

# Ten years after: lessons from the EUPM in Bosnia and Herzegovina

## 2002-2012

### Joint Report

January 2013

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This report derives from a seminar on ‘The impact of the EU Police Mission in Bosnia and Herzegovina from 2002-2012’, organised jointly by the EU Police Mission (EUPM) and the European Institute for Security Studies, that took place in Sarajevo on 7-8 June 2012.

The event marked 10 years of EU civilian crisis management in the Western Balkans and sought to examine the impact of the EUPM in Bosnia and Herzegovina and assess the lessons learned for the future of the Common Security and Defence Policy (CSDP). The seminar was attended by representatives of the EU institutions (European Commission, EU Delegation in BiH), representatives of the Bosnian Ministry of Foreign Affairs and Security and the Parliamentary Assembly as well as academics, think tankers and key players in civil society.

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## FOREWORD

### THE CLOSURE OF EUPM: BACK TO THE FUTURE

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#### Javier Solana

The launch of the EU Police Mission (EUPM) in January 2003 was for many the first tangible outcome from the EU Common Foreign and Security Policy (CFSP). EU foreign policy was rich in declaratory statements and commitments and only a couple of years before had started to make the difference with diplomacy and engagement. But the deployment of people from EU member states, making a hands-on contribution and taking risks for peace and stability, was a real change. For the good.

And it was the bitter experience of failure in the 1990s conflicts in the Balkans that provided the trigger for this action which in a way became the prototype for a lot of our external policies to come. It was the start of EU crisis management as we know it today.

However, at that time there was no EU template for intervening in crisis situations and it was to a large extent a case of 'learning by doing'. If anything, EUPM later became the template for other missions. We had to create the machinery, the institutional structures, but also develop the human capacity. In this way many of those who were involved in setting up and conducting the mission in 2003 are truly the real EU crisis management pioneers.

But just as EUPM, Bosnia and Herzegovina and the whole Balkans region has developed since then, so has EU crisis management. Actually, I think few EU policies have ever evolved faster and adapted better to the many different needs. We had no choice but to learn from our own previous mistakes. After the Kosovo war, we recognised the importance of early EU involvement. The Ohrid Agreement and the subsequent deployment of the EU's first military mission, Operation *Concordia*, in March 2003 in the former Yugoslav Republic of Macedonia, as well as the management of the peaceful break-up of Serbia-Montenegro several years later, are good examples of effective and timely interventions. And of good preventive EU diplomacy.

Since the launch of EUPM, crisis management missions have been at the heart of the EU's stabilisation and normalisation efforts in the Balkans. As the region continues to progress peacefully and the countries move closer towards EU membership, the missions are gradually being transformed from executive missions to monitoring and advisory operations. And as the reforms take effect, what these countries need from us is technical assistance aimed at preparing them for the EU. The Balkans therefore has been and remains a good example of the EU's comprehensive approach, able to

help people and territories out of crisis situations and along the path of institution building. For me this is the European way of doing things: an all-inclusive approach to crisis prevention and crisis management; a large and diversified tool box; a rapid response capability; playing our role as a global actor.

This has also been the path of EUPM and Bosnia and Herzegovina. The mission was always conceived and recognised as a transition from Dayton to Brussels – from crisis to EU membership. Still today, EU integration continues to be the most effective instrument in ensuring long-term security and peace. And it is just a matter of time before Bosnia and Herzegovina will officially apply for EU membership.

But the world keeps on changing. The challenges and threats of today are evolving more rapidly and becoming increasingly complex. There is a closer connection between external and internal security. We know by experience that the events in the Balkans ultimately impacted on the security of the EU. In today's even more interconnected world it is clear that developments such as the Arab Spring and the ongoing conflict in Syria will increasingly impact on our security. The repercussions of a conflict are very difficult to contain: refugee flows, immigration, smuggling and trafficking as well as the effects of economic collapse.

Today's conflicts equally demonstrate more clearly than ever that during the process of stabilisation after a crisis, the desired outside intervention has to go far beyond a military presence. What we can see is that rule-of-law type missions have proven critical to success in complex processes of state-building and governance.

I believe that we Europeans represent the aspiration for a world governed by law. Logically this is reflected by the nature of the EU, itself a community of law. And one way or another it is the direction in which all our external policies point. In different ways, almost all our crisis management missions contribute to the strengthening of states or to the spread of the rule of law. It is in this area that the future for EU crisis management lies. But regardless of how we decide to act, our operations must always remain firmly anchored in political strategies. The solution to any crisis, any emergency, any conflict, must always be political.

We have to be bold. We have to be ready to respond to the growing demands that will be made of us to play our part in the global security environment. The key to the future success of EU crisis management is to continue to develop a culture of planning and conducting combined civilian and military operations together, adapted to purpose, time-limited and with clear mandates. We should also be innovative and be open to new ideas and areas where we can make use of our expertise. The recently established Special Investigative Task Force (dependent on EULEX Kosovo) is an interesting example of a small and highly specialised team that was created for a very specific purpose. It is also imperative that we close the gap between our ambitions and our capabilities.

Considering the difficult economic climate and the fact that demand continues to outstrip supply, we must make more rational use of our instruments. And we must strengthen the solidarity between EU member states so that the political and economic entity to which they belong can live up to both European and international expectations. In other words, in our conduct of crisis management we must be wary of discrepancies between rhetoric and stated objectives and the reality on the ground or risk the EU's credibility internationally. And finally, we must not forget the lesson that early intervention and prevention is always much more cost-effective.

Closing a mission is good news. After all, their ultimate aim has always been to become irrelevant or no longer needed. It is also very good news that Bosnia and Herzegovina itself will shortly start participating in EU missions. Having progressed from being at the receiving end to joining the ranks of security providers, Bosnia and Herzegovina will bring with it crucial first-hand experience.

EU crisis management has proved its worth. At the time that the EUPM was launched it was an aspiration. Today it is a reality on the ground. Last June the EU closed one mission but at the same time we are launching three new ones in other parts of the world. I think this clearly demonstrates that crisis management operations have a central place, also in the future of the EU peace project. I would also like to take this opportunity to pay tribute to all the friends and colleagues that helped plan and establish EUPM and to all those that so generously served there. Altogether they have made a great contribution to peace and prosperity in the Balkans and to Europe as a whole.

*Madrid, December 2012*





## INTRODUCTION

### Damien Helly and Tobias Flessenkemper

The European Union Police Mission in Bosnia and Herzegovina (EUPM) was the first-ever European Security and Defence Policy (ESDP) operation, conceptualised during 2002 and launched on 1 January 2003. However, at that moment, the EU was not a new actor in Bosnia and Herzegovina, neither politically nor operationally. The inability of the EU to manage the conflicts resulting from the dissolution of Yugoslavia which erupted in 1991 and 1992 provided the impetus for the development of EU crisis management structures throughout the 1990s. EUPM was to become the first operation to test and put those structures to use. Also throughout the 1990s the EU deployed EU crisis management tools *avant la lettre* in Bosnia and Herzegovina.

Since 1991, the European Community (later: Union) Monitoring Mission (ECMM/EUMM) had been active in the country, and later, following the Washington Agreement in 1994, the EU deployed a mission to the city of Mostar to promote the reintegration of the divided Herzegovinian capital. The operational experimentation took place in parallel to the development of political instruments under the CFSP. Before the formal establishment of the function of EU Special Representatives (EUSR), the EU member states appointed Lord Carrington (1991), Lord Owen (1992) and then later Carl Bildt (1995) as EU Representatives for the Former Yugoslavia and Co-Chairmen of the International Conference on Yugoslavia.

The inception of and decision on EUPM took place in parallel with the appointment of the first formal EUSR for Bosnia and Herzegovina (BiH) on 11 March 2002. These decisions marked the starting point of a new era in the bilateral relations between Bosnia and Herzegovina and the European Union, whereby BiH continued to remain the testing ground for EU foreign policy instruments. EUPM became the 'guinea pig' and trail blazer for the development of ESDP and for the Union and its foreign policy bodies a laboratory to experiment with 'learning by doing'. EUPM existed throughout an exceptionally formative decade for the EU.

The mission's relevance was boosted in 2003 by the confirmation of a EU membership perspective for Bosnia and Herzegovina and the other Western Balkans countries. The EUPM witnessed two waves of EU enlargement and the consequent reassessment and controversies regarding the sustainability of reforms in the areas of the rule of law, particularly in the southeastern EU member states (Bulgaria, Greece, Hungary and Romania). Operationally and politically it was affected by the constitutional debate of the 2000s and the continuous build-up of crisis management structures and the growth of CSDP. The mission drew to a close at the end of this cycle at a moment of renewed uncertainty about the future of the European project. All of these developments played out in the small theatre of Bosnia and Herzegovina where

the mission oversaw the development of police and the rule of law in the country and the wider region and witnessed the emergence of the EU area of justice, liberty and security.

## Why Bosnia and Herzegovina matters

The argument has been repeated many times: how can the European Union be a credible foreign policy actor if it cannot manage to project stability and security in its immediate neighbourhood? In this case, into a country that will share an almost 1,000 kilometre-long border with the EU's 28<sup>th</sup> member state, Croatia. Not only Croatia, but many other member states such as Austria, Slovenia and (through immigration) Germany and Sweden, to name but some, have close historical ties to Bosnia and Herzegovina. There are few countries in the world which are so closely linked to the EU as BiH is, in particular through personal and family connections and relationships.

The war in Bosnia and Herzegovina that started in 1992 undermined the EU's aspirations to become a unified political actor after Maastricht. At the same time the war seemed anachronistic as the aim of the war as formulated by the President of Republika Srpska Radovan Karadžić was the destruction of the 'common life' (*zajednički život*) of the Orthodox Serbs, Catholic Croats and Muslim Bosniaks and other nations and nationalities. The President of Serbia, Slobodan Milošević, advocated the redrawing of borders in Europe. These aims challenged the very basic idea of multiculturalism and peaceful relations as advocated by the European Union. The response to the war in Bosnia and Herzegovina challenged the European Union and resulted in a number of failed mediation attempts which could not prevent the return of ethnic cleansing, mass expulsions and genocide on the European continent. BiH thus did not only matter as a testing ground of the EU's political resolve; it also mattered as an area where the values of the European integration project had to be defended. While political unity and consensus on how to deal with the dissolution of Yugoslavia remain a challenge for the Union even today, the policy response of the EU *vis-à-vis* BiH needed to at least save the EU from further embarrassment if the Union wanted to avoid the risk of irrelevance. However, the continuation of the dissolution of the former Yugoslavian state in 2006 (independence of Montenegro) and 2008 (declaration of Kosovo's independence), both of which had a significant negative impact on the political situation in Bosnia and Herzegovina, painfully exposed fractures and lack of unity among EU member states at the political level.

The Dayton Agreement of 1995 ended the war and opened the way for the reconstruction of Bosnia and Herzegovina, which became a priority for the European Union. No other country has ever benefited *per capita* more from EU assistance since then. For the EU the stabilisation and reconstruction of a multicultural and multiethnic community in Bosnia and Herzegovina became a litmus test for its commitment to turn itself into a political actor projecting peace and stability throughout the whole con-

continent. Bosnia and Herzegovina's future matters thus not only for the citizens of the country but also for the EU's self-perception as a foreign policy and security actor.

Therefore it is not surprising that one of the most measurable results of the Yugoslav crisis and the war in Bosnia and Herzegovina has been the impetus it provided for the development of EU crisis management structures throughout the 1990s, which in turn laid the basis for the deployment of EUPM which would operate for a whole decade. If Bosnia and Herzegovina became an experimental laboratory for the development of CFSP and CSDP instruments, the mission in BiH would become the testing ground for the design, application and adjustment of the civilian CSDP instruments.

### **Why lessons learned matter**

Lessons learned<sup>1</sup> matter for reasons of democratic accountability: they are a good way to inform European constituencies, civil society and taxpayers about how CSDP is performing and improving. They allow debate about collective security and defence initiatives and our efficiency in working together in an EU framework. They also enhance the efficiency of CSDP work by conveying technical and political conclusions back to upper management levels like the Political and Security Committee (PSC) or European External Action Service (EEAS), the Council and Commission's cabinets. Finally, lessons learning results in a true added value by building up an institutional memory which makes it possible to assess whether real progress has been made over time. For instance, when the same lessons identified at the beginning of the CSDP remain unaddressed or unlearnt a decade down the road, lesson learning work may help in flagging up enduring challenges for the future of CSDP.

The EU is still a security actor in the making. It is working with others to put its soft and – more rarely – hard power at the service of the international rule of law. As a new instrument and policy, CSDP, now thirteen years old, remains very much work in progress. The learning curve has been steep in the first ten years. CSDP started almost from scratch, in the face of institutional opposition from some quarters (initially the Council and the Commission) and inspired by existing practices. Civilian CSDP in particular has constantly been, since its beginnings as EUPM's experience shows, an innovative and 'learning by doing' experience. As far as military developments are concerned, the experiments of 'acting European' have not been less demanding in terms of organisational change.

Learning processes, and what was called 'lessons policy' in a book on the ten years of ESDP published by the EUISS in 2009,<sup>2</sup> have happened at all (individual and in-

1. In this volume, the term 'lessons learned' does not have an official EU meaning corresponding to an explicit mandate given by a political authority, but is used to refer to the informal work done by the EUISS in this area between 2010 and 2012.

2. Giovanni Grevi, Damien Helly and Daniel Keohane (eds.), *European Security and Defence Policy: The First Ten Years (1999-2009)*, EUISS, Paris, 2009, p. 410.

stitutional) levels since then and featured among official guidelines in the December 2011 Council conclusions on CSDP. In the EU Military Staff (EUMS) and the Civilian Planning and Conduct Capability (CPCC), they have been formalised into streamlined procedures, sometimes using specific IT tools and databases. Individual missions have also conducted their own lessons learned work. The Athena mechanism follows its own lessons learned process. Comprehensive strategic reviews have been carried out systematically by the EEAS-CMPD on numerous missions, recently leading to consequential decisions on some of them. The European Parliament, with its hearings on CSDP missions and a recent report on lessons learned, has also shown its interest in this approach. The EUISS started its lessons learned activities in 2008 during the EUFOR Tchad/RCA operation. The European Security and Defence College, by organising specialised seminars on CSDP, is also playing an important role in disseminating the knowledge gathered through lessons learned processes.

Identifying lessons from CSDP actions has thus become common and recommended practice. It has even been formalised in detail by academics looking at all dimensions of impact, as demonstrated by Susan Penksa's contribution to this report.

### **How to do lessons learned?**

However, given that numerous organisations and institutional bodies are involved in lessons learning work, some challenges remain with regard to their ultimate effectiveness. Based on the example of the experience of the present report and of other lessons learned exercises conducted by the EUISS since 2008, five main guidelines on how to do lessons learned may be identified.

The first requirement is to follow a strong theoretical and empirical methodology. To ensure the methodology used matches the existing level of academic knowledge, it is recommended to work collaboratively with academics with strong credentials on studying CSDP. The second requirement is to consult as closely as possible with those who have been engaged in or have been influenced by the CSDP operation. In other words, talking about CSDP should be done together with those in charge of the operation, and those supposed to benefit from it.

Following methodological *sine qua non* conditions, lessons-learning initiatives on CSDP missions and operations can only be conducted with a strong buy-in from all their direct or indirect stakeholders. This is especially relevant when CSDP actions are supposed to contribute to a wider comprehensive EU engagement intended to respond to complex and multi-faceted crises. As a priority, lessons learning has to be requested or at least tolerated by political masters who have decided to conduct the given operation. It is absolutely essential to ensure, as far as the EU is concerned, that at least the PSC and a majority of its ambassadors, and more broadly the EEAS, are keen to benefit from a lesson learning initiative on a specific mission. Similarly,

the top management of the mission itself has to be logically engaged in the design of a lesson learning process, as well as the bodies in charge of planning and mission support.

Indirect stakeholders of a CSDP operation include the European Commission and the numerous relevant DGs involved in coordinating activities and who are supposed to ensure the comprehensiveness of the EU's action. Unlike existing isolated institutional learning procedures, such an approach to lessons learning requires intensive and persistent negotiations with all parties to ensure that the exercise becomes theirs.

Third, once all stakeholders have agreed to cooperate among themselves to identify joint lessons, a systematic identification of lessons can start, pooling all inputs from inside and outside the EU. This can usually be done through upfront public or closed-doors consultations and lessons-gathering sessions. At this stage, involving non-EU stakeholders from civil society, the host government and other international organisations, is essential.

An efficient lessons sharing phase during which identified lessons are not only disclosed but debated among all stakeholders is a fourth step. This is when all stakeholders are invited to meet and exchange and confront visions, interpretations and reflections. For this phase, one recipe for success is the quality and the neutrality of the chairs invited to manage debates and of the *rapporteurs* in charge of reporting their content.

This phase, however, has to integrate a political analysis process that will also contribute to an understanding of the limits of lessons learned processes for CSDP. A consistent message in all of the contributions is the need to bear in mind the political limitations of CSDP operations. It seems that CSDP operations can achieve some of their objectives but, as the case of EUPM and Bosnia and Herzegovina shows, CSDP can only be a remedy for some of the symptoms of a crisis but it cannot and will not be a cure for underlying root causes, even less if the EU member states fail to provide a consistent policy framework.

Finally, all of the above, if implemented successfully, allows the leaders of the lessons learning exercise to shape, in consultation with the stakeholders, a reform and implementation strategy on the basis of lessons sharing. The final step in the process consists of sharing and communicating this strategy to the highest political level for it to be considered and transformed into concrete actions.

We hope the present report, which is the result of a collaborative endeavour, will play a valuable role in contributing, through the identification of key lessons and recommendations, to collaborative lessons learning for police reform in BiH, CSDP and the EU's external action in general.



# I. THE INSTITUTIONAL GENESIS OF THE EUPM

**Michael Matthiessen**

This chapter on the institutional genesis and evolution of the EU Police Mission in Bosnia-Herzegovina (EUPM) will focus on the European and international political background to the mission, as well as the early ESDP debates around EUPM. It will be based on the author's personal involvement from the launch of EU civilian crisis management in December 1999 to the start of the first ever ESDP mission (EUPM) in January 2003, i.e. only three years later. It will show that the combination of European and international developments in the period 1999-2002 facilitated the launch of a mission like EUPM, albeit in a very challenging institutional and administrative EU environment. It will also underline that EUPM was the pioneer mission of ESDP. Most, if not all, of the challenges the mission faced during both the planning phase and the start-up in Bosnia and Herzegovina (BiH) were later met by the other missions and operations under ESDP, both civilian and military. It is noteworthy that most of the lessons identified with EUPM were later turned into lessons learned and therefore many new structures, procedures and capabilities were put in place in order to take this into account and improve the overall performance of ESDP. Looking back, now that the EU has conducted more than 25 E/CSDP missions and operations, EUPM was definitely the test case and 'guinea pig' for ESDP.

## **The European political and institutional background**

1999 was the year in which the objectives and structures for the new ESDP were established and adopted at the Cologne and Helsinki European Councils in June and December respectively. The main emphasis, indeed the origin, of ESDP was military, but under the influence notably of the Nordic countries a strong though less well-known civilian element was introduced. In an annex to the conclusions to the European Council in Helsinki in December 1999 many of the non-military aspects of ESDP were laid out, especially the police aspects. This part of ESDP did not get much attention. The Policy Unit working for the newly appointed High Representative for CFSP, Javier Solana, decided to suggest concrete implementation of this text, not least by creating a civilian headline goal – similar to the military headline goal decided at the European Council in Helsinki. This was done in the spring of 2000, *inter alia* by holding a conference on policing capabilities in Lisbon. At the European Council in Feira in June 2000 the EU decided on a police headline goal of 5,000 police officers by 2003. The same European Council welcomed the creation of a Committee for Civilian Crisis Management (CIVCOM) and noted the setting up of a coordinating mechanism in the Council Secretariat (which contributed to the creation of the Police Unit within the Directorate for civilian crisis management). This was followed up by the adoption of a Police Action Plan at the European Council in Gothenburg



in June 2001 and a Police Capability Improvement Conference in the margins of an EU Foreign Ministers' meeting in November 2001. On this basis – and on the basis of similar developments on the military side of ESDP – the European Council in Laeken in December 2001 was able to adopt the declaration on the operational capability of ESDP.

From the above, two lessons can be drawn. First, in order to launch an ESDP mission, policy-makers need overall objectives, structures and capabilities. Second, headline goals adopted at ministerial level are helpful in developing capabilities for civilian ESDP.

### **The international political background**

At the same time a number of important international developments took place. They were also part of the background to the emergence of EUPM.

At the UN, the Panel led by Lakhdar Brahimi reviewed the organisation's peace operations, including policing capabilities. In August 2000 the Panel's report was published and called for 'regional training partnerships for civilian police officers'. It also recommended setting up a dedicated police unit within DPKO as part of a new and holistic approach to the rule of law, very much in line with what the EU was doing.

In 2001 it became clear that the UN wanted to end their 2,000-man strong International Police Task Force (IPTF) in BiH. The UN was overstretched and had other priorities. At the same time, the international community felt that there was still a need for an international police presence in the country. The police had been re-established, vetted and trained, but there was still the need for institutional strengthening, not least at management level. This raised the question of who should take over the responsibility for international policing in BiH.

