

HIGH EXPECTATIONS, LIMITED RESOURCES

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THE BOTTLENECKS OF EU CIVILIAN
CRISIS MANAGEMENT IN KOSOVO

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BRIEFING PAPER 70, 24 November 2010



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Tanja Tamminen
Researcher
The Finnish Institute of International Affairs

Briefing Paper 70
24 November 2010

- The EU Rule of Law Mission, EULEX Kosovo, is the biggest and the most expensive operation ever conducted under the CSDP. It was warmly welcomed by the Kosovo population in 2008, but it has proved difficult for the EU to live up to the high expectations.
- EULEX suffers from a number of political constraints, as not all EU member states have recognized the independence of Kosovo.
- International coordination in Kosovo is particularly complicated as the international actors live in parallel realities when it comes to the status of Kosovo: some recognize its independence, some do not, and others are status neutral.
- EULEX also suffers from slow procurement procedures, as well as from inadequate recruitment policies.
- Constant evaluation shows that the Kosovo rule of law institutions are steadily developing under EULEX monitoring and mentoring, but in key areas such as the judiciary and the fight against organized crime the progress is slow.

The European Union research programme
The Finnish Institute of International Affairs



Demonstration against corruption in the judiciary, Pristina 2007. Photo: Tanja Tamminen

EULEX Kosovo is the flagship of EU civilian crisis management operations. It is the biggest and the most expensive operation ever conducted under the CSDP, employing almost 2,000 international experts and over 1,000 local staff members. All 27 EU member states agreed on sending the EULEX mission to Kosovo on 4 February 2008, only 13 days before the Kosovo independence declaration. Its mandate to assist and strengthen the Kosovo rule of law institutions has been extended until June 2012.

EULEX did not get off to an easy start, but it is now fully implementing its mandate – despite a number of political and practical obstacles. This briefing paper will tackle a few of these stumbling blocks to successful EU crisis management in Kosovo and address some questions. Why did the EU deploy a mission to Kosovo in the first place, and has it been able to achieve its goals? Where have the major bottlenecks occurred when it comes to ensuring the efficiency of the EULEX mission? In seeking to answer these questions, this paper will also propose a number of recommendations to the EU.

A bumpy start to the EULEX operation

After the Kosovo war in 1999 the UN Security Council adopted Resolution 1244, which established the provisional UN administration, UNMIK, in Kosovo. UNMIK was in charge of civilian administration, promoting autonomy and self-government in Kosovo by gradually transferring its responsibilities into the hands of the Kosovo authorities. In 2005 the Secretary General launched the process to determine Kosovo's future status. His Special Envoy, Martti Ahtisaari, made a status proposal in early 2007 on "supervised independence". The proposal called for the abolition of the remaining UNMIK factions and the creation of a much smaller and lighter International Civilian Office to supervise the status implementation. The EU was to send to Kosovo the largest civilian crisis management operation in its history.

This mission was prepared during the Kosovo status negotiations, and the main weaknesses of the Kosovo institutions were identified in the field of the rule of law. Local actors were unable or unwilling to fight

According to its mandate, the EULEX mission "will assist the Kosovo authorities, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability. It will further develop and strengthen an independent and multi-ethnic justice system and a multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognized standards and European best practices. The mission, in full co-operation with the European Commission Assistance Programmes, will implement its mandate through monitoring, mentoring and advising, while retaining certain executive responsibilities".

Source: Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO.



Responsibility for protecting the cultural heritage sites of the Serbs in Kosovo is being gradually transferred from the NATO-led peacekeeping force, KFOR, to the Kosovo Police. The Monastery of Gračanica/Grančanicë was transferred in autumn 2010. Photo: Tanja Tamminen

against high-level corruption or to deal with sensitive war crime cases, for instance. In the post-war situation, organized crime networks had gained an unforeseen foothold in Kosovo. Whatever the Kosovo status was going to be, an international presence was deemed necessary.

