/?year=2009&month=12, accessed on 30 June 2015.

[383] Nona Mikhelidze, 'The Geneva Talks over Georgia's Territorial Conflicts: Achievements and Challenges', Documenti IAI 10 (25 November 2010, Istituto Affari Internazionali), 3.

Incident Prevention and Response Mechanism (IPRM). In addition to providing an account of the mission's confidence-building efforts, the chapter also seeks to explain the participation of conflict parties in such confidence-building frameworks and thus identify the conditions under which cooperation – in a conflict resolution context - is possible.

5.1. Implementing the ceasefire agreement: no recourse to the use of force

The mission's first and arguably most critical confidence-building task came in the aftermath of the August 2008 war and it involved monitoring compliance by the Georgian, South Ossetian and Russian parties with the Six-point ceasefire agreement reached by French President Nicolas Sarkozy and his counterpart Dmitry Medvedev. The provisions of the ceasefire plan included a commitment from all sides to put an end to hostilities and refrain from the use of force, as well as allow access for humanitarian assistance and engage in international discussions on the security and stability of South Ossetia and Abkhazia. In addition, and more importantly, Georgian forces would need to return to their garrisons, while Russian forces would have to withdraw to their positions before the start of hostilities.[384] The sticking point of the agreement turned out to be the withdrawal of Russian troops which were by now scattered across the border area, including on previously undisputed Georgian territory.[385] The mission started its work in earnest, conducting 14 patrols already on its first day on the ground, making contact with the Georgian authorities, Russian military staff and local population, including establishing technical contacts with Russian forces in preparation for an orderly withdrawal. As the deadline for the withdrawal of troops – 10 October 2008 – approached, the EUMM closely monitored the movement of Russian military forces. It reported the dismantling of the first Russian checkpoint on 5 October and the

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[384] Civil Georgia, 'Six-Point Ceasefire Plan', 20 August 2008, available at: http://www.civil.ge/eng/article.php?id=19478, accessed on 26 June 2015.
[385] The term 'undisputed Georgian territory' refers, in a Human Rights Watch Report terminology, to 'any part of Georgia, except South Ossetia and Abkhazia, both areas which are subject to dispute over their sovereignty and have made bids for independence'. Human Rights Watch, 'Up in Flames. Humanitarian Law Violations and Civilian Victims in the Conflict Over South Ossetia' (New York, January 2009), 2, cited in Fischer, 'The European Union Monitoring Mission', 380.

intensification of the process over the following days, which allowed it to conclude that 'Russia seems to have completed most of the withdrawal'.[386]

On the basis of this information, Javier Solana, the EU High Representative for the CFSP, confirmed 'the withdrawal of Russian forces from the zones adjacent to South Ossetia and Abkhazia' on 10 October 2008.[387] Despite this formal confirmation, it soon became clear that the situation on the ground was different. In reality Russian troops remained stationed in a number of villages which had clearly been controlled by Georgia before the August 2008 war.[388] This was particularly the case for the village of Perevi, located on the Georgian side of the ABL with South Ossetia and where Russian forces had allegedly refused to dismantle a checkpoint despite persistent calls from the EUMM.[389] In spite of EU repeated calls (at Brussels, member state and EUMM level) for the withdrawal of Russian and South Ossetian military forces from the Georgian side of the boundary line and the reduction of the number of troops deployed in South Ossetia and Abkhazia, Russia continued to occupy previously Georgian-controlled territories. It also blocked attempts by the EUMM to gain access inside South Ossetia and subsequently Abkhazia by claiming that the formal recognition of the independence of the two regions by the Russian Federation rendered point 5 of the ceasefire agreement obsolete.[390] As a result, the EUMM was unable to monitor the situation on the South Ossetian and Abkhazian sides of the ABLs.

Although the EUMM and the EU strongly opposed Russia's refusal to withdraw its forces, the continued Russian military presence in formerly Georgian-controlled villages and along the ABLs has at times reinforced the stabilisation process by arguably providing better protection than local South Ossetian militias.[391] This led the EUMM to

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[386] EUMM, 'EUMM witnesses withdrawal of Russian troops'. Press Release, 8 October 2008, available at: http://www.eumm.eu/en/press_and_public_information/press_releases/96/?year=2008&month=12, accessed on 26 June 2015.

[387] Council of the European Union, 'Javier Solana, EU High Representative for the CFSP, confirms the withdrawal of Russian forces from the zones adjacent to South Ossetia and Abkhazia', S332/08, 10 October 2008.

[388] The Georgian villages still occupied by Russian troops after the withdrawal deadline included Akhmaji and Perevi.

[389] EUMM, 'EUMM concerned about situation in Perevi', Press release, 8 October 2008, available at: http://www.eumm.eu/en/press_and_public_information/press_releases/28/?year=2008&month=12, accessed on 26 June 2015.

[390] Sabine Fischer, 'The European Union Monitoring Mission', 383.

[391] Martin, 'Crossing boundaries', 134.

take the unusual step of suggesting that Russian troops return to the checkpoint in Perevi after Russia had reportedly decided to retreat from the village. The mission's position was spurred by the anxious reaction of the local population to the departure of Russian forces and a realisation that such a move could exacerbate tensions and compromise the incipient stabilisation process. The issue was discussed at the EU-Russia Summit in Nice on 14 November 2008 where the EU raised the problem of the safety and security of the local population. As a result, Russian forces retook control of the checkpoint on 16 November.[392] Another example of the EUMM accepting the presence of Russian troops as a trade-off in exchange for stability is provided by the deployment of Russian forces in order to assist with the demarcation of what Tskhinvali considers the 'state border' between Georgia and South Ossetia. Following its recognition by Russia, South Ossetia reportedly requested that Russian experts provide assistance in the demarcation of the ABL with Georgia. In June 2010 International Crisis Group reported that an estimated 900 Russian troops had been deployed along the ABL, with the purpose of demarcating the border, building 20 frontier posts and guarding the border until a South Ossetian Border Guard service would be created. Interestingly, the EUMM accepted the situation and even claims that border incidents have subsided since the deployment of Russian forces, a claim substantiated by the local population.[393]

In addition to the challenging task of monitoring the Russian troop withdrawal, the EUMM also closely followed the compliance of Georgian troops with their commitments. In order to prevent the build-up of tensions between conflict parties as a result of a lack of communication and the misinterpretation of the other side's actions, the mission attempted to discourage any behaviour that could be misconstrued as provocative, as well as monitor and report on issues such as troop mobilisation and movement of equipment. Thus, the mission advised the Georgian government against the deployment of armoured vehicles in the areas adjacent to the ABLs as it was believed their presence could aggravate the sense of insecurity around the buffer zones. Given the risk of insecurity perceptions leading to an escalation in hostilities, the EUMM advised

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[392] EUMM, 'Russian units return to Perevi checkpoint', Press Release, 16 November 2008, available at: http://www.eumm.eu/en/press_and_public_information/press_releases/106/?year=2008&month=12, accessed on 26 June 2015.
[393] International Crisis Group, 'South Ossetia: The Burden of Recognition', Crisis Group Europe Report N°205, 7 June 2010, 8.

against the deployment of such military-style vehicles or, in case they should be used, their clear identification as police vehicles in order not to be confused with military equipment.[394] The EUMM also succeeded in persuading Georgian police forces to accordingly mark their uniforms so that Abkhaz and South Ossetian militias could differentiate them from members of the Georgian armed forces.[395]

Importantly for its confidence-building role, the EUMM was able on a number of occasions to dispute Russian and separatist allegations that Tbilisi was increasing the number of Georgian troops in the buffer zone. This was possible due to the Memoranda of Understanding (MoU) the mission had concluded with the Georgian Ministries of Defence (MoD) and Interior (MoI), which allowed the EUMM to conduct unrestricted inspections on Georgian deployments of equipment and personnel.[396] Under the MoU with the Ministry of Interior, signed on 10 October 2008, the Georgian side agreed not to deploy heavy armaments in the areas adjacent to the ABLs, committed itself to notifying the EUMM in advance of any prospective police deployments in these areas and allowed for unannounced inspections on Georgian Police facilities.[397] The arrangement also provided for a mechanism of cooperation and coordination between the EUMM and the Georgian MoI through liaison officers. In May 2009 an annex to the MoU was added expanding the areas around the ABLs where EUMM monitors could conduct unannounced inspections.[398] The MoU with the MoD contained similar provisions regarding restrictions on movements of Georgian armed forces around the ABLs and the requirement to notify the EUMM in advance of any such plans. In addition, the EUMM was also called by Tbilisi to monitor the movements of the Georgian armed forces

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[394] EUMM, 'EUMM expresses concern about deployment of new Georgian police vehicles', Press Release, 26 December 2008, available at:
http://www.eumm.eu/en/press_and_public_information/press_releases/668/?year=2008&month=12, accessed on 23 June 2015.
[395] Merlingen and Ostrauskaite, 'EU Peacebuilding in Georgia', 24.
[396] Fischer, 'The European Union Monitoring Mission', 383.
[397] Fischer, 'The European Union Monitoring Mission', 384.
[398] EUMM, 'EUMM enhances co-operation with the Georgian Ministry of Internal Affairs', 27 May 2009, available at:
http://www.eumm.eu/en/press_and_public_information/features/1464/?year=2009&month=12, accessed on 24 June 2015.

throughout Georgia as a result of a restructuring programme in order to confirm that they do no amount to a military mobilization.[399]

While the MoU have been hailed as an important confidence-building measure, they remain a unilateral gesture given that Russia, South Ossetia and Abkhazia have not reciprocated with equivalent commitments. Georgia's willingness to adhere to an arrangement that placed rules of transparency on the actions of its military forces was acknowledged as 'a brave and unilateral move to de-escalate and forestall tensions' and allowed the EUMM to 'issue, as it were, a clean bill of health to the effect that Georgia will not be able to assemble a force with sufficient escalation potential to militarily challenge the administrative boundary lines'.[400] The EUMM has repeatedly urged South Ossetia, Abkhazia and the Russian representatives in the two regions to reciprocate these arrangements, claiming that 'there will only be stability if all sides contribute to it'.[401] However, there is little interest for such a measure in the separatist regions and it seems highly unrealistic to expect this situation to change in the foreseeable future. The unilateral MoU have contributed to confidence-building to the extent that EUMM was able to investigate any allegations of a military build-up by Georgia and confirm that Tbilisi was compliant with the commitments it had undertaken and provided the necessary transparency and access to the mission's monitors. By disputing accusations of a build-up of Georgian armed forces on a number on occasions, the mission has dispelled any misunderstanding that could have led to violent incidents.

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[399] EUMM, 'EUMM to monitor forthcoming Georgian armed forces movements'. Press Release, 19 November 2009, available at:
http://www.eumm.eu/en/press_and_public_information/press_releases/1780/?year=2009&month=12, accessed on 27 June 2015.
[400] EUMM, 'EUMM and Georgian Ministry of Defence sign Memorandum of Understanding', 26 January 2009, available at:
http://www.eumm.eu/en/press_and_public_information/press_releases/796/?year=2009&month=12, accessed on 24 June 2015.
[401] EUMM, 'EUMM disputes claims by de facto South Ossetian authorities', Press Release, 9 February 2009, available at:
http://www.eumm.eu/en/press_and_public_information/press_releases/1006/?year=2009&month=12, accessed on 27 June 2015.

5.2. Explaining Georgia's Memoranda of Understanding with the EUMM: the strong preferential fit of the Saakashvili regime and the absence of strategic constraints

Unlike EUBAM, which was deployed at a time when the acute phase of the conflict between Moldova and Transnistria had long passed, the EUMM was conceived as part of the ceasefire agreement that ended the Russian-Georgian war of August 2008. Being responsible for the implementation of the ceasefire agreement, the EUMM operated in a highly divisive environment where tensions were still running high and the possibility of a flare up in hostilities was realistic. The implication of this state of affairs on the political preferences of the incumbent regimes in Georgia, Abkhazia and South Ossetia is that these were shaped not only by the struggle for political office, but also by more fundamental issues of state survival – for Georgia, the country's sovereignty and territorial integrity, and for South Ossetia and Abkhazia, self-determination and independence. Also, as it often happens when countries experience war, the political establishment tends to be unified in the face of foreign aggression, which can explain why veto players have been slow to emerge and a fairly united political front has characterised attitudes towards conflict settlement and confidence-building measures between conflict parties.

Georgia's willingness to allow its military movements to be overseen by the EUMM, in accordance with the Memoranda of Understanding concluded between the mission and the Georgian Ministries of Interior and Defence, has undoubtedly been one of the main factors that contributed to stability in the aftermath of the August war. Given the limitations imposed on its ability to defend itself, amounting to a restriction of sovereignty, and the absence of a reciprocal commitment from Russia, the Georgian government's agreement to sign the MoU was not a foregone decision. According to the EUMM, Georgia's obligations under the MoU stemmed from the diplomatic commitment made by President Saakashvili to President Sarkozy regarding the non-use of force.[402]

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[402] US Embassy Tbilisi, 'Georgia: EUMM seeks to formalize arrangements on the ground', Cable 08TBILISI2050_a, 4 November 2008, available at: https://wikileaks.org/plusd/cables/08TBILISI2050_a.html, accessed on 1 September 2015.

But the non-use of force clause applied to both conflict parties and a unilateral commitment on the part of Georgia without the equivalent commitment from Russia in no way guaranteed that further violence would be prevented. In light of this, it was argued, 'any country would naturally pause before unilaterally and voluntarily limiting its own sovereign right to deploy its defence forces anywhere on its territory at any time, without having to inform anyone'.[403]

There are several reasons which explain the Georgian government's decision to sign the MoU under the terms proposed by the EUMM and they all point to the strong preferential fit between the political elites' goal of staying in power and the mission's – and more generally the international community's – objective of keeping the Georgian leadership in check. Despite continuing to enjoy popular support in the aftermath of the war, Saakashivili was acutely aware that his political survival was precarious in the face of an undisguised Russian desire to see him replaced. He also appeared to be weighed down by the responsibility of the war and its implications for the future of Georgia. In the words of an American diplomat, 'Saakashvili is stronger politically, but paradoxically more insecure, burdened by the fear history will judge him to have lost irrevocably the occupied territories'.[404] At the same time, the international community was seeking guarantees from both Georgia and Russia that neither of them would resort to military force. With 20% of its internationally recognised territory occupied by Russia, Georgia greatly needed the support of the US and the EU. The government understood that it had to restore its image internationally and provide a set of guarantees that confirmed its determination not to use force and the commitment to a peaceful resolution of the conflict.[405] There was little doubt among the Georgian political elites that Russia sought not only to thwart Tbilisi's NATO aspirations and attempts at diversifying energy supplies, but that it was resolutely trying to achieve regime change.[406] In order to avoid

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[403] US Embassy Tbilisi, "Georgia: MOD close to signing MOU with EUMM", Cable 09TBILISI82_a, 15 January 2009, available at: https://wikileaks.org/plusd/cables/09TBILISI82_a.html, accessed on 1 September 2015.

[404] US Embassy Tbilisi, 'Georgia: Scenesetter for Special Representative Holbrooke's visit', Cable 10TBILISI203_a, 18 February 2010, available at: https://wikileaks.org/plusd/cables/10TBILISI203_a.html, accessed on 31 August 2015.

[405] Interview UNM Member of Parliament, Tbilisi, Georgia, 27 July 2016.

[406] US Embassy Tbilisi, 'Georgia: EUMM seeks changes to proposed info exchange with MOD', Cable 08TBILISI2118_a, 13 November 2008, available at: https://wikileaks.org/plusd/cables/08TBILISI2118_a.html, accessed on 1 September 2015.

this, Saakashvili had to assuage both domestic and international concerns about Georgia's future military intentions. Indeed, restoring Georgia's credibility on the international stage was critical for the reputation of Saakashvili's regime and cooperation with the EUMM appeared as the most immediate way of achieving this.

The EUMM was valued by Georgia not only for providing a greatly needed international presence on the ground, but also for its ability to confirm Tbilisi's compliance with the ceasefire agreement and therefore rehabilitate the country's reputation within the international community.[407] The provisions of the MoU imposed restrictions on the deployment and movement of Georgian troops near the ABLs with South Ossetia and Abkhazia and required that Georgia give advance notice to EUMM of any military deployments. In addition, EUMM monitors were allowed to carry out unrestricted inspections across a mutually agreed area near the ABLs. By undertaking these commitments, Georgia took a politically sensitive decision of acting transparently and succeeded, at the same time, to claim the moral high ground vis-à-vis Russia. While the latter had repeatedly accused Tbilisi of deploying military equipment near the ABLs and mobilising its troops, the EUMM was able – due to the unfettered access that the MoU granted it – to dismiss these accusations as groundless every single time. Referring to one of the EUMM's statements confirming Georgian compliance with the MoU, HoM Hansjörg Haber admitted a slight embarrassment at the 'flattering' tone of the statement but acknowledged that the mission had been 'genuinely impressed with the level of the MOD's cooperation'.[408]

The decision of the Georgian government to engage in cooperation with the EUMM on the specific issue of the Memoranda of Understanding can be understood as the result of a strategic calculus which considered the respective costs and benefits of alternative courses of action in light of the actors' preference for political survival and power. The alternative strategies that the Georgian leadership had at its disposal were to either cooperate with the EUMM by signing the MoU or to decline the agreement. Given

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[407] US Embassy Berlin, 'Germany supports EUMM but seeks realistic goals', Cable 09BERLIN838_a, 10 July 2009, available at: https://wikileaks.org/plusd/cables/09BERLIN838_a.html, accessed on 1 September 2015.

[408] US Embassy Tbilisi, 'Georgia: EUMM confirms compliance with MOU on military movements', Cable 09TBILISI841_a, 1 May 2009, available at: https://wikileaks.org/plusd/cables/09TBILISI841_a.html, accessed on 5 September 2015.

the government's need to bolster its international standing and reassure the international community of its peaceful intentions, cooperation with the EUMM appeared to be the strategy providing the greatest benefits. The signing of the MoU would have not only rehabilitated Georgia's international reputation, but it could have potentially gained the Saakashvili regime a good deal of sympathy and support abroad. Nonetheless, as this thesis has shown, actors pursue their interests under constraints which can often influence their cost-benefit calculations. Thus, factors such as the competing strategies of veto players, the existence of alternative coalitions and EU threats and side-payments could have affected the level of preferential fit between the Georgian government's preference for political power and the objectives of the EUMM. As it happened, there were few environmental constraints affecting this particular strategic interaction. Despite expectations of domestic political opposition to the signing of the MoU, given the loss of sovereignty they entailed, the immediate aftermath of the war provided for a seemingly unified political front at least as far as the necessity to restore Georgia's international credibility was concerned.[409] Also, Saakashvili's opponents were highly fragmented across the political spectrum and did not amount to a significant group of veto players. The considerable popular support he continued to enjoy after the war also contributed to strengthening his position vis-à-vis political adversaries. As a result, the support for the MoU with the EUMM did not incur significant domestic political costs and brought the benefit of showcasing Saakashvili's commitment to a peaceful resolution of the conflict. Georgia also lacked the existence of an alternative coalition that could have proposed a competing agreement to what the EU was offering. The broader international community, including the US, was highly supportive of the EUMM's proposed MoU and a coalition with Russia was out of the question, given that the two countries had waged war against each other. On the other hand, a failure to conclude the MoU would have not only drawn international criticism of Saakashvili but also endangered the delivery of badly-needed international aid and assistance to Georgia.

The Georgian government felt that any potential costs incurred by the MoU – with respect to relinquishing sovereignty – were outweighed by the benefits of

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[409] Interview UNM Member of Parliament, Tbilisi, Georgia, 27 July 2016.

cooperation with the EUMM and the broader international community.[410] As such, signing the MoU emerged as the highest utility-maximising strategy that would have most likely satisfied actors' preferences. These efforts did indeed pay off, gaining the government international praise for 'its sincere interest in being both cooperative and transparent with the international community'.[411] On the contrary, Russia continued to show a lack of flexibility and transparency in its military manoeuvres and firmly refused to consider any suggestion of a non-use of force agreement, claiming that Georgia should sign such agreements directly with South Ossetia and Abkhazia. The EUMM had not initially planned to seek the signing of a MoU with the Russian side, given that the mission would not have been able to check on Russia's military movements and any formal agreement could have been interpreted as conferring legitimacy on South Ossetia and Abkhazia.[412] However, it was believed that any potential benefits of the Georgian MoU could only be fully capitalised upon if Russia responded with a similar agreement on the South Ossetian and Abkhaz sides of the ABLs.[413] The stark contrast between Georgia's open and cooperative behaviour and Russia's obstinate and uncompromising attitude further contributed to restoring Georgia's international credibility and strengthening Saakashvili's position.

5.3. Opening channels of communication: the Incident Prevention and Response Mechanism (IPRM)

As the only on-the-ground mechanism that brings together all the conflict parties and facilitates information exchange on local incidents, detentions and human rights violations, as well as promoting a quick and effective response to problems which affect the daily livelihoods of local populations, the IPRM is a powerful confidence-building tool. Having been proposed by the EUMM in the context of the Geneva talks, the IPRM

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[410] US Embassy Tbilisi, 'Georgia: MOD close to signing'.
[411] US Embassy Tbilisi, 'Georgia: Govt agrees to limit offensive capability near territories', Cable 09TBILISI171_a, 30 January 2009, available at: https://wikileaks.org/plusd/cables/09TBILISI171_a.html, accessed on 1 September 2015.
[412] US Embassy Tbilisi, 'Georgia: EUMM seeks to formalize'.
[413] US Embassy Tbilisi, 'Georgia: MOD close to signing'.

and its associated Hotline benefitted from strong backing at the political level.[414] Violent incidents and other issues of concern for the conflict parties could be raised either at the regular meetings of the IPRM or, when urgent, they could be addressed by activating the Hotline. Two different IPRMs were set up for South Ossetia and Abkhazia respectively in order to optimise the resolution of practical issues affecting each of the regions. Seven years on, the IPRM remains the only concrete achievement of the Geneva conflict settlement negotiations[415] and the one forum which ensures regular contact between conflict parties on the ground. It was believed that by enabling contacts between the structures responsible for security and public order in South Ossetia and Abkhazia, on one hand, and Georgia, on the other hand, the potential for tensions would be reduced.

The need for a regular communication and incident diffusion platform was exacerbated by the inability of the EUMM to access the territories of South Ossetia and Abkhazia and thus the possibility of monitoring the security situation in the separatist regions. Unable to observe, report, and investigate incidents that took place across the ABLs, the mission could do little to create an environment of mutual trust and unobstructed communication between parties. As a result, the EUMM adopted a 'knocking on the door' strategy, trying to conduct patrols or gain ad hoc access to areas under separatist control whenever possible. When the mission was informed of violent detentions or other incidents the EUMM would approach the separatist authorities and Russian representatives in order to request access across the boundary lines. Sometimes access was bluntly denied, as when a South Ossetian resident was allegedly shot and killed by a sniper near the ABL and EUMM monitors were not allowed to cross the boundary line in order to collect information on the ground.[416] Nonetheless, when the mission was given the opportunity to investigate reported incidents, it demonstrated an ability to 'act decisively and contributed to fact-finding in a handful of detention cases'.[417]

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[414] EUMM, 'Third round of Geneva talks: no agreement, but yet progress', 20 December 2012, available at: http://www.eumm.eu/en/press_and_public_information/features/627/?year=2008&month=12, accessed on 24 June 2015.

[415] International Crisis Group, 'Georgia-Russia: Learn to Live like Neighbours', Crisis Group Europe Briefing N°65, 8 August 2011, 4.

[416] EUMM, 'EUMM concerned about situation in Perevi'.

[417] International Crisis Group, 'South Ossetia', 22.

Before the establishment and regular operation of the IPRM there was hardly any communication between the Georgian authorities, on one hand, and the separatist authorities and Russian representatives, on the other hand. The EUMM had to go to great lengths to facilitate contact between the conflict parties and often found it challenging to monitor and report incidents itself. The frequency of detentions on the ABLs in the early stages of the mission highlighted the challenge of ensuring freedom of movement for local residents of villages in the border areas. In the period immediately following the end of hostilities the main problem was a lack of border demarcation which often resulted in locals unintentionally crossing the ABL and subsequently being detained. The mission was closely involved in monitoring, reporting and attempting to bring such cases to a smooth resolution. Thus, when a group of 16 Georgian woodcutters were arrested by Russian Border Guards in October 2009, the EUMM encouraged the Georgian and South Ossetian authorities to address the matter to the IPRM and accompanied Georgian, Russian and South Ossetian representatives on a visit to the site of the arrest in order to jointly ascertain what had happened. Once it was established that the 16 Georgian citizens had probably accidentally crossed the ABL and that there was no 'malicious intent' on their part, they were released. The EUMM stressed the importance of addressing such inadvertent ABL crossings as administrative misdemeanors rather than criminal offences and urged law enforcement agencies on both sides of the administrative line to increase cooperation and show leniency in dealing with similar cases.[418]

The IPRM was initially envisaged as a forum for weekly meetings between all sides, including the EUMM, OSCE and the UN, but its implementation has been hampered by the volatility and obtrusiveness of the separatist regimes and Russia. The IPRM for the South Ossetian theatre was suspended for over a year because the de facto authorities in Tskhinvali conditioned participation on receiving information on missing or detained South Ossetian residents.[419] During this time the EUMM continued to make efforts at bringing incidents to a peaceful resolution and avoid a re-escalation of

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[418] EUMM, 'EUMM follows up on 16 Georgian citizens recently arrested by Russian Border Guards', Press Release, 28 October 2009, available at:
http://www.eumm.eu/en/press_and_public_information/press_releases/1700/?year=2009&month=12, accessed on 23 June 2015.
[419] Human Rights Watch, 'Living in limbo: the rights of ethnic Georgian returnees to the Gali District of Abkhazia', July 2011, 13.

hostilities. One of the most prominent cases investigated by the mission during this period was the detention in January 2010 of Gennady Pliyev, a South Ossetian resident who was held by Georgian police because he had allegedly approached a Georgian post on the ABL carrying a weapon. The de facto authorities of South Ossetia claimed that he had been abducted by Georgian forces from the outskirts of Tskhinvali. The EUMM investigation concluded that neither account could be confirmed and raised doubts that Pliyev 'was abducted or that he was carrying a weapon at the time of his arrest'.[420] By not confirming either version of the incident, the mission managed to establish an independent account of a contested case and possibly contributed to the release of Pliyev after three months, following a trial. This was significant because neither the Georgian nor the Abkhazian parties accepted the EUMM's findings.