In Bosnia and Herzegovina High Representative Petritsch had embarked on slimming down the high number of international actors in the country. In addition to the High Representative and his large office (OHR) the list included NATO/SFOR, UNMIBH, UN/IPTF, the OSCE and the Delegation of the European Commission.

The third lesson is that the UN's encouragement for regional action as regards civilian crisis management capabilities was helpful for the development of civilian ESDP.

### **How it all started**

At the Feira European Council in June 2000 the EU, thanks to the police headline goal, sent a clear message to the world that it would become an actor in international policing as of 2003. The message, which was publicly welcomed by the US,



was repeated by EU officials and diplomats in various conferences in the second half of 2000 and first half of 2001. In mid-2001 the UN Special Representative of the Secretary General (SRSG) in BiH, Ambassador Jacques-Paul Klein, paid a discreet visit to Brussels and met with senior officials from the Council Secretariat. Having heard about the EU's future policing capabilities he suggested that the EU take over the task of international policing in BiH. According to Klein the future of BiH was in the EU and that would give Brussels more leverage *vis-à-vis* the BiH authorities and thus increase the chances of a successful outcome of the mission. During the meeting a large number of questions was raised from both sides. For instance, who in the EU would perform a function similar to that of the UN SRSG, i.e. overseeing the police mission on the ground as it was not conceivable that the Head of Mission would report directly to High Representative Solana? It was thus suggested that the EU could have an EU Special Representative in BiH. However, this would add another international actor in the country, going against High Representative Petritsch's efforts to limit the presence of the international community. The idea of 'double-hatting' the next High Representative who would take over in 2002 (Paddy Ashdown) as both High Representative and EU Special Representative was then put forward. Obviously, this idea would have to be accepted by both the international community via the Peace Implementation Council (PIC) and the EU member states, as well as the Council's own lawyers who had misgivings about an EU Special Representative, legally accountable only to the EU, having an apparently subordinate relationship also to the PIC. Hence two further lessons: when launching an ESDP mission there is a need for an international request and the international community has to decide which international actor is best qualified to engage in a specific mission.

The visit by UN SRSG Klein led to internal preparations in the Council Secretariat and the dispatching of an exploratory mission to BiH in the autumn of 2001. The mission, composed of officials from both the Council Secretariat and the European Commission, met with relevant actors on the ground. After the mission the Council Secretariat's part of the delegation recommended that the EU should take over the responsibility of international policing after the UN, focusing on monitoring and mentoring at mid- and senior level of BiH police. The colleagues from the European Commission were sceptical as they perceived civilian ESDP as part of institution building, a task very much under the responsibility of the Commission. Under the leadership of the responsible Commissioner, Chris Patten, who grasped the overall political context, they did not in the end make an issue of it. This perhaps reluctant acquiescence was no doubt helped by the fact that this intra-institutional debate coincided with the ministerial Police Capability Conference and the preparations for the Laeken declaration on the operational capability in late 2001, which showed the member states' commitment to ESDP and their willingness to provide policing capabilities to an EU mission. This phase of EUPM history confirms the obvious: in order to launch an ESDP mission the genuine support of the member states is essential.

## The planning of EUPM

In March 2002 the Council, upon recommendation by the High Representative for CFSP Javier Solana, took the formal decision to launch EUPM – the EU’s first ESDP mission. A planning team, headed by former UN Police Commissioner in Kosovo Sven Frederiksen and composed of seconded national experts and EU officials, was established. The team was first co-located with the Police Unit in the Council Secretariat and later moved to Sarajevo. In accordance with an agreement between the EU and the UN, Frederiksen became the last UN/IPTF Commissioner, while at the same time being the head of the EU’s planning team. This innovative ‘double-hatting’ was not without problems, but was facilitated by the fact that the EU planning team moved into the UN/IPTF-building, which was foreseen as the HQ for EUPM. It also helped that the mission had a long lead in time (almost a year) and that there was close cooperation between the Police Unit in Brussels and the planning team in Sarajevo.

The main lesson to be drawn from this experience is that the double-hatting of a Head of Mission is generally not to be recommended, as it implies two ‘chains of command’ and two constituencies, who do not necessarily have the same objectives.

While the planning team had to deal with many technical matters on the ground, the colleagues in the Police Unit and the rest of the Directorate for civilian crisis management in Brussels had to face various institutional, operational and budgetary matters – for the first time. There were no templates, procedures, standards or mechanisms. This had never been done before as the Council Secretariat was a traditional secretariat not used to these kinds of operational tasks, such as preparing the formal decisions on the launch of the mission via legal and operational texts, organising the force generation, i.e. recruiting seconded police officers and local staff, obtaining the agreement of BiH authorities (SOMA), securing the UN Security Council resolution providing the legal basis for EUPM (UNSCR 1396), obtaining the agreement of the PIC for EUPM to follow on from UN/ IPTF and for the double-hatting of the High Representative also as EUSR, defining the chain of command, which fully included the double hatted High Representative/EUSR in BiH, ensuring the procurement of equipment, which had to be done in close coordination with the Commission and in accordance with the EU financial regulation, entering agreements with Third States (Canada, Iceland, Norway, Switzerland, Turkey, Ukraine and Russia) and ensuring the cooperation with NATO/SFOR (later replaced by the EU military operation EUFOR *Althea*).

It was a big challenge to plan the EU’s first ESDP mission, in close coordination with the European Commission and with the member states – especially through the new Council bodies, CIVCOM and the Political and Security Committee, as well as the RELEX working group. It was also a new task for the representatives of the member states in the newly created CIVCOM and PSC, the latter responsible for political control and strategic direction of ESDP operations. While the diplomats could be seen

as micro-managing the planning of the mission, the full support of their capitals was needed in order to obtain the required number of more than 500 well-qualified police officers through national secondment.

In order to face the challenges mentioned above the Police Unit and the Directorate of civilian crisis management had to work closely with other parts of the Council Secretariat, not least the Legal Service, the geographical desks covering BiH, the Administration and SITCEN. The newly created and well-staffed EU Military Staff (200 officers) was reluctant to assist as this was a purely civilian mission falling outside their terms of reference.

The cooperation with the European Commission was particularly difficult and required direct contacts between High Representative Solana and Commissioner for External Relations Patten. While many officials in the Commission could accept that military ESDP was a Council task, they had difficulties in accepting a role for the Council in civilian ESDP. Many felt that policing was part of the Commission's existing rule-of-law programmes. However, close cooperation was necessary, not least because the CFSP budget is part of the overall EU budget, which is implemented by the Commission. As disbursement of funds to EUPM was based on a contract between the Head of Mission and the Commission, some Commission officials argued that the mission in fact had 'two chains of command': one budgetary to the Commission and one political to High Representative Solana and the Council. Such views did not make it easier to plan and conduct EUPM.

In order to ensure that the planning was on the right track, High Representative for CFSP Solana paid a visit to Sarajevo in late September 2002. He met with representatives of the BiH government, with HR/EUSR Ashdown, UN SRSG Klein and IPTF Commissioner/EUPM Planning Team Head Frederiksen and encouraged close cooperation between the concerned parties. Later, he attended the official launch of EUPM in January 2003 together with the Chair of the Foreign Affairs Council, Foreign Minister George Papandreou, and senior European Commission officials.

The first ESDP planning experience emphasised a coherence imperative: it is essential that close cooperation between all the EU institutions involved in civilian ESDP take place throughout all phases of preparation, launch and conduct of a mission.

## **Conclusion**

When recapitulating the long list of challenges the EUPM planning team and the Council Secretariat had to face in 2001-2003 it is interesting to look at the many improvements which have taken place since then – also based on the lessons identified and learned from EUPM. In hindsight it is also clear that the planning of EUPM underestimated certain aspects, not least a greater involvement of experts with knowledge of the situation in BiH. This was partly due to lack of cooperation with both

the geographical desk and the Commission, and project management and human rights and gender experts.

One important improvement, based on High Representative Solana's suggestion at the Informal Summit at Hampton Court in October 2005, was the creation of first the CPCC, the Civilian Planning and Conduct Capability, headed by a Civilian Operations Commander, and later the CMPD, the Crisis Management Planning Directorate. This meant that the operational conduct of a civilian mission was performed by the CPCC while the strategic planning for the mission (be it civilian or military) was performed by CMPD. CMPD could thus deal with a number of horizontal tasks, which were more or less similar for civilian and military operations.

Another change was the improved cooperation among the various services within the Council Secretariat, including the EU Military Staff, as the number of missions grew and more experience was gained with both civilian and military missions and operations. In this context, the regular crisis management exercises were useful in order to draw all the stakeholders into delivering an ESDP output – including member states and the Commission via the various relevant Council bodies – and to develop updated procedures.

Over time cooperation between the Council Secretariat and relevant Commission services also improved. Both sides understood they needed each other and member states made it clear that they could not accept the two institutions arguing over ESDP.

Cooperation with the UN was also greatly improved following the planning of EUPM. Thanks to this first mission some *ad hoc* contacts were established with UN DPKO. However, this became much more streamlined with the creation of the EU-UN Steering Committee, the close and direct contacts between the Council Secretariat and DPKO at various levels, and the cooperation on the ground. After EUPM, the EU has had to work closely with UN missions in various theatres, such as in the Democratic Republic of the Congo (DRC), Afghanistan and Kosovo.

Also, the cooperation was strengthened at the operational level, albeit limited by overall political problems in the relationship between the EU and NATO. After EUPM's cooperation with SFOR in BiH, some civilian ESDP missions have been operating in the same theatres as NATO military operations (Afghanistan and in Kosovo).

The involvement of Third States in civilian ESDP missions has also been made much easier as framework agreements concerning their participation have been signed with most of them.

The chain of command for civilian ESDP missions was also streamlined as all Heads of Missions report to the Civilian Operations Commander in Brussels. When there is a EUSR for the country/region, he is no longer part of the chain of command, but

can provide 'local political guidance' – a wording which has been harmonised for all ESDP missions, whether they are military or civilian.

The idea of the double-hatting of a EUSR with another function, first experimented with EUPM, was also used afterwards: Pieter Feith in Kosovo was double-hatted as both EUSR and as International Representative, while the EUSRs in both Afghanistan and BiH are now double-hatted also as Head of the EU Delegation.

However, even if a large number of improvements have been made over time, it seems as though some problems linked to civilian CSDP persist: slow and difficult procurement of equipment to the missions, lack of staff for the civilian structures in the EEAS (especially civilian planners) as well as challenging force generation of civilian capabilities. Thus, more than ten years after the planning of EUPM in 2001/2002, the EU still needs to improve its performance in the area of civilian crisis management – as part of the EU's comprehensive external policy after the entry into force of the Lisbon Treaty.

## II. POLICE REFORM AND CONDITIONALITY

### Dominik Tolsdorf

Among the issues that have heavily influenced the relations between the international community's representatives and BiH politicians during EUPM's mandate has been the debate on police reform, which mainly took place between 2004 and 2008. This chapter analyses the negotiations between BiH and EU officials and the approaches that the EU applied in the process. This includes the role of EUPM and the lessons learned from the police reform debate.

### Police reform under Paddy Ashdown

Since the end of the war in Bosnia and Herzegovina, international actors have supported the reform of the police forces. Within this sector three major reforms can be distinguished: the first concerns practical police work including aspects such as accountability and sustainability. EUPM, its predecessor IPTF and other international actors have assisted reforms in this sector through various capacity-building projects. The second dimension of reforms is related to institution-building at the state level, including the establishment and strengthening of the State Border Service (SBS), the State Investigation and Protection Agency (SIPA) and the Ministry of Security. The OHR/EUSR, EUPM, the Commission's delegation and some EU member states (on a bilateral basis) have all been supporting these efforts. The third reform concerns the restructuring of policing areas, which, due to its constitutional implications, became the most controversial police reform project.

In 1995, the police forces in Bosnia and Herzegovina remained highly decentralised, and according to the constitution of the GFAP (General Framework Agreement for Peace in Bosnia and Herzegovina), policing is an entity competence with few shared competences at state level. The ten cantons in the Federation of Bosnia and Herzegovina have their own police structures that are only loosely connected to the federal level. In contrast, there is a unified police structure in the Republika Srpska (RS) with loose ties to the state level. Given that the international community suspected that in both entities there would be a high degree of political interference in the work of the police, the authorities were repeatedly asked to implement police restructuring. In 2003, the European Commission (EC) identified police reform as a key priority for the pre-accession process. A review of the police system, which was prepared by a consultancy firm and which was released in June 2004, argued that the fact that the system consists of fifteen autonomous police services was not a problem *per se*, but that coordination between the various levels should be improved.



The debate gained further momentum when in June 2004 NATO decided to reject Bosnia and Herzegovina's participation in the Partnership for Peace programme on the grounds that the country insufficiently cooperated with the International Criminal Tribunal for the former Yugoslavia (ICTY). The HR/EUSR Paddy Ashdown concluded that this was related to the BiH police structures that were not able to effectively search for indicted war criminals and to tackle organised crime groups. He therefore instructed the establishment of a Police Restructuring Commission (PRC) that was to draft legislation for a 'single structure of policing for Bosnia and Herzegovina under the overall political oversight of a ministry or ministries in the Council of Ministers' and thus a stronger centralisation of the police. In addition, Ashdown requested the implementation of three principles which stipulated that (i) all legislative and budgetary competencies for all police matters must be administered at the state level; (ii) the functional local police areas must be determined by technical policing criteria, where operational command is exercised at the local level (and not at the entity level); and finally, (iii) there should be no political interference with police operations. Thus, by setting such specific guidelines, the OHR opted for a top-down approach in dealing with police restructuring. The debate on the police principles had a significant impact on relations between EU officials and BiH politicians between 2004 and 2007.

The first two principles were from the beginning strongly criticised by Bosnian Serb politicians, who were not willing to give up the autonomy of their own police forces and regarded police restructuring as a constitutional issue. Furthermore, they suspected Ashdown of trying to implement state centralisation and the break-up of the RS' autonomy within Bosnia and Herzegovina. In fact, Ashdown hardly denied this and regarded police centralisation as an important part of the state-building process. However, already in summer 2004, some PIC ambassadors called Ashdown's centralised model into question by referring to similar federal police structures in EU member states like Germany or Austria, which are functional and effective. Since the current police model is enshrined in BiH's constitution, the OHR could not use the Bonn Powers to impose Ashdown's model. In need of political leverage, Ashdown therefore persuaded the EC to regard his police criteria as EU principles and thus 'activated' the tool of SAP conditionality. In this respect, the good relations between Ashdown and Chris Patten, at the time EU Commissioner for External Relations, became important.<sup>1</sup> Upon the High Representative's request, Patten weighed in on the debate and in October 2004 informed the BiH authorities that Ashdown's principles needed to be implemented in the pre-accession process.

When Olli Rehn became new Commissioner for Enlargement in November 2004, he did not call the principles into question. Consequently, until autumn 2007, various EU representatives consistently requested the implementation of the principles. This is surprising since they had never been openly discussed in the relevant political

1. Paddy Ashdown, *Swords and Ploughshares: Bringing peace to the 21<sup>st</sup> century* (London: Orion Publishing, 2007).

committees in Brussels, including the Council's Working Party on the Western Balkans Region (COWEB). It was certainly problematic to declare Ashdown's principles as 'European principles' as this implied that they could have been derived from the *acquis communautaire*, which was not the case.

In Bosnia and Herzegovina, the negotiations in the framework of the PRC in 2004 did not lead to a compromise among local officials. Probably the most controversial issue in the debate remained the reorganisation of police districts: While OHR officials requested that new police districts should also cross the inter-entity boundary line between the Federation and the RS, the merging of police districts was rejected by RS politicians. However, until the end of Ashdown's mandate in January 2006, the OHR adhered to its top-down approach and constantly increased the pressure on the authorities to adopt the principles. By doing so, the OHR underestimated the potential for conflict with Bosnian Serb politicians. As tensions increased, the latter accused Ashdown and the international community (including the EU) of promoting the interests of the Bosniak politicians, which were mostly in favour of state centralisation. After several efforts by the OHR to reach consensus on police reform and shortly before the end of Ashdown's mandate, in October 2005 the leaders of the major political parties signed a statement of intention on a reform. Although it left the issue of new police districts open, it allowed Bosnia and Herzegovina to start negotiations on a Stabilisation and Association Agreement (SAA) with the EU.

Although EUPM Head of Mission Kevin Carty had been a member of the PRC in autumn 2004, EUPM's role in the negotiations was not very prominent. According to Thomas Mühlmann, this was due to the fact that EUPM's leadership missed the chance to mobilise the relevant expertise on police restructuring within the mission in order to better explain the advantages of such a process to the local counterparts. On the other hand, the OHR would have hardly taken the expertise of EUPM into consideration.<sup>2</sup> The OHR perhaps feared that EUPM would be focusing too narrowly on a bottom-up approach in the reform negotiations and thus undermine the OHR's top-down agenda. In fact, EUPM was requested by the Council to foster the local ownership process in Bosnia and Herzegovina as part of its activities. This did not fit in with the political ambitions of the OHR in 2004 and 2005. Although there was scepticism within the mission about the Ashdown principles, EUPM had to support them. It has to be kept in mind that at that time, the EUSR – in order to ensure a 'unified' EU chain of command – was to give guidance to the EUPM Head of Mission. This institutional constellation changed in 2008.

2. Thomas Mühlmann, 'Police restructuring in Bosnia-Herzegovina: Problems of internationally-led Security Sector Reform', *Journal of Intervention and Statebuilding*, vol. 2, no. 1, 2008, pp. 1–22.



## **A new approach from 2006 onwards**

In general, the relations between the OHR and the EUPM were rather strained in the first years, which was also due to personal animosities between the Heads of Mission. This apparently changed when both leaderships were replaced in spring 2006: while the Italian Carabinieri Brigadier-General Vincenzo Coppola took over the post of EUPM Head of Mission, Christian Schwarz-Schilling was appointed as new High Representative/EUSR in January 2006. The latter was requested to support the local ownership process. Since EUPM was regarded by many observers as a weak mission, particularly the Committee for Civilian Aspects of Crisis Management (CIVCOM) pushed for a strengthening of the mission's role. With a new mandate, EUPM's competence was not only strengthened with regard to its role in supporting the fight against organised crime, but also with regard to assisting the police reform process. At the same time, the EUSR/OHR was to play a more discreet role in the future reform negotiations. This new strategy was the result of the 'Comprehensive Review of EU Activities in Bosnia and Herzegovina', which was launched in autumn 2005 under the leadership of Javier Solana, and which identified a lack of coordination among the EU actors in the country as among the key challenges. The review not only led to a strengthening of EUPM's mandate but also a clearer adjustment of the mandates of EUPM, EUFOR and the EUSR in 2006.

The police reform negotiations continued in the Directorate for the Implementation of Police Restructuring (DIPR). However, when Milorad Dodik was re-elected RS Prime Minister in February 2006, he openly put the compromise of October 2005 into question. Being increasingly involved in the negotiations in the DIPR, EUPM tried to depoliticise the process by not focusing too narrowly on the restructuring of the police districts. At the same time, the mission continued to harmonise the police procedures in both entities and to further professionalise the police forces. Vincenzo Coppola regarded the lack of sufficient coordination mechanisms among the police services as one of the crucial weaknesses of the system. He therefore invited the relevant stakeholders to Italy, where they were informed about the functions of the Ministry of the Interior in coordinating police units at the state level. Despite these efforts, the negotiations within the DIPR stagnated as they were overshadowed by the politicised atmosphere in the country: Montenegro's withdrawal from its state union with Serbia and the discussions on the upcoming independence of Kosovo increasingly led Bosnian Serb politicians to formulate stronger calls for a referendum on the independence of the RS. Consequently, the general elections in October 2006 were characterised by a return to nationalistic rhetoric by most political parties, which was further amplified by the verdict of the International Court of Justice in February 2007 that the massacre of Srebrenica was genocide.

The DIPR's work ended in December 2006 with the adoption of a final report, which did not include a plan on the restructuring of the police districts. Besides the lack of consensus among the Bosnian politicians, disagreements among the ambassadors

of the EU member states and the US became apparent in spring 2007. Accordingly, some politicians objected that some ambassadors had considerably departed from Ashdown's police model. The reform debate gained new momentum when Miroslav Lajčák began his work as new EUSR in June 2007 and reinforced the pressure on the Bosnian politicians to reach an agreement. In autumn 2007, Lajčák imposed a controversial decision on the procedures of the Council of Ministers. The harsh reactions of the Bosnian Serb politicians to Lajčák's actions raised great concerns among EU officials in Brussels. Due to the upcoming decision on Kosovo's independence in February 2008 and the parliamentary elections in Serbia in May 2008, the EU's foreign ministers were keen to preserve a stable situation in the region. It thus regarded progress in Bosnia and Herzegovina's and Serbia's pre-accession process as an effective move to ease domestic tensions, and thus to smooth the way to signing SAAs with both countries as soon as possible.

