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Marlies Glasius – Denisa Kostovicova *

The European Union as a State-Builder: Policies towards Serbia and Sri Lanka

Abstract: This article analyses the European Union's state-building policies with reference to two "ailing" states: Serbia and Sri Lanka. After an introduction on the evolution of the European Union's foreign policy, we discuss commonalities between the Serbian and Sri Lankan polity: their boundaries are contested; the governmental machineries are ineffective and corrupt, and state capacity wanting; there is a lack of social cohesion that goes beyond ethnic divisions; but the agency of citizens is expressed in local civil society initiatives. While the EU's policies towards these states appear at first glance to have been very different, we find significant similarities in terms of the crude use of conditionalities, a neglect of the global and regional context, failure to apply state-strengthening and civil society-strengthening initiatives simultaneously, flawed human rights policies, and above all the continued separation and indeed competition between security and development policies. Instead, we propose a more holistic approach to state-building by the European Union informed by human security principles.

EU External Policies: "High" and "Low" Politics

The founders of the original European Coal and Steel Community believed that if they promoted integration at the level of society through common infrastructure like steel and coal, through economic relations such as trade and finance, and through people-to-people links, the high politics of security and foreign policy would eventually follow. In keeping with this founding philosophy, the European Union's emphasis, and its greatest strides, have until recently always been in the area of "low politics." This is true for its external relations as well as its domestic policy. But the European Union has in recent years become more ambitious in terms of its global role in "high politics," in particular in relation to security and crisis management.

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The failure of the European Union (EU) to act in an effective and co-ordinated way during the crises in the former Yugoslavia led to revision in the provisions on Common Foreign and Security Policy (CFSP) in the Amsterdam Treaty, and the appointment of Javier Solana as High Representative or "face" of the EU's external policies. The EU has since set "headline goals" both for its military capabilities and civilian personnel that could be deployed in crisis situations outside the Union. In 2003 it deployed its first external missions, to Bosnia-Herzegovina, Former Yugoslav Republic of Macedonia and the Congo, and at the time of writing it was engaged in no less than sixteen military, civilian or mixed missions.¹ But because the member states wish to keep close control over their high politics, high and low politics are developed by different institutions, with different logics, more or less in isolation from each other. Some regions are primarily subject to high politics, other primarily to low politics (see fig. 1, p. 86).

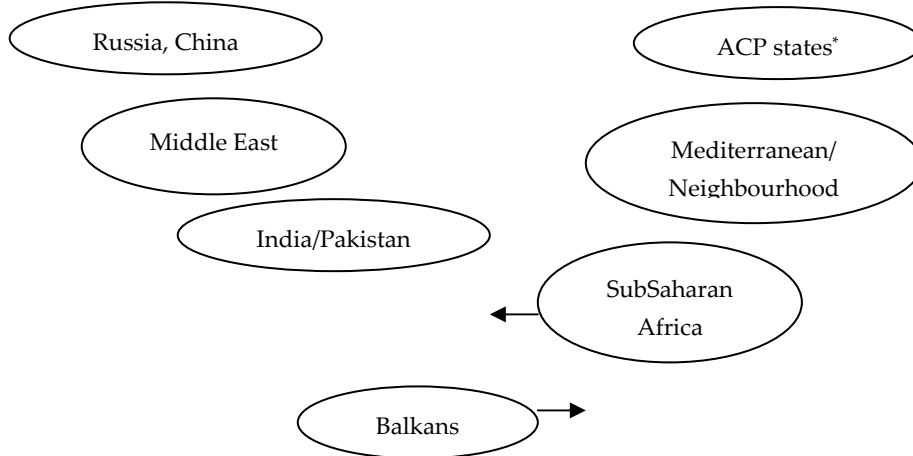
EU foreign policy remains split between the Council and the Commission. Outside events, topics, and indeed entire regions get coded "security" or "development," and accordingly one or the other institution responds. Until now, security issues have been looked after by the inter-governmental Council, while development has been taken care of by the supra-national Commission. Both institutions are now heavily involved in what might be termed "state-strengthening," but each has different traditions, assumptions and instruments, and therefore also different limitations. Moreover, where the two approaches do meet, policies are prone to becoming guided more by bureaucratic struggles between the Council and the Commission than by the needs of citizens of weak states or the aspirations of European citizens.

The failed European Constitution made several proposals to mitigate this competition, including having a single representative for foreign policy, and an amalgamated European external action service answerable to this figure. The Lisbon Treaty has largely reincorporated these proposals, albeit in more modest terms. However, even if the Treaty does achieve universal ratification, the legacy of separated and competing strands of foreign policy is not likely to be undone at a stroke.

¹ HUMAN SECURITY STUDY GROUP, *A European Way of Security: The Madrid Report of the Human Security Study Group Comprising a Proposal and Background Report*, Madrid, 8 November 2007, p. 3, available at <<http://www.lse.ac.uk/Depts/global/PDFs/Madrid%20Report%20Final%20for%20distribution.pdf>>; *Ein europäisches Sicherheitskonzept. Der Madrid-Report der Human Security Study Group umfasst einen Vorschlag und einen Hintergrundbericht*. Er wurde Javier Solana am 8. November 2007 in Madrid präsentiert. Berlin: Friedrich-Ebert-Stiftung, Internationale Politikanalyse, Februar 2008, available at <<http://library.fes.de/pdf-files/id/ipa/05217.pdf>>.

Figure 1 EU External Policies: High and Low

High Politics	Low Politics
<i>Institution:</i> Council/Member states	Commission
<i>Priority:</i> Stability, good relations	Development
<i>Instruments:</i> Negotiation, intervention	Aid and trade
<i>Aimed at:</i> Governments	Societies

Countries and Regions:

* ACP states – African, Caribbean and Pacific States

Within the framework of state-building, we focus on "state-strengthening," i.e. developing policies designed to reinforce weak states, rather than building from scratch entirely failed states. This aspect captures a set of challenges the EU and other institutions actually encounter much more frequently than pure state failure, which tends to dominate the state-building literature. We focus on "ailing" states,² whose malfunctions both in terms of provision of national cohesion and public goods stems from their weakness. This weakness is self-perpetuating and not necessarily heading for state failure.

Without rational, accountable and liberal institutions, the state is an empty shell and a protective shield at a disposal of the few. At the same time, it is an indispensable infrastructure for predatory political elites and their clients in the pursuit of partial interests. In fact, the state's complete failure would jeopardise their interests. These elites are "ruminants," as Wade describes them borrowing from John Waterbury, since they graze the resource base while fertilising it at the other end. Hence, they are to be distinguished from "vampire"-type elites that extract so much from the state as to debilitate.³ In sum, state weakness, that becomes a chief source of non-traditional security threats with local and global implications, is their vested interest.

We compare two "ailing states," Serbia and Sri Lanka, which have been treated very differently by the EU, but which, we argue, have much in common in terms of structural weaknesses and hidden strengths, in order to illustrate the problems raised by the two separate approaches pursued by the EU.⁴ On the basis of these case studies, we will argue that the EU could overcome the myopia of its security or development approaches by basing all its external state-building efforts on a coherent human security vision underpinned by a set of principles that would apply throughout European foreign policy.

Commonalities between the "Ailing States" Serbia and Sri Lanka

Contested Polities

The boundaries of the sovereign states of Serbia and Sri Lanka are both contested. In both cases, some areas are effectively out of control of the central

² We acknowledge Shiral Lakhtilala of the Berghof Foundation, Colombo, as our source for this appropriate term.

³ Robert WADE, *Governing the Market: Economic Theory and the Role of Government in East Asian Industrialization*, Princeton, N.J.: Princeton University Press, 2004, p. 358, fn. 3.

⁴ In the case of Sri Lanka, we focus on the response to the tsunami as epitomising both the character of state weakness and the flaws in EU policy.

government, while their international status is dubious, and at least part of the citizenry feels they should be under government control.

In 2000, Serbia emerged out of the wars of the previous decade and embraced the democratisation project as an "improvised state."⁵ The violent implementation of the Serbian national project of uniting "all Serbs in one state," centred on Serb-populated areas in Croatia and Bosnia-Herzegovina as well as forceful abolition of Kosovo's autonomy, failed to produce the desired outcome. The territorial integrity of Croatia and Bosnia-Herzegovina was preserved, so was that of the then Federal Republic of Yugoslavia, now Serbia and Montenegro. However, at the same time, the borders of Serbia and Montenegro were left open to the likelihood of the future revision. By early 2008, the Serbia was confronted with a "double loss:" both of Montenegro after the disintegration of the state of Serbia and Montenegro and that of Kosovo. Although the two events eventually defied fears of major destabilisation in the region, they have had a direct impact on Serbia's interaction with the EU.