IPRM meetings covering the South Ossetian theatre were resumed in late 2010 and started addressing a variety of issues related to the stabilisation and normalisation processes: the smooth resolution of detention cases; the ability of local residents to cross the administrative line without difficulty; access to agricultural lands near the ABL; ensuring the security of farmers during the harvest period; demining activities, etc.[421] Significantly, in April 2013 it was decided in the context of the IPRM that the Hotline would be activated in order for Georgian and South Ossetian representatives to notify each other about planned agricultural works along the ABL.[422] The Hotline has proved to be a useful instrument for promoting the normalisation of the lives of local populations, through its effective use in resolving specific issues from the mundane return of missing livestock to more serious cases of detention. In addition, the security of energy infrastructure and utilities was addressed in a number of meetings which underlined the

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[420] EUMM, 'EUMM expresses serious reservations about the case of Mr Gennady Pliev', Press Release, 25 January 2010, available at: www.eumm.eu/en/press_and_public_information/press_releases/1836/, accessed on 22 June 2015.

[421] Please see EUMM press releases throughout 2011, available at: http://www.eumm.eu/en/press_and_public_information/press_releases/?year=2011, accessed on 24 June 2015.

[422] EUMM, '33rd IPRM meeting in Ergneti: Hotline to be activated to give prior notice about planned agricultural work at ABL', Press Release, 16 April 2013, available at: http://www.eumm.eu/en/press_and_public_information/press_releases/3776/?year=2013&month=12, accessed on 24 June 2015.

importance of implementing water and gas projects in the region.[423] At the 20th IPRM meeting in Ergneti on 21 February 2012 the possibility of creating an ad-hoc working group focused on 'livelihood' issues of local residents of villages around the ABL was discussed, demonstrating that the IPRM framework could provide the basis for more structured forms of cooperation.[424]

Until 2012 IPRM Gali - covering the Abkhazian theatre - functioned relatively successfully. The mechanism allowed the conflict parties to address and diffuse potentially aggravating incidents, which could have otherwise stoked tensions. Such an incident took place in September 2010, when local residents of a village near the Abkhaz ABL reported that Russian Border Guards had detained several of them in a minibus and confiscated their goods. Upon arriving at the scene, Georgian Special Police officers detained the Russian guards in question in a move that could have easily escalated tensions. EUMM monitors who had been patrolling the area visited the site of the incident and subsequently the mission established contacts with both the Georgian and Russian authorities in order to obtain more information. The mission also facilitated discussions between Moscow and Tbilisi and a patrol oversaw the release of the detainees, thus bringing the incident to an uneventful conclusion.[425] The case was brought up in the context of the IPRM in order to raise awareness of the potential destabilising nature of such episodes and encourage conflict parties to react moderately to any perceived provocation.

The IPRM Gali was suspended in April 2012 as a result of the refusal of the Abkhazian authorities to participate in the meetings as long as Andrzej Tyszkiewicz, whom they had declared persona non grata, remained the Head of EUMM. Sukhumi had protested against what it perceived as offensive comments by the EUMM Head of Mission, accusing him of showing 'disrespect' towards and attempting to 'politically

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[423] EUMM, 'IPRM meeting in Dvani', Press Release, 21 October 2011, available at: http://www.eumm.eu/en/press_and_public_information/press_releases/2830/?year=2011&month=12, accessed on 24 June 2015.

[424] EUMM, 'The 20th IPRM meeting in Ergneti', Press Release, 21 February 2012, available at: http://www.eumm.eu/en/press_and_public_information/press_releases/2953/?year=2012&month=12, accessed on 24 June 2015.

[425] EUMM, 'EUMM expresses concern about potentially destabilising incident today near Khurcha at the Abkhaz Administrative Boundary Line', Press Release, 24 September 2010, available at: http://www.eumm.eu/en/press_and_public_information/press_releases/2302/?year=2010&month=12, accessed on 2 July 2015.

blackmail' the Abkhaz side.[426] The dispute appears to have originated in a request by the de facto government in Tskhinvali that EUMM investigate allegations regarding the existence of Georgian-backed paramilitary groups who operate in areas adjacent to the ABLs. When HoM Tyszkiewicz argued that the mission would need access to Abkhazia in order to conduct the investigation, he was accused of taking a confrontational position and making unacceptable demands. Despite Abkhazia claiming that it is ready to return to the IPRM meetings provided the EUMM is represented by someone other than HoM Tyszkiewicz, this has not happened so far even though the mission has changed two Heads of Mission between 2013 and 2015. The new reason put forward by Sukhumi for not taking part in IPRM Gali is its protest against Tbilisi's intention of including the Abkhazian government in exile in the IPRM framework.[427]

The situation has deprived the EUMM of a vital mechanism for reporting on violations of human rights and providing conflict parties with a platform for addressing these issues before any potential escalation of hostilities. When used by all sides, the IPRM offers an environment conducive to greater confidence and cooperation where Abkhazian, South Ossetian, Russian and Georgian representatives can meet and discuss challenges to security and normalisation on the ground. In the absence of a regular communication and prevention mechanism the EUMM has had to rely on its monitoring activities and the ad hoc use of the Hotline. Luckily its presence has been increasingly requested for assistance with investigations in both entities[428] and the Hotline is being used regularly and effectively by all parties in order to address specific cases of detention and various challenges to local residents' daily activities.

The role of the IPRM was brought into sharp focus by the so-called 'borderisation' process which raises a number of challenges on the ABLs. In 2013 the mission noted the intensification of the installation of fences and other physical obstacles along the ABLs[429] which undermines the freedom of movement of local residents and

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[426] Civil Georgia, "Sokhumi Slams EUMM Head2, 25 April 2012, available at: http://www.civil.ge/eng/article.php?id=24693.

[427] Interview EUMM advisor, 26 August 2015 via Skype.

[428] International Crisis Group, 'Georgia-Russia', 12.

[429] The intensification of border demarcation as of 2013 has been linked to the initialling of the Association Agreement between Georgia and the EU at the Eastern Partnership Summit in Vilnius in November 2013, as acknowledged by Georgia's Foreign Minister, Declaration of Maia Panjikidze, the Minister of Foreign

affects their ability to carry out day to day activities such as seeking medical treatment, visiting relatives or tending to property.[430] This process has involved the installation of fences and barbed wire along the ABLs (in particular the administrative line that separates South Ossetia from Georgian recognized territory), frequently cutting across communities. The ABLs are enforced strictly by the separatist authorities who consider them 'state borders'. The EUMM has reported the situation to the European External Action Service in Brussels and the EU Member States, and raised the issue in the context of the Hotline and at the IPRM meetings between conflict parties. Further to this, on 29 November 2013, incidentally the last day of the Vilnius Summit, the EUMM released a press statement noting the resumption of the installation of fences along the ABL with South Ossetia and calling for exchange of information between parties and consideration of the impact of the actions on people's livelihoods.[431] Understandably, the local population has reacted angrily and in some instances, like in the village of Ditsi, has protested against the installation of fences. EUMM responded promptly to the disturbance, participating in an ad-hoc meeting. The presence of the EUMM was possibly the key factor in preventing the outbreak of incidents in a tense context characterized by popular discontent and an increasing security personnel presence from all sides.[432] While the 'borderisation' of the ABLs continues to this day, so does the EUMM's monitoring and reporting of the situation, with the issue being raised at almost every IPRM meeting and round of Geneva talks since April 2013.

The obstacles encountered by the EUMM in its attempts to establish confidence-building platforms such as the IPRM underline the fragility of the mission's position and the fact that, in carrying out its mandate, it is entirely dependent on the willingness of the two breakaway regions to cooperate. The lack of access to South Ossetia and Abkhazia

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Affairs of Georgia: http://www.aljazeera.com/video/europe/2013/12/georgia-seeks-closer-ties-with-europe-201312618540820659.html.

[430] EUMM, 'Friendship across the Administrative Boundary Line', 9 July 2013, available at: http://www.eumm.eu/en/press_and_public_information/features/3924/, accessed on 21 June 2015.

[431] EUMM, 'EUMM notes resumption of fencing activities', Press Release, 29 November 2013, available at: http://eumm.eu/en/press_and_public_information/press_releases/4113/?year=2013&month=12, accessed on 15 May 2014.

[432] EUMM, 'EUMM: Recent installation of fences near Ditsi is unacceptable', Press Release, 28 May 2013, available at:
http://www.eumm.eu/en/press_and_public_information/press_releases/3862/?year=2013&month=12, accessed on 24 June 2015.

clearly limits the potential for confidence-building, since the EUMM can only provide information on the deployment of Georgian armed forces but has no way of confirming or infirming a military build-up on the South Ossetian or Abkhazian sides of the ABLs. On a number of occasions the EUMM was able to gain access to South Ossetia and Abkhazia, as a result of facilitation through IPRM meetings[433], but such sporadic incursions in order to participate in the investigation of isolated incidents cannot provide the mission with the kind of regular on-the-ground reporting and monitoring which could foster confidence-building. The unwillingness of the separatist authorities and the Russian government to allow EUMM access to the breakaway territories has undermined the mission's ability to oversee the withdrawal of Russian troops and investigate incidents and human rights violations. In this sense, EUMM has been able to fulfill its mandate only half-way, on the Georgian side of the ABL.

Nonetheless, while the full compliance with the six-point agreement was not achieved and the presence of Russian troops was bolstered rather than reduced, the EUMM has nonetheless been a critical actor in stabilising the situation along the ABLs between Georgia and South Ossetia and Abkhazia respectively.[434] By establishing a field presence during the critical stage of cessation of hostilities, monitoring troop movements, reporting on its findings and calling on Russia to comply with the provisions, the EUMM used its monitoring and reporting resources to expose destabilising acts. The mission demonstrated an ability to adapt to very difficult circumstances and work within the parameters of a political context it had no control over. Despite not being able to effectively monitor the comprehensive compliance with the ceasefire agreement, the EUMM has provided a framework for stabilisation efforts which in turn acted as a deterrent to the renewal of hostilities. The EUMM's critical role in contributing to stabilisation in the aftermath of the war notwithstanding, the effectiveness of its confidence-building mechanisms between conflict parties remains questionable. As one analysis point out, 'it will remain difficult to make a direct contribution to confidence-

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[433] International Crisis Group, 'Georgia-Russia', 4.
[434] Fischer, 'The European Union Monitoring Mission', 385.

building, beyond the IPRM framework, without functioning relations with all parties to the conflict'.[435]

5.4. Explaining the IPRM: preferential misfit in the separatist territories as a result of total dependence on Russia

The exceptional circumstances of the EUMM's deployment – in the aftermath of a war between a country which aspires to EU membership and a major power which perceives the Union as a competitor in the region – are significant for explaining the entrenched positions of the conflict parties as EU or Russia allies. If for Transnistria the choice of cooperation with both the EU (and Moldova) and Russia was possible, allowing the incumbent regime to select areas of engagement in accordance with their political interests, in the case of South Ossetia and Abkhazia the August 2008 conflict turned this choice into a zero-sum game. The configuration of alliances was rigidly drawn following the war, with Georgia's territorial integrity being supported by the EU and the US and the formal independence of the breakaway regions being recognised by Russia. The EU had never played a significant role in South Ossetia and Abkhazia, among others due to a lack of initiatives on Georgia's part to support a gradual opening of the two entities to interdependence with the EU.[436] The war minimised further any possibility of cooperation between the EU and South Ossetia and Abkhazia by deepening existing divisions and animosities.

While Moscow provides South Ossetia and Abkhazia with everything from recognition to financial support and military assistance, the EU has not offered any concessions that could have enticed the two entities to cooperate. As one survey of attitudes of the EU in Abkhazia suggests, it is not only the de facto authorities, but also representatives of civil society and youth groups who accuse the EU of bias in Georgia's favour and feel there is no point in engaging with Europe unless it recognises

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[435] Fischer, 'The European Union Monitoring Mission', 386.
[436] Alina Doroftei, Kakha Gogolashvili and Thea Kentchadze, 'The ENP and conflict resolution in Georgia', Georgian Foundation for Strategic and International Studies and Crisis Management Initiative, March 2009, 17.

Abkhazia.[437] Incursions of EU monitors into the territories of South Ossetia and Abkhazia without explicit authorisation have been considered 'unacceptable'[438] as they seem to treat the entities as Georgian territories, something the de facto authorities oppose in the strongest terms. The issue of recognition or 'status' in the language of the Geneva talks, is at the heart of South Ossetia's and Abkhazia's lack of engagement with the EU. The positions of the two separatist entities in the context of the Geneva talks, the IPRMs and vis-à-vis the EUMM's access to their territories are shaped by the de facto governments' interest in achieving internationally sanctioned independence, as well as by their overwhelming dependence on Russia. Cooperation with the EU, in this context, has been occasionally instrumentalised as a strategy to help the South Ossetian and Abkhazian de facto authorities achieve their goal of international recognition. On one hand, in light of the EU's declared support for Georgia's territorial integrity, the preferences of the de facto political elites in the two separatist entities appear anathema to any form of cooperation with the EU and the EUMM. However, participating in internationally-mediated negotiation and confidence-building frameworks also represents a rare opportunity for the unrecognised entities to achieve a degree of communication and engagement with the international community that they typically do not enjoy. That both South Ossetia and Abkhazia ultimately engaged with the IPRMs set up by the EUMM and the inconsistent nature of this involvement can be partly explained by the extent to which this framework is seen as fulfilling some of the interests of the de facto authorities. It has been argued that participation in the IPRMs has been motivated not only by the de facto South Ossetian and Abkhazian authorities' pursuit of international recognition and legitimacy, but also by their ability to win domestic support for contributing to the resolution of practical issues that affect the livelihood of local communities.[439] At the same time, the role of Russia and its ability to fully control the strategies of South Ossetian and Abkhazian leaders should not be neglected, given its interest in keeping a tight grip on developments in the two territories and limiting the EU's influence.

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[437] Liana Kvarchelia, 'Perceptions of the EU in Abkhazia and prospects for the EU–Abkhazia engagement' (Centre for Humanitarian Programmes, Arda Inal-Ipa, Conciliation Resources (London), People's Peacemaking Perspectives project, 2012), 5-6.

[438] Civil Georgia, 'EU Monitors Want Access to Abkhazia, S.Ossetia', 5 November 2008, available at: http://www.civil.ge/eng/article.php?id=19890, accessed on 7 July 2015.

[439] Interview government official at the Ministry of Interior, Tbilisi, Georgia, 29 July 2016.

The political elites and societies in the separatist territories are not entirely comfortable with their absolute dependence on Russia, particularly in Abkhazia which has a long history of autonomy and is keen on remaining independent. The Abkhaz elite have arguably been divided between those who favour independence and a degree of integration with Europe and those who support de facto integration with Russia.[440] However, these lines have increasingly been blurred in the aftermath of the war when it became clear that closer relations with the EU effectively meant reintegration with Georgia and the only viable option was to preserve whatever degree of independence Russia allowed for. Negotiations over the 'integration agreements' signed in November 2014 with Abkhazia and March 2015 with South Ossetia revealed concerns in the separatist territories over surrendering their defence entirely to Moscow. The prospect of subsuming South Ossetia's military, security services and part of its judiciary under the Russian government's control raised alarm in Tskhinvali, where a Georgian invasion is still feared. This was poignantly suggested by the declaration of a South Ossetian official: 'If the military command sits with Moscow, in a situation like that, Moscow might be reluctant to come to our support — that is what happened when we were fighting for our independence in the early-1990s'.[441]

Despite unease at Russia's growing economic and military clout over the separatist regions, there has hardly been any significant opposition to Moscow among the local political elites. Both South Ossetia and Abkhazia have relatively pluralistic political systems and leadership contests following the 2008 war have tended to be intensely disputed. On occasion, political developments have moved away from Moscow's preferences, as shown by the 2011 presidential elections in South Ossetia which were unexpectedly won by independent candidate Alla Dzhioyeva, despite Russia's public endorsement of her opponent, Anatoly Bibilov. Nonetheless, Dzhioyeva herself was seen as pro-Russian and her campaign centered on domestic issues related to corruption and the misappropriation of Russian funds.[442] Similarly, the forceful removal of Abkhazia's

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[440] Doroftei, Gogolashvili and Kentchadze, 'The ENP and conflict resolution in Georgia', 15.

[441] Kathrin Hille, 'Georgia wary of Moscow deals with South Ossetia and Abkhazia', *Financial Times*, 18 February 2015, available at: http://on.ft.com/1yYEcTo, accessed on 7 July 2015.

[442] Following Bibilov's accusations of election fraud, the result was declared invalid and new elections were rescheduled, from which Dzhioyeva was barred. BBC News, 'South Ossetia unrest after election

president in 2014 appears to have been fueled by accusations of corruption and an inability to improve the economic situation of the breakaway region, rather than foreign policy considerations.[443] On the other hand, there are claims that Ankvab's demise was spurred by a financial crisis artificially created by Russia with the specific purpose of producing a domestic context conducive to regime change.[444]A degree of political allegiance to Moscow appears to be a sine qua non condition for the political elites of South Ossetia and Abkhazia and, despite occasional divisions between those who advocate integration with Russia and those who support independence, Russia is the only international actor willing and able to provide the support sought by governments in Tskhinvali and Sukhumi. The European Union is not perceived as a viable alternative, despite its attempt at reaching out to the two entities through a strategy of 'engagement without recognition'. Both South Ossetia and Abkhazia remain suspicious of any European cooperation initiative in the absence of recognition, fearing that the ultimate goal in Brussels is to bring them under Georgian sovereignty.

In addition to the importance of international recognition, the political preferences of the governments of the two breakaway regions must be understood in light of Russia's overwhelming control over political, economic and strategic developments in the two breakaway regions. The literature on power and interdependence posits that in a situation of asymmetric interdependence the less dependent actor is more likely to have the upper hand in a political bargaining process; however, this should not be confused with a situation of pure dependence in which bargaining becomes redundant and control over political decisions can be easily enforced.[445] This is precisely the type of relationship that exists between Russia, on one hand, and South Ossetia and Abkhazia, on the other hand, and it goes a long way toward explaining Tskhinvali's and Sukhumi's limited participation in and willingness to cooperate with the confidence building mechanisms set up by the EUMM. While the results of elections have occasionally diverged from Moscow's preferred outcomes, there is little doubt that the South Ossetian and Abkhazian

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result is annulled', 30 November 2011, available at: http://www.bbc.co.uk/news/world-europe-15965537, accessed on 7 September 2015.

[443] David M. Herszenhorn, 'President of Georgian Abkhazia Resigns Under Pressure', *The New York Times*, 1 June 2014, available at: http://nyti.ms/1mGmH5Q, accessed on 13 August 2015.

[444] Interview government official at the Ministry of Interior, Tbilisi, Georgia, 29 July 2016.

[445] Keohane and Nye, *Power and Interdependence,* 9.

positions over the conflict settlement process, engagement in confidence-building measures with Georgia and general cooperation with the EUMM are shaped by Russia's own stance. Given Moscow's strategic interest in preserving the independence of the separatist entities and minimising the role of other international actors in the region, there is no reason to expect that Russia would sanction confidence-building measures that could facilitate Tbilisi regaining control over the disputed territories.

Both South Ossetia and Abkhazia are entirely dependent on Russia for their continued existence as de facto states: Moscow provides Tskhinvali and Sukhumi with recognition, security guarantees and financial support. In addition, Russia essentially runs the internal affairs of South Ossetia and Abkhazia through its representatives on the ground. Before the August 2008 war, Russia formally recognised Georgia's territorial integrity and its military presence in South Ossetia and Abkhazia was presented as part of peacekeeping forces – the so-called Joint Peacekeeping Forces in South Ossetia composed of Russian, Georgian and South Ossetian troops and CIS peacekeepers in Abkhazia.[446] Following 'Russia's demonstration of hard power in Georgia'[447], Moscow abandoned any semblance of neutrality and recognised South Ossetia and Abkhazia as independent states. Its military support shifted from being disguised behind multilateral peacekeeping formats to open, bilateral agreements on military cooperation.

The two breakaway regions are also heavily dependent on Russian aid and subsidies, with contributions from Moscow making up approximately half of Sukhumi's state budget[448], while South Ossetia is entirely dependent on its northern neighbour due to its small size and lack of resources.[449] Relations between Russia and South Ossetia and Abkhazia have been further consolidated through the signing of strategic treaties in March 2015 and November 2014 respectively. The agreement with Sukhumi envisages the creation of a joint Russian-Abkhazian military force, a prominent role for Russia in

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[446] Helge Blakkisrud, and Pål Kolstø, 'Dynamics of de facto statehood: The South Caucasian de facto states between secession and sovereignty', *Southeast European and Black Sea Studies,* 12:2 (2012), 290.

[447] James Nixey, 'The Long Goodbye: Waning Russian Influence in the South Caucasus and Central Asia', Briefing Paper (Chatham House, London, June 2012), 2.

[448] Nikolaus von Twickel, 'No Clear Frontrunner as Abkhazia Goes to Poll', *The Moscow Times*, 26 August 2011, available at: http://www.themoscowtimes.com/news/article/no-clear-frontrunner-as-abkhazia-goes-to-poll/442702.html, accessed on 6 July 2015.

[449] Mikhail Delyagin, 'A Testing Ground for Modernization and a Showcase of Success', *Russia in Global Affairs*, 8 March 2009, available at: http://eng.globalaffairs.ru/number/n_12538, accessed on 6 July 2015.

Abkhazia's foreign policy, the integration of Abkhazia's trade laws with the Eurasian Economic Union and the subsidising for modernising Abkhazia's military by Russia[450]. Under a similar treaty, South Ossetia will be almost entirely incorporated into Russia militarily and economically.[451] In addition to large-scale military and financial support, Russia has reinforced the dependence of the two entities through a variety of measures such as issuing Russian passports, investment in healthcare and culture, Russian purchases of real estate, the intensification of Russian language-teaching, as well as the provision of legal assistance and restoration of air, rail and road traffic.[452] Facilitating access to South Ossetia and Abkhazia and imposing barriers to cross-border travel to Georgia are also part of this policy.

More relevant for the EUMM's role, Russia controls South Ossetia's and Abkhazia's borders, having signed agreements with the two entities on border control cooperation in April 2009. Although the agreements were meant to stay in place until Sukhumi and Tskhinvali established their own border control agencies, the more recent agreements on Alliance and Integration stipulate the merger of Russian, Abkhazian and Ossetian customs and border services, effectively relinquishing the breakaway regions' border control responsibilities to Moscow.[453] The EUMM itself supported to a certain extent the control of the ABLs by Russia, which was in a much better position to offer public order and protection to the local population than separatist militias. However, this did not amount to an endorsement by the mission of Russia's military presence on the boundary line, but was the result of a pragmatic choice between the 'mob rule' of local militias and the potential of Russian troops to provide stability.[454]

Russia's virtual control over the breakaway regions' military forces, economy, borders and domestic and foreign policy direction has resulted in Moscow being able to

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[450] David M. Herszenhorn, 'Pact Tightens Russian Ties With Abkhazia', *The New York Times*, 24 November 2014, available at: http://www.nytimes.com/2014/11/25/world/europe/pact-tightens-russian-ties-with-abkhazia.html?_r=0, accessed on 6 July 2015.
[451] Colin Freeman, 'Russia signs integration deal with South Ossetia', *The Telegraph*, 19 March 2015, available at: http://www.telegraph.co.uk/news/worldnews/europe/georgia/11484030/Russia-signs-integration-deal-with-South-Ossetia.html, accessed on 6 July 2015.
[452] Nixey, 'The Long Goodbye', 3.
[453] Valeriy Dzutsev, 'Russia to Strip Abkhazia and South Ossetia of their Limited Sovereignty', *The Central-Asia Caucasus Analyst*, 18 March 2015, available at: http://www.cacianalyst.org/publications/analytical-articles/item/13163-russia-to-strip-abkhazia-and-south-ossetia-of-their-limited-sovereignty.html, accessed on 6 July 2015.
[454] Martin, 'Crossing boundaries', 138.

largely shape the positions of South Ossetia and Abkhazia at the Geneva talks, the IPRM and vis-à-vis the EUMM's access to the separatist territories. Given that Russia's interests in the region have focused on the preservation of its sphere of influence, as well as preventing Georgia's NATO and EU membership, Moscow predictably opposed the presence of EUMM monitors in Abkhazia and South Ossetia. In fact, Russia was firmly opposed to any increased international presence on the ground, despite this being the only effective way of implementing an agreement on the non-use of force between conflict parties.[455] This is not surprising given that Moscow has no interest in allowing an international presence which could disturb a status quo that allows it to control the two secessionist provinces and, by extension, gives it leverage over Georgia's strategic choices (i.e. NATO membership). Russia's staunch opposition to allowing EUMM monitors inside South Ossetia and Abkhazia was also confirmed at the time of OSCE's termination of its mission in Georgia, when French Minister of Foreign Affairs Bernard Kouchner was quoted as telling journalists in reference to the EUMM: 'I just asked [Russian Foreign Minister Sergei Lavrov] for one millimeter of progress in giving the E.U. observers access to the other side of the line. It has not been accepted.'[456]

From the very beginning of its deployment, the EUMM's role on the ground has been instrumentalised by Russia in accordance with its preferences. Thus, the Russians have allegedly hoped that the mission would provide a check on 'Saakashvili's erratic behaviour'[457], suggesting that they did not envision a role for the EUMM in South Ossetia and Abkhazia. Notably, Moscow chose to interpret the EUMM's mandate as exclusively meant to monitor and report on the activities of the Georgian side while having no authority in South Ossetia and Abkhazia. Consequently, as Russia was withdrawing its troops from South Ossetia in October 2008, Russian officials asked the EUMM to sign off documents which transferred authority back to Georgia, in an apparent attempt to commit the mission to becoming directly involved in the provision of security. In addition, Russian representatives also asked Head of Mission Hansjörg Haber to sign

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[455] US Mission Geneva, 'Geneva Discussions On Georgia: Round IX', Cable 10GENEVA45, 17 February 2010, available at: https://wikileaks.org/plusd/cables/10GENEVA45_a.html, accessed on 6 July 2015.

[456] Vladimir Socor, 'OSCE RIP in Georgia', *The Jamestown Foundation*, 1 July 2009, available at: http://www.jamestown.org/programs/edm/single/?tx_ttnews[tt_news]=35201&cHash=87be3b3b44#.Vc-PD_lVhHw, accessed on 15 August 2015.

