Introduction

Since the end of the Cold War, more than a dozen new or nascent states have emerged in Europe as a consequence of the break-up of three multinational federations: the Soviet Union, Czechoslovakia and Yugoslavia.[1] This second 'springtime of nations' has proved to be more sanguinary than the first a century and a half earlier. While in most cases the establishment of new states has proceeded in a peaceful manner, in other instances it has been accompanied by violent conflict, either because the federal authorities have not acquiesced in the assertions of statehood on the part of rebel entities or because population groups within the emergent states have contested the independence claims. The wars of Yugoslav dissolution, triggered by Slovenia's and Croatia's declarations of independence on 25 June 1991, have been the most prominent example of this violent trend.[2]

The response of the international community to the Yugoslav crisis – still ongoing – has taken many forms. One of the more controversial initiatives has been the European Community's recognition of new states in Yugoslavia beginning in December 1991.[3] To some, EC recognition of the break-away republics was but a matter of bowing to the inevitable; to others, it was an act of reckless diplomacy. To its proponents within the Community, however, recognition was thought to have broad utility

[1] The dissolution of these three states led, by January 1994, to the creation of nineteen new or successor states: Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, the Czech Republic, Georgia, Kazakhstan, Kyrgyzstan, Macedonia, Moldova, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Yugoslavia (Serbia and Montenegro). In addition, three states – Estonia, Latvia and Lithuania – regained their independence. Several other sub-state entities – among them Chechnya in Russia and Kosovo in Serbia – were engaged in struggles for independence.

[2] For other conflicts associated with the establishment of new states in Europe after the Cold War, see Michael E. Brown (ed.), *The International Dimensions of Internal Conflict* (Cambridge, MA: CSIA/MIT Press, 1996).

[3] The European Community (or 'the Twelve') and the European Union are used interchangeably throughout this study. The EU superseded the EC with the coming into force of the Treaty on European Union on 1 November 1993.

for the purpose of conflict regulation. The prospect of recognition, it was argued, might deter the Belgrade authorities from continuing to prosecute the war. Actual recognition would alter the nature of the conflict – that is, transform an internal dispute into an interstate war – and thus endow the protagonists with additional rights and obligations as well as create new opportunities for third-party intervention. Recognition would also confer legitimacy on, and therefore strengthen, one political option – independent statehood – that some thought would provide the basis for a permanent solution to the conflict. Finally, recognition could be granted on conditional terms, allowing the EC a degree of leverage with which to mould the strategic environment in a manner more conducive to peace in the region.

This latter use of recognition – conditional on criteria relevant to regional security – is the central focus of this book. When in December 1991, six months after the outbreak of hostilities, the EC Council of Ministers chose to recognise the Yugoslav (and Soviet) republics seeking independence, it conditioned recognition on the acceptance of various 'Helsinki norms' by the new state authorities. The EC stipulated, *inter alia*, that the new states would have to have constituted themselves on a democratic basis; to have accepted the provisions of the UN Charter, the Helsinki Final Act, and the CSCE Charter of Paris, especially with regard to the rule of law, democracy, and human rights; and to have demonstrated a commitment to settle by agreement all differences arising from state succession. The Yugoslav republics were further required to accept extensive provisions for safeguarding the rights of national minorities within the new state borders and to adopt constitutional and political guarantees ensuring that they harboured no territorial claims towards 'a neighbouring Community state'.[4] The prospect of recognition, the EC reasoned, would induce the emerging states to adopt policies that might mitigate and perhaps even eliminate some of the presumed sources of the conflict.

The EC's initiative, although not unprecedented, represented an innovation in EC security policymaking.[5] It also represented a significant departure from recent state practice, where the tendency had been to recognise states on the basis primarily of non-political criteria. Despite

[4] 'Declaration on the "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union"' and 'Declaration on Yugoslavia', Extraordinary EPC Ministerial Meeting (Brussels), EPC Press Releases P. 128/91 and P. 129/91, 16 December 1991.