After the regime-change in Belgrade, Serbia faced an independence movement from Montenegro, its sister republic, comprising the Federal Republic of Yugoslavia (FRY). The crisis between Serbia, which sought to preserve the federation, and Montenegro was resolved under the auspices of the EU in 2002. Based on the policy of preservation of the joint state, EU's Foreign Policy Chief Javier Solana brokered the creation of the union of Serbia and Montenegro, accordingly nicknamed "*Solania*". A belated adoption of the Constitutional Charter by the FRY parliament in early 2003 marked the beginning of the new state. Importantly, it removed the possibility of an immediate referendum on independence in Montenegro, which, it was believed, would trigger a referendum in Kosovo. The moratorium on a referendum on Montenegro's independence expired in 2006, coinciding with the beginning of the negotiations on the final status on Kosovo. By that time, the dysfunctional nature of the new state had emerged as yet another obstacle in the process of European integration of both Serbia and Montenegro. Consequently, it forced a change in the EU's original approach that favoured the union between the two states.⁶ In the event, the role of the EU in brokering the terms of the independence referendum by setting the threshold for a "yes" vote at 55 percent and in appointing its representative to the Montenegrin Electoral Commission, which was critical for certifying the re-

⁵ Cf. Slobodanka AST, »Milan St. Protić: Meni niko ne treba da soli pamet!« [Milan St. Protić: I Don't Need Preaching!], in: *Vreme*, No. 554, 16 August 2001.

⁶ Cf. Karsten KRIS, »The Referendum in Montenegro: The EU's 'Postmodern Diplomacy'«, in: *European Foreign Affairs Review*, 12 (2007) 1, pp. 67–88.

sult, had an important legitimating impact on the entire process.⁷ The current EU's role in Kosovo is already subject to legitimacy challenge.

After the NATO intervention in 1999 ended the Serb minority rule and the ethnic violence in Kosovo, Kosovo became a UN protectorate. The original conflict over the ethnic claim to Kosovo, between Serbs in Serbia and minority Serbs in Kosovo who claim Kosovo to be an integral part of Serbia and Kosovo's majority Albanians who seek independence, remained unresolved. The 1244 United Nations Security Council Resolution that introduced the UN administration stipulated that Kosovo's final status would be determined in negotiations, which began in February 2006. The final status talks took place in Vienna under the UN auspices, chaired by former Finnish President, Martti Ahtisaari. The talks were focused on a discussion of non-status issues given that the two sides entered the process with diametrically opposite views. The final status question overshadowed the talks and any constructive engagement by the parties remained elusive, prompting the change of strategy. The UN Special Envoy was given a task of drafting a solution. This move signalled the method of an imposed solution with the backing of the international community. In March 2007, Ahtisaari submitted a document to the UN Secretary General, along with a report, that says that "the only viable option for Kosovo is independence, to be supervised for an initial period by the international community."⁸ The document itself contains a detailed outline of the internal governance architecture of the future independent Kosovo, accompanied by an elaborate outline of international supervision to take a form of the civilian and military presence.⁹ The adoption of the package in the UN Security Council in the spring 2007 was blocked by Russia's opposition to a non-negotiated and imposed solution, which led to another 120 days of negotiations under the auspices of the Contact Group. The futility of yet another round of talks, led to the unilateral declaration of independence by Kosovo Albanians on 17 February 2008, though not without coordination with their partners in the international community, pri-

⁷ Srdjan DARMANOVIĆ, »Montenegro: A Miracle in the Balkans?«, in: *Journal of Democracy*, 18 (April 2007) 2, pp. 152–159.

⁸ *Letter Dated 26 March 2007 from the Secretary-General Addressed to the President of the Security Council; Report of the Special Envoy of the Secretary General on Kosovo's Future Status*, United Nations S/2007/168, 26 March 2007, available at <<http://www.unosek.org/docref/report-english.pdf>>.

⁹ *Letter Dated 26 March 2007 from the Secretary-General Addressed to the President of the Security Council; Addendum, Comprehensive Proposal for the Kosovo Status Settlement*, United Nations S/2007/168/Add.1, 26 March 2007, available at <http://www.unosek.org/docref/Comprehensive_proposal-english.pdf>; <<http://www.unosek.org/unosek/index.html>>.

marily the US, the United Kingdom, France and Germany. While the EU remained divided over the recognition of independence, Serbia and Russia opposed the move, requesting, in vain, its annulment by the UN Security Council.

In the post 2000 period, the prospects and the eventual independence of Kosovo and Montenegro enhanced the anxiety of the Serbian political elites. They elevated the concerns with Serbia's borders and territory into a priority issue competing with and, even, sidelining the post-Communist and post-conflict reform agenda.¹⁰ At the same time, Serbia's uncertain borders accentuated the need for the EU to act as a security actor in the region, while at the same time attempting to advance its enlargement agenda with various degrees of success.

After independence, Sri Lanka increasingly moved, in law and in fact, towards the model of a unitary, majoritarian state, favouring the Sinhala majority over Tamil speakers and condoning periodic massacres. This sparked armed rebellion of Tamil youngsters in the late 1970s, with the Liberation Tigers of Tamil Eelam (LTTE) emerging as the dominant group. It seeks an independent homeland, "Tamil Eelam" for ethnic Tamils, and has held territory designated as the core of a nascent Tamil Eelam since the mid-1980s. Periods of barren peace negotiations and open warfare have followed each other intermittently since. The last ceasefire agreement, dating from 2002, was officially abrogated by the government in early 2008, although severe and numerous breaches on both sides had long since made it a dead letter. The shortcomings of the 2002-2005 negotiations have been extensively documented elsewhere,¹¹ but one of the main weaknesses was the underlying assumption that the government could "deliver" universal support for the process on the part of the Sinhala majority, and the LTTE could similarly "deliver" the Northeast.

Instead, the last government relied on the minority support of the left-nationalist party JVP (*Janatha Vimukthi Peramuna* – People's Liberation Front), which was dead-set against the peace process, while the iron grip of the LTTE leadership over the Tamil people also came under challenge. In March 2004 a break-away faction was formed, led by commander Karuna, who claimed that

¹⁰ Slobodan CUPARIĆ, »Gordo posrtanje« [Proud Stumbling], in: *Nezavisna svetlost*, 4 April 2002, available at <<http://www.svetlost.co.yu>>.

¹¹ Cf. Jonathan GOODHAND/Bart KLEM, *Aid, Conflict and Peace Building in Sri Lanka, 2000–2005*, Colombo: The Asia Foundation, 2005 (Sri Lanka Strategic Conflict Assessment 2005, Vol. 1), available at <<http://www.asiafoundation.org/publications/pdf/208>>
Liz PHILIPSON/Yuvi THANGARAJAH, *The Politics of the North-East*, Colombo: The Asia Foundation, 2005 (Sri Lanka Strategic Conflict Assessment 2005, Vol. 4), available at <<http://www.asiafoundation.org/publications/pdf/212>>.

LTTE privileged the needs of Northern over East Coast Tamils. LTTE has since tried to exterminate Karuna and his followers, while elements of the army and military intelligence exploited the Karuna split, which challenges the idea that the Tamils are a homogeneous group and the LTTE is their sole legitimate representative. This low-intensity but bitter three-way conflict is marked primarily by assassinations, bombings and disappearances. The military significance of the Karuna faction may have dwindled, with Karuna himself now being held in custody in the United Kingdom, but his group, the TMVP (*TamilEela Makkal Viduthalai Pulikal* – TamilEela People's Liberation Tigers), continues to compete for political power in the East. It has recently won local elections, marred by violence on all sides, in Batticaloa.¹²

Moreover, as the peace negotiations appeared to be bringing Tamil self-government a step closer to reality, there has been increasing conflict between Tamils and Muslims in Eastern Sri Lanka. Muslim youths have in recent years become increasingly radicalised, frustrated about being squeezed between the main parties in the conflict, and encouraged by the apparent example set by the LTTE experience, that the use of violence buys respect and a place at the negotiating table.¹³ While Muslims live in geographically dispersed areas, a "Pondicherry model" of Muslim autonomy in a series of non-contiguous areas predominantly inhabited by Muslims has been floated.¹⁴

The contested nature of the territory has a double deleterious effect on the governability of both Serbia and Sri Lanka. First, it raises practical problems in every field of government, from the birth registry to transport policies to customs or crime prevention. Secondly, it means that every area of policy becomes poisoned with the "national question", and contingent upon hotly contested "final solutions."

State Weakness

In Serbia, like in its West Balkan neighbours, state weakness is a manifestation of a double legacy of Communism and conflict. The state in the Balkans is weak in a structural as well as the political sense: it cannot provide public goods and it lacks political, national and social cohesion. Weak state capacity is exacer-

¹² Randeep RAMESH, »Jailed Tamil Warlord Has Deadly Influence on Election in Batticaloa«, in: *The Guardian*, 7 March, 2008.