[457] US Embassy Berlin, 'Germany supports EUMM but seeks realistic goals'.

two Memoranda of Understanding – one limiting the presence of Georgian armed forces in the areas previously occupied by the Russians and the second confirming Russia's withdrawal to pre-war positions and guaranteeing that the EUMM would not seek access into South Ossetia and Abkhazia.[458]

This liberal interpretation of the EUMM's mandate was partly a consequence of the vaguely phrased point 2 of the Sarkozy-Medvedev agreement of 8 September which called for European Union 'observers' to replace Russian 'peacekeeping forces'.[459] Russia capitalised on this confusion in order to repeatedly criticise the EUMM for not doing enough to provide security and even for the alleged weakness of the MoU with the Georgian Ministry of Defence which, it claimed, 'did not conform to Russian military requirements' and was not binding.[460] In addition to invalidating any request by the EUMM to access the territories of South Ossetia and Abkhazia, Russia's attempts to portray the mission as tasked to monitor strictly the Georgian side of the ABLs was meant to underline the Russian troops' role as 'stabilisers' on the South Ossetian and Abkhazian sides. By implying this equivalence, Moscow aimed to shift the perception of Russia as a conflict party to that of Russia as a mediator in the conflict.

Having failed to persuade the EUMM to willingly restrict its activities to the Georgian side of the ABLs and faced with repeated requests for access to the separatist territories, Russia resorted to more covert tactics aimed at undermining the mission's mandate. On 26 October 2008, the EUMM was invited to a meeting by the South Ossetian de facto authorities, which however the latter failed to attend. The South Ossetian media later accused the mission – who had waited for the South Ossetians for ninety minutes on the ABL – of crossing the boundary line without authorisation and thus violating its mandate.[461] On a different occasion a EUMM armoured patrol vehicle and an accompanying ambulance were damaged by explosions near the Abkhazian ABL, resulting in the death of the ambulance driver and the injury of a medic. The timing of the incident - which occurred in the aftermath of Russia vetoing the continued presence of

[458] US Embassy Tbilisi, 'Georgia: Russian forces withdraw', Cable 08Tbilisi1868_a, 8 October 2008, available at: https://wikileaks.org/plusd/cables/08TBILISI1868_a.html, accessed on 1 September 2015.
[459] US Embassy Tbilisi, 'Georgia: Russian forces withdraw'.
[460] US Embassy Tbilisi, 'Georgia: Good and bad news from EUMM', Cable 09TBILISI674_a, 6 April 2009, available at: https://wikileaks.org/plusd/cables/09TBILISI674_a.html, accessed on 31 August 2015.
[461] US Embassy Tbilisi, 'Georgia: EUMM seeks to formalize'.

UNOMIG on the ground and a week before the OSCE monitoring mission ceased its activities – as well as the specific circumstances of the explosions, suggested that the attack might have been targeted. An American diplomat speculated that 'the attack suggests that some side(s) may want to dissuade the EUMM from continuing its monitoring efforts'.[462] These incidents suggest that despite public statements to the contrary, Russia would have preferred to see the EUMM's mandate terminated or, in any case, modified to explicitly exclude access to South Ossetian and Abkhazian territory.

EUMM's confidence-building initiatives are meant to reduce the risk of a resumption of hostilities through facilitating communication between the Georgian, Abkhazian, South Ossetian and Russian parties and pave the way for a working relationship between these actors in order to tackle practical issues that affect the livelihoods of local communities. The IPRM has arguably been the only concrete result of the Geneva talks and a valuable confidence-building mechanism, supporting conflict parties in exchanging information and tackling violent incidents around the ABLs. It is the only forum which facilitates regular contacts between security providers on the ground and is, thus, essential to preserving peace in the region. The EUMM put forward the proposal for an incident settlement at the Geneva talks in the hope that the mechanism could help conflict parties address challenges to stabilisation and normalisation, as well as foster confidence-building between participants. The IPRM attempts to avoid the sensitive political issues of status and conflict settlement outcomes. However, in practice, it is difficult to detach strictly technical confidence-building measures from the political context of the conflict. As a result, the de facto authorities and Russian representatives constantly try to push for the recognition of independence of the two breakaway regions by bringing politicised issues such as border demarcation within the framework of the IPRMs.[463] While Georgia has been open to engage in the IPRM, South Ossetia and Abkhazia have repeatedly tried to undermine the mechanism either at Russia's behest or because it did not advance the political agenda of the government in power at the time.[464] Although Tskhinvali and Sukhumi have occasionally been cooperative vis-à-vis the

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[462] US Embassy Tbilisi, 'Georgia: Explosions damage two EUMM vehicles; Georgian ambulance driver killed', Cable 09TBILISI1136_a, 22 June 2009, available at: https://wikileaks.org/plusd/cables/09TBILISI1136_a.html, accessed on 1 September 2015.

[463] Interview government official at the Ministry of Interior, Tbilisi, Georgia, 2 May 2013.

[464] Interviews government officials at the Ministry of Interior, Tbilisi, Georgia, 2013.and 2016.

IPRM, their pattern of engagement is indicative of a Russian-directed 'good cop-bad cop routine'.[465] Moscow's strategy has been to play the card of intransigence on the part of the de facto South Ossetian and Abkhazian governments while seemingly attempting to plead with them for moderation.[466]

Initially it was South Ossetia who refused to participate in the IPRM under a variety of pretexts, including its insistence that the meetings should take place on the ABL in Ergneti, rather than alternatively on the Georgian and South Ossetian sides. Once Georgia agreed to the Ossetian demand, Tskhinvali brought up a new issue – that of the chairmanship of the IPRM – arguing that it cannot accept that the meetings be chaired by the EUMM together with the OSCE and lobbying for the replacement of the latter by Russia.[467] In addition, the IPRM was further conditioned on the resolution of the case of three missing Ossetians. However, as an indication that the case was merely being used as a pretext in order to undermine the IPRM, when a Georgian official suggested that Tbilisi would be willing to allow a South Ossetian delegation to visit the place where they believed the South Ossetians were detained in exchange for Georgia being also allowed to investigate cases of concern on the South Ossetian side of the ABL, the Russian representative to Tskhinvali flatly refused.[468] The standoff was only brought to an end after more than a year when the South Ossetian side agreed to take part again in the IPRM following the publication of a report on missing persons in the August 2008 conflict by the Council of Europe's Human Rights Commissioner.[469]

The restoration of the IPRM for the South Ossetian theatre was, however, followed by a breakdown of IPRM Gali, covering the Abkhazian theatre. Despite an initial openness in Abkhazia to cooperate with the EUMM and address practical issues in the context of the IPRM, an incident involving the Head of the EUMM in April 2012 led Sukhumi to suspend the mechanism. The dispute reportedly emerged when, responding

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[465] US Embassy Tbilisi, 'Georgia: Scenesetter'

[466] During a private conversation, Russian Deputy Foreign Minister Grigoriy Karasin reportedly told EUMM HoM Hansjörg Haber that he was flexible on the issue of the location of the IPRM 'but that he was not the "foreign minister" of South Ossetia'. US Embassy Tbilisi, 'Georgia: 2nd Incident Mechanism better, or maybe not', Cable 09TBILISI1045_a, 5 June 2009, available at: https://wikileaks.org/plusd/cables/09TBILISI1045_a.html, accessed on 31 August 2015.

[467] US Embassy Tbilisi, 'Georgia: 2nd Incident Mechanism'.

[468] US Embassy Tbilisi, 'Georgia: 2nd Incident Mechanism'.

[469] Human Rights Watch, 'Living in limbo', 13-14.

to a request from the Abkhazian de facto authorities to investigate a violent episode, HoM Tyszkiewicz requested access to Abkhazia and was, as a result, accused of political blackmail and declared persona-non grata in the separatist entity. Similarly to the suspension of the IPRM for South Ossetia, the boycott of IPRM Gali appears to have at its origin a deeper intention to undermine the IPRM and, implicitly, cooperation with the EUMM.[470] In addition, it has been argued that the suspension of IPRM Gali represented a political decision which responded to the imperatives of the Sukhumi regime's agenda at the time.[471] Although Abkhazia claimed that it would be willing to renew its participation in IPRM Gali if the EUMM was represented by someone other than HoM Tyszkiewicz, the suspension continues well after the mission's leadership has been taken over by a new Head of Mission. The new pretext used by Sukhumi to justify its continued refusal to restart the confidence-building mechanism is its opposition to the inclusion of the Abkhazian government in exile in the IPRM framework, something which Tbilisi has allegedly been pursuing.[472]

The obstructiveness of South Ossetia and Abkhazia in relation to the IPRMs should be regarded in the context of a primary concern with status – the recognition of the two entities as independent - and only a secondary interest in addressing practical issues that affect people's daily lives, which is precisely what a confidence-building platform such as the IPRM seeks to do.[473] This is consistent with attempts by Sukhumi in November 2012 at changing the format of the Geneva talks by upgrading the status of negotiators to 'delegations', as opposed to 'participants' as they are currently identified.[474] This move runs contrary to the 'status neutral' format of the Geneva discussions, adopted precisely in order to avoid the initial deadlock in negotiations caused by disagreements between Georgia, South Ossetia and Abkhazia over the formal recognition of the breakaway regions. By seeking to open up this controversial issue, it is plausible to assume that the separatist entities and Russia aim to either force the status

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[470] Interview EUMM leadership, 26 April 2013, Tbilisi, Georgia.
[471] Interview government official at the Ministry of Interior, Tbilisi, Georgia, 29 July 2016.
[472] Interview EUMM advisor, 26 August 2015 via Skype.
[473] US Embassy Tbilisi, 'Georgia: 2nd Incident Mechanism'.
[474] Civil Georgia, 'State Minister for Reintegration'.

issue onto the Geneva agenda or use any ensuing impasse in order to boycott the Geneva discussions altogether.[475]

The behaviour of decision-makers in South Ossetia and Abkhazia regarding engagement in the IPRMs must be understood in the context of their fundamental concern with political survival, itself a function of the preservation of the de facto independence of the two entities and of their total dependence on Russia. Cooperation with the EU did not provide an opportunity for the separatist territories to enhance their autonomy – on the contrary – neither did it represent a realistic alternative to Russia. Therefore, engaging in the IPRMs and the other confidence-building measures supported by the EUMM brought benefits only to the extent that this form of cooperation could be shown to boost the governments' standing at home. However, whenever such benefits were outweighed by the potential costs of Russian retaliation or by competing domestic interests, cooperation with the EUMM inevitably suffered. With the EU not positioning itself as a credible alternative coalition and thus lacking any leverage in terms of threats and side-payments and the absence of opposition from domestic veto players (given that no one among the political elites in Tskhinvali and Sukhumi would have benefitted from cooperation with the EU at the cost of antagonising Russia), there was little that could have altered this strong preferential misfit. The benefits of cooperation with the EU and the EUMM were simply too marginal to overcome domestic political imperatives or Russian pressures. While participating in the IPRMs can offer the de facto authorities a degree of visibility and even legitimacy, this ceases to be appealing when Russia opposes it. Considering the entities' lack of autonomy and inability to make independent decisions, it is the interests of the Russian leadership rather than those of the South Ossetian and Abkhazian de facto authorities which often influence outcomes in the two territories.

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[475] Interview EUMM advisor, 26 August 2015 via Skype.

5.5. Conclusion

This chapter has confirmed that the emergence and persistence of confidence-building mechanisms in the context of EU civilian missions in the Eastern Neighbourhood can only take place under conditions of preferential fit between the incumbent regimes' motivation to gain or retain power and the specific measures advocated by CSDP missions. If a particular confidence-building initiative is perceived to incur political costs that outweigh its benefits, it is unlikely that it will be adopted by the target government. The preferential (mis)fit of the de facto regimes in South Ossetia and Abkhazia is shaped by their need for international recognition and legitimacy and by their total dependence on Russia, which explains the inconsistent and at times obstructive behaviour in the context of the IPRMs. The EU's support for the territorial integrity of Georgia means that the Union does not represent a viable foreign policy coalition for the largely unrecognised entities. The involvement of South Ossetia and Abkhazia in the IPRMs has been informed, on one hand, by the opportunities provided by this framework in terms of international recognition and domestic political capital and, on the other hand, by Russia's highly strategic behaviour in the form of attempts to gain leverage over the functioning of the mechanism in order to sabotage the broader Geneva negotiation framework. When the two factors were compatible, effective cooperation in the framework of the IPRMs was possible because of strong or, at least, passive preferential fit between the de facto authorities and EUMM. However, when they were at loggerheads, Russia's ability to convert the strong and/or passive preferential fit into weak preferential fit determined South Ossetia and Abkhazia to undermine the EUMM's confidence-building efforts. The overwhelming dependence of the separatist territories on Russia positioned Moscow as the only viable coalition and shaped the strategic environment surrounding the EU-driven confidence-building processes in a way which did not allow for the EU to situate itself as a credible alternative to Russia or to offer threats and/or side-payments which could have altered the cost-benefit calculations of de facto leaders. At the same time, the extent of reliance on Moscow also prevented the emergence of domestic veto players with different interests from those of the de facto incumbent regimes. Ultimately, the degree of preferential fit between the preference for

political survival of the South Ossetian and Abkhazian elites and the EUMM confidence-building goals was mainly constrained by the vital role played by Russia within the two territories. Moscow successfully constituted itself as the only potential cooperation partner for South Ossetia and Abkhazia, whose leaders' political survival and ability to preserve power hinged entirely on their willingness to support the Russian agenda. The EU, on the other hand, lacked leverage and its ability to constrain the strategic environment of the two entities and thus alter their cost-benefit calculations was limited at best.

The Memoranda of Understanding between the EUMM and the Georgian government illustrate well how failure to participate in a confidence-building framework can also be politically costly and this consideration may induce political leaders to adhere to measures which they would have otherwise not adopted Saakashvili took the politically sensitive decision to limit Georgia's ability to mobilise military forces around the internal boundary lines because a refusal to sign the MoU with the EUMM could have cost Georgia the support of the international community and potentially ended his political career. All things considered, an agreement with the EUMM over the MoU appeared to be the utility-maximising strategy, allowing Saakashvili to retain his popularity abroad and consolidate his power domestically. Given the fragmented nature of the political opposition and the significant challenges in forming a unified group of veto players that could effectively oppose the President, the decision to sign the MoU involved little, if any, domestic cost to Saakashvili. Moreover, there was no prospect of an alternative coalition to the EU and the West broadly, since the obvious candidate for this role – Russia – was considered an occupying power in Georgia. The role of the unified front presented by the international community on the MoU issue should also be noted, as it is likely to have been carefully considered in Saakashvili's strategic calculations. As was the case with the customs regime between Moldova and Ukraine, a policy action that enjoys the endorsement of the broader international community leaves the target government with fewer options in terms of potential alternative coalitions and thus makes it more likely that the proposed measure would be accepted. The case of the MoU represents one of the few instances where the regime in power (Saakashvili) faces few, if any, environmental constraints and can thus act according to its preferences.

Saakashvili's preferential fit with the EU's agenda was generally strong and was further enhanced in the aftermath of the war with Russia when Georgia had few options but comply with the requests of the international community.

Chapter 6

EUJUST Themis: cooperation and rule transfer in Georgia's criminal justice system reform

This chapter examines the cooperation between the EUJUST Themis rule of law mission and the Georgian government in the context of the reform of Georgia's criminal justice system. According to the mission statement, 'EUJUST THEMIS, shall, in full coordination with, and in complementarity to, EC programmes, as well as other donors' programmes, assist in the development of a horizontal governmental strategy guiding the reform process for all relevant stakeholders within the criminal justice sector, including the establishment of a mechanism for coordination and priority setting for the criminal justice reform'.[476] The mission's specific objectives included the provision of guidance to Georgia's government on a new criminal justice reform strategy, supporting coordination between relevant rule of law actors, assisting with the drafting of new legislation and supporting the development of international cooperation. The chapter begins with an empirical analysis of the mission's mandate and seeks to highlight the extent to which EUJUST Themis has been able to assist in the rule transfer stipulated by its mandate. The second part of the chapter aims to provide an explanation for the extent of rule transfer through the prism of the Georgian government's preferential misfit with EUJUST's reform programme.

6.1. Developing a new criminal justice reform strategy

The first part of the mission's activity on the ground consisted of an assessment phase which was planned to last between two and four months and aimed at producing a comprehensive assessment of the Georgian criminal justice system. On the basis of this

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[476] EU Council, 'Council Joint Action 2004/523/CFSP of 28 June 2004 on the European Union Rule of Law Mission in Georgia, EUJUST THEMIS', 2004.

evaluation, Themis experts would provide their Georgian counterparts with recommendations and advice on how to proceed with the reform of Georgia's criminal justice system. As part of the assessment process, Themis experts visited courtrooms across Georgia, attended court sessions and interviewed their Georgian counterparts in order to acquire an understanding of the characteristics of the Georgian system and elaborate a series of reform proposals.[477] This process posed challenges for some of the experts who felt they had been received with suspicion by their counterparts. The interviewing process was in some cases undermined by language barriers and a perceived lack of trust between EU experts and Georgian officials, the latter giving the impression that they thought the mission personnel was there to 'spy' on them.[478] Another problem was that mission experts would sometimes receive contradictory information, which seemed to suggest that Georgian officials, particularly at high level, only conveyed information that suited their interests and attempted to cover phenomena such as the arbitrary removal of judges.[479]

In terms of the concrete recommendations of the mission, the most prominent issue flagged up by EUJUST Themis was the incompatibility between several features of the Georgian criminal justice system and the principle of independence of the judiciary. The role of the President in the Georgian Constitutional system was assessed as detrimental to the independence of the judiciary, given its prerogatives to appoint and dismiss judges and change the territorial jurisdiction of different courts.[480] Moreover, the High Council of Justice was deemed to be incompatible with the principles of the European Charter on the judiciary. Whereas the Charter requires that disciplinary proceedings against judges must be conducted by an independent institution, the High Council of Justice was an advisory institution to the President.[481] As far as the Prosecution was concerned, Themis noted that the Georgian Prosecution system was

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[477] Interview EUJUST Themis expert, 16 October 2013 via Skype.
[478] Interview EUJUST Themis expert, 16 October 2013 via Skype.
[479] Interview EUJUST Themis expert, 10 July 2013, Warsaw.
[480] Council of the European Union, 'EUJUST Themis – Third Mission Assessment Report (MAR) of the Rule of Law mission in Georgia, EUJUST THEMIS', ST 8051/09 (Declassified), 19 November 2005, 10.
[481] Council of the European Union, 'EUJUST Themis – Third Mission Assessment Report (MAR) of the Rule of Law mission in Georgia, EUJUST THEMIS', ST 8051/09 (Declassified), 19 November 2005, 9.

highly hierarchical with power concentrated in the General Prosecutor's hands.[482] The mission recommended enhancing the individual prosecutors' autonomy in order to improve the speed and effectiveness of prosecutorial activities.[483]

In order to proceed with the drafting of a criminal justice strategy, the mission recommended the creation of a high-level working group and nine sectoral subgroups. Given Themis's task to 'assist in the development of a horizontal governmental strategy', it was crucial for the mission to involve all the relevant stakeholders in the process of drafting Georgia's new criminal justice strategy. The high-level working group proposed was meant to be 'the main co-ordinating mechanism and strategic decision making body of the criminal justice reform process in Georgia'[484] and also coordinate the work of the subgroups. But the formal approval process became protracted as President Saakashvili only signed a presidential decree setting up the working group and affiliated subgroups several months later, in October 2004. This was a crucial moment for EUJUST Themis, since a failure to have its proposals approved could have resulted in the termination of the mission. The delay of President Saakashvili in signing the decree raised alarm among mission experts who perceived the seeming disinterest as an indication of the lack of support and commitment of the Georgian government.[485] However, once the coordinating mechanism was formally set up, the mission starting working on deciding the groups' membership together with its Georgian counterparts.

The high-level working group was composed of the Minister of Justice of Georgia, who also headed the group, and representatives of other relevant judicial institutions: the Secretary of the National Security Council, the Secretary of the High Council of Justice, the Minister of Finance, the Chairman of the Supreme Court, the General Prosecutor, the Public Defender, the Head of the Legal Affairs Committee of the Parliament, two Members of Parliament, a Member of the Working Group on the Criminal Procedure Code and representatives from the Liberty Institute and 'IRIS'

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[482] Anecdotal evidence that points to the disproportionate power of the Prosecution compared to all the other judicial branches includes the example of a courtroom just outside of Tbilisi where the 1st and 2nd floors, where the courtroom was situated, had no electricity, but the 3rd floor where the Prosecution was located had a special cable for the supply of electricity. Interview EUJUST Themis expert, 11 September 2013, via Skype.

[483] Council of the European Union, 'EUJUST Themis', 8.

[484] Council of the European Union, 'EUJUST Themis', 6.

[485] Interview EUJUST Themis expert, 11 September 2013, via Skype.

Georgia NGOs. The high-level working group was supported by nine subgroups whose task was to draft the strategy in the relevant sectors of the criminal justice system: 1. Police Authorities and Crime Prevention; 2. Prosecution; 3. The Bar and advancement of the Legal Aid system; 4. The Judiciary; 5. Reforms of the Criminal and Administrative Violations' Codes; 6. Execution of Penalties; 7. The Criminal Procedure Code; 8. Reform of the Public Defender's (ombudsman) institution; 9. Reform of Education of Lawyers'.[486] The practice of co-location – the placement of EUJUST Themis legal experts in relevant Georgian institutions – was meant to contribute to enhancing communication between Georgian actors in the area of criminal justice through facilitating 'the co-ordination and co-operation between various rule of law institutions in Georgia'. EUJUST Themis experts were also actively involved in supporting joint meetings of different subgroups in order for these to harmonise their individual draft concepts into a coherent horizontal reform strategy.[487]

While the mechanism of the working groups provided excellent opportunities for cooperation and coordination between Georgian rule of law institutions, the personnel reshuffles championed by Saakashvili across the state administration resulted in the membership of the group changing a number of times. The tragic death of Prime Minister Zhvania in February 2005 only reinforced the difficulties of getting the high-level working group started, bringing about further changes in its composition and delaying a previously scheduled meeting by one month.[488] The combined effect of PM Zhvania's death and the constant staff reshuffles in the judicial system was that the high-level working group hardly ever met.[489] As for the subgroups, they also suffered some personnel changes, although the majority of coordinators and key members remained the same.[490] Nonetheless, it appears they did not meet regularly either and some of them were composed of a very limited number of people.[491] For instance, records of a meeting between the Head of Mission Sylvie Panz and EUJUST Themis senior legal expert Rafal

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[486] Interview EUJUST Themis expert, 11 September 2013, via Skype.
[487] Council of the European Union, 'EUJUST Themis', 13.
[488] Council of the European Union, 'EUJUST Themis', 16.
[489] The high-level working group did not meet at all between November 2004-March 2005, despite an expectation that meetings would be held twice a month. Council of the European Union, 'EUJUST Themis', 19.
[490] Council of the European Union, 'EUJUST Themis', 20.
[491] Helly, 'EUJUST Themis in Georgia', 100.

Pelc with the Public Defender Sozar Subari show that Ms Panz expressed concern at the delay in the work of the subgroup on the reform of the Public Defender's (ombudsman) institution.[492] Also, the High Council of Justice had failed to send a representative to participate in the subgroup on the judiciary which clearly limited the progress the sectoral group could make given the importance of the HCOJ.[493]

The mission raised the issue of the irregular meetings of the high-level working group with several high-ranking Georgian figures, including Prime Minister Noghaideli and Minister of Justice Kemularia, and received assurances regarding the commitment of the Georgian government to the reform of the criminal justice system.[494] During a meeting of the governmental Euro-Integration Commission on 9 March 2005, Minister of Justice Kemularia gave assurances that the high-level group would meet twice a month and that the draft strategy would be ready by mid-April.[495] Prime Minister Noghaideli intervened to request the renewal of the composition of the high-level working group in order to reflect the personnel reshuffles; better coordination between subgroups; weekly reporting to the government regarding the progress of the subgroups and the high-level working group.[496] However, the high-level group continued to meet infrequently as a result of the government's anti-corruption efforts. Georgian officials who were part of the group were routinely changed, which proved disruptive to the work carried out and prevented the achievement of significant progress in harmonising and integrating the nine sectoral draft concepts into a coherent criminal justice strategy.

Ultimately, it can be argued that the mission succeeded in bringing the various stakeholders of the criminal justice system around the table and incentivised them to coordinate their reform efforts.[497] But the difficulties posed by a volatile political environment, in particular the constant personnel reshuffles, severely limited the effectiveness of coordinating mechanisms such as the working groups and undermined what should have been the end result of their work: the drafting of Georgia's criminal justice strategy. EUJUST Themis itself acknowledged that 'it is not clear whether this co-

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[492] Council of the European Union, 'EUJUST Themis', 18.
[493] Council of the European Union, 'EUJUST Themis', 18
[494] Council of the European Union, 'EUJUST Themis', 17.
[495] Council of the European Union, 'EUJUST Themis', 22.
[496] Council of the European Union, 'EUJUST Themis', 18
[497] Kurowska, 'The rule of law mission in Georgia', 207.

operation and co-ordination is going to be sustainable in the long term'.[498] As the rest of this section shows, the failure of the Georgian leadership to actively commit to and engage in drafting the criminal justice strategy resulted in large parts of this document being drafted by the mission experts, with no involvement from Georgian stakeholders.

While the nine subgroups, with the advice and support of EUJUST Themis, produced the sectoral draft concepts[499], the high-level working group failed to deliver on its commitment to submit a comprehensive and integrated criminal justice strategy by the end of April 2005. Despite a clear deadline, the Georgian leadership did not bring its contribution to finalising the draft strategy. This situation triggered something akin to an internal crisis within the mission, which found itself under extraordinary pressure to obtain a comprehensive document by mid-May 2005.[500] Themis went ahead with drafting the strategy without Georgian input[501] and also proceeded to put political pressure on the Georgian leadership. As a result, Minister of Justice Konstantine Kemularia was invited to the Political and Security Committee (PSC) in Brussels which nudged the Georgian authorities to submit their contribution to the strategy. The result was a short, minimalist document which, despite being adopted by the government on 20 May 2005 had to be revised several times.[502] The revised draft - the National Strategy for Criminal Justice Reform – was finally adopted by President Saakashvili in July 2005 by decree.[503]

The drafting of the criminal justice strategy was in many respects a fiasco. Whereas the EU's assessment of the mission as a success reflects its self-congratulatory tendencies, the fact that the strategy did not reflect national ownership seriously undermined its legitimacy. The mission itself had gone to great lengths to entice its Georgian counterparts to fully participate and 'own' the drafting of the strategy, but the politicisation of the judicial process prevented this from happening. Thus, as far as the reform of the judiciary was concerned, Georgian judges were very much interested in the reform process and wanted to participate actively. The obstacle was that most of the proposals put forward by the judges were rejected by a newly-appointed President of the

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[498] Council of the European Union, 'EUJUST Themis', 15.
[499] Council of the European Union, 'EUJUST Themis', 6.
[500] Helly, 'EUJUST Themis in Georgia', 100.
[501] Kurowska, 'The rule of law mission in Georgia', 206.
[502] Helly, 'EUJUST Themis in Georgia', 100.
[503] Kurowska, 'The rule of law mission in Georgia', 206.