Hence in autumn 2007 Javier Solana and Olli Rehn jointly decided to postpone the implementation of the three police principles and agreed to accept a compromise which had been formulated by the leaders of the major Bosnian parties in October 2007. It envisioned the establishment of seven new police coordination bodies on the state level that did not immediately affect the entity competences over police. Although the compromise was far from Ashdown's principles, it was regarded by the EU as sufficient. This allowed the BiH parliament to adopt two police laws in April 2008, which enabled the country to sign the SAA in June 2008. The implementation of the police laws was rather slow, and the Progress Report of October 2012 stated that the institutional development of several police agencies were undermined by a lack of political agreement on their future.

### **Lessons from the police reform process**

Although the EU was not successful in forging a comprehensive police reform in Bosnia, it has over the years demonstrated an ability to draw lessons from its activities and its presence in the country. These include:

#### *(a) The ability to change its policy approach*

The example of the EU's support for police reform demonstrates that the EU did not pursue a coherent approach towards the Bosnian authorities between 2004 and 2007, when the main political negotiations were conducted. A crucial factor that contributed to this incoherence is the fact that the EU was for many years rather indecisive as to whether it should apply top-down or bottom-up approaches in its relations with the Bosnian authorities. This incoherence was mirrored in the policy approaches pursued by the EUSRs in these years: With the backing particularly of the US and British ambassadors, Paddy Ashdown pursued a top-down agenda in Bosnia. In contrast, Christian Schwarz-Schilling tried to support bottom-up processes. The position of the EC was somewhat ambiguous: while it was called upon by Patten and

Rehn to support the introduction of Ashdown's principles, in negotiations with the Bosnian authorities, EC officials reportedly showed more flexibility with regard to their interpretation.

During the reform negotiations, the EU had to acknowledge that issues that are related to the constitutional structure can hardly be imposed top-down but must be pursued 'from bottom up'. In the first years, the EU's leadership (particularly Paddy Ashdown, Chris Patten, Olli Rehn and Javier Solana) clearly underestimated the fact that Ashdown's principles touched upon Bosnia's constitutional order which had been created under the GFAP. The stagnating debates on constitutional reform in the country demonstrate how sensitive this area is. Bosnia's fragmented police model is the result of the GFAP. Without constitutional reform, the only option to instigate reform in the police system is to persuade BiH politicians that gradual change is in their own interest. However, such a change in mindset cannot be imposed from above but must be supported 'bottom-up'.

In the case of police reform, it was in the end EUPM which helped the EU to save face: once requested to play a more active role in the reform process, it tried to depoliticise the negotiations by focusing on the establishment of coordination mechanisms. The mission was thus able to contribute to a modest police reform. In the end, the EU accepted that Ashdown's principles will not be implemented in the near future. This concession certainly undermined the credibility of EU conditionality, which was no longer impartial but open to political negotiations. The EU seems to have drawn the lessons from the 'negative' experience with police reform: since 2008, the Union has become much more cautious about setting 'hard' conditions in the SAP and has preferred instead to give recommendations in sensitive policy areas.

### *(b) Organisational learning*

During EUPM's mandate, the EU demonstrated its ability to apply organisational learning. Since the EUSR was for a long time in EUPM's chain of command, the relationship between both EU actors was problematic. As EUPM regarded itself as a technical mission, it often feared that it might become too involved in the political affairs of the HR/EUSR. This became particularly apparent during the mandate of Paddy Ashdown. The intra-institutional relations changed in August 2008 when the Council of the EU dismissed the EUSR's role as an intermediary between EUPM and Javier Solana. Since the establishment of the Civilian Planning and Conduct Capability in Brussels, the Civilian Operations Commander has exercised command and control at strategic level for the conduct of EUPM and directly reported to Javier Solana on the mission. Whereas the decision weakened the position of the EUSR/HR *vis-à-vis* EUPM, it allowed Brussels to more strongly micro-manage the mission's work and to prevent personal animosities between Heads of Mission from affecting the EU's presence 'on the ground'. Finally, Paddy Ashdown tried to use the SAP's conditionality in order to increase leverage in the state-building process. The decision to decouple the position of the EUSR from the OHR might prevent the EU from

mixing policy instruments that are not complementary. This can be regarded as a lesson learned from the police reform process as well.

## **Conclusion**

The EU has since 2008 opted for strengthening the local ownership process in Bosnia. This was emphasised with the decision to decouple the offices of the HR and the EUSR and to merge the latter with the EU delegation. The new EU presence in Bosnia, i.e. the EU delegation/office of the EUSR, seeks only to apply EU conditionality in order to foster reforms that are necessary for the pre-accession process. A lesson from the police reform process is that when setting SAP conditions, the EU should ensure that they can be derived from the *acquis communautaire*, are applied in all EU member states and thus can really be considered as 'European standards'. The Union will undermine its credibility as a 'transformative power' if it has to revise its benchmarks later.

Another challenge of which the EU will need to remain aware is the fact that regional circumstances will always affect the EU's efforts in Bosnia and Herzegovina. In the negotiations on police reform, once the EU came under pressure because of the upcoming independence of Kosovo, it had to finally slacken the reins with regard to the police principles and back down to the Bosnian Serb opposition. In the future, it is likely that RS politicians will continue alluding to Kosovo in order to put the EU under pressure.

### III. SUPPORT TO THE FIGHT AGAINST ORGANISED CRIME AND CORRUPTION: BETWEEN STANDARDS, STRUCTURAL REFORM AND PRAGMATISM

#### Tobias Flessenkemper

In late November 2002, on the eve of the official launch of EUPM, Ministers of Interior from EU member states and the Western Balkans countries met in London to issue a joint statement – ambitiously called ‘Defeating Organised Crime in South Eastern Europe’.<sup>1</sup> The document laid out an agenda and priorities for action in an area which had become a prime concern after the end of the Yugoslav wars of dissolution.

The Zagreb summit in 2000 had started to pave the way towards EU accession for the region by framing the Stabilisation and Association Process (SAP). With the emergence of a clearer post-Yugoslav political order in the region and the end of the Tudjman and Milošević regimes, a new phase of engagement in and with the region by EU member states commenced.

This new phase painfully exposed the legacy of a decade of violence and war, the damage that the rule of law had suffered as well as widespread corruption in the public sphere. Although not formally linked to the launch of EUPM, the London statement marks the beginning of reinforced efforts to curb criminality in and emanating from the region. For EUPM in Bosnia and Herzegovina the programme formulated in London and other EU and international fora would remain a key point of reference.<sup>2</sup> The increasing focus on the fight against organised crime and corruption shaped the evolution of the mission’s mandate and approach over a decade.

#### The search for standards

EUPM’s core mandate was to initially ‘establish sustainable policing arrangements under BiH ownership in accordance with best European and international practice’. The Council Joint Action of March 2002 remained relatively silent with regard to organised crime and corruption. In the attached ‘mission statement’ a reference to corruption can be found, however, largely attributable to a normative logic of improving police performance in the country as part of a peacebuilding effort.

1. The London Statement is not an official EU document. It can be found at: <http://www.stabilitypact.org/org-crime/london-statement.pdf>.

2. The initial framework of action to support the fight against organised crime was provided by the Stability Pact for South Eastern Europe. See: <http://www.stabilitypact.org/org-crime/default.asp>.

However, the lack of a clear definition of what should be understood by ‘best European and international practice’ impacted on the ability of EUPM to have solid legal references to fulfil its mandate.<sup>3</sup> The diversity of the legal and operational traditions and structures governing policing within the EU posed difficulties, notably when reviewing pieces of legislation which governed the structure of the Ministries of Interior and police agencies as well as when advising on the interaction between the political and operational parts of the law enforcement sector.

As an illustration, one of the key endeavours of EUPM was to minimise undue political interference in police operations by creating a clear division of tasks and structure between the ministers on the one hand and the heads of the police bodies, on the other. This was a particularly pertinent issue against the background of the Yugoslav heritage in terms of law enforcement, which was characterised by an absence of checks and balances and a political approach to policing. Problems were exacerbated by the political division of the security and law enforcement sector among the three main nationalist parties already in 1991<sup>4</sup> and the 1992-1995 war itself. The system was far removed from principles of democratic policing – the police was seen by politicians solely as an instrument of oppression and control. Most notably war and post-wartime political elites maintained links to criminal networks, for instance as tools to circumvent international embargos on certain goods during the war. The legacy of the war thus left the country with a corrupt, politicised and fragmented security sector.

The UN IPTF and the OHR introduced initial elements of a separation between the ministerial level and the police administration, just before the start of the mission in 2002. It was, however, left to EUPM to make the system work and to support depoliticisation. This was also reflected in EUPM’s initial mission mandate, which envisaged *inter alia* that after three years of EUPM, police in Bosnia and Herzegovina should be able ‘to undertake criminal investigations of corruption cases regardless of political implications’.<sup>5</sup>

However, this delineation could not be achieved in practice by the legislation imposed by the OHR on all police bodies and, when legally achieved, its degree of implementation varied greatly. In recognition that there was no *acquis communautaire* governing the matter, EUPM turned to international standards applicable to capacity building with specific emphasis on possible standards regulating the issue of democratic oversight and operational autonomy of law enforcement agencies.

3. The author would like to thank Eric Fréjabe for his valuable input on this topic.

4. See Marko Attila Hoare, *The History of Bosnia: From the Middle Ages to the Present Day* (London: Saqi Books, 2007), p. 347.

5. Council Joint Action of 11 March 2002 on the European Union Police Mission (2002/210/CFSP), Annex: Mission Statement for EUPM.



In this context the Council of Europe did highlight the importance of police operational independence, professionalism and depoliticisation.<sup>6</sup> Essentially, the Council of Europe stressed the need for the police ‘to remain neutral and not be subject to political influence.’ The Council of Europe European Code of Police Ethics enumerates basic principles such as accountability and civilian supervision. Part of the Code could be interpreted as promoting operational independence. The Code stresses for instance the necessity for recruitment to be merit-based. However, the Council of Europe Code does not elaborate on structural arrangements, which would ensure politically unimpeded police activities in the fight against organised crime and corruption. It states that ‘each state must set up its own specific legal framework for the functioning and supervision of a democratic police force.’

The OSCE Guidebook on Democratic Policing specifically touched upon the necessary separation between the representative of the government having the responsibility for policy setting, oversight and review, and the police leadership who exercised competency and control over operational management.<sup>7</sup> Again, this guidance remains too general for the specific cases with which EUPM was faced.

In sum, while the wording of the mandate was appropriate for technical and operational advice, it proved to be more difficult to derive standards with respect to institution building that would untangle ‘the widespread and enduring collusion between politics, business and organised crime.’<sup>8</sup>

### **An executive episode and the emergence of pragmatism**

As the mission was slow in addressing those dilemmas criticism started to mount during the second year of mandate implementation. Criticism reached its peak in 2005 and the mission risked losing the support of member states and the trust of and credibility with domestic partners.<sup>9</sup> There was an increasing demand for the EU to deliver ‘concrete results’, i.e. arrests and seizures etc., in the fight against organised crime. The tension between a value- und standards-driven approach and robust and result-oriented intervention came to breaking point with EUFOR *Althea*’s launch in Bosnia and Herzegovina in December 2004.

6. Main reference documents are: Recommendation Rec(2001)10 of the Committee of Ministers of the Council of Europe to Member States on the European Code of Police Ethics adopted on 19 September 2001; Report of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe, dated 2 June 2005, Ref. Doc 10567.

7. OSCE, *Guidebook on Democratic Policing*, by the Senior Police Adviser to the OSCE Secretary General, May 2008, 2<sup>nd</sup> edition.

8. Antonio Maria Costa, Preface, in: *Crime and its Impact on the Balkans and affected countries*, United Nations Office on Drugs and Crime (UNODC), March 2008, p. 5.

9. See International Crisis Group, ‘Bosnia’s stalled Police Reform: No Progress, No EU’, *Europe Report* no. 164, 6 September 2005.

Following on from NATO's SFOR operation, EUFOR *Althea* was, *inter alia*, tasked to support the fight against organised crime. With an executive mandate under chapter VII of the UN Charter, *Althea*'s leadership interpreted the task in a proactive way. As of the beginning of 2005, the EU's military mission started to undertake its own operations targeting suspected criminal groups and undertakings. This led to considerable difficulties as EUFOR *Althea*'s soldiers were ill-equipped for the task and acted outside the existing legal framework of Bosnia and Herzegovina. During 2005, the problem was identified and the PSC undertook a comprehensive review of the tasks of the three CSFP/ESDP instruments in the country. In the run-up to the extension of EUPM's mandate, which expired on 31 December 2005, the PSC agreed in September to better delineate the work of the EUSR, the EUPM and EUFOR *Althea* in support of the fight against organised crime and corruption. The overall successful reorganisation of mandates was aided by the fact that the PSC acted as the single political and strategic body guiding the instruments on the ground.

As of 2006, EUPM's mandate was refocused on two main tasks: support to the police reform process and support to the fight against organised crime and corruption. The Council Joint Action firmly put EUPM in the centre of the EU's assistance efforts to enhance the effectiveness of the fight against organised crime and at the same time proposed a more proactive formula for the strengthening mandate:

'Under the direction of the EUSR, the EUPM will take the lead in the coordination of policing aspects of the ESDP efforts in the fight against organised crime, without prejudice to the agreed chains of command. It will assist local authorities in planning and conducting major and organised crime investigations.'<sup>10</sup>

This reorientation of the mandate was complemented by the adoption of Common Operational Guidelines for EUPM and EUFOR *Althea* for the support to the fight against organised crime and corruption. As a historic first the guidelines require any military assistance to local authorities to be authorised by EUPM. The guidelines remained in place until the conclusion of EUPM's mandate in June 2012 and were regularly reviewed. While from 2006 to 2008, the EU coordination structures regularly managed to provide practical support to local authorities, such activities progressively declined with the reduction of EUFOR and growing local capacity. The interplay of a police advisory role and the mobilisation of military assets, in particular those supplied by the Integrated Police Unit in EUFOR, in support of domestically owned investigations and operations, provided a useful formula, yielding concrete results in the fight against organised crime and corruption.

This was further facilitated by a changing role of the mission itself. EUPM was gradually transformed from a police into a rule-of-law mission with an increasing diversity of expert staff. The mission established a unit to work on the relations between police

10. Council Joint Action 2005/824/CFSP of 24 November 2005 on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH).



and prosecutors, and hired advisors for questions related to the penitentiary, money-laundering and financial investigations. The underlying idea was to extend the assistance and advice of the mission to all elements along the chain from ‘crime to prison’.

From 2006 to 2008 EUPM managed thus a surrogate sustainability mechanism that on the one hand brought together the EU ‘family’ and on the other hand the relevant law enforcement agencies as well as the State Prosecutor’s office. Throughout this period investigative and operational cooperation inside the country increased. While Republika Srpska authorities accepted that the EUPM could play a coordinative role, they did not accept that state-level institutions could play such a role, neither the SIPA nor the Ministry of Security nor the State Prosecutor. Yet, the transfer of coordination tasks to domestic authorities was the declared exit strategy for the mission.

The initial aspiration was to stop-gap the ineffectiveness of the law enforcement sector by increased EU engagement for a limited period until an overall reform would provide for ‘sustainable policing arrangements’. In mid-2008, the police reform negotiations came to an end. They left, however, a largely unreformed policing system in place. Thus, a further extension of the formula of assistance was required to make the existing policing system work better and to find avenues to ‘sustainability’ other than structural reform.

### **Intermezzo: visa liberalisation**

In early 2008, Ministers of Interior of the European Union gave the green light to the European Commission to launch a visa dialogue with the countries of the Western Balkans with the aim of granting visa-free travel to the Schengen area. The visa dialogue reset the agenda with regard to the fight against organised crime and corruption. Detailed road maps laid out requirements and benchmarks which each country of the region, including Bosnia and Herzegovina, were expected to fulfill to gain visa-free travel for their citizens. For Bosnia and Herzegovina road map requirements included many aspects, which the mission was already struggling to implement, They included obvious prerequisites for a successful and sustainable fight against organised crime such as the establishment of countrywide police information systems, data exchange, border information systems and an upgraded legal framework for criminal investigations. Through the road-maps the Commission formulated a set of practices and standards which the mission was missing at the beginning of its work.

The whole visa liberalisation process was to be led by the European Commission. This was a positive change since conditionality was no longer formulated by international political actors on the ground, as was the case with police reform earlier. It also meant that conditions, although country-specific, remained harmonised throughout the region. With regard to concrete results in the fight against organised crime, regional cooperation needed to be fostered which resulted in increased cross-border investigation and operational activity of the law enforcement sector. Most notably,

the involvement of member states was limited to the relevant Council bodies, in particular COWEB, in Brussels. For EUPM, as a CSDP mission, the Commission-led process proved highly beneficial as it could focus on its technical expertise and not be considered an interpreter of political conditionality at the whims of member states preoccupied with their individual concerns.

### **Are the policing arrangements sustainable?**

Nevertheless, the structural fragmentation of the policing system of Bosnia and Herzegovina remained the key limiting factor for ‘sustainable’ arrangements. In the absence of any political agreement or willingness to change the constitutional division of competence for law enforcement and with the decision of BiH political leaders in spring 2008 to postpone any such decision to the distant future, the onus for leading the fight against organised crime and corruption shifted to the existing law enforcement organisations. In 2008, six years after the mission started, progress in investigative capacity and operational capability was noticeable and was duly registered. However, the progress was often to be found on the level of individual police agencies and did not come as the result of systematic joint endeavours. While the visa road-map informed administrative and legislative efforts, for the first time prominently coordinated by the state-level Ministry of Security, EUPM supported their implementation by the various law enforcement agencies.

The visa liberalisation process, however, removed political obstacles for police cooperation in the country in the 2008-2010 period as all political forces in Bosnia and Herzegovina supported the aim of visa free travel. However, once the goal of visa liberalisation was achieved in late 2010, the cohesion of the law enforcement sector in jointly facing the challenges of organised crime and corruption seemed to weaken. This was also a reflection of the antagonistic politics that characterised the period after the 2010 general elections.

On the positive side, the Directorate for Coordination of Police Bodies of Bosnia and Herzegovina, the main institutional innovation of the police reform process, had slowly taken root. Although the Directorate is legally limited to the coordination of police bodies for crime fighting and border control at state level, it has the key role in international police cooperation, an essential element in the fight against organised crime, including for the police of the entities. However, no systemic and institutionalised cooperation mechanism was in place. The voluntary nature of cooperation among different levels of law enforcement remained the main feature of the fight against organised crime and corruption. In combination with persistent political control over the security sector, it would be difficult to broaden the space for further positive developments. Yet the decision to liberalise the visa regime with Bosnia and Herzegovina entailed a logic that the system had sufficiently matured, also in comparison with the neighbouring countries. The question of sustainability was thus primarily a political one, providing EU member states with the opportunity

to reflect about the opportunities and limitations of civilian crisis management to support the fight against organised crime and corruption.

## **Conclusion**

EUPM was deployed as a civilian crisis management operation under the CSDP. One of the mission's objectives was to support the Stabilisation and Association process with the aim of the eventual EU accession of Bosnia and Herzegovina. In this respect the mission worked closely with the European Commission in the country to complement Community assistance projects, including in the area of the fight against organised crime and corruption. The principal aim, however, was to contribute to the peacebuilding and stabilisation efforts in the country and to minimise risks for the European Union and its member states as enumerated in the European Security Strategy. The third aim of the mission was to advance the European identity in the area of foreign and security policy. By 2010, in all three aspects progress could be registered and was duly noticed.

The fragmented structure governing police and the politicisation of security matters remained in place. The inherent limitations affecting the fight against crime and corruption are, however, a reflection of the root causes of the conflict and crisis of Bosnia and Herzegovina. The mission was not designed to have impact on these issues. The mission could only help to alleviate symptoms of the crisis by assisting a normalisation of police work and facilitate steps towards converging with European standards. From a civilian crisis management perspective the achievements of the police services in Bosnia and Herzegovina are considerable as the country's law enforcement services are no longer the source of insecurity, systematically implicated in criminal acts. They have become able and willing, within the margins defined by domestic politics, to perform their duties.

With the conclusion of EUPM, the EU transformed its post-war and crisis management assistance towards an assistance embedded in the framework of the (pre-)accession process. The mechanisms to fight against organised crime and corruption are not at the level required for EU member states. In the framework of the instrument for pre-accession assistance (IPA), the BiH authorities, EUPM and the EU Delegation jointly designed a set of follow-on technical assistance measures with the aim to support sustainability. In order to remain politically engaged in supporting the development of law enforcement in Bosnia and Herzegovina a special section has been created in the Office of the EU Special Representative. Whether these instruments and the EU integration process will have sufficient leverage over domestic authorities to secure police operational independence, enhance a high level of professionalism and foster effectiveness in order to entrench democratic values, accountability and the rule of law remains to be seen. Otherwise, further progress in the fight against organised crime and corruption in Bosnia and Herzegovina will remain unlikely.

## IV. LESSONS FROM EUPM: A LEGAL APPROACH

### Eric Fréjabue

EUPM provided its international experts with legal assistance in order to anchor their technical recommendations in the domestic legal regime and ensure consistency in a complex and fragmented legal framework governing policing. Legal assistance was also provided in the area of legal and regulatory harmonisation by bringing together local partners to achieve countrywide agreements on police-related matters to implement parts of the EUPM mandate related to police reform.

This chapter draws on the lessons learnt in those two areas. While the first part analyses the working methodology with local counterparts which was used by EUPM, the second part highlights the challenges which stemmed from the implementation of the legal aspects of police reform.