¹³ GOODHAND/KLEM, *Aid, Conflict and Peace Building* (above fn. 11), p. 53; Interview with Mirak RAHEEM, Research Associate, Centre for Policy Alternatives, Colombo, 1 September 2005.

¹⁴ GOODHAND/KLEM, *Aid, Conflict and Peace Building* (above fn. 11), p. 54.

bated by a predatory project of the elites set on extracting resources from the state itself. Consequently, a weak state becomes both a subject and an obstacle of political and democratic liberalisation, as it creates space for corruption and unofficial economy, hinders structural economic reform and development, and accounts for inability to establish proper market institutions.¹⁵

In addition, the Balkans has seen an expansion of organised criminal networks, which had been cultivated during the conflict.¹⁶ The end of the war precipitated global integration of these networks in a quest for new sources of income. In this context, the Balkans as a region assumed several roles. It established itself as a transit route, as a destination, but, also, due to impoverishment and insecurity, as a source of illicit commodities. Revenues generated by organised crime in cooperation with transnational networks, are used directly to undermine the state's political institutions and economy. A combination of informal practices and institutions, and of organised crime linked to the criminalised elements of the state, has undermined the democratisation project. The assassination of the Serbian Prime Minister Zoran Djindjic in 2003 by the criminal underground infiltrated into the state security services and suspected of involvement in war crimes in former Yugoslavia is an extreme example.¹⁷

But this is not a scenario of a weak state necessarily edging into failure.¹⁸ Rather, as Reno notes, in the post-Communist context, the existence of organised and informal structures depends on state's ability to provide some public goods.¹⁹ The perpetuation of state weakness becomes a self-interest to these structures, hence leading to a situation of sustained but unconsolidated democracy.²⁰ At the same time, a strong state also becomes a barrier to the predatory project of the elites. Hence, a perverse consensus operates between the elites and the underground on maintaining state weakness, without destroying the state altogether.

¹⁵ Cf. Ivan KRASŤEV, »Weak State as a Security Threat«, in: *Südosteuropa Mitteilungen*, 44 (2004) 4, pp. 102–116.

¹⁶ Peter ANDREAS, »Criminalized Legacies of War: The Clandestine Political Economy of the Western Balkans«, in: *Problems of Post-Communism*, 51 (2004) 3, pp. 3–9.

¹⁷ Miloš VASIĆ, *Atentat na Zorana* [Zoran's Assassination], Beograd: Politika, B92, Vreme, Narodna Knjiga, 2005.

¹⁸ Robert I. ROTBERG, »The failure and collapse of nation-states: breakdown, prevention, and repair«, in: Robert I. ROTBERG (ed.), *When States Fail: Causes and Consequences*, Princeton, N.J.: Princeton University Press, 2004, pp. 1–45, p. 1.

¹⁹ William RENO, »Shadow States and the Political Economy of Civil Wars«, in: Mats BERDAL/David M. MALONE (eds.), *Greed and Grievance: Economic Agendas in Civil Wars*, Boulder, Colo.: Lynne Rienner Publishers, 2000, pp. 43–68, p. 55.

²⁰ Valerie BUNCE, »Rethinking Recent Democratization: Lessons from Postcommunist Experience«, in: *World Politics*, 55 (2003) 2, pp. 167–192, p. 167.

The daily manifestation of the state's omission to provide public goods since Milošević's fall, amidst a pervading sense of insecurity, has discredited the democratic process among the populace. Citizens have been left feeling helpless, or finding alternative recourses to fill the human security gap created by state corruption, criminalisation and inactivity. As the legitimacy of the elected as opposed to unelected institutions plummets, the opinion polls have recorded that 18 and 22 per cent of respondents trust the Serbian parliament and government respectively as opposed to 63 and 41 per cent who trust the Serbian Orthodox Church and the army.²¹ In sum, according to the Centre for Free Elections and Democracy, citizens of Serbia have greater trust in social institutions or the so-called "people institutions," such as relatives, neighbours, priests, work colleagues, doctors than the state institutions.²²

While Sri Lanka is probably less penetrated by transnational criminal networks, the form that state weakness takes is remarkably similar to that in Serbia. As Frerks and Klem have put it,

*the government may sometimes better not be seen as an agent necessarily acting for the common good, but rather as a structure through which individual agents operate for their own benefit.*²³

Governments are unstable, politics are personalised and subject to patronage, but a certain level of service-provision is maintained, and the system is structurally weak, but by no means sliding into "state failure."

A combination of weak capacity, bureaucratic rigidity and rapacity was demonstrated in the central government's response to the tsunami. After having been virtually absent in the first week, the state response became extremely centralised. President Kumaratunga created various Colombo-based coordinating bodies, headed by personal confidants, sidelining even her own ministers. The most lasting of these bodies, the "Task Force to Rebuild the Nation" (TAFREN) has been singled out for particular criticism by all who dealt with it. It de-

²¹ *Socijalni i politički milje predsedničkih izbora. Istraživanje javnog mnjenja Srbije, zima 2007/08. godine* [The Social and Political Milieu of the Presidential Elections. Public Opinion Poll in Serbia, Winter 2007/2008], Beograd: Centar za slobodne izbore i demokratiju (CeSID), 2008, p.3; available at <http://www.mediacenter.org.yu/upload/documents/izbori_2008/Izvestaj_CeSID_decembar_januar.pdf>.

²² *Ibid*, Tabela 2. »Ne/poverenje u društvene institucije jun 2007–decembar 2007« [Table 2: The lack of confidence in social institutions June 2007–December 2007], p. 4.

²³ Georg FRERKS/Bart KLEM, *Tsunami Response in Sri Lanka: Report on a Field Visit from 6–20 February 2005*, Disaster Studies, Wageningen University and Conflict Research Unit, Clingendael Institute 2005.

scribed itself as "facilitators, enablers, coordinators,"²⁴ but was treated with scorn by local NGO actors and foreign aid officials alike.²⁵ In an interview in September 2005, nine months after the tsunami, a TAFREN official acknowledged that they had been slow to establish a presence in the tsunami-affected regions, but expressed the hope that there would be such a presence in six to eight weeks.²⁶ As a result of centralisation, the district authorities, who had had a mixed but not wholly inadequate record in the immediate response, became paralysed.

A second effect of central government involvement was that aid became subject to patronage. The then Prime Minister, now the President, Mahinda Rajapakse, gave a particularly egregious example, concentrating his efforts on his own constituency, the Hambantota district. He stands accused of directing 83 million rupees (approximately € 665,000) of international donor money into the private "Helping Hambantota" fund.²⁷ Generally, national politicians focused on the South coast, because most of their constituency comes from the Sinhala majority in the South of the country.

In Sri Lanka as in Serbia, the weak and corrupt state has three effects on the citizenry: it fuels a generalised distrust of the state, it feeds into existing suspicions and envy between different communities, but also, perhaps more positively or at least ambiguously, it sparks local-level citizen initiatives to provide human security where the state is failing to do so.

Lack of Social Cohesion

As a consequence of ethnic nationalism and wars, UN sanctions from 1992–1995, translation of political loyalty into economic privilege during Milošević's rule, the disappearance of the middle class, and reluctance by the state to confront the past after the wars, Serbia has emerged as a deeply fragmented society. The lines of division cut across the lines of welfare, ethnicity and ideology. The latter schism is reflected in a lack of consensus on a liberal state among the

²⁴ Interview with Rachel PERERA, NGO Coordinator, Task Force to Rebuild the Nation (TAFREN), 2 September 2005.

²⁵ Interviews with Shiral LAKTHILALA, Senior Advisor, Berghof Foundation, Colombo, 29 August 2005; Chammika MALLAWAARACHCHI, Consortium of Humanitarian Agencies, Colombo, 29 August 2005; Merce de TORRES LLOSA, Development Cooperation Advisor, Delegation of the European Commission to Sri Lanka, 2 September 2005.

²⁶ Interview PERERA (above fn. 24).

²⁷ »Police Probe PM Tsunami Fund«, in: *BBC*, 15 September 2005, available at <http://news.bbc.co.uk/1/hi/world/south_asia/4250190.stm>.

political elites and population.

Some 10 percent of the population in Serbia lives below the poverty line. However, subjective perception of poverty is much more pronounced due to a dramatic decline of general welfare (in the 1990s the GDP per capita dropped by some 50 percent) and high expectations of the democratic change.²⁸

At the same time, Serbia is the most ethnically diverse state in the Western Balkans, affected by occasional flare-ups of ethnic tensions. This, in turn, sustains an ethnic as opposed to civic dimension of Serbian identity. Even excluding Kosovo, it has significant ethnic minority populations of Hungarians and Slovaks in Vojvodina, Bosniaks in Sanjak, Albanians in Southern Serbia, Roma, etc.