Supreme Court. Also, many of the judges were dismissed and the newly appointed ones were reluctant to cooperate with the mission.[504] On the other hand, in other areas such as the reform of the Prosecutor's Office there was simply no interest in altering a status quo that provided the General Prosecutor with overwhelming power to the detriment of the defence and judges.

6.2. EUJUST Themis and international cooperation in the area of criminal justice

To some extent Themis played a significant role in coordinating the donor community in Georgia, succeeding in relaunching a donors' information exchange in the field of rule of law.[505] One mission expert points out that this was the responsibility of the recipient country, however, the Georgian authorities made little effort towards coordinating international efforts, either because of a lack of local capacity or because they 'didn't mind getting the same thing from several actors'.[506] International donors' roundtables were organised regularly and Themis actively participated in these, as well as in various seminars and conferences organised by other international donors.[507] Several joint meetings between EUJUST Themis, other international donors working in the rule of law area and Georgian authorities took place. On 3 March 2005 the Deputy Head of Mission together with the Head of the EC Delegation, the personal representative of the Council of Europe Secretary General and the Head of the OSCE Mission to Georgia met Georgian Prime Minister Kemularia to discuss the competences of different international actors and the improvement of coordination among international donors and with Georgian institutions.[508] On 14 March 2005 Themis participated in a meeting with the International Organisation for Migration (IOM) to discuss trafficking in human beings, a new 'alien law' and a law on labour migration.[509] The mission also met with CoE

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[504] Interview EUJUST Themis expert, 11 September 2013, via Skype.
[505] Helly, 'EUJUST Themis in Georgia', 98.
[506] Interview EUJUST Themis expert, 8 March 2013, Brussels.
[507] Council of the European Union, 'EUJUST Themis', 26.
[508] Council of the European Union, 'EUJUST Themis', 19.
[509] Council of the European Union, 'EUJUST Themis', 26.

representatives on a number of occasions and attended various conferences organised by the CoE, on its own or in cooperation with the Georgian civil society.

These events contributed to the development of international cooperation between international donors in the area of rule of law, although they fell short of supporting a coordinated approach to reform efforts. One particular international donor with which Themis appears to have had a relatively closer relationship was the Norwegian Rule of Law Mission (NORLAG) which, like EUJUST, had a one year mandate to advise the Georgian authorities on criminal justice-related issues. EUJUST Themis and NORLAG cooperated in a number of ways, including discussing legal developments in the Georgian criminal justice system, informing each other of their respective activities, priorities and working foci and participating in each other's seminars and workshops.[510] Coordination appeared to work more effectively in the field of penitentiary reform through the creation of a roundtable which included the OSCE, ICRC, Penal Reform International and TACIS, as well as one Themis expert.[511] However, as far as penitentiary reform was concern, the main EU actor involved in the process was the European Commission with EUJUST Themis proving necessary support rather than leading the process.

Some of the EUJUST Themis experts have been critical of the coordination between relevant international donors in Georgia. There was an abundance of international actors offering assistance in the area of rule of law – according to some accounts, there were up to 28 different rule of law organisations or programmes operating simultaneously, which not only failed to cooperate with one another but even withheld information from each other.[512] While international donors' meetings took place regularly, some of the participants claimed that the discussions lacked meaningful substance and did not actually contribute to better coordination of the international donors' community.[513] There was no division of labour between the various organisations on the ground and this resulted in significant duplication, but also in the Georgians receiving very different advice on similar issues. In depth coordination and cooperation with other donors would have been challenging for EUJUST Themis, given ESDP (sic!)

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[510] Council of the European Union, 'EUJUST Themis', 30.
[511] Helly, 'EUJUST Themis in Georgia', 98.
[512] Interview EUJUST Themis expert, 11 September 2013, via Skype.
[513] Interview EUJUST Themis expert, 16 October 2013 via Skype.

confidentiality rules. As a result, neither the OSCE not the US government were consulted on the drafting of the strategy.[514]

The relationship between Themis and the various US programmes and organisations on the ground was a complex one. The inter-personal relations between EU and American experts on the ground was good as they shared a frustration with the constant personnel changes which meant activities such as training and mentoring were oftentimes wasted on individuals who were no longer in the positions they had been trained for.[515] But on a more general normative level, the EU-US relationship became competitive. While American legal experts allegedly supported Themis's concept of a criminal justice system that would reflect and be compatible with Georgia's historical and political specificities[516], there was no doubt that the Georgian leadership and many in the legal profession were drawn to American elements such as jury trial and plea bargaining. Themis experts are unambiguous about the existence of a clash between European and American legal philosophies, exacerbated by the fact that the Americans offered the Georgians significantly more financial support than EUJUST Themis and the EC Delegation in Tbilisi.[517] The preference of the Georgians for an American-style criminal justice system resulted in the adoption of a number of legal norms and procedures which were at odds with the recommendations of Themis for the draft criminal strategy.

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[514] Helly, 'EUJUST Themis in Georgia', 98.
[515] Interview EUJUST Themis expert, 12 September 2013 via Skype.
[516] Helly, 'EUJUST Themis in Georgia', 98.
[517] Interviews EUJUST Themis expert, 10 July 2013, Warsaw & EUJUST Themis expert, 23 February 2013 via Skype.

6.3. Planning for the implementation of Georgia's criminal justice reform strategy

The final stage of Themis aimed at formulating a plan for the implementation of the criminal justice reform strategy by a high-level strategy group composed of Georgian and Themis experts.[518] However, given the delay in drafting the strategy, there was no time to complete the implementation phase before the end of the mission's 12-month mandate. The proposal by Themis experts that the mandate be prolonged found no support in Brussels and Tbilisi and it was decided that instead a follow-up mission composed of two Themis experts would be located in the office of the EUSR Border Support Team.[519] The follow-up mission was meant to be on the ground for six months, from September 2005 until February 2006, and its main task was to assist in close cooperation with the EC Delegation the Steering Committee set up by the Georgian authorities to draft an implementation plan for the recently adopted strategy. The Steering Committee had been established through the July 2005 presidential decree (No.549) which also formally approved the criminal justice strategy, but the lack of broader endorsement, as well as the poor communication with EU officials raised doubts about the prospects for implementation. Problematically, the strategy had not been discussed in and formally adopted by the Parliament[520] and the mission only found out about its adoption when it was orally informed in July 2005 and it took several months for the information to be transmitted via official channels.[521]

Under these circumstances there was, understandably, a degree of scepticism among Themis experts regarding the success of the implementation phase.[522] Not only did the Georgian leadership show little interest in the process, but the precarious status of the judiciary as an independent branch of power diminished the chances of the strategy to be implemented. Nonetheless, the two follow-up Themis experts started their work in earnest. They began meeting Georgian officials all over again in an attempt find out the

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[518] Kurowska, "More than a Balkan Crisis Manager', 103.
[519] Kurowska, "The rule of law mission in Georgia', 207.
[520] The mission's OPLAN actually stipulated that the draft strategy should be adopted by 'a high-level authority (Parliament)', [520] Helly, 'EUJUST Themis in Georgia', 92.
[521] Helly, 'EUJUST Themis in Georgia', 100.
[522] Council of the European Union, 'EUJUST Themis', 24.

concrete details of the Georgian's side efforts at implementation. According to one of the experts, one of the most difficult things was to convince them to allocate money from the budget in order to implement measures such as providing training.[523] It soon became clear that very little progress was being made with respect to planning the implementation of the strategy. By the time the follow-up mission concluded its activity in December 2005 only parts of the implementation plan had been realised, with other issues still outstanding, such as: deciding the allocation of budget, establishing deadlines for various tasks, etc.[524] Rather than implementing the strategy that the mission had developed, to a large extent on its own but with the support of the sub-groups, the Georgians ended up cherry picking those parts of the strategy they wanted to enforce and discarding the ones which were against their interests.

In a Report detailing the follow-up phase of the mission the Themis experts noted that, while over the six months since the end of EUJUST Themis a variety of judiciary reforms have been adopted that go beyond the scope of the strategy, 'this process has turned into a political controversy'.[525] Among the reforms that did comply with the Strategy the experts noted the use of the three tier (trial, appeal and cassation) court system; changes to the Organic law on common courts regarding the composition of the High Council of Justice; the Law on Disciplinary Proceedings; changes with regard to the functioning of the General Prosecutor's Office, particularly structural changes, the elaboration of an Ethics Code, the establishment of clear and transparent criteria for the appointment of prosecutors. But overall they assessed that 'reforms are not well planned and prepared, there is a lack of transparency'.[526] The position of the Prosecution in the broader framework of the judicial system remained excessively powerful, with the General Prosecutor a member of the High Council of Justice (HCOJ) and thus part of the executive branch, rather than the judiciary.[527] While there had been efforts at reforming the HCOJ through expanding its composition, the inclusion of the General Prosecutor as a member failed to redress the power imbalance between the judicial and executive

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[523] Interview EUJUST Themis expert, 10 July 2013, Warsaw.
[524] Interview EUJUST Themis expert, 10 July 2013, Warsaw.
[525] Council of the European Union, 'EUJUST THEMIS follow-up: Assessment Report on the Status of Implementation of the Strategy of the Reform of the Criminal Justice System of Georgia', 15587/1/05, 19 June 2007, 2.
[526] Council of the European Union, 'EUJUST THEMIS follow-up', 2-3.
[527] Council of the European Union, 'EUJUST THEMIS follow-up', 7.

branches identified by EUJUST Themis at the very beginning of its mandate. Overall the HCOJ did not incorporate in its reform the principles stipulated by the Strategy, particularly the provision of fair and impartial assessment of the activities of judges in a transparent way with the participation of society.[528]

Moreover, the criteria for judges' promotion from lower instances to a higher one remained unspecified allowing anyone who met the general requirements (law education, 5-years working experience in the legal field) or even a person with no judicial experience to be appointed for high instance court such as the Supreme Court.[529] On the other hand, no progress had been made on clarifying the grounds for dismissal of judges and no steps had been taken towards granting life tenure to judges.[530] The disciplinary prosecution of judges was to be carried out by a disciplinary council composed of four members of the HCOJ, contrary to Themis's recommendations that the body in charge of such proceedings should function without interference from the HCOJ, in order to preserve the independence of the judiciary. The precariousness of the judges' positions continued to worsen after the departure of the mission. The follow-up experts raised this issue in their final report noting that 'prosecutors in criminal cases intimidate judges in order to reach verdict of guilty. Such influence of so-called 'telephone justice' – like it was widely spread practice during earlier times, also takes place in certain civil proceedings especially on privatisation cases'.[531]

Whatever compliance with Themis's recommendations and the criminal justice strategy was minimal and failed to address the entrenched political interference in judicial affairs that prevailed in Georgia. While Saakashvili's anti-corruption reforms were hailed as a model for democratic reform in the Eastern Neighbourhood, the forceful removal of judges was often arbitrary and not based on any substantial proof of corruption. The result was the replacement of those who were considered Shevardnadze's supporters with Western-leaning, but young and inexperienced, Saakashvili supporters. By the end of EUJUST's mandate, the reforms in the criminal justice system had been selective and failed to effect the one fundamental change that would have put Georgia on the path to a

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[528] Council of the European Union, 'EUJUST THEMIS follow-up', 8.
[529] Council of the European Union, 'EUJUST THEMIS follow-up', 8-9.
[530] Council of the European Union, 'EUJUST THEMIS follow-up', 9.
[531] Council of the European Union, 'EUJUST THEMIS follow-up', 7.

truly rule of law-based democracy: the independence of the judiciary. Moreover, reforms were often cosmetic or merely limited to a rhetorical level, whereas their substantial content contradicted rule of law principles and the concrete recommendations of the mission.

6.4. Explaining rule of law cooperation: failed rule transfer in the face of preferential misfit?

Saakashivili's regime came to power in the aftermath of the 2003 Rose Revolution with an ambitious plan for reform - centred around the need for state building and the eradication of corruption – and with strong political backing from the EU and the US. Rule of law reform efforts, particularly the fight against corruption, were high on the new government's agenda[532]. It was thus believed that EUJUST Themis's support in the reform of the criminal justice system could complement the government's overall objective of reforming the justice system. But despite the seeming fit between EU reform efforts in the rule of law area and the political agenda of the Saakashvili government, it soon became clear that in practice the 'rule of law' was conceptualised differently in Brussels and Tbilisi. Saakashvili prioritised state building over democracy, aiming to create a strong, well-functioning and less corrupt state, even if that meant centralising power in the executive branch, curtailing press freedom and civil liberties and, crucially, undermining the independence of the judiciary.[533]

Under the banner of the fight against corruption, Saakashvili's government engaged in a thorough purge of the public administration, targeting ministry personnel, judges and prosecutors associated with the Shevardnadze regime.[534] While this was done in the name of replacing the vested interest groups of Shevardnadze's administration, the new leadership had no intention of allowing the judiciary to function independently. The government's intrusion in judicial affairs was heavy handed and raised serious concerns among EU legal experts. A large number of judges were dismissed without due process

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[532] Ademmer and Börzel, 'Migration, Energy and Good Governance', 589.
[533] Lincoln A. Mitchell, 'Compromising democracy: state building in Saakashvili's Georgia', *Central Asian Survey* 28:2, 2009, 172, 178.
[534] Merlingen and Ostrauskaite, 'EU peacebuilding in Georgia', 22.

or pressured into resigning and the constitution was amended in order to strengthen the executive branch.[535] This allowed the government to attempt to dismiss all the judges of the Supreme Court twice within the space of two months via legislative means, in a blatant breach of the independence of the judiciary.[536] The mission alarmingly pointed out that such forceful removals 'have a negative effect on the independence of the judiciary by creating an atmosphere of arbitrariness, lack of transparency and infringement upon the separation of powers of the branches of government'.[537] The new government's grip on the judiciary was consolidated through an institutional structure which tightly linked the two branches of power: the High Council of Justice was an advisory institution to the President, while being responsible for the appointment and dismissal of judges and initiating disciplinary proceedings against them. In effect, the President had competence to appoint and dismiss judges and to change the territorial jurisdiction of courts, something which the Venice Commission had already pointed out as a problem.

EUJUST Themis was in a position to observe Saakashvili's increasingly repressive tendencies as his regime pressed forward with what has been variously described as a 'purification' process[538] or a purge of public administration personnel meant to cleanse 'the state apparatus from the cronies of the old administration'.[539] This created a volatile environment as ministers, judges and other legal professionals were removed, replaced and shuffled around in the state administration. According to EUJUST Themis, the personnel changes were often non-transparent and did not correspond to EU best practice, in addition to amounting to a loss of institutional memory and expertise.[540] Of particular importance was the replacement of high-ranking officials such as the Minister of Justice, the President of the Supreme Court, the General Prosecutor, the Ombudsman, etc, who were EUJUST Themis's direct counterparts. Among the changes that took place within less than a month were: on 17 February 2005 Minister of Justice

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[535] Xymena Kurowska, 'More than a Balkan Crisis Manager. The EUJUST Themis in Georgia' in Merlingen, M and Ostrauskaite, Rasa. (2008). *European security and defence policy: An implementation perspective* (Routledge advances in European politics). London: Routledge, 103.
[536] Council of the European Union, 'EUJUST Themis', 10.
[537] Council of the European Union, 'EUJUST Themis', 10.
[538] Interview EUJUST Themis expert, 16 October 2013, via Skype.
[539] Kurowska, 'More than a Balkan crisis manager', 103.
[540] Council of the European Union, 'EUJUST Themis', 10.

Giorgi Papuashvili was replaced by Konstantine Kemularia, on 19 February President Saakashvili nominated a new Chairman of the Supreme Court and on 21 February the Chairman of the High Council of Justice resigned because of a conflict of interests.[541]

The frequent changes in personnel were aimed at bringing easily controllable people into key positions, typically young, well-educated Georgian professionals who nonetheless lacked the necessary experience and political influence. Most of those who had been nominated for ministerial positions lacked relevant political and professional experience for such prominent roles. The Minister of Justice at the time of EUJUST Themis's deployment was a 32-year old who had previously worked as the Director of the Program "Rule of Law" at the Open Society Georgia Foundation.[542] The Chairman of the Supreme Court nominated by the President in February 2005 was 31-years old and had been the first deputy justice minister between 2000 and 2002 when Saakashvili himself was the Minister of Justice. Despite Saakashvili justifying the nomination as an attempt to bring in a politically unaffiliated person who could introduce genuine reforms, EUJUST Themis experts were critical of his lack of professional experience, particularly as he had never been a judge.[543] Similarly, the new 32-year old General Prosecutor had never been a prosecutor and took over his role after a rapid succession of nominations as Minister of Justice (December 2003 – February 2004), and Minister for State Security (February–June 2004). Mission experts found it difficult to work with such young and inexperienced counterparts and doubted their political autonomy. There was a pervasive perception among EU legal experts that the new nominees were meant to replace those from the Shevardnadze era with personalities supportive of Saakashvili who engaged with the mission rhetorically but would not push through with the adoption and implementation of reforms if this contravened vested political interests.

In addition to constantly changing the counterparts the mission was working with and nominating young, inexperienced and politically weak individuals in key positions, the government's personnel purge also left entire institutions understaffed. As already mentioned, the mission itself was aware of at least two attempts to dismiss all the judges of the Supreme Court via legislative means which were fortunately unsuccessful due to

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[541] Council of the European Union, 'EUJUST Themis', 38-39.
[542] Please see http://constcourt.ge/index.php?sec_id=29&lang_id=ENG, accessed on 17 July 2015.
[543] Interview EUJUST Themis expert, 9 October 2013, via Skype.

vocal national and international criticism.[544] But perhaps the most prominent initiative of the Georgian government to rid itself of undesired judges was a so-called scheme for voluntary retirement whereby every judge was given the possibility to get a lifetime pension if they voluntarily retired. Given the insecurity and political pressures involved, many conceded, which resulted in the Supreme Court, lower courts and other institutions such as the Council of Justice becoming barely functional.[545] An ongoing project of merging courts was also aimed at making judges redundant, despite its stated goal of improving efficiency and there are even suggestions that the government was trying to fabricate evidence in order to charge judges with corruption.[546]

The consequence of these developments was a climate of fear and unpredictability for many in the legal profession who had no motivation to engage with EUJUST Themis without knowing whether they would be able to keep their jobs. The government's heavy-handed tactics eventually made many in the justice system doubt the genuine urge of the Saakashvili regime to adopt and implement reforms that would protect the judiciary from political interference. Under these circumstances, working on a criminal justice strategy that might have not been supported by the government seemed futile. Judges in the Court of Appeal were extremely interested in the work of the mission and participated actively in drafting reform proposals but their efforts were made redundant by the unwillingness of the new Chairman of the Supreme Court to press ahead with reforms. While some of these judges were dismissed or pressured into resigning, the newly appointed ones were scared and very reluctant to cooperate with the mission.[547]

These insights highlight a significant preferential misfit between Saakashvili's political agenda – which sought to bring the judiciary under executive control – and EUJUST Themis's ultimate goal of promoting the independence of the judiciary. The Georgian government perceived the need for a strong executive as a necessity in order to successfully complete the state building process which had been deemed as a higher priority than democracy building. Reflecting on the government's achievements in his

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[544] Council of the European Union, 'EUJUST Themis', 10.

[545] Interview EUJUST Themis expert, 12 September 2013, via Skype.

[546] One of the Themis experts described how during a civil dispute which was being handled in a judge's office rather than the courtroom, someone tried to slip an envelope with money on the desk and, while the judge prevented the person from approaching the desk, they were still charged with accepting a bribe. Interview EUJUST Themis expert, 11 September 2013, via Skype.

[547] Interview EUJUST Themis expert, 11 September 2013, via Skype.

first State of the Union address, Saakashvili boasted that 'when people ask us about our main achievement, we say that our main achievement is that for the first time in modern history, Georgia has become a proper state'.[548] In this interpretation, democracy could only fully take root once the structure of a strong state was in place. This sequence thus justified a temporary increase in the central powers of the executive. Significantly, these hastened efforts to build the Georgian state also allowed Saakashvili to accomplish concrete reforms, by improving the efficiency of tax collection, reducing corruption in the police force, improving service delivery and strengthening the military. These achievements were popular with the voters and enabled the government to present itself as visionary, energetic and dedicated to transforming Georgia into a country which can provide for and protect its citizens. With a broad mandate at home and extraordinary goodwill and support from the West, Saakashvili felt confident to compromise democracy in the name of state building while arguing that this was in the best interest of Georgia's long-term development.

The preferential misfit between EUJUST Themis's efforts at promoting reforms conducive to strengthening the independence of the judiciary and Saakashvili's attempts at controlling the judicial branch was also supported by the existence of an influential group of internal veto players. Following Tsebelis, veto players are defined as 'actors whose agreement is necessary for a change of the status quo.'[549] At a micro level, EUJUST Themis aimed to change the status quo in the Georgian criminal justice by supporting Tbilisi in drafting a new criminal justice strategy which was hoped would, among others, limit the prerogatives of the Prosecution. Also, it was hoped that the Prosecutor's Office would become a better functioning, more streamlined institution, by improving the autonomy of individual prosecutors and the level of investigation. The problem was that, within the judiciary, the balance of powers was strongly tilted in favour of the Prosecution not only compared to the Defence, but also as far as the role of judges was concerned. Thus, the new prosecutors brought in to replace those from Shevardnadze's era were very keen on preserving a status quo which gave them significantly more power than any other actors within the judiciary. There was immense

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[548] Mitchell, 'Compromising democracy', 179.
[549] George Tsebelis, *Veto players: How political institutions work* (Princeton, N.J.: Princeton University Press, 2002), 19.

pressure on judges to rule in favour of the Prosecution, making acquittals unlikely and leading to exceptionally high rates of conviction and overcrowded prisons.

EUJUST Themis noted at the end of its activity that, despite its own advice, Georgia's 'Strategy of procuracy envisages that prosecution will become part of state executive power and will not be part of judiciary. Currently, position of procuracy is stronger than of judiciary, therefore inclusion of the Prosecutor General in the composition of HCOJ [High Council of Justice] will lead to a breaking down of balance between state powers'.[550] Even more aggravating, the mission, as well as other international organisations in Georgia, had received reliable information about cases of prosecutors intimidating judges in order to pass 'guilty' verdicts, a practice EU legal experts referred to as 'telephone justice'.[551] Given these circumstances, it is not surprising that the judges were the most cooperative of the mission's counterparts while the Prosecutor's Office and the Ministry of Interior were the most obtrusive.[552] Prosecutors had no interest in altering the status quo because that would have resulted in diminishing their influence. The measures that EUJUST Themis was proposing – a decoupling of the Prosecution and the executive power, as well as transparent and impartial assessments of judges' activities – would have deprived the Prosecution of the power to exert control over judges, a situation that the General Prosecutor's Office clearly tried to avoid. The result of the obstructiveness of veto players from amongst the Prosecution's ranks was that any measures proposed by EUJUST Themis that could have undermined their influence were ignored, while changes were introduced in the structure of the judiciary's administration which strengthened the Prosecution's position.[553]

The overall impression created by the nature and extent of the Georgian government's cooperation with EUJUST Themis was that Saakashvili tried his best to instrumentalise the role of the mission. While there was a genuinely domestic drive for fighting corruption and the pervasiveness of criminal groups in Georgian society, Saakashvili's priorities were to remove parallel monopolies of violence, build effective

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[550] Council of the European Union, 'EUJUST THEMIS follow-up', 7.
[551] Council of the European Union, 'EUJUST THEMIS follow-up', 7.
[552] Interview EUJUST Themis expert, 11 September 2013, via Skype.
[553] These changes included amending the composition of the High Council of Justice to include the General Prosecutor of Georgia, as well as amendments to the law on disciplinary proceedings against judges of common courts which stipulated that the disciplinary collegium should be composed of four members of the HCOJ; Council of the European Union, 'EUJUST THEMIS follow-up', 10.

law enforcement institutions and restore public confidence in security structures. As one scholar observes, these objectives were meant to inspire respect for the state rather than for the rule of law.[554] This is why the mission was often confronted with Georgian ideas that did not coincide with its recommendations, which sometimes resulted in domestic proposals for reforms that were not aligned to EU best practice. The Georgian political elite's commitment to EUJUST Themis's agenda was perceived by the mission as merely rhetorical and indicative of a desire for increased EU assistance rather than support for a particular programme of reforms.[555] As one Themis expert argues, the formal request by the Georgian Prime Minster for EU assistance was simply one of many Georgian demands for international support, and did not necessarily signal a desire to improve the rule of law in accordance with EU norms.[556] Also, there was a perception that President Saakashvili was interested in as much international assistance as possible in order to prove Georgia's European and Western credentials and also to consolidate his leadership with support from the EU and US.[557]

In addition to influential domestic veto players, there were other factors which reinforced the preferential misfit between the interests of the Saakashvili regime and EUJUST Themis's mandate. Thus, while the Georgian government's preferential misfit with EUJUST's objectives stemmed from a fundamentally different vision of the role of the judiciary, there were also diverging preferences regarding the particular model of criminal justice system to be adopted (European vs American). In this sense, it can be argued that the US succeeded, due to the provision of side-payments and the preferential fit between the Georgian government's interests and the American model of criminal justice system, to position itself as an alternative coalition to the EU with respect to the content of rule of law reforms. The prominent influence of the US in rule of law reform efforts in Georgia was acknowledged by the officials involved in the process of drafting a new Criminal Procedure Code, with some of them barely considering EUJUST Themis's input and arguing that their main counterpart was the US Department of Justice.[558] While

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[554] DiPuppo, 'The externalization of JHA policies'. 111.
[555] Interviews EUJUST Themis experts, February- October 2013.
[556] Interview EUJUST Themis expert, 11 September 2013, via Skype.
[557] Interview EUJUST Themis expert, 16 October 2013, via Skype.
[558] Interview member of the Working Group for the Criminal Procedure Code, Skype interview, 26 June 2015.

there was a counter-current led by the Georgian Young Lawyers' Association which collaborated with German experts from the German Agency for Technical Cooperation (GTZ) and was influenced by European law, their influence did not overshadow the American school of legal thought. This influence, in the view of EUJUST Themis legal experts, is inextricably linked to the US' ability to provide the Georgian regime with wide ranging side-payments and thus increase even further the perceived benefits of not implementing EUJUST's requests. The Georgian rule of law sector was characterised by a multitude of international donors and programmes whose work often overlapped. Nonetheless, the US was clearly the most influential international actor in Georgia, having had a long history of support for the South Caucasian country whose new and young political elite had predominantly been educated at American universities. According to EUJUST Themis experts, the US rule of law support for Georgia came with considerable leverage in the form of generous financial help.[559] While the US ambassador had a large budget he could use at his discretion, the EC Delegation depended on the slow decision-making process in Brussels. This allowed for projects such as the establishment of a new Bar Association, the costs of which were entirely covered by the US, whereas the reforms required by Themis lagged behind.