[5] New states established by the Congress of Berlin (1878) and the post-First World War settlements were also bound by national minority provisions, as discussed in ch. 1.

these novelties, scholars have given scant attention to the strategic logic governing the EC's use of recognition.[6] There are two reasons that explain this lacuna. First, the controversy surrounding the initiative has tended to overshadow many other considerations – controversy arising in part from Germany's precipitate moves towards recognition (of Croatia especially) but also from the reputedly baleful consequences of recognition itself. Second, the EC's weak implementation of its policy, notably its tolerance for derogation from its own requirements for recognition, has led many analysts to treat the initiative as a mere face-saving gesture, the real purpose of which was to mask a fundamental policy reversal so as to forestall a heightening of divisions among the Twelve.[7] But while 'extra-strategic' factors clearly had important bearing on the EC's decision to extend recognition, they alone do not explain the specific design of the recognition policy, the provisions of which reflected several months of thinking about the requirements for peace in the region. It is apparent from EC official documents, political memoirs, and other evidence examined in this study that the architects of the EC's policy were motivated to a large degree by the security dividends that they expected conditional recognition to yield, however modest those dividends might be.

One aim of this study, then, is to recover the strategic thinking behind the EC's recognition policy. What were the sources of the policy? How was it expected to contribute to peace and stability in the region? What led to its adoption in the face of strong objections or warnings from leading EC member states, the UN secretary-general and diplomats in the field? Another aim is to explore the strategic consequences of the policy. While recognition was intended ostensibly to help dampen the hostilities, critics maintain that it did more to aggravate and extend the Yugoslav wars than perhaps any other single factor – by encouraging the republics (and the Kosovo Albanians) in their drives

[6] Partial exceptions include Robert Cooper and Mats Berdal, 'Outside Intervention in Ethnic Conflicts', 35(1) *Survival* (1993), 133–4; Jennifer Jackson Preece, *National Minorities and the European Nation-States System* (Oxford: Clarendon Press, 1998), pp. 44–8; and Karen E. Smith, 'The Use of Political Conditionality in the EU's Relations with Third Countries: How Effective?' 3 *European Foreign Affairs Review* (1998), 268.

[7] See, for instance, Johan Galtung, 'The Problems of Recognition', *YugoFax* No. 9 (1991), 1; Simon Nuttall, 'The EC and Yugoslavia – *Deus ex Machina* or *Machina sine Deo*?' 32 *Journal of Common Market Studies*, Annual Review (1994), 17–19; Susan L. Woodward, *Balkan Tragedy: Chaos and Dissolution After the Cold War* (Washington, DC: The Brookings Institution, 1995), pp. 183–9; and Mario Zucconi, 'The European Union in the Former Yugoslavia', in Abram Chayes and Antonia Handler Chayes (eds.), *Preventing Conflict in the Post-Communist World* (Washington, DC: The Brookings Institution, 1996), pp. 263–70.

for independence; by undermining the EC peace talks under the direction of Lord Peter Carrington; by intensifying the fighting in Croatia; and by triggering the bloodiest phase of the conflict, the Bosnian war. Are these valid criticisms? Did the EC's policy help in any way to mitigate or prevent violent conflict in the region? Did it create opportunities for more effective international action, whether or not those opportunities were exploited? Or would the interests of peace have perhaps been better served by a further delay in recognition? These are some of the key questions at the heart of this study.

Recognition and conflict management

Although there has been little scholarly treatment of the EC's use of conditional recognition as an instrument of conflict management, the scholarly literature on conflict management itself provides a useful lens through which to view the EC's initiative in relation to other approaches to the regulation of conflict. Much of this literature is concerned with conflicts between identity groups that occur *within* states, where these groups are often aggrieved national minorities seeking to redress what they perceive to be unjust patterns of state governance by the dominant identity group or groups, including the denial of self-determination in the form of independent statehood.[8] Of course, many internal conflicts have a trans-boundary dimension that involves cross-border identity affinities (e.g., Northern Ireland, Cyprus), while some interstate conflicts also have a basis in communal competition (e.g., India–Pakistan, Rwanda–Burundi). The Yugoslav wars have had elements of all of these different categories: internal conflict, interstate war, communal strife and intragroup competition.

Scholars typically distinguish conflict management from two other modes of third-party diplomatic and/or military engagement in a crisis (other than war-fighting itself): conflict prevention and conflict resolution. Conflict prevention refers to measures that aim to impede the escalation of a non-violent dispute into an armed confrontation. Conflict resolution occurs during or, more likely, after the cessation of hostilities and refers to efforts to eliminate the sources of violent disagreement or to impose a partial settlement. Conflict management or regulation (the

[8] Representative works of contemporary scholarship in this field include Milton J. Esman, *Ethnic Politics* (Ithaca, NY: Cornell University Press, 1994); Ted Robert Gurr and Barbara Harff, *Ethnic Conflict in World Politics* (Boulder, CO: Westview Press, 1994); and Donald L. Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1985).

terms are frequently used interchangeably) occupies the broad middle ground between the two and refers to attempts to contain, suspend, mitigate or channel conflict after the eruption of violence and while resolution is being sought.[9] These are by no means hard and fast distinctions; the lines between the different categories are often blurred. For instance, the mitigation of conflict may be so thorough as to constitute effective elimination. Some scholars, for that matter, treat conflict resolution as an aspect of conflict management.