Lastly, Serbia's democratisation has been overshadowed by a denial of its responsibility for war crimes on the territory of former Yugoslavia. This issue provides a key challenge for Serbia's European integration. On the one hand, Serbia's full cooperation with the International Criminal Tribunal for former Yugoslavia (ICTY) is one of the conditions for Serbia's advance in the process of European integration. On the other hand, the failure to face nationalist past, and break with it demonstrates an incompatibility between the state's tolerance for nationalism and its proclaimed Europeanisation.²⁹

In Sri Lanka, the most obvious division, between Sinhala and Tamil, expressed in the military opposition between the army and the LTTE, obscures many more complicated divisions of religion, caste and region. Hill-country Tamils of recent Indian descent are looked down upon by the Tamils who have inhabited the island for millennia, East Coast Tamils resent Jaffna Tamils for dominating the LTTE when they have borne the brunt of the conflict, and the high caste urban and rural elites, both Tamil and Sinhala, are believed to treat lower castes with disdain and indifference.

The response to the tsunami fed into all these long-standing grievances.³⁰ On the positive side, there appear to have been no instances of severe depriva-

²⁸ VLADA [REPUBLIKE SRBIJE], *Prvi izveštaj o implementaciji Strategije za smanjenje siromaštva u Srbiji* (2005), available at <<http://www.prsp.sr.gov.yu/download/Prvi%20izvestaj%20o%20implementaciji%20SSS.pdf>>; GOVERNMENT OF THE REPUBLIC OF SERBIA, *First Progress Report on the Implementation of the Poverty Reduction Strategy in Serbia* (2005), available at <<http://www.prsp.sr.gov.yu/download/PRS%20Progress%20Report%20-%20English%20FINAL.pdf>>.

²⁹ Denisa KOSTOVICOVA, »Civil Society and Post-Communist Democratization: Facing a Double Challenge in Post-Milošević Serbia«, in: *Journal of Civil Society*, 2 (2006) 1, pp. 21–37.

³⁰ For a more extensive discussion of the aftermath of the tsunami, see Marlies GLASIUS, »The EU Response to the Tsunami and the Need for a Human Security Approach«, in: *European Foreign Affairs Review*, 11 (2006) 3, pp. 353–378.

tion: food, health care and transitional shelters were adequate for all, and while the latter leave a lot to be desired for long-term habitation, they are generally built to a better standard than is customary for IDP camps. The unsystematic response to the tsunami, and the lack of information available, has left almost every victim feeling that others have it better. At the macro-level, people in the North and East are convinced that victims in the South are better off because they received more government aid. In the South, the North and East are resented because they received the bulk of the international and Non Governmental Organisation (NGO) aid. These differential commitments might have become complementary, were it not for the fact that the international community has been severely hampered in implementation of its plans for the North and East by the increased level of hostilities since early 2006.³¹

The complaints of different communities are not necessarily based on facts concerning the actual situation in other provinces. They feed into long-standing grievances concerning differential treatment of different ethnic groups. At the micro-level, too, there is a general perception that other communities, sometimes but not necessarily of a different religious or ethnic affiliation, have received more, and are better off. The expression "golden tsunami" is often heard, always applying to what other people (for instance "the villages on that side of the bay"³²) have received.

Just as in Serbia, the civic dimension of what might constitute a Sri Lankan identity is overshadowed by the ethnic identity, with the majority ethnicity attempting to conflate the two. Moreover, again just as in Serbia, instead of being conceptualised as constituting a set of obligations as well as entitlements, citizenship is constructed as a claim to a share of the collective pie, of which too much is always grabbed by others.

Local Civil Society Initiatives

The citizens of Serbia and Sri Lanka are not always apathetic in the face of a mal-functioning state. They do organise in small groups to collectively provide basic security or basic services.

An illustrative example of self-organisation of citizens is the effort to combat drug dealing and trafficking in Novi Sad, Serbia. For five years a mother has

³¹ EUROPEAN COMMISSION, *2007 Progress Report on the EC Post Tsunami Rehabilitation and Reconstruction Programme*, Brussels, 17 December 2007, pp. 21–28, available at <http://ec.europa.eu/world/tsunami/docs/2007_report_final.pdf>.

³² Interview with women engaged in cash-for-work programme, Navaladi, 5 September 2005.

been fighting to save her son, a heavy drug user, by pleading with state institutions to crack down on dealers. Her futile attempts convinced her in the collusion between the state and criminal networks. According to her, every time the parents reported the dealers to the police, they would leave just before the police came, if it showed up at all: "All this assured me that we are completely helpless, left to our own devices."³³ Consequently, she founded the Citizens' Association for the Fight against Drugs, which now gathers about 2,000 people, mostly the parents of drug addicts. She explained why:

The strongest motive [for setting up an NGO] was that there were no adequate institutions to help our children, both in healthcare, in the police, including the politicians, in general, state organs who could offer us help and protection, and treatment for our children.³⁴

This is not an isolated example of individual insecurity prompting self-organisation of non-state actors in order to engage an otherwise unresponsive weak state. In fact, with a spread of political apathy among the population at large combined with the lack of trust in the state institutions, it demonstrates a trend of the NGO sector emerging as the only vocal corrective to the failings of the weak state. However, due to the legacy of Communism and an aversion of post-Communist citizens to joining voluntary organisations, as well as the tendency of the post-Communist state to view civil society as an opponent rather than a partner, the civil society, like the state, is weak.³⁵ It too lacks a capacity to contribute to the strengthening of the state, and has limited impact on ameliorating state weakness.

In Sri Lanka, society's capacity for self-help in the absence of an adequate state response was demonstrated in the immediate aftermath of the tsunami. While, as described above, it took the Sri Lankan government a week to even set up a coordinating body, the initial emergency response to the tsunami was spontaneous, uncoordinated, but largely successful. As a Batticaloa-based commentator put it, "people were better off the day after than the victims of Katrina."³⁶ Frerks and Klem describe the situation as follows:

In the immediate aftermath of the tsunami, rescue and life saving activities have been

³³ Interview with a mother who launched the initiative, Novi Sad, 5 May 2004.

³⁴ Ibid.

³⁵ KOSTOVICOVA, »Civil Society and Post-Communist Democratization«, (above fn. 29); Marje M. Howard, *The Weakness of Civil Society in Post-Communist Europe*, Cambridge: Cambridge University Press, 2003.

³⁶ Interview with T. JAYASINGHAM, Senior Lecturer, Eastern University, Chenkalady, 5 September 2005.

*undertaken nearly instantaneously. Necessary medical aid was given within hours, dead bodies were buried and relief aid was mobilised within a day.*³⁷

As a result, "the worst did not happen:" there were no major outbreaks of disease contributing to the death toll.

Moreover, the initial effort went remarkably across ethnic and political boundaries, and caused unlikely partners to work together. One of the more striking features of the local response, particularly in the conflict environment in the Northeast, was the immediate setting up of inclusive district coordinating committees within 24 to 48 hours, involving the district administration, the LTTE, the local NGOs, the international agencies and in Trincomalee also the army.³⁸

The emergence of these structures may be less remarkable than they appear when it is taken into account that local civil servants in the Northeast are by and large Tamil (Trincomalee is an exception), and by and large loyal to, or at least afraid of, the LTTE. Nonetheless, the immediate cross-community response

*had a positive emotional appeal, everyone was talking about pulling together and reconciliation [...] Immediately after the tsunami there was this upsurge for living in harmony.*³⁹

But these initiatives did not last. In the context of generalised distrust, described above, they were always fragile, but additionally they were crowded out and marginalised by the rigid state response and the overweening international response combined.

Background to EU Relations with Serbia and Sri Lanka

The EU and Serbia: From "High" to "Low" Politics

The fall of Slobodan Milošević after the fraudulent presidential elections and the subsequent victory of the united Serbian opposition in 2000 heralded the EU's qualitatively novel engagement with Serbia. Hitherto Serbia had been considered a "rogue state" in the region, and the EU's involvement with this country had primarily fallen under the remit of the Council, and the domain of high

³⁷ FRERKS/KLEM, »Tsunami Response in Sri Lanka« (above fn. 23).

³⁸ Interviews with JAYASINGHAM; JALAMUDIN (LTTE), Head Project Implementation Centre, Mullaitivu, 8 September 2005.