By contrast, EUJUST Themis was never meant to provide financial assistance or other material incentives, but rather aimed to 'export brains' and support the reform of the criminal justice system through high-quality legal expertise.[560] But while the mission did not make use of side-payments in the form of capacity-building in order to determine Georgia to take steps to reform its criminal justice system, there was a perception within EUJUST Themis that the Georgian side expected financial and technical support in return for reforms. While the Georgian counterparts never challenged the mission openly, some of the EUJUST experts felt that there was an expectation of financial support from the mission, rather than merely advice and mentoring. When this did not materialise, the enthusiasm in Tbilisi for Themis and the willingness to embrace the proposed reforms subsided. One EU legal expert recalled how, when the reform of the Rustavi prison was discussed, the Georgian side expressed willingness to engage in refurbishing the prison

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[559] Interviews EUJUST Themis experts February – October 2013, via Skype and in Warsaw.
[560] Interview EUJUST Themis, 16 October 2013, via Skype.

court and training personnel, provided the EU covered the expenses.[561] Another Themis expert pointed out that the Georgians gave the impression they would adopt American-inspired criminal justice procedures in exchange for money.[562] Claims by Georgian governmental actors that they had excellent legal professionals and expertise but only needed financial resources reinforced the impression of mission experts that the Georgian side was not interested in their advice and mentoring, but in financial assistance. The contrast between what the mission, on one hand, and US financed programmes, on the other hand, could offer was stark. While EUJUST Themis's mandate did not envision the provision of financial assistance, the financial support provided by the US was extremely generous.[563] In the opinion of a majority of EUJUST Themis experts, it was this difference between the lack of capacity-building provided by the EU and the very substantial US support that tilted the balance in favour of an American-style criminal justice system in Georgia.

As far as EUJUST Themis was concerned, the criminal justice model Georgia wanted to adopt was at odds with the mission's reform proposals. Among the issues that raised alarm among EU legal experts were the introduction of jury trials and plea bargaining. Themis experts believed that, inspired as they were by the American legal model, these measures were incompatible with the political and legal realities in Georgia. While the mission was not recommending a certain national European model (given that the experts came from nine different countries), they went to great lengths to coordinate their input in order to provide Georgian counterparts with options that would suit their tradition, legal system and history.[564] The American-inspired elements that Tbilisi wanted to adopt were deemed inappropriate for a small country like Georgia where corruption was endemic and efforts to tackle it were at the very beginning. The practice of plea bargaining in particular was criticised for allowing suspects to purchase temporary or permanent freedom by making a financial contribution to the state budget,

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[561] Interview EUJUST Themis expert, 10 July 2013, Warsaw, Poland.
[562] Interview EUJUST Themis expert, 11 September 2013, via Skype.
[563] One Themis expert claims that the US offered the Georgian government $3million for the development of an expert centre, without requesting an estimation of the budget or monitoring reports of expenditures. In another example, American funding helped the Ministry of Interior buy 28 moving criminalistics labs for an expert unit. Interview EUJUST Themis expert, 11 September 2013, via Skype.
[564] Interview EUJUST Themis expert, 10 July 2013, Warsaw, Poland

which however was not properly accounted for.[565] These features of the US criminal justice system made the American model much more palatable to the Georgian decision-makers than the European one, preserving the prominent role of the Prosecution and enabling high-level corruption. The preferential fit between the US system and the interests of the Saakashvili regime was thus in stark contrast to the strong preferential misfit with EUJUST Themis's proposed model which sought to reduce the role of the Prosecution and minimise opportunities for corruption.

Nonetheless, despite the preferential misfit between Themis and the Georgian government, this could have potentially been altered and even shifted to a certain degree of preferential fit if the EU had been able to offer Tbilisi certain side-payments. The EU, however, did not place any conditionality on rule of law reforms and had few concrete rewards to offer to Georgia at the time. EUJUST Themis was not reinforced with a financial assistance package which might have incentivised the Georgian side to cooperate. This, according to EUJUST Themis experts, made a significant difference when it came to choosing between a European and American criminal justice model.

At the time of EUJUST Themis's deployment in 2004 the EU was just beginning to define its relationship with its neighbours through the European Neighbourhood Policy (ENP). While early scholarly analyses have criticised the potential effectiveness of the ENP given the lack of a membership perspective for the Eastern neighbours, recent studies have argued that conditionality can work even when it is not linked to the big 'carrot' of accession, but to sectoral policy rewards, provided the policy changes required fit the preference of domestic political elites.[566] EUJUST Themis's reform proposals were not linked to specific rewards but were loosely embedded in Georgia's newly embraced pro-Western policy orientation. The political leadership in Tbilisi was eager to receive any type of support and assistance from the EU, while Brussels itself was keen on showing its readiness to engage with Georgia in the aftermath of the Rose Revolution and assist the new government in its reform efforts.[567] According to some accounts, the early stages of the post-Rose Revolution period were characterised by an unrealistic belief in

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[565] International Crisis Group, 'Georgia: Sliding towards authoritarianism?', Europe Report No 189, (Brussels, 19 December 2007), 22.
[566] Ademmer and Börzel, 'Migration, Energy and Good Governance'.
[567] Kurowska, 'More than a Balkan Crisis Manager', 100.

Tbilisi that Georgia would soon become a NATO and EU member.[568] Thus, despite a lack of policy-specific conditionality and preferential misfit on the part of the Georgian government, the Georgian government was very much interested in a successful outcome of EUJUST Themis, even if that mean shallow reforms that were subsequently overturned.

Although EUJUST Themis did not offer the Georgian government any side-payments that could have altered its cost-benefit calculations, it did resort to a negative strategy of threats and political pressures which, nonetheless, proved of limited effectiveness. When the Georgian authorities failed to deliver the comprehensive draft strategy in April 2005, as initially agreed, Head of Mission Sylvie Pantz had no other choice but to attempt to put pressure on the Georgian government through Brussels. After informing the EUSR for the South Caucasus about the situation, Ms Pantz travelled to Brussels in the hope of mobilising political support at the EU level. As a result, Minister of Justice Konstantine Kemularia was summoned by the Political and Security Committee where he pledged that work on the criminal justice strategy would be intensified. However, the political pressure did not amount to negative conditionality because it did not imply sanctions for non-compliance, nor did it offer any additional incentives to spur the Georgians into cooperation with EUJUST Themis. Under these circumstances and given the challenges the mission had encountered up to that point – the preferential misfit between its own reform ideas and the criminal justice system model preferred by many in the Georgian government, as well as the presence of multiple veto players and the competing side-payments offered by the US– the direct pressure used by the EU was not likely to achieve more than shallow adoption of the measures proposed by Themis.[569] Indeed, the Georgian authorities scrambled to produce a minimalist document by the new deadline in May, parts of which were entirely drafted by EUJUST Themis experts. The strategy was formally approved through presidential decree in July 2005 but hardly any of its provisions were implemented and a large proportion of them were eventually changed in 2009.

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[568] Interviews EUJUST Themis experts, February-October 2013.
[569] Ademmer and Börzel, 'Migration, Energy and Good Governance', 584.

While EUJUST Themis was not accompanied by a 'carrot and stick' approach, it is doubtful whether the offer of side-payments or the use of more assertive threats could have facilitated the mission's rule transfer agenda. Saakashvili's idea of consolidating the Georgian state – and through this his own regime – was at odds with basic rule of law standards which require the existence of an independent judiciary. The political objectives of Saakashvili's government and EUJUST Themis could not have been more radically opposed. This deep division left little room for a shift in the government's preferential fit which would have made policy-specific conditionality and the provision of capacity-building an exercise in futility.

6.5. Conclusion

This chapter has investigated the extent to which the Georgian government was willing to effectively cooperate with the EUJUST Themis rule of law mission in the context of its rule transfer activities regarding Georgia's criminal justice system. The findings reveal minimal, if any, effective cooperation between the incumbent regime in Tbilisi and the EU mission, with EUJUST's recommendations being largely unheeded and its proposed legislative changes resisted and eventually overturned. The extensive preferential misfit between the Georgian government and Themis's objectives has meant that complying with the rules advanced by the mission did not serve the goals of the incumbent regime. Saakashvili was keen on attracting as much EU involvement in Georgia as possible in order to consolidate his own position, which largely relied on a pro-Western, reformist political profile. However, his political agenda of strengthening the executive functions of the state at the expense of the independence of the judiciary was antithetical to EUJUST's fundamental goals. The presence of influential veto players who also supported the status quo and strongly resisted Themis's proposed reforms only consolidated Saakashvili's position by blocking reforms in relevant rule of law institutions. In addition, the Georgian government also had a viable alternative coalition to turn to which not only provided it with a criminal justice system model more attuned to its preferences but also offered significant side-payments. The US legal system proved more compatible with the interests of the Georgian political leadership and the offer of

generous financial support helped strengthen the commitment to American-inspired rule of law reforms.

On the other hand, the EU did not provide any side-payments that could have affected the strategic calculations of the Georgian government and thus potentially reduce the level of preferential misfit. As far as side-payments are concerned, the two elements that could have incentivised the Saakashvili regime to engage at least in shallow rule transfer – policy-specific conditionality and capacity-building - were absent from EUJUST Themis's modus operandi. The pressure exerted by the PSC on Georgia's Prime Minister in order to get the Georgian authorities to contribute their share to the criminal justice strategy draft resonated with a negative conditionality approach, but the lack of effective 'sticks' resulted in the strategy being never implemented and substantially modified even before the termination of EUJUST's mandate. Not only were there no identifiable benefits for the Georgian government to transfer the rules advocated by EUJUST Themis, but a failure to do so did not incur any costs either.

One incentive that had the potential to change the regime's strategy and minimise the level of preferential misfit was capacity-building. While it might have not induced the Georgian government to extensively embrace Themis's reform programme because the preferences of the Saakashvili regime for consolidating political power would have still been threatened by a genuinely independent justice system, the offer of capacity-building as a side-payment could have weakened the position of the US as an alternative coalition. This could have resulted in the choice of a European-style criminal justice system rather than an American one. However, EUJUST did not have a capacity-building mandate and operated on a limited budget which resulted in considerable discrepancy with the generous financial support provided by the US Department of Justice. Considering the existence of domestic veto players , as well as the absence of policy-specific conditionality and capacity-building and the strong position of the US as an alternative coalition, , it is not surprising that the preferential misfit between the government and the mission emerged as particularly strong and resilient. As a result, the Georgian government engaged in limited cooperation with EUJUST Themis and failed to take on board most of its recommended reform proposals.

Chapter 7

EUBAM and the promotion of border management and customs reforms: cooperation on rule transfer at the Moldovan-Ukrainian border

This chapter examines the cooperation between EUBAM, on one hand, and the Moldovan and Ukrainian governments, on the other hand, in the context of the reform of the two countries' border management systems and customs procedures. As such it focuses on the extent to which the rules promoted by EUBAM in these areas have been adopted and implemented by the relevant authorities. As opposed to EUBAM's confidence-building activities, the rule transfer dimension of its mandate aims to trigger concrete reforms in the form of legislative, institutional and behavioural changes. Over the years the range of the mission's activities has been significantly enlarged and now includes, among others, support for the reform of the border and customs services in Moldova and Ukraine towards increased modernisation and effectiveness, as well as capacity building of these services, contributing to organised crime prevention, fighting corruption and helping Moldova and Ukraine to approximate the border and law enforcement standards of the EU, particularly through Integrated Border Management (IBM). The first half of the chapter presents an account of EUBAM's reform efforts in the border management and customs areas respectively, followed by an analysis of how incumbent regimes in Moldova and Ukraine chose their strategies - in this case a choice between a cooperative strategy including the adoption of rules promoted by EUBAM or an uncooperative strategy of rejecting the mission's rule transfer mandate – under conditions of fixed preferences for political survival and power. Thus, the second half of the chapter explores the impact of factors such as domestic veto players in Moldova and Ukraine, and the EU's offer of side-payments in the form of policy-specific conditionality and capacity-building with regards to border management and customs reforms, on the formation of preferential fit at governmental level which in turn

determined the scope of cooperation and rule transfer between EUBAM and the incumbent regimes in Kiev and Chisinau. .

7.1. Reforming border management systems in Moldova and Ukraine

Although when EUBAM was deployed in 2005 the ENP had just been launched, the gradual progress of the EU's relationship with Moldova and Ukraine brought the mission's activity into focus, particularly as the two countries started taking concrete steps towards the signing of Association Agreements with the EU. Thus, in recent years the mission became actively engaged in assisting the two countries in their efforts to achieve the legislative and institutional reforms required by the visa liberalisation and DCFTA processes. The new priorities under the Visa Liberalisation Action Plans (VLAPs) and the DCFTA happened to coincide to a large extent with EUBAM's mandate, which meant that the mission was in a unique position to support the necessary reforms. Many of the newly emerging requirements had already been put in motion by EUBAM through its efforts towards improving border control, harmonisation of customs procedures and the implementation of Integrated Border Management systems. Thus, EUBAM's role with respect to the rule transfer function must necessarily take into account the existence of overarching policy frameworks such as the VLAPs and DCFTAs and their potential for exercising policy-specific conditionality. Nonetheless, the mission has only recently become explicitly involved with these policy frameworks and the largest part of its mandate has been carried out relatively autonomously. In trying to account for both the independent role of the mission in rule transfer, as well as for the implications of the launching of the visa liberalisation and DCFTA processes in Moldova and Ukraine, this chapter empirically traces EUBAM's record of promoting the adoption and implementation of border management and customs rules.

Moldova and Ukraine initiated Visa Liberalisation Action Plans (VLAPs) in 2011 and 2010 respectively. The VLAPs include four blocks of benchmarks related to: 1. Document security, including biometrics; 2. Border management, migration and asylum;

3. Public order and security; and 4. External relations and fundamental rights.[570] As this chapter will show, benchmark 2 is the most relevant for EUBAM's work and covers issues ranging from the consolidation of the legal framework for border management to the implementation of adequate border checks and procedures, improvement of inter-agency cooperation and the adoption and implementation of migration and asylum policies. EUBAM has been at the forefront of a reform process in border management that aims to transform border guard services in Moldova and Ukraine in modern law enforcement agencies, an objective stipulated by the two countries' respective Visa Liberalization Action Plans (VLAP). In practice this entailed a wide range of changes in the legislation, organisation and performance of border institutions which revolved around EU best practice and concepts. One of the fundamental concepts of European border systems is the Integrated Border Management (IBM) which incorporates three pillars: intra-service, inter-agency and international cooperation and coordination. EUBAM capacity building efforts have thus focused on advising partner services to create legislative frameworks that facilitate such cooperation, remove any legal provisions that might restrict opportunities for coordination and develop the necessary institutional structures and operational capabilities to sustain IBM. At the same time, EUBAM has tried to promote the EU intelligence-led policing model which places risk analysis at the heart of border management systems.[571] This has meant that the mission has worked hard to equip Moldovan and Ukrainian border guard and customs services, but also other law enforcement agencies, with the knowledge, skills and equipment necessary for carrying out effective border control.

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[570] Please see: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/eastern-partnership/visa-liberalisation-moldova-ukraine-and-georgia/index_en.htm.

[571] EUBAM, 'Progress Report 2005-2010. Main achievements in border management by the partner services in five years of EUBAM activity', 7, available at: http://www.eubam.org/files/AOSU%20Progress%20Report%20final.pdf, accessed on 3 June 2015.

7.2. Legislative and regulatory border management reforms

The mission's efforts at supporting partner services in developing the necessary institutional and operational mechanisms to effectively carry out their tasks had to inevitably tackle the legislative and regulatory frameworks within which these were embedded. The mission worked extensively on reviewing relevant legislation in the area of border management, identifying gaps and obstacles and providing advice on legislative changes. The border guard services in Moldova and Ukraine were generally receptive to the suggestions and accordingly adapted their legal provisions. A first step towards legal reform was the improvement of the legal basis for the functioning and development of the partner services, with a focus on provisions establishing the areas of responsibility and concrete tasks of agencies.

Following the introduction of the Moldovan Border Guard law - which incorporated EUBAM's suggestions - the MDBGS underwent a restructuring process in 2008 resulting in decentralisation within the service.[572] Moreover, the MDBGS adopted a three-year 'Plan of Institutional Development of the Border Guard Service 2009-2011' which provided for the modernisation and enhancement of the capacities of the service, including strengthening its legislative basis, optimising the organisational structure and management system, introducing an IBM system, restructuring the staff training system, updating logistics and international cooperation.[573] A series of legislative acts which lay a solid foundation for modern border management were adopted in 2011 and 2012: the 'Law on the State Border'; the 'Law on Border Police' – which provided a good basis for demilitarisation and professionalisation of the Border Guard Service, subsequently transformed into a Border Police – and several legislative amendments meant to grant the Border Guard Service competencies for prosecution and examination of administrative offences, among others.[574] As part of the process of reforming the Moldovan Border

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[572] EUBAM, 'Annual Report European Union Border Assistance Mission to Moldova and Ukraine 2008', (2009), 11, available at: http://www.eubam.org/files/Mission_Report_2008_ENG.pdf, accessed on 4 September 2015.

[573] EUBAM, 'Progress Report 2005-2010', 7.

[574] European Commission and EEAS, 'Joint Staff Working Document. Second progress report on the implementation by the Republic of Moldova of the Action Plan on Visa Liberalisation', SWD(2012) (Brussels, 9/2/2012), 4, available at: http://ec.europa.eu/dgs/home-affairs/news/intro/docs/20120209/md_2nd_pr_vlap_swd_2012_12_final.pdf, accessed on 12 August 2015.

Guards and converting the agency into a Border Police, EUBAM offered substantial support by assisting with the creation of the National Coordination Centre of Border Police and the establishment of the Centre for Dogs Training.[575]

Through the 'Concept on Development of the UASBGS for the period 2006-2015' Ukraine's border guards service has undergone an intensive organisational and logistical reform process divided into three stages in order to reach compliance with European border standards.[576] In 2009 Ukraine adopted a new 'Law on border control', based on the principles of the Schengen Borders Code.[577] The law was significant because it contained a set of provisions underlying the secure management of state borders, as well as provisions on fighting corruption at border crossing points, and was deemed to largely meet European and international standards.[578] In order to ensure the continued effectiveness and relevance of border–related legislation, EUBAM regularly reviews legal provisions and monitors implementation in order to ensure alignment with EU and international norms.[579] While progress was made towards transforming the UASBGS into a modern law-enforcement authority, the EU raised the issue of the service's role in crime prevention and investigation as being relatively limited and urged that the UASBGS 'should be allowed to participate in the detection and investigation of cross-border crime in coordination with all competent law enforcement authorities'.[580] These recommendations notwithstanding, the European Commission reported in 2013 that several provisions of the new Ukrainian Criminal Procedure Code further reduced

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[575] EUBAM, 'Annual Report 1 December 2011- 30 November 2012. European Union Border Assistance Mission to Moldova and Ukraine' (2013), 17, available at: http://www.eubam.org/files/Report_2012_ENGL.pdf, accessed on 25 August 2015.
[576] EUBAM, 'Progress Report 2005-2010', 7.
[577] EUBAM, 'Progress Report 2005-2010', 7.
[578] European Commission and EEAS, 'Second progress report on the implementation by Ukraine', 5.
[579] EUBAM, 'Annual Report 1 December 2012- 30 November 2013. European Union Border Assistance Mission to Moldova and Ukraine' (2014), 16, available at: http://www.eubam.org/files/Report_2013_ENGL%20.pdf, accessed on 27 August 2015.
[580] European Commission and EEAS, 'Second progress report on the implementation by Ukraine of the Action Plan on Visa Liberalisation', SWD(2012) 10, (Brussels, 9/2/2012, 5, available at: http://ec.europa.eu/home-affairs/news/intro/docs/20120209/UA%202nd%20PR%20VLAP%20SWD%202012%2010%20FINAL.pdf, accessed on 12 August 2015.

the competences of the UASBGS, who lost their right to carry out preliminary criminal proceedings to the Prosecutor's Office.[581]

Following a review of the organisational and management structures of the partner services, EUBAM made a series of recommendations with a view to improving their ability to deliver high-quality border management. As far as the border guards were concerned, demilitarisation and professionalization, including ending conscription, represented priorities. In line with international norms, the mission recommended that border guard services prioritise their policing functions over the military ones in order to establish an independent, specialised and professional service. MDBGS ended its conscript recruitment in 2011 with the last contingent of 200 conscripts ending service in 2012.[582] Ukraine had phased out conscription even earlier and by 2011 all the staff at the Moldovan-Ukrainian border was contracted.[583] The two border guard services also progressed towards a less hierarchical management system through the simplification of their organisational structure – the MDBGS switched from a 4 to a 3-level management system, while the UASBGS shifted from a 5 to a 4-level one.[584]

Another crucial area in need of change identified by EUBAM was the top-down, centralised management structures in the partner services.[585] This limited the possibilities for inter-agency and cross-border cooperation which are essential aspects of an Integrated Border Management system. With respect to inter-agency cooperation, the rather closed institutional environments of counterpart services meant that interaction was limited to the central level. The mission argued strongly for an 'integrated approach to justice, law enforcement and border management', as the best way to cope with the diverse challenges of modern border management.[586] Following EUBAM's recommendations, there seemed to be noticeable improvements in the willingness of services to cooperate,

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[581] European Commission, 'Third report on the implementation by Ukraine of the Action Plan on Visa Liberalisation', COM(2013) 809 (Brussels, 15/11/2013), 5, available at: http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20131115_3rd_progress_report_on_the_implementation_by_ukraine_of_the_apvl_en.pdf, accessed on 12 August 2015.
[582] EUBAM, 'Progress Report 2005-2010', 7.
[583] EUBAM, 'Progress Report 2005-2010', 7.
[584] EUBAM, "Annual Report 2005/2006. European Union Border Assistance Mission to Moldova and Ukraine" (2007), 7, available at: http://www.eubam.org/files/Report_Engl_2005-2006.pdf, accessed on 4 April 2015.
[585] EUBAM, 'Annual Report 2005/2006', 15.
[586] EUBAM, 'Annual Report 2005/2006', 15.

both at central and regional level. This materialised in a number of encouraging initiatives, including joint training for mobile units, coordination between UASBGS, local police and tax authorities, and a joint operation resulting in a significant seizure in Otaci, Moldova.[587] However, there remained a significant level of poor inter-agency cooperation in Ukraine, such as in the cases of the criminal justice system, and between border guard and customs services (exemplified by the handling of a stolen vehicles case in Odessa). In order to address this issue, EUBAM suggested that joint investigation teams should be created. In 2007 progress was noted in cooperation between border guard and customs services, as well as between the UASBGS and the traffic police and between MDCS, the Moldovan Police and the local Interpol office. At local level, significant progress was made in the implementation of joint border checks of cars and buses by border guards and customs officers, joint vehicle searches and joint checks of railway passengers.[588]

7.3. Operational border management reforms

The development of risk analysis capabilities within the organisational structures of partner services has been at the forefront of EUBAM's capacity-building efforts, as an area of crucial importance in the approximation of border management in Moldova and Ukraine with European best practice.[589] The initial focus of the mission in this area was the development of central-level risk analysis concepts and analytical units in each service. The foundations of such systems were established throughout 2006, with MDCS in the process of populating their database, both Moldovan services recruiting analysts and liaison officers, and the State Customs Service of Ukraine (SCSU) rolling out its quantitative risk analysis system at the local level.[590] Risk Analysis Advisors were collocated at the central level in all four services which was hoped would 'provide the

[587] EUBAM, 'Annual Report 2005/2006', 15.
[588] EUBAM, 'Annual Report 2007. European Union Border Assistance Mission to Moldova and Ukraine', (2008), 11, available at: http://www.eubam.org/files/Report_2007_ENGL.pdf, accessed on 4 April 2012.
[589] EUBAM, 'Annual Report 2005/2006', 14.
[590] EUBAM, 'Annual Report 2005/2006', 14.

intellectual space that will, in time, be filled by the bottom-up developments that the mission is supporting'.[591]

In 2007 the border guard services of Moldova and Ukraine and the State Customs Service of Ukraine implemented EUBAM's recommendations and established regional Risk Analysis units.[592] In 2008, Moldova and Ukraine continued to make progress in their development of risk analysis capabilities with the help of EUBAM, who provided service tailored risk profiles, reports identifying main criminal routes, trends and modi operandi related to illegal migration, trafficking in human beings, drug trafficking, vehicle trafficking, meat and cigarette smuggling and customs fraud.[593] A brief look at the counterpart services reveals the enhanced risk analysis capacities acquired as a result of EUBAM support: MDBGS started elaborating risk assessment reports, risk forecasts and risk profiles, developed an intelligence database and renewed the information gathering process in line with EU best practice; the MDCS reinforced its Risk Analysis Unit, established an Intelligence Unit and promoted the reduction of the frequency of selective controls at the border; the UASBGS completed its risk analysis operational infrastructure and introduced risk analysis in the curriculum of the Border Guard Academy; UASCS upgraded the national automated risk analysis system, but EUBAM noted that the application of risk-based selectivity needed to be further improved. EUBAM's Risk Analysis Advisors collocated in each of the four counterpart services played a crucial role in these developments, working on a daily basis with the Risk Analysis Units in the respective services and assisting with improving the quality and use of risk analysis products.[594]