As the Ahtisaari plan was not endorsed by the UN Security Council, the Kosovo leaders declared independence on 17 February 2008. The fact that all EU member states would not recognize Kosovo's independence had been anticipated and the Joint Action to establish the EULEX Kosovo mission had been accepted a couple of weeks prior to the independence declaration to ensure the support of all member states.

To accommodate itself to the complicated situation of working under the UNSC Resolution 1244 umbrella, a Joint Action and an invitation by the Kosovo authorities, EULEX has declared itself a "status neutral" and "technical" mission. Political issues are left in the hands of the EU Special Representative, Pieter Feith, who is also double-hatted as the International Civilian Representative, in the latter role in charge of supervising the implementation of the Ahtisaari plan. However, many rule of law problems are in one way or another related to the political issue of the Kosovo status and cannot be solved solely by technical means.

As there is no new UN Security Council resolution, the UN interim administration, UNMIK, which was reconfigured in 2008, is staying on in Kosovo, contrary to the original plans. The handover was anything but smooth and the EULEX operation had to wait until December 2008 to take over its designated responsibilities in the field of the rule of law.

Achievements versus expectations

Today, Kosovo's progress in the field of the rule of law is closely monitored by both the EULEX mission and the European Commission. The EULEX Programme report of last summer shows that there has been considerable development in the Kosovo Police (KP) and Customs. Kosovo Police, already trained by the OSCE for years, is often commended as highly professional when it comes to day-to-day policing and maintaining public order. However, as also noted in the recently published Commission Progress Report on Kosovo, there has been limited progress in tackling organized and complex crime due to the lack of intelligence-led policing capability.¹

On a more positive note, the transfer of the responsibility to protect the Serb Orthodox monasteries and cultural heritage sites from KFOR to the Kosovo Police is underway. Some major sites such as the Gazimestan, a memorial to the Kosovo Polje Battle, and the Gračanica/Grančanicë, a monastery near Pristina, were transferred this year under KP protection, which is monitored by EULEX. The KP has also taken over the surveillance of the border with Albania. To strengthen the efficiency of border controls, EULEX has put a lot of emphasis on the importance of inter-agency cooperation. The Kosovo Customs, also monitored by EULEX, have reinforced their cooperation both with the Police and the Prosecution.

¹ European Commission Kosovo 2010 Progress Report, 10 November 2010. p. 54.

Yet major challenges remain in the field of the judiciary, which is labouring under a huge backlog of cases. EULEX has managed to open the Mitrovicë/a courthouse in the northern part of the divided city, which was closed after the violent demonstrations in spring 2008. As a result, a number of urgent cases have been dealt with. In some fields, the progress is plain to see. At least the long-awaited Kosovo Judicial Council is finally functional. In other fields (such as property cases), the progress is less easy to track. EULEX has worked hard to ensure an inter-ethnic balance in the judiciary, but in the absence of an encouraging atmosphere both from Belgrade and the Serb-populated areas, there is a serious lack of Kosovo Serb candidates for the positions.

Corruption, nepotism and political interference are lingering challenges in the judiciary. Last spring the leader of the Vetëvendosja (Self-determination) movement was summoned to court for crimes allegedly committed in 2007. The case became a farce as both the defendant, his lawyers and the local judges repeatedly refused to show up in court. This has not been the only instance where local judges and/or prosecutors have refused to deal with sensitive cases. However, it is clear that EULEX is not prepared to use its executive powers indefinitely. Responsibility is to be transferred to the hands of the local actors for good.

Even if the Vetëvendosja and some other rather marginal political actors are asking for EULEX to leave Kosovo, it is obvious that the public opinion would, in fact, have welcomed a much more robust EU mission to fight against organized crime and high-level corruption. There is, however, insufficient political will inside the EU to encourage the mission to find out where local dignitaries have stashed their suspicious personal wealth. With its current capacities, the mission would not be capable of doing so in any case. Only a few corruption cases can be dealt with at any one time.