In their study of the macro-political regulation of ethnic conflict, John McGarry and Brendan O'Leary provide a taxonomy of the methods of ethnic conflict regulation that is a useful scheme for classifying conditional recognition as conceived of by the European Community.[10] McGarry and O'Leary identify eight methods of ethnic conflict regulation, four of which aim at the elimination of group differences (genocide, forced mass-population transfers, partition and/or secession, integration and/or assimilation) and four of which seek to manage group differences (hegemonic control, arbitration, cantonisation and/or federalisation, consociationalism or power-sharing). States may employ different methods at the same time, choosing even to combine aims. Thus, for instance, South Africa under white minority rule pursued both a strategy of partition and one of hegemonic control through its homelands and apartheid policies respectively.

To the extent that the EC's recognition policy can be characterised by its efforts to ensure a large measure of autonomy for national minorities adversely affected by the break-up of Yugoslavia, this approach clearly belongs to the class of methods seeking to manage rather than to eliminate group differences. The form of autonomy that the EC envisioned for its target minorities in Yugoslavia had a cultural, political and, in some cases, territorial component to it. None of the four methods within McGarry and O'Leary's family of management techniques corresponds precisely to this full range of entitlements but cantonisation comes very close. Under cantonisation political power is devolved to a delimited

[9] Luc Reychler, 'The Art of Conflict Prevention: Theory and Practice', in Werner Bauwens and Luc Reychler (eds.), *The Art of Conflict Prevention* (London: Brassey's, 1994), pp. 1–21; Sophia Clément, *Conflict Prevention in the Balkans: Case Studies of Kosovo and the FYR of Macedonia*, Chaillot Paper No. 30 (Paris: Institute for Security Studies of the Western European Union, 1997), pp. 7–9; and Raimo Väyrynen (ed.), *New Directions in Conflict Theory: Conflict Resolution and Conflict Transformation* (London: ISSC/SAGE Publications, 1991).

[10] John McGarry and Brendan O'Leary, 'Introduction', in John McGarry and Brendan O'Leary (eds.), *The Politics of Ethnic Conflict Regulation: Case Studies of Protracted Ethnic Conflicts* (London: Routledge, 1993), pp. 1–40.

area of the state where a national minority, numerically superior in that area, is permitted to enjoy 'mini-sovereignty'.[11] (National minorities outside the region may also possess certain entitlements – as they did under the EC's plan – but these will necessarily fall short of territorial autonomy.) Examples of cantonisation would include the Basque region of Spain, the German-speaking region of Italy (Alto Adige/South Tyrol) and the transfer of authority from Westminster to Scotland and Wales within the United Kingdom (the latter more accurately, perhaps, a form of 'semi-federalisation').

By allowing minorities to be masters of their own house, at a local level at least, autonomy arrangements are meant to mitigate the effects of majority rule in an ethnically divided society. And where ethnic divisions have already led to violence, these arrangements may enhance the security of the affected population. Because cantonisation enshrines rather than eliminates ethnic differences, it can be attractive to identity groups who wish to preserve their distinctiveness within a society rather than to transcend their differences through integration and assimilation. Since it requires less cooperation among competing ethnic groups than power-sharing arrangements, it is also thought to be especially well suited to deeply divided societies. Where the divisions are so profound as to give rise to secessionist demands, the expectation is that the devolution of power will defuse these pressures. Central authorities, however, are often concerned that cantonisation may in fact have the effect of encouraging state fragmentation.[12]

In many cases in recent history, autonomy agreements have proved to be an effective means of managing internal conflicts. In his study of communal conflicts between 1945 and 1990, Ted Robert Gurr found that autonomy agreements resulted in a de-escalation of violence in seven out of eleven instances in which they were adopted.[13] (Of the four failures – marked by the commencement or resumption of civil war – two were attributable to central government defections from their agreements.) While a communal group may choose to reject autonomy arrangements because they fall short of the group's ultimate aspiration (i.e., independent statehood), it may also be discouraged from accepting

[11] *Ibid.*, p. 31.
[12] Donald L. Horowitz, 'The Cracked Foundations of the Right to Secede', 14(2) *Journal of Democracy* (2003), 10.
[13] Ted Robert Gurr, *Minorities at Risk: A Global View of Ethnopolitical Conflicts* (Washington, DC: United States Institute of Peace Press, 1993), pp. 300–5. Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1990), pp. 123–327, provides details of nine regional autonomy arrangements.

such arrangements under pressure from outside parties – an observation, it will be seen, that has particular relevance to the Yugoslav case.