In order to ensure the sustainability of operational capacity building, EUBAM regularly evaluates border control procedures. In 2012 EUBAM was involved in overseeing the implementation of EU standards in second line border checks by partners. The mission assisted partner service in the selection process of travellers and vehicles planning to cross the Moldovan-Ukrainian state border, delivered a series of on-the-job training sessions on the methodology of travel document examination, provided

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[591] EUBAM, 'Annual Report 2005/2006', 9.
[592] EUBAM, 'Annual Report 2007', 8.
[593] EUBAM, 'Annual Report 2008', 12.
[594] EUBAM, 'Annual Report 2008', 12.

assistance in data gathering and border checks at Odessa and Illichevsk ports and helped with the implementation of the pre-arrival information system at Giurgiulesti port.[595] Reflecting the importance accorded by the mission to risk analysis as a fundamental methodology for border controls, EUBAM carried out eight one-day seminars on risk analysis to 57 representatives of the MDBP and 60 representatives of UASBGS, as well as seminars on risk profiling of travellers and facial recognition to 28 trainers from the MDBP and UASBGS.[596]

7.4. Implementing effective border control: fighting against cross-border organised crime

In order to evaluate border control at BCPs and on the green and blue border between Moldova and Ukraine and customs control at BCPs, EUBAM carried out a number of Joint Assistance Actions (JAAs) in 2011. The findings underlined that significant progress had been achieved in this area by all partner services. Thus, it was revealed that the infrastructure of most of the road BCPs in Moldova and Ukraine is adequate; EU best practices such as basic first line check equipment are in place at most BCPs on the common border; border check procedures are performed by border guards with good level of professional knowledge and skills; infrastructure and equipment of border guard posts are effective, although more so in Ukraine than in Moldova; border surveillance is carried out by both MDBGS and UASBGS through technical monitoring and patrolling in high risk areas; customs procedures were significantly improved in a number of areas: IBM, delegation of authorities from regional to local level, risk analysis, simplification of customs procedure, improvement of customs examination at BCPs, electronic customs clearance, accelerating customs clearance procedures and facilitating trade and traffic flow at BCPs.[597]

Moreover, EUBAM's Annual Report for 2013 assessed that 'there is clear evidence of the improvements in the effectiveness of border checks […] in both services'. Not only did border control and surveillance measures improve in terms of procedure and

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[595] EUBAM, 'Annual Report 1 December 2011- 30 November 2012', 14.
[596] EUBAM, 'Annual Report 1 December 2011- 30 November 2012', 14.
[597] EUBAM, 'Annual Report 2011', 9-10.

professionalism, but they also produced the desired results. As early as 2006 the implementation of EUBAM's advice by partner services with regard to applying selective checking or tactical risk analysis resulted in improved effectiveness of border control procedures, as exemplified by increased rates of detections and seizures (i.e. a large consignment of contraband cigarettes in Odessa port and a case of undervaluation in Moldova).[598] This trend continued, as shown in the mission's Annual Report for 2013, which observed a notable increase in the detection of impostors and forged travel documents, detained trespassers on border crossing points and stolen vehicles, compared to the previous year.[599] In 2010 the number of total violations of the state border decreased significantly compared to the previous year, from 1175 cases in 2009 to 665 cases in 2010 (43% decrease). The figures for migration-related border apprehensions decreased by 29 percent in 2010 compared with the previous year (166 persons in 2010 and 236 in 2009). As a further confirmation that EUBAM training is effective and does contribute to the improvement of border checks, the case of an alleged trafficker and a THB victim who were profiled on their way to Dubai is illustrative. The MDBP officers who carried out the profiling had been trained on profiling of THB victims during a EUBAM training event two months before.[600]

EUBAM has taken a pro-active approach in supporting partner services in their border control and surveillance activities. The mission has advised counterpart services on the optimisation of passenger passport control through the streamlining of checking procedures, the avoidance of duplication and the integration of additional checks on foreign nationals into normal protocol.[601] The mission's support in the examination and inspection of vehicles and related documents has been of particular importance, in light of the high number of irregularities related to the crossing of BCPs by vehicles.[602] EUBAM's recommendations regarding the maximisation of existing equipment and resources, together with the BOMMOLUK project which addressed many technical

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[598] EUBAM, 'Annual Report 2005/2006', 14.
[599] EUBAM, 'Annual Report 1 December 2012- 30 November 2013', 16.
[600] EUBAM, 'Annual Report 1 December 2011- 30 November 2012', 23.
[601] EUBAM, 'Annual Report 2005/2006', 11.
[602] EUBAM, 'Annual Report 2005/2006', 11.

needs of the partners, ensured that rigorous border management continued to be carried out without major investments from Moldova and Ukraine.[603]

In 2008 border guard and custom services in Moldova and Ukraine became engaged in the Working Group on the Development of Jointly Operated BCPs. In order to assess how effective a jointly operated border crossing point would be and to determine the future basis for the concept of joint border control, the four services, at EUBAM's recommendation, decided to set up a pilot project – the jointly operated BCP Briceni-Rossoshany. The mission assisted representatives from the customs and border guards in both countries to draft a protocol and supporting documents to facilitate the operation of the BCP and procured the necessary equipment to establish a data link between Rossoshany and Briceni.[604] The concept of the JOBCP aims to unify and optimise border control procedures in order to reduce legal border crossing times by having border guards and police perform their duties 'shoulder-by-shoulder' in one booth. Initial assessments of the project indicated positive results, with a decrease in crossing time of 15-20% in the first six months and several joint incident detections by the partner services .[605] Having proved its success through faster movement of traffic and indications of greater transparentcy, JOBCP Rossoshany-Briceni served as an example for the development of other JOBCPs which are expected to enhance the efficiency of Moldovan-Ukrainian border cooperation.[606]

EUBAM's support of partner services in their efforts to prevent cross-border crimes has focused on 'prevention, detection and investigation of transborder offences. This is done through support in risk analysis and investigations and through joint operations'.[607] Thus, a significant part of the mission's efforts was directed towards the identification of levels and trends in cross-border organised crime at the Moldovan-Ukrainian border and providing partner services with the instruments and skills to perform such analyses themselves. One such instrument is the Common Border Security Assessment Report (CBSAR), a flagship EUBAM initiative, whose role is to provide the necessary information for developing an effective crime prevention strategy through

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[603] EUBAM, 'Annual Report 2005/2006', 11.
[604] EUBAM, "Annual Report 2010', 18.
[605] EUBAM, 'Annual Report 1 December 2011- 30 November 2012', 11.
[606] EUBAM, 'Annual Report 1 December 2012- 30 November 2013', 14.
[607] EUBAM, 'Annual Report 1 December 2012- 30 November 2013', 27.

identifying risks and modi operandi and sharing this information with all relevant agencies. In 2008, on the basis of trend analysis of the quarterly CBSARs, EUBAM alerted partner services about emerging trends of illegal activity, including trafficking of hard drugs. Several seizures of drugs in Odessa port supported the mission's suggestion of a trafficking route which used ports in Ukraine, transited Moldova and entered the EU.[608]

Another important element in the fight against trans-national organised crime is effective operational information exchange. Moldova and Ukraine signed a Protocol on Operational Information Exchange in 2006 which established a good basis for information exchange between the border guard services of the two countries. Thus, since 2006 the quality of the statistics exchanged has improved, and the frequency of the exchange has increased.[609] EUBAM has been instrumental in establishing two further crucial mechanisms for the prevention of cross-border crime: working groups and task forces. The mission has made a key contribution to the establishment and development of working groups, helping partner services to investigate criminal cases and identify new trends in criminal activity. There are four working groups supporting information exchange and coordination at intra-agency, inter-agency and international level whose goal is to combat cross-border crime in the areas of illegal migration and trafficking in human beings, smuggling and intellectual property rights protection. In addition to the working groups, EUBAM has also established four task forces meant to offer information exchange and help coordinate law enforcement operational activities: Task Force Arms, Task Force Drugs, Task Force Tobacco and Task Force Vehicle Crimes.

Joint border control operations (JBCOs) strengthen inter-agency and international cooperation, which in turn is a key aspect in the prevention of and fight against cross-border crimes. Since the beginning of its activity, EUBAM has facilitated eleven JBCOs. JBCO OVIDIU, launched in 2012, resulted in 116 incidents being reported by the partner services, with the support of EUBAM and international partners. These involved the confiscation of 100.000 cigarettes, 19 vehicles, 3.896 litres of alcohol and two weapons, charges against 81 persons for violations of the border regime, the detention of 13 illegal

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[608] EUBAM, 'Annual Report 2008', 14.
[609] EUBAM, 'Annual Report 1 December 2012- 30 November 2013', 28.

migrants and 3 facilitators and the detection of non-declared consumer goods in ten cases. Overall the value of seized goods reached €300.000. Of particular importance was the level of exchange of actionable intelligence and the high number of investigations developed, indicative of the effectiveness of the JBCO.[610] In 2011, JBCO PODOLIA reported 95 incidents, including the confiscation of more than 800.000 pieces of cigarettes, 17 vehicles, 267 pills containing psychotropic substances, 603.5 litres of alcohol, 1.590 grams of mercury and 15.724.250 Russian roubles; 24 persons were detained for illegal border crossing and 54 persons were sanctioned for violations of the border regime; non-declared consumer goods were detected in 12 cases and the total amount of seized goods reached €600.000.[611]

As far as irregular migration and trafficking in human beings are concerned, EUBAM carried out extensive work in trying to identify trends in irregular border crossings. It detected relatively large-scale illegal migration on the Transcarpathian route (Ukrainian-Slovak border) which was used by smugglers to cross migrants into the EU and offered advice to Ukraine on the return of migrants.[612] Another route identified by the mission was across the Ukrainian-Moldovan border and via Odessa port through Ukraine towards the EU. With respect to a case of traffic in human beings and sexual exploitation of children in Moldova, EUBAM facilitated cooperation between representatives of EU member states and Moldova's Center for Combatting Trafficking of Persons.[613] In 2013 the mission supported partner services in investigating cases of irregular migration of Iranian and Afghani citizens and helped identify a new trend of irregular migration via the Criva-Mamaliga joint BCP.[614] The mentoring and training provided by EUBAM to field officers proved effective in improving their skills, including their interview techniques, which led to an increase in the detection of forged documents (passports and Schengen visas).[615] The mission, together with the IOM Missions in Moldova and Ukraine and the law enforcement agencies of the two countries produced a Report on Irregular Migration and Trafficking in Human Beings at the

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[610] EUBAM, 'Annual Report 1 December 2012- 30 November 2013'.
[611] EUBAM, 'Annual Report 1 December 2011- 30 November 2012', 24.
[612] EUBAM, 'Annual Report 2005/2006', 16.
[613] EUBAM, 'Annual Report 1 December 2011- 30 November 2012', 22.
[614] EUBAM, 'Annual Report 1 December 2012- 30 November 2013', 28.
[615] EUBAM, 'Annual Report 2007', 12.

Moldovan Ukrainian Border 2012. The report highlighted improvements of border and migration management systems in the framework of the visa liberalisation process and an enhanced ability of Moldovan and Ukrainian authorities to control irregular migration, but more importantly a decreasing trend in irregular migration.[616] Nonetheless, this trend is not thoroughly positive, given the conclusion of the ENP Progress Report for 2014 that Moldova continues 'to be a source country for the trafficking of men, women and children.[617]

Drug smuggling represented a significant phenomenon on the Moldovan-Ukrainian border long before EUBAM's deployment. The mission identified several drug-smuggling routes and offered recommendations for tackling the issue. One of the routes detected passed through Northern Moldova and involved minor drugs (marijuana) cases. In light of a seizure of marijuana on a Chisinau-Russia train, EUBAM recommended the strengthening of law enforcement cooperation between Moldova, Ukraine and Russia.[618] Over the following years the seizures of drugs became increasingly significant, with the mission concluding in 2007 that the detections are 'risk indicators that Ukraine is a possible drugs trafficking route.[619] In 2013 only EUBAM assisted in the investigation of several drug smuggling cases: ecstasy trafficking from Poland to Ukraine, heroin trafficking from Romania to Moldova, and Iran to Ukraine, and raw opium trafficking from Iran to Ukraine and Canada.[620] As part of the efforts of Task Force Drugs to identify large drugs shipments, EUBAM initiated a joint control operation in 2013 - 'PONTUS EUXINUS' - which included the countries of the Black Sea Basin and transhipment ports on the Mediterranean Sea. The objective of the operation was to map out criminal activities in the region in order to take appropriate measures for preventing maritime drug trafficking. With the support of the mission, the partner services investigated several serious drug smuggling cases. By 2014 the proportion of

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[616] EUBAM, 'Annual Report 1 December 2012- 30 November 2013', 28

[617] European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, 'Implementation of the European Neighbourhood Policy in the Republic of Moldova. Progress in 2014 and recommendations for actions', SWD(2015) 69 (Brussels, 25/3/2015), 15, available at: http://eeas.europa.eu/enp/pdf/2015/repulic-of-moldova-enp-report-2015_en.pdf, accessed on 17 July 2015.

[618] EUBAM, 'Annual Report 2005/2006', 17.

[619] EUBAM, 'Annual Report 2007', 13.

[620] EUBAM, 'Annual Report 1 December 2012- 30 November 2013', 28.

drug-related crimes had decreased[621] , a development which confirmed the effectiveness of EUBAM-promoted regional cooperation between law enforcement agencies.[622]

7.5. The reform of customs procedures and trade facilitation

There are a number of measures under Moldova's and Ukraine's DCFTA provisions covered by EUBAM's mandate, most notably the requirements that fall under the 'customs and trade facilitation' chapter providing for the simplification of customs formalities, prevention of customs fraud and alignment of legislation and procedures with international standards.[623] These provisions include more specific issues that EUBAM has closely been involved with, such as rules of origin and classification and valuation, among others. The rest of this section explores EUBAM's rule transfer activities with respect to customs and trade-related reforms. While the mission has been involved in these areas since its deployment in 2005, the extensive requirements of the DCFTA implementation have triggered greater engagement on the part of EUBAM and stronger commitment on the part of the host countries.

When it comes to implementing trade policy, the challenge is to achieve the right balance between trade facilitation and ensuring the integrity of customs procedures in order to protect the interests of state and society. EUBAM's efforts in Moldova and Ukraine have been directed towards achieving this balance. Perhaps EUBAM's greatest contribution to enhancing customs revenue was its monitoring of the implementation of the Joint Declaration between Ukraine and Moldova, which ensured that Transnistrian companies register with the Moldovan authorities and carry out legal foreign trade activities. The registration of Transnistrian companies with the State Registration Chamber of Moldova and the clearance of their goods with the Moldovan Customs

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[621] European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, 'Implementation of the European Neighbourhood Policy in the Republic of Moldova', 15.

[622] According to statistics based on the Common Border Security Assessment Report (CBSARs), drug seizures (kg) decreased in the period 2007-2013: 2007 – 72.16kg; 2008 – 27.07kg; 2009 – 41.61kg; 2010 – 6.71kg; 2012 – 10.9kg; 2013 – 7.7kg.

[623] European Commission, 'EU-Republic of Moldova Deep and Comprehensive Free-Trade Area Reading Guide', 11 February 2014, available at: http://trade.ec.europa.eu/doclib/docs/2014/february/tradoc_152194.pdf, accessed on 13 September 2015.

Service has meant that Moldova's customs revenues have been significantly enhanced since the new customs regime came into force in 2006. Thus, as of 2010 the exports of Transnistrian companies had brought approximately €1.804 billion to Chisinau's budget, while the import activities amounted to €364.143 million.[624]

The mission can also be said to have contributed to enhancing customs revenue by supporting the process of modernisation of the customs services in Moldova and Ukraine and thus strengthening their ability to collect revenues. The Moldovan Customs Service underwent a significant restructuring process over the past years. The most important change was the modification of the legal framework which subordinated MDCS to the Ministry of Finance as of 2009, accompanied by several rounds of internal reorganisation which saw the reduction of customs bureaus, the restructuring of central level functions and the approval of a new structure of the MDCS HQ with a focus on intelligence and operational work.[625] The institutional reforms which the Customs Services in Moldova adopted are embedded into a broader framework of preparation for Moldova's adherence to the DCFTA and the Association Agreement with the EU. In the run-up to the initiation of the EU Autonomous Trade Preferences for Moldova in 2008, an intensification of institutional, administrative and operational upgrades related to customs services could be noted. Legal and operational amendments were made in order to allow MDCS to issue preferential certificates of origin for exports to the EU, which brought the procedure in line with the standards of the European Union.[626] The mission also contributed to strengthening the capacity of Moldova's customs authority to verify the origin of goods, allowing it to facilitate legitimate trade.[627] Among other developments were the harmonisation of regulations on Intellectual Property Rights with EU legislation in 2008 and the modification of the Moldovan Customs in 2009 based on EU customs acquis.[628] Also, the MDCS established 'Post-clearance' Audit and Origin Departments in line with EC recommendations.[629] As far as the UASCS is concerned, it too has adopted a series of reforms as part of its accession to the WTO in 2008. These

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[624] EUBAM, 'Annual Report 2010', 18.
[625] EUBAM, 'Progress Report 2005-2010', 7.
[626] EUBAM, 'Annual Report 2007', 9.
[627] EUBAM, 'Annual Report 2007', 6.
[628] EUBAM, 'Progress Report 2005-2010', 7.
[629] EUBAM, 'Annual Report 2007', 8.

included the unification and simplification of Ukrainian customs legislation in line with international standards on issues such as the identification of the country of origin and the right to suspend customs clearance of goods.[630]

Strengthening the ability of MDCS and UASCS to collect customs revenues and increasing their value represented a priority for EUBAM's mandate and the mission worked towards providing the partner services with the necessary operational and institutional tools. A crucial part of this process was the introduction and operation of the Pre-Arrival Information Exchange System (PAIES) by Ukraine and Moldova and the post clearance audit and control function.[631] According to EUBAM's own assessment 'PAIES succeeded in preventing and fighting customs fraud and increasing compliance, and therefore revenue'.[632] PAIES, which allows the exchange of import/export information, has been operational since 2008 and has already proved its effectiveness in preventing customs fraud. Based on its successful operation on the Moldovan-Ukrainian border, the information exchange system will be replicated on the Belarus-Ukraine border through an EU funded project – PRINEX – due to become operational in 2015 .[633] Data-sharing has not only improved operational coordination, but has also enhanced trust-based relations between services and has helped curb corruption.[634]

In 2007 the mission identified a number of risks to the correct implementation of trade policy and the integrity of customs revenues: the undervaluation of many commodities and goods, including luxury vehicles and consumer goods which distorts markets and defrauds the state budget; the falsification of certificates of origin to goods which is designed to avoid payment of customs duties on imports and results in huge losses of revenue to the state budget (of Ukraine in this case – foodstuffs imported to Moldova from a non-CIS country, temporarily warehoused, legalised with false certificates of origin and then exported to Ukraine, benefiting from intra-CIS trade agreements). EUBAM supported a joint investigation by Moldovan and Ukrainian

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[630] EUBAM, 'Annual Report 2007', 8.
[631] EUBAM, 'Progress Report 2005-2010', 13.
[632] EUBAM, 'Progress Report 2005-2010', 13.
[633] EUBAM. (2015). 'Annual Report 1 December 2013- 30 November 2014. European Union Border Assistance Mission to Moldova and Ukraine', 18, available at:
http://www.eubam.org/files/Report_2015_ENGL.pdf, accessed on 15 September 2015.
[634] Dura, 'The EU Border Assistance Mission', 283.

agencies which revealed a large number of cases concerning forged certificates of origin, but additional work is necessary in order to ensure prosecution and convictions.[635] In 2009 the mission concluded that the concept of trade facilitation and a service mentality were well understood in the partner services, but that improvement was still needed, particularly in customs, if Moldova and Ukraine are to become more attractive to business.[636]

Inter-agency cooperation at BCPs has been identified by EUBAM as not only a significant aspect of IBM, but also one of the crucial factors that enhance trade facilitation.[637] In 2012 EUBAM assisted partner services in establishing regular working sessions which can provide a platform for cooperation between border control agencies and the implementation of the 'one-stop shop' and 'single window' concepts.[638] The mission also supported efforts at capacity building at the local level, providing joint training to local managers on risk analysis and elaborating guidelines for the implementation of one-stop shop in the field offices.[639] The mission was intensely involved in the implementation of the One-Stop-Shop concept, organising evaluation meetings and fact-finding missions which were able to establish that legislative gaps and infrastructural shortcomings continue to exist and prevent the full-scale implementation of the concept.[640]

7.6. The fight against corruption

EUBAM's work in the area of corruption has been particularly challenging with respect to both border management and customs and trade related issues. While the initial adoption by partner services of anti-corruption legislation and regulatory frameworks was promising, it was not followed by rigorous implementation and did not result in an improvement of the corruption climate within border and customs agencies. Ukraine consistently lagged behind in fulfilling anti-corruption requirements, delaying the

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[635] EUBAM, 'Annual Report 2007', 13.
[636] EUBAM, 'Annual Report EUBAM December 2008- December 2009', 9.
[637] EUBAM, 'Annual Report 1 December 2012- 30 November 2013', 13.
[638] EUBAM, 'Annual Report 1 December 2011- 30 November 2012', 10.
[639] EUBAM, 'Annual Report 1 December 2011- 30 November 2012', 10.
[640] EUBAM, 'Annual Report 1 December 2012- 30 November 2013', 13.

developing of a national anti-corruption strategy, inconsistently developing Regional Action Plans on Combating Corruption across a limited number of UASBGS detachments and customs houses, and failing to make some of the regulatory frameworks legally binding (i.e. the UASCS Code of Conduct).[641] Given the pervasive corruption present within Moldova's and Ukraine's state administrations, and particularly the border guard and customs services, the mission's anti-corruption activities have tended to focus on the less controversial area of public education. In collaboration with a working group including representatives of Moldovan and Ukrainian partner services and academic institutions, EUBAM contributed to the development of an Anti-Corruption Training Curriculum and has been supporting its introduction as a training component for officers in the border guard and customs services.[642] In Ukraine the curriculum was included in the Customs education system, while the border guards adopted it as a distance learning package. The mission is also involved in a wide-ranging civil society outreach initiative which aims to provide educational events to schools and universities and raise awareness of corruption and good governance issues. One of EUBAM's flagship projects in this area is the Anti-Corruption summer school which is organised on an annual basis and includes students from both countries, as well as representatives from the border guard and customs services academies.[643] The mission has also been involved in organising three international schools 'Youth against Corruption' in cooperation with the UASBGS and the Centre for Combatting Economic Crimes and Corruption (CCECC) in Moldova.[644]

A particular area of interest for EUBAM in the context of anti-corruption activities has been the integrity and human resources management of partner services. All four partner services adopted a number of preventive measures aimed at tackling corruption, including a rotation system of personnel, regular training events, the use of CCTV and psychological tests, the implementation of a new remuneration system which reduces the possibility for corrupt behaviour, as well as the creation of a database to register corruption offenders and the use of 'undercover' officers to identify corruption

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[641] EUBAM, 'Progress Report 2005-2010', 14.
[642] EUBAM, 'Annual Report 1 December 2012- 30 November 2013', 33.
[643] EUBAM, 'Annual Report 1 December 2012- 30 November 2013', 33.
[644] EUBAM, 'Annual Report 1 December 2010- 30 November 2011', 21.

cases.[645] However, Ukraine has been unwilling to take cooperation with EUBAM further and as a result the mission has only been invited to carry out Integrity Risk Assessments for MDCS and the Moldovan Border Police.[646] Under these circumstances, EUBAM has not been able to do more than provide general recommendations on integrity aspects of human resource management.

As part of its anti-corruption work EUBAM also offered operational support, providing concrete advice on the improvement of procedures to reduce opportunities for corruption on the ground. JBCPs were identified as useful frameworks for promoting anti-corruption through peer accountability. In 2010 the mission initiated an innovative project meant to reduce corruption levels and improve the professional integrity of officers at BCPs, as well as demonstrating that it is possible to achieve concrete results in the fight against corruption provided there is strong commitment and dedicated leadership. Known as the 'Model Border Crossing Point' pilot project, the initiative established two 'excellent' BCPs at Tudora-Starokozache and Moghilev-Podolskiy-Otaci where mission staff works closely with field officers in order to advise and monitor on compliance with anti-corruption measures.[647] In addition, each BCP carries out an annual survey in order to assess public perceptions regarding the levels of corruption and the quality of service experienced by members of the public at these particular BCPs. The results of the surveys have not indicated that travellers are significantly happier with the levels of integrity at the model BCPs, prompting the mission to assess that 'both the measures and the surveys require reappraisal to be more consistent and effective'.[648] EUBAM has advocated that the project is replicated at all the other BCPs with partner services taking greater ownership of anti-corruption efforts and the mission taking a supporting role. However, it is questionable whether this idea would garner the support of the partner services given the pervasive levels of corruption at border crossing points.

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[645] EUBAM, 'Progress Report 2005-2010', 14.
[646] EUBAM, 'Annual Report 1 December 2012- 30 November 2013', 33.
[647] EUBAM, 'Annual Report 1 December 2013- 30 November 2014' (2015), 21, available at: http://www.eubam.org/files/Report_2015_ENGL.pdf, accessed on 15 September 2015.
[648] EUBAM, 'Annual Report 1 December 2012- 30 November 2013', 33.