The main sphere in which EUPM was connected to local authorities was the revision of legislation covering areas ranging from the fight against corruption to data exchange, forensic expertise or interception of telecommunications. As a result, secondary and primary pieces of legislation were assessed, reviewed and proposals were made to amend them, always in close coordination with local counterparts at all level of government. Personnel appointed by the national authorities were either civil servants or police officials.

### Work methodology with local counterparts

The working methodology was very much dependent on the result sought and the nature of the piece of legislation under consideration. While the review of legislation applicable only to specific law enforcement agencies<sup>1</sup> (LEAs) would not necessarily call for a coordinated approach with others (as was the case for example of the revision of the structure of the agency entrusted with the task to fight corruption) in most of the cases close coordination with other LEAs, was pivotal to ensure that the fragmented legal framework governing police bodies would remain harmonised and compatible with one another. This was particularly the case when a ranking system was designed when revising the laws governing the rights and obligations of police officials.<sup>2</sup>

1. The term 'Law Enforcement Agency' is broader than the term 'police body', as the review of legislation extended beyond the remit of police bodies and Ministries of Interior and also concerned agencies such as the Indirect Tax Administration or the Agency for Prevention of Corruption and Coordination of the Fight against Corruption.

2. All police bodies, except for the three state-level agencies which shared one law, had the rights and obligations of their police officials governed in their respective Laws on Police Officials. Such laws were originally designed by EUPM for state-level bodies and progressively extended to other police bodies. They established *inter alia* a meritocratic system (including a proper ranking and promotion system) which left less room for political interference in the recruitment and promotion procedures.

In these cases, the working methodology was essentially based on the principle of active cooperation with the national authorities either at the request of individual LEAs or upon the initiative of EUPM or other international stakeholders. Typically, the *modus operandi* was that following the identification of insufficiencies either at the operational level or in the legislation proper, EUPM would engage in close cooperation with national and international stakeholders, and into a consultation phase with senior officials of the concerned LEA or, in some cases, at the ministerial level. Such consultation usually translated in the appointment of experts from the LEAs in question. The experts would then take part in working groups involving one or more, sometimes all (as was the case for the revision of the law regulating rights and obligations of police officials) of the agencies.

Another case scenario was that EUPM legal expertise was requested by local authorities. This was for example the case in the framework of a domestic working group tasked by all the Police Directors to harmonise the work of Professional Standard Units (PSU) to enhance accountability within the police. In this context, the EUPM Legal Team, the Anti-Corruption Team and the Inspection Team provided support and advice. While attempting to keep the harmonisation to a maximum, local participants proposed significant procedural and legal changes aimed, for the most part, at strengthening the authority and status of the PSUs in all police bodies. In the course of the process which lasted for about ten months, EUPM teams provided support in drafting parts of the Book of Rules prior to and during all the sessions.

EUPM response in this type of case was first based on researching the applicable international standards. Such findings were shared in-house and the best way in which to respond to the request was discussed in the framework of internal and, when the need arose, of interagency coordination meetings. In this particular case, the Book of Rules was left pending at the last session of the domestic working group held in the spring of 2011, as some of the proposals could not be implemented due to the fact that opposition was encountered to plans to change primary pieces of legislation governing the structure of the police. Amending the laws first was a legal precondition to introducing any changes to the Book of Rules.

This example is typical of the difficulties encountered when attempting to engage in capacity-building reform on different fronts at the same time, unless a clear political understanding is reached beforehand to ensure that the sequence of changes proposed takes into consideration legal constraints.

### **Challenges deriving from interaction with local realities**

EUPM Legal Team was asked to comment on draft pieces of legislation and amendments, sometimes at extremely short notice. This made it necessary to devise an effective response mechanism to allow an accurate and timely assessment of the proposed changes for onwards processing through the chain of command.

The quality and dedication of the national legal advisors and translators was a pivotal element of this mechanism. In general the process unfolded as follows.

While a first screening of incoming legal documents was performed by the national legal advisors, problematic documents were then sent for summary translation to allow the international legal advisors to provide first-hand comments, while the full documents were translated when there was a need to have a more thorough analysis. Such work methodology required a good internal organisation, the compilation of an up-to-date legal library and a good management of the available resources. Retention of local and international staff having the background and technical knowledge of the legal issues at stake was also key to ensure consistency and accuracy in providing legal advice.

Similarly, while taking part in working groups, it was essential to ensure a qualitative and timely interpretation of the issues being discussed. In this context a thorough understanding of the legal tradition of the country, as well as a holistic approach to the legal framework, were critical for the international legal advisors to rapidly and accurately form their opinions and be able to deliver in a timely fashion when the need arose.

EUPM launched initiatives to counter the natural tendency of police bodies to amend their respective legislation governing policing in relative isolation.

A topical example of this trend was the so-called Law on Police Officials Consultation Process which included representatives of all LEAs from November 2010 to June 2011. The aim of this process was twofold: first, to ensure harmonised amendments to the laws in question to address legal, practical and operational challenges faced by most if not all of the LEAs. Second, to foster the creation of a pool of experts which could then tackle similar problems in other pieces of legislation governing police work once EUPM's mandate had expired. The latter was designed to build up on the contributions of mid- to senior-level officials and create an informal, yet effective, forum of discussion covering police and associated agencies.

EUPM also played a key role in bringing key personnel involved in legal drafting together by organising a series of training courses, notably on legal drafting techniques and EU integration. The intention was to trigger a certain *esprit de corps* to transcend the fragmented structure of the police forces, at least at the working level.

While it is still premature to assess the long-term effect of these initiatives, they were all generally well received by the participants.



## **Evaluation of the work with local authorities**

Generally EUPM was perceived as having a fairly holistic approach to the police system in the country. Due to the fragmented structure and competences of the police forces, this approach was not shared widely by individual police bodies which had a tendency to focus on their own particular problems without necessarily having a comprehensive understanding of the issues.

Discussions would be engaged occasionally between EUPM and local counterparts to broker an agreement on substantial changes to be enshrined in laws. Similarly, LEAs would coordinate to counter proposals which were deemed inappropriate. All parties were fully aware that, ultimately, the final decision would come from the political sphere, be it at the ministerial level or during the adoption procedure before the parliaments.

At the working level, the professional competencies and educational background of the local participants was generally good and their commitments genuine. Few however demonstrated a truly proactive attitude and undue influence, mainly but not exclusively political, was notable on some occasions.

Undue influence at the working level took the form of reluctance to share documents and information on time. In other occurrences, some police bodies challenged the very principle of having a harmonised legislation on core issues. In most cases, obstruction occurred in response to measures perceived as strengthening state-level agencies, or centralising police competences or prerogatives. In other cases, objections were driven by personal or community interests.

## **Legal challenges of police reform in Bosnia and Herzegovina**

### **Reasons for the legal reform of the police**

The fragmented police system in Bosnia and Herzegovina impacted *inter alia* on police operations and cost effectiveness. Coordination and cooperation was poor or, when it existed, was based on personal relations rather than on institutionalised mechanisms.

While it would be inaccurate to say there was no cooperation between the police bodies, it was clear that the legal framework was not conducive to operational coordination and failed to foster an institutional framework to allow fluid cooperation to exist.

In recognition of the fact that the ability to fight effectively organised crime was affected by the lack of a clear legal framework governing, for example, the exchange of information between police bodies, a two-way approach was designed to address those flaws structurally. This approach was conditioned to a thorough legislative

review of the framework governing policing and was complemented by technical and operational advising.

This situation led to the EC-funded functional police review, carried out by the International Centre for Migration Policy Development. An assessment report was finalised and submitted at the end of May 2004. The review assessed the financial sustainability of the BiH police forces as well as whether the organisation of the relevant police authorities made it possible to efficiently conduct the police functions. The review paved the way for a ‘top-down’ reform.

In parallel to a ‘top-down’ approach, a ‘bottom-up’ approach was proposed. Both approaches were seen as complementary as the latter would take over in the event that the top-down approach was not satisfactorily implemented – as proved in practice to be the case, as indicated below.

### **The ‘top-down approach’**

The first part of the legislative response to the systemic flaws was a top-down approach underpinned by an ambitious police reform plan aimed at achieving, *inter alia*, a fairly high degree of centralisation of the police structure of the country.<sup>3</sup> This approach was strongly supported by the international community as of 2004, as a part of the Stabilisation and Association Process.

This approach was significantly watered down, particularly after the general election of October 2006, and eventually translated into the adoption of two laws creating state level-based institutions<sup>4</sup> in 2008. A political agreement could only be reached on the creation of new bodies at the state level with no or limited competences over the other police bodies at cantonal, entity and Brcko District levels. In addition, the creation of specialised agencies generated a risk of duplication, as was the case with the Agency for Forensic Examination and Expertise of BiH, or made it difficult for them to impose themselves as new players in an already fragmented system at state level.

Without going into a detailed analysis of the dynamics of police reform,<sup>5</sup> the full implementation of police reform would have necessitated constitutional changes due to the domestic legal framework.

3. This approach was underpinned by three main principles: (1) Legislative and budgetary competencies for all Bosnian police matters must be at the state level; (2) No political interference in any operational police matter; and (3) The establishment of local police areas should be done in accordance with purely professional technical criteria.

4. The BiH Parliamentary Assembly adopted on 16 April 2008 a set of two laws: the *Law on Independent and Supervisory Bodies of Police Structure of BiH* and the *Law on the Directorate for Coordination of Police Bodies and Agencies for Support of Police Structure of BiH*. The two laws came into force on 14 May 2008.

5. An overview on police reform at large can be found in the report which followed a seminar held on 4-6 June 2008: ‘Seminar on police reform in Bosnia and Herzegovina, security sector reform and the stabilisation and association process’, Center for European Perspective (CEP), 2009.



Indeed, the BiH Constitution, as part of Annex IV of the General Framework Agreement for Peace in Bosnia Herzegovina,<sup>6</sup> known as the Dayton Peace Accord, entrenched a division of police competences between the state and the two entities. While the state retained general competences over matters such as immigration and international and inter-entity criminal law enforcement,<sup>7</sup> the entities were to ‘[...] provide a safe and secure environment for all persons in their respective jurisdictions, by maintaining civilian law enforcement agencies operating in accordance with internationally recognised standards and with respect for the internationally recognised human rights and fundamental freedoms [...] taking such other measures as appropriate.’<sup>8</sup>

In addition, each of the ten cantons, together with Brcko District, were vested with specific police competences. Each of the ten cantons of the Federation had an autonomous Ministry of Internal Affairs, and laws regulating its own police. The Federation Ministry of Interior was not superior to cantonal police. It had jurisdiction only in select areas such as terrorism and inter-cantonal and organised crime. The definitions of the type of crimes falling in the ambit of the respective police bodies were further elaborated in the pertinent State, entity and Brcko District criminal codes.

This division enshrined in the Constitutions paved the way to the present fragmentation of the police structure.

As a result, any attempt to rationalise, and essentially centralise, the police structure inherited from the Dayton Peace Accord would have resulted in necessarily changing Annex IV and by extension the Entity and Cantonal Constitutions, including the Brcko District Statute.

In this context, the constitutional changes which would have been necessary to reorganise the police proved too ambitious at the time this reform was pursued and thus ultimately led to the failure of this approach.

### **The ‘bottom-up approach’**

The bottom-up approach was originally triggered by the initiative of a select few local authorities at the state level and then was taken over by EUPM in a more systemic fashion, as of 2006. It was essentially designed to ensure an acceptable level of harmonisation between the legislation of the 16 police bodies (the State Investigation and Protection Agency, Border Police, the Directorate for Police Coordination at state level, 10 cantonal police bodies, the Federation Ministry of Interior, Brcko

6. ‘The General Framework Agreement for Peace in Bosnia and Herzegovina’, December 1995. See: [http://www.ohr.int/dpa/default.asp?content\\_id=380](http://www.ohr.int/dpa/default.asp?content_id=380).

7. Art. III para 1 sub items f) and g) of Annex IV of the General Framework Agreement.

8. Article III para 2 sub item c) of Annex IV of the General Framework Agreement.

District and the Republika Srpska Ministry of Interior) to enhance the compatibility of *inter alia* the ranking, education and promotion systems, disciplinary matters, and strengthening management and administration of police services. The idea was to ultimately improve cooperation and coordination mechanisms, enhance accountability and foster operational efficiency.

However, the diversity in size, competences and institutional needs of the police bodies impeded the full harmonisation of key pieces of legislation. This state of affairs was revealed, for example, when proposing that police officials apply for promotion to a police body other than the one of origin. The idea was to: (i) motivate personnel by increasing promotion opportunities throughout the country, and (ii) benefit the system as a whole by promoting the best elements. In addition, such a proposal would have enhanced the multiethnic composition of the police bodies, as advocated in post-war agreements such as the Bonn-Petersberg Agreement<sup>9</sup> and would have minimised the risk of corruption by ensuring that police officials were periodically rotated. Small Cantons however objected to this solution for fear that they would have to bear the financial burden of the recruitment and training of the officials in question and see them apply to and be ultimately promoted in another police body.

Similarly, efforts were made to ensure that police positions are filled and promotions granted on the basis of competence and merit. From the early days of the certification undertaken by the UN-led International Police Task Force (IPTF) in the aftermath of the war, the depoliticisation of the police has been a principle underpinning the legislation governing the functioning of the police.

Despite the creation of specific legal mechanisms, political interference took place, thus undermining the safeguards provided in the laws. Political interference took for example the form of criticisms voiced by a number of political parties, relayed by Ministers of Interior, against the institution of the Independent Boards. Such bodies were designed to play a key role in the appointment, professional evaluation and discipline of the Heads of the police bodies and were a pivotal element in the check and balance mechanism in place in the country.

At the end of the EUPM mandate, harmonisation was achieved to a large extent but remained dependent on the willingness of the local authorities to cooperate. One significant change in one of the many laws and regulations would defeat the whole purpose of the exercise.

The harmonisation of the legal framework was well received by the local counterparts as long as it did not hinder political interests. However a different fate awaited the changes proposed by EUPM, notably to the legislation governing the structure of the police bodies, and aiming at minimising undue political interference. These changes were perceived by some, and rightfully so, as eroding the possibility of political con-

9. Bonn-Petersberg Agreement on Restructuring the Police, Federation of Bosnia Herzegovina, 25 April 1996.

trol over operational policing. As such these changes proved difficult to adopt and even more difficult to implement.

It is notable that, as of spring 2011, a relatively general tendency to delay the implementation of EUPM's advice or not respond to requests for information could be observed within most of the local counterparts. This trend coincided with the quasi-official news that the mission would definitely close.

By definition, the outcomes of political changes are hard to foresee from the start, as political figures and parties can change overtime. However a thorough analysis of the political past of a country can be instrumental in getting a sense of what can be achieved and by what timelines, since mentalities and related dynamics are usually inherited and can significantly change only over several generations. Practice indicates that the police system in Bosnia and Herzegovina is characterised by a general tendency to stick to the rules when they exist, which allows for little flexibility. The second main characteristic is that practitioners rely to a large extent on personal relationships to make the system work, as opposed to entrenching the system in formal mechanisms by seeking for example the institutionalisation of information exchange mechanisms. In short, failing to recognise that the Bosnian political system, structured by the Dayton Agreement, was built on a complex, decentralised, multi-layered and overall mainly ethno-political power-sharing model impacted greatly on the outcome of the reforms.

Learning from the limits of the bottom-up and top-down approach, at the very end of its mandate EUPM took the view that no matter the legislation and structure governing the police bodies, compliance with EU *acquis* and the efficiency of the police forces were the only valid criteria.

The reference to the *acquis* had increased throughout the lifespan of EUPM, and particularly towards the end, in the areas where such *acquis* existed, such as asylum and immigration. This paved the way to a full ownership approach in the framework of the European integration process and ultimately the termination of EUPM and the handover to the EUSR and IPA project. However, most of the capacity-building efforts could not be based on any *acquis* as the latter does not touch upon the structure of the Ministries of Interior *per se*.

In sum, the achievements of legal reforms proved to be almost entirely dependent on the political factor. When negotiating mission invitations and mandates, a clear understanding of the host country's top political interests and internal dynamics should be sought to anticipate areas where political obstruction might be encountered in an attempt to overcome such obstacles at an early stage before engaging legal reforms.

## Conclusion

A highly fragmented structure governing police matters, a generally high level of politicisation and a lack of a shared vision regarding the direction of the country by the main political leaders were among the main challenges that EUPM faced in implementing legal and regulatory reforms.

Shortly before and after the closure of EUPM, there were increased indications that what has been achieved so far is fragile and is being challenged. Attempts are being made in some quarters to revert to political control over the operations of the police.

Developments in the spring and early summer of 2012, mainly but not exclusively at cantonal level, were indicative that some ministers were attempting to amend their legislation to regain political influence over the police.

At the close of EUPM and despite its efforts, there was no effective functional delineation between the Ministry and Police Director and the policing structures in the Republika Srpska (RS). In the Cantons, the legislative framework securing the independence of the police administration varied greatly from canton to canton. At state level, the degree of financial independence was high but structural relations with the Ministry of Security meant that there was a certain degree of overlapping. In the Federation, a key piece of legislation regarding the structure of the police had been in the adoption procedure for a significant time. Although declaratively mentioned, the operational independence of the police had not been substantiated with the implementing tools in a coherent and harmonised fashion throughout the country.

With the termination of EUPM, the EU departed from a post war-generated type of assistance towards an assistance embedded in the framework of the (pre)-accession process. The latter translated in the spring and early summer of 2012 into handing over parts of EUPM tasks to the IPA 2010 project, designed jointly by the BiH authorities, EUPM and the EU Delegation, and to the newly created Law Enforcement Section within the Office of the EU Special Representative.

This development mirrors the dynamics of the European integration process in the region. Indeed, in 2012 Croatia received its date for accession (July 2013), while Serbia was given candidate status on 1 March 2012. That year also saw the launching of the feasibility study for Kosovo while the EU opened accession negotiations with Montenegro on 29 June.

The EU integration process may have significant leverage over BiH authorities and as such is a valuable instrument for securing police operational independence, enhancing high levels of professionalism and fostering effectiveness, all of which are essential to entrench democratic values, accountability and the rule of law in a country which is still in transition.

The closure of EUPM was essentially triggered by political considerations as opposed to an evidence-based record of tracked and easily measurable achievements. Indeed, by definition, such types of missions are part of an ongoing process and there is no clear cut moment at which to terminate them.

The long-term impact of EUPM on the legislative framework governing capacity building of the police remains to be assessed.

## V. POLITICS, POLICING AND SECURITY SECTOR REFORM IN POST-WAR BOSNIA AND HERZEGOVINA

Edina Bećirević and Maida Čehajić

### Introduction

Compared with other post-communist countries in the Western Balkans, BiH had a more difficult trajectory following its declaration of independence in the wake of the dissolution of the former Yugoslavia. Due to the 1992-1995 war, the country suffered infrastructural devastation and over 100,000 casualties. Thus, reform of the security sector was primarily conceptualised as a transition from war to peace, reconciliation, and institution building. The member states of the Peace Implementation Council (PIC), and the steering board countries in particular, started with the premise that a reformed and democratically controlled security sector was the key to ‘reducing the possibility of the resumption of violent conflict.’<sup>1</sup> It was also a necessary step towards political stability, and a precondition for state progress toward Euro-Atlantic integration.

Reform began as soon as the war ended in 1995. In the period immediately following the war, the police was an ethnically divided institution. Police forces served the function of protecting the political power of nationalist parties and preventing refugees from returning to their homes.<sup>2</sup> This meant that changing the image of an ethnically fragmented police force, loyal only to their national political masters, was an incredibly difficult task. The Bonn-Petersberg Agreement, signed in 1996, took steps to begin restructuring the police in the Federation of BiH.<sup>3</sup>

Police reform required a subtle and long-term approach. At Dayton, the United Nations was authorised to oversee this reform. After initial uncertainty, a lack of resources and a limited mandate, the UNMIBH International Police Task Force (IPTF) began the certification process.<sup>4</sup> Translated into reality on the ground, this meant removing individuals with incriminating wartime records and eliminating ethnic criteria in the recruitment of the police.

1. Gregory Mounier, ‘European Police Missions: From Security Sector Reform to Externalization of Internal Security’, in *HUMSEC Journal*, Issue 1, European Training and Research Centre for Human Rights and Democracy (ETC), Graz, June 2007, p. 53.

2. International Crisis Group, ‘Is Dayton Failing? Bosnia Four Years after the Peace Agreement’, ICG [Bosnia], Sarajevo/Brussels, October 1999.

3. Petersberg Declaration, Bonn, 25 April 1996. Available online at: [http://www.ohr.int/other-doc/fed-mtng/default.asp?content\\_id=3576](http://www.ohr.int/other-doc/fed-mtng/default.asp?content_id=3576).

4. *Bosnia and Herzegovina – UNMIBH – Mandate*. Available online at: <http://www.un.org/en/peacekeeping/missions/past/unmibh/mandate.html>.

When its mandate expired at the end of 2002, UNMIBH left many unresolved issues behind for the EU, which inherited police reform in January 2003. In order to strengthen the rule of law and further support Security Sector Reform (SSR), the EU offered assistance to BiH through a special European Union Police Mission. For almost a decade, until 30 June 2012, EUPM focused on strengthening police accountability, institution building and reform, and fighting organised crime.