While this book is concerned with the EC's use of conditional recognition as an instrument of conflict management, it draws to a limited extent from the field of development studies for insights into the utility of this approach generally. For more than two decades states and multilateral organisations have been employing political conditionality in their relations with developing countries, tying aid, trade and other concessions to prescribed changes in a recipient state's political behaviour.[14] Often conditional development assistance has been in pursuit of objectives akin to those of the EC in Yugoslavia, including the promotion of human rights, democratisation and 'good governance'. The EC/EU itself has used political conditionality extensively as part of its trade and development assistance programmes, sometimes imposing on recipient states requirements relating to their domestic political structures in many ways not unlike the requirements it stipulated for the new state authorities in Yugoslavia. Another aim of this study, therefore, is to examine these early and parallel uses of political conditionality for what they suggest about the potential for and limitations of conditional recognition as an instrument of conflict management. How effective has aid and trade conditionality been and what accounts for its successes and shortcomings? Bearing in mind the relevant differences, can the lessons drawn from these experiences inform the use of conditional recognition in support of conflict mitigation and prevention?

Recognition and norms

The question of norms is central to this study and provides the overarching framework for a discussion that spans a broad range of topics. Norms are shared understandings of standards for behaviour; they inform beliefs and expectations about how an actor with a given identity will or ought to behave.[15] In the case of the EC and Yugoslavia, norms were the very basis of the Community's criteria for the recognition of new states.

Norms may find expression in ethically or prudentially prescriptive terms, as in the assertion: 'It is immoral (or unwise) to sell arms to states that may use them to suppress internal dissent.' In this sense of the term,

[14] For an overview of these practices, see Olav Stokke, 'Introduction', in Olav Stokke (ed.), *Aid and Political Conditionality* (London: Frank Cass, 1995).
[15] Audie Klotz, *Norms in International Relations: The Struggle Against Apartheid* (Ithaca, NY: Cornell University Press, 1995), p. 14.

the EC's use of political conditionality can be said to raise important normative issues concerning equitable relations between states. Is it fair to expect new states – and select new states at that – to satisfy requirements for recognition that established states have not had to meet and in many cases could not meet? Is it legitimate for some states to insist on the adoption of standards that do not have universal currency as well as on the mode of their implementation? The difficulty is compounded by the fact that conditionality, whatever form it takes, is predicated on fundamental asymmetries in the global order that the major powers have exploited historically for purposes evidently more self-serving, yet no less nobly proclaimed, than those that would appear to have guided the EC in this particular instance.[16]

The normative dimension of this study, however, does not extend principally to questions of international morality, although these are given some consideration. There is another, more fundamental sense in which norms are central to this study, and that is in the constitutive and regulatory functions they perform in the international system. As Peter Katzenstein explains the distinction:

> In some situations norms operate like rules that define the identity of an actor, thus having 'constitutive' effects that specify what actions will cause relevant others to recognize a particular identity. In other situations norms operate as standards that specify the proper enactment of an already defined identity. In such instances norms have 'regulative' effects that specify standards of proper behavior.[17]

These two functions are inter-related: norms help to define the distinguishing characteristics of an actor, and the actor's identity in turn shapes expectations about its behaviour. Consider the principal actor in the international system: the state. The state's identity is in part constituted by shared beliefs, which are embedded in international conventions and customary law about what a state is: notably, an inhabited territory with a government capable of exercising effective control over that territory and of entering freely into relations with (other) states. A trust territory is not a state because it lacks the attributes of internal and external sovereignty. If such a territory were to become a state, our expectations about its formal capabilities would change

[16] For a representative statement of this view, see Samir Amin, 'The Issue of Democracy in the Contemporary Third World', in Barry Gills, Joel Rocamora and Richard Wilson (eds.), *Low Intensity Democracy* (London: Pluto Press, 1993), pp. 59–79.