³⁹ Interview with S.I. KEETHAPONCALAN, Senior Lecturer, University of Colombo, 30 August 2005.

politics of security and foreign relations. Democratic change in Belgrade paved the way for the role of the Commission and engagement with Serbia within the framework of the European enlargement, specifically, the Stabilisation and Association process (SAp), designed for the Western Balkan aspirants to the EU membership. The EU's enlargement to the countries on the other side of the Cold War divide in Europe was the extension of Europe-as-a-peace project model: ensuring peace and security via political and economic integration.⁴⁰ It offered a prospect of a European future to all countries and entities of the Western Balkans through a contractual relationship in the form of Stabilisation and Association Agreements (SAA) accompanied by a programme of assistance and asymmetric trade liberalisation.⁴¹

The objectives and conditionalities of the SAp were evolved from the model applied to the post-Communist countries in Central and Eastern Europe, but were tailored to meet the double challenge of post-conflict and post-Communist transition. As such, the SAp conditions were more demanding and more multifaceted than the conditions applied to Central and Eastern Europe, which were already stricter than those applied to earlier newcomers to the EU.⁴² However, they were also shaped by an imperative to deal with the political, economic and security fallout of ethnic conflict in the Balkans. The EU has not been able to entirely relegate the involvement with Serbia from the Council to the Commission, nor has Serbia been able to make a clear-cut shift from being a "security" to becoming a "transition" issue. Therefore, the EU has continued to pursue simultaneously both security and enlargement approaches and policies towards Serbia. Instead of being mutually reinforcing, the two approaches have led to policy spill-overs and interference, ultimately slowing down rather than accelerating Serbia's European integration process. This is best illustrated by the approach to the final status of Kosovo.

The EU has insisted on artificial separation of the issue of Kosovo's final status and Serbia's EU integration. The EU strategy was based on attempting to get Serbia locked into the process of EU integration, preferably with the SAA agreement, in order to make it difficult for Serbia to abandon the process after

⁴⁰ Karen E. SMITH, »The Evolution and Application of EU Membership Conditionality«, in: Marise CREMONA (ed.), *The Enlargement of the European Union*, Oxford/New York: Oxford University Press, 2003, pp. 105–139, p. 107.

⁴¹ Fraser CAMERON/Andreas KINTIS, »Southeastern Europe and the European Union«, in: *Journal of South East European and Black Sea Studies*, 1 (2001), pp. 94–112, p. 94.

⁴² Karen E. SMITH, »Western Actors and the Promotion of Democracy«, in: Jan ZIELONKA/Alex PRAVDA (eds.), *Democratic Consolidation in Eastern Europe*. Volume 2: International and Transnational Factors, Oxford, New York: Oxford University Press, 2001, pp. 31–57.

Kosovo's declaration of independence. This policy has failed. As the Kosovars' declaration became imminent, following the Serbian presidential elections in January 2008, the EU's last-ditch attempt was to offer Serbia a partial political agreement – yet another, though much more feeble form of tying Serbia into the process. However, there were no takers in Belgrade.⁴³ The EU was preparing to despatch its biggest ever rule of law mission EULEX on the ground in Kosovo, based on the Ahtisaari plan. For the Serbian government, this heralded the beginning of the realisation of the supervised independence for Kosovo. Rejecting any contractual relationship with the EU, the Serbian Minister for Kosovo and Metohija (the Serbian full name for Kosovo), said:

It [the SAA] is actually a 'lump of sugar' that Belgrade needs to swallow in order to swallow the 'poisonous pill' of independence.⁴⁴

In other words, the EU's involvement in the Balkans based on its European Security and Defence Policy (ESDP) portfolio directly undermined its enlargement policy in the region. Equally important will be its impact on the pro-European sentiment of the Serbian citizens, who have consistently supported the idea of European integration. Serbia signed the SAA on 29 April 2008. The move was seen as the EU's strategy to boost the pro-Western vote in the May parliamentary elections. Nonetheless, the agreement's implementation remains subject to fulfilment of cooperation with the ICTY.

The EU and Sri Lanka: A Stronger Commitment?

Sri Lanka is a small middle-income country, far from Europe and without significant strategic resources. As such, it generally receives only limited attention from the international community. Europe's attention to the conflict in Sri Lanka has been very scant, particularly compared to its involvement with conflicts in for instance the Balkans or the Middle East. Since 2002, the European Union has been one of the four co-chairs in the peace negotiations between the Sri Lankan government and the LTTE, but this has been largely a passive role.

⁴³ The Serbian 'no' to the EU was paved by the resolutions adopted by the Serbian parliament of 26 December 2007. See *Rezolucija Narodne skupštine Republike Srbije o zaštiti suvereniteta, teritorijalnog integriteta i ustavnog poretka Republike Srbije* [Resolution of the National Parliament of the Republic of Serbia on the Protection of Sovereignty, Territorial Integrity and Constitutional Order of the Republic of Serbia], available at <http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=465&t=Z>.

⁴⁴ »Koštica: Misija EU poništava SSP« [Koštica: The EU Mission Annuls the SAA], in: *B92*, 27 January 2008, available at <<http://www.b92.net>>.

Sri Lanka has been much more the subject of development policy than of political foreign policy on the part of the EU, but even Europe's aid role was small. From 2002 to 2004, it disbursed 10–15 million euros to Sri Lanka per year. This limited interest in Sri Lanka was reflected in the number of staff dedicated to Sri Lanka in Brussels and on the ground. Until 2005, the EU's External Action Service had precisely one diplomat in Colombo, a *chargé d'affaires*, supported by half a dozen contract staff with no diplomatic status and another four staffers in ECHO, the office for humanitarian affairs. Generally, the diplomatic community in Colombo is very small, with just six of the EU members represented. This also had advantages: ties were close and informal, EU political matters were routinely handled by the *chargé d'affaires* and the EU chairing ambassador jointly, and the rivalry between Council and Commission in Brussels did not surface at the country level. Partly because of the small size of the delegation and partly because all aid is disbursed indirectly, through partners, the EU and Sri Lanka were virtually invisible to each other.

This suddenly changed when the tsunami of 26 December 2004 struck, affecting virtually the entire coastline. Unlike India and Thailand, Sri Lanka requested international assistance within hours of the disaster, and the EU was one of the first and most generous respondents to this call. In the first few days after the tsunami, the European Commission wired € 23 million to the Red Cross and various UN agencies. In the next few months, the EU disbursed a further € 100 million in relief funds, approximately 40% of which went to Sri Lanka. The Council was much slower to get into action. Immediately after the tsunami, the problem arose how to organise the relief effort in the LTTE-held coastal areas, which had been hard-hit. In the post-tsunami upsurge of inter-communal solidarity, this problem was soon constructed as an opportunity for an initiative to set up a joint tsunami response mechanism including both the government and the LTTE, which, it was hoped, would build trust and spark wider peace negotiations. Arguably, an immediate political response to the tsunami from the EU, rather than just a humanitarian response, pushing immediately and hard for a joint relief mechanism, might have capitalised upon the early sentiments of cross-communal solidarity in Sri Lanka. The EU did in fact signal its support for the joint mechanism during a visit by External Affairs Commissioner Ferrero-Waldner in early March, but by this time, the central government and the LTTE had both responded in their own way, and accusations were flying back and forth.

The transition from relief to reconstruction was slow on the part of the EU as well as other donors and receiving governments. The European Commission presented its detailed plans for reconstruction in late May 2005, five months

after the tsunami.⁴⁵ For Sri Lanka, it proposed a total package of € 95 million, divided into € 40 million towards rebuilding the main road from the South to the East and € 55 million towards livelihoods and community support in the North and East, the bulk of which was to be channelled through the joint mechanism described above. When the joint mechanism ultimately collapsed after a legal challenge, the EU was left scrambling to hastily disburse its 2005 allocation for the Northeast to multilateral agencies (it was too late to consider a call for proposals from NGOs), and to seek alternatives for the rest of the programme. Since then, the funding to the South has been successfully disbursed, but most projects in the East and Northeast, the areas now doubly hit by tsunami and subsequent flare-up of the conflict, have been suspended indefinitely.⁴⁶

The EU also monitored the 2005 presidential elections, an unprecedented fourth electoral mission in five years (a measure of the instability of the Sri Lankan political system as well as the EU's commitment). The EU's representation in Colombo has been upgraded from a lone *chargé d'affaires* with contract staff to a full delegation led by an ambassador and supported by six diplomatic staff, although none devoted specifically to political affairs. This should considerably increase the EU's capacity to implement any policies at all. The question is whether, given that Sri Lanka is still a small middle-income country without significant resources, this expansion, and the increased attention it signals, will be sustained.

After the tsunami, the EU also briefly took a more active interest in the conflict in Sri Lanka. The Council has taken a harder and more consistent line on the LTTE, first warning that the EU was "actively considering the formal listing of the LTTE as a terrorist organisation",⁴⁷ then proceeding to list the organisation in the face of continued attacks.⁴⁸ However, since then, its only visible pol-

⁴⁵ EUROPEAN COMMISSION EXTERNAL RELATIONS DIRECTORATE GENERAL, *Tsunami Indicative Programme: Indonesia, Sri Lanka, Maldives (2005 – 2006)*, C (2005)1490, 23 May 2005, available at <http://ec.europa.eu/world/tsunami/docs/tip_05-06_c1490.pdf>.