EUPM had a mandate that called for it to strengthen institutions rather than substitute them, which meant that it could not interfere in the decision-making process from a position of authority. Rather, its role was to share and incorporate EU standards and best capacity building for the security sector, and help put BiH on the path toward developing sustainable, efficient, transparent and democratic security institutions. However, there is still work to be done in ensuring that these institutions are fully accountable to BiH's citizenry. Significant improvements that were not realised during EUPM's decade of operation are still needed.

### **SSR and creating accountability for local-level police forces**

One of the EU's fundamental reform principles was the depoliticisation of the police. Generally speaking, depoliticisation calls for the removal of political influence or control, or rendering a particular institution apolitical. In BiH, depoliticisation required that the police become an independent institution, able to do their work without undue influence from local politicians. Indeed, when outlining the 'three key elements necessary for police reform', which the EU linked with BiH's ability to come to a Stabilisation and Association Agreement (SAA), the then Chair of the Police Restructuring Commission, Wilfried Martens, noted that 'the future system must protect the police against improper political interference.'<sup>5</sup>

BiH's citizens did not find the initial reform process satisfactory, despite the adoption of various measures aimed at increasing the efficiency of the police. Common criticisms included that law enforcement institutions were uninterested in preventing crime and lacked the ability to successfully investigate and identify perpetrators. This was especially true of individuals participating in organised criminal activities. Research conducted back in 2007 showed that BiH citizens believed that the police represent one of the 'most corrupt parts of BiH society.'<sup>6</sup>

Widespread political influence exercised over the police and diminished accountability explained popular dissatisfaction with the work of the police. The establishment of positions such as Police Directors and Commissioners, appointed for their political independence, did not mean that politically-driven influence entirely ceased, but

5. Euro-Blic Interview with Mr. Wilfried Martens, Office of the High Representative, 11 March 2005. Available online at: [http://www.ohr.int/print/?content\\_id=34197](http://www.ohr.int/print/?content_id=34197).

6. *Police Corruption: Reality vs. Perception*. Available online at: [http://cin.ba/Stories/P14\\_Police/?cid=726,1,1](http://cin.ba/Stories/P14_Police/?cid=726,1,1).



exposure and investigations of police officers connected to criminal organisations increased trust in police forces.

Recent investigations and political affairs related to the police forces bring to mind the remarks of Thomas Mühlmann, who in 2007 noted that the international community ‘underestimated the real dimensions of the problem’:

‘Some of the proponents of this reform appear to have looked at police restructuring from a purely policing perspective (...) For them, it was probably surprising to face such sustained resistance from the Bosnian political elites.’<sup>7</sup>

Rather than facing the issue of inappropriate political interference head on, the EUPM provided significant technical and capacity-building assistance, which is possibly the mission’s greatest contribution to post-war BiH. Although the international community, with the Office of the High Representative (OHR) as its standard bearer, insisted that comprehensive police reform was of critical importance for BiH’s SAA – which was to include successful depoliticisation of policing activities – the bar was once again lowered. The last EUPM Head of Mission, Stefan Feller, in looking back on police reform, noted that: ‘Between 2003 and 2008, the term “police reform” became a synonym for efforts to restructure the police. The international community was intensely engaged and the highly political process proved a challenge for the work of EUPM. In the end, a compromise was found that allowed both BiH and the EU to enter into signing the SAA.’<sup>8</sup>

What Commissioner Feller did not note in this particular interview was that the compromise that BiH and the EU eventually reached failed to effectively depoliticise police work. Though depoliticisation of the police is not explicitly stated as part of the EUPM’s mandate, it was nevertheless a topic that the EUPM attempted to tackle. Only days before the end of his mission’s mandate, the Head of Mission appealed to his local counterparts to move forward in terms of police accountability: ‘I haven’t seen an improvement on the political level. As long as that is so, no one can expect that law enforcement and criminal justice will simply improve.’

EUPM did attempt to address the challenges of depoliticisation through providing expert advice and sophisticated technology that assisted the police in their operative activities. However, although technical support was useful, it was not enough. Political obstacles to effective police work still exist, as evidenced, for example, by the repeated failure to arrest Naser Keljmemdi.<sup>9</sup> The police in today’s BiH are some-

7. Thomas Mühlmann, ‘Police Restructuring in Bosnia-Herzegovina: Problems of Internationally-Led Security Sector Reform’, *Journal of Intervention and State Building*, vol. 1, Special Supplement, 1 December 2007.

8. EUPM Press and Public Information Office (PPIO), ‘Genuine Partnership is the Key to Success – Reflections on a Decade of EUPM with Head of Mission Stefan Feller’, *EUPM Mission Magazine* no. 95, p. 4. Available online at: <http://www.eupm.org/FCKeditor/Images/Media/Mission%20Mag/MissionMag%20095.pdf>.

9. According to police throughout the region, Naser Keljmemdi is the leader of the most powerful Albanian-speaking criminal group in the Western Balkans.

times unable to identify and arrest the perpetrators of criminal activities. However, it would be incorrect to paint an entirely negative picture. In date 2012, 25 individuals were arrested for a variety of criminal acts, including murder and drug trafficking.

### **Lessons learned: SSR and local-level accountability**

A number of lessons for future SSR reform initiatives – particularly in the context of post-conflict states – may be gleaned from BiH's experiences. First and foremost, in the future, the international community should be more willing to tackle tough issues head-on by demanding transparency and sanctioning individuals or institutions that fail to comply with newly established, politically neutral standards. While the achievements EUPM demonstrated in a variety of sectors, including technical assistance and gender equality, are admirable, the 'lowest common denominator' approach to police reform applied in 2008 demonstrated to local authorities that they could continue to go about their business as usual. A systematic lowering of the bar on the part of the international community, with a 'carrot and stick' approach that more often than not settled on offering the carrot, or a reward, showed local counterparts that achieving less than was originally asked of them was not a problem.

One possible future solution for dealing with this problem would be to create an independent office or official with a mandate to investigate and punish inappropriate political interference in the police forces. Such an institution could be staffed by local officials, international representatives or a combination of both. It would be critically important to empower this institution and respect its decisions.

Another key lesson that the international community learned in BiH is that decentralised police forces in multiethnic states allow for political manipulation by individual ethnic groups. Based on BiH's experiences, a clear argument for the effective centralisation and reorganisation of police forces exists. This can help promote security sector functionality and operational independence.

### **SSR and creating accountability for state-level police forces**

Security is not simply an internal matter for independent states. International cooperation is also required. This is particularly true in the case of combating organised criminal networks, which do not view state borders and ethnicity as obstacles to the achievement of a common criminal interest. EUPM proved a valuable and capable partner in defining methods for improving police coordination and efficiency. They were able to share the EU's experiences and best practices when coordinating police activities and improving cooperation among security sector institutions. One par-

ticularly good example of this is the level of success that could be observed during Operation *Stone*, during which agencies came together across the Inter-Entity Boundary Line to fight organised crime.

Police reform in BiH also included efforts toward centralisation of state-level police structures. In 2004, with pressure applied by EUPM and other international actors, the jurisdiction of the State Investigation and Protection Agency (SIPA) was extended. SIPA acquired new competences to enforce laws in preventing and combating crime. SIPA's statewide jurisdiction was linked to the enforcement of laws adopted at the state level. It was empowered to react in cases of inter-entity and international criminal activities. Moreover, SIPA could act when a certain politico-territorial unit was unable or unwilling to fight crime prescribed by a state-level law. Numerous examples of action on SIPA's part exist, including an anti-piracy operation in the Una-Sana Canton in September 2011. With this extended jurisdiction, however, SIPA is still obliged to cooperate with and seek assistance from lower-level police institutions.

Unfortunately, SIPA has only a limited capacity to effectively intervene in such cases. The institution must remain wary of its policing actions being seen as illegitimate should politicians claim that police operations are conducted against a particular ethnic or national group. In contemporary BiH, where politics are driven by national agendas, it is difficult to imagine that SIPA will be able to successfully investigate the actions of high-ranking politicians at the Entity and Canton levels. Politicians consistently argue to their constituencies that investigations are merely politically motivated and based on ethnicity.<sup>10</sup>

This problem came to light when Dragan Lukač, an ethnic Croat and the Deputy Director of SIPA, submitted a report to the State Prosecutor's Office against Milorad Dodik in 2009. At the time, Dodik was the RS Prime Minister. The report was leaked by an unknown source to the press and contained a number of alleged corruption charges. Under immense pressure from politicians and the media, Lukač's superior, Mirko Luić, an ethnic Serb, attempted to sanction Lukač for submitting a report that allegedly lacked his authorisation. However, the report actually did include Luić's signature.<sup>11</sup> This scandal diminished SIPA's authority by clearly demonstrating that the state-level agency can be corrupted by political influence. In this case, it was made clear that the Serb Director of SIPA was not independent enough to act against Milorad Dodik, a Serb who has been the President of the RS since 2010.

The above example is illustrative of the destructive role that political influence continues to play today at all levels of BiH's law enforcement. While neither negating nor minimising the significant efforts made by IPTF, and subsequently EUPM, it remains glaringly clear that serious work remains to be done. As this chapter has illustrated,

10. Matthieu Damian and Heinz Vetschera, 'Security Sector Reform in Bosnia and Herzegovina: The Role of the International Community', *International Peacekeeping*, vol. 13, no. 1, 2006. pp. 40-45.

11. SIPA, 'Luka smijenjen samozbog Dodika'. Available online at: <http://hiseta.com/index.php/vijesti/politika/460-sipa-luka-smijenjen-samo-zbog-dodika>.

undue political interference is widely acknowledged as an ongoing problem both by BiH's population and the international community. Furthermore, there is evidence to demonstrate connections between the police and criminal groups and a clear division between those in the police forces who rise above political or criminal influence, and those who succumb to it. Proving such connections is difficult even in countries that are much more developed than BiH. Thus, it was premature to assume that the BiH police forces were capable of doing this on their own. For this key reason, the authors argue that EUPM's departure from BiH may have happened too early.

### **Lessons learned: SSR and state-level accountability**

The key lesson learned for SSR at the state-level in BiH is that, like lower-level institutions, state-level agencies such as SIPA are not immune to political influence. The pressure applied by EUPM and other international actors was key to empowering SIPA through extending its jurisdiction. Here, the lesson is that international pressure – though possibly resented by local actors – can be the key to making a previously paralysed institution operate as it should. As argued in the first lessons learned section of this paper, an independent institution staffed with locals and internationals could be useful in the struggle to develop politically neutral police forces.

Second, agencies at all levels must be brought together in order to successfully carry out certain operational tasks. Inter-sector cooperation, such as that witnessed between the police and the judiciary, is also of critical importance. EUPM was correct in supporting the development of positive relationships among local authorities.

Finally, it is crucial to base the conclusion of a mandate on objectives fulfilled, rather than arbitrary dates. Local counterparts must be clearly shown that internationally-funded missions are immune to an incremental 'lowering of the bar'.

### **Conclusion**

EUPM undoubtedly played an important role in SSR. It provided significant technical support and expertise, which allowed for the security sector to be greatly improved. EUPM enabled BiH's police forces to be more professional and better trained, assisted in the implementation of multiple laws, and transferred invaluable skills and knowledge to local security authorities. This helped to increase efficiency and the democratic accountability of the police. With the mission's support, the police were firmly established as a service for citizens, capable of working to advance the rule of law. However, BiH's complex constitutional organisation and the political realities on the ground, although taken into account, were perhaps not adequately appraised.

Significant work remains to be done in effectively reforming BiH's policing institutions. The persistent issue of undue political influence upon the police is still a problematic obstacle that must be overcome. In order for the police to become truly accountable to citizens, law enforcement agencies and their personnel – at all levels – must be able to conduct their work outside the realm of nationalist agendas and destructive political interests. Local authorities and the international community must jointly commit themselves to developing a politically neutral police force in the years to come, as BiH moves forward on the challenging path towards EU membership.

## VI. HAS POLICING CHANGED? AND IF NOT, WHY NOT? – LOCAL COMMUNITY PERCEPTION

Srećko Latal

### Introduction

The ten year-long engagement of the European Union Police Mission, EUPM, officially ended in June 2012 with moderate pomp in the domestic media and mixed feelings among local society. After I was asked to submit a contribution to this publication about the lessons learned by the end of EUPM's mandate in Bosnia and Herzegovina, I decided to base this text on interviews with local civil society activists, representatives from non-governmental organisations, analysts and journalists and their views of EUPM, its work, behaviour, mandate and the level of success of its mission. These interviewees are all highly respected professionals who have better than average knowledge and understanding of various aspects of international engagement in Bosnia and Herzegovina. Their selection has been made in respect of professional, gender and age balance as much as possible.

All interviewees were asked to provide their comments on two opening questions: 'EUPM as a catalyst for change: lessons from civil society' and 'Lessons on police change: selected case studies from communities' but also to add their own thoughts and suggestions related to the EUPM mission. Those who agreed to be named will be appropriately identified in the subsequent text. During the writing process I deliberately decided to steer clear of surveys, research and analysis carried out by EUPM itself or other international organisations in order to keep this text focused on local perception. Interestingly, some of the interviewees themselves suggested that EUPM and its staff should draw their own conclusions and lessons about their mission. This text represents local perception and therefore should not be mistaken for an *exact analysis* of EUPM's work. It is clear that this *local perception* in some parts differs significantly from official views, which could be the overarching conclusion of this text: that perception is as important as the facts themselves.

### Public perception of the success of police reform

The main question that this chapter seeks to address concerns local perception of the success – or lack thereof – of the police reform in BiH, as well as how EUPM is considered to have influenced this reform.

In this regard the majority of local counterparts think that from the very beginning until the end of its mandate EUPM has suffered from the relatively negative publicity that attached to its predecessor – the UN International Police Task Force (UN IPTF). IPTF was established with a significantly stronger mandate, including some executive powers, in order to initiate reform of BiH police forces immediately after the war. During the war, local police forces were fully integrated into different military forces and waging war was an equally if not more important task than preserving public order in the war-torn country. At the end of the war BiH had over 44,000 police, including administrative staff. IPTF carried out a strict certification process eventually reducing this number to around 16,000. In the process IPTF removed numerous police officers who were directly implicated in war atrocities and many of those later ended up being prosecuted by the International War Crimes Tribunal for Former Yugoslavia (ICTY) or local courts for war crimes. IPTF also carried out the first round of police reform.

*‘Reform of the local police was a very good idea, but it was poorly executed. Only a small part of the wartime police cadre was removed, mostly lower-ranking members, while they left those in command structures. This is why today in Prijedor for example we have several senior police officers who are directly linked to war crimes.’<sup>1</sup>*

Although the process of certification of police officers enabled subsequent further reforms and professionalisation of BiH police, by the end of its mandate in December 2002 IPTF was not popular with any of the sides. There were many reasons for this, the most important one being the fact that the certification process was seen as tainted by many mistakes and errors which resulted in a number of cases in which some persons believed to be responsible for war crimes remained in senior police structures, while on the other hand numerous cases of decertification of policemen were later proved to be based on erroneous or incomplete data. Maybe the biggest grudge which local society bore towards IPTF was due to the fact that decertified policemen had no legal mechanisms for complaint, either at local or international courts. All those problems remained acute and haunted the perception of the EUPM mandate until its very end.

Another reason for negative publicity was the perception that IPTF management and staff were spending too much while often underperforming in relation to normal professional standards and outside of any international supervision. During its mandate IPTF had more than 1,600 international staff spending over US\$120 million per year, not counting salaries of the staff seconded by other countries. EUPM had a considerably smaller staff: starting with 478 international and 296 national staff and ending its mission with 33 international and 44 national staff. Yet the budgets of IPTF, EUPM and most other international organisations were considered as a part of the international financial support for Bosnia and Herzegovina, despite the fact

1. Gordana Katana, Banja Luka-based journalist who works for the Sarajevo daily *Oslobodjenje*, weekly *Dani* and Reuters news agency.



that most of those funds were spent neither by Bosnians nor in BiH. This certainly did not enhance their popularity among the local population.

*'People in BiH have been suspicious more because of the UN IPTF than because of EUPM. Unlike IPTF, EUPM was seen as successful because of the individual examples and capacities of its staff, especially its commander Stefan Feller, who was able to bring together and mediate among rival parties.'*<sup>2</sup>

In addition to the wartime past and lack of professionalism among local police, the police reform also had to tackle the lack of technical capacity among local law enforcement agencies. This is best shown in the following anecdote quoted in a news article:

*'Head of the Mostar police station Himzo Đonko is managing some 500 policemen. At a recent meeting with the representatives of the EU Police Mission, EUPM, he was given a CD with materials including a proposal for a new organisation of police forces. In front of the shocked European officials Đonko took the CD and threw it into the stove. 'I asked them: gentleman, where should I put this CD? I do not have a computer because the ministry never approved it.'*<sup>3</sup>

Yet despite many negative perceptions and criticism, local communities and their representatives also recognised positive achievements that had come about as a result of police reform.

*Garret Tankosić Kelly, former UNDP Resident Representative in Montenegro, now a writer and entrepreneur based in Sarajevo, recalls an anecdote about a foreign correspondent whose passport was stolen and who tried to enter Bosnia and Herzegovina with written confirmation authorising single entry from his consulate in Belgrade. The local policeman manning the border crossing did not know what to do and called a nearby EUPM officer asking him for advice. The EUPM officer did so, explaining patiently how such cases are handled in EU countries. The former journalist was eventually allowed to enter the country and the local policeman has learned something new.*

Eventually the police reform floundered and IPTF and EUPM are also partially blamed for what was perceived as the failure of this reform 17 years after the end of the war. Political crisis, which has been present in BiH since 2006 and which has further deteriorated since the 2010 elections, has contributed to what the majority of local and international experts see as a new politicisation of the police. Local political structures first blocked further police reform and then gradually increased political control over law enforcement agencies in order to utilise them in their power struggles, or protect themselves against being prosecuted for widespread corruption and misuse of office.

*'As long as we have a system of political control over the police, we cannot hope for anything better.'*<sup>4</sup>

2. Alida Vračić, director of the Sarajevo-based think tank *Populari*

3. 'Poorly paid police tempted to take bribes', article published by the Center for Investigative Journalism, CIN, on 30 May 2007.

4. Gordana Katana, op. cit. in note 1.

## Has the perception of public security changed?

Interviews with a broad variety of local actors as well as ordinary citizens and media reports alike all show that the BiH public does believe that local law enforcement agencies, as well as the judiciary and most of the public administration, have recently become worse – more ineffective, expensive and corrupt than some ten years ago. This opinion exists in parallel with the general impression that the security situation across Bosnia and Herzegovina has deteriorated. This is reflected in numerous reports by different local media organisations claiming that living in BiH has become dangerous.

*‘Citizens of Kakanj protest: Kakanj has become a town in which it is dangerous to live.’<sup>5</sup>*

*‘Ungrounded statements from police officials ... lead to a conclusion that we live peacefully and safely. Reality shows differently.’<sup>6</sup>*

Whether these public concerns have a direct link with EUPM-supported police reform or not, they do influence public perception regarding the success of the police reform. Therefore, a growing feeling of public vulnerability and insecurity should be properly addressed by local and international authorities alike. The best way to do that is through full transparency, public awareness campaigns and analysis based on verifiable statistics that should show to what extent public concerns are justified and whether there is some real security issue that should be addressed. During its mandate, EUPM took these public perceptions very seriously and was in some cases the only agency that was monitoring – and willing to publish – crime statistics. Yet these statistics make sense only when compared to similar data in other European countries. One such comparative analysis undertaken by this author shows that Bosnia and Herzegovina remains a country in which it is relatively safe to live.<sup>7</sup> When compared with two other countries of similar size, Finland and Ireland, it showed that crime rates in Bosnia and Herzegovina were significantly lower than in those countries: in 2007 there were 48 murders and 119 robberies registered in BiH. These figures were higher both in Ireland and Finland, with 85 murders and 2,173 robberies registered in Ireland and 127 murders and 1,784 robberies in Finland. Both local and international experts warn that such statistics may be misleading, especially bearing in mind that statistical systems and the collection and analysis of data in BiH are still far from meeting European standards. However, these figures may suggest that despite growing public concerns BiH remains a relatively safe and peaceful country but with negative trends, growing public concerns and an obvi-

5. 24sata.info web portal report on 13 April 2012 after a shootout among what were believed to be local criminal gangs.

6. ‘Sarajevo – city of dangerous living: mentally ill patient was walking around the city carrying a gun’: article in Sarajevo daily *Oslobođenje*, 4 February 2011.

7. Research undertaken by the author in preparation for a conference organised by the Schwarzkopf Foundation in Berlin, using data from Eurostat and the BiH Statistics Agency to compare levels of crime in selected countries with population sizes similar to BiH.

ous need for urgent reforms. Most interviews indicate that local police enforcement agencies should take better care to provide the public with appropriate statistical data and comparative analysis that would help BiH citizens better understand real security risks both at home and abroad. In the absence of appropriate data, local leadership and qualitative reforms, some miss EUPM and the feeling of safety its presence helped create.