[17] Peter J. Katzenstein, 'Introduction: Alternative Perspectives on National Security', in Peter J. Katzenstein (ed.), *The Culture of National Security: Norms and Identity in World Politics* (New York: Columbia University Press, 1996), p. 5.

accordingly – as would its behaviour.[18] For instance, only states sit on the United Nations Security Council, only states petition the International Court of Justice and only states participate in the Nuclear Non-Proliferation Treaty regime. Contrary, then, to the claims of neo-Realists and other materialists who maintain that one can explain the behaviour of states principally with respect to the balance of their relative capabilities, norms are not mere epiphenomena. Rather, they are of fundamental importance in part because they help to shape the modal character of statehood itself.[19]

Norms are also important because they reduce the complexity of choice-situations with which states are confronted and in so doing bring a measure of order and stability to an otherwise anarchic world.[20] By making it possible to establish what a state is, norms provide a means by which a unique set of rights and obligations are conferred on some entities and not on others – even entities whose power, in the case of major multinational corporations, may in important respects exceed that of certain states. Thus do states avoid the chaos that would no doubt arise were myriad entities around the globe to lay claim to such entitlements as the right of self-defence and freedom from intervention.

The conferment of rights and obligations is, of course, achieved through the recognition of states, which itself is a norm-governed process. The relevant norms have their basis in both treaty and customary law, although recognition has also always been something of a discretionary political act. A broad degree of uniformity in the application of these and any norms would seem necessary, however, if they are to perform any meaningful role, and such uniformity does indeed exist. Yet, as we noted earlier, the EC's adoption of security-relevant criteria for the recognition of new states in Yugoslavia represented a significant departure from the prevailing norm tending towards recognition on the basis primarily of non-political criteria. The question arises, then, how pertinent was the normative legal tradition to the EC's actions? And

[18] The degree of actual sovereignty may differ from the formal sovereignty required for statehood, as evidenced by the international community's tolerance of a large measure of control by Moscow over the foreign and domestic policies of the Soviet vassal states during the Cold War.

[19] Ronald L. Jepperson, Alexander Wendt and Peter J. Katzenstein, 'Norms, Identity, and Culture in National Security', in Katzenstein, *The Culture of National Security*, pp. 35–6.

[20] Friedrich V. Kratochwil discusses the simplification of choices that norms help to achieve. See his *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs* (Cambridge: Cambridge University Press, 1989), p. 10.

what are the implications for international order of the EC's use of unorthodox criteria?

Answers to these questions depend, in part, on how one understands international law to function. If international law is understood as the mere application of neutral rules in a disinterested fashion, then its relevance to the case at hand would seem slight. If instead international law is understood as a dynamic process of which policy considerations are an integral part, then there may be scope for 'deviations' of the kind the EC practised.[21] But surely there are limits to innovation within any normative order, beyond which certain actions would be considered to be an unacceptable violation. How are these limits determined? In exploring these questions, this study draws on the interdisciplinary dialogue that has been taking place in recent years between scholars of international law and scholars of international relations.[22] One result is to suggest a different way of thinking about recognition: not as a set of rules but as an informal regime governed by a set of norms (political as well as legal) whose 'compliance pull' derives largely from the contribution that recognition is perceived to make to the maintenance of a stable international order. While the EC may have departed from customary practice by conditioning its recognition of new states in Yugoslavia on unorthodox criteria, it can be said to have done so in a manner consistent with trends in international law – in particular, what some scholars view as an emerging right to democratic governance.[23] The general explanations of state behaviour advanced in this book thus seek to accommodate the EC's actions while at the same time retaining the notion of meaningful normative constraints.

The structure of the book

The EC's use of recognition as an instrument of conflict management can best be appreciated within several different contexts, notably European strategic considerations at the end of the Cold War; the relevant international law and legal norms; and the intended and actual policy outcomes of EC actions. Accordingly, this book is organised

[21] Rosalyn Higgins explores these two views of international law in her *Problems & Process: International Law and How We Use It* (Oxford: Clarendon Press, 1994), ch. 1.

[22] For a useful overview of this dialogue, see Anne-Marie Slaughter, Andrew S. Tulumello and Stepan Wood, 'International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship', 92 *American Journal of International Law* (1998), 367–97.

[23] Thomas M. Franck, 'The Emerging Right to Democratic Governance', 86 *American Journal of International Law* (1992), 46–91.