⁴⁶ *Ibid.*, pp. 23–33.

⁴⁷ [UK PRESIDENCY OF THE EU 2005,] *European Union Declaration Condemning Terrorism in Sri Lanka*, 26 September 2005, available at <<http://www.eu2005.gov.uk/servlet/ServletFront?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1115146994806&a=KArticle&aid=1127731929213&date=2005-09-26>>.

⁴⁸ COUNCIL OF THE EUROPEAN UNION, *Declaration by the Presidency on Behalf of the European Union Concerning Listing of the LTTE a Terrorist Organisation*, Brussels, 31 May 2006, 9962/06 (Presse 163), P 078/06, available at <www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/cfsp/89790.pdf>.

icy in response to the escalating violence has been to issue a statement urging the LTTE and the Karuna faction to stop using child soldiers.⁴⁹

Shortcomings in EU Policies

Crude Use of Conditionalities

Until recently, Serbia had been treated exclusively as a security problem by the EU, while Sri Lanka was exclusively treated with a development paradigm, with the civil war considered at most as a minor nuisance. In recent years, the EU has begun to apply more economic instruments to Serbia as a part of the SAp, and begun to concern itself with the conflict in Sri Lanka.

However, in both cases, the (belated) recognition that security and economic development are connected has been translated into a simplistic use of political and financial conditionality. In the Balkans, the objective and the conditionalities defined by the SAp have come under criticism for their ambiguous impact on furthering stabilisation. The impact of the SAp on shaping the reforms in the region has not been as comprehensive and effective as it was hoped. There is admission that the results of the EU strategy towards the Balkans have fallen behind the expectations.⁵⁰

One reason is that the SAA remains only a stepping-stone to candidacy, and its implementation "a prerequisite for any further assessment by the EU of the country's prospects of accession."⁵¹ Consequently, scholars argued that being exogenous to the enlargement has limited the impact of the SAp on the domestic political agenda.⁵²

At the same time, the enhanced conditionality, that encompasses a range of political, economic, social and security issues, has favoured states that have

⁴⁹ COUNCIL OF THE EUROPEAN UNION, *Declaration by the Presidency on Behalf of the European Union on the Situation of Children Affected by Armed Conflict in Sri Lanka*, Brussels, 1 December 2006, 16076/06 (Presse 347), P 141, available at <http://www.consilium.europa.eu/ueDocs/cms_Data/docs/hr/news88.pdf>.

⁵⁰ Stefan LEHNE, »Has the 'Hour of Europe' Come at Last? The EU's Strategy for the Balkans«, in: Judy BATT (ed.), *The Western Balkans: Moving on*, Chaillot Paper No 70, October 2004, pp. 111–124, p. 111, available at <<http://www.iss.europa.eu/uploads/media/cp070.pdf>>.

⁵¹ EUROPEAN COMMISSION, *From Regional Approach to the Stabilisation & Association Process*, available at <http://ec.europa.eu/enlargement/enlargement_process/accession_process/how_does_a_country_join_the_eu/sap/history_en.htm>.

⁵² Dimitrios TRIANTAPHYLLOU, »The Balkans between Stabilisation and Membership«, in: Judy BATT ET AL. (eds.), *Partners and Neighbours: A CSFP for a Wider Europe*, Chaillot Paper No 64, September 2003, pp. 60–76, p. 69, available at <<http://www.iss.europa.eu/uploads/media/cp064e.pdf>>.

made greatest progress in reform. This, in turn, has created a new line of division in the region between the Balkan candidates and "potential candidates." From the start of the process, the European integration of the Western Balkans has been characterised by the "stability dilemma:" those countries that suffer from the greatest stability deficits qualify least for the EU's initiatives.⁵³ No policy follow-up was designed to fill in the vacuum created by the success of the individual aspirants.⁵⁴ It is precisely this vacuum that is the strength of the transnational spoilers of the Europeanisation.

In Sri Lanka, as elsewhere, there are strong connections between security and development, or between freedom from fear and freedom from want aspects. It was a combination of exclusion from political and administrative positions and threats to physical safety by the Sinhala majority that drove certain Tamils to take up arms, sparking the present-day conflict. Moreover, the conflict does of course block both infrastructural development and especially, private investment, although not in the whole country but almost exclusively in the conflict zone. According to one analysis, the unequally distributed benefits of neoliberal policies, fuelling disgruntlement of the poor in both communities, was one of the major reasons for the failure of the peace process that began in 2002.⁵⁵ At present, it is the poorest, least educated segments of the population that form a recruiting ground for the army, the LTTE, the Karuna's TMVP and the Marxist-nationalist JVP alike. On the one hand, these organisations may offer the only form of livelihood. On the other, their ideology of blame appeals precisely to those who feel most marginalised.

The connections between development policy and the peace process have not been as straightforward as donors previously hoped. Neither of the parties in the conflict has been easily influenced by aid "carrots," in fact the general perception has been that they have been rather better at manipulating donors than the other way around.⁵⁶ Nor has the ceasefire agreement had an immediate and significant effect on economic prosperity in the conflict area.

⁵³ Andreas WITTKOWSKI, »South-Eastern Europe and the European Union – Promoting Stability through Integration?«, in: *South-East Europe Review for Labour and Social Affairs*, 3 (April 2000) 1, pp. 79–96, p. 85.

⁵⁴ Dimitris PAPANITRIOU, »The European Union's Strategy in the Post-Communist Balkans«, in: *Journal of Southeast European and Black Sea Studies*, 1 (2001) 3, pp. 69–94.

⁵⁵ GOODHAND/KLEM, *Aid, Conflict and Peace Building in Sri Lanka* (above fn. 11), pp. 29–30.

⁵⁶ Interviews with S.I. KEETHAPONCALAN; Anthea MULAKALA, Conflict Advisor, DFID, Colombo, 2 September 2005.

Security does not automatically lead to economic development, or vice versa. This would suggest that policies on security and development must be worked out in conjunction with each other, yet each for its own sake, without easy assumptions being made about an instrumental connection.

Policies Ignore Regional and Global Context

Foreign policy, even the foreign policy of a supra-national entity like the EU, still has a tendency to focus attention on areas that are defined in terms of statehood. Because of this, regional and transnational as well as sub-national sources of state weakness, or potential strength, tend not to be taken into account.

In the case of Sri Lanka, there are three aspects to this. The first is the proximity of the regional power India. India has a fraught history with the conflict in Sri Lanka, including a very unfortunate attempt at intervention in the 1980s, but its relations with both the government and the LTTE have in recent years become more normalised.⁵⁷ It has a rather more fortunate record with respect to the neglected issue of the rights of the hill-country Tamils of more recent origin.⁵⁸ Its preferences regarding resolution of the conflict, tending towards accommodation of minority rights rather than self-government for the Northeast, may well run parallel to those of the EU.

The second dimension is sub-national, but partly connected to India's proximity, and of an economic nature: Sri Lanka may well be reaping some benefit from India's spectacular recent growth, but such benefit may be felt exclusively in the South West of the country. Development policies should take account of, and try to counteract, the likelihood of growing economic inequality between different parts of Sri Lanka.

The final dimension is the role of the Tamil diaspora, which has been part of the problem in the military conflict, but could also be part of the solution. It is well-known that LTTE is partly, perhaps even largely funded by diaspora communities, although no one really knows the extent and fluctuation of this funding. Little attempt has been made by the EU to have a dialogue with and within these communities, many of which are in Europe, about the peace process. The open letter by European Commissioner Ferrero-Waldner addressed to the diasporas, justifying the Council's decision to list the LTTE as a terrorist or-

⁵⁷ GOODHAND/KLEM, *Aid, Conflict and Peace Building in Sri Lanka* (above fn. 11), pp. 65–66.

⁵⁸ Interview with Sunil BASTIAN, Deputy Director, International Centre for Ethnic Studies, Colombo, 9 September, 2005.

ganisation, could be seen as a step in that direction.⁵⁹ It was a one-way communication, and although it defended the Council decision, the move might also be interpreted as encroaching on the Council's turf. A joint statement, defending the decision but simultaneously inviting diaspora groups from both communities to contribute suggestions regarding Sri Lanka's future, would have been a real break-through. The diaspora has also been making spontaneous contributions to development, particularly of the Northeast and particularly after the tsunami. These efforts too could have been harnessed, and connected to the peace process at a time when it might still have been saved.

In the Balkans, the key question has been not of whether there are regional initiatives, but of what nature and, therefore, effectiveness they are. One of the main challenges that the EU still experiences in the region is "to identify correctly regional actors involved, their political agendas and likely strategies."⁶⁰ In order to prepare the Western Balkans for accession to the European Union, the Stabilisation and Association Process has also been premised on a regional dimension. Ultimately, the regional cooperation became another explicit condition for the progress of the Western Balkans towards the EU integration.⁶¹ The Balkan aspirants must show commitment to improving relations with neighbours and enhancing political and economic cooperation. At the same time, the EU retained an individual approach to the states in the Balkans awarding the leaders in transition with a candidate status.