Regional countries such as Croatia, which will finalize its membership negotiations with the EU this coming spring, have done a lot to fight against corruption in the high-level administration. This is clearly due to the EU membership carrot and political pressure from Brussels. In the Kosovo case, such a carrot does not *de facto* exist until all EU member states have recognized its independence. Thus Brussels has no tools to pressure the Kosovo political elites

to assume definite responsibility in the fight against corruption. Despite the fact that all the Kosovo leaders have committed themselves to the fight against crime, concrete action and exemplary behaviour are thin on the ground.

Already preparing to exit

There is still a lot to be done in ensuring the efficient implementation of all the planned reforms and new legislation in Kosovo, but the political interest in EULEX Kosovo and in civilian crisis management seems to be waning in Brussels and in many EU member states. This can be seen in the lack of seconded candidates, for example. One of the reasons behind this is the current economic crisis, which has forced the EU member states to limit their crisis management budgets. What is more, this situation has coincided with EULEX preparations for a comprehensive exit strategy. EULEX is preparing to give up its executive powers to concentrate solely on monitoring, mentoring and advising tasks. This message has been made clear by the EULEX management when explaining the mission mandate and achievements to the Kosovo public.

The mission is preparing an exit strategy based on the “Programmatic Approach” and, according to EULEX, the Kosovo authorities are in the “driving seat”. EULEX wants to limit its use of executive powers and strengthen local responsibility for rule of law issues. Annual Programme reports compiled by EULEX experts conducting monitoring, mentoring and advising (MMA) are made public and EULEX has presented a tailored MMA tracking mechanism on the internet. It is now possible for anyone to log on and follow how the Kosovo rule of law institutions are advancing in implementing reforms. Every summer the annual report grades the institutions from A to C.²

Monitoring can be withdrawn from areas that have achieved the required level and reinforced in areas that lack achievements. When all areas have reached the required level, the EULEX mission will no longer be needed. The responsibility for implementing the reforms lies with the local institutions, and the pace of the EULEX exit strategy depends on their achieve-

2 <http://www.eulex-kosovo.eu>



The Vetëvedosja (Self-determination) movement has organized a number of campaigns targeted against EULEX. Photo: Tanja Tamminen

ments. The success of this strategy rests, however, on the assumption of the EU's long-term commitment to Kosovo. In the current economic situation, there is a risk that good results in some fields of the rule of law would lead to a hasty winding up of the whole mission, which would not serve the long-term sustainability of the developments.

Inadequate procurement and recruitment procedures

From the moment the EULEX mission was launched, it faced a number of high expectations for rapid and concrete results. In addition to the political constraints and contradictory pressures (to be more robust or to strengthen local ownership), EULEX has fallen victim to practical problems. The CSDP missions have to follow EU Commission procurement procedures to get the necessary equipment in the field. Tendering processes are slow and complicated, and sometimes the chosen providers have difficulties honouring their promises. Procurement cannot get underway fully until a political decision on the launch of a mission has been made, but once launched, the mission personnel should quickly be on the receiving end of certain key facilities – adequate cars, phones, computers and radios at the very least. Combating organized crime would require even more sophisticated equipment.

In addition to the slow procurement procedures, EULEX still suffers from sluggish recruitment and deployment procedures for international experts. Today, the EU organizes about four Calls for Contribution (CfC) per year to recruit staff for CSDP missions. This procedure is too slow to meet the require-

ments of the mission. Experts leave the mission all year round for a number of reasons. Sometimes their sending state decides to end their secondment for budgetary reasons. This rotation does not follow the timing of the CfCs. On the contrary, the mission suffers from a chronic shortage of qualified staff. In addition, if an expert who has been chosen in one of the major calls for contribution finds a better job in the meantime and does not come to the mission area at all (drops out), a second best candidate cannot be contacted according to the EU recruitment policy. On the contrary, this vacancy has to be re-opened in the next CfC a few months later, and meanwhile the mission has to endure the lack of a key expert.