7.7. Explaining EUBAM'S rule transfer: selective reforms and mixed results

The mission enjoyed from the very beginning unprecedented support across the political leadership in Chisinau because the government was deeply supportive of the mission's objective to contribute to the implementation of the Joint Declaration between Moldova and Ukraine. The main interest of the Moldovan government was in the mission's contribution towards enforcing the difficult customs regime on the Moldovan-Ukrainian border by coercing Transnistrian companies to function under Chisinau's authority. Nonetheless, the mission also served other politically significant purposes for Moldova's government, not least of which was EUBAM's alleged ability to curb the illegal export of weapons from Transnistria. Moldova had long claimed that Transnistria was a source of large-scale arms smuggling and there were even suspicions of nuclear material trafficking. However, these allegations had never been proved and it had been argued that they were merely a result of Chisinau's efforts to put pressure on Tiraspol.[649] When EUBAM's investigations concluded that no evidence had been found to confirm these reports, Moldova interpreted the findings as proof of EUBAM's effectiveness in deterring arms smuggling from Transnistria. This narrative emerges time and again from conversations between Moldovan officials and US diplomats in Chisinau. Thus, during a meeting with US diplomats in October 2007 Moldovan Prime Minister Vasile Tarlev 'praised EUBAM's work and stated that he believed it had stopped the export of arms from TN [Transnistria]'[650], while Voronin himself 'expressed his gratitude for the introduction of EUBAM, noting that it had disappointed both Russia and Transnistria because arms trafficking had stopped'.[651] EUBAM officials believe that both Chisinau and Tiraspol have appropriated the results of the mission's investigations for their own political purposes: the former to claim that arms trafficking had been indeed taking place

[649] Ahto Lobjakas, "Moldova: Western Diplomats Say Reports Of Smuggling From Transdniester Likely Exaggerated", Radio Free Europe /Radio Liberty, 11 October 2005, available at: http://www.rferl.org/content/article/1062030.html, accessed on 31 August 2015.
[650] US Embassy Chisinau, "PM Tarlev upbeat on USG CFE proposals", Cable 07CHISINAU1281, 23 October 2007, available at: https://wikileaks.org/plusd/cables/07CHISINAU1281_a.html, accessed on 30 August 2015.
[651] US Embassy Chisinau, "President Voronin Worried about possible 'incident' provoked by Russia and Transnistria", Cable 08CHISINAU1008, 9 October 2008, available at: https://wikileaks.org/plusd/cables/08CHISINAU1008_a.html, accessed on 30 August 2015.

but was stopped by EUBAM and the latter to show that there was no illegal weapons smuggling taking place in the first place and EUBAM had uncovered the reality behind Moldova's accusations.[652]

On the other hand, Ukraine had a slightly different attitude towards EUBAM. While the mission enjoyed strong support at the highest political levels given Yushchenko's goal of strengthening Ukraine's European credentials, there was a clear sense that the main beneficiary of the mission's presence was Moldova and that Kiev was merely doing its neighbour a favour. This created a situation of heightened uncertainty with every renewal of EUBAM's mandate because Ukraine would typically suggest it was considering terminating its contribution to the mission. This was partly the result of what has been variously described as the 'corporate self-assurance' of a large and 'arrogant' country, but was also meant to extract as many concessions regarding EUBAM's mandate as possible. The implication of this non-committal attitude was that the continued presence of EUBAM on the ground could never be taken for granted as far as Ukraine was concerned. The possibility of Ukraine withdrawing from cooperation with the mission featured prominently in negotiations for the renewal of EUBAM's mandate and has been a great cause of anxiety for Moldovan officials over the years.[653] In the early stages of the mission's deployment Kiev was reluctant to accept the mission's competences, including EUBAM's right to make unannounced visits at checkpoints along the Moldovan-Ukrainian border.[654] As a result, the mission decided to announce its visits in order to strengthen mutual trust and show the Ukrainian counterparts that its approach to cooperation was flexible and took into account the concerns of local actors.

Despite the different positions of the Moldovan and Ukrainian governments vis-à-vis EUBAM, it is safe to say that neither of them represented particularly strong driving forces behind the transfer of EU-inspired border management reforms. The main interest for both Moldova and Ukraine under Voronin and Yushchenko rested with the implementation of the customs regime rather than the extensive range of legal, institutional and operational reforms that EUBAM was proposing. That being said,

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[652] Interview EUBAM leadership, 26 August 2015 via Skype.
[653] Moldovan high-level officials expressed concerns regarding Ukraine's alleged intention to cease its activity in EUBAM on a number of occasions.
[654] Interview EUBAM leadership, 4 April 2013, Odessa.

neither government was opposed to these changes and was willing to passively support any reforms that would not contravene important political interests and/or incur prohibitive costs. To be sure, the improvement of border control and the modernisation of border management institutions as envisaged by EUBAM were of interest to both Chisinau and Kiev, but neither the Voronin nor the Yushchenko regimes was willing to go through with domestic changes that could have cost them political capital. As a result, the rule transfer process in which EUBAM became involved in 2005 proceeded in a selective manner and wielded diverse results. Initially, the Moldovan and Ukrainian governments displayed passive preferential fit with EUBAM's rule transfer mandate which was assessed as neither particularly beneficial nor detrimental to the two incumbent regimes' preference for maintaining and strengthening political power. Under circumstances of passive preferential fit, factors such as veto players and the use of EU side-payments under the form of policy-specific conditionality and capacity-building can intervene in the cost-benefit calculations of governments and thus transform the passive preferential fit into a weak or a strong fit depending on whether it is the costs or the benefits which are increased. . In the case of EUBAM's rule transfer mandate, the existence of domestic veto players explains why anti-corruption reforms are still lagging behind in both countries, while policy-specific conditionality and capacity-building explain the adoption and implementation of certain policies which otherwise would have been too costly to be carried out.

Returning to preferential fit, it is important to point out that the coming to power of new a new political leadership has the potential of altering the cost-benefit balance within the government, depending on the strategic alignment of the new regime. In Moldova, the preferential fit between the political agenda of the Moldovan government and EUBAM's objectives was strengthened in 2009 with the election of a strongly pro-European coalition government – the Alliance for European Integration (AEI) – who intensified reform efforts at the heart of the European Neighbourhood Policy (ENP). The goals of achieving a visa-free regime with the Schengen area and the conclusion of a DCFTA with the EU drove forward progress in approximating relevant legislation with EU standards and building the necessary institutional and administrative capacity. Thus, the government was praised for its extraordinary achievements in the visa liberalisation

process[655] where the government's 'pre-emptive' approach ensured that Chisinau met its targets well in advance of the EU schedule. The fast-paced progress led to Moldova becoming the first Eastern Partnership country to be granted visa-free travel to the Schengen zone, an outstanding accomplishment to which EUBAM brought a significant contribution.[656] With respect to the establishment of a DCFTA, despite the high costs of essentially adopting the EU trade acquis, Moldova maintained a strong preferential fit with the EU's goals, if only for the 'tremendous symbolic value' of the Association Agreement as a token of successful governance in the eyes of electorates and neighbouring countries such as Russia.[657] In Ukraine, the coming to power of the Yanukovych government in 2010 weakened Ukraine's overall commitment to European integration and contributed to the country lagging behind on its reform agenda. While the progress of border management reforms was not significantly undermined, Ukraine's poor compliance with the anti-corruption measures required under the Visa Liberalisation Action Plan meant that the country could not be offered a visa-free agreement.[658]

7.7.1. When preferential fit meets internal veto players

The fight against corruption has indeed been one of the policy areas notorious for the lack of progress. EUBAM's anti-corruption mandate proved from the very beginning to be a highly contentious issue in Moldova and Ukraine and was opposed by a significant number of veto players from the ranks of the mission's partner services themselves. While the two countries are allegedly committed to an anti-corruption agenda, the endemic corruption that characterises the political and economic environment in both countries makes the implementation of anti-corruption measures extremely

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[655] Enlargement Commissioner Stefan Fule cited in Litra, 'Moldova on the EU visa liberalization path', 9.

[656] European Commission, 'Commissioner Malmström on visa-free travel for the citizens of the Republic of Moldova', (EC Statement, Brussels, 27 April 2014), available at: http://europa.eu/rapid/press-release_STATEMENT-14-137_en.htm, accessed on 26 September 2015.

[657] Laure Delcour and Kataryna Wolczuk, 'Beyond the Vilnius Summit: challenges for deeper EU integration with Eastern Europe', Policy Brief 13 October 2013, European Policy Centre.

[658] European Commission, 'Fourth Report on the implementation by Ukraine of the Action Plan on Visa Liberalisation', COM(2014) 336 (Brussels, 27/5/2014), 4, available at: http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/international-affairs/general/docs/fourth_report_on_the_implementation_by_ukraine_of_the_action_plan_on_visa_liberalisation_en.pdf, accessed on 10 September 2015.

difficult. In the early days of the mission there were hostile reactions from Moldovan and Ukrainian partner services to EUBAM's idea of bringing in an anti-corruption expert. The issue proved to be so controversial that the position had to be renamed 'integrity expert' in order to gain the acceptance of the border guard and customs services.[659] The problem continues to remain sensitive, as shown by the reluctance to present the 'model' border crossing point initiative as an anti-corruption measure, but rather as a project aimed at enhancing the integrity and professionalism of staff.[660] This is hardly surprising given the double challenge that EUBAM is facing in Moldova and Ukraine: not only is corruption rife in virtually every policy sector in both countries, but the border guard and customs services represent perhaps the greatest targets for corruption in 'development and trans-shipment states'.[661] The reasons for the inextricable link between border guard and customs services and corruption are related to the structural vulnerability of security sectors in countries characterised by poor economic performance, weak governance and high levels of organised crime. Corruption is deeply embedded within the Moldovan and Ukrainian border guard and customs services, from petty bribery of border guards to sophisticated illegal trade at the highest levels of government.

Ukraine is notorious for 'corruption at every level of government, from the rank-and-file of the border security service to the highest-ranking officials'.[662] As revealed by a US diplomat, there were suggestions that the Ukrainian border guard and customs services would have been glad to see EUBAM terminated since that would have not only allowed flexibility in implementing the customs regime at the border with Moldova, but it would have also lessened the pressure of EUBAM-driven anti-corruption reforms. Opposition to initiatives aimed at fighting corruption existed within the Moldovan partner services as well, but it tended to be more muted than in Ukraine, particularly after the 2009 elections when the objective of signing an Association Agreement with the EU gave a renewed push to reform efforts.

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[659] Interview EUBAM local staff, 4 March 2013, Brussels.
[660] Interview EUBAM advisor, 5 April 2013, Odessa.
[661] Alice Hills, 'Border control services and security sector reform', (DCAF Working Paper, Geneva, 2002), 331.
[662] Katherina W. Gonzales, 'Good fences make good neighbours. Ukrainian Border Security and Western Assistance', *Problems of Post-Communism* 51:1 (2004), 44-45.

The election of the Alliance for European Integration (AEI) in Moldova had marked a shift towards stronger preferential fit with EUBAM's mandate and, despite political infighting and protracted instability, the coalition can be credited with Moldova's remarkable reform progress after 2009. Prime Minister Vlad Filat tried hard to push his signature agenda item – European integration – and has been supported in this endeavour by a dedicated ministerial team who has been credited as largely responsible for Moldova's advances.[663] Thus, it can be argued that, despite some domestic opposition to EUBAM's anti-corruption reforms, Moldova's incumbent regime after 2009 strategically assessed the benefits of cooperation with EUBAM as exceeding the potential costs inflicted by veto players.

On the other hand, after 2010 and the coming to power of Yanukovych, Ukraine has had the opposite experience, with efforts towards EU-demanded reforms subsiding together with the government's overall commitment to European integration. An example which illustrates how domestic veto players in Ukraine have reinforced the already weak preferential fit with EUBAM's agenda is the reform of Human Resources Management (HRM) systems. The issue has been strongly opposed by the leadership of Ukrainian border guard and customs services as it had the potential to disturb powerful interests in these organisations. As EUBAM's leadership acknowledges, 'this is understandable because it [the reform of HRM systems] would make nepotism difficult'.[664] Engagement with Moldova in this area has been more successful to the extent that Chisinau agreed to have EUBAM analyse its Human Resources Management system and offer recommendations for its reform.[665] Another telling example is provided by the reversal of the UASBGS's investigative powers by provisions in the new Ukrainian Criminal Procedure Code. The measure is to be understood in the context of

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[663] Max Fisher, 'How a boar hunt gone awry toppled Moldova's government and might bring back communists', 24 April 2013, available at: https://www.washingtonpost.com/news/worldviews/wp/2013/04/24/how-a-boar-hunt-gone-awry-toppled-moldovas-government-and-might-bring-back-communist-rule/, accessed on 3 September 2015; Vladimir Socor, 'Demise of Moldova's Alliance for European Integration Surprises European Union's Leaders', The Jamestown Foundation, 13 May 2013, available at: http://www.jamestown.org/regions/europe/single/?tx_ttnews%5Btt_news%5D=40870&tx_ttnews%5BbackPid%5D=51&cHash=32f3a4cdf9a70b89f3a270d299e2b672#.VgFvzd9VhHw, accessed on 10 September 2015.
[664] Interview EUBAM leadership, 4 April 2013, Odessa.
[665] Interview EUBAM officer, 4 April 2013, Odessa.

the expansion of the UASBGS's legal competences following EUBAM's advice on this issue. The Ukrainian Border Guard service used to have very little investigative power, with criminal proceeding being typically forwarded to the Ukrainian Security Service (SBU)[666], and EUBAM sought to remedy this imbalance in order to stimulate detentions and combat border guards' reluctance to act against cross-border illegal activities. However, EUBAM's recommendations threatened to undermine the extensive powers enjoyed by the SBU and were therefore reversed as soon as a new regime came to power, poignantly illustrating the changing cost-benefit calculations of regimes in power. Although veto players have the ability to alter the strategic calculations of political elites by shifting the balance between costs and benefits, in Ukraine's case this does not seem to have been the case. Rather, veto players could only achieve their goals once a change of regime, and thus of preferential fit, took place.

In fact, the preferential fit between the Ukrainian leadership and EUBAM's anti-corruption mandate weakened progressively – firstly, after the 2006 parliamentary elections that forced Yushchenko to share power with Yanukovych, and to an even greater degree after the 2010 presidential elections that brought the latter to power. This was consistent with the changing strategic alignment of the different incumbent regimes in Ukraine: from the pro-Western regime of Yushchenko whose political mandate was defined by the goal of European integration to the contradictory foreign policy directions of the Yushchenko-Yanukovych tandem and finally the growing pro-Russian orientation of Yanukovych presidency. Given the already low level of preferential fit between EUBAM and post-2006 Ukrainian incumbent regimes, the opposition of domestic veto players to anti-corruption reforms championed by EUBAM merely reinforced the incompatibility between governmental preferences for political power and the mission's objectives but was not instrumental in altering this dynamics.

Both countries have powerful veto players within the border guard and customs services, as well as other agencies whose work is relevant for export activities and border controls. Moldova and Ukraine also share the politicisation of public services primarily because the leadership of organisations such as the border guard or customs services is not protected from political interference and is thus vulnerable to pressures from political

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[666] Gonzales, 'Good fences make good neighbours', 47.

and business elites. The potential for restrictions on EUBAM's ability to transfer border management and customs rules is therefore significant but this chapter has shown that domestic veto players have not been able to decisively influence governments' strategic calculations. Instead, they either did not have enough leverage to affect the cost-benefit balance for political regimes, like in Moldova, or they simply had to wait the coming to power of a government that shared their interests, as in Ukraine. .

In addition to the competing strategies of veto players, another factor which has emerged as potentially influencing the cost-benefit calculations, and thus strategies, of governments in Moldova and Ukraine is the EU's offer of side-payments under the form of policy-specific conditionality and capacity-building. Unlike the rule of law policy area in Georgia, border and customs management has been subject to policy-specific conditionality in Moldova and Ukraine. This is because the management of border regimes in the EU's Eastern Neighbourhood has significant security implications for the EU, who wants to curb smuggling and illegal migration at its external borders. Thus, Brussels has placed the harmonisation of border and customs standards – falling under the freedom, security and justice chapter - among the priority objectives in the Action Plans of both countries.[667] It is important to note here that it is not EUBAM who employs conditionality as a tool to entice partner services into complying with the requirements of its mandate, but that the mission's mandate is part of a broader policy area that is subject to conditionality.

The EU has offered two main rewards in exchange for Moldova and Ukraine bringing their border and customs regulations in line with EU standards: visa-free regimes and trade facilitation culminating in Deep and Comprehensive Free Trade Agreements (DCFTAs). Paving the way for these long term goals are intermediate rewards such as visa facilitation agreements and Autonomous Trade Preferences (ATPs). Moldova has been a frontrunner in adopting and implementing the provisions of its Action Plan under the freedom, security and justice chapter, succeeding in being granted a visa-free regime as of December 2013 and introducing the DCFTA regime as a result of signing an Association Agreement with the EU in June 2014. Policy-specific

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[667] Andrea Gawrich, Inna Melnykovska and Rainer Schweickert, 'Neighbourhood Europeanization through ENP: The Case of Ukraine', *JCMS: Journal of Common Market Studies* 48:5 (2010), 1224.

conditionality has arguably played an important role in keeping Moldova on track with its reform programme. As far as visa liberalisation is concerned, the EU's technical approach including clear benchmarks and prompt rewards has paid off with Chisinau choosing to adopt a 'pre-emptive' implementation strategy in order to stay ahead of schedule.[668] EUBAM itself has been extensively involved in many of the reforms that paved the way for the provision of visa free access to the Schengen area, such as efforts to combat organised crime, corruption and illegal migration, as well as improving the administrative capacity of the Border Police.

With respect to trade facilitation, policy-specific conditionality has been crucial in gradually offering Moldova increasingly significant rewards in exchange for its progress in the customs sector. As Chisinau adopted and began applying the principle of risk-based customs control, modified customs legislation (including the Customs Code) and created a risk analysis division within the Customs service in 2005, it was granted the Generalised system of Preferences Plus (GSP+). Next, legislation on competences in certification of origin and the issuing of export certificates, as well as the creation of the necessary administrative structure, and the inclusion of provisions on intellectual property rights in the Customs Code facilitated the granting of Autonomous Trade Preferences (ATPs) in 2007. Further alignment of the customs procedure code with EU standards, as well as an improved code of ethics ensured that Moldova had a credible perspective for a DCFTA.[669]

Ukraine, on the other hand, did not respond similarly positively to the EU's conditionality. Initially, at the beginning of EUBAM's activity on the ground which incidentally coincided with the aftermath of the Orange Revolution, Kiev appeared willing to comply with the EU's requirements in order to establish its democratic and pro-European credentials. However, Ukraine's expectations were higher than Moldova's and the former envisaged that the rewards promised by the EU would be more substantial and would arrive sooner. By 2008, as it became clear that the granting of a visa-free regime was still a distant prospect, Kiev's commitment to comply with EU-required

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[668] Leonid Litra, 'Moldova on the EU visa liberalization path: taking stock of achievements and failures', (IDIS Viitorul, Chisinau, 2012).
[669] Christian Hagemann, 'External Governance on the Terms of the Partner? The EU, Russia and the Republic of Moldova in the European Neighbourhood Policy', *Journal of European Integration* 35:7 (2013), 775-76.

reforms started to flounder.[670] This was also related to the coming to power of the Yanukovych government in 2010 which weakened Ukraine's overall commitment to European integration, and implicitly the preferential fit with EUBAM's mandate, and contributed to the country lagging behind on its reform agenda. As a result, Kiev is still not close to being offered a visa-free regime, with Brussels urging Ukraine to make more progress in the areas of corruption and organised crime.[671]

Policy-specific conditionality cannot provide the same comprehensive top-down adaptive pressures as enlargement conditionality and thus works in a different, bottom-up fashion. Rather than providing domestic actors with opportunity structures, as institutionalist approaches suggest, the success of policy-specific conditionality depends on the agency of national governments and the extent to which they instrumentalise it in order to achieve political purposes. The cases of Moldova and Ukraine illustrate both the ability of policy-specific conditionality to strengthen preferential fit by increasing the benefits of cooperation with the EU – as Moldova's impressive rule transfer progress in the context of visa liberalisation and the DCFTA shows – as well as its relative weakness in the face of preferential misfit, a situation highlighted by Ukraine's disinclination to push forward with the same reforms. In the former case, policy-specific conditionality acts as a catalyst, providing reform efforts with a clear direction and timeline, as well as giving incumbent regimes a legitimising framework for policy changes. It thus has the potential of mitigating the costs incurred by the adoption and implementation of reforms and raises the prospect of cooperation with the EU impact in policy areas where there is preferential fit between the government and EU objectives, but in the absence of EU rewards the costs are prohibitive. The substantial progress of Moldova towards fulfilling the requirements of the visa liberalisation process and the DCFTA negotiations illustrates this dynamic. On the other hand, if the incumbent regime does not have preferential fit with the EU's objectives, as in Ukraine after Yanukovych won the presidency in 2010, policy-specific conditionality is unlikely to be able to increase either the benefits of

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[670] Disappointed with the limited benefits of its cooperation with the EU, Ukraine even postponed granting visa-free access to Romanians and Bulgarians. Gawrich, Melnykovska and Schweickert, 'Neighbourhood Europeanization', 1227.

[671] 'EU Says No Visa Liberalization For Ukraine And Georgia', RFE/RL, 8 May 2015, available at: http://www.rferl.org/content/eu-visa-liberalization-ukraine-georgia/27002254.html, accessed on 29 July 2015.

cooperation or the costs of non-cooperation for incumbent regimes to an extent that could fundamentally alter their strategic calculations. Thus, in light of the preferential fit of the Yanukovych regime with EUBAM's general objectives, but in particular its anti-corruption agenda, it is not surprising that little progress was achieved on the reform of Human Resources Management systems in Ukraine's border guard and customs services). Unlike membership conditionality, the rewards offered by policy-specific conditionality are limited in light of the extensive reform efforts required. Thus, it is important that there is broad political support for the reform agenda.

7.7.2. Add capacity-building to the mix

According to the literature on EU-driven policy change in the Eastern Neighbourhood, policy-specific capacity building works through empowering certain domestic actors by offering additional benefits or mitigating adaptational costs.[672] Consistent with the focus on the agency of incumbent regimes in this thesis, capacity-building is found here to influence the degree of preferential fit of governments through the provision of additional resources in the absence of which EU reforms would be too costly. This refers particularly to material costs, the one type which capacity-building can attenuate. Thus, it is often the case that EU-proposed reforms do not result in significant political benefits or costs for the elites in power and thus do not change their strategic calculations. In such a situation it would not be reasonable to expect the government to engage in rule transfer despite the absence of political costs. If the envisaged reforms would not bring about political benefits but could potentially incur material costs, one of the factors that might marginally alter preferential fit is capacity-building. EUBAM's rule transfer dimension presents such a situation under the Voronin and Yushchenko governments. At the time - before 2010 - the prospects of visa liberalisation and concluding DCFTAs with the EU appeared distant and the policy-specific conditionality that would later be put in motion in support of these policy goals was not yet active. The preferential fit of both regimes with EUBAM's rule transfer mandate was passive and the mission's reform programme was accepted as a slightly inconvenient, but necessary,

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[672] Langbein and Börzel, 'Introduction'; Börzel and Risse, 'From Europeanisation to Diffusion'.

condition in support of the more important goal of ensuring the implementation of the customs regime at the Moldovan-Ukrainian border. In the absence of strong preferential fit and policy-specific conditionality, the Moldovan and Ukrainian governments were relatively indifferent to EUBAM's rule transfer agenda (except for those issues that encountered opposition from internal veto players). But while many of the reforms would not have incurred political costs, there was still the matter of material costs which, in the absence of capacity-building, might have compromised EUBAM's rule transfer efforts.

As it happens, EUBAM has a specific mandate for capacity building of border guards/police and customs services in Moldova and Ukraine which has greatly assisted its reform efforts. The Memorandum of Understanding that established the mission clearly stipulates that it should 'build up appropriate operational and institutional capacity in Moldova and Ukraine to endure effective border control and surveillance'. The mission is involved in a wide variety of capacity building activities, ranging from training practitioners and middle management to improving the institutional and organisational culture of partner services and strengthening operational capacity. Over almost ten years of activity on the ground, EUBAM has provided extensive technical and financial assistance to improve border management and surveillance on the Moldovan-Ukrainian border. In the first years of the mission EUBAM's activities were reinforced by the EC-funded project BOMMOLOK (Improving Management on the Moldovan-Ukrainian State Border) which provided financial assistance for the procurement of equipment, communication systems, training and risk analysis systems.[673] BOMMOLUK I, which had a budget of €3.3 million, ran until December 2007 and was complemented by BOMMOLUK II with a budget of €6.6 million which was completed in December 2009. As a flanking project for EUBAM, BOMMOLUK organised study tours for partner services to EU member states and provided specific expertise through the contracting of short-term experts.[674] This type of assistance was clearly a carrot for Moldovan and Ukrainian partner services, with border guard and customs services personnel eager to participate in study trips and to receive equipment in the form of last generation

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[673] Dura, 'The EU Border Assistance Mission', 281.
[674] Kurowska, 'EU Border Assistance Mission', 55.

gadgets.[675] As a result of BOMMOLUK I and II, the border infrastructure on both sides of the Ukrainian-Moldovan border was improved and equipment consisting of personal computers, laser printers, portable thermal imagers and minibuses, among others, were delivered (predominantly to the Moldovan border guard service).[676]

The provision of financial assistance contributed to a number of initiatives which could not have taken off otherwise, given the limited budgets of partner services. One of these was a public information campaign meant to distribute leaflets containing border crossing regulations which EUBAM partially funded on the understanding that the Moldovan and Ukrainian counterparts would contribute at a later stage.[677] Nevertheless, by 2008-2009 EUBAM understood that it must reorient its focus from temporary needs to sustainable development. As one EUBAM officer points out, while Moldovan and Ukrainian counterparts are understandably enthusiastic about study visits and high-tech equipment, it is important for them to understand that the role of the mission is not limited to simply handing off money.[678] Thus, in light of limitations on EUBAM's own budget, direct financial contributions were phased out in favour of more sustainable forms of capacity-building such as training, mentoring and the provision of expert legal and institutional advice. In order to address the needs of partner services, a network of donors was put in place - including the World Customs Organisation (WCO), EUROPOL and FRONTEX - which can support the Moldovan and Ukrainian border guards/police and customs services beyond the assistance provided by EUBAM.[679]

The sequencing of EUBAM's capacity-building activities, with the provision of direct financial and technical assistance in the first years of the missions and its subsequent replacement with more sustainable forms of assistance, has matched the configuration of preferential fit and policy-specific conditionality before and after the 2009 and 2010 changes in government. The fact that EUBAM could provide concrete capacity-building in its first years of operation on the ground contributed to institutional and operational reforms in the border guard and customs services which might have not been achieved in light of the passive preferential fit of the Voronin and Yushchenko

[675] Interview EUBAM local staff, 4 March 2013, Brussels.
[676] Dura, 'The EU Border Assistance Mission', 281.
[677] Interview EUBAM officer, 18 February 2013, London.
[678] Interview EUBAM officer, 4 April 2013, Odessa.
[679] Interview EUBAM Head of Unit, 4 April 2013, Odessa.

regimes with the mission's rule transfer mandate, as well as the absence of policy-specific conditionality.

7.8. Conclusion

This chapter has investigated the extent of cooperation   between EUBAM and incumbent regimes in Moldova and Ukraine with respect to rule transfer in the areas of border management and customs systems. As conceived of in this thesis, cooperation refers to the ability of EU missions to co-opt national governments in supporting their policy objectives. The analysis of EUBAM's reform efforts and their results reveals the fact that the strategic environment, consisting of factors such as domestic veto-players and the EU's use of side-payments, has not imposed strong constraints on the strategies of national decision-makers. Rather, the courses of action selected by the Moldovan and Ukrainian governments were mainly informed by the strategic alignment of the respective regimes with either the EU or Russia. Domestic veto players and EU side-payments merely reinforced the resulting degree of preferential fit between these two ENP governments and EUBAM's mandate, rather than alter the leaders' cost-benefit calculations.

Interestingly, EUBAM's case shows that cooperation is possible both when the EU's policy objectives are actively supported by the incumbent regimes, as well as when they are passively accepted. Thus strong preferential fit describes a situation in which the EU's policy objectives are in the governments' political interests, while passive preferential fit captures a neutral dynamics whereby EU goals neither enhance nor undermine the regimes' preferences. Thus, EUBAM has been able to successfully engage in cooperation both in the first part of its mandate (2005-2010) when the Moldovan and Ukrainian governments were fairly indifferent to its reform agenda, as well as after 2009 in Moldova when preferential fit was strengthened. Nonetheless, the fact that EUBAM's impact in Moldova has been significantly more extensive – in terms of the scope of the reforms – after 2009 than before indicates that the strength of preferential fit matters.

The strength of preferential fit is typically linked to the way in which the government positions itself vis-à-vis European integration, on one hand, and cooperation

with other international actors, on the other hand, and the role played by this strategic alignment in their electoral success. The extent to which a particular policy issue is perceived as compatible with the incumbent regime's preference for maintaining and/or gaining power represents in fact the fundamental consideration of preferential fit and appears to be a highly accurate predictor of the prospect for cooperation in the case of EUBAM's rule transfer mandate. While factors such as the existence of domestic veto players and the offer of EU side-payment in the form of policy-specific conditionality and capacity-building, have been found to alter the governments' strategies, their ability to act as effective constraints on governmental behaviour crucially depends on their ability to alter cost-benefit calculations. If the benefits offered and the prospective costs incurred are not significant enough to decisively enhance the cost-effectiveness of an alternative over the other, it is likely that the selected strategy will be shaped more by the degree of preferential fit resulting from the regimes' strategic alignment than the constraints of environmental factors.

Thus, between 2005 and 2010 capacity-building contributed to maintaining the Moldovan and Ukrainian governments' commitment to border management and customs reforms but this was only possible under circumstances of passive preferential fit and the strategic alignment of the incumbent regimes in Kiev and Chisinau with the EU. At the same time, policy-specific conditionality helped Moldova stay focused on the necessary reforms in the run-up to its visa free agreement with the EU, but the strong preferential fit of the Filat government resulting from its positioning as a reformist, firmly pro-European regime, was crucial for the successful adoption and implementation of reforms. On the other hand, policy-specific conditionality did not provide the same political opportunities to Yanukovych's government, given its significantly weaker preferential fit with a European integration agenda. Domestic veto players for whom the status quo is beneficial will always be a stumbling block in the way of reforms and Moldova's and Ukraine's difficulties in tackling corruption are to be largely attributed to the presence of veto players across key institutions. They have the potential of altering governmental preferential fit, although this will usually take the form of selective rule transfer rather than the complete abandonment of a reform programme. However, it cannot be argued that veto players have been able to decisively influence the Moldovan and Ukrainian

governments' strategic calculations, but rather their influence has depended on the strategic alignment with either the EU or Russia. As such, in Moldova the strong preferential fit of the Filat regime has neutralised to some extent the influence of veto players, allowing for the adoption, albeit selective and limited, of anti-corruption reforms, while in Ukraine it was only the coming to power of a regime with weak preferential fit that enabled the reversal of some of EUBAM's reforms.

Chapter 8

Conclusion

This thesis has started from the premise that the sine qua non condition for effective cooperation between EU foreign policy instruments such as CSDP missions and incumbent regimes in the Eastern Neighbourhood is the compatibility between EU objectives and the incumbent regimes' intrinsic preference for gaining and/or maintaining political power. Defined as preferential fit, the 'match' between the goals of EU missions – as highlighted by their mandates – and the political agendas of national governments in ENP countries emerges as the necessary condition that facilitates effective EU-ENP cooperation . In addition to confirming the centrality of the agency-oriented concept of 'preferential fit' – as opposed to the institutionalist notion of 'goodness of fit' – for the development of effective cooperation between the EU and its Eastern neighbours,   the findings outlined in the four empirical-analytical chapters have also tested the hypotheses of the research with respect to the conditions which shape the cost-benefit calculations of national governments. Domestic veto players, alternative coalitions and EU threats and side-payments have all emerged as relevant factors which affect the actors' choice for the optimal strategy. When more than one intervening variable is present, incumbent regimes engage in assessing the cost-effectiveness of the alternative strategies prescribed by each of the factors against each other and opt for the utility-maximising one – i.e. the strategy perceived as most likely to ensure the gain and/or consolidation of political power.

Contrary to the 'goodness of fit' concept encountered in the Europeanisation literature, which envisages fit as an institutional category and conceives of EU impact as the result of adaptive pressures, preferential fit is an agency-focused notion and treats EU-ENP interactions as relations of cooperation between co-equal actors rather than as the impact of the EU upon the ENP. This can be explained by the different expectations for cooperation with the EU in the Eastern Neighbourhood, as opposed to the candidate countries of Central and Eastern Europe. The accession process embedded EU rule transfer in the highly institutionalised framework of enlargement policy. Underpinned by

membership conditionality which required the compulsory adoption of the acquis communautaire, accession worked as a top-down, institutional process. By contrast, the European Neighbourhood Policy lacked the binding character of enlargement because it did not offer EU neighbours a membership perspective. While aiming to encompass the same conditionality logic as enlargement, the ENP was weakly institutionalised and failed to exert the kind of top-down adaptive pressures that made accession an effective rule transfer policy. This realisation led most scholars studying the ENP to conclude that, in the absence of a membership offer and a more robust institutional framework, there is little scope for EU impact in the neighbourhood – of the kind witnessed within the candidate countries of Central and Eastern Europe. This thesis argues that outside an enlargement context the role of institutional factors in explaining EU foreign policy diminishes in relevance and the salience of agency-related factors increases. This is because the strategic alignment of incumbent regimes in ENP countries with the EU cannot be taken for granted to the same extent as was the case with candidate countries. Domestic actors in the Eastern Neighbourhood have more room for manoeuvre vis-à-vis the EU than their Central and Eastern European counterparts. Not only are they not bound by strict accession requirements, but they also have Russia - and potentially other international actors - as an alternative foreign policy choice. To the extent that the EU can achieve its foreign policy objectives in the Eastern Neighbourhood, it is the incumbent regimes in ENP countries that one must look to for an explanation.

The reason for identifying national governments as the most relevant actors is the inadequacy of the differential empowerment argument for the specific case of the Eastern Neighbourhood. If the EU has been able to differentially empower a variety of state and non-state actors in the Central and Eastern candidate countries by changing domestic opportunity structures in their favour, in the Eastern Neighbourhood the Union has struggled to empower reform-oriented coalitions that aim to challenge governments in power. This is to a certain extent due to the ENP's institutional weakness, but also to the weakness of civil society, the limitations on civil and political rights and the pervasive corruption within state administrations that characterise Eastern neighbourhood countries. Given the difficulty for the EU to empower alternative domestic actors, governmental actors emerge as the main domestic forces that can facilitate and/or constrain cooperation

with the EU. In cases of secessionist conflicts, such as the Transnistrian, South Ossetian and Abkhazian conflicts, it is not only the legitimate authorities who can affect the possibilities for cooperation with the EU, but also the de facto authorities in the breakaway regions.

This thesis argues that ENP governments shape the possibilities for cooperation with the EU by instrumentalising EU policy objectives in accordance with cost-benefit calculations. Drawing on rational-choice assumptions, the research shows that national governments in the Eastern Neighbourhood act strategically by examining alternative courses of action and taking the one which is most beneficial to their interests. In doing this, incumbent regimes engage in cost-benefit calculations meant to reveal the course of action that will maximise their utility. Consistent with rational-choice tenets, this thesis has assumed that actors' preferences are defined exogenously and cannot be changed. This is because actors make choices under constraints, rather than from ideal states of the world and thus develop fixed preferences. The fixed preference of ENP governments is their inherent goal to gain and/or maintain political power, defined in the literature as preferential fit. Thus, it has been assumed that incumbent regimes in the Eastern Neighbourhood engage in cooperation with the EU when the objectives of CSDP missions are perceived as being compatible with the governments' fundamental objective of coming to and/or staying in power. This compatibility, or fit, refers both to the perceived political benefits of engaging in cooperation with EU missions, as well as to the potential costs of a lack of cooperation. However, given the environmental constraints under which governments act, this thesis has argued that their cost-benefit calculations and thus their strategies can be altered by a number of factors: 1. The competing strategies of domestic veto players; 2. The potential for alternative coalitions (Russia, US other international organisations) 3. The cost-effectiveness of threats and side-payments (i.e. EU policy-specific conditionality and EU capacity-building).

8.1. Domestic actors and their role in shaping CSDP impact

The case studies explored in this thesis consistently confirm preferential fit as a necessary condition for effective EU-ENP cooperation. Thus, the analysis of confidence-

building measures and rule transfer across EUJUST Themis, EUBAM and EUMM reveals that instances of successful cooperation invariably correlate with instances of preferential fit and that, on the contrary, CSDP goals have not been achieved in cases of preferential misfit. The strategic alignment of ENP governments with the EU, on one hand, or with Russia (or, less frequently, other international actors), on the other hand, represents one of the most important considerations shaping preferential fit because it can affect which decisions are the most beneficial or costly in terms of the incumbent regimes' strategies for political survival and power maximisation.

EUBAM's mandate with respect to the implementation of the customs regime was facilitated by the strong preferential fit of President Yushchenko with a pro-European political agenda. This was the result not only of the government's overall pro-EU inclinations, but also of the political costs involved in a decision to not implement the Joint Declaration with Moldova. Given that the EU - together with the US - had stepped up its pressure on Ukraine, in addition to deploying EUBAM, the Yushchenko regime would have incurred significant political costs in terms of its domestic support and its international reputation had it chosen to continue to tolerate illegal Transnistrian trade. On the other hand, the railway dispute between Moldova and Transnistria raised the challenge of a perceived incompatibility between the political agenda of the regime in Tiraspol and the confidence-building measures proposed to address this significant outstanding issue. Smirnov's firm disinclination to engage with Voronin in negotiations over the railway stalemate, despite the economic losses that both Moldova and Transnistria were suffering, reflected his exclusive strategic alignment with Russia and the conviction than an opening to the EU would not have helped him maintain power. The change in policy brought about by the new Transnistrian government in 2012 turned this calculation on its head. Better served politically by a policy of limited cooperation and economic integration with Moldova and the EU, the government of the more progressive Yevgeny Shevchuk worked on addressing a number of practical issues with Chisinau, with the resumption of railway traffic being the most prominent dispute resolved.

As far as the EUMM's confidence-building mandate is concerned, the strategic alignment of the de facto regimes in South Ossetia and Abkhazia with Russia and the

opposite alignment of the Georgian government with the EU (and the West in general) provide insights into the possibilities and limitations of the mission's goal to foster communication between conflict parties and facilitate the resolution of practical issues. The resulting preferential misfit of the de facto South Ossetian and Abkhazian authorities with the Incident Prevention and Response Mechanisms can be best described as a zero sum game. The political objectives of the de facto governments revolve around the recognition of their independence which the IPRMs deliberately do not address and which is not acknowledged by the international community with the notable exception of Russia.

The involvement of South Ossetia and Abkhazia in the IPRMs has been highly strategic, with their ultimate goal of obtaining the recognition of independence informing their attitude towards the confidence-building mechanism. On the contrary, the strategic alignment of the Georgian leadership with the EU, as well as the West more broadly, both before the 2008 conflict and to an even greater degree in its aftermath, created a context in which Georgia's failure to participate in a EU-driven confidence-building framework could have been politically costly. Thus, Saakashvili took the politically sensitive decision to sign the Memoranda of Understanding proposed by the EUMM which limited Georgia's ability to mobilise military forces around the internal boundary lines because a refusal to cooperate with the EUMM could have cost Georgia the support of the international community and potentially ended his political career. Nevertheless, the strategic alignment of the Saakashvili regime with the West, encompassing both the EU and the US, did not prevent the government from obstructing cooperation with EUJUST Themis and instead favour an American model of criminal justice system. This was possible because the EU and the US, while representing a coherent strategic choice, differed in their prescriptions for Georgia's criminal justice system reform

The extensive preferential misfit between the Georgian government's political interests and EUJUST Themis's objectives goes a long way towards explaining the minimal impact of the mission with respect to the reform of Georgia's criminal justice system. For Saakashvili, complying with the rules advanced by EUJUST did not serve any politically relevant goals. The Georgian president was keen on attracting as much EU involvement as possible in order to consolidate his own position, which largely relied on

a pro-Western, reformist political profile. However, his political agenda of strengthening the executive functions of the state at the expense of the independence of the judiciary was antithetical to EUJUST's fundamental goals.

EUBAM's case shows that the strategic alignments of governments in Moldova and Ukraine have broadly defined the parameters of their preferential fit with the mission's rule transfer objectives. Thus, EUBAM has been able to engage in fruitful cooperation in the first part of its mandate (2005-2010) when the Moldovan and Ukrainian governments were fairly indifferent to its reform agenda, but nonetheless they both embraced a strategic alignment with the EU. After 2009 the preferential fit of Moldova's government with EUBAM's rule transfer mandate was strengthened with the coming to power of a determinately pro-European governing coalition. The fact that cooperation between EUBAM and the new Moldovan leadership has been significantly more extensive – in terms of the scope of the reforms – after 2009 than before indicates that the nature of the strategic alignment matters when it comes to the strength of preferential fit. As far as Ukraine is concerned, the ambiguous strategic alignment of the Yanukovych regime after 2010 and its pro-Russian leanings meant that the degree of preferential fit with EUBAM's agenda decreased noticeably.

While preferential fit encompasses the fixed preferences of incumbent regimes for political power and it is assumed here that actors behave according to these exogenously defined interests, the actual outcome of decision-making processes depends also on a set of environmental constraints. Thus, the strategies the governments resort to in order to achieve their goals can be altered by intervening factors. This means that, in principle, the cost-benefit calculations of political elites can be changed to the extent that their support for CSDP objectives is no longer the most politically profitable course of action. One of the intervening variables that has been identified as potentially influential in altering governmental preferences is the competing strategies of domestic veto players. The implementation of the customs regime with Moldova by Ukraine was a deeply divisive issue within the country and triggered the opposition of a number of veto players whose interests were negatively affected by the new regulations. These included a variety of business and governmental actors who benefitted from the illegal trade from Transnistria, as well as the Ukrainian border guard and customs services. Nonetheless, the pressures of

these domestic actors were not able to render the implementation of the Joint Declaration prohibitively costly for the Yushchenko regime, confirming the first hypothesis of this thesis according to which the effectiveness of veto players in altering the strategies of incumbent regimes depends on their ability to directly disrupt the regimes' pursuit of political power. In turn, this is a function of both the capacity of veto players to form a coherent and unified front and of their position in the system. The domestic veto players that opposed the introduction of the new customs regime at the Moldovan-Ukrainian border represented an eclectic group of governmental officials, members of the border guard and customs services and business representatives who were not in a position to vitally undermine the Yushchenko regime, at least in the short-term. Similarly, those who opposed Saakashvili's decision to sign the Memoranda of Understanding with the EUMM - restricting Georgia's ability to deploy military forces on its territory - were not able to inflict any political costs on the incumbent president precisely because they were a highly fragmented group of veto players who could not credibly threaten the survival of the government in power.

Moreover, in the context of the significant incompatibility between Smirnov's regime preferences with regard to the railway dispute and EUBAM's confidence-building measures, influential domestic veto players have acted to reinforce the misfit even further. The large network of powerful veto players that Smirnov was surrounded by included many who benefitted tremendously from Transnistria's economic isolation and whose support was vital for Smirnov's ability to stay in power. When it comes to Moldova's and Ukraine's cooperation with EUBAM on the mission's anti-corruption agenda, it cannot be argued that domestic veto players have been able to influence the two governments' strategic calculations away from the course of action predicted by their respective strategic alignment. With veto players perceived as unable to threaten its political survival, the strongly pro-EU Filat government selectively bypassed their opposition and allowed for some –albeit limited – anti-corruption reforms. On the other hand, the coming to power of Yanukovych triggered not only increased apathy in Kiev towards EUBAM's anti-corruption mandate, but even the reversal of some already adopted reforms. This can hardly be attributed to the existence of veto players – although they certainly existed and opposed these reforms – but to the ambiguous strategic

alignment of the new Ukrainian government which oscillated between the EU/the West and Russia. Likewise, the preferential misfit between Saakashvili's government and the objectives of EUJUST Themis was only strengthened by the existence of a number of actors within Georgian rule of law institutions (i.e. prosecutors) who would have incurred significant costs had the mission's recommendations been implemented. Ultimately, it appears that the ability of domestic veto players to alter governmental strategies depends on how credibly they are perceived as threatening the regimes' pursuit of political survival and power, in confirmation of this thesis' first hypothesis.

In addition to domestic veto players, this thesis has also identified a number of other factors which can potentially alter the cost-benefit calculations of governments. Notably, the potential for alternative coalitions to the EU provides incumbent regimes with a certain room for manoeuvre which can diminish the benefits, or increase the costs of, cooperation with the EU. This thesis has shown that, while Russia is the obvious alternative governance provider for Eastern ENP countries, the possibility of other prominent international actors – such as the US – being perceived as an alternative to the EU should not be neglected. The reason why this issue is rarely, if ever, discussed with reference to the EU's Eastern neighbourhood is the binary conception of Russia vs the West, with the latter often understood as a homogeneous grouping. In reality, the EU and the US, as well as some of the international organisations working in the region such as the OSCE and the UN, have occasionally been at odds regarding their respective approaches to reform efforts. In Georgia, the US was seen as a less costly alternative to the EU's EUJUST Themis rule of law mission which resulted in the Georgian government advocating for the adoption of an American-inspired model of criminal justice system. Nonetheless, Russia remains the main alternative coalition that has the ability to alter the ENP regimes' strategic calculations given its unique role in the region. Confirming the second hypothesis advanced by this thesis, the case studies explored show that the ability of Russia to change governments' cost-benefit calculations depends not merely on the degree of asymmetric interdependence between ENP countries and Moscow, but on the costliness of this interdependence. Given the peculiar type of interdependence that exists between Russia and the former Soviet republics, this is often dependent on the former's willingness to resort to coercive measures such as trade

embargoes and the latter's ability to mitigate the envisaged costs of such moves. Moscow has been able to undermine EU efforts particularly with respect to the missions' confidence-building activities mainly due to the political sensitivity of the CBMs for the conflict settlement process and the total dependence of the breakaway regions in Moldova and Georgia on Russia's recognition and financial support. Moscow's direct attempts at undermining an EU-supported confidence-building framework are well illustrated by the significant pressures it exerted on Ukraine in order to change policy direction on the customs regime issue. At the same time, Moscow imposed a series of trade bans on Moldova and Ukraine in an attempt to pressure the two countries into abandoning the newly implemented customs regime. Nonetheless, its pressures failed to shift the Moldovan and Ukrainian strategies given the existence of the EU's alternative market and political benefits of reorienting the Moldovan and Ukrainian economies towards the EU (in spite of short-term economic costs). As indicated by the second hypothesis of this thesis, if ENP countries are able to mitigate the costs incurred by their asymmetric interdependence with Russia, Moscow's ability to position itself as a better alternative to the EU decreases significantly. As far as the EUMM's confidence-building frameworks are concerned, Russia has opposed the access of EU monitors in South Ossetia and Abkhazia and has also used the complete dependence of the separatist entities on its military protection and economic aid to control their behaviour within the Incident Prevention and Response Mechanisms. In this case, the extent of the dependence – rather than asymmetric interdependence – of the two breakaway regions on Russia was such that cooperation with the EUMM on the part of the de facto authorities outside of the parameters established by Moscow itself would have been prohibitively costly in political terms. Thus, despite Russia's overwhelming influence in the region, its ability to alter the strategies of ENP governments is limited by their cost-benefit calculations which often result in a decision by pro-EU regimes to resist Russian pressures if that is evaluated as the course of action most likely to enhance their political power.

The EU itself has the ability to alter the cost-benefit calculations of ENP regimes by increasing the costs of non-cooperation through threats or providing additional benefits through the offer of side-payments, such as policy-specific conditionality and capacity-building. In line with the third hypothesis formulated, this thesis has shown that

the effectiveness of EU threats depends on the support it enjoys from other international actors, in particular if the pressures it exerts are seen as being backed up by other prominent members of the international community – notably the US. Thus, the fact that the EU and the US were perceived as jointly supporting international pressures on the Ukrainian government to implement the Joint Declaration rendered the potential costs of non-compliance more compelling. At the same time, given that the political credentials of the Yushchenko regime depended on the support of the 'Orange' pro-Western electorate, continuing to ignore the requests of the EU and the US appeared to be a politically counter-productive strategy.

On the other hand, EU side-payments such as policy-specific conditionality and capacity-building have been assumed to have the potential to change the cost-benefit calculations of governments, depending on the size of the rewards offered. Nonetheless, this thesis found that EU side-payments, either in the form of capacity-building or the offer of visa liberalisation merely reinforced the preferential fit resulting from the strategic alignment of ENP governments with either the EU or Russia, rather than alter the regimes' strategic calculations. Indeed, the side-payments which the EU was willing to provide were not significant enough to trigger a decisive change in the governments' strategies, leading to outcomes which reflected primarily EU- or Russia – oriented strategic alignments. Thus, this thesis has noted that under circumstances of passive preferential fit (when CSDP policy objectives do not result in significant benefits for the incumbent regime, but they do not incur costs either) and strategic alignment with the EU, capacity-building contributed to maintaining the Moldovan and Ukrainian governments' commitment to border management and customs reform. Policy-specific conditionality helped Moldova push through with the necessary reforms in the run-up to its visa free agreement with the EU, but this was possible only due to the strong preferential fit of the Filat government with EUBAM's agenda. The preferential misfit of the pro-Russian Yanukovych government in Ukraine explains why policy-specific conditionality did not result in the same outcomes for Kiev The case of EUJUST Themis shows how the absence of EU side-payments under circumstances of significant capacity-building offered by an alternative coalition undermines the appeal of the EU as a desirable cooperation partner. The mission's recommendations were never considered by

the Georgian government and, when the draft criminal justice strategy was adopted as a result of political pressure, it was immediately modified to remove Themis's input. While this was largely the result of an initial preferential misfit between Saakashvili's regime and EUJUST's objectives, the offer of EU side-payments might have altered the government's strategic calculations, thus reducing the level of preferential misfit and potentially enticing the Georgians into cooperating with the EU rule of law mission. The offer of significant capacity-building from the US appears to have been effective in tilting the cost-benefit balance in favour of cooperation with the US.

8.2. New perspectives on EU foreign policy: contribution and way forward

Having examined how incumbent regimes in the Eastern Neighbourhood decide to engage in effective cooperation with CSDP missions, this thesis makes a number of much needed contributions to theoretical and empirical debates in the EU foreign policy literature. Despite a broad acknowledgement both at academic and policy-making levels that the EU's external environment plays a crucial role in shaping EU foreign policy, the topic has been conspicuously absent from accounts of EU foreign policy effectiveness and external impact. To the extent that the literature addressed issues of effectiveness and impact, the focus tended to be on EU internal dynamics rather than external effects. By providing a theoretical understanding of the extent to which governments in host countries facilitate and/or constrain the EU's ability to pursue its goals via foreign policy instruments such as the CSDP, this research expands the range of approaches available to EFP scholars.

The focus on the agency of domestic actors, as opposed to the overarching institutionalist perspectives that dominate Europeanisation and external governance perspectives, is considered to be particularly fruitful in allowing a more balanced understanding of the interactions between the EU and the recipients of its policy. The thesis also counteracts the implicit assumption in much of the literature on the EU as an international actor that EU foreign policy success largely depends on the Union's capabilities. Drawing on rational-choice premises, rather than on rationalist

institutionalism, this research posits that the domestic actors in the Eastern Neighbourhood act under domestic, regional and international political constraints, rather than EU institutional adaptive pressures. Theoretically, this is a significant shift from the institutionalist perspectives that have long dominated studies of how the EU triggers domestic changes in member states and candidate countries.

Empirically, this research has made an original contribution to the CSDP and ENP literatures due to its extensive use of primary sources. It is also one of the few analyses that explores the three EU missions in the Eastern Neighbourhood in a comprehensive fashion, examining the role of region-specific factors such as Russia and pondering on the specific circumstances of this 'shared neighbourhood' at the EU's borders. While this in-depth focus might have limited the comparative potential of the case studies and the possibility to broadly generalise the research findings, it is the conclusion of this thesis that the micro-domestic level where political actors compete for power is the critical arena that shapes the possibilities and limitations for EU foreign policy impact. Given their presence on the ground, sometimes for extended periods of time and the close interaction they engage in with local counterparts, any explanation that does not consider this microcosm of relationships is unlikely to provide an accurate picture of the mechanisms of impact.

Nonetheless, this thesis only provides an account of the fit between CSDP policy objectives and the preferences of national governments as a necessary condition for CSDP impact. Moving forward with the study of EU external impact, it will be important to identify not only the necessary conditions, but also the sufficient ones. Here, the role of EU capabilities, including the Union's ability to coordinate internally, is likely to emerge as relevant. Explanations than encompass both agency-focused and institutional factors are not uncommon and need not result in theoretical confusion. One of the most of the most prominent theories of European integration is Moravcsik's rationalist framework of international cooperation, which envisages cooperation as the result of three distinct stages: national preference formation, interstate bargaining and the choice of international institutions.[680] A theoretical framework that differentials between the gradual stages of

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[680] Andrew Moravcsik, *The choice for Europe social purpose and state power from Messina to Maastricht*. (London: UCL Press, 1999), 18.

impact, as well as between necessary and sufficient conditions, would greatly enhance our understanding of the dynamic relationship between the EU and the recipients of its foreign policy.

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