Although nearly ten years of EU's involvement in the region and its insistence on regionalism has undoubtedly advanced greater regional cooperation among the Balkan states, the policy has not been without contradictions.

Delević has pointed out different if not conflicting agendas regarding the regional cooperation:

The Western Balkan countries' aim is to further the prospects of their promised European Union membership, while the EU stresses the intrinsic benefits of cooperation, and more recently has become more ambiguous about the timetable of integra-

⁵⁹ *Open Letter from Commissioner Benita Ferrero-Waldner* [on EU Declaration to Combat Terrorism, 17 July 2006], available at <http://ec.europa.eu/external_relations/sri_lanka/intro/open_letter_commissioner_june_2006.pdf>.

⁶⁰ Vesna BOJICIC-DZELILOVIC/Denisa KOSTOVICOVA, »Introduction«, in: Denisa KOSTOVICOVA/Vesna BOJICIC-DZELILOVIC (eds.) *Austrian Presidency of the EU: Regional Approaches to the Balkans*, Vienna: Centre for the Study of Global Governance and Center for European Integration Strategies in cooperation with the Renner Institute, 2006, pp. 17–23, p. 19.

⁶¹ Cf. Judy BATT, »Introduction: The Stabilisation/Integration Dilemma«, in: IDEM (ed.), *The Western Balkans: Moving on* (above fn. 50), pp. 7–20.

*tion. Therefore it would be a mistake to take the existing consensus on regional cooperation for granted.*⁶²

With its focus on the state level cooperation, the EU's insistence on regionalisation has not substantially affected the effectiveness of transnational criminal and other informal and illicit networks that are "multi-ethnic, cross-border and integrated in Europe."⁶³ These have thrived on the weakness of the states in the region, despite the latter's official championing of the EU's regional approach. In fact, shady non-state transnationalisation of the region that has taken place in parallel with the official regional cooperation among the states continues to pose a threat to state strengthening and to de-ethnification of local politics.⁶⁴ Ultimately, these networks threaten the Europeanisation of the Balkans.

Failure to Strengthen State and Civil Society Simultaneously

In Serbia, the EU's focus has been overwhelmingly on trying to strengthen state institutions. In its declarations, the EU considers consolidation of civil society fundamental to achieving a more accountable and accessible government. But the EU's assistance directed at civil society both in the SAP and in the Stability Pact framework indicates that non-state-centred investment has been considered neither strategic nor integral to comprehensive state-building effort in contrast to narrowly conceptualised state-building as institution-building. In addition, it has been almost entirely divorced from the security efforts, security being defined in terms of human security.⁶⁵ This is partly due to donors' preference for funding economic reconstruction projects, which produce concrete accountable results in the short or medium term, in contrast to "cumbersome," long-lasting projects with unquantifiable soft results in the field of democratisation.⁶⁶ The donors' reluctance is reinforced by the EU's ambivalence in making a

⁶² Milica DELEVIĆ, *Regional Cooperation in the Western Balkans*, Chaillot Paper, no 104, July 2007, p. 99, available at <http://www.iss.europa.eu/uploads/media/cp104_01.pdf>.

⁶³ Dejan ANASTASIJEVIĆ, »Comment«, Study Group on Europe's Security Capabilities meeting, Brussels, Belgium, 17 March 2004.

⁶⁴ See Denisa KOSTOVICOVA/Vesna BOJICIC-DZELILOVIC (eds.), *Transnationalism in the Balkans*, London/New York: Routledge, 2008.

⁶⁵ York University Centre for International and Security Studies, *The Security Sector Reform in South Eastern Europe: An Inventory of Initiatives*, available at <<http://ssr.yciss.yorku.ca>>.

⁶⁶ Wim van MEURS, *The Balkans and New European Responsibilities. Strategy Paper Presented to the Special Meeting of "The Club of Three and the Balkans"*, Brussels, June 29-30, 2000, available at <<http://www.cap.uni-muenchen.de/download/2000/balkan1.PDF>>.

conceptual shift in treating a non-state sector as a strategic actor in state-building. Even less on the radar is the transnationalisation of the civil society in the Balkans, which could be a response to thriving illegal transnational links.

In Sri Lanka, the opposite has to some extent happened, in particular in response to the tsunami. In its frustration with the corrupt and bureaucratic central state, the international community has largely channelled its relief effort through NGOs, bilateral and UN agencies. But this has not benefited the local civil society efforts, which were responsible for the successful immediate relief operations. On the contrary, local groups have found themselves marginalised and losing staff to the much better-paying international organisations. Similarly, the local administration found itself disempowered. This is where the EU could have made a very practical contribution to state-building, boosting the capacity and self-confidence of local authorities in humanitarian crises by providing them with for instance vehicles, phones and computers as well as training. In addition, at the civil society level, the EU could play a role in funding, legitimising and raising the profile of consultations and negotiations between groups beyond the armed parties.

So, in the Balkans and particularly in Serbia, the focus has been on the state, while in Sri Lanka, in line with prevailing development orthodoxy until recently, civil society (in practice in the form of international NGOs) has been the panacea for development. A holistic approach to state-building in both countries would require a simultaneous focus on strengthening civil society and state capacity.

Flawed Human Rights Policy

In Sri Lanka the international community, including the EU, is still in the "Dayton-phase" of over-focusing on mediation between the armed parties at the expense of the ordinary people on the ground. None of the armed parties in question is a champion of human rights. It might still be possible for them to find agreement around financial and territorial power-sharing arrangements, without either party being inclined to look into the other's human rights record except for rhetorical value. Therefore, it must be a third party such as the EU, which champions human rights, even if this appears to complicate negotiations in the short run. At present, the manner in which human rights violations are brought up with each party tends to be through a routinised exchange, and

cf. Nenad PANDUREVIC, »Security Aspects of the Stability Pact for South Eastern Europe«, in: *Security Dialogue*, 32 (2001) 3. pp. 311–324.

does not make much of an impression. The International Independent Group of Eminent Persons (IIGEP), invited by the President to shadow his own Commission of Inquiry into recent human rights violations, and enthusiastically supported by the EU, has just quit in protest at having its suggestions to increase the independence and effectiveness of the Commission ignored.⁶⁷

In Serbia emphasis on justice as pursued by the EU has rendered contradictory results on the ground. As mentioned above, the cooperation with the ICTY is the "condition of all conditions" for Serbia's path to the EU. In so far as the cooperation is primarily interpreted in terms of extradition of war criminals it has done little to promote the cause of transitional justice in Serbia. The issue of transitional justice became just a technical issue of extraditions, rather than reckoning with war crimes that would open up a possibility of regional reconciliation.

This is best illustrated by a spate of surrenders by Serbian war crimes suspects after the EU and the US stepped up pressure on Serbia.⁶⁸ The government headed by Prime Minister Vojislav Koštunica hailed a surrender by a former army general and a suspected war criminal as a "patriotic act."⁶⁹ Even though it glorified war criminals, the government was rewarded by the EU with a Feasibility Study, which is the first step towards the Stabilisation and Association Agreement. At the same time, the vocal civil society groups that advocate recognition of Serbian responsibility for war crimes in former Yugoslavia, increasingly at risk for their work both from the state and the non-state illiberal groups, have been excluded from the EU's justice policy. In addition, neither is transitional justice specifically earmarked as one of the areas to be funded within the scope of EU's civil society programmes.

Human rights violations are one of the most contested issues both in Sri Lanka and Serbia. They are closely related to the conflict since they constitute part of the root causes for state weakness in both cases, and also affect national cohesion as one of the dimensions of state weakness. In so far as the EU recognised the importance of human rights issues in Serbia, its state centred approach

⁶⁷ INTERNATIONAL INDEPENDENT GROUP OF EMINENT PERSONS, *Public Statement: The Presidential Commission's Public Inquiry Process So Far Falls Short Of International Norms and Standards*, Colombo, 05 March 2008, available at <<http://www.ahrchk.net/statements/mainfile.php/2008statements/1408/>>.

⁶⁸ INTERNATIONAL CRISIS GROUP, *Serbia: Spinning its Wheels*, Europe Briefing No 39, 23 May 2005, available at <http://www.crisisgroup.org/library/documents/europe/balkans/b039_serbia__spinning_its_wheels.pdf>.