As politically incorrect as it may sound, Kosovo has been a safe test laboratory for EU CSDP action. If the EU wants to become a major crisis management actor and send CSDP operations to more insecure environments, it should make the procurement and recruitment procedures more effective. The EU could learn from other crisis management actors such as the UN and the OSCE when developing its policies.

For example, greater attention should be paid to the procurement sector. The EU should have more centralized procurement procedures for its CSDP missions to provide staff members with the basic tools from the first day onwards. This may entail the creation of a central warehouse for the use of CSDP operations. Mission administration dealing with procurement should not be understaffed either. A multimillion euro procurement budget should be managed with enough international personnel with sufficient experience in EU procurement rules.

President Martti Ahtisaari talked to the Finns working in Kosovo at the International Civilian Office in Pristina in summer 2009. Photo: Tanja Tamminen



Recruitment policies should be rethought to address the operational needs of the missions. An internet-based recruitment system should be considered following the OSCE example. Nor should a centralized civilian expert pool be rejected as an idea. An EU civilian crisis management operation cannot succeed without highly qualified staff. EU member states should keep seconding sufficient, qualified staff members for at least a couple of years at a time.

Complicated coordination

Post-independence Kosovo has not constituted an easy political context for a CSDP operation. Some international actors such as the United States and the International Civilian Office recognize Kosovo as an independent state. Others, such as the UN interim administration, UNMIK and, as a part thereof, the OSCE mission in Kosovo, live in the post-1999 reality under UNSCR 1244 and cannot, within the framework of their mandates, recognize the independence.

The number of international representatives in Kosovo is mind-boggling: the Special Representative of the UN Secretary General, the International Civilian Representative, the Head of the OSCE Mission and the Commander of the NATO peacekeeping force, KFOR, all speak for the “international community”. Not to mention the confusion caused by the EU itself, which has sent a number of representatives and facilitators of its own to Kosovo. The EULEX Head of Mission does not discuss politics. That task is left to the EU Special Representative. When it comes to questions on northern Kosovo, however, the Italian Ambassador has a special role as the EU facilita-

tor. In the case of another sensitive political issue, the protection of cultural heritage sites, the Greek Ambassador bears the title of EU facilitator. In the Balkans it is often money that talks while the Head of the EU Commission Liaison Office manages the EU assistance.

The more representatives the international community has in Kosovo, the less authority and influence it wields in local politics. When it comes to the EU, it is clear that “the stronger the political cohesion between EU Member States, the larger the potential for a CSDP mission to be effective in the field”.³ This is particularly true in the case of Kosovo. EU member states that are not united in their stance towards Kosovo have contributed to the slow pace of achievements of EULEX. Rarely can decisive action be taken without strong political backing from Brussels and the member states.

³ GIOVANNI GREVI et al. (Eds). *European Security and Defence Policy: The first 10 years (1999-2009)*. Paris: European Union Institute for Security Studies, 2009, p. 405.



Recommendations

- EU member states should work on their internal coherence when it comes to the status and future of Kosovo. The stronger the political cohesion between EU member states, the greater the potential for EULEX to be effective in the field.
- To ensure the efficiency of the CSDP operations, the EU should prepare for more flexible procurement procedures and centralized warehouses to equip the missions.
- EU member states should keep seconding highly qualified staff members. Recruitment procedures should be made smoother and swifter with an online application procedure. In this post-Lisbon era, the EU should also start thinking of a centrally managed civilian expert pool.
- International coordination should be reinforced and streamlined with Kosovo's EU perspective. Activities in the field should be seen as "member state building".
- The EULEX exit strategy should be a long-term process and requires EU commitment. Good results in some fields should not lead to too hasty a closing down of the mission.

Photo: Tanja Tamminen

Tanja Tamminen
Researcher
The Finnish Institute of International Affairs
ISBN 978-951-769-285-4
ISSN 1795-8059
Cover photo: Enisa Kasemi / EULEX
Layout: Tuomas Kortteinen
The Finnish Institute of International Affairs 2010
www.upi-fia.fi