*‘EUPM, just like IPTF, was making the local population feel safer. EUPM never had an executive mandate to engage in concrete actions ... If people were to ask me whether I would want to have a EUPM mission in BiH again one day I think I would say yes, but with a stronger mandate.’<sup>8</sup>*

One of many examples of BiH citizens and officials seeking protection from EUPM against their own authorities was the case of Zdravko Krsmanović, the mayor of the eastern town of Foča and member of a small opposition party, who sought help from EUPM when Republika Srpska police pressed charges against him for fraudulent privatisation of two companies.

*‘Krsmanović was quoted as saying that the action against him was motivated by the pre-election campaign and was dropped “as soon as I won in the elections.”’<sup>9</sup>*

According to Alida Vračić, the presence of an international authority and the reforms they carried out also had a negative impact on local policemen: *‘Gradually local police have lost the authority they once had in society. I think that EUPM itself has left a somewhat ambiguous message about the success of its own mandate: do we trust local police forces or not? I am not sure about that myself.’*

## **Communicating with communities**

Most local experts believe that one of the crucial contributions of the EUPM was its focus on improving communication with local communities, both for EUPM officials as well as all local law enforcement agencies. Throughout its mandate EUPM organised and financed numerous public campaigns, although most of those were focused or even carried out on behalf of local police.

One such example was the public campaign ‘Krimolovci’ which in just first three months registered more than 1,700 phone calls which resulted in 675 police actions.<sup>10</sup>

8. Zoran Puljić, director of Sarajevo-based Mozaik Foundation and a leading civic activist in BiH.

9. ‘Zdravko Krsmanović complains to EUPM’, Republika Srpska SRNA news agency report, 27 September 2009.

10. ‘New hotline helps police fighting crime’, *Southeast European Times*, 15 July 2004.

Another such activity was focused on promoting greater presence of women in law enforcement agencies – a contentious issue in the traditionally male-dominated BiH society. Together with several local agencies EUPM participated in the preparation and public rollout of a report entitled ‘Women in the police – the situation in BiH’ which was presented in Sarajevo on 23 June 2010 and met with significant interest among the local public. Two years later, on 24 September 2012, the Banja Luka daily *Nezavisne Novine* published an article reporting that there are more and more women finding employment in the security sector, both in institutions as well as in private agencies.

Local experts and media also recognised the effort made by the EUPM staff to engage local communities even beyond EUPM’s narrow focus on the work with law enforcement agencies. This included visits by and lectures to local schools and universities by EUPM commanders and senior staff, who also organised training courses and competitions for schoolchildren.

It seems that these efforts were noticed and appreciated by local officials, civil society and population alike. It helped EUPM to gain a more human face and greater popularity than its predecessor IPTF ever had. Yet the eventual failure of the police reform and the worsening political, economic and social situation in the country left the public with mixed feelings about this and every other international engagement.

## **Conclusion**

It should be understood that the overall perception of EUPM and the degree to which its mandate was a success is tainted by the very existence of two opposing concepts of international engagement.

Just like the Office of the High Representative (OHR) and other international organisations and diplomatic missions, EUPM has been forced to operate between two opposing expectations: one was based on an intrusive international approach towards Bosnia and Herzegovina and its almost permanent state of crisis, demanding the use of executive powers by OHR, and sanctions by leading Western countries whenever and wherever necessary. The other advocated a hands-off approach and strengthening local ownership of the reform process, based on the gradual assumption of responsibility and accountability by local institutions and leaders. However, most international organisations have managed to disappoint expectations from both groups so far.

With the country caught in the middle of what many consider the most difficult political, economic and social crisis since the end of the war in 1995, many thought that the time was not right for EUPM to leave.

*'This is definitively a bad moment for EUPM or any other international organisation to leave Bosnia and Herzegovina. This crisis makes people afraid and they need any reassurance they can get. EUPM leaving the country sends a wrong message at the wrong moment.'*<sup>11</sup>

Some even question the purpose of an international presence in BiH when it has so far failed to steer BiH out of its downward spiral. The performance, effectiveness and success of most international players, including the EUPM mission, are overshadowed by this widespread sense of gloom.

*'It is difficult to say that the EUPM mission was much better or worse than the overall mission of the international community in BiH.'*<sup>12</sup>

Others believe that EUPM had to leave so as to enable Bosnia and Herzegovina to assume responsibility and take its fate into its own hands and in this way move closer towards EU membership. Some European officials believed that as long as there was a presence of international security agencies on BiH's soil – even without an executive mandate – the country was not ready or willing to join this exclusive club.

*'The Index of Failed States takes into account the presence and the number of foreign uniformed and non-uniformed police forces in a country. So with the number of its officers and their impact on the ground, EUPM was contributing to the notion of Bosnia and Herzegovina being close to something like a failed state.'*<sup>13</sup>

For many local and international officials and experts alike, this dilemma is still very much present today since the country seems stuck in prolonged political deadlock. Today BiH is gradually falling behind the rest of the region in the race towards the ever-elusive finish line in Brussels. EUPM's effectiveness, results and possible lessons learned after ten years of its mandate should be interpreted and analysed in the light of this past as well as present divergence of views.

*'Maybe there is a general problem which people in BiH have with foreign organisations. I am not really sure whether I think the EUPM mission was successful or not. Maybe EUPM can best answer that question themselves. Yet one main recommendation and lesson which I would draw from the presence of EUPM and every other international organisation in BiH is the need to introduce better internal and external supervision and measurable standards as smaller organisations do. This is crucial in order to ensure a high level of professionalism and performance,' concludes Alida Vračić.*

11. Mirsad Behram, Mostar journalist currently working for Radio Free Europe and the Starmo web portal.

12. Nidžara Ahmetašević, journalist, editor and currently Ph.D student in Graz, Austria.

13. Alida Vračić, op. cit. in note 2.

## VII. LESSONS FROM STAFFING AND EQUIPPING EUPM. LEARNING BY DOING?

### Tobias Flessenkemper

Following the adoption of the Council Joint Action on 11 March 2002, the Police Unit in the then Directorate General for External Relations of the Council, Civilian Crisis Management (DG E IX), and the incoming mission staff faced an uphill struggle in becoming operational both at headquarters level in Brussels and on the ground in Sarajevo. Some challenges continued throughout the mission's life: the hybrid position of the Head of Mission, force generation, financing and, as of 2009, the establishment of a temporary warehouse for civilian CSDP. As the first-ever mission, EUPM played the role of a guinea pig in many instances while on the other hand the structural limitations affecting civilian CSDP missions have remained in place under the Lisbon Treaty.

### The Special Advisor/Head of Mission

EUPM was the first-ever civilian CSDP mission. A distinctive attribute of such a mission is its unique financing arrangement. Unlike military CSDP operations all costs are covered by the Community budget, with the exception of salaries for seconded personnel and their travel in and out of theatre. The core administrative element of civilian CSDP operations is the CFSP Special Adviser contract. This is a *sui generis* contract set-up exclusively to allow a single individual, in EUPM's case the Head of Mission, to act on behalf of the Council in the field of the CFSP.

Its legal form was agreed after the coming into force of the Treaty of Amsterdam. The Court of Auditors endorsed it in its 2001 report on the CFSP.<sup>1</sup> The four EUPM Heads of Mission, i.e. CFSP Special Advisers, acted under the authority and operational direction of the Civilian Operation Commander and, prior to that, of the High Representative for the CFSP and the Political and Security Committee. Their actions had to be politically in line with the Council decisions and administratively in line with their individual Special Adviser contracts with the Commission. The individual EUPM Heads of Mission were thus responsible to the Commission for the financial administration of the mission.

1. Court of Auditors, Special Report no 13/2001 on the management of the common foreign and security policy (CFSP), together with the Council's replies and the Commission's replies, in: *Official Journal of the European Communities*, 2001/C 338/01, 30 November 2001.



This legal and administrative framework was put in place before the launch of EUPM. In 2004, the European Commission revised its communication related to the employment of personnel by CFSP Special Advisors and EUSRs.<sup>2</sup> EUPM's deployment had shown that Heads of Mission of civilian CSDP operations had to recruit and contract a far more significant number of staff than initially expected. The Commission regulated a practice that made the Head of Mission, as a natural person, the sole contractual authority *vis-à-vis* contracted staff. This followed the practice established for contracting suppliers and other service providers.

The approach was justified by the specific requirements of CSDP operations. It was argued that CSDP operations were set up on an *ad hoc* basis with a limited duration. Their unique structure and the need for swift reaction necessitated that the EUPM Head of Mission should be entrusted with the recruitment and employment of the staff and the contracting of service providers and suppliers he considered necessary for carrying out the mandate given by the Council.

This practice already led to complaints in 2004 in EUPOL *Proxima*.<sup>3</sup> Overall, the EU institutions created a legal ambiguity with regard to employment relations, both for international and national staff. The initial justification referring to the short duration of CSDP operations seems, in hindsight, premature. EUPM lasted some ten years. The civilian CSDP operations in Kosovo are in their seventh year of operation. It is therefore not surprising that the employment practice by means of CFSP Special Advisors has started to create complex legal problems. Furthermore, the Special Advisor contract regime has limited the development of autonomous civilian CSDP capabilities, a lesson that can be learned from the example of the temporary CSDP warehouse (see pp. 63-4).

## **Force generation**

During the first years, EUPM did not face significant staffing difficulties. This was thanks to the transfer of EU member and participating third states' personnel serving in the UN IPTF to EUPM on 1 January 2003 and a strong commitment of EU member states to the mission and to the nascent ESDP.

However, throughout the mission's life span there was a gradual shift from generic to ever more specialised tasks. This was a reflection of the changing character of the mission. During the first phase of EUPM (2003-2005), the mission was predomi-

2. See Commission Communication on Specific Rules of Special Advisors entrusted with the implementation of operational CFSP actions (C(2004) 2984 of 6 August 2004), which lays down the conditions of employment of international staff. They have been subsequently adapted. Currently in force is Commission Communication on Specific Rules of Special Advisors entrusted with the implementation of operational CFSP actions and contracted international staff (C(2009) 9502 of 30 November 2009), which sets out the conditions of employment of international contracted staff.

3. See Decision of the European Ombudsman on complaint 3008/2005/OV against the European Commission. Available at: <http://www.ombudsman.europa.eu/decision/en/053008.htm>.



nantly a traditional police peacekeeping operation, following closely in the footsteps of the UN. At the end of 2005, the mission was refocused. The main tasks became support to police reform and the fight against organised crime and corruption. Both issue sets were more directly linked to the country's EU membership perspective and the related political conditionality. In the area of supporting the fight against crime and corruption, the mission developed a more comprehensive approach. The mission started to employ advisors for almost all the stages in the criminal justice chain, i.e. ranging from the initial investigation, forensic examination, and prosecution stages to trial monitoring and penitentiary institutions. Force generation became more complex and demanding. Fewer but more qualified personnel were required. Experts required by the mission were often considered indispensable in their home services or would not be able or ready to serve in the mission for at least a year. The problem became ever more acute for areas such as financial investigations, money laundering and anti-corruption measures. In some cases, these posts had to be left vacant due to a lack of qualified candidates or the mission had to accept less experienced experts to deliver at least basic advice.

These force generation difficulties point to a general shortcoming in CSDP. Although the joint actions/Council decisions foresee the secondment of staff to missions by EU institutions, this rarely happened. EUPM was not able to attract, for instance, experts from the European Anti-Fraud Office (OLAF), the Court of Auditors or specialised Commission services. The mission was dependent on the contributions of member and participating states or needed to hire experts on a contractual basis. However, member states have been reluctant, in particular after the onset of the economic crisis in 2008, to increase the number of contracted posts, thus limiting the mission's access to the international labour market to fill staffing gaps.

The specialisation of the mission's tasks – from generic peacebuilding towards supporting the Justice, Freedom and Security (JLS) agenda – made them increasingly interchangeable with Community projects. For instance in the field of anti-corruption, the EU not only deployed EUPM but also a Community project financed under the Instrument for Pre-Accession Assistance (IPA). In the area of Integrated Border Management, parallel activity started already during the mid-2000s with several Community Assistance for Reconstruction, Development and Stabilisation (CARDS) projects. Towards the last phase of the mission (2010-12), EUPM competed almost directly for qualified personnel with Community projects.<sup>4</sup>

EUPM, in this respect, has the potential to be a prototype for the planning and design of other CSDP operations. Although CSDP operations in the future will probably no longer be deployed in potential member states, such as the Western Balkans countries, maturing missions may follow a similar trajectory. The initial reasons for

4. Several former EUPM senior members started working in IPA projects either as consultants or through their home institution's direct participation in twinning projects.

mission deployment are an imminent crisis or post-crisis situation. This can usually be supported with generic law enforcement personnel. The gradual build-up of local capacities and capabilities will then require more specific qualifications. In particular, this will be the case in neighbourhood countries where the EU has an interest in supporting security sector reform (SSR) and enhanced border management.<sup>5</sup>

The institutional challenge is to manage the double transition, including of personnel, between Community instruments and civilian crisis management operations, first during the phasing-in and then the phasing-out of CSDP. From a force generation perspective, EUPM learned that phasing-out is a more complex undertaking. The increase in IPA projects led to a parallel demand for the same kind of personnel and expertise, both by the Community and CSDP. Yet the decision to conclude the mission required a consensus among member states, which led to protracted negotiations in the Council. The uncertainty of the mission's future, in turn, had a detrimental effect on recruitment. Senior experts who require a longer, more certain planning horizon for their engagement, lost interest in the mission.

To avoid the hollowing-out of a mission, the phasing-out therefore requires a more structured approach allowing the retention of key personnel until the very end. For CSDP this creates a particular difficulty. The Council decides on the basis of political criteria while the matured mission follows functional requirements, which have by default turned into a longer-term development agenda of the institutions that EUPM supported. This difficulty is also reflected in member states' administrative set-ups regarding CSDP. Decisions on EUPM were taken by the PSC, i.e. with ministries of foreign affairs in the lead, while the mandated tasks were of interest to the ministries of interior and the JLS agenda. Only, in June 2011, the first joint PSC/COSI meeting provided a platform to discuss the cooperation between external and internal security actors and future deployment policies.

Force generation of seconded staff remains the responsibility of the Civilian Operations Commander and the CPCC. It thus falls into their remit to develop for instance through joint PSC/COSI meetings and, in cooperation with the various line ministries (interior, justice) in member states, personnel capabilities which are able to respond to the needs of complex missions.

## **Financing and equipping EUPM**

This section will analyse administrative issues, in relation to which the mission experienced a certain amount of overlap between the European Commission and the CPCC, i.e. EUPM's operational chain of command with the Civilian Operation Commander. Even after the coming into force of the Treaty of Lisbon these issues remain

5. The future operational development of FRONTEX may further impact on the availability of personnel for CSDP operations in the area of border management.

pertinent, as this dichotomy was not overcome in relation to the decision-making and financing of CSDP operations.

When it was decided to deploy EUPM, the planning team and later the mission itself lacked the necessary infrastructure. This meant that the financing instruments for CSFP actions which hitherto had only been applied for much smaller and much less resource-intensive actions needed adaptation.<sup>6</sup>

The arising problem was twofold. On the one hand the Council General Secretariat (CGS) had little experience in drawing up operational budgets while on the other hand the European Commission was not used to dealing with the Council as a 'direct' beneficiary of Community financing. Up to now, the CFSP budget had provided limited funding for EU Special Representatives as well as funding for larger actions that were carried out by other entities (such as the Office of the High Representative in Bosnia and Herzegovina). This meant that the CGS was not directly involved in administrative matters as the beneficiaries, apart from the EUSRs, were not in the operational chain of command of the High Representative. Thus, unlike the civilian crisis management structures, the CGS had no direct stake and interest in the administrative aspects of the actions the Council decided. There was no direct ownership before: EUPM became the game-changer. The Council became a player in recruiting staff for the mission and the member states expected a well-functioning, adequately financed and efficiently administered mission. The launch of EUPM created a new dynamic between the CFSP and Community pillar.

The modalities of financing the mission were to become an example of inter-institutional learning. While the amount of initial financing for EUPM proved to be sufficient, the budget had to be readjusted significantly. For instance, the Fact-Finding Mission identified the need for only two local staff for the planning team whereas at the end of 2002 this number had necessarily risen to nearly 200. Similarly, the Council Fact-Finders underestimated the costs of software licences by a factor of 10. These examples offer an idea of the initial difficulties and the weaknesses of the CGS's operational planning capacities. The EUPM Planning Team also had to start the procurement process for the transport and communication equipment. For its own purposes, because of the lengthy tendering procedures of the European Union, the planning team needed to rely on short-term service providers and material on loan from the European Commission Delegation and the EU Monitoring Mission. Once the mission became operational on 1 January 2003 additional financing became necessary with the result that the total budget for the first four years, 2002-2005, came to just over €70 million (see table 1, page 81). No payment of *per diems* was foreseen for international

6. The EU Administration of Mostar from 1994-1996 faced almost insurmountable difficulties in financing and administrative matters. The experiences of this relatively large civilian administration operation were not taken into account when the civilian crisis management structures were established in the Council General Secretariat.

staff.<sup>7</sup> This kept the overall cost of the operation for the first four years relatively low, despite a high international staffing level of some 500 international mission members.<sup>8</sup>

Based on the lessons learned from EUPM's first phase, efforts were undertaken by the CGS and the Commission to streamline financing and procurement procedures, in order to minimise shortfalls and stop-gap measures in the future. EUPM's launch also marked the start of a discussion which would several years later lead to the establishment of a temporary warehouse within EUPM to facilitate the start-up phase of CSDP operations.

### **The temporary CSDP warehouse**

The lessons learned from the difficulties of procurement and technically equipping CSDP operations have been largely implemented within the limits of the EU's Financial Regulations.<sup>9</sup> As the logic of the Community budget does not allow for the creation of specific rules for CSDP operations, EUPM and other missions remained bound to the stringent framework which is applied to all external relations activities based on a contract with the European Commission (Special Advisor contract). For future missions an alternative solution to existing procurement procedures needed to be found in order to avoid initial logistic and equipment problems. However, also following the Hampton Court decisions and the subsequent establishment of the CPCC, the discussions on the strengthening of civilian capabilities remained inconclusive. Only in mid-2009 did the issue gain momentum. The idea of creating a temporary warehouse for civilian CSDP missions and of negotiating framework contracts with suppliers of generic equipment for CSDP operations was mooted.<sup>10</sup>

The decision to place the temporary warehouse within EUPM was influenced by at least four factors. First, the decision bought further time for a discussion about the establishment of a permanent warehouse for CSDP operations. Second, the relative geographic proximity to Kosovo facilitated supporting the continuing build-up of

7. *Per diems* were introduced for international contracted staff on 1 January 2008 and for seconded staff on 1 January 2010. The *per diem* for seconded staff was introduced to bring EUPM's practice into line with that of the other civilian CSDP operations which were paying *per diems*. It was also understood to be an incentive to attract staff for the last years of operation of EUPM.

8. Not only, yet also because of the *per diems* for all international staff, the EU Planning Team in Kosovo with much lower staffing numbers had a budget of €76.5 million for approximately two years before the launch of EULEX Kosovo. Cf. Council Joint Action 2007/778/CFSP of 29 November 2009, amending and extending Joint Action 2006/304/CFSP on the establishment of an EU Planning Team (EUPT Kosovo) regarding a possible EU crisis management operation in the field of rule of law and possible other areas in Kosovo, article 2.

9. See Annika S. Hansen, 'Against all Odds – The Evolution of Planning for ESDP Operations Civilian Crisis Management from EUPM onwards', Centre for International Peace Operations (ZIF), Study 01/2006. Available at: [http://www.zif-berlin.org/fileadmin/uploads/analyse/dokumente/veroeffentlichungen/Evolution\\_of\\_Planning\\_for\\_ESDP\\_Operations\\_11.06.pdf](http://www.zif-berlin.org/fileadmin/uploads/analyse/dokumente/veroeffentlichungen/Evolution_of_Planning_for_ESDP_Operations_11.06.pdf).

10. Council conclusions on ESDP, paragraph 49, 2974<sup>th</sup> External Relations Council meeting, Brussels, 17 November 2009.

the largest civilian CSDP operation, EULEX Kosovo. Third, EUPM had by then become a well-established and smooth-running operation, which due to its efficient functioning was able to handle the additional tasking both technically and administratively. Fourth, due to the continuous downsizing of EUPM since 2006 surplus equipment could remain in the temporary warehouse without removing it from the area. Furthermore, the EUPM enjoyed excellent relations with the host country and the existing Status of Mission Agreement provided for the protection of assets just as the presence of EUFOR *Althea* contributed a security blanket.

The contractual arrangement of the Special Advisor regime meant that the mission's assets were under the responsibility of the Head of Mission but belonged to the European Commission. The CPCC had no formal authority over their use. In practice, the assets could not be moved up the chain of command to the Civilian Operations Commander or the CPCC but had to remain under the responsibility of an individual person, the EUPM Head of Mission. Therefore the formal legal decision on the temporary warehouse reads: 'The Head of Mission shall be responsible for the management of a warehouse stocking used equipment that may also be used to respond to urgent requirements in ESDP deployments.'<sup>11</sup>

The EUPM Operation Plan for 2010/2011 was amended accordingly and additional financial resources for the management of the warehouse were put at the Head of Mission's disposal. In practice, the assets within the warehouse were managed by the CPCC whereby the Head of Mission followed instructions issued by the Civilian Operations Commander. Assets, such as vehicles and IT-equipment, were sent to other operations on the basis of trilateral agreements between the EUPM Head of Mission, the European Commission and the beneficiary, i.e. the Head of Mission receiving the assets.

With the conclusion of EUPM on 30 June 2012, the temporary CSDP warehouse formally ceased to exist. As member states did not decide on a permanent warehouse, assets had to be merged as of 1 July 2012 with the mission's assets. The Head of Mission, in fulfilling his contractual obligations *vis-à-vis* the European Commission, became the Head of the Liquidation Team. During the liquidation phase all EUPM assets were cleared in consultation with the European Commission's Foreign Policy Instruments Service and the CPCC. In this respect EUPM in liquidation continued to provide *de facto* warehouse functions until 31 December 2012 for other CSDP operations.

## Lessons learned?

During EUPM's ten years of operation, the structural limitations for CSDP operations remained in place. Nevertheless lessons have been identified from EUPM and are being addressed. First and foremost, EU institutions are now aware that evolving

11. Council decision 2009/906/CFSP of 8 December 2009 on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH), article 12.1.

mission mandates may lead to difficulties in attracting and retaining qualified seconded personnel. As the Civilian Operations Commander and the CPCC cannot act without the cooperation of member states, the joint PSC/COSI meetings seem to be a good platform for a more strategic approach to force generation, to bridge the foreign policy/justice and home affairs divide. The participation of the Commission in these meetings has the potential to better articulate assistance in the area of law enforcement throughout the continuum of crisis and post-crisis management and development, which is supported through Community assistance.

EUPM was adequately financed from the Community budget. After the initial difficulties, mainly due to the fact of being the first mission, a strengthening mission in a benign environment proved able to manage its operation under the existing financial regulations. This may not be the case in a less benign environment or for a mission with a substitution mandate. In both cases the predictability of action is naturally reduced. Swift new action, for instance hiring of additional contracted personnel, costly movement of assets or the *ad hoc* provision of a witness protection measure, may become impossible due to the impediments of the financial regulations.

The legal ambiguities related to the status of the Head of Mission as both a Special Advisor to the Commission and a political appointee of the Council could not be overcome and remain in place under the Treaty of Lisbon. How they will play out with regard to employment relations in the future remains to be seen. The set-up has clearly limited the development of civilian CSDP capabilities, as could be observed with the closure of the temporary CSDP warehouse.

In this respect, lessons learned solely concerned the effective management and handling of the inherent limitations of CSDP. Consequences for institutional development were limited. Civilian CSDP seems to have come full circle. The end of EUPM, the first-ever CSDP operation, marks a moment of truth: the absence of institutional champions for the build-up of autonomous EU civilian capabilities.



## VIII. MEASURING IMPACT: SPECIFIC ACHIEVEMENTS AND OUTCOMES

Susan E. Penksa

### Applying impact measurement methodology to EUPM<sup>1</sup>

In a 2006 study of the lessons learned from EUPM's operational conduct between 2003 and 2006, I argued that greater attention needed to be placed on five important challenges for civilian CSDP operations: (i) mission mandates; (ii) personnel recruitment, expertise and training; (iii) programme design, implementation and assessment; (iv) reporting and decision-making procedures and structures; and (v) the functions of EU representatives in the field.<sup>2</sup> From this longitudinal work assessing the impact of EUPM, I developed a typology of the internal and external outcomes produced by CSDP missions. Based on this typology of impact and Roy Ginsberg's work on the effects of EU foreign policy,<sup>3</sup> we designed a methodological approach for analysing the scope of internal and external impact for CSDP operations – on the EU and its members, on host states and societies, and on other international security providers.<sup>4</sup> We provide a *model* of EU foreign policy decision-making; a *theoretical* study of CSDP operations using different perspectives and levels of analysis; and a *typology* of CSDP operations to categorise, compare, and evaluate effects for lessons learned.

CSDP is an internal and external product of European integration.<sup>5</sup> 'Institutional learning' by the EU and its members occurs when they analyse the impact of CSDP operations and make adjustments to mission planning, conduct, decision-making and evaluation procedures. 'International learning' refers to how international organisations and countries respond to and are affected by CSDP operations and how they come to accept (or not accept) the EU as a global security actor.

*Internal impact* is the impact of the CSDP operation on the EU itself and its foreign policy decision-making system. An analysis of internal EU politics reveals the values,

1. The author would like to thank Lenka Dojcanova for her helpful comments on the original draft of this chapter.

2. Susan E. Penksa, *Policing Bosnia and Herzegovina 2003-2005: Issues of Mandates and Management in ESDP Missions*, CEPS Working Document no. 255, Centre for European Policy Studies, December 2006.

3. Roy H. Ginsberg, *The European Union in International Politics* (Lanham: Rowman & Littlefield Publishers, 2001).

4. Roy H. Ginsberg and Susan E. Penksa, *The EU in Global Security: The Politics of Impact* (Hampshire: Palgrave Macmillan Publishers, 2012).

5. Since 2002, the author has conducted annual interviews with the EU and member state officials involved in CSDP as well as interviews with a variety of state and non-state actors in Sarajevo (2002-2012), Pristina (2006-2011) and Tbilisi (2009).



interests, capabilities and procedures that shape and influence the impact of the mission from start to finish.

*External impact* occurs as a consequence of EU actions and inactions, and is influenced by the EU relationship with host states, societies and international stakeholders. It is the power to modify a situation or to alter the perceptions or behaviours of other actors. CSDP missions produce different types of external effects – functional, political, societal, strategic, unintended, and temporal.

Applying impact measurement methodology to EUPM reveals that both ‘institutional learning’ as well as ‘international learning’ occurred. EUPM had a non-executive mandate to ‘mentor, monitor and inspect’.<sup>6</sup> During the first term of EUPM, EU and member state officials lacked consensus about how to interpret and implement the mission mandate and, thus, also disagreed about performance criteria to evaluate mission conduct. Over time, EUPM recalibrated its mission mandate and refined its system for programme development and evaluation; these internal changes multiplied the external effects of the mission. The EUPM lessons learned process also shaped CSDP decision-making and evaluation improvements in Brussels and the planning and conduct of other CSDP operations, such as for EULEX in Kosovo.

In 2009, Mission Implementation Plans (MIPs) emerged as a key method to strengthen the link between the strategic goals of civilian missions with specific operational tasks and expected outcomes, including analysis of measures to overcome roadblocks to successful mission implementation. The 2010-2011 MIP from EUPM and its supporting software system for reporting was presented in 2010 within the CPCC as best practice for other CSDP missions, another example that highlights how learning by EUPM spilled over and inspired positive changes elsewhere.

Moreover, EUPM had a positive impact along all external dimensions. The evidence is available subjectively (e.g. from BiH and international officials who credit EUPM with instilling positive security changes in BiH) and objectively from data sources documenting institutional, legislative and behavioural transformation. EUPM improved the functionality and sustainability of the BiH security sector and depoliticised conflict over police restructuring, functional and political effects analysed in the next section. It also engaged in important societal-level initiatives such as cooperating with NGOs, providing forums for returning refugees, sponsoring town meetings on security issues, holding round-tables on the problem of domestic violence and engaging in public safety information campaigns. Strategically, EUPM cooperated with a number of international security providers in BiH: the United States

6. Penksa, op. cit. in note 2; Cornelius Friesendorf and Susan E. Penksa, ‘Militarized Law Enforcement in Peace Operations: EUFOR in Bosnia and Herzegovina’, *International Peacekeeping*, vol.15, no.5, November 2008; Susan E. Penksa, ‘Security Governance, Complex Peace Support Operations and the Blurring of Civil-Military Tasks’, in Christopher Daase and Cornelius Friesendorf (eds.), *Rethinking Security Governance: The Problems of Unintended Consequences* (London: Routledge, 2010).

Department of Justice (ICITAP), NATO, the OSCE and the UN. These international actors appreciated EUPM's contribution and recognised the EU as a valuable partner in global security. Lastly, unintended negative mission effects were ameliorated, such as when there was an adjustment in the mandates of EUPM and the EU military force (EUFOR) to adjust their respective operational roles in assisting BiH authorities in the fight against organised crime and corruption.

Evaluating effects is not an easy task and requires long-term analysis and multiple data sources. There is no single degree of external impact; it ranges from nil to marginal and from considerable to significant. Moreover, there is an interactive relationship among effects that is not easily quantifiable, but is observable. In other words, these are not watertight categories; each category of impact relates to and shapes other types of impact. The best illustration of this point is through an examination of the functional and political dimensions of EUPM's external impact.

### **Lessons learned: the functional and political effects of EUPM**

Among the most challenging CSDP operations to deploy and evaluate are civilian rule-of-law and security sector missions that involve complex technical, juridical, and political reform agendas. In a 2009 examination of the lessons identified from the police reform process in BiH, I focus on the need for a clear methodological approach to guide EU security sector and rule-of-law programmes; the importance of a lead actor to facilitate the coherence of reform agendas; the challenge of cultivating local ownership; and necessary mechanisms to strengthen the effectiveness of civilian CSDP operations.<sup>7</sup> As I note, 'policy makers and practitioners are confronted with questions about the best timing and sequencing for reform measures, what type of reforms to pursue and when, the conditions and mandates for international missions, and the strategies best employed – bottom up or top down.'<sup>8</sup> These issues and dilemmas were still relevant at the time of the handover to the EU Delegation.

Moreover, CSDP impact assessments include judgments about the degree to which the strategic and functional objectives of the mission have been met, which necessitate technical and political calculations utilising both objective and subjective performance criteria. Simply put, impact evaluation involves more than simply documenting the number of police officers trained or new laws or projects that are in place; qualitative analysis is central to measuring mission effects.

7. Susan E. Penksa, 'Lessons Identified from Bosnia and Herzegovina: Strategies for Developing Domestic Reform Agendas', Seminar Report on *Police Reform in Bosnia and Herzegovina: Security Sector Reform and the Stabilisation and Association Process*, Centre for European Perspective, Ljubljana, 2009, p.28.

8. *Ibid.*, pp.29-30.

With an ethnically-based political system and fragmented law enforcement structure, security sector reform is essential in BiH.<sup>9</sup> Law enforcement agencies have worked in isolation from each other. Police officials have struggled to provide comprehensive situation assessments and proactive intelligence-led investigations of organised crime and corruption because of the disjointed law enforcement structure, political interference, deficiencies in terms of technical capabilities, personnel recruitment problems, and budgetary limitations.

Against this backdrop, EUPM's primary achievement is its functional transformation of the BiH security sector. It initiated and supported vital institutional and legislative changes and capacity-building initiatives. EUPM's ten-year legacy demonstrates significant technical effects. There is improved police professionalism and enhanced capacity, greater harmonisation of police laws and strengthened cooperation among police services, and new and/or consolidated state-level institutions for security governance: SIPA (the State Investigative Protection Agency), the Ministry of Security, BiH Border Police, and the Directorate of Coordination for Police Bodies. EUPM also facilitated enhanced capacity of the BiH Police Academy. These are concrete actions by EUPM that promoted security and the rule of law in BiH.

The state-level security agencies in BiH were built from the ground up. EUPM helped create new institutions where none existed (i.e. SIPA, the Ministry of Security and the Directorate of Coordination for Police Bodies) and boosted the performance of existing organisations (i.e. BiH Border Police). It assisted in the establishment of the functional roles for each state-level security agency and supported legislative initiatives essential to standardising intelligence-led policing at the state level. These new security services became professionally capable organisations able to execute both general and specialised police and security functions. Through its successful methodology of co-location and its partnership approach to security sector reform, EUPM provided security assistance through on-site mentoring, monitoring of performance, inspections, specialised training, equipment provision, and operational and legal advice and support.

The functional effects of EUPM are measurable across time. For example, in terms of legislative support, EUPM provided assistance in the setting up or the implementation of legal frameworks, lobbied for the adoption of legislation (i.e. the Agreement on Restructuring of Police), participated in drafting laws, such as the Immigration Service Law, and worked closely with law enforcement agencies to meet the requirements of the EU roadmap for visa liberalisation and the Stabilisation and Association (SAA) process.

9. For an analysis of SSR and DDR processes in BiH, see Susan E. Penksa, 'DDR in Bosnia and Herzegovina', in Richard Millett (ed.), *Limited Success and Recurring Problems: The Evolution of Disarmament, Demobilization, and Reintegration in the Modern World* (Fort Leavenworth: Combat Studies Institute of the United States Army, forthcoming 2013).

In its second and third phases EUPM focused its activities on strengthening the BiH capacity to fight organised crime.<sup>10</sup> In June 2004, SIPA became the only police agency with full police authorisation and competence across the entire territory of BiH. SIPA is still confronted with staffing shortfalls. Since SIPA concentrates on the most sensitive policing issues – organised crime, corruption, and war crimes – it faces obstacles in recruiting competent senior police officers who are willing to relocate to Sarajevo, the location of most of SIPA’s officers. SIPA needs to recruit more entity police investigators to work for it; these officers will need to transfer their loyalties from their entity to the state of BiH. The ability of EUPM to influence this cultural and attitudinal shift among BiH police personnel was nil to marginal, yet the mission generated positive functional outcomes in building the capacity of SIPA.

EUPM has played a valuable role in the development and consolidation of SIPA. Officials from both EUPM and SIPA have described the cooperation between the two organisations as extremely effective with significant impact. The growth in capacity among SIPA personnel is attested by an increased number of searches, statements, and interviews carried out by SIPA officers and submitted reports to prosecutors. Cross-border cooperation and intelligence exchange expanded among BiH security agencies, as did the ability and willingness of BiH officials to partner with security agencies throughout the Balkan region.

Positive outcomes can be measured in light of the large number of successful organised crime and corruption cases that were undertaken by SIPA officials towards the latter half of the mission, including with EU police agencies and member states and jointly between BiH security agencies. Increased activism by SIPA officials is a quantifiable behavioural change that is verifiable across time. However, long-term change in BiH is dependent on a robust adherence to the rule of law whereby reports submitted by SIPA to the State Prosecutor’s Office result in a greater number of arrests and convictions, an outcome that has not yet satisfactorily occurred.

EUPM did not have a mandate to monitor, mentor or inspect BiH prosecutors, nor was it originally conceived as a broadly mandated rule-of-law mission. Out of pragmatic necessity, however, EUPM established the Criminal Justice Interface Unit to improve cooperation between police and prosecutors. EUPM eventually worked with personnel from the criminal justice system as a whole – police and customs officials, chief prosecutors, judges, and prison directors – and, *de facto*, evolved from a police mission to a rule-of-law mission.

Moreover, EUPM did not have a mission mandate to lead a BiH political debate about police restructuring. Although systemic police restructuring was politically unfeasible during the tenure of EUPM, the mission nevertheless produced positive political effects. EUPM helped solve the political deadlock among BiH officials and between BiH and the EU, thereby facilitating BiH signing the SAA (see also Dominik

10. This section is drawn from Ginsberg and Penksa, *op. cit.* in note 4, pp.107-8.

Tolksdorf's chapter on police reform and EU conditionality in this report). In other words, EUPM's functional achievements were also political – passing the Agreement on Restructuring of Police was as much a political outcome as a technical and legislative success.

A salient political explanation of the success of EUPM was its partnership approach to mission implementation. Regular consultations between EUPM and BiH counterparts took place at all levels of authority (from the ministerial level through Director to Chief of Unit positions) and continually shaped and improved the conduct of the mission. From 2008 onwards, the strategic objectives of the mission were drafted in consultation with the directors of security agencies and government ministries; EUPM held meetings on priorities and thematic areas of the MIP that required BiH political support; and the team plans were drafted with input provided from the directors of the agencies to which they applied.

Thus, through monitoring and mentoring BiH counterparts and through their constructive role in police reform negotiations, EUPM officials had significant political impact. This included new and consolidated security agencies that increased their performance over time; notable achievements in police reform; crucial legislative changes; a signed SAA agreement with the EU; and visa liberalisation.

Without question, there are still unresolved political, security and economic challenges. National political leaders need to build on the positive legacy of EUPM by further depoliticising the rule of law and consolidating security reforms and, thus, secure BiH membership in the Euro-Atlantic community of the EU and NATO.

### **Conclusion: Key lessons from an impact assessment of EUPM**

This analysis of EUPM's performance in BiH highlights three interrelated lessons.

First, distinguishing among types of internal and external impact ensures that *all* the effects of CSDP missions are evaluated. Moreover, while quantitative indicators are indispensable, mission officials must also provide qualitative assessments of mission impact to determine what constitutes adequate progress. A holistic, multi-level methodology of mission impact assessment encourages 'institutional learning' as well as 'international learning'. EUPM generated significant internal and external effects; it minimised and corrected negative outcomes through recalibrating the focus and strategy of the mission and developed best practices implemented by other CSDP operations.

Second, police reform efforts will be stymied unless they are undertaken through a comprehensive rule-of-law programme. EUPM was limited by its narrow mandate concentrated on police reform. While it pragmatically expanded its activities to pro-

mote enhanced capacity in the BiH criminal justice system, EUPM would have benefited from a legal remit to mentor, monitor and inspect the law enforcement community as a whole.

Third, security sector and rule-of-law missions are not simply ‘technical’ operations. They necessitate political consensus among the EU and other international stakeholders, a political strategy for implementation, and the political will and agreement of host political authorities. BiH police reform negotiations involved complex functional, political, strategic and societal issues. Accordingly, CSDP personnel require both specialised skill sets and functional expertise.

On the basis of these lessons, the EU should refine the concepts and methodological procedures for CSDP impact assessment. It should also hire external evaluators to establish mission-specific baselines and performance criteria as part of the planning and launch process of the CSDP operation (so that subsequent impact assessments are properly evaluated). As this study of EUPM has established, CSDP is a vital instrument of EU foreign and security policy.

## IX. EUPM@10: LESSONS FOR THE EU'S EXTERNAL ACTION, CSDP AND CFSP

**Damien Helly**

### **Lessons for the EU's external action**

The experience of the ten year-long EUPM in Bosnia is the latest example of Europe's long struggle to find solutions to violence on the continent. In the post-Cold War era, the first lesson to be drawn from EUPM is that European problems require European solutions. This of course does not at all mean that the need for and role and support of international partners, and firstly the United States, should be disregarded. In the 1990s, the US probably wished to see the EU playing a stronger role in the Balkans but the Europeans were unable to act collectively. However, the experience in Bosnia and Herzegovina (BiH) of a multi-layered international and institutional engagement (EU, US, UN, NATO, OSCE), together with various forms of handover and double hatting, have raised issues of international coordination. As in many other crisis-prone areas, this could perhaps have been avoided or mitigated if from the outset Europeans had been willing to be in the driving seat and to take responsibility for addressing European security issues. In the future, more assertive EU leadership in crisis management on the European continent would also facilitate coordinated partnerships with other international organisations.

From this international coordination imperative follows a second – very political – lesson for Europe itself: the unity (beyond mere and conceptually unclear coherence) imperative. In a context of what some describe today as the renationalisation of foreign policy in Europe, the experience of EUPM is there to remind us how detrimental divisions between member states and between EU institutions are to the advancement of any form of European security. Debates are still ongoing among experts about what could have been done better since 2002 to ensure more efficient coordination and avoid tensions between the EUSR and the European Commission; the EUSR and OHR; individual personalities; US and EU actors; and, last but not least, between EU member states themselves.

Thirdly, BiH is too close to Brussels for the EU to fail there. Through EUPM, BiH has been a crucial test case for the credibility of the EU's comprehensive approach in its external action and for its regional integration project. Failing or being too slow at stabilising Bosnia and Herzegovina and ensuring its integration into the EU would undermine the EU's profile on crisis management elsewhere in the world – especially where there is no EU 'carrot'.



The work that the EU has done on police reform over the past decade in BiH shows that patience, flexibility, and the ability to listen to societies' and citizens' needs are *sine qua non* preconditions for engaging in collaborative and mutually beneficial cooperation in order to democratically reform law enforcement systems. However, at the end of the day, interference by domestic political leaders in policing may be a challenge everywhere. The real threat looms when there are no watchdogs or authorities to support police professionals in their everyday work and thereby protect citizens.

### **Lessons for SSR and rule-of-law reform**

EUPM has demonstrated or confirmed a number of lessons for those engaged in efforts to reform rule of law in post-conflict environments.

It is perhaps too easy to argue that basic security and justice sector reform notions and methods have to be mastered by staff before their deployment. Quite often, staff learn on the job and even if they have been familiarised with concepts, they only really get to understand their meaning when they are confronted with their actual implementation in third countries. This is perhaps why the very principle of the need for a review of the existing 2005/2006 EU SSR concept documents deserves further thought. The gap between CSDP discourse and practice does not need to be widened further, but too many concepts are not necessarily useful. On the contrary, what is needed is more practice.

EUPM has also highlighted challenges for future work on SSR and international justice. For instance, its experience shows that addressing war crimes and transitional justice issues solely through police reform or SSR strategies is ineffective. This may sound obvious to many professionals and practitioners, but it may be worth recalling at a time when the EU is supporting SSR and rule-of-law work in countries like Cote d'Ivoire, Guinea, Tunisia, Niger and Mali.

The Dayton negotiations seemed to have prioritised ending the war over durable peace and justice. The constitutional system agreed presented major shortcomings as far as rule of law and European standards of efficient law enforcement were concerned, paving the way for enduring impunity and political interference at all levels. The main lesson for CSDP and CFSP here is to find ways, as early as possible, to protect citizens in post-conflict environments from power abuses by the elites who, in the case of BiH, remained the same elites that provoked the crisis or proved unable to put an end to the violence. Similarly, when constitutional constraints become clear obstacles to efficient rule-of-law reform and the pursuit of international justice, the lesson is, until constitutional reform takes place (if ever it does) to work around them. In that regard, the lesson from EUPM is that room of manoeuvre can be found to work around constitutional constraints on policing until the constitutional issue has to be addressed for the sake of efficiency and compliance with existing standards.

In other words, the lesson is that technical solutions must be used as early and as much as possible, but they need to be bolstered by political action to properly address political issues.

Second, there is no contradiction in terms between top-down and bottom-up approaches to police reform. Both are complementary, as Eric Fréjabue reminds us in his chapter in this volume. Ultimately, political decisions have the upper hand and police missions should remain flexible and adjust to the mandate of the political master. Indeed, the BiH police coordination bodies were created thanks to patient bottom-up work after strong top-down political pressure. In police reform, you may need both the good and the bad cop to apply sound and timely pressure depending on windows of opportunity.

Third, institution building seems to help foster efficient and democratic change and reform. The examples of SIPA and Border Police are mentioned by almost all authors as a significant achievement which may be considered a source of inspiration for further CSDP missions.

Fourth, fighting organised crime and curbing corruption are key to lasting stability and peaceful development as the World Bank has pointed out in the *World Development Report 2011*. While the creation of new institutions contributed to Bosnia and Herzegovina's progress in this area, domestically driven efforts increased during the EUPM's mandate when they were clearly linked to EU conditionality. This was helped by regional development assistance and the perspective of EU membership. However, the most important lesson in this area is to offer pragmatic approaches and assistance rather than grand institutional design and elusive 'best practice' solutions. As Tobias Flessenkemper points out in his chapter in this volume on 'Support to organised crime and corruption', assistance and advice provided by a CSDP operation will only yield lasting results if they are linked to an overall democratisation process.

Finally, the value of co-location of experts within the premises of their counterparts has to be re-emphasised, to ensure not only continuous monitoring opportunities but also, and perhaps above all, close cooperation and a sense of common belonging.

### **Lessons for CSDP**

Our report has taken stock of a variety of tensions within the EU CSDP chain of command. The very notion of double hatting needs to be reexamined. Initially seen as a solution to all sorts of transitions (from the UN to the EU, from the CSDP to the European Commission or from the CSDP to an EU Delegation), lessons show that this option is never easy or straightforward. If unity (instead of coherence) were to become the new objective of the EU's external action, some thought could be given to ways of reducing the number of hats, instead of repeatedly doubling or multiplying them.

EUPM broke new ground and has been exemplary in many respects. The authors of this report have converged in underlining the role of EUPM in what some have called ‘police negotiations’ or mediation between BiH political forces. This practice needs to be acknowledged and perhaps analysed in more detail to assess the relevance of transforming this experience into a more systematic learning of negotiation skills for staff involved in police reform and CSDP.

More generally, EUPM administrative and legal difficulties illustrate a highly problematic and inefficient anomaly of CSDP: the maintenance of two chains of command (as described in Michael Mathiessen’s chapter): one budgetary and the other political. Identified as the original weakness of the whole system, this dual procedure has been retained for all CSDP civilian missions since the launch of EUPM, leading to constant tensions between CSDP structures and the European Commission. It is far from certain that the creation of the EEAS and the integration of the Foreign Policy Instrument (FPI) into the EEAS building in Brussels has helped to solve these contradictions. It is a case of ‘path dependency’, entrenched in legal, bureaucratic and institutional rigidity, which seems immune to any rational problem-solving approach or recommendation. The issue is that this rigidity contradicts the unity imperative, which requires instead a single political chain of command.

## **Lessons for CFSP**

The reader may feel that the findings of this report contain an element of schizophrenia: on the one hand it is contended that EUPM achieved a lot. On the other, there are many lessons which have not been learnt at all over the decade. This contradiction has to do with structural features of CFSP.

In fact, since they have not led to the necessary changes, it seems evident that many lessons that were identified early on from EUPM have never really been learnt. This is clearly a cause for concern: first, it means the balance of power among member states, regarding the EU’s conduct of external action, is still not conducive to the kind of change that would lead to increased collective efficiency. There are some bottlenecks, and most probably also powerful spoilers who have vested interests and do not wish the system to improve.

A good example of incoherence is for instance the lack of cooperation between organs working on foreign affairs on the one hand and on internal security on the other. It is quite surprising to see that European policy-makers waited until June 2011 to hold the first joint PSC/COSI meeting as a platform to discuss the cooperation between external and internal security actors and future deployment policies. Similarly, debates about the takeover of the EUPM mandate by the EU delegation and a team of consultants for the European Commission show that long-running institutional tensions between CSDP actors and the Commission are still pertinent.

While the Lisbon Treaty may have brought more coherence in the formulation of foreign policy with the creation of the EEAS and of a double-hatted High Representative and Vice President of the Commission, the implementation of CSDP remains a coherence challenge. In the framework of the debates about the need for a new treaty, the option of a CFSP with more autonomous financial procedures and leaner decision-making processes will probably materialise to ensure that lessons have been learned from the past decade.

## ANNEXES

### ***EUPM HEADS OF MISSION AND THE KEY FEATURES OF MANDATE DEVELOPMENT***

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#### **Planning and mission build-up (2002-2005)**

##### Commissioner Sven Frederiksen (2002-2004)

Sven Frederiksen of Denmark was the last Police Commissioner of the International Police Task Force (IPTF) of the UN Mission in Bosnia and Herzegovina. In order to strengthen the continuity between the UN IPTF and the follow-on EU mission he was appointed Head of the EUPM Planning Team in 2002. As of 1 January 2003 he was the first EUPM Head of Mission. He faced the challenge of building up the first-ever ESDP operation. Frederiksen oversaw the deployment of EU civilian capabilities on the ground, including a substantial contribution by third states. Sven Frederiksen died of heart failure in Sarajevo while still serving as Head of Mission in February 2004.

##### Commissioner Kevin Carty (2004-2005)

Kevin Carty of Ireland assumed responsibility for the mission in the difficult phase following Sven Frederiksen's sudden death. In 2004, the EU prepared to take over the military tasks in Bosnia and Herzegovina from NATO. EUFOR *Althea* was to become the first Berlin Plus military ESDP operation. The coordination of mandates became the key challenge. Additionally, the demand for police structural reform was put on the agenda by the High Representative Paddy Ashdown and was included among the political conditionalities of the EU for the conclusion of a Stabilisation and Association Agreement. The question of police structural reform was, however, not reflected in the EUPM mandate as this had already been conceptualised in 2002. As both EUFOR *Althea*'s deployment and police reform were not foreseen initially, the PSC started a discussion about the extension of the mission beyond 2005 with a new focus. During this period Carty placed particular emphasis on supporting the development of crime-fighting capacities and improving the professional attitudes and awareness of the police agencies in Bosnia and Herzegovina.

## **The refocused mission (2006-2009)**

Brigadier-General Vincenzo Coppola (2006-2008)

The overlapping mandates of EUPM and EUFOR, as well as the politically complicated question of police structural reform, demanded a stronger association with the EU and ESDP decision-making structures in Brussels. Vincenzo Coppola of Italy was the first Head of the Police Unit within the Council General Secretariat and was appointed to bring his institutional experience from the Headquarters to the mission. The mandate for the two-year extension of EUPM until 2007 was refocused on three issues: support to the fight against organised crime, assisting the police reform process and strengthening the accountability of the law enforcement sector through inspection. At the same time, the staffing levels of the mission were drastically reduced. Due to the protracted and inconclusive police reform process, the EUPM mandate was extended for another two years until 2009. In spring 2008 the question of police structural reform was postponed by means of a compromise to pave the way for the signing of the Stabilisation and Association Agreement with the European Union. In June 2008 the European Commission delivered a road-map for visa liberalisation to the authorities of Bosnia and Herzegovina which was to dominate the coming years.

## **Conclusion (2010-2012)**

Commissioner Stefan Feller (2008-2012)

At the end of 2008, Stefan Feller of Germany was appointed as fourth Head of Mission. He had previously served from 2004 as Head of the Police Unit in the Council General Secretariat and, following the Hampton Court reform of the crisis management structures, as of 2007 he was Head of Operations in the CPCC. The implementation of the police reform and practical assistance in meeting the requirements of the visa liberalisation road-map through the support in the fight against organised crime and corruption became the priorities of the mission. For the period 2010-2011 the mission was further reduced while at the same time the thematic scope was broadened to the whole range of rule-of-law issues. The focus of the mission was to support the strategic development of the partly reformed but still highly fragmented law enforcement and judicial system. The objective was to establish an institutionalised cooperation within the country on the basis of the EU policy cycle in the area of justice, liberty and security. The unanimous decision of the Council in November to lift the visa requirement for Bosnia and Herzegovina is also considered as testimony to the success of EUPM's work. The cooperation of the authorities of Bosnia and Herzegovina with EUROPOL, EUROJUST and FRONTEX increased, as well as regional police cooperation and cooperation on a bilateral basis with EU member states. Further reform and rationalisation of the law enforcement sector of the country remained, however, tied to the question of the reform of the Dayton constitution.

The Council considered this question beyond the scope of a civilian crisis management operation under the CSDP and terminated the operation on 30 June 2012.

Following a competitive tender, a Consortium led by the Austrian Federal Ministry of Interior in partnership with the Hungarian Ministry of Interior, the Ministry of Interior of the Republic of Slovenia, the Police Academy of the Federal State of Brandenburg and International Centre for Migration Policy Development (ICMPD) was selected, in the framework of the Instrument for Pre-Accession (IPA), and contracted by the European Commission to implement the project 'EU Support to the Area of Law Enforcement'. The project started in May 2012 and is scheduled to be finalised by the end of April 2014. The office of the European Union Special Representative in Sarajevo was additionally reinforced with a home affairs and public security section.

*The website of EUPM remains available at [www.eupmbih.eu](http://www.eupmbih.eu) and contains further information about the work of the mission. Audiovisual material commissioned and produced by EUPM can be found at: <http://www.youtube.com/user/EUPMchannel>.*

*Source:* Compiled by Tobias Flessenlempfer.



## TABLES

**Table 1: Council Joint Actions/Council Decisions**

| <b>Council Joint Actions/Council Decisions on EUPM with budgetary implications</b>                                                                                     | <b>Year</b>      | <b>Budget (EUR)</b>     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|-------------------------|
| Council Joint Action 2002/210/CFSP of 11 March 2002 on EUPM                                                                                                            | 2002             | 14,000,000              |
| Council Joint Action 2002/968/CFSP of 10 December 2002 concerning the implementation of Joint Action 2002/210/CFSP on the European Union Police Mission (2003 budget)  | 2002/03          | 20,000,000              |
| Council Joint Action 2003/141/CFSP of 27 February 2003 on additional 2003 budget for EUPM                                                                              | 2003             | 1,700,000               |
| Council Decision 2003/856/CFSP of 8 December 2003 concerning the implementation of Joint Action 2002/210/CFSP on the European Union Police Mission (2004 budget)       | 2003/04          | 17,500,000              |
| Council Decision 2004/837/CFSP of 6 December 2004 concerning the implementation of Joint Action 2002/210/CFSP on the EUPM                                              | 2004/05          | 17,410,000              |
| Council Joint Action 2005/824/CFSP of 24 November 2005 on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH)                                     | 2005             | 3,000,000               |
| Council Decision 2006/865/CFSP of 28 November 2006 relating to the implementation of Council Joint Action 2005/824/CFSP of 24/11/2005                                  | 2006<br>2007     | 9,000,000<br>12,150,000 |
| Council Decision 2007/791 CFSP of 4 December 2007 relating to the implementation of the Joint Action 2007/749 CFSP of 19/11/2007                                       | 2008             | 14,800,000              |
| Council Decision 2008/890/CFSP of 27 November 2008 implementing Joint Action 2007/749/CFSP on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH) | 2009             | 12,400,000              |
| Council Decision 2009/906/CFSP of 8 December 2009 on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH)                                          | 2010             | 14,100,000              |
| Council Decision 2011/781/CFSP of 1 December 2011 on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH)                                          | 2012             | 5,250,000               |
| <b>TOTAL</b>                                                                                                                                                           | <b>2002-2012</b> | <b>110,010,000</b>      |

Source: Official Journal of the European Union, 2002-2011.

Note: The amounts in the budget column are taken from the relevant Council Joint Action/Decision. They reflect the allocation of appropriations in the Community budget. Throughout EUPM's mandate those appropriations were fully committed through the contract with the Special Advisor. The actual amount spent per budget year differs from the amounts stated in this table. However, unspent funds were carried forward into the following budget year. The overall amount spent from the Community budget on EUPM is expected to be close to the amount stated in this table. The amounts stated in this table do not include any costs related to seconded staff. Those costs, apart from the local *per diems*, were entirely borne by the seconding member or participating third state.

**Table 2: Staffing of EUPM**

| <b>Category/year</b>            | <b>2003</b> | <b>2005</b> | <b>2007</b> | <b>2009</b> | <b>2011</b> | <b>2012</b> |
|---------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| International Personnel (total) | 556         | 412         | 195         | 140         | 104         | 33          |
| – Police                        | 498         | 362         | 167         | 114         | 75          | 13          |
| – Civilian Experts              | 58          | 50          | 28          | 26          | 29          | 20          |
| BiH staff                       | 333         | 312         | 217         | 211         | 146         | 44          |
| <b>TOTAL</b>                    | <b>889</b>  | <b>724</b>  | <b>422</b>  | <b>351</b>  | <b>250</b>  | <b>77</b>   |

Source: EUPM, 2012.

Note: Numbers as of November of the respective year and in May 2012. Participating third states were Canada, Iceland, Norway, Switzerland, Turkey and Ukraine. From 2002 to 2004 ten acceding states also participated in the mission. From 2002-2012 all 27 EU member states participated at least once in EUPM.

**Table 3: Staffing of EUPM by country, 2002-2012**

| EU MEMBER STATES | Police officers |             | Civilians experts/staff |            | EUPM total   |
|------------------|-----------------|-------------|-------------------------|------------|--------------|
|                  | Contracted      | Seconded    | Seconded                | Contracted |              |
| Austria          |                 | 38          | 2                       | 2          | <b>42</b>    |
| Belgium          |                 | 20          | 2                       | 5          | <b>27</b>    |
| Bulgaria         |                 | 6           | 0                       | 3          | <b>9</b>     |
| Cyprus           |                 | 13          | 0                       | 0          | <b>13</b>    |
| Czech Republic   |                 | 19          | 0                       | 0          | <b>19</b>    |
| Denmark          | 1               | 44          | 1                       | 1          | <b>46</b>    |
| Estonia          |                 | 9           | 0                       | 0          | <b>9</b>     |
| Finland          |                 | 43          | 14                      | 3          | <b>60</b>    |
| France           |                 | 268         | 4                       | 6          | <b>278</b>   |
| Germany          | 1               | 316         | 5                       | 7          | <b>328</b>   |
| Greece           |                 | 28          | 0                       | 0          | <b>28</b>    |
| Hungary          |                 | 15          | 0                       | 0          | <b>15</b>    |
| Ireland          | 1               | 34          | 1                       | 6          | <b>41</b>    |
| Italy            | 1               | 143         | 5                       | 7          | <b>155</b>   |
| Latvia           |                 | 10          | 0                       | 1          | <b>11</b>    |
| Lithuania        |                 | 8           | 0                       | 0          | <b>8</b>     |
| Luxemburg        |                 | 11          | 0                       | 1          | <b>12</b>    |
| Malta            |                 | 3           | 0                       | 0          | <b>3</b>     |
| Netherlands      |                 | 127         | 1                       | 6          | <b>134</b>   |
| Poland           |                 | 47          | 0                       | 0          | <b>47</b>    |
| Portugal         |                 | 22          | 0                       | 2          | <b>24</b>    |
| Romania          |                 | 32          | 2                       | 0          | <b>34</b>    |
| Slovakia         |                 | 21          | 0                       | 0          | <b>21</b>    |
| Slovenia         |                 | 26          | 0                       | 0          | <b>26</b>    |
| Spain            |                 | 67          | 6                       | 9          | <b>82</b>    |
| Sweden           |                 | 57          | 3                       | 2          | <b>62</b>    |
| United Kingdom   |                 | 196         | 16                      | 13         | <b>225</b>   |
| <b>Sub-total</b> | <b>4</b>        | <b>1623</b> | <b>62</b>               | <b>74</b>  | <b>1,763</b> |

*(Table continued overleaf)*

(Table continued from previous page)

| THIRD STATES       | Police officers |              | Civilians experts/staff |            | EUPM total   |
|--------------------|-----------------|--------------|-------------------------|------------|--------------|
|                    | Contracted      | Seconded     | Seconded                | Contracted |              |
| Canada             |                 | 28           | 0                       | 1          | <b>29</b>    |
| Iceland            |                 | 6            | 1                       | 0          | <b>7</b>     |
| Norway             |                 | 26           | 5                       | 0          | <b>31</b>    |
| Russia             |                 | 7            | 0                       | 0          | <b>7</b>     |
| Switzerland        |                 | 11           | 1                       | 0          | <b>12</b>    |
| Turkey             |                 | 55           | 0                       | 3          | <b>58</b>    |
| Ukraine            |                 | 19           | 0                       | 1          | <b>20</b>    |
| <b>Sub-total</b>   | <b>0</b>        | <b>152</b>   | <b>7</b>                | <b>5</b>   | <b>164</b>   |
| <b>BiH STAFF</b>   |                 |              |                         | 435        |              |
| <b>Grand Total</b> | <b>4</b>        | <b>1,775</b> | <b>69</b>               | <b>514</b> | <b>2,362</b> |

Source: EUPM, 2002-2012.

Note: The numbers reflect deployment to the mission and not the number of individual persons who worked in the mission. Several officers served multiple tours of duty and other international staff were serving once as seconded and then as contracted staff or vice versa. These cases are necessarily counted in as different deployments. The contracted Police Officers were the four Heads of Mission.

## **ABBREVIATIONS**

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|        |                                                                        |
|--------|------------------------------------------------------------------------|
| BiH    | Bosnia and Herzegovina                                                 |
| CARDS  | Community Assistance for Reconstruction, Development and Stabilisation |
| CFSP   | Common Foreign and Security Policy                                     |
| CGS    | Council General Secretariat                                            |
| CIVCOM | Committee for Civilian Crisis Management                               |
| CMPD   | Crisis Management and Planning Directorate                             |
| COSI   | Standing Committee on Operational Cooperation on Internal Security     |
| COWEB  | Working Party on the Western Balkans Region                            |
| CPCC   | Civilian Planning and Conduct Capability                               |
| CSDP   | Common Security and Defence Policy                                     |
| DG     | Directorate General                                                    |
| DIPR   | Directorate for the Implementation of Police Restructuring             |
| DPKO   | Department of Peacekeeping Operations                                  |
| EC     | European Commission                                                    |
| EEAS   | European External Action Service                                       |
| ESDP   | European Security and Defence Policy                                   |
| EUMM   | European Union Monitoring Mission                                      |
| EUMS   | EU Military Staff                                                      |
| EUPM   | EU Police Mission                                                      |
| EUSR   | EU Special Representative                                              |
| GFAP   | General Framework Agreement for Peace in Bosnia and Herzegovina        |
| HQ     | Headquarters                                                           |
| HR     | High Representative                                                    |
| ICTY   | International Criminal Tribunal for the former Yugoslavia              |
| IPA    | Instrument for Pre-Accession Assistance                                |
| IPTF   | International Police Task Force                                        |
| IT     | Information Technology                                                 |

|         |                                                                |
|---------|----------------------------------------------------------------|
| JLS     | Justice, Freedom and Security                                  |
| LEA     | Law Enforcement Agency                                         |
| MIP     | Mission Implementation Plan                                    |
| NATO    | North Atlantic Treaty Organisation                             |
| NGO     | Non-Governmental Organisation                                  |
| OHR     | Office of the High Representative                              |
| OSCE    | Organisation for Security and Co-operation in Europe           |
| PIC     | Peace Implementation Council                                   |
| PRC     | Police Restructuring Commission                                |
| PSC     | Political and Security Committee                               |
| RS      | Republika Srpska                                               |
| SAP     | Stabilisation and Association Process                          |
| SFOR    | Stabilisation Force                                            |
| SIPA    | State Investigation and Protection Agency                      |
| SITCEN  | Situation Centre                                               |
| SOMA    | Status of Mission Agreement                                    |
| SSR     | Security Sector Reform                                         |
| UN      | United Nations                                                 |
| UNMIBH  | United Nations Mission in Bosnia and Herzegovina               |
| UNSCR   | United Nations Security Resolution                             |
| UN SRSG | United Nations Special Representative of the Secretary General |

## NOTES ON THE CONTRIBUTORS

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