⁶⁹ D. DJEVORI/Lj. STALETOVIĆ, »General ispunio patriotski čin« [The General Carries out a Patriotic Act], in: *Glas javnosti*, 4 February 2005, available at <<http://arhiva.glas-javnosti.co.yu/arhiva/2005/02/04/srpski/P05020301.shtml>>.

proved to have limited effectiveness. It resulted in the extradition of some, but notably not the most wanted fugitives, such as Bosnian Serb war time commander Ratko Mladić and leader Radovan Karadžić. The exclusion from this policy, as well as a lukewarm support to civil society advocating confrontation with one's nation criminal past, allowed the culture of denial of Serbian war crimes in Serbia to be entrenched further.⁷⁰

Conclusion

This comparative study of Sri Lanka and Serbia analysed through a lens of EU's policy approach to "ailing states" has not argued that both countries should be treated equally in the EU's external portfolio in terms of commitment, attention and resources. The EU's privileging the Western Balkans is consistent with the region being considered the EU's "near abroad." Or, as the EU's Enlargement Commissioner Olli Rehn summed up the EU's approach: either the EU will export stability to the Western Balkans through enlargement, or it will import instability.⁷¹ Despite EU's increased involvement in the aftermath of the tsunami, Sri Lanka is bound to remain one out of a number of competing areas on its state-building policy's receiving end. Our comparative approach was aimed at challenging the *nature* of the EU's attention.

We have shown that the outcomes of state-strengthening interpreted almost exclusively in a reductionist manner as institution-building, such as in the case of Serbia, or a narrow focus on development and humanitarian assistance, as in the case of Sri Lanka, are bound to be limited. Rather, state-building ought to be designed as a long-term and holistic project. It should involve both security and economy, civil society and state institutions, as well as a domestic and regional perspective. In the context of "ailing states" prioritising specific policy areas over others creates voids. These are readily exploited by both domestic and transnational constituencies for the pursuit of their partial interests, one of the top ones being maintaining the state weakness.

Further, more policies on the part of the EU do not necessarily imply better results on the ground. Some scholars have argued that the EU's twin approach to the Western Balkans, embodied by a set of Enlargement and ESDP mechanisms, demonstrates the EU's growing strength in projecting stability into the

⁷⁰ KOSTOVICOVA, »Civil Society and Post-Communist Democratization« (above fn. 29).

⁷¹ Olli REHN, *The Future of EU Enlargement: Consolidation, Conditionality and Communication*, Public Lecture, London School of Economics and Political Science, 20 January 2006, transcript available at <<http://lse.ac.uk/collections/LSEPublicLecturesAndEvents/pdf/20060120-OlliRehn.pdf>>.

region.⁷² We, however, challenge this view. The parallel involvement of the Council and the Commission, without prior coordination and streamlining of the EU policy, has actually introduced another level of separation of the EU's policy instruments. This has not only chipped the legitimacy of the EU as an effective actor on the ground, as the locals observe and try to make sense of EU's bureaucratic struggles. It has also had an unintended consequence of actually slowing the advance towards Europe. This is best illustrated by Serbia and Montenegro's inability to agree to economic harmonisation as stipulated in the Belgrade Agreement – itself an ESDP product. The deadlock nearly halted their advance in the SAP process.

In Sri Lanka, the increased focus on security is to be welcomed. The EU may have more credibility as an honest broker with both warring parties as well as with civil society actors than the US with its anti-terrorist agenda. However, it must guard against making the mistakes of the Balkans, where Council and Commission involvement have typically been in competition with each other.

The interrelated nature of challenges faced by the EU as a state-builder and the multiplication of the EU's policy instruments makes a strong case for a re-think of a best-suited strategy. We argue that this strategy should be defined at two levels: institutional and policy. Institutionally, the EU needs to do away with a distinction between "high" and "low" politics best achieved by closer coordination and inter-institutional learning between the Council and the Commission. Policy-wise, the intra-EU institutional streamlining should be guided by the application of a comprehensive human security vision. In our conclusion, we take inspiration from the "human security principles" developed by the Study Group on Europe's Security Capabilities.⁷³

⁷² See Milada A. VACHUDOVA, »Strategies for Democratization and European Integration of the Balkans«, in: CREMONA (ed.), *The Enlargement of the European Union* (above fn. 40), pp. 141–160, p. 141; Islam YUSUFI, »Europeanizing the Western Balkans through Military and Police Missions: the Cases of Concordia and Proxima in Macedonia«, in: *European Balkan Observer*, 2 (2004) 1, pp. 8–12, available at <<http://www.wiiw.ac.at/balkan/files/EBO%203.pdf>>.

⁷³ STUDY GROUP ON EUROPE'S SECURITY CAPABILITIES, *A Human Security Doctrine for Europe: The Barcelona Report of the Study Group on Europe's Security Capabilities*. Presented to EU High Representative for Common Foreign and Security Policy Javier Solana, Barcelona, 15 September 2004, available at <<http://lse.ac.uk/Depts/global/Publications/HumanSecurityDoctrine.pdf>>. We elaborate on five of the Study Group's seven principles as particularly relevant to its state-building role in Serbia and Sri Lanka. The other two, multilateralism and appropriate use of force, relate more to the use of military power in failed states.

Primacy of Human Rights

The primacy of human rights, encompassing economic and social rights as well as political and civil rights, is what distinguishes the human security approach from traditional state-based approaches. This principle has profound implications both for security policy and for development. In security terms, this implies serious attention to be paid to the *means* of the external involvement, not just the legitimacy of its *ends*. In development terms, the primacy of human rights has implications for conditionality. Ways have to be found to help the individual even where a country has poor governance or fails to meet various forms of conditionality. Different voices within a country should be consulted on the use of conditionality, and means have to be found to assist communities that bypass local authorities.

Legitimate Political Authority

The end goal of a human security strategy has to be the establishment of legitimate political authority capable of upholding human security. Again this applies both to issues of physical security, where the rule of law and a well-functioning system of justice are essential, and to material security, where issues of legitimate employment and the provision of infrastructure and public services require state policies. Legitimate political authority does not necessarily need to mean a state, it could be local government or regional or international political arrangements. Multilevel but always public monopolies of authority could emerge from such a policy that can compensate for each other's weaknesses.

Bottom-up Approach

Notions of "partnership," "local ownership" and "participation" are already key concepts in development policy. These concepts should also apply to security policies. Decisions about the kind of security policies to be adopted, whether or not to intervene and how, must take account of the most basic needs identified by the people who are affected by violence and insecurity. This is not just a moral issue, it is also a matter of effectiveness. People who live in the affected area are the best source of intelligence. Thus communication, consultation, and dialogues are essential tools for both development and security.

Regional Focus

State-weakness is not sustained only through (in)activity of local actors. Rather, in a global setting, their impact in maintaining the "ailing state" depends on full integration into transnational diaspora and criminal networks. Most situations of severe insecurity are located in regional clusters. The tendency to focus attention on areas that are bounded by national borders, even the contested ones, has often meant that relatively simple ways of tackling the sources of insecurity have been bypassed. By the same token, a regional focus is important in restoring and/or fostering economic and trade co-operation. The breakdown of transport and trade links, associated with war, is often a primary reason for falls in production and employment that contribute to poverty and insecurity.

Use of Legal Instruments

For both development and security, the establishment or restoration of a rule of law is of critical importance. Whether we are talking about dealing with political violence or a criminalised economy, legal instruments that respect the dignity of the individual need to be available. Where there has been a breakdown of law and order, and in authoritarian states, where domestic law lacks legitimacy, legal frameworks need to be established which command widespread assent. Investment is also needed in civilian capabilities for law-enforcement, i.e. police, court officials, prosecutors and judges. Citizens in these situations need to regain the protection of the law, and to help transform it if the old laws were unjust or repressive.

In their focus, these five principles match the complexity of non-traditional security challenges spawned by "ailing" states. They join up coherently the low and the high end of external policies. In so far as the EU has pursued or experimented with their individual aspects, albeit in a piecemeal fashion, both institutionally and policy-wise, it is well-positioned to adopt these principles in a comprehensive manner as a guide to broadening its policy vision and fine-tuning its institutional mechanisms. The alternative is letting the spoilers get away with their narrow vision focused on weak states, with major repercussions for the credibility of the EU as a human security actor, and for the security of Europe itself.

Abbreviations and Acronyms

CFSP	Common Foreign and Security Policy
ECHO	European Commission's Humanitarian Aid Office
ESDP	European Security and Defence Policy
EU	European Union
FRY	Federal Republic of Yugoslavia
GDP	Gross Domestic Product
ICTY	International Criminal Tribunal for Former Yugoslavia
IIGEP	International Independent Group of Eminent Persons
JVP	<i>Janatha Vimukthi Peramuna</i> – People's Liberation Front
LTTE	Liberation Tigers of Tamil Eelam
NATO	North Atlantic Treaty Organisation
NGO	Non Governmental Organisation
SAA	Stabilisation and Association Agreement
SAP	Stabilisation and Association process
TAFREN	Task Force to Rebuild the Nation
TMVP	<i>TamilEela Makkal Viduthalai Pulikal</i> – TamilEela People's Liberation Tigers
UN	